



## BRIEFING PAPER

Number 5531, 9 September 2019

# Regulation of Insolvency Practitioners (IPs)

By Lorraine Conway

### 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 the regulatory framework
6. Complaint statistics



# Contents

<b>Summary</b>	<b>3</b>
<b>1. What is an IP?</b>	<b>4</b>
<b>2. Structure of the regulatory regime</b>	<b>5</b>
2.1 Role of the Insolvency Service	5
2.2 Role of the Recognised Professional Bodies (RPBs)	5
2.3 The 2015 legislative changes	6
2.4 New regulatory objectives	6
<b>3. Features of the complaints system</b>	<b>8</b>
3.1 Who can make a complaint?	8
3.2 What complaints cannot be considered by the Gateway?	8
3.3 Complaints about an IP's remuneration	9
3.4 Sanctions that can be taken against IPs	9
<b>4. The mechanics of a complaint</b>	<b>11</b>
4.1 First stage: assessment/preliminary enquiry	11
4.2 Second stage: formal investigation	11
4.3 Third stage: consideration by a committee, which may impose a sanction	12
4.4 Fourth stage: review or appeal	12
4.5 Compensation	12
<b>5. Review of the regulatory framework</b>	<b>13</b>
5.1 Review of handling complaints about IPs	13
5.2 Call for evidence on the current regulatory framework for IPS	14
<b>6. Complaint statistics</b>	<b>15</b>

## 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.

The current regulatory framework has been in place since October 2015. All IPs must be licensed and regulated by a Recognised Professional Body ("an 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.

In October 2015, the [Small Business Enterprise and Employment Act 2015](#) introduced new regulatory objectives intended to provide RPBs with a clear structure within which to carry out their regulatory functions. Importantly, the Act gave the Secretary of State the power to create a single, independent regulatory body in place of the current system of RPBs, should it be considered appropriate. This power expires in 2022.

On 12 July 2019, the Insolvency Service published a [call for evidence](#) on the current regulatory framework; it closes on 4 October 2019. This consultation starts the process to inform the government as to whether the regulatory objectives have had their intended impact or whether there is a need to make further changes, including whether to consult on a move to a single regulator.

This Commons briefing paper provides an outline of the current regulation of IPs. It provides information on how a complaint can be made against an authorised IP. At **section 5**, it also considers the Insolvency Service's recent call for evidence.

It should be noted that insolvency is a devolved function in Northern Ireland, although in practice the regime is closely aligned with that of England and Wales. Insolvency is handled by the [Northern Ireland Insolvency Service](#) with oversight regulation carried out by the Department for Economy (DfE). Scotland shares the same corporate insolvency law as in 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?

The authorisation regime for insolvency practitioners in Great Britain and Northern Ireland was introduced by Part XIII of the [Insolvency Act 1986](#) (IA 1986).

An IP is an individual who is authorised under the 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

Some IPs take only personal or corporate insolvency appointments, but many IPs work in both fields. Insolvency is a relatively small profession; according to Insolvency Service estimates, there are currently 1,565 IPs in the UK, of which 1,244 are actively taking appointments.<sup>1</sup>

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.

---

<sup>1</sup> Insolvency Service, [Call for Evidence: Regulation of insolvency practitioners: Review of current regulatory landscape](#), 12 July 2019, [online] (accessed 9 September 2019)

## 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, the Insolvency Service (specifically, its [Insolvency Practitioner Regulation Section](#) (IPRS) acts as the oversight regulator of the RPBs in Great Britain on behalf of the Secretary of State.<sup>2</sup>

It should be noted that since 2009-10, the Insolvency Service has put its authorisation function at arm's length from its overarching regulatory function.<sup>3</sup>

### 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 RPBs (see **Box 1** below). Each authorising body is monitored by the [Insolvency Service](#) and is required to act in a way which is compatible with new regulatory objectives (see sections 3 & 4 below).

#### Box 1: Recognised Professional Bodies

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

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

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

These new regulatory objectives are intended to provide the RPBs with a clear structure within which to carry out their regulatory functions in authorising IPs.

In practice, it is the responsibility of the Insolvency Service to ensure that the regulation of IPs is undertaken in accordance with common standards. Insolvency Service guidance requires all RPBs to have a complaints system that is accessible, fair and transparent. This includes the proper assessment and investigation of complaints, and the provision of timely and appropriate information to all parties and to the Insolvency Service. The disciplinary procedures of RPBs should secure fair and consistent outcomes.

<sup>2</sup> Oversight regulation in Northern Ireland is carried out by the Department for Economy (DfE)

<sup>3</sup> The Insolvency Service stopped authorising IPs (on behalf of the Secretary of State) at the end of September 2016

## 2.3 The 2015 legislative changes

In October 2015, the [Small Business, Enterprise and Employment Act 2015](#) introduced significant changes to insolvency law, practice and regulation of IPs. These included:

- the introduction of regulatory objectives for insolvency regulators, which apply to the RPBs and the Secretary of State, as oversight regulator;
- powers for the Secretary of State to act against RPBs and, where it is in the public interest, against IPs directly; and
- changes to the way that some IP fees and expenses are communicated and agreed with creditors.

