

# *Annual Report* *2007*

**Insolvency Practices Council**  
*Influencing the standards of the insolvency profession*



## The Insolvency Practices Council

The IPC is a public interest body that advises the insolvency profession and its regulators on the professional and ethical standards of insolvency practitioners.

The IPC has nine members – a chairman and five other lay members together with three members of the insolvency profession who provide technical advice – and a secretary.

### What the IPC does

The IPC reviews whether the professional and ethical standards of insolvency practitioners are appropriate and whether they are satisfactorily enforced by the Recognised Professional Bodies that regulate them.

The main objectives which the IPC seeks to promote are that insolvency practitioners act professionally, fairly, courteously and transparently in all their dealings with members of the public and, wherever appropriate, give them “best advice” on the options open to them; and that they are fully accountable for the protection and use of the assets with which they are entrusted.

The IPC seeks to promote fair, consistent and transparent procedures for the investigation of any complaints made by members of the public against insolvency practitioners. However, the IPC is not itself an ombudsman and has no powers to investigate complaints.

The IPC has a duty to make recommendations to the government Insolvency Service or to the Recognised Professional Bodies about any matters relating to regulatory, professional or ethical standards.

The IPC publishes an annual report, which includes details of its work and recommendations made.

In all its work the IPC will take into account any relevant concerns brought to it by individuals or organisations on public interest matters as well as any concerns identified by the IPC itself.

The IPC welcomes information or concerns on insolvency from those affected by insolvency and, particularly, from debtors and creditors.

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	Page
Executive Summary .....	2
The Chairman's Report .....	4
Recommendations	
Statistics on Individual Voluntary Arrangements and Debt Management Plans .....	8
Complaints Handling by Insolvency Practitioners and their Regulators.....	9
Follow-up to Annual Report 2006 recommendations .....	11
Other Activities and Meetings in 2007	
Tribunals & Enforcement Bill .....	13
Code of Insolvency Ethics .....	13
Pre-packs and pre-appointment expenses .....	13
Individual Voluntary Arrangements .....	13
Simplified IVAs .....	14
Scotland .....	14
Other meetings .....	14
Proposed Council Activities during 2008 .....	15
Funding .....	15
Members of the Council .....	16



This annual report comes at a time of great uncertainty about the world and the UK economic outlook. A serious economic slow-down could lead to significant increases in both personal and corporate insolvencies. Against this background we are concerned by the sharp increase at the end of last year in the number of personal debtors who are being denied debt relief by the refusal of some creditors to accept their proposals for Individual Voluntary Arrangements (IVAs). We believe that the legitimate concerns voiced by creditors about the operation of IVAs have been met by the agreement reached in January by the insolvency profession and the British Bankers Association on a Standard Protocol for handling consumer IVAs. We accordingly call on the creditors to respond by treating all IVA proposals, which conform to the Protocol, on their merits whenever they provide a better return to the creditors than bankruptcy.

More generally, we are concerned at the confused state of the market in “debt solutions” for distressed personal debtors. There is a need for more consistent and objective information to be provided by all debt advisers to distressed personal debtors on the pros and cons of different “debt solutions” both statutory and informal and for better statistics particularly on IVAs and informal Debt Management Plans. This point is covered in some of our Recommendations below. There is also a need for stronger coordination within government of policy relating to personal indebtedness.

Following some independent research that we commissioned, the IPC calls for Insolvency Practitioners (IPs) and their regulators to ensure that all personal debtors can have access to an independent consumer-friendly complaints system which has the power to award redress where appropriate.

Our main recommendations this year are that:

- **The Insolvency Service and the regulators should publish annual statistics showing aggregate completion and failure rates of IVAs set up in each of the previous five years and the equivalent statistics for each IP and the firms they work for. In the longer-term the Insolvency Service should also provide regular information to the regulators on the financial outcomes of all IVAs;**
- **The Insolvency Service and the regulators should work together with the creditors and their agents to collect and publish similar statistics from debt advice firms on the performance of informal debt management plans; and**
- **The insolvency regulators should require their IPs to ensure that their firms’ complaints handling systems include an option for making redress (whether financial or otherwise) when a complaint by a personal debtor is upheld. The Insolvency Service and the regulators should also take steps to ensure that any personal debtor can take a complaint against any IP relating to poor debt advice or unsatisfactory management of debt problems to an independent arbiter, who can award appropriate redress when the complaint is upheld.**

We also repeat the concern we expressed in last year’s report relating to the reduction in the financing made available by the government for the investigation by the Insolvency Service of the reports produced by IPs into the conduct of the directors of insolvent companies under the Company Directors Disqualification Act 1986. We continue to believe it is essential that:

- **all adverse reports by IPs containing prima facie evidence of misconduct by directors under the Company Directors Disqualification Act 1986 should be investigated, so that sanctions can be taken, where appropriate.**

The IPC plans to continue to follow up these recommendations during 2008 through discussions with all the relevant organisations.

During 2007 the IPC participated as an observer in the IVA Forum meetings set up by the Insolvency Service and the British Bankers Association to simplify and improve the management of IVAs. We also accepted an invitation to be an observer on the IVA Standing Committee that was formed last year to oversee the agreement reached in the IVA Forum between the insolvency profession and the major creditors. Many of the points agreed by the IVA Forum are in line with recommendations we have made in previous years. Within the Standing Committee we are pressing the case for better information and statistics to be made available to all market participants on the pros and cons of different types of debt solution.

