

Annual Report *2008*

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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This report makes recommendations to Insolvency Practitioners (IPs) and their regulators (the Recognised Professional Bodies which license them) and, where appropriate, to the Insolvency Service and other government agencies, on personal indebtedness, on pre-packaged administrations and on complaints handling.

Personal Indebtedness: Individual Voluntary Arrangements and Debt Management Plans

The IPC recommends that:

- The Insolvency Service and the insolvency regulators should monitor the IVA market to determine whether debtors, who can only make monthly repayments of less than £200, are being unreasonably refused IVAs. If this is confirmed, the Government should put pressure on creditors to allow such IVAs to be approved, if necessary by adopting more flexible fee structures;
- The Insolvency Service should take the earliest legislative opportunity to reintroduce the substance of their proposals for Simplified IVAs;
- The Insolvency Service should publish regular aggregate statistics on the failure rates of IVAs, starting this year. It should provide the RPBs with regular IVA failure statistics for each licensed IP to help them focus their monitoring. The Insolvency Service should also carry out further survey research into the reasons for IVAs failing;
- The Insolvency Service and the OFT should work through the IVA Standing Committee to obtain commitments from debt-advice organisations and the creditors or their agents to produce meaningful aggregate statistics on the average duration and success/failure rates of Debt Management Plans (DMPs) to enable debt advisers and debtors to make more informed decisions; and
- The Government should, with the help of the FSA and the Financial Reporting Council, investigate whether, as is widely believed in the debt advice sector, there are differences in the accounting and solvency rules or in their application, which allow creditors to reduce the extent to which they write down impaired debts covered by DMPs compared with IVAs and bankruptcy.

Corporate Insolvencies: Pre-packs in Administrations

We recommend that:

- In monitoring the reports on pre-packs in administrations, which IPs are now required to provide to creditors under the Statement of Insolvency Practice (SIP 16), both the insolvency regulators and the Insolvency Service should check that the administrators have taken all reasonable steps to market the business or to approach other possible buyers;
- The Insolvency Service and the insolvency regulators should also monitor compliance with the requirement in the new Ethical Code that IPs, who have previously advised the directors of a company prior to its entering administration, should not accept an appointment as the administrator when there is a material risk that they may be seen as lacking the necessary objectivity and independence to serve the interests of all the creditors; and
- Any review of the conduct of directors following a pre-pack should consider whether either fraudulent or wrongful trading has taken place. Appropriate action should then be taken by IPs and the Insolvency Service where either is found to have occurred.

The Company Directors' Disqualification Act 1996

Though we make no specific recommendation on this topic, we draw attention to the fact that the number of reports made by IPs on the conduct of the directors of insolvent companies is likely to increase significantly during the recession. We believe it is crucial that sufficient government funding is provided to the Insolvency Service to enable it to carry out the increased number of investigations it will need to make in cases where the IP's report provides sufficient grounds for pursuing a possible case for disqualification.

Complaints Handling

In the light of a second research project by the Nottingham Law School for the IPC, which compares the complaints and disciplinary procedures of the insolvency regulators with those of other professions, we recommend that:-

- All personal debtors who believe that they have been given bad advice by an IP are able to bring their complaint to the Financial Ombudsman Service. This would bring IPs into line with other debt advisers.

As regards other complaints against IPs, we believe that there should be:-

- A distinct complaints procedure for handling those complaints which fall short of the threshold required for disciplinary action, eg, isolated cases of inadequate professional service;
- An independent external reviewer of complaints to whom a complainant can appeal if their complaint is rejected in the first instance; and
- The independent reviewer should be able to award appropriate redress to complainants whose complaint is upheld. In many cases an apology will be sufficient, but in a minority of cases a consolatory monetary award for distress or inconvenience suffered may be justified.



In last year's Annual Report we pointed to the risk of increasing numbers of personal and corporate insolvencies as the UK economy slowed down. The Insolvency Service's published statistics show that in the second half of 2008 individual insolvencies rose by 11.6% compared with the figures for the second half of 2007 and corporate liquidations rose by 40%. It is clear that these trends are likely to continue through 2009. The number of debtors calling National Debtline for advice is reported to have doubled in the early weeks of this year. Against this background there are two main concerns, which will be on the IPC's agenda during the year ahead and which are reflected in our Recommendations in this Annual Report:



- That distressed personal debtors should be given adequate information and objective advice by Insolvency Practitioners and other debt advisors and that, where statutory debt relief (through a bankruptcy or an IVA) is justified, access to it is promptly agreed; and
- That in the corporate sector "pre-pack" sales of insolvent businesses should be chosen only when this is likely to produce better returns to creditors than any of the alternatives.

Personal Indebtedness

The total number of new personal insolvencies in England, Wales and Northern Ireland in 2008 at 108,181 (see table below) was marginally higher than in 2007. But the numbers of both bankruptcies and Individual Voluntary Arrangements (IVAs) increased sharply both between the first and second halves of the year and in comparison with the figures for the second half of 2007, with bankruptcies increasing much faