

Annual Report *2005*

Insolvency Practices Council
Influencing the standards of the insolvency profession



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Chairman

Geoffrey Fitchew CMG Currently a member of the Determinations Panel of the Pensions Regulator. Chairman of the Building Societies Commission 1994-2002, having worked in the Treasury, the Cabinet Office and in the European Commission in Brussels

Lay Members

Robert Bertram* A member of the Audit Advisory Board of the Scottish Parliament. Former member of the Competition Commission and the Scottish Law Commission

Gill Hankey Director of Bankruptcy Advisory Service Ltd

John Hanlon Regulator of Community Interest Companies, Care Commissioner for Scotland, Chair of the Governance Committee of the Royal Pharmaceutical Society of GB and a member of the Scottish Consumer Council.

Roger Page* Cardiff-based director of finance formerly a senior manager with HSBC

Malcolm Watkins Director of Finance & Operations MND Association

Practitioner Members

Ritchie Campbell Corporate Services consultant, Scott and Paterson, Edinburgh. Past Chairman of ICAS Insolvency Committee

Peter Horrocks* Solicitor Insolvency Practitioner and a director of Insolvency Management Limited

Peter Souster London-based business recovery partner with Baker Tilly. Council member, Association of Business Recovery Professionals (R3).

Secretary

David Harrison* Formerly a senior manager with Lloyds Bank and subsequently an adviser to small and medium-sized businesses in Yorkshire

** Denotes members who retired on 31 December 2005*

New members joining the Council on 1 January 2006

Lay Members

Dr Dianne Hayter Board member of the National Consumer Council and a member of the Determinations Panel of the Pensions Regulator. Former vice chair of the Financial Services Consumer Panel

David Tracy A senior executive with Barclays Bank, 1988 – 2003. Non-executive chair of the Nuneaton and Bedworth Healthy Living Network

Practitioner Member

Hamish Anderson Partner with Norton Rose and Deputy Chairman, City of London Law Society Insolvency Committee

Secretary

Mike Stancombe Retired army officer, civil engineer and former chief operating officer of R3

Following the steep increase in personal indebtedness the Insolvency Practices Council's main focus during 2005 was on personal insolvency. This Annual Report makes four recommendations to the insolvency profession and its regulators, which are set out in detail on pages 7 to 10 of the Report. In summary they are as follows:

- ❖ That Insolvency Practitioners (IPs) should give personal debtors written “best advice” on all the options available to them whenever Individual Voluntary Agreements (IVAs) are being considered. This is increasingly important following the entry into force of the Enterprise Act 2002, which makes bankruptcy a better option for some debtors. We have come across evidence that IVAs are being inappropriately recommended, albeit in a small number of cases, to debtors whose only financial resources come from social security benefits;
- ❖ That the Insolvency Service (IS) should take steps to improve the statistical information available on the success or failure and the financial outcomes of IVAs to enable the regulators better to monitor the performance of the IPs they license in setting up and supervising IVAs;
- ❖ That IPs and their Recognised Professional Bodies (RPBs) should, as a matter of good practice, be expected to send substantive or, if necessary, holding replies within 10 working days of receiving any correspondence from creditors, debtors and other members of the public. The Joint Insolvency Committee (JIC) should write this target into its ethical code and consider with the RPBs taking steps to discipline IPs who persistently fail to meet this target;
- ❖ We support proposals to set up Simplified Individual Voluntary Agreements (SIVAs). We further recommend that there should be a simplified fee structure for SIVAs. As regards fees for corporate insolvency work, we recommend that the regulators should monitor IPs' compliance with their new obligations to provide sufficient information about the work they have done to enable their creditors and the courts to assess their value for money and effectiveness.

During 2005 the IPC also responded to two consultation documents issued by the IS. The first set out proposals for a simplified IVA put forward respectively by an IS working party. The IPC generally supported these proposals, but expressed concern that they did not adequately protect the interests of creditors. Our response therefore recommended that formal approval by creditors be required for all IVAs and also on any decision on whether bankruptcy proceedings should be initiated when a SIVA fails.

The IS also consulted on proposals to introduce simplified Debt Relief Orders (DROs) to grant debt relief to personal debtors with insufficient income or assets to make any repayment of their debts. Our response argued that these proposals needed amendment to provide stronger protection against fraud. We also expressed concerns as to whether the proposed voluntary organisations would have adequate resources to carry out the checks on the eligibility of DRO claims, as envisaged in the Government's proposals. Here again the IPC proposes that adequate safeguards and monitoring should be put in place.

The IPC had regular meetings with the Joint Insolvency Committee (JIC) and attended the latter's first Regulatory Forum which addressed issues such as industry intelligence, co-operation on monitoring IPs and consistency in disciplinary procedures between RPBs. The IPC recommends that the Regulatory Forum becomes a regular event.

At the end of the year two lay members of the IPC, Robert Bertram and Roger Page, and one practitioner member, Peter Horrocks, retired. The Secretary of the IPC, David Harrison, also retired and has been succeeded by Mike Stancombe.

This is the IPC's 6th Annual Report and my first as Chairman. The Council's membership has also almost completely changed in the last two years. So it seems appropriate to recall the Council's terms of reference and to explain how we interpret them.

The IPC's remit is to represent the public interest in the work of the insolvency profession and, where we judge it appropriate, to make recommendations to IPs and to the RPBs, which regulate them, on ethical and professional standards and how these are enforced.

At the most general level the Council's aim, in representing the public interest, is to help to sustain and strengthen public confidence in the integrity and effectiveness of the UK insolvency regime. Under this general heading there are three main objectives we seek to promote in our work:-

- ❖ The need for insolvency procedures and IPs to maintain the appropriate balance between the interests of creditors, debtors and of IPs themselves, having regard to the over-riding aim to achieve the best outcome for creditors in the circumstances of each case;
- ❖ The need for IPs and the RPBs to be seen to act professionally, fairly and transparently in all their dealings with debtors, creditors and members of the public; and for IPs to be fully accountable for the protection and use of the assets entrusted to their care; and
- ❖ The need to promote better public knowledge and understanding of the different insolvency procedures; and the need for better statistical information to enable both insolvency professionals, policy makers and the general public better to judge the effectiveness of the different procedures.

All the recommendations made by the IPC both in previous years and in this Annual Report fall under one or more of these headings.

Our work in 2005 has been dominated by the very rapid growth in personal insolvencies, caused by the preceding growth in credit card and other consumer debt and perhaps also by the new bankruptcy regime introduced by the Enterprise Act 2002. The IS's statistics show that in 2005 there were 47,287 personal bankruptcies and 20,292 new IVAs, representing increases of 31.7% and 88.7% respectively over the 2004 figures. Substantially higher numbers are involved in informal debt management schemes. Most economists expect this rising trend to continue for



some time ahead. As a consequence a large number of people will be going through either a formal insolvency procedure or an informal debt management scheme in the next 5 to 10 years. At the end of 2005 the total number of personal debtors involved in bankruptcy proceedings or an IVA was 95,291.

These trends reinforce the view which the IPC has taken in successive reports from 2000 onwards that IPs and their regulators must take and be seen to have taken all reasonable steps to ensure that personal debtors receive fair, courteous and professional treatment from their IP throughout the process, whether acting as a trustee in bankruptcy or as the nominee or the supervisor of an IVA.

Against this background our work last year centred on four main aims:-

- ❖ That all individual debtors should be given full and clear information and "best advice" on the options available to them. The rate of failure of IVAs, while falling, is still apparently around 30%. We have also received both direct and anecdotal evidence of cases, albeit a small number, where IVAs have been recommended and set up for debtors whose only income was unemployment or disability benefit payments and who clearly could not meet the repayments required by the IVA;
- ❖ That the RPBs and the IS should have regular annual statistics on the completion or failure of IVAs and on their financial outcomes to enable them to monitor both the effectiveness of IVAs as a policy instrument and the performance of the IPs they regulate;
- ❖ That IPs should give prompt and courteous replies to all correspondence they receive from creditors, debtors and the general public; and
- ❖ That debtors and creditors should be given clear information by IPs about their fees before being asked to enter into commitments and that in seeking approval for their fees IPs should provide their creditors with sufficient information to judge whether what the IPs have done represents value for money.

Some welcome further progress was made on some of these issues in 2005. As regards IVA statistics, the IS has implemented one of the recommendations we made last year and is now able to use an electronic data-base to produce statistics on the failure/completion rate of IVAs both in aggregate and for individual IPs. On fees the revised Statement of Insolvency Practice 9 (SIP9) should lead to creditors being in a better position to judge whether or not the fees requested by IPs are justified as representing a reasonable reward for the work undertaken.

As we have said in previous reports, we believe that the large majority of IPs do an often difficult job with diligence, skill and integrity and that abuses arise only in a minority of cases. But we believe that on the four issues mentioned above there are further improvements which can and should be made. Our recommendations in this year's Annual Report set out the further measures that we believe are needed in the near future.

Later in the report we describe the responses we gave to two recent initiatives by the IS and the insolvency profession respectively for dealing with personal insolvencies. First, the IS has proposed that debtors who have insufficient income and assets to make any significant repayment of their debts should be able to get debt relief through simpler administrative procedures. Second, an independent working party, chaired by the IS, has made proposals for a simplified and lower-cost IVA (a cause the IPC has championed since 2003).

We support the general thrust of both these proposals, which will provide a more flexible range of options and speedier procedures for personal debtors. But these objectives must not be at the expense of seeking the best possible outcome for the creditors, which rightly remains at the centre of insolvency procedures. Our responses to the two consultation documents also stressed the need to maintain effective safeguards for creditors. It remains in everyone's interest that the strong sense of obligation felt by most borrowers to repay their debts should not be weakened.

