Sound advice

INSOLVENCY MONITORING 2019

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2018 saw a 0.7% increase in company insolvencies compared with 2017, but these statistics are impacted by a number of bulk insolvencies. Excluding these, underlying company insolvencies increased by 10% on 2017 and reached the highest underlying annual level since 2014.

Personal insolvencies rose by 16.2% on 2017 and reached their highest annual level since 2011. All forms of personal insolvency increased, with IVAs reaching the highest annual level recorded.

The construction industry suffered the most insolvencies during 2018, followed by administration and support service activities. In January 2018 we saw the construction giant Carillion placed into liquidation. This had a major impact on the public sector and other businesses. Administration appointments were also made over high street names including Toys R Us, House of Fraser, Poundworld and HMV.

2018 was dubbed the year of the Company Voluntary Arrangement (CVA), with a number of high profile CVAs hitting the market. Companies such as Carpetright, New Look and Homebase all made use of this restructuring tool and restaurant chains Jamie’s Italian, Prezzo and Carluccio’s also followed suit. During 2018, CVA numbers increased by 16% on 2017, although actual CVA numbers for Q4 2018 were the second lowest recorded since 1998.

Elsewhere, the Department for Business, Energy and Industrial Strategy (BEIS) published the government’s response to its consultation on Insolvency and Corporate Governance in August 2018. The far-reaching legislative changes proposed include a new pre-insolvency moratorium; the prohibition of supplier termination clauses; and a new restructuring plan. And the autumn budget announced the return of preferential status for HMRC. The timing of these changes is unclear.

Brexit continues to dominate headlines and in November 2018, the government laid the Insolvency (Amendment) (EU Exit) Regulations 2018, in draft, in an attempt to protect the profession in the event of a no-deal Brexit. The regulations were made on 30 January 2019 and will come into effect on the day the UK leaves the EU, if we leave without a deal on insolvency.

We expect insolvencies to continue to rise in 2019. It’s uncertain whether 2019 will see the changes to regulation mentioned above, but we can expect to see the long-awaited outcomes of the consultations on bonding and pre-pack reforms. The Insolvency Service is also starting its review of self-regulation ahead of the expiry of the single regulator sunset clause in 2022.

With economic uncertainty and further changes to the way our profession works on the horizon, 2019 looks set to be another interesting year.
ICAEW licenses more insolvency practitioners than any other licensing body in the UK. At 1 January 2019 ICAEW licensed 804 insolvency practitioners (IPs), over 50% of the UK’s IP population.

Our insolvency reviews for 2018 comprised:

- 139 routine visits
- 87 desk top reviews
- 1 risk visit
- 1 targeted visit

We concluded visits to 144 IPs during 2018. These include some visits that were started in 2017 (some of the visits started in 2018 will be concluded in 2019). The outcome of the visits closed in 2018 is shown above, and compared with the outcomes in 2016 and 2017.

While there has been an increase in the number of visits considered by the Insolvency Licensing Committee (ILC), there aren’t any particular trends which explain this increase.

17% of the visits we concluded in 2018 needed follow-up action. In 40% of these cases 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-ups included updates on case-specific matters or case progression and closure and confirmations that IPs would address the matters highlighted.

The outcome of the cases considered by the ILC in 2018 resulted in the following actions:

- 4 referrals to ICAEW’s professional conduct department
- 4 targeted visits ordered
- 1 regulatory penalty awarded
- 2 licence restrictions
- 1 licence withdrawal

SIP 16

Since 1 November 2015, the recognised professional bodies (RPBs) have been responsible for monitoring compliance with SIP 16. At ICAEW we don’t review all of the SIP 16 submissions we receive from our IPs. Instead we adopt a risk-based approach, so typically we will review:

- SIP 16 statements for those IPs who haven’t submitted a previous SIP 16;
- those from IPs who haven’t submitted one for some time; or
- those where the previous review indicated shortcomings.