The IPC continues to respond to consultation papers on insolvency matters. In keeping with our view that there is a case for stronger co-ordination within government to ensure a more coherent strategy for debt advice and proposed solutions, we argued against the then Department of Constitutional Affairs' (now the Ministry of Justice's) proposals to introduce Enforcement Restriction Orders, which we believe will add further complexity to an already confused market place.

IPC members had meetings with Citizens Advice and the Office of Fair Trading to discuss misleading advertising and allegations of mis-selling. We have also maintained our continuing dialogue with the Insolvency Service, the Joint Insolvency Committee and the insolvency licensing bodies.



This Annual Report goes to the printers at a time when world economic prospects are unusually uncertain. The risk of a serious economic slowdown in the UK appears to be increasing and with it the possibility of sharp rises in the numbers of both personal and corporate insolvencies. The insolvency profession and its regulators could face a busy and challenging year. On the basis of what we have seen in 2007 there are two main issues, which the IPC will want to follow closely this year:



- The number of personal debtors who are denied debt relief because bank lenders are rejecting many proposals for Individual Voluntary Arrangements (IVAs). More generally, distressed debtors face a confused marketplace, populated by an “alphabet soup” of debt advisers and “debt solutions” without adequate objective information about their pros and cons and performance. These issues are discussed in detail below; and
- The operation of the administration procedure in the corporate sector. There are concerns that administration is being used as a substitute for liquidation without the “checks and balances” inherent in the latter. There are arguments that reform of the Company Voluntary Arrangement procedure is needed to improve the chances of rescuing companies. We repeat our concerns elsewhere in this report about the insolvency profession’s handling of conflicts of interest in relation to pre-arranged sales of businesses back to the previous directors.

### Individual Voluntary Arrangements (IVAs) and Personal Indebtedness

The Insolvency Service’s end-year statistics (see Tables below) show that the total number of personal bankruptcies and IVAs in England & Wales and Northern Ireland, while still at historically high levels, have fallen slightly below the record levels of 2006, with IVAs falling from the second quarter of 2007. CCCS, the largest provider of informal debt management plans (DMPs), also reports that the numbers of new DMPs they arranged stabilised in 2007 at just over 31,000. This suggests that the total number of new DMPs may have been at least 125,000.

**Table 1 – Personal Insolvency Statistics**

IVAs and Bankruptcies in England & Wales and Northern Ireland between 1998 and 2007

Calendar Year	IVAs approved	Bankruptcy orders	Totals
1998	5024	20041	25065
1999	7367	22012	29379
2000	8245	21899	30144
2001	6474	23769	30243
2002	6502	24626	31128
2003	7901	28113	36014
2004	11201	36564	47765
2005	20925	48108	69033
2006	45125	63994	109119
2007	42606	65378	107984

**Table 2 – Sequestrations and Protected Trust Deeds in Scotland**

Calendar Year	Sequestrations	PTDs approved	Totals
1998	3016	1449	4465
1999	3195	2144	5339
2000	2965	2801	5766
2001	3048	3779	6287
2002	3215	5174	8389
2003	3328	5452	8780
2004	3297	6024	9321
2005	4065	6881	10946
2006	5430	8208	13638
2007	6219	7595	13814

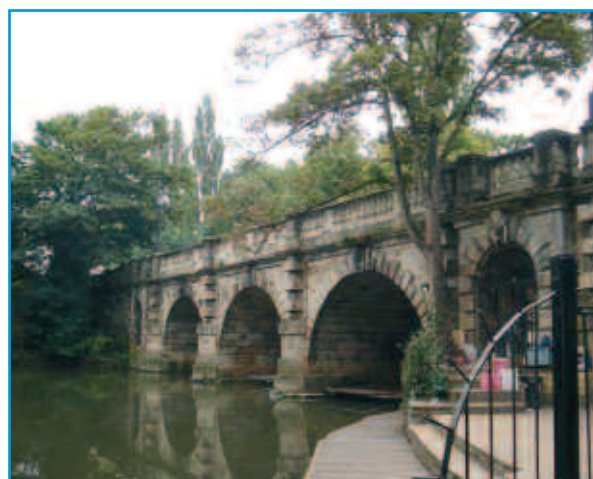
Source: *The Insolvency Service*

These reductions in numbers may reflect efforts by consumers to rein in their indebtedness. But financial pressures on households increased in the second half of 2007 as a result of the rising costs of food and fuel and higher council taxes, so personal indebtedness problems could clearly get worse if there is a serious economic slow-down.

The sharp reduction in the numbers of IVAs was mainly the result of deliberate decisions taken by some of the major lenders to reject a higher proportion of IVA proposals submitted to them, particularly in the second half of the year. These decisions appear partly to reflect a determination by the lenders to seek better returns from IVAs by pressing for both higher contributions from debtors and for lower fees and charges from Insolvency Practitioners (IPs) but also a preference expressed by some lenders for putting borrowers into informal Debt Management Plans (DMPs) rather than IVAs.