There are two other issues not covered in our recommendations that deserve highlighting. First, the recent rapid growth of firms or separate businesses within larger groups, which specialise in personal debt cases (sometimes described as IVA "factories") creates a situation that was understandably not foreseen when the present system of insolvency regulation was set up in 1986. The IS and the RPBs, unlike other "fit and proper" financial regulators, are limited by law to regulating only the individual IPs they license and not the firms which may employ them. In some of these firms a small number of IPs may be supervising a sizeable number of junior staff, who, together with the IPs, may be expected to meet commercial targets set by the owners or managers of the firms. It is important that in such firms the IPs are able freely to exercise their independent professional judgement on the appropriate treatment of individual cases. We suggest that the RPBs may need to consider with the IS what steps they can take to satisfy themselves that in such cases the firms' systems and procedures adequately protect the IPs' independent professional status. In the longer term, the IS may need to consider seeking additional powers to regulate firms which offer regulated insolvency procedures such as IVAs as part of their business model.

Secondly, we have noted that corporate administrations are now also on the increase, though compulsory and voluntary liquidations remain low. This is a tribute to the development of a lively "turnaround/recovery" culture, which we generally welcome. But IPs can be presented with difficult conflicts of interests, particularly where a company, which they have been advising, goes into administration prior to a pre-arranged sale or management "buy-out" (so-called "pre-packs"). This is an issue we plan to look into during 2006.

Finally, I would like to thank most warmly, for the considerable contributions they have made to the IPC's work over the past years, three retiring IPC members: Robert Bertram, Peter Horrocks and Roger Page. At the same time we welcome their successors: Hamish Anderson, Dianne Hayter and David Tracy. A special word of appreciation and our best wishes go from myself, from Graham Kentfield, my predecessor and from all past and present members of the Council to David Harrison who retired at the end of January after 6 years as Secretary of the Council. Whatever successes the IPC has achieved owe a large part to David's hard work, intelligence and powers of organization as well as his persuasiveness and sense of humour. We also welcome Mike Stancombe as his successor, who brings a wealth of knowledge about the insolvency profession.

Geoffrey Fitchew
Chairman

1. “Best Advice” to the debtor when an IVA is being considered

In our Annual Report for 2004 we recommended that there should be a more specific requirement imposed on IPs and monitored by their regulators to give written “best advice” to debtors on which of the options open to them is most appropriate to their circumstances. We made this recommendation because we remain concerned that some debtors are being advised to opt for an IVA when bankruptcy might be more appropriate.

The JIC’s response to this was that the RPBs would prefer to review this recommendation once the Working Party set up by the IS to consider the introduction of a simplified IVA had reported its conclusions. The IS has now consulted the profession and the public on the introduction of a simplified IVA (SIVA) and the consultation paper covered the questions of whether and, if so, how best advice should be given.

In our response to the consultation paper on SIVAs we said that we believed “best advice” should be given and documented whenever an IVA (whether simplified or not) is being considered. We accepted in our response that a “face-to-face” interview should not be regarded as an essential element in giving “best advice” on IVAs or SIVAs, though we said that “best practice should be at least to offer the debtor a “face-to-face” meeting in the IP’s office.

We accordingly repeat, with minor modifications, last year’s recommendation below, which is intended to apply whether initial advice is given to the debtor face-to-face or by telephone. We see no justification for the RPBs waiting for the introduction of SIVAs before they address this issue, which is just as relevant to the existing form of IVA as to SIVAs. A number of cases have been drawn to our attention this year in which IVAs have been recommended to debtors whose only available source of finance was unemployment or disability benefits and who in our view could not reasonably have been expected to meet the payments required by the IVA.

➡ RECOMMENDATION: The IPC recommends that an IP or a member of his/her staff authorised by the IP should have a thorough discussion with an insolvent debtor in order to gain a detailed understanding of the latter’s financial circumstances. Whether or not an oral recommendation was made in this initial discussion, the IP should then send the debtor a written copy of the financial assessment together with a full explanation of all the options open to him or her and a reasoned recommendation, signed off by the IP, as to which the IP considers is most appropriate for the debtor’s circumstances. Before the IP agrees to set up an IVA for the debtor, the debtor should be asked to confirm in writing that they have read and understood the written advice and that the IP’s understanding of their financial circumstances is accurate.

The RPBs’ monitors should carry out appropriate checks on compliance with these requirements. For this purpose IPs should be required to retain records (whether written or recorded) of the initial conversation with the debtors as well as the of subsequent written assessments and advice.

We do not believe there are any circumstances in which an IVA can be appropriate for debtors who have financial resources available to them other than means-tested social security benefits; and we think that IVAs are unlikely to be appropriate for most debtors whose sole financial resources are non means-tested unemployment or disability benefits. The IS and RPBs should give guidance to IPs not to recommend IVAs to debtors on means-tested benefits and to exercise great caution in assessing whether debtors on means-tested benefits could sustain an IVA.

(This recommendation does not apply in Scotland, where IVAs do not exist.)