VISIT FEEDBACK

We ask all IPs to complete a feedback questionnaire after their visit. This provides an ongoing assessment of IPs’ views on monitoring visits. It helps to identify the areas of a visit that have gone well and those that could be improved. Detailed comments from IPs help with the continuing development of the visit process.

In 2018, 100% of the IPs that responded were ‘very satisfied’ or ‘fairly satisfied’ with the management of their monitoring visit process and their interaction with ICAEW.

89% stated the reviewer was constructive in their approach.
During 2018 we received SIP 16 statements for 231 companies. 126 related to connected party sales. Only 10 were referred to the Pre-pack Pool. 127 had deferred consideration. 19 included a viability statement. We concluded the review of 65 of the 231 submissions in 2018; 53 were compliant; 12 were not fully compliant.
As the chart below shows, there’s no overriding theme to the issues raised in our 2018 monitoring visits. Rather they cover almost all the areas IPs deal with when handling an insolvency case.

2018 visit findings

- 23%
- 14%
- 11%
- 10%
- 10%
- 18%

Below, we outline some of the most common issues in these areas and guidance on how to avoid them. On pages 9 and 10 we highlight the wide range of award-winning support and resources available to you as an ICAEW IP.

RENUMERATION AND SIP 9

The most common issues we see on our visits relate to SIP 9 and fees. In most cases, the issues are inadequate disclosures. These include:

- failure to disclose why a fixed or percentage fee is fair and reasonable (remember this also applies to pre-appointment fees);
- providing generic lists of tasks to be carried out, which haven’t been adapted to suit the circumstances of the case; and
- a lack of detailed narrative of the work done, or to be done.

Guidance: Make sure links to SIP 9 guides are working correctly

Some reports still fail to tell creditors where they can find a guide to their rights. Remember you need to include this in every report. In some cases the links provided don’t work or are out of date. Please make sure all links are working correctly and that they link to the correct SIP 9 guide, not a generic webpage.

The fee issues we have seen include invalid fee and category 2 disbursement resolutions. In some cases approval hadn’t been obtained at all, hadn’t been obtained within the stipulated deadline, or couldn’t be evidenced. In some cases, the IP had already drawn fees and had to refund them to the estate.

We have also seen some fees that can’t be justified as fair and reasonable, given the circumstances of the case. We are required under the 2015 Regulatory Objectives to ensure that our IPs provide high quality services at a fair and reasonable cost, and consider the interests of all creditors in any particular case.

These regulatory objectives also require IPs to promote the maximisation of returns to creditors and treat all parties fairly. That means making interim distributions where you are holding large sums, but can’t conclude the case.

Guidance: Make sure you have effective controls to ensure you only draw fees and disbursements that have been approved

Using a fee approval checklist which prompts you to check the record of the decision procedure and any fee estimate should help you avoid drawing unauthorised fees.
2016 RULES

Our 2018 monitoring visits indicate that the profession is dealing well with the Insolvency (England and Wales) Rules 2016 (IR 2016). Where we have seen issues with the IR 2016, they mainly relate to the provision of the required disclosures in notices and reports; and the recording of decision procedures.

However the information required to be included in the statement of affairs (SOA) appears to be causing some confusion. As is how the SOA is made available to creditors in the section 100 procedure.

The SOA needs to be delivered to creditors by the convenor. An IP can’t just upload it to their web portal as that doesn’t satisfy this legislative requirement.

Guidance: When to include schedules

You need to include a separate schedule of employees and consumers in the SOA you send to creditors. The schedules need to detail the names and addresses of these creditors. Make sure you remove these schedules when you file the SOA with Companies House. If you become aware that you have incorrectly filed the employee and consumer schedules at Companies House, you should contact Companies House to arrange for their deletion.

REPORTING

The most common reporting issues include inadequate disclosures in progress reports for all case types and in administrator’s proposals, such as failing to:
- include details of the work undertaken in the period in progress reports;
- confirm the outcome of investigations; and
- disclose the likelihood of exceeding fee and expense estimates.

