

Support information

INSOLVENCY MONITORING REPORT 2020

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Further growth in insolvencies but was 2019 the calm before the storm?

While the regulatory changes we expected in 2019 were delayed as a result of Brexit, 2019 wasn't quiet from an insolvency perspective. It saw company insolvencies increase to their highest annual level since 2013. This was largely driven by an increase in creditors' voluntary liquidations which reached their highest annual level since 2009. Administrations also increased in 2019 compared to 2018 although compulsory liquidations decreased, and company voluntary arrangements (CVAs) remained flat.

2019 also saw total individual insolvencies increase to their highest annual level since 2010. This was largely driven by an increase in individual voluntary arrangements (IVAs) which reached their highest year on record for the second year in a row. Bankruptcies increased slightly compared to 2018, while debt relief orders decreased slightly.

Retail insolvencies hit a five year high in 2019 with Debenhams, Links of London, Karen Millen and Bon Marché falling into insolvency. The building and construction sector also continued to feel the strain, with a 55% increase in insolvencies between the second and third quarters of 2019.

And then there was the tourism industry. After 178 years in business, high street holiday company Thomas Cook failed in September 2019, impacting thousands of employees and customers. It was one of 23 airline carriers that ceased in 2019.

The government issued its final report on its independent airline insolvency review in May 2019. The proposed reforms include a special administration procedure to enable the repatriation of passengers and striking a better balance between stronger consumer protection and the interest of tax payers. The reforms were included in the Queen's speech in December 2019 and were (pre COVID-19) expected to come into force in 2020.

But if 2019 was the calm before the storm, the maelstrom that is the COVID-19 pandemic means that 2020 could be an even busier year for insolvency practitioners (IPs). At the time of drafting (mid-May 2020) the UK is in lockdown due to the coronavirus pandemic with all but essential shops closed, and we're not clear when that will be lifted. The pandemic is anticipated to result in a global recession, and will significantly impact every business in the UK and internationally.

Some of the insolvency changes outlined above may still happen in 2020, and we are expecting the restructuring moratorium provisions to come in, potentially earlier than they would otherwise have done. We had also expected to see the outcome of the Insolvency Service's deliberations on the prepack and single regulator consultations in 2020. We expect that the prepack sunset clause will now be allowed to lapse but don't currently know to what extent the current pandemic will affect the single regulator sunset clause due to expire in 2022.

In the meantime, IPs will see changes to the Insolvency Code of Ethics which became effective from 1 May 2020 and revisions to SIPs 7 and 9 later in the year.

We expect IPs to play a significant part in individuals and businesses recovering from this pandemic and we will look to support and guide our licence holders. We are using Talk Insolvency, our social media platform, to keep our IPs up to date with the regular changes to usual working practices in this lockdown period and would urge all our IPs to sign up to its alerts. The ICAEW website has a coronavirus hub containing useful resources about COVID-19 including help for business, tax issues and employer advice. It can be accessed at [icaew.com/insights/coronavirus](https://www.icaew.com/insights/coronavirus). The hub also has lots of resources to support our IPs, including advice for maintaining mental and physical wellbeing and tips for working from home.

For now though, take care and stay safe.

2019 – the year in figures

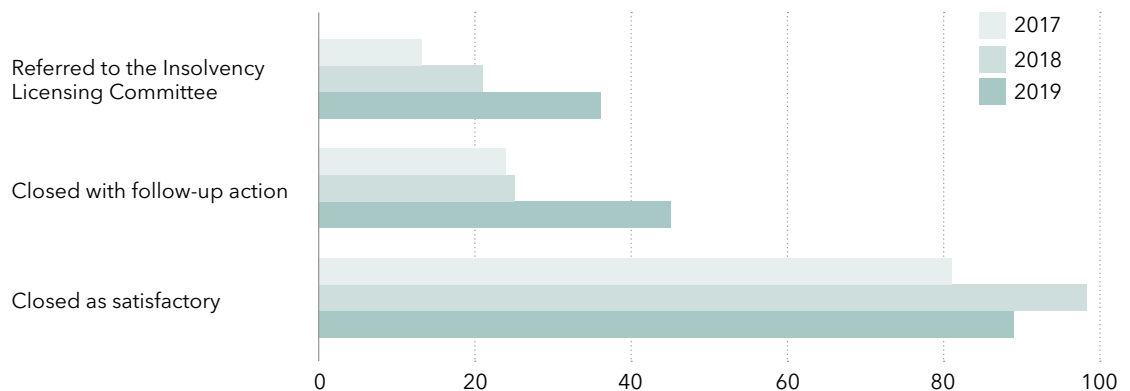
ICAEW licenses more IPs than any other licensing body. At 1 January 2020 ICAEW licensed 805 IPs, over 50% of the UK's IP population.