Against this background the Insolvency Service and the British Bankers' Association set up an IVA Forum on 17 January last year, bringing together representatives of the insolvency profession, its regulators and of the banks and other lenders. The main aims of the Forum were to simplify and reduce the costs of IVAs and to improve the information and quality of advice given to debtors by IPs and other debt-advice firms.

As a result of these negotiations the insolvency profession and the lenders reached agreement on 29 January 2008 on a Standard Protocol to be followed by IPs when proposing and supervising straightforward consumer IVAs and a simplified set of Standard Conditions for IVAs. An IVA Standing Committee chaired by the Insolvency Service was set up to oversee the working of the agreement. This agreement and the associated undertakings given by the parties are intended to complement the Government's proposals to introduce a Simplified IVA (SIVA) by secondary legislation aimed at reducing the costs resulting from the regulatory burden imposed by the Insolvency Act 1986.



The IPC participated, as an observer, at meetings of the IVA Forum and in its working groups and subsequently accepted an invitation from the IS to be an observer on the IVA Standing Committee. In the meetings of the IVA Forum we argued, as we have consistently in previous years, that there should be no misleading advertising of IVAs; that IPs must give clear information to all debtors who seek their advice about the alternative debt solutions available to them; and give objective advice, based on the individual debtor's circumstances, on the most appropriate solution for them. Many of the commitments agreed by the IVA Forum (see box below) are along the lines we have recommended and we welcome them.

### Commitments agreed by the IVA Forum

- by the insolvency profession to abide by the Office of Fair Trading's guidance on the advertising of IVAs;
- by the insolvency profession to give clear information to debtors about all the alternative "debt solutions" (formal and informal) available to them and objective advice, based on the individual debtor's circumstances, on which is the most appropriate solution;
- by the insolvency profession to accurate verification of debtors' financial circumstances;
- by IPs and creditors to the use of a common method of assessing debtors' income and expenditure needs and the surplus available for repaying their debts;
- by IPs and creditors to limit the amount a debtor in an IVA may be required to pay for an additional mortgage to release equity from the their home to no more than 50% of their monthly surplus income; and
- by the regulators to monitor (or continue their existing monitoring) of many of these commitments.

Along with other parties at the Forum meetings we also argued that it is in the public interest that insolvent debtors should be given access to IVAs, when that is an appropriate solution for them and gives the creditors a better return than bankruptcy. It will clearly be unsatisfactory, if, where the case for an IVA has been reasonably made out consistently with the requirements of the IVA Forum agreement, the debtor is denied an appropriate solution to his or her problem by the creditors insisting on unrealistic rates of repayment ("hurdle rates") or imposing other unreasonable restrictions.

Unfortunately, there has so far been no commitment by the creditors to treat IVA proposals, which comply with the terms of the Standard Protocol, on their merits. In a letter circulated to all the negotiating parties the lenders which belong to the BBA have indicated only that they will review their current policy stance on approving IVAs when they see how IPs are complying with the Standard Protocol. The IVA Standing Committee will be reviewing progress on this matter in May. We trust that there will be a positive response from the banks and other lenders.

The lack of clarity about lenders' willingness to approve IVA proposals is only one of many uncertainties that face distressed personal debtors when they try to find the most appropriate solutions to their problems. Individual debtors are confronted by a confusing array of "debt solutions", often heavily advertised. They include loan consolidation, re-mortgages, informal Debt Management Plans, IVAs and bankruptcy and their Scottish equivalents. Any one of these may be suitable for some debtors, depending on their circumstances; none of them will be suitable for every debtor.

There is similarly an "alphabet soup" of debt advisers from both the commercial and voluntary sectors in addition to the agents and staff of the major lenders. There is no common "hymn-sheet" that all advisers can "sing from" and some advisers are dependent for their finances on one or two of the options on the "debt solutions" menu. Bankruptcy, which may be the most appropriate solution for a higher proportion of today's debtors than at present resort to it, produces lower fees for debt advisers than several of the alternatives. In contrast to other

financial services, there are, outside the insolvency profession, as yet no common standards of training or regulatory guidance for debt advisers.

This confusion is to a large extent the result of the play of competition in a free market. For the most part this competition is healthy. Both creditors and debtors need to have the freedom (within acceptable limits) to resolve their problems on a voluntary basis. We do not suggest that every debtor can or should be unerringly directed to one and only one "debt solution"; and many debtors remain keen to avoid the perceived stigma of bankruptcy.

But there is a strong case for greater transparency and better information for debtors, creditors and debt advisers not just about IVAs, but about the pros and cons of all statutory and informal "debt solutions". We make recommendations on this elsewhere in this report. There is also a strong case that all debt advisers, who offer themselves as giving independent and objective advice, should accept a similar obligation to that currently imposed on IPs to give debtors full information about the alternatives available to them and a reasoned recommendation on the option most appropriate for each debtor's circumstances.

With the boundaries rapidly disappearing between the insolvency profession and other debt advice organisations there is also a need for strengthened co-ordination at government level to ensure a coherent strategy. The departments and agencies involved include Department for Business, Enterprise and Regulatory Reform, the Insolvency Service, the Office of Fair Trading and the Ministry of Justice. The latter has recently published proposals for an Enforcement Restriction Order and is also consulting lenders on a form of regulated Debt Management Scheme. We remain concerned that both these proposals may only add to the existing confusion in the already complex market place described above.

