THE JOINT INSOLVENCY COMMITTEE

Annual Report for the
Year ended 31 December 2007

CONTENTS

ABBREVIATIONS USED IN THIS REPORT

IP	Insolvency practitioner.
IPC	Insolvency Practices Council
IS	Insolvency Service (An Executive Agency of the Department for Business, Enterprise and Regulatory Reform which deals with insolvency matters)
IVA	Individual voluntary arrangement
JIC	Joint Insolvency Committee
JIEB	Joint Insolvency Examination Board
R3	The Association of Business Recovery Professionals
SIPs	Statements of Insolvency Practice (Statements issued by all of the insolvency authorising bodies which outline basic principles and essential procedures which an Insolvency Practitioner must follow)

Overview of the Joint Insolvency Committee's work and structure

Insolvency regulation in Great Britain is overseen by the IS, an executive agency of the Department for Business, Enterprise and Regulatory Reform. The IS is also an authorising body and, with the Recognised Professional Bodies, can authorise or recognise those individuals considered fit and proper to conduct insolvency appointments.

The JIC was formed in 1999 and provides a forum for discussion and promotes consistency of approach across the authorising bodies. Its mission statement is to:

- *Consider, maintain, improve, develop and promote insolvency standards and guidance of a regulatory, ethical, or best practice nature by means of debate and agreement within the Committee.*
- *Discuss any such matters with any other appropriate bodies.*
- *Facilitate discussion between authorising bodies in order to ensure that, as far as possible, insolvency practitioners are dealt with uniformly by such authorising bodies.*

The JIC meets four times a year but also works through a sub-group between meetings. Each authorising body has one representative on the JIC, supported, where appropriate, by staff from the authorising body they represent. The JIC also welcomes a number of observers who play a valuable role in updating JIC on issues from within their remit. Details of the authorising bodies, JIC members and observers are shown in the **appendices**.

Roger Smith, chairman of the JIC since 1 January 2005, stood down with effect from 31 December 2007, and the JIC appointed Andrew Tate, the representative of the ACCA as the chairman with effect from 1 January 2008. The JIC is grateful to Roger Smith for his valuable work as chairman.

SIPs are issued under procedures agreed between the insolvency regulatory authorities acting through the JIC. They are commissioned by the JIC, produced by R3, approved by the JIC and adopted by each of the regulatory authorities.

The JIC approved an amendment to SIP 11 *the handling of funds in formal insolvency appointments* and the revised SIP was issued on 1 June 2007.

Additionally, amended SIPs for England and Wales, Scotland and Northern Ireland, *SIP 2 A liquidator's investigations,* SIP 3 *Voluntary arrangement* and, SIP3A *Trust Deeds* (Scotland), SIP3B *Company Voluntary Arrangements* (Scotland), SIP 9 *Remuneration of office holders* and SIP 15 *Reporting and providing information of their functions to committees in formal insolvencies* (Northern Ireland) were issued in 2007.

The JIC held a Regulatory Forum on 8 March 2007, which concentrated mainly on the topical subject of the IVA market.

The JIC works closely with the IPC and considers and takes appropriate action upon recommendations put forward by the IPC.

Work continues on the development of an Insolvency Code of Ethics. A revised Code was issued for consultation during the summer of 2007.

The JIC continues to take a close interest in current issues in the field of insolvency, and during 2007 has discussed, amongst other subjects, the IVA protocol, disaster recovery should an IVA provider fail, the role of the Financial Services Ombudsman in complaints about insolvency and the European Communities (Recognition of Professional Qualifications) Regulations 2007. The JIC has been kept updated on the progress of the IS' project to consolidate, modernise and simplify the secondary insolvency legislation and the implementation of the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Working with the Insolvency Practices Council

The IPC is a public interest body established to influence the professional and ethical standards of insolvency practitioners. The JIC, through its chairman and secretary, continued to meet and correspond with the IPC during 2007, and the minutes of JIC are shared with the IPC. The chairman of the IPC Geoffrey Fitchew attended the JIC meeting in March 2007 and was one of the speakers at the regulatory forum which followed that meeting.

The IPC produces an annual report in which it makes recommendations to the insolvency profession and its regulators. Its report for 2006 contained four recommendations, which are reproduced below, with the JIC's response.