A number of reports included confusing or contradictory information.

We have recently seen an increase in the late filing of reports and statutory notices, which has been a systemic issue on a few recent visits.

Guidance: Avoid late filing of reports

It’s vital that you have an effective diary system to ensure that you meet statutory reporting deadlines.

SIP 16

We have seen an improvement in compliance with SIP 16 (81% compliance rate in 2018 v 59% in 2017). However we still find that IPs miss certain disclosures that are specifically required by the SIP.

Remember:
- Name the source of the initial introduction. You shouldn’t just refer to them as an accountant, tax adviser etc.
- Disclose whether the valuer had adequate PII. It isn’t sufficient just to state the valuer’s professional qualifications.
- While it may be implicit from what is said about ongoing trading that there won’t have been any requests to potential funders to fund working capital requirements, the SIP requires you to either provide details of such requests, or say why no such requests have been made.
- Disclose any security taken in respect of deferred consideration. If you haven’t taken any, you need to explain this together with the basis of your decision that none is required.
- Include a copy of your SIP 16 statement in your proposals when you file them at Companies House.
- You shouldn’t have multiple statutory purposes.
- If you aren’t issuing your proposals at the same time as your SIP 16 statement, you need to explain why they will be sent at a later date.
- You need to split the sale consideration across asset categories.

You can access past webinars and blogs through icaew.com/talkinsolvency to explore some of these areas in further detail and find further guidance.
What do you do at take-on and is it enough?

There has been significant scrutiny of the accountancy profession over the last 12 months, with concerns raised over quality, conflicts of interest and lack of choice. The restructuring and insolvency profession is not immune from these challenges.

During 2018 we completed a themed review looking at take-on processes in relation to formal insolvency appointments at some of the larger practices with ICAEW-licensed IPs. The main findings from this work are typical of the issues we see on our insolvency monitoring visits.

- While take-on and conflict-checking processes are generally started at an early stage, they are not always fully documented or signed off until after the appointment has been accepted. If something has not been considered which could give rise to a threat, it will be difficult for you to safeguard against this once appointed. If you don’t complete your checks until after appointment, you are exposing yourself to risk.

- The process is only effective if it is used properly. Those carrying out the conflict checks need to fully understand what they are being asked to do and why. And reviews of that work by the approving party should be robust.

- The documentation should evidence the work carried out. If a possible threat has been identified, this should be recorded and the steps taken to mitigate the risk should be evidenced. If you conclude that this potential threat does not preclude you from accepting an appointment, the documentation should explain why.
Help us to close your visit promptly
After we’ve reviewed your response to a closing record, we may need to clarify a point or ask for a further response on a particular issue; this can delay the closure process. To help us close your visit and let you know the outcome promptly, please check you:

• have replied to all the substantive issues, focusing on what you will do to ensure that the specific issues don’t recur in future; and
• give us timescales for the changes you are planning.

If your reply just says ‘noted’, it’s almost certain that we’ll need to come back to you for further information, which will delay closure of the visit.

Make sure you complete all the changes
Please make sure that you make all the changes you’ve outlined and that your timescales are reasonable. You should also ensure that any changes you make work effectively and address the issue; you can use your annual ICR to check that.

If a monitoring visit highlights a significant issue and we, or the ILC, rely on your assurance to make necessary changes to address it, the ILC is unlikely to be sympathetic if we raise the same issue next time round. Please be aware, the ILC will see your response.

Have we received your feedback?
We ask all IPs to complete an anonymous feedback questionnaire after each visit. Your comments help us with the continuing development of the visit process, so please return the questionnaire after your visit; we want to hear your views.
As well as our monitoring work and this report, there is a wealth of support and guidance available to ICAEW IPs.

We are delighted to have won the ‘Education and Training provider of the year 2018’ award at the Turnaround, Restructuring and Insolvency (TRI) Awards. The judges were impressed with the breadth of ICAEW’s offering. The award reflects the webinar and roadshow programmes we provide, our annual insolvency conference, our ‘promoting ICAEW IP’ videos, our Certificate in Insolvency qualification, as well as the wider training and education provided by ICAEW in other areas.