Finally, the requirement on debt advisers to give objective and appropriate advice will be reinforced if personal debtors, who wish to complain about bad advice, have easy access to an independent complaints system which can also provide redress (both financial and otherwise) when complaints are upheld. With this in mind we last year commissioned research by the Nottingham Law School of Nottingham Trent University into complaints handling by IP firms and by their regulators. It is clear from this report that the current arrangements do not provide a redress-based complaints system which will cover all complaints by personal debtors against all IPs. We make recommendations below on how this could be remedied.

We are optimistic that progress can be made on a number of these issues in the course of 2008. In particular:

- The IVA Standing Committee is committed to improving the information available to debtors, debt advisers and creditors about IVAs. It is important that there should also be as much equivalent information about DMPs as possible; we understand from both Citizens Advice and the Financial Ombudsman Service that they receive many more complaints about DMPs than about IVAs;
- The IVA Standing Committee is also working on a debtor-friendly and objective guide to the pros and cons of all types of statutory and informal "debt solution." The aim should be to produce a document of sufficiently high quality that all debt advisers, both commercial and voluntary (and the major creditors), will make it available to debtors seeking advice;
- The OFT is about to begin inspections and investigations of debt advice firms to verify that they are "fit and proper"; and
- The Debt Resolution Forum (DRF), set up by a large number of commercial debt adviser firms as a self-regulatory body, is making progress in setting up a system of accreditation and training which will be used by all its member firms. Similar efforts to improve advice standards and training in the not for profit sector are being made under the auspices of the Money Advice Trust.

We will continue to observe and, where appropriate, participate in some of these developments in 2008.

## Statistics on Individual Voluntary Arrangements and Debt Management Plans (DMPs)

Debtors, creditors and IPs need better information about the pros and cons and performance of the main “debt solutions” available for distressed personal debtors to enable them to make informed decisions about the most appropriate solution for the debtors. The Recognised Professional Bodies (“the regulators”), which regulate IPs also need better statistics to help them monitor the performance of individual IPs. There is a particular need for regular published statistics on the completion and failure rates of Individual Voluntary Arrangements (the main statutory form of personal debt relief short of bankruptcy) and of the informal Debt Management Plans (DMPs) often favoured by the banks. In each of the last two years around 40,000 new IVAs were agreed. Best estimates suggest that new DMPs in the UK are at least 125,000 a year.



We understand that the Insolvency Service is now providing the regulators with quarterly statistics on the completion/failure rates of IVAs in line with a recommendation we made two years ago. However, no meaningful statistics on the performance of IVAs are yet available to the general public or to creditors either in aggregate form or for individual IPs or their firms. There are no aggregate statistics available for DMPs.

There was a general agreement between creditors, the insolvency profession and their regulators in last year’s IVA Forums that more and better statistics about IVAs were needed. A Working Party was set up to make recommendations on what improvements should be made but, at the time of writing, has not yet reported.

We welcome this initiative. We draw attention, however, to two points, which are essential to improving both the advice given to debtors and the decisions made by them. First, data about the performance of IVAs proposed and supervised by each IP and by individual debt advice firms should be published in a form readily accessible not just to creditors but to debtors and the general public. Second, similar information also needs to be collected and published relating to the performance of the informal Debt Management Plans. The IVA Protocol agreed between the British Bankers Association and the insolvency profession rightly requires that all debtors must be fully advised by IPs and debt advice firms about the pros and cons of all the options available to them. At present, however, with one or two exceptions, neither debt advice firms nor the lenders publish any information about the duration or typical contributions required under DMPs, and there are no industry-wide statistics on the completion/failure rates of DMPs. Without adequate information about all forms of debt solution it is difficult for debt counsellors to advise on the most appropriate solution or for debtors to judge what is in their own best interests.

**We therefore recommend the following measures, the first three of which we also recommended last year:**

- **The Insolvency Service (IS) should start publishing annual statistics showing aggregate completion/failure rates of IVAs set up in each of the previous five years;**
- **The IS and the regulators should agree to publish annually IVA completion/failure rates for each individual IP and, if possible, their firms, for all the IVAs set up in each of the previous five years;**
- **In the longer-term the IS should take the necessary steps to provide regular electronic information to the regulators on the financial performance of IVAs and consider whether these can also be supplied to creditors;**

- The IS and the regulators should work together with IPs, creditors and their agents to collect and to publish annual statistics on the numbers of proposed IVAs rejected by the creditors both in aggregate and for each IP acting as nominee. The numbers of IVAs rejected annually by each of the main creditors should also be published; and
- The IS and the regulators should also work together with creditors, their agents and the Debt Resolution Forum (DRF) to reach agreement on the annual collection and publication of statistics both in aggregate and by firm on the numbers of DMPs proposed and agreed each year and the outcomes of those plans.