2. Statistical Information about IVAs

Adequate statistics on the outcomes of IVAs are essential both for assessing the success of the IVA as an instrument of policy and for monitoring the performance of IPs in giving “best advice” when IVAs are set up and in supervising them subsequently. We therefore welcome the recent action taken by the IS to introduce new software, which will enable them to track the duration and completion or failure of all IVAs on their Birmingham Register. The IS has confirmed to us that this software will enable it to produce a rolling annual series of statistics showing the completion/failure rates of IVAs taken out in previous periods both in aggregate and for individual IPs and for each RPB. We recommend that the IS should now discuss with the RPBs how this data can best be used systematically by the regulators to monitor the performance of IPs both collectively and individually.

The regular data produced by the new software does not include any information about the financial results of IVAs, such as the relative proportions of the debtors’ contributions being returned to creditors and being absorbed by administrative costs, including IPs’ fees. We consider that such information would also be highly relevant to monitoring the success of IVAs as an instrument of policy and the performance of individual IPs in supervising them.

We understand that the IS has carried out an assessment of the financial outcomes of a sample of recent IVAs, which some RPBs have indeed found useful for their monitoring work. We therefore recommend that the IS and the RPBs should now examine how these financial assessments can be produced electronically on a regular basis. We believe a necessary first step may be to introduce a standard format which could be used by IPs to send in their statutory closing statements of account to the IS electronically. Electronic reporting should reduce the regulatory burden on IPs, while improving the effectiveness and reducing the costs of the RPBs’ monitoring.

► **RECOMMENDATION:** We recommend that the IS should now use the information about IVAs on its Birmingham Register to produce a rolling annual series of statistics showing the completion/failure rates of IVAs initiated in previous years both in aggregate and for individual IPs. We suggest that the aggregate statistics should be published and that the IS and the RPBs should make systematic use of the completion/failure rate information on the Birmingham data-base to assist their monitoring of their IPs’ performance in setting up and supervising IVAs both collectively and individually.

We further recommend that the IS and the JIC should follow up the recent successful sampling exercise and take early steps to collect regular annual data on the financial outturns of individual IVAs in electronic form for the purpose of assisting the RPBs’ monitoring of the performance of their IPs.

(This recommendation does not apply in Scotland, where IVAs do not exist.)

3. Correspondence Between the IPs/RPBs and Debtors/Creditors

We recommended last year that the JIC should set a formal standard of best practice requiring IPs to reply within 10 working days in their correspondence with debtors and creditors. In our discussions with them the JIC has acknowledged the desirability of an improvement in IPs' performance on this matter, which is the most frequent cause of complaints to the RPBs. We understand that the RPBs have given non-binding guidance to their IPs on the desirability of replying promptly to correspondence. They are, however, reluctant to set a formal standard on this. We understand that the RPBs have given non-binding guidance to their IPs on the desirability of replying promptly to correspondence. They are, however, reluctant to set a formal standard on this.

We recognise that it would be unnecessarily burdensome and unproductive to require the monitors to report every single failure by IPs to answer correspondence within the proposed 10 day limit. We believe, however, that the RPBs' efforts to encourage prompt replies should be strengthened. We therefore recommend as follows:

▣ **RECOMMENDATION:** We recommend that the JIC should check that all the RPBs specify in their guidance to their IPs on the prompt handling of business that all correspondence from creditors, debtors or the general public should receive within 10 working days either a substantive reply or, if that is not possible a holding reply, indicating when a substantive reply will be given. The JIC should incorporate this as a statement of good practice in the revised ethical guide currently under discussion. The JIC and the RPBs should also consider taking appropriate action to monitor and, if necessary, discipline IPs who persistently fail to meet this performance level. The RPBs should meet the same standards in their own correspondence with complainants and other members of the public.

4. Fees

a. Fees for IVAs

As in the case of other insolvency procedures, fees for IVAs have to be approved by the creditors' committee or a meeting of creditors. IPs usually seem to charge a fee, which in some cases may vary from client to client, for their initial work as the nominee setting up the IVA and a separate fee for its supervision based either on chargeable hours or on a percentage of the debtor's contributions plus realised assets.

The report by the Working Party set up by the IS on a SIVA noted that in a minority of cases the fees charged led to controversy because they appeared to be disproportionate to what the debtor paid into the IVA and what was distributed to the creditors.

The Working Party's Report accordingly recommended that for SIVAs, IPs should charge a fixed fee for nominee work and that supervision fees should be collected monthly out of the debtors' contributions either in the form of a fixed administration charge or as a set percentage of realisations. No fee should be received if the creditors are not receiving a dividend.

