

INSOLVENCY GUIDANCE PAPER - DEALING WITH COMPLAINTS

INTRODUCTION TO INSOLVENCY GUIDANCE PAPERS

Insolvency Guidance Papers (IGPs) are issued to insolvency practitioners to provide guidance on matters that may require consideration in the conduct of insolvency work or in an Insolvency Practitioner's practice. Unlike Statements of Insolvency Practice, which set out required practice, IGPs are purely guidance and practitioners may develop different approaches to the areas covered by the IGPs. IGPs are developed and approved by the Joint Insolvency Committee, and adopted by each of the insolvency authorising bodies.

Authorising bodies

Recognised professional bodies

The Association of Chartered Certified Accountants

Insolvency Practitioners Association

The Institute of Chartered Accountants in England and Wales

Chartered Accountants Regulatory Board for the Institute of Chartered Accountants in Ireland

The Institute of Chartered Accountants of Scotland

Solicitors Regulation Authority for the Law Society

The Law Society of Northern Ireland

The Law Society of Scotland

Competent authorities

The Insolvency Service (for the Secretary of State for Business, Innovation and Skills)

Department of Enterprise, Trade and Investment (for Northern Ireland)

Introduction

It is in the interest of complainants and insolvency practitioners, and in the wider public interest, that complaints directed at practitioners are dealt with professionally and expeditiously. Failures to do so can only exacerbate any problem, prolong any sense of grievance felt by a complainant, and undermine confidence in the insolvency profession. As a result, practitioners, their firms and the profession may be brought into disrepute.

This paper is intended to remind insolvency practitioners of their duty to deal properly with complaints, and to suggest some matters that insolvency practitioners might usefully consider. The rules of some authorising bodies (and the rules which apply to the holders of standard consumer credit licences) impose requirements additional to, and which override, the suggestions in this guidance paper,

Steps to be taken

It is likely that the following steps will be appropriate:

- A complaint should be acknowledged promptly.
- The insolvency practitioner should ascertain the background facts as quickly as possible and seek additional information from the complainant as required.
- If the insolvency practitioner concludes that a complaint is unjustified, the complainant should be provided with a full and clear explanation of the reasons for that conclusion.
- If an error has been made, the insolvency practitioner should rectify the error promptly and offer an apology.
- The complainant should always be notified that a complaint can be referred to the insolvency practitioner's authorising body at any time.

The complainant should be kept aware of the steps that are being taken by the insolvency practitioner to review and respond to the complaint, the likely timetable for the response, and the reasons for any delay.

The duties of insolvency office holders

It is a feature of the work of insolvency practitioners that complaints may arise because of an incomplete understanding of the legislation under which insolvency office holders are required to act. In many cases, actions or outcomes that are obvious to insolvency practitioners may be seen as wrong or unfair by complainants, as the duties of the office holder may be misunderstood.

When responding to a complaint, an insolvency practitioner should provide where appropriate a clear explanation of the matters affecting the duties of an office holder, including the relevant legislation.

Other matters to consider

The matters that an insolvency practitioner should consider in relation to complaints include:

- The desirability of establishing a formal complaints procedure within the firm, set out in writing, which can be communicated to complainants.
- Whether complaints should be reviewed by another principal in the firm (where possible) or by an independent practitioner.
- Early resolution of complaints by telephone conversations and meetings.

Guidance on what constitutes a good complaints procedure is issued by certain of the authorising bodies.

Professional indemnity insurance

A complaint may, in some circumstances, have to be notified to an insolvency practitioner's professional indemnity insurer. In such cases, any action or response by the practitioner will necessarily be subject to any conditions imposed by the insurer.