## Complaints Handling by IPs and their Regulators

The IPC commissioned research on Complaints Handling in the Insolvency Profession which was undertaken by Professors Adrian Walters and Mary Seneviratne of Nottingham Trent University (NTU). The research report which was published in January 2008 and is on the NTU website at

[http://www.ntu.ac.uk/research/school\\_research/nls/clr/Corporate%20and%20commercial/59254.pdf](http://www.ntu.ac.uk/research/school_research/nls/clr/Corporate%20and%20commercial/59254.pdf)

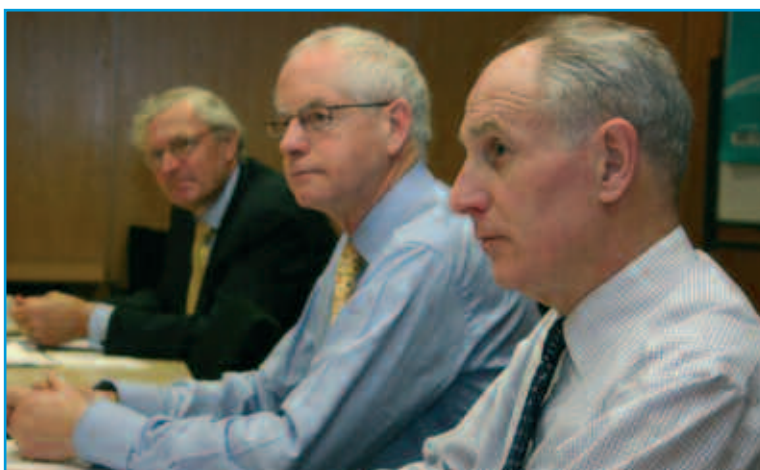
describes and comments on the arrangements for handling complaints in a sample of ten IP firms, the approach adopted by the Insolvency Service and the insolvency regulators to regulating and monitoring the complaints systems in IP firms and the disciplinary systems operated by each of the regulators for hearing complaints against the IPs they have licensed. We have subsequently discussed the report's findings with the IS, the Joint Insolvency Committee (which represents all the regulators), the OFT, the Financial Ombudsman Service and with other stakeholders.

We plan to complete our research by commissioning a comparison of the disciplinary and complaints systems of the regulators of IPs with those of a selection of the regulators of other professions, including the provision of financial and other redress. In the longer term, we will want to consider the case for a harmonised disciplinary and complaints system for IPs together with a harmonised approach to the monitoring and investigations work on which the disciplinary systems depend.

## Complaints Handling by IPs

The Report identifies several issues on which we believe improvements should be made in the regulatory requirements for the handling of complaints by personal debtors by IPs and their firms.

Although their regulators require all IPs, as a condition of their licence, to provide a system for handling complaints by their clients, there is no requirement that these systems should provide for any redress (whether financial or otherwise) for complainants, whose complaint is upheld. Moreover, the complaints systems operated by the regulators themselves are essentially disciplinary in character and do not in general provide for any redress to the individual complainant, although the report notes that some of the regulators may sometimes provide informal mediation between complainants and IPs.



The Consumer Credit Act 2006 partially addresses this situation by requiring that any debtor, who is dissatisfied with the service they have been given by a firm or an individual, such as an IP, who holds a standard consumer credit licence from the OFT, can eventually take their complaint to the Financial Ombudsman Service (FOS) provided it relates to a consumer credit activity, in this case debt advice or debt adjustment. However, a significant number of IPs who have been licensed by the accountancy RPBs are covered by a group consumer credit licence granted by the OFT to their RPB. In the case of these IPs, personal debtors do not have access to the Ombudsman and can only take their complaint to the relevant RPB.

We believe that all personal debtors, who believe they have received bad advice or poor service from an IP or a debt advice firm, should have access to a complaints system, operated by the IP or firm, which provides for redress (whether financial or otherwise). In addition, like other consumers of financial services, personal debtors, who are dissatisfied with the handling of their complaint by the IP or debt advice firm should also have access to an independent complaints system, which has the power to offer financial or other redress. It seems likely that, as a consequence of the Consumer Credit Act 2006, those IPs who are covered by a group licence held by their RPB will be the only licensed debt advisers whose customers do not have access to an independent complaints system of this kind. We believe that this divergence of treatment is unacceptable. We emphasise that our recommendation here applies only in respect of personal debtors and not to customers or other stakeholders involved in corporate insolvencies.

The interviews conducted by the researchers show that those IP and IVA firms, which do hold standard consumer credit licences take three different views on where the jurisdiction of the FOS stops, so that debtors seeking to make a complaint are likely to get different advice on whether or not they can take their case to the Ombudsman. Any individual IP or firm can seek advice from the Ombudsman's technical advice desk as to whether a particular case can be taken by the FOS. However, we believe it would be helpful if the insolvency regulators would seek clarification from the FOS on the scope of the latter's jurisdiction, so that they can give general advice to all the IPs they license.

It appears that IPs are not uniformly required to arrange for complaints against them to be examined by someone in the firm (or from outside) other than the IP, who has conducted business with the complainant. Although several of the regulators give formal or informal guidance to this effect and the larger firms interviewed by our researchers comply with it, in some of the smaller practices complaints may be handled solely by the IP about whom the complaint is made. We believe that tolerance of this may fall below the best practice in other professions. We will aim to verify this in our further research. We recognise that for the smaller IP practices it may be difficult to find someone independent within the firm and they may need some help from their regulators to deal with this problem.