The IPC's annual report is available on its website.[1]

Recommendations

Recommendation 1 - individual voluntary arrangement statistics

The IPC welcomes the intention of the Insolvency Service (IS) to provide the RPBs with quarterly statistics, showing the completion/failure rates of Individual Voluntary Arrangements (IVAs) for individual IPs acting as Supervisors. The RPBs should use this information to monitor the performance of their IPs and to seek explanations from those IPs whose failure rates are significantly above the national average. The RPBs and the IS should consider publishing the completion/failure rates of IVAs by individual IPs. The IS should seek to remove the legal obstacles to collecting regular electronic data on the financial outcomes of individual IVAs and should then as soon as possible make this data available to the RPBs to facilitate effective monitoring.

JIC response

The JIC welcomes the production by the IS of quarterly completion/failure statistics on IVAs. Additional statistical information will always be of assistance to monitors and will be a useful addition to the information already available.

However, the JIC has concerns that the publication of completion/failure rates for individual IPs could result in the information being used as a "league table" and that those practitioners who do not specialise in the volume IVA market could appear at a disadvantage, as they are likely to be providing bespoke IVA proposals for more complex situations, and their failure rates could be skewed by a small number of cases. In addition, IVA providers may avoid riskier cases because of the possible impact on failure rates, so denying some debtors access to the IVA process.

The JIC has been kept updated on the development of the non statutory IVA protocol, the development of which included the collection of management information concerning IVAs.

Recommendation 2 - pre-packaged administrations

The IS and the RPBs should require IPs acting as Administrators of insolvent companies to report promptly to the full body of creditors when they have executed a pre-pack sale of the insolvent business. The reports should give creditors a reasoned explanation of why the IP decided not to advertise the business on the open market and why doing so would have been detrimental to obtaining a better price for the sale of the business. The RPBs should remind their IPs of the potential for conflicts of

[1] www.insolvencypractices.co.uk

interest in relation to pre-packs, if they accept an appointment as Administrator having previously advised the directors, or managers of the insolvent company or connected third parties on the option of a pre-pack. There should be full disclosure by IPs of any potential conflicts of interest in their reports to creditors; the RPBs should monitor this.

JIC response

The JIC has discussed pre-packs at length and continues to take a close interest in issues surrounding this subject. R3 were initially asked to consider a re-draft of SIP 13 (acquisition of assets of insolvent companies by directors) to deal with matters specific to a pre pack situation, including the provision of information to creditors. Within R3 this issue has also been considered in great depth, and the preliminary findings of Dr Sandra Frisby's research into pre-packaged administrations, which was published in August 2007, has further informed that debate. At the end of 2007, at the request of the JIC, R3 produced a draft of a new SIP, SIP 16 dealing principally with pre-packs in administration and the JIC is considering this draft.

In addition, the new draft insolvency code of ethics identifies the threats associated with pre-agreed business sales.

As regards the monitoring of such cases, monitors already have regard to ethical considerations when looking at such cases.

Recommendation 3 - reports under the Company Directors Disqualification Act 1986

The IPC considers that the Government's action in cancelling a substantial number of the investigations planned under the CDDA in 2006/2007 is damaging to the public interest, because it materially weakens the protection of the public in general and creditors in particular. The IPC urges the Government to remove as soon as possible the restrictions on investigations it announced in December and to provide sufficient funding to allow the DTI Official Receivers to investigate all adverse reports.

JIC response

The IPC's recommendation regarding the cancellation of investigations under the Company Directors' Disqualification Act 1986 due to funding restrictions echoed the JIC's own concerns in this area. The JIC also urges government to ensure that sufficient resources are made available so that misconduct may be investigated in all appropriate cases.

Recommendation 4 - correspondence between the IPs/RPBs and Debtors/Creditors

As recommended in previous IPC Annual Reports, the RPBs should give guidance to their IPs that, as a standard of good practice, they should reply to all correspondence from debtors, creditors or the general public within 10 working days. If a substantive reply cannot be given within that period, a holding reply should be sent, indicating when a substantive reply will be sent. The RPBs should also monitor performance against this standard so that, if necessary, disciplinary action can be taken against those who persistently fail to meet the standard and thereby may bring the profession into disrepute.

It is apparent that the IPC has remained unconvinced by the JIC's views on this matter. However, time has moved on and the profession is looking at means of communicating with those who have an interest in an insolvency proceeding which does not always rely on an individual written response. The IS' project to consolidate, modernise and simplify the secondary insolvency legislation is also seeking to make greater use of electronic communication and the posting of documents on websites.