Importantly, the Act gave the Secretary of State the power to create a single, independent regulatory body in place of the current RPBs should it be considered appropriate. This power expires in **October 2022**.

There were two drivers for change:

- First, a 2010 report by the Office of Fair Trading (OFT) into the market for corporate IPs; and<sup>4</sup>
- second, a 2013 report by Professor Elaine Kempson of Bristol University on her review of IP fees.<sup>5</sup>

Both reports found that the regulatory regime for IPs lacked clear objectives against which the Insolvency Service could hold RPBs to account. In addition, the Insolvency Service had limited powers with which to regulate RPBs; it did not have a range of sanctions to enable it to deal promptly with varying degrees of poor performance. Under the Insolvency Act 1986 it could revoke an RPB's recognition, but this action was felt to be disproportionate in all but the most serious circumstances. Both reports raised concerns about the ability of unsecured creditors to control fees and the treatment of individual debtors where there is a surplus of assets.

[Guidance](#) on the legislative changes was published by the Insolvency Service in December 2015.<sup>6</sup>

## 2.4 New regulatory objectives

Under the regulatory objectives, RPBs are required to act in the way they consider most appropriate for achieving the following:

- having a system of regulating IPs that secures fair treatment for people affected by their acts, that is transparent, accountable, proportionate, and ensures consistent outcomes;
- encouraging an independent and competitive insolvency practitioner profession whose members provide high quality services at a fair and reasonable cost, act transparently and with integrity, and consider the interests of all creditors in any case;
- promoting the maximisation of, and promptness of returns to, creditors; and
- protecting and promoting the public interest.

---

<sup>4</sup> Office of Fair Trading, [The market for corporate insolvency practitioners: a market study](#), 2010, [not online].

<sup>5</sup> [Review of Insolvency Practitioner fees – Report to the Insolvency Service](#), Elaine Kempson, Bristol University, July 2013 [online] (accessed 9 September 2019)

<sup>6</sup> Insolvency Service, [Insolvency practitioner regulation – regulatory objectives and oversight powers](#), 7 December 2015 [online] (accessed 9 September 2019)

[Guidance on Common Sanctions](#) was issued in November 2016 and is used by all RPBs to determine the appropriate sanction following a finding of IP misconduct.<sup>7</sup> According to the Insolvency Service, this encourages consistency and best practice in the application of the available penalties.

---

<sup>7</sup> Insolvency Service, [Common Sanctions Guidance](#), 2 November 2016, [online] (accessed 9 September 2019)

## 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 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 legislative changes, the Gateway can consider complaints 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 is generally appropriate in the circumstances of a 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 five RPBs have a range of regulatory and disciplinary sanctions at their disposal to use against an IP (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 enough 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 the regulatory framework

### 5.1 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.<sup>8</sup> The review covered the five RPBs that will remain beyond September 2016 (see **Box 1** above). 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.<sup>9</sup> 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.<sup>10</sup> It made the following recommendations:

- RPBs should ensure that information is sought from IPs in respect of complaints received.
- RPBs and the Insolvency Service should consider the feasibility of IPs paying compensation directly to a complainant in situations where loss or distress has been caused by the IP's actions.
- RPBs to discuss with the Insolvency Service how they intend to ensure the 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.<sup>11</sup>

---

<sup>8</sup> The Insolvency Service, [Review of Handling of Complaints about Insolvency Practitioners](#), September 2016, [online] (accessed 9 September 2019)

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid

## 5.2 Call for evidence on the current regulatory framework for IPS

On 12 July 2019, the Insolvency Service launched a [call for evidence](#).<sup>12</sup> It is seeking views on the impact of the new regulatory objectives introduced for IPs by the [Small Business Enterprise and Employment Act 2015](#). All stakeholders are encouraged to respond to the consultation, namely, Recognised Professional Bodies, insolvency practitioners, trade bodies, creditors and their representatives and debt charities. The consultation closes on **4 October 2019**.

According to the Insolvency Service, responses to the consultation should help it to measure current levels of confidence in the regulatory framework and assess whether there is a need to make further changes, including whether to consult on a move to a single regulator. The Insolvency Service has said that it will consider all the information presented as part of this call for evidence when determining what, if any, further action may be required. Any formal proposals related to the creation of a single regulator will be subject to further consultation and full Parliamentary scrutiny.<sup>13</sup>

---

<sup>12</sup> Insolvency Service, [Call for Evidence: Regulation of insolvency practitioners: Review of current regulatory landscape](#), 12 July 2019, [online] (accessed 9 September 2019)

<sup>13</sup> 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.<sup>14</sup> Further information is provided in a useful table compiled by the Insolvency Service (see **Figure 1** below).

Fig.1. Complaints statistics

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

According to the Insolvency Service, 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.

<sup>14</sup> The Insolvency Service, [Review of Handling of Complaints about Insolvency Practitioners](#), September 2016, [online] (accessed 9 September 2019)

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).