During 2019, our insolvency reviews comprised:

- 165 on-site routine visits
- 5 targeted visits
- 2 risk visits
- 42 SIP 16 desk top reviews
- 28 new IP telephone calls

Routine and targeted visits closed – number of IPs in each category

| | |
|---|----|
| Satisfactory | 89 |
| Visits requiring follow up | 45 |
| Visits referred to the Insolvency Licensing Committee for regulatory action | 36 |



We concluded on-site visits to 170 IPs during 2019. These include some visits that were started in 2018. Likewise some of the visits started in 2019 will be concluded in 2020. The outcome of the visits concluded in 2019 is shown above, and compared with the outcomes in 2017 and 2018.

Follow-up action was required for 26% of the visits concluded in 2019, an increase of 9% on 2018. In 47% of these cases (21 IPs) we asked the IPs to send us a copy of their next insolvency compliance review (ICR), as we wanted reassurance that they

had made the changes needed. Other follow-up included asking 8 IPs to provide undertakings and 27 to provide confirmation that they would address specific matters. We also issued 15 requests for updates on case specific matters or case progression and closure.

21% of the visits concluded in 2019 resulted in a referral to the Insolvency Licensing Committee (ILC). This is a 6% increase on 2018, and a 10% increase on 2017.

The outcome of the cases considered by the ILC in 2019 resulted in:

- 24 IPs giving undertakings
- referral of 22 IPs to ICAEW's Professional Conduct Department (PCD) for investigation into potential disciplinary action
- 9 regulatory penalties
- 6 targeted visits being ordered
- restriction of 1 IP's licence

The outcomes for some visits resulted in multiple actions.

REFERRALS TO THE INSOLVENCY LICENSING COMMITTEE (ILC)

While in recent years there haven't been any particular trends in the increased number of visits referred to the ILC, there have been some common themes in visits referred during 2019.

REMUNERATION

We referred 11 visits to the ILC where fees had been drawn without appropriate authority. We also referred four visits where we found the fees, or proposed fee basis, to be excessive or unreasonable, given the circumstances of the case. The ILC has the authority to request repayment of fees in such circumstances, alongside taking disciplinary action against the IP.

One of the regulatory objectives introduced in October 2015 is to encourage an independent and competitive insolvency practitioner profession, whose members provide high quality services at a fair and reasonable cost. The words 'fair and reasonable' have a common interpretation, and we will consider both the interests of IPs, who are entitled to a fair return from the work they do, and of those affected by the fees charged in a particular case. We assess whether the fees charged are set at the right level, taking into account the assets and liabilities of the case, and the level or grade of staff used to carry out each aspect of a case.

Despite the new rules coming into effect in April 2017, in 2019 we also saw instances where decision procedure rules were not being followed. And we saw some cases where fee estimates were not provided despite the IPs seeking fees on a time cost basis, and the well-publicised introduction of fee estimates in 2015.

Guidance: Consider using a billing authority form, which prompts for staff to provide evidence of the fee authority. Step back from your fee request and ask yourself if you would be happy with the amounts proposed if you were a creditor. Does the fee estimate or report give you a clear picture of the work done, or to be done, and do the costs seem reasonable given the explanation provided.

ETHICS

Some potentially serious breaches of the ethical code have resulted in referrals to the ILC.

We reported three instances of taking appointments where a prior professional relationship had not been considered. In all of these cases, we considered that the IPs had accepted the appointments where they ought to have concluded that it was unethical to do so given the threats to the fundamental principles of the Code of Ethics. The matters included numerous repeat appointments with common interested parties and cases accepted where the IP firm was connected to a party who had previously provided significant accounting work to the entity.

Guidance: You should properly consider and document any potential conflicts of interest or other threats to compliance with the Code of Ethics before taking on an appointment. Where there has been a prior relationship, you should ensure that the nature of this is fully documented, as well as the fees earned, so that the conflict note fully reflects the position. In some cases the conflict arising from previous work or insolvency engagements will mean that you shouldn't accept the appointment.

INVESTIGATIONS

While failure to record sufficient investigation work under SIP 2 won't necessarily result in referral to the ILC, a systemic failure to do so may well do. We have also referred visits to the ILC where IPs have failed to pursue antecedent transactions for the benefit of creditors.