The JIC remains of the view that it would be inappropriate to impose a requirement on IPs to deal with all correspondence within a specific timescale. Imposing a time limit does not ensure that any response issued addresses the matters raised. Additionally the costs of replying to non-priority correspondence will ultimately be borne by the creditor body as a whole. The monitors will continue to identify situations where there is a failure to deal with correspondence promptly and effectively, which may be indicative of a more serious underlying problem and the RPBs will continue to take appropriate action in such situations.

The ethics sub group of the JIC is considering producing an insolvency guidance paper covering complaints handling. In this context the JIC will also consider the research into complaints handling in the insolvency profession produced by Nottingham Trent University for the IPC which was published in January 2008.

Statements of Insolvency Practice

Statements of Insolvency Practice (SIPs) are issued to licensed insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency. All insolvency practitioners are therefore working to common standards.

SIPs are issued under procedures agreed between the insolvency regulatory authorities acting through the JIC. They are commissioned by the JIC, produced by the Association of Business Recovery Professionals, approved by the JIC and adopted by each of the regulatory bodies.

The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standards set out in the SIPs is a matter that may be considered by a practitioner's regulatory authority for the purposes of possible disciplinary or regulatory action.

Where appropriate, when changes are made to SIPs affecting England and Wales, equivalent changes are made to those affecting Scotland and Northern Ireland.

During 2007 the JIC agreed a revised process for the issue of amended SIPs relating to other jurisdictions, where the amendment is to align non-legal content within the SIPs or to simply amend legal references, and the JIC has already approved the equivalent SIP for England & Wales. The aim of the process is to improve the efficiency of the process of approval of SIPs across all jurisdictions, leading to less delay and therefore less inconsistency when implementing SIPs.

A number of SIPs considered for amendment during 2006 were issued in 2007. These were SIP 2 *A liquidator's investigations,* SIP 3 *Voluntary arrangements,* SIP3A *Trust deeds* (Scotland), SIP3B *Company Voluntary Arrangements* (Scotland), *SIP 9 Remuneration of office holders* and SIP 15 *Reporting and providing information of their functions to committees in formal insolvencies* (Northen Ireland). These SIPs were issued on 1 April 2007.

SIP 11 – *The handling of funds in formal insolvency appointments* was amended to enable IPs to use omnibus accounts (similar to those used by many solicitors) whilst also ensuring there were appropriate and proportionate controls over the use of such accounts. The use of such accounts should offer efficiencies to IPs, and ultimately benefit creditors. The revised SIP was issued on 1 June 2007. Further amendments to this SIP are being considered to stress the importance of controls when using omnibus accounts.

During 2007, the JIC also considered proposed amendments to SIP 4 *Disqualification of directors* (England and Wales and Scotland). A final version of this SIP has yet to be agreed and is the subject of continued discussions between the JIC, R3 and the IS.

As noted above, the JIC has discussed pre-packs at length and has provided feedback to R3 on a first draft of a new SIP, SIP 16 *Pre-packaged sales in administrations.*

All SIPs are available on the websites of the authorising bodies and R3 (see appendices 1 and 3).

Regulatory forum

The JIC held its second regulatory forum on 8 March 2007.Attendees were mainly representatives from the authorising bodies although others with an interest in the insolvency process also attended. A number of the members of the IPC attended.

Subjects discussed included the regulation of IVA providers, with two insolvency practitioners sharing their experience of the sector. Geoffrey Fitchew chairman of the IPC also offered his views on insolvency regulation, also focussing on the IVA market. The forum gave the authorising bodies the opportunity to hear differing views and to debate the issues raised.

The JIC is grateful to the Barbican Settlement Trust for providing grants to fund the forum and to the IS for providing a venue.

Code of ethics

The JIC has undertaken an extensive review of the Ethical Guide and on 2 April 2007 published for consultation, the results of that review in the form of a revised Insolvency Code of Ethics. The consultation period closed on 2 July 2007. The revised code is based in part on the ethical framework applied by accounting bodies but also draws extensively on the existing ethical guide for insolvency practitioners.