► **RECOMMENDATION:** We agree with the general thrust of the Working Party's recommendations. Specifically, we agree that it would be more transparent and helpful if IPs each quoted a standard fee for all their nominee work for SIVAs. This does not however imply that the same fixed fee should be charged for nominee work by all IPs. We also agree that supervision fees for SIVAs should not be fixed on the basis of chargeable hours and that they should only be collected while contributions are being made either by the debtor or a third party as agreed under the SIVA. The IPC also believes that proportionality should be a factor in fixing fees to ensure that they are reasonable in relation to the repayments the debtor is making to the creditors under the SIVA. The IPC also believes that proportionality should be a factor in fixing fees to ensure that they are reasonable in relation to the repayments the debtor is making to the creditors under the SIVA.

b. Corporate Insolvencies

In our Annual Reports for 2003 and 2004 we commented on the remuneration of office holders, in particular for work on corporate insolvencies in England and Wales, in the light of the judgments by Mr Registrar Baister in the *Cabletel* case and by Mr. Justice Ferris in the *Independent Insurance* case. We noted the emphasis placed by Registrar Baister in the *Cabletel* judgment on the criterion of value for money and effectiveness and the subsequent endorsement of this criterion in the new Practice Statement issued by the courts in October 2004. Both the latter judgment and the Practice Statement issued by the courts in October 2004 make it clear that IPs should give value for money not only in the case of their own remuneration, but also in deciding whether or not to seek outside advice and how much to pay for it. We suggested that it would be right for creditors' committees and liquidation committees also to apply these criteria when assessing claims for remuneration. Without making a formal recommendation we said we expected that the RPBs would give further guidance to their licence holders on this matter.

The RPBs issued a revised Statement of Insolvency Practice (SIP 9), applying with effect from 1st August 2005, which updated the previous guidance to reflect changes in legislation. Though the new SIP 9 does not explicitly endorse the criteria of value for money and effectiveness, it does helpfully require office-holders to explain, when seeking agreement for their fees, what they have achieved and how, so that creditors and debtors can "assess the value of the exercise". The new SIP will also improve and standardize the information given to creditors and other stakeholders when approval of fees is sought. We also understand that Registrar Baister is exploring the possibility of setting up a mediation body (not limited to fee disputes) which could help creditors and IPs to resolve disputes over fees without recourse to the courts. We very much welcome these developments. It is now important that there is proper monitoring of IPs' compliance with the new requirements of SIP 9 and the Practice Statement. Our recommendation below addresses this.

► **RECOMMENDATION:** We recommend that in their regular sample checks on IPs' compliance with the Practice Statement and SIP 9, the monitors should assess whether IPs are meeting with their obligation to explain what they have done and why so that their creditors and the courts where appropriate can make an informed judgment on the value for money and effectiveness of their work. In making this recommendation we fully recognise the difficulties involved in assessing value for money in complex corporate insolvencies.

During 2005 we followed up the recommendations we made in our Annual Report for 2004 on better IVA statistics, “best advice” and timely communication in our regular meetings with the Insolvency Service and the Joint Insolvency Committee (JIC) with the results reported above. In addition we responded to consultation documents from the IS on simplified Voluntary Arrangements (SIVAs) and on Debt Relief Orders (DROs). We summarise the IPC’s view on these and other key issues in the rest of this section.

SIVAs

The IS set up a working group in September 2004, consisting of representatives of the larger firms offering IVAs and/or debt management arrangements to personal debtors and of other stakeholders, including the major lenders, to consider how to create a simpler and less expensive form of IVA which would benefit both debtors and creditors. The IS published a consultation document in July 2005, inviting public comment on the following recommendations made by the working group:-

- ❖ Simpler standardised terms and conditions and a standardised fee structure should apply to all IVAs covering debts up to £75,000. All SIVAs should offer the creditors a better return than bankruptcy, with debtors paying the maximum they could afford;
- ❖ Where debts did not exceed £25/30,000 there would be no creditors’ vote on the IP’s proposal for an IVA. For cases between £25/30,000 but below £75,000 the proposal would require acceptance (without modifications) by a simple majority of creditors rather than the current 75%; and that
- ❖ Debtors whose behaviour had been irresponsible, reckless or dishonest could be barred and creditors would retain the right of appeal to the courts.

Table 1 – Personal Insolvency Statistics

IVAs and Personal Bankruptcies in England & Wales between 1997 and 2005

Calendar Year	IVAs approved	Completed ¹	Failed ¹	Bankruptcies
1997	4545	2599	1473	19892
1998	4901	2912	1536	19647
1999	7195	2632	1354	21611
2000	7978	2539	1676	21550
2001	6298	2722	1807	23477
2002	6295	3263	1821	24292
2003	7583	4485	1726	27596
2004	10752	5839	1786	35898
2005	20292	6640	2388	47287

Source: The Insolvency Service Statistics – www.insolvency.gov.uk/information/stats.htm

¹ Figures denote completions/failures in that year. There is no direct relationship between the approved, completed and failed figures for any specific year.

In our response we welcomed most of the Working Group's proposals for a simplified IVA (which we had recommended as desirable in our Annual Report 2003), with three main provisos:-

- ❖ We recommended that, in order adequately to protect creditors' interests, all proposals for SIVAs should require a formal approval by a simple majority vote of creditors, not just those where debts exceeded £25/30,000;
- ❖ A simple majority vote of creditors should also be required to approve a decision on whether or not bankruptcy proceedings should be instituted when a SIVA fails; and that
- ❖ There should be adequate safeguards and monitoring to help ensure that IPs and the firms employing them comply with their duty to give best advice to the debtors.