The regulatory objectives state that the RPBs must ensure that their IPs are carrying out their functions with a view to promoting the maximisation of the value of, and promptness of, returns to creditors. Failing to pursue antecedent transactions, which could result in potential asset realisations for the benefit of creditors, is a serious failing in your primary duty as an IP.

Guidance: Ensure that potential recovery actions are explored at an early stage as required by SIP 2 and that you then follow up on these in a timely manner. Where it may not be commercially viable or in the best interests of creditors to pursue recoveries, this should be fully justified and documented in your files. However, bear in mind that litigation funders may be able to help you.

STATUTORY DEADLINES

In a trend that seems to have followed on from 2018, we have seen an increasing number of cases where the IP has failed to meet statutory deadlines; not in isolated cases, but on a systemic basis. There should routinely be no reason to miss filing deadlines except in exceptional circumstances. We have referred IPs with repeated and systemic breaches to the ILC. In these cases the ILC has often ordered the IP to make subsequent periodic returns to monitor whether the situation has been addressed.

Guidance: Ensure you have robust diary prompts and case-specific checklists. Consider appointing an appropriate grade of staff to oversee compliance in this area, and to ensure that staff are aware of upcoming deadlines.

OTHER MATTERS

INSOLVENCY COMPLIANCE REVIEWS (ICRs)

Other matters reported to the ILC included weak internal ICR procedures. This was where IPs had either failed to identify breaches when conducting their ICRs, or had not implemented any changes to their processes following the ICR, which led to breaches continuing to occur. Also, two IPs had failed to complete an ICR. While there is a lot of discretion as to how you carry out your ICR, our licensing regulations require you to complete one annually and it is a requirement that the ILC takes seriously.

Guidance: When carrying out your ICR, use a robust checklist, and document your findings, and any corrective measures you intend to introduce. Make sure you act on these. You can find guidance on the ICR process at [icaew.com/technical/insolvency](https://www.icaew.com/technical/insolvency), including a copy of our current checklists.

INFORMATION TO DEBTORS

We referred a number of matters to the ILC where we found that IPs were giving poor information to debtors. This included omitting relevant alternative options during discussions; rushing calls; leading the debtor; and not sufficiently explaining the relevant pros and cons of other insolvency processes available to them.

It is crucial that an IP provides accurate and impartial information to debtors, to ensure that they enter a suitable insolvency process. IPs need to exercise fair treatment, which is of specific importance when dealing with parties who will have a relatively limited understanding of insolvency law.

Guidance: Ensure that all employees carrying out calls are sufficiently trained and knowledgeable, so that debtors receive a fair service. Review and update scripts regularly. Call discussions should be individually adapted to the debtor's circumstances and debtors should be given sufficient time to consider their options. IPs who delegate calls to staff should carry out a quality review on an ongoing basis.

Common monitoring issues

In 2019, as was the case in 2018, there was no overriding theme to the issues raised in our monitoring visits. They cover almost all of the areas IPs deal with when handling an insolvency case.

Below are some of the more common issues that we have identified during monitoring visits with IPs during the last year. We've also included guidance from our quality assurance reviewers on how you can avoid similar issues being raised on your monitoring visit.

1. DELIVERY TIMESCALES

On a number of visits we have found that delivery timescales haven't been properly calculated, so creditors haven't had sufficient notice of decision procedures.

Guidance: Don't forget the definition of 'delivered' when issuing reports and make sure you allow sufficient days. And don't forget that for postal delivery, this will also depend on whether you use first or second class postage. Remember to exclude both the date of delivery and the date of the decision when calculating the notice periods for decisions.

2. REPORTING AND FEE REQUESTS

We have come across requests where the IP has not justified the reasonableness of their fees or where the IP's narrative in support of the fee request is lacking, or contradictory to the numerical information provided. We also regularly see generic statements of work to be carried out, and we have found that an estimate of expenses is often forgotten when issuing fee estimates.

There can also be limited detail in reports relating to the work done. We have also noted that you can forget to mention whether you have exceeded your fee estimate and why.

Guidance: Take a break and read the report or fee estimate cold. Or you may want to get a colleague who isn't familiar with the case to read it and consider whether it is adapted to the circumstances of the case. Where your fee estimate has been exceeded, remember to explain the deviation from your original fee estimate and what you plan to do about it. And don't forget to check your SIP 9 links.