#### **We recommend that:**

- **The IS and the regulators should require all their IPs to ensure that their or their firms' complaints handling systems include an option for making redress (whether financial or otherwise) when a complaint by a personal debtor is upheld as justified;**
- **In addition the IS and the regulators should take steps to ensure that any personal debtor can take a complaint against any IP relating to poor debt advice or unsatisfactory management of debt problems to an independent arbitrator, whether inside or outside the regulatory bodies, who will be able to award redress (financial or otherwise) to a complainant whose complaint is upheld;**
- **The IS and the regulators should seek clarification from the Financial Ombudsman Service on the limits to its jurisdiction in relation to complaints against IPs, holding individual licences, and give appropriate guidance to IPs and their firms about this, so that they can advise their clients appropriately; and**

- All IPs and their firms should be required to have internal complaints procedures, which provide for complaints to be examined at the appropriate stage by someone independent of the IP who has conducted business with the complainant. Sole practitioners could be required to nominate an independent complaints investigator in their annual returns, as they are now required to do in nominating a successor IP. The regulators should consider how they can help sole practitioners and small partnerships to find a suitable independent person to examine complaints against them.

## Complaints handling by the Insolvency Service and the Regulators

The Research report reviews both the way in which the RPBs regulate and monitor the complaints handling systems of IPs and the operation of the RPBs and the IS's own disciplinary systems. As regards the latter we may want to make further recommendations later this year when we have received the comparison of the RPBs' disciplinary systems with those of other professions which we are commissioning. We note that the IS's own disciplinary system, covering the IPs it licenses directly, is inflexible in that the only sanction available to it is the removal of the IP's licence. This is clearly unsatisfactory, but is also linked to the wider question of whether the IS should continue to license IPs directly.

As regards the regulation and monitoring of IPs' complaints systems, it appears from the report and our further discussions that the regulators do not systematically require IPs to keep centralised records of the complaints dealt with through their in-house-procedures. We believe that this information would be useful both to the firms themselves for management purposes and to the regulators.

### We recommend that:

- All the regulators should require their IPs and the firms they work in to maintain a centralised record of the numbers and main types of complaint dealt with and of the outcomes. These should be reported annually in aggregate terms to the RPBs as information likely to be useful to the monitors.

## Follow up to Other Recommendations in last year's Report

### Pre-Packs

"Pre-pack" is the term used to describe the sale of an insolvent business by an IP appointed as the administrator on the basis of an agreement negotiated before the administrator's appointment. Such sales are completed without the business being offered on the open market and often without consultation with all the creditors. We recommended last year that the Insolvency Service should require administrators, when reporting to the full body of creditors, to give a reasoned explanation of why they proposed a pre-pack and, in particular, why they decided against offering the business for sale on the open market.

The IS has now made proposals to amend secondary legislation, which will require the administrator to explain their actions in selling companies through a pre-pack to the full body of creditors as a precondition for getting the creditors to authorise the payment of any expenses the IP has incurred prior to appointment.

Whilst we welcome the duty on the administrator to explain his or her actions to creditors, we are concerned that the new rules on pre-appointment expenses may actually create a perverse incentive for IPs to ignore the potential conflicts of interest which may arise when an IP, who has previously been advising the company or its directors, decides to accept an appointment as administrator in order to execute a deal which he/she may have set up. We are pursuing this point further with the IS, the JIC and other interested parties.

## Reports under the Company Directors Disqualification Act 1986

We expressed concerns last year about the Government's action in cancelling a significant proportion of the Insolvency Service's planned investigation programme into IPs' reports (D-reports) into company directors' conduct in the case of insolvent companies.

The deterrent effect of the Company Directors Disqualification Act depends on directors believing that any misconduct will be investigated and, where appropriate, penalised and on the commitment and thoroughness of the IPs, in writing their reports on the conduct of directors' of insolvent businesses. The effectiveness of the system could easily deteriorate if the perception develops among directors and IPs that there is a significant chance that the latter's reports will not be followed up.

We have been assured by the IS during the year that the number of investigations carried out has exceeded the initial forecast. We have also recently been informed that it has commissioned an external review into how the productivity of the Investigation Branch can be improved through changes in its working practices. We continue to believe that it is essential that all adverse D-reports that contain prima facie evidence of misconduct by directors should be properly investigated by the insolvency staff.

## Correspondence between IPs/RPBs and Debtors/Creditors

We continue to discuss with the RPBs our recommendation that they should issue guidance to IPs proposing a target of 10 working days for replies to correspondence from creditors, debtors and the general public.



The IPC responded to consultations and proposals concerning the following issues:

### **The Tribunals, Courts and Enforcement Bill**

The IPC generally welcomed the proposal made by the Department of Constitutional Affairs (now the Ministry of Justice) to introduce Debt Relief orders (DROs) contained in the Tribunals, Courts and Enforcement Bill. However, we expressed concern to the DCA that in the absence of adequate verification of debtors' circumstances, the DRO procedure may be vulnerable to fraudulent claims. We suggested that the Official Receivers might have a role in the process by undertaking periodic checks on a small statistically valid sample of cases.