We understand that the IS is now considering the numerous responses to the consultation document it has received before it puts forward its own proposals for introducing SIVAs

Debt Relief Orders

In March 2005 the IPC also responded to a consultative document on "Relief for the Indebted – An Alternative to Bankruptcy" issued by the IS, which, in line with earlier proposals from the Department of Constitutional Affairs (DCA) recommended the creation of a non-court administered scheme of Debt Relief Orders (DROs) to deal with personal debtors whose income and assets are so low as to make it unrealistic for them to make any repayment of their debts. The proposal envisaged that individual debtors' eligibility for a DRO would be initially assessed by money advice intermediaries, probably working in the voluntary sector, though the final decision would be taken by an Official Receiver.

Our response recognised the case for a simplified form of debt relief for debtors with no (or virtually no) free income or assets. We, however, expressed two reservations about the proposals, both of which were shared by a number of other respondents. We were concerned, first, that the system might be vulnerable to fraud, unless the debtors' claims to meet the eligibility criteria were properly checked. Second, we questioned whether the voluntary organisations would have adequate financial and other resources to carry out the necessary checking.

The IS has now announced its intention to go ahead with the proposals, which will require new legislation. The IS stated that the legislation will contain appropriate and proportionate remedies to discourage misconduct by debtors. The IS is now in discussion with the relevant voluntary and other organisations in order to define the role of the intermediaries more precisely and to address the question of adequate funding.

Joint Insolvency Committee Regulatory Forum

The JIC organised a first Regulatory Forum in May, which brought together representatives of all the RPBs and of the IS as well as numerous IPs and other interested stakeholders, including the IPC. The Forum debated a number of current topics of interest, including industry intelligence, methods and frequency of monitoring and consistency in disciplinary procedures, which are discussed below. The IPC considers this was a useful initiative by the JIC and would encourage the JIC to turn the Forum into a regular event.

❖ Industry Intelligence

The Regulatory Forum discussed the case for setting up a dedicated and independent telephone “hot-line” which potential “whistleblowers” working within the IP sector could call on a confidential basis. Following subsequent discussion in the JIC, the Insolvency Practitioners Association (IPA) has initiated a research project, the results of which will be shared with all the licensing bodies, to investigate how such a system could be established. The IPC welcomes this initiative. Although we share the view of the RPBs that the vast majority of IPs do an often difficult job conscientiously and well, a protected “whistleblowers” system could help the regulators in identifying the relatively rare cases of misconduct.

❖ Monitoring

Following the closure of the Joint Insolvency Monitoring Unit at the end of 2004, the Institute of Chartered Accountants in England & Wales (ICAEW) and the IPA has established their own separate monitoring systems. All the RPBs’ monitors continue to exchange ideas and information directly through the regular reports to the JIC by the “Meeting of Monitors”. Two members of the IPC were invited to the July “Meeting of Monitors” and were pleased to observe that the monitors appear to work well together and that the meeting produced valuable exchanges of experiences.

Informal co-operation of this kind is welcome and will hopefully continue. We nevertheless believe that a more systematic harmonisation of monitoring methods and benchmarks is desirable. We are concerned at the discrepancies between the RPBs in the frequency of their monitoring visits. We also believe that a gap of 6 years between visits is too long.

❖ Consistency in Disciplinary Procedures

IPs from time to time express concerns about differences in the procedures and outcomes of RPBs’ disciplinary and complaints handling systems. Following discussions at the Regulatory Forum, the IS has asked the RPBs and other interested parties to supply any evidence of differences in the standards applied by the RPBs. The IPC’s view is that, since increasing numbers of members of the public come into contact with IPs, it would benefit the profession and the public if all the RPBs were to adopt common standards and procedures in the handling of complaints and disciplinary cases and preferably move to a single system with a common pool of tribunal members, including wholly independent lay members.



The Insolvency Service's Review of the Memorandum of Understanding and the Principles for Monitoring

Towards the end of the year the IS consulted the RPBs and other interested parties on possible revisions to the Memorandum of Understanding, which is the basis for delegating the work of regulation to the RPBs, and to the Principles for Monitoring by the RPBs. We hope that this review will provide an opportunity to achieve greater harmonisation in both monitoring and disciplinary procedures. The IPC has been asked to join in the consultation process and welcomes the opportunity to express its views on these issues.

The *Leyland DAF* Case – Payment of Liquidation Expenses out of Assets comprised in Floating Assets.

The DTI has proposed to amend Section 175 of the Insolvency Act 1986 in order to reverse the effect of the House of Lords decision in *Buchler v Talbot, re Leyland DAF* (2004). In that case, the House of Lords held that the costs and expenses of a Liquidator in a winding – up are not recoverable out of the assets comprised in a floating charge until the secured debt has been paid in full. This decision reversed the position that had obtained for many years in England and Wales regarding the payment of expenses, and the DTI intention as expressed in new section 175 is now to return to the law which had so obtained. The IPC supports the DTI's intention to deal with the matter in this way and also supports the efforts being made by the RPBs to reach satisfactory arrangements with the major lenders on how to deal with this matter until the amendment to Section 175 can be adopted. The *Leyland DAF* case brought the law in England and Wales into line with the position in Scotland but the Department of Trade and Industry's intention is to cause the law to revert. It has been suggested that the Scottish Executive should take similar statutory action to permit Liquidators in Scotland to take their expenses before the holder of a floating charge is paid but implementing this change would necessitate a substantial change to Scots Law, not merely the reversal of a Court Judgment. The issue is currently being considered by the Scottish Executive following a period of consultation.