3. CASE MANAGEMENT AND HANDLING

The primary focus of an IP is to maximise asset realisations for the benefit of creditors. We have seen some unnecessary delays in the recovery of assets.

We have also seen delays in distributing funds to creditors, missed dividend declaration deadlines, and the incorrect calculation of claims, particularly employee claims. Where we see claims or distributions incorrectly calculated, we expect you to correct the position.

Guidance: Consider using an asset control spreadsheet to monitor the steps taken to realise individual assets and include it as part of your file reviews. Issue timely notice of dividends and diarise the deadline for agreeing claims and distributing funds. Make interim distributions where you can, retaining funds to cover ongoing work. Review and sense check dividend calculations. If you have advised creditors that you will implement the small debt provisions, don't forget to do so.

4. ANTI-MONEY LAUNDERING

As well as your obligations in respect of client due diligence and risk assessment, don't forget firm-wide obligations. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 introduced the requirement for a firm-wide risk assessment to be carried out and reviewed each year. You are also expected to complete an AML compliance review. And don't forget to check that your firm has a supervisor. ICAEW will be your firm's supervisor if your firm is an ICAEW member firm. But if it isn't, ICAEW can be your firm supervisor if you enter into a contract for Practice Assurance.

5. FEE BANDS

Ensure that your fee band is sufficient for the fees you expect to generate from your regulated insolvency work. Be mindful of joint appointments and how the fees are allocated. If, during the year, you find that you'd underestimated your fee income and that your fee band is too low, contact us to request an increase.

6. CLIENTS' MONEY

If you're an ICAEW member who is a sole practitioner, or if you work within a practice that falls within the definition of a firm in ICAEW's clients' money regulations, whether you're an ICAEW member or not, you will need to comply with ICAEW's clients' money regulations. Firms with a Practice Assurance contract for money laundering supervision by ICAEW are also required to comply with them. Don't forget that this means five-weekly reconciliations, trust status letters and an annual compliance review. SIP 11 provides some examples of what is client money in an insolvency context. It's worth remembering that fees paid in advance are not clients' money.

7. GDPR

GDPR came into force in May 2018. IPs appear to have addressed firm-wide matters, including privacy policies and internal procedures, but they are not necessarily considering the personal data that individual insolvent entities might be holding. This includes whether the data is secure, if it is held for a lawful purpose and if the entity was registered with the ICO. Also a quick reminder for firms, please check that you are registered with the ICO at the correct tier level. You can find guidance on the ICO website.

The ICAEW website has a wealth of information on all of the above areas.



SIP 11 – Are you compliant?

One practice matter we particularly want to bring to your attention is compliance with SIP 11. The current SIP 11 was issued on 1 January 2018 to address the handling of funds in formal insolvency appointments. It introduced some detailed safeguards and suggested controls over funds held.

While the SIP has been in place for over two years, it's worth taking some time to re-familiarise yourself with the requirements and assessing whether the controls that you have in place are adequate.

The principles of SIP 11 are unchanged, an IP should clearly differentiate and segregate estate money, client money and the money belonging to the office-holder or an entity in which they are working. Estate money and client money must only be handled for their proper purposes, held securely and be subject to appropriate financial controls.

However, SIP 11 introduced safeguards that an IP must have in place to protect funds belonging to the estate. It covers financial controls, including but not limited to:

- ensuring transactional processing is conducted in a timely manner;
- seeking to ensure that solicitors and agents holding estate money account for those funds in a timely manner;
- allowing only appropriate persons within the entity to conduct transactions;
- adequate supervision of personnel with access to funds;
- limiting the size of transactions that can be processed by different grades of staff;
- implementing secure and robust authorisation procedures within the entity;
- regular reconciliation of estate and client accounts;
- periodic risk assessment of transactional processes within the entity; and
- requiring joint signatories or joint authentication.

The financial controls and safeguards applied should be proportionate, considering the number of estates, the quantum of funds held (individually and cumulatively), the number of transactions processed and the structure and ownership of the entity.

The SIP also requires that these controls need to be fully documented and reviewed by the office-holder for their adequacy, as and when appropriate (and at least annually).

Some IPs consider that their ICR process covers this, but unless it also includes a review of your wider firm procedures for areas such as bonding and insurance and handling of funds, in addition to testing of financial processes each year, it may not be enough. Where you are relying on your ICR, you should ask your provider to make it clear that the ICR also constitutes your SIP 11 review. And if you do your own ICR you should clearly state that it includes the SIP 11 review and document your conclusion on your controls and processes.