The IPC was not persuaded of the need for Enforcement Restriction Orders (EROs), Administration Orders or for Regulated Debt Management Plans as proposed in the consultation document and outlined in the Bill as they all appeared to overlap to a significant extent with other existing or proposed statutory or informal arrangements for dealing with consumer indebtedness problems.

### **The Code of Insolvency Ethics**

A revised draft Code of Ethics, circulated by the Joint Insolvency Committee (JIC), received a number of critical responses from those consulted. The IPC shared the view put forward by other consultees that the Code was too long and that the specific illustrations and guidance in the second half of the Code were not clearly enough linked with the principles set out in the first half and we put forward some suggestions on how the structure and coherence of the proposed Code could be improved in a letter to the JIC dated 28 June. We understand that the JIC will be circulating a new draft of the Code shortly.

### **Pre-packs and Pre-appointment Administration Expenses**

The IPC sent a written response on 30 August to the Insolvency Service's proposals to amend the Insolvency Rules to allow pre-appointment administration expenses to be recovered within the administration procedure. In it the IPC supported the broad objectives of the proposals suggested a change in the definition of the pre-appointment expenses that will be recoverable in order to reduce the risk of conflicts of interest arising in relation to IPs decisions whether or not to take on the administration of a pre-pack sale on which they have previously advised the company and its directors.

### **Individual Voluntary Arrangements**

The IPC had provided examples of misleading advertising of IVAs to the OFT which subsequently wrote to 17 firms about the claims made in their advertisements. At a further meeting with the OFT during 2007 the IPC was asked to provide evidence of other cases of misleading advertising on daytime television. The oversight of advertising has now been taken on by the Standing Committee of the IVA Forum, with regulators checking it as part of the monitoring process.

The IPC continued to press for more and better statistics on IVAs (including on failed IVAs) and the need for IPs to inform personal debtors of all options available to them, including non-statutory solutions.

The IPC also commented to Citizens Advice on their claims of mis-selling of IVAs by IPs. It urged CA to inform the appropriate regulators so that their monitors could follow up such allegations during visits.

## **Simplified IVAs**

The IPC responded to the consultation paper on the IVA regime contained in the Insolvency Act 1986. We supported the proposals put forward, which we considered would maintain necessary protection of those affected and that there would be net cost savings following their introduction. We believe that, combined with the proposals emerging from the IVA Forum, the SIVA should lead to greater speed and certainty for all parties and a better understanding of the process by debtors.

## **Scotland**

Two of our members liaised with the Institute of Chartered Accountants of Scotland in order to keep in touch with the implementation of the Bankruptcy & Diligence Act in Scotland. Two IPC members also attended the ICAS annual insolvency conference.

## **Other Meetings**

During 2007 the IPC met on 5 occasions in London and once at Magdalen College, Oxford.

The Chairman and Secretary had several meetings with members of the Insolvency Service, the Chairman and Secretary had 3 meetings with the Chairman and Secretary of the Joint Insolvency Committee and 4 members attended the JIC Regulatory Forum (the Chairman as a speaker).

Meetings were also held with Citizens Advice in London, the Office of Fair Trading and the Financial Ombudsman Service.

Three IPC members attended the IVA Forum in Birmingham and the second plenary session with the Chairman being an observer in the subsequent Working Group 2 (3 meetings) and as an observer on the IVA Standing Committee (3 meetings).

The Chairman and Secretary had meetings with members and staff of the IPA, ICAEW and ACCA. They also attended the IPA Members' Conference.

The Chairman, Secretary and a member attended at the R3 Smaller Practice Group annual Forum. A member also attended the VAS User Forum in Manchester.

Several meetings were held with Professor Adrian Walters concerning the Complaints Research contract entered into by the IPC. He and Professor Mary Seneviratne also attended an IPC meeting to present their draft report.

Dr Sandra Frisby addressed the IPC about the research she is undertaking for R3 about Pre-packs. The Chairman and Secretary met with Dr Frisby on several occasions during the year.

The Chairman and Secretary attended the Money Advice Liaison Group annual conference.

Several members attended the Insolvency Service seminar on EA 2002 and the Annual research conference

The Chairman was a guest at both the R3 and ACCA annual dinners.

IPC lay members attended a number of training courses, mainly those organised by R3, thanks to the grant made available for this purpose by the Trustees of the Barbican Settlement.

Contacts were made with the IPC via its website and on the telephone by 25 members of the general public and the media throughout the year.

Our aims for 2008 include the following:

- Meet regularly with the Insolvency Service, the Joint Insolvency Committee, the RPBs, R3 and other bodies as appropriate, eg, the Banking Codes Standards Board;
- Maintain pressure on the insolvency profession to progress recommendations made in previous IPC Annual Reports;
- Maintain contact with the Financial Ombudsman Service, the Office of Fair Trading, Citizens Advice, the Money Advice Trust, the Bankruptcy Advisory Service and the Community Legal Services;
- Continue to contribute to the work of the IVA Standing Committee, in particular concerning IVA and DMP statistics and the Debtors' Guide;
- Follow-up work on recommendations following the Complaints Handling research;
- Commission research into comparing the insolvency regulators' disciplinary systems with those of some other professions;
- Visit Scotland to maintain contacts with the Scottish RPBs, the Accountant in Bankruptcy and Citizens Advice Scotland and to keep a watching brief on Scottish insolvency developments;
- Keep up to date with developments in the accreditation and monitoring of all providers of debt advice and solutions and the work of the Debt Resolution Forum;
- Respond to government consultation papers on relevant issues;
- Attend relevant courses and conferences (paid for by a grant from the Barbican Trustees of Farringdon Insurance Company Limited);
- Attend and address the ICAS and R3 annual conferences on the work of the IPC;
- Respond to questions posed via the IPC website and telephone; and
- Monitor press reports concerning the insolvency profession.