Debt Management Companies

The IPC has noted increasing discussion about whether debt management companies (DMCs), most of which hold consumer credit licenses granted by the Office of Fair Trading, should be subject to stronger "conduct of business regulation" or at least required to train their staff to meet agreed professional standards. We understand that the IPA has been discussing with some of the leading debt management companies and other advice and solution providers the scope for developing, alongside the existing statutory regulation of IPs, a consumer debtor-specific recognition/accreditation scheme (or schemes) for the training, examination, continuing professional development, oversight and regulation of those who advise on and administer the range of consumer debtor solutions.

We welcome the IPA's initiative in raising this. To the extent that the case for training the staff of DMCs relates to the fact that they are effectively giving advice to debtors, the case for formal training standards applies equally to the staff employed or supervised by IPs who specialise in dealing with personal debtors and to the money advice staff employed by the charitable and voluntary sector.

Developments in Scotland

There are a number of developments currently underway in Scotland. These are:

- ❖ The advent of Debt Arrangement Schemes
- ❖ The Bankruptcy and Diligence (Scotland) Bill
- ❖ The Protected Trust Deeds (Scotland) Regulations

Here follows a short summary in relation to each written from the perspective of the public interest on the need for equivalence of the effectiveness of regulatory and monitoring regimes as they apply to personal debt management.

The advent of Debt Arrangement Schemes

As indicated in the 2004 Annual Report, the Debt Arrangement Scheme (DAS) established by the Scottish Executive came into force on 30 November 2004 to provide a form of debt management rather than debt relief. It was envisaged that debt arrangement plans would be supervised by the voluntary sector with trained money advisers carrying out the work. Fund distributors are also appointed. To date, approximately 60 advisers have been appointed and approximately one hundred and fifty plans set up.



The Bankruptcy and Diligence (Scotland) Bill

It is intended that the provisions of the Bill will replace the existing regulatory powers contained in Schedule 5 of the Bankruptcy (Scotland) Act 1985. The Bill was introduced in the Scottish Parliament on 21 November 2005.

The Protected Trust Deeds (Scotland) Regulations 2006

In January 2006 the Scottish Executive issued a Consultation Paper (with responses to be submitted by 14 April) containing a draft of regulations on the Reform of Protected Trust Deeds (PTDs) in Scotland. The Scottish Executive appears to be satisfied that, in principle, Protected Trust Deeds are a useful tool and have a place in a reformed and integrated system of debt management and debt relief. Concerns have however been expressed by the Scottish Executive about the way in which PTDs have been used since 1998.

The following table demonstrates the very significant increase in the number of PTDs since 1998:

Table 2 – The Growth of Protected Trust Deeds in Scotland

1999	2000	2001	2002	2003	2004	2005
1574	2353	2946	4011	5363	5669	6141

The overall aim of these initiatives is, in all of which the Accountant in Bankruptcy (AiB) plays a role, in the words of the Scottish Executive “to provide a better integrated and more effective system of debt management and relief in Scotland.”

Under the Scotland Act the power to legislate on insolvency and bankruptcy procedures is devolved to the Scottish Parliament, whereas the power to regulate IPs throughout the United Kingdom is reserved to the UK Parliament. These new developments illustrate some of the potential consequences of this division of responsibilities. Both the legislation introducing DASs and the role envisaged for the AiB in the Bankruptcy and Diligence (Scotland) Bill will lead to a substantial portion of work on personal insolvency procedures being moved away from IPs either to the public sector under the AiB or to the voluntary sector.

While some aspects of the new Scottish legislation may fall outside a strict definition of the IPC’s remit, all of it is relevant as part of the wider context within which we work. There is in our view a public interest in relation to all statutory insolvency procedures that both creditors and debtors’ interests are adequately protected. In the case of debtors this includes an expectation that debtors are properly advised by those whoever supervises these procedures on the best course of action available to them. We emphasise that this does not mean that such procedures should necessarily be reserved for IPs. We hope to discuss this and other aspects of the changes in the Scottish legislation with the relevant Scottish authorities later this year.

During 2005 members of the IPC journeyed around the country to meet members of the insolvency profession, the regulatory bodies and organisations that represent individuals and businesses that are in some way affected by insolvency.