Our firm annual return process now includes a specific prompt, asking if you have carried out a SIP 11 review.

Guidance: You need to consider the procedures you have in place, whether they meet all of the safeguarding requirements, and how you will conduct your SIP 11 review.

In relation to the financial transactions you could consider:

- carrying out random testing on cases, possibly as part of your ICR, to ensure that transactions (receipts, payments and journals) have been processed in accordance with your procedures;
- reviewing the findings from your annual client money compliance review;
- running reports from your internal cashing systems to review the level of funds held and the frequency with which bank reconciliations have been carried out; and
- reviewing a sample of bank reconciliations.

ICAEW issued a helpsheet *Financial controls for insolvency cases and what to do if you discover financial irregularities* in February 2019. You can find this on the website at

[icaew.com/financial-controls-for-IPs](https://www.icaew.com/financial-controls-for-IPs)

ICAEW insolvency resources

As well as our monitoring work and this report, ICAEW provides a wealth of support and guidance for its IPs.

Webinars

Our webinars are free for our IPs and their colleagues to attend. Our next webinar is:

Insolvency reporting - 11 June 2020

Autumn roadshows and annual insolvency conference

We had planned to run our usual roadshow sessions this autumn, together with holding our annual conference in September. However, given the COVID-19 pandemic, we aim to deliver some of the sessions by way of a series of webinars.

You can see details of all our insolvency events and book online at events.icaew.com, just search on insolvency.

Talk Insolvency

Talk Insolvency is ICAEW's online community - talkinsolvency.com. During the current crisis Talk Insolvency is our key way of quickly communicating new changes to our licence holders. There is also the option to set up automatic new post alerts. Find out how to do that [here](#).

ICAEW licensed insolvency practitioner logos

All ICAEW-licensed IPs are eligible to use the ICAEW licensed insolvency practitioner (UK) logo for promotional purposes. There is also a firm logo for firms whose IPs are all licensed by ICAEW. Download your logo at icaew.com/logos

Access SIPs, regulations and guidance 24/7

Access the SIPs, the insolvency Code of Ethics, guidance on conducting insolvency compliance reviews, past webinars, checklists and further information about the ICAEW annual return at icaew.com/insolvency

ICAEW Certificate in Insolvency (CII)

If, like many, you anticipate an increase in work over the next 12 months now might be a good time to ensure you have appropriate resource to support you. This includes making sure those who support you are as knowledgeable and as up to date as they can be.

Now might be a good time to consider the ICAEW Certificate in Insolvency (CII). ICAEW is delighted to announce two new Partners in Learning for 2020. In addition to BPP, the CII is now supported by NTI and Insolvency Support Services Scotland. Lectures last no more than two hours and are all online. In another leading development ICAEW will shortly be moving to remote invigilation for all of its qualifications. Find out more information at icaew.com/CertInsolvency

Technical and ethics advisory services

Our Technical Enquiries Service provides advice on a wide range of subjects. Visit icaew.com/helplines to find out how to contact us during COVID-19 and beyond. You can also access a wide range of helpsheets written by our technical advisers at icaew.com/helpsheets

Reduce the administrative burden on your firm

By choosing ICAEW as the single regulator for your firm, as ICAEW IPs, your colleagues will benefit from access to the very best insolvency guidance and support and it will reduce administration. We work hard to understand our IP firms, so we can help and support you and your teams. And, if there are more than five IPs, you can appoint one point of contact who we can liaise with for all your firm's insolvency regulation needs. Find out more at icaew.com/insolvency

Our role as a world-leading improvement regulator

We protect the public interest by making sure ICAEW's firms, members, students and affiliates maintain the highest standards of professional competency and conduct.

ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department and overseen by the independent ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. There are more than 1.8m chartered accountants and students around the world, and more than 184,500 of them are members and students of ICAEW.

We believe that chartered accountancy can be a force for positive change. So we attract the brightest and best people and give them the skills and values they need to ensure businesses are successful, societies prosper and our planet's resources are managed sustainably.

Founded in 1880, we have a long history of contribution to the public interest and we continue to nurture collaborative global connections with governments, regulators and business leaders. By sharing our insight, expertise and understanding we can create a world of strong economies and a sustainable future.

www.charteredaccountantsworldwide.com
www.globalaccountingalliance.com

ICAEW

Metropolitan House
321 Avebury Boulevard
Milton Keynes MK9 2FZ
UK

T +44 (0)1908 248 250
E contactus@icaew.com
icaew.com/insolvency