Some 20 responses were received including a response from the IPC, and many responses included detailed comments on the draft text. Since the consultation closed, a sub group of the JIC has been considering in detail and debating the comments received, and amending the draft code where it is considered appropriate to do so in the light of the responses received.

The Code is now close to being finalised and is now more insolvency specific whilst remaining consistent with ethical guidance followed by the accounting profession.

Ultimately, the JIC will recommend a revised version of the Code to all of the authorising bodies for adoption. If the JIC's recommendation is accepted, all insolvency practitioners will continue to follow a standardised Code, regardless of their authorising body. It is hoped that the revised code will be introduced in the autumn of 2008.

Appendix 1

THE BODIES WHICH REGULATE INSOLVENCY LICENCE HOLDERS IN GREAT BRITAIN AND/OR IN NORTHERN IRELAND

Recognised professional bodies

Name and address	Number of licence holders	Website
The Association of Chartered Certified Accountants (ACCA) 29 Lincoln's Inn Fields, London WC2A 3EE	183	www.accaglobal.com
Insolvency Practitioners Association (IPA) Valiant House 4-10 Heneage Lane London EC3A 5DQ	389	www.insolvency-practitioners.org.uk
The Institute of Chartered Accountants in England & Wales (ICAEW) Metropolitan House 321 Avebury Boulevard Central Milton Keynes MK9 2FZ	719	www.icaew.com
The Institute of Chartered Accountants in Ireland (ICAI) [1] 83 Pembroke Road Ballsbridge Dublin 4	46	www.icai.ie
The Institute of Chartered Accountants of Scotland (ICAS) CA House 21 Haymarket Yards Edinburgh EH12 5BH	110	www.icas.org.uk
The Law Society of Scotland 26 Drumsheugh Gardens Edinburgh EH3 7YR	15	www.lawscot.org.uk
Solicitors Regulation Authority For the Law Society (SRA) Ipsley Court Berrington Close Redditch Worcestershire B98 0TD	148	www.lawsociety.org.uk www.sra.org.uk

Other regulators

The IS[2] PO Box 203 21 Bloomsbury Street London WC1B 3QW	92	www.insolvency.gov.uk
The IS Northern Ireland[3] Fermanagh House Ormeau Avenue Belfast BT2 8NS	3	www.insolvency.detini.gov.uk
The Law Society of Northern Ireland[3] 40 Linenhall Street Belfast BT2 8BA	8	www.lawsoc-ni.org

[1]The Institute of Chartered Accountants in Ireland, under the provisions of its Bye-Laws, established the Chartered Accountants Regulatory Board in April 2007 and has delegated regulatory functions to this Board.
[2]The IS authorises insolvency practitioners to take appointments in Great Britain only.
[3]These bodies have observer status on JIC and only license insolvency practitioners to take appointments in Northern Ireland.

Appendix 2

MEMBERS OF THE JIC at 31 December 2007

Roger Smith Chairman	Insolvency Practitioners Association
Andrew Tate	The Association of Chartered Certified Accountants
Chris Garwood	Solicitors Regulation Authority for the Law Society
David Hill	The Institute of Chartered Accountants of Scotland
Joan Houston	Chartered Accountants Regulatory Board (Institute of Chartered Accountants in Ireland)
Mike Chapman	The Insolvency Service
Phillip Sykes	The Institute of Chartered Accountants in England & Wales
Rachel Grant	The Law Society of Scotland

OBSERVERS OF JIC

Catherine Collinson	Representing the monitors of the authorising bodies.
Gillian Thompson	Accountant in Bankruptcy
Graham Rumney	R3 – Chief Operating Officer
John Francis	Secretary, R3 General Technical Committee
Richard Heis	Chairman, R3 General Technical Committee
Sandra McMahon	Law Society, Northern Ireland
Tom Roulston	IS, Northern Ireland

Secretarial support to the JIC is provided by the ICAEW.

OTHER BODIES

Association of Business Recovery Professionals (R3) 8th Floor, 120 Aldersgate Street London EC1A 4QJ	www.r3.org.uk
Insolvency Practices Council PO Box 698 Godalming GU7 9AR	www.insolvencypractices.co.uk
The Accountant in Bankruptcy 1 Pennyburn Road Kilwinning Ayrshire.	www.aib.gov.uk

If you wish to contact the JIC, please contact the Secretary, c/o ICAEW, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ.
Telephone number: 01908 546220 Email: tracy.stanhope@icaew.com