- ❖ The Chairman addressed over 60 IPs at an R3, Association of Business Recovery Professionals, meeting in Bristol on the work of the IPC.
- ❖ Three members spent a day at the IS IP Unit at Birmingham examining the complaints procedures and files. They were impressed with the speed and fairness in which the staff dealt with the public at large. They were also introduced to the IVA register and the improvements planned by the introduction of the Crystal database. A meeting with the Assistant Official Receiver for Birmingham B to understand more fully the OR's role in the increase in personal debt problems completed the day.
- ❖ Two members visited CCCS and Payplan to gain an understanding of their views regarding the new SIVA package to assist with the IPC response in September.
- ❖ Two members joined the "Meeting of Monitors" July meeting and were invited to take part in the discussions on current issues and their concerns about monitoring the growing number of IVA processing houses. There was a concern that there could be a conflict of interest between achieving 'sales' targets and giving best advice.
- ❖ The Chairman and a member spoke at the Institute of Chartered Accountants of Scotland (ICAS) insolvency conference in St Andrews;
- ❖ Two members attended the annual conference of the Money Advice Liaison Group in London and spoke to a number of the Money Advisers who populate the CABs around the country.
- ❖ Attendance at the half-yearly meetings of the Voluntary Arrangement Service of HM Revenue and Customs brings the IPC in contact with the corporate issues facing the payment of taxes.
- ❖ Two members and the Secretary designate attended the R3 Smaller Practice Issues Committee forum in Solihull in October.
- ❖ The Secretary has been in regular contact with the Institute of Credit Management, the Federation of Small Businesses and Citizens Advice.



Our aims for 2006 include to:

- ❖ make progress on our Recommendations on “best advice”, IVA statistics, IP communications and fees;
- ❖ respond to the IS’s consultations on the Memorandum of Understanding and the Principles for Monitoring;
- ❖ respond to the IS’s expected consultations on simplified IVAs;
- ❖ comment on the IS’s consolidation of secondary insolvency legislation;
- ❖ promote the need for a more harmonised approach by the RPBs towards monitoring, disciplinary and complaints procedures;
- ❖ discuss the operation of debt management companies with the Office of Fair Trading;
- ❖ visit the Institute of Credit Management to discuss its views on the insolvency profession;
- ❖ examine the regulatory issues relating to pre-packaged Administrations;
- ❖ explain the IPC’s work to regional meetings of IPs (visits to Scotland, Newcastle and the North West);
- ❖ contacts with the voluntary debt advice sector and the major consumer credit lenders as well as with the RPBs; and
- ❖ understand better the working of the personal insolvency regime in Scotland.



The members of the insolvency profession fund the IPC; the levy for 2005 was £50 per licence holder. The IPC is run on a tight budget and benefits from the support and hospitality of some of its members, R3, the IS and the RPBs.



Members of the IPC thank those both inside the insolvency profession and outside who have provided assistance to the Council during the year.

AiB	Accountant in Bankruptcy – an executive agency of the Scottish Executive administering personal insolvencies in Scotland
CABs	Citizens Advice Bureaux
CCCS	Consumer Credit Counselling Service – a registered charity which assists people in financial difficulty
CVAs	Corporate Voluntary Arrangements – Formal arrangements made by companies for payments to be made to their creditors over a period of time under the supervision of an insolvency practitioner.
DASs	Debt Arrangement Schemes – for over-indebted individuals, applying in Scotland only.
DCA	Department of Constitutional Affairs – issued the consultation paper on the choice of paths open to over-indebted individuals in England and Wales.
DMCs	Debt Management Companies – that give advice and manage debt for the consumer debtor either taking a fee or receiving payment from the creditors. Currently not the subject of any formal regulatory process.
DROs	Debt Relief Orders – introduced in England and Wales for over-indebted individuals whose income and no assets are so low as to make it unrealistic to make any repayment of their debts.
DTI	Department of Trade & Industry
ICAEW	Institute of Chartered Accountants in England & Wales
ICAS	Institute of Chartered Accountants of Scotland
IPA	Insolvency Practitioners Association
IPC	Insolvency Practices Council – represents the public interest in insolvency.
IPs	Insolvency Practitioners – individuals licensed and regulated by the RPBs to practice insolvency and take cases.
IS	The Insolvency Service – the agency of the Department of Trade and Industry that acts as the regulator of the RPBs.
IVAs	Individual Voluntary Arrangements – formal arrangements made by debtors for payments to be made to their creditors over a period of time under the supervision of an insolvency practitioner.
JIC	Joint Insolvency Committee – the co-ordinating committee made up of representatives from the RPBs and the IS to bring together a process for implementing changes and improvements to insolvency practice and standards, and to respond to the recommendations made by the IPC.
PTDs	Protected Trust Deeds – in Scotland only
R3	Association of Business Recovery Professionals – the trade organisation for the insolvency profession and responsible for training. Acts as a voice for the profession and co-ordinates changes to SIPs.
RPBs	Recognised Professional Bodies – professional institutions, authorised by the Secretary of State for Trade & Industry for the purpose to set the ethical and professional standards for their members being responsible for regulation, encouragement of proficiency of members, monitoring performance, discipline and complaints.
SIPs	Statements of Insolvency Practice – detailed standards relating to the day-to-day work of insolvency practitioners.
SIVAs	Simplified Individual Voluntary Arrangements – proposed simplified IVAs for consumer debtors.