## Funding

The members of the insolvency profession fund the IPC – the levy being equivalent to £50 per insolvency licence holder. The levy has remained at this level for four years. The IPC is run on a tight budget and benefits from the support and hospitality of some of its members and R3. It is also supported by the Trustees of the Barbican Settlement of Farringdon Insurance Company Limited who made grants for future research and the attendance by IPC lay members on training courses, mainly those run by R3, during 2007.

**Chairman**

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

**Lay Members**

John Hanlon      Independent Case Examiner for the Department of Work and pensions (DWP). Chair of the Governance Committee of the Royal Pharmaceutical Society of GB and a member of the Scottish Consumer Council

Dr Dianne Hayter      Chairman of the Consumer Panel of the Bar Standards Board, board member of the National Consumer Council, a member of the Determination Panel of the Pensions Regulator, a former vice Chair of the Financial Services Consumer Panel and Chair of the Labour Party's National Executive

Philip McNeill      A chartered accountant, chartered tax adviser, author and lecturer, currently involved in providing training for debt advisers. He has been involved with the not-for-profit sector for many years and specialises in tax debt

David Tracy      A senior executive with Barclays Bank (1988 – 2003). Non-executive Chair of the Nuneaton and Bedworth Healthy Living Network and a non-executive director, University Hospitals of Leicester NHS Trust

Malcolm Watkins      Director of Finance & Operations of the MND Association

**Practitioner Members**

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

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

Peter Souster      Former business recovery partner of Baker Tilly in London. A Council Member of R3 and Deputy Chairman of the ICAEW's Insolvency Committee

**Secretary**

Mike Stancombe      Retired army officer, civil engineer and former Chief Operating Officer of R3

\* denotes member retired on 31 December 2007

**New Practitioner Member wef 1 January 2008**

Ron Robinson      Former partner of Begbies Traynor in Manchester and a Past President of R3

## Glossary of Terms used in the Report

<b>AiB</b>	<b>Accountant in Bankruptcy</b> – an executive agency of the Scottish Executive administering personal insolvencies in Scotland.
<b>CA</b>	<b>Citizens Advice</b> – responsible for the Citizens Advice Bureaux.
<b>CVAs</b>	<b>Corporate Voluntary Arrangements</b> – 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.
<b>DAS</b>	<b>Debt Arrangement Scheme</b> – for over-indebted individuals, applying in Scotland only.
<b>DMP</b>	<b>Debt Management Plan</b> – a non-statutory arrangement between a debtor and creditors, currently not the subject of any formal regulatory process.
<b>DRO</b>	<b>Debt Relief Order</b> – introduced in England and Wales for over-indebted individuals whose income and assets are so low as to make it unrealistic to make any repayment of their debts.
<b>DRF</b>	<b>Debt Resolution Forum</b> – an industry body for debt resolution companies formed in 2006 with administrative support from the IPA.
<b>ICAEW</b>	<b>Institute of Chartered Accountants in England &amp; Wales</b>
<b>ICAS</b>	<b>Institute of Chartered Accountants of Scotland</b>
<b>IPA</b>	<b>Insolvency Practitioners Association</b>
<b>IPC</b>	<b>Insolvency Practices Council</b> – represents the public interest in insolvency.
<b>IP</b>	<b>Insolvency Practitioner</b> – an individual licensed and regulated by the Secretary of State or one of the RPBs to practise insolvency and take cases.
<b>IS</b>	<b>The Insolvency Service</b> – the agency of the Department for Business, Enterprise and Regulatory Reform (BERR) that acts as the regulator of the RPBs.
<b>IVA</b>	<b>Individual Voluntary Arrangement</b> – a formal (statutory) arrangement made by a debtor for payments to be made to his/her creditors over a period of time under the supervision of an insolvency practitioner.
<b>JIC</b>	<b>Joint Insolvency Committee</b> – 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.
<b>PTD</b>	<b>Protected Trust Deed</b> – in Scotland only (similar to IVA).
<b>R3</b>	<b>Association of Business Recovery Professionals</b> – the trade organisation for the insolvency profession and responsible for training. Acts as a voice for the profession and co-ordinates changes to SIPs.
<b>RPB</b>	<b>Recognised Professional Body</b> – a professional institution, authorised by the Secretary of State for Trade & Industry for the purpose of setting the ethical and professional standards for its members being responsible for regulation, encouragement of proficiency of members, monitoring performance, discipline and complaints.
<b>SIP</b>	<b>Statement of Insolvency Practice</b> – detailed standards relating to the day-to-day work of Insolvency Practitioners.
<b>SIVA</b>	<b>Simple Individual Voluntary Arrangement</b> – proposed simplified IVA for consumer debtors.