Webinars and roadshows
Our roadshows and webinars are free for our IPs and their colleagues to attend.

Trading cases webinar: 6 June 2019
With trading insolvencies declining, staff now often lack practical experience of trading cases. Join Rebecca Dacre of Mazars and Alison Morgan of ICAEW as they discuss some of the practical considerations you need to take into account when trading an insolvent business.

Annual conference
ICAEW’s ninth Insolvency and Restructuring Group Conference will take place at Chartered Accountants’ Hall on 26 June 2019.

Autumn roadshows
Join us at one of our annual roadshows later this year:
Bristol - 18 September
Birmingham - 19 September
London - 24 September
Leeds - 8 October
Manchester - 10 October
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. Our reviewers post blogs about issues that arise on monitoring visits, technical changes and forthcoming ICAEW events. There is also the option to set up automatic new post alerts.

Helping you to promote your restructuring and insolvency services
We have developed a suite of materials to help you promote the value of ICAEW insolvency practitioners.

• The restructuring guide explains the seven stages of business recovery and the role of insolvency and restructuring specialists. The guide has been designed so that you can co-brand it. Over 60 firms have already done so.
• A series of videos explain the importance of businesses with financial difficulties engaging with an IP at an early stage.

You can share the brochure and videos with your clients, business partners and staff. Access the material at icaew.com/promotingips

ICAEW Restructuring and Insolvency Community
All ICAEW-licensed IPs are automatically given free membership of our Restructuring & Insolvency Community. Led by a committee of dedicated specialists, the community provides guidance, support and representation to IPs licensed by ICAEW. This includes special rates for our prestigious Annual Conference and access to our compliance checklists and guidance.

ACA students, JIEB students and ICAEW Insolvency Certificate students also receive free access to the community. Access the community at icaew.com/insolvency
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 where all the insolvency practitioners are licensed by ICAEW. Download your logo at icaew.com/logos

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

Technical and ethics advisory services

Our Technical Enquiries Service provides advice on a wide range of subjects. Whatever your technical or ethical query, phone +44 (0)1908 248 250 for objective, confidential advice. In addition to advice provided through the helplines, common topics are addressed in a series of helpsheets written by our technical advisers at icaew.com/helpsheets

Access SIPs, regulations and guidance 24/7

Access the SIPs, the insolvency Code of Ethics, guidance on conducting insolvency compliance reviews, past webinars, checklists, insolvency case work and further information about the ICAEW annual return at icaew.com/insolvency
Without Question provides an interesting and impactful way to highlight the challenges of directors and professional advisers seeking assurance on difficult issues, as well as the underestimated importance of effective communication.

With its focus on professional scepticism and everyday business challenges, Without Question is designed for use by firms and companies of all sizes, and all around the world.

To find out more about ICAEW films visit icaew.com/films
ICAEW’s regulatory role is distinct from its representative role. Managed by our Professional Standards department, we protect the reputation of ICAEW, our members and the chartered accountancy profession. We ensure our students, members and firms act with integrity and are competent. Our role is to:
• authorise our members and firms to undertake work regulated by law: audit, local audit, investment business, insolvency work, and probate;
• monitor firms and insolvency practitioners to ensure they undertake work correctly and to the highest standards;
• investigate complaints and hold members and firms accountable where they fall short of standards;
• lobby and comment on proposed changes to the law and regulation affecting our stakeholders; and
• provide guidance, advice and award-winning training films to ensure our stakeholders comply with laws, regulations and professional standards.

There are over 1.8m chartered accountants and students around the world − talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 180,000 of these are ICAEW Chartered Accountants and students. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

We’ve been at the heart of the accountancy profession since we were founded in 1880 to ensure trust in business. We share our knowledge and insight with governments, regulators and business leaders worldwide as we believe accountancy is a force for positive economic change across the world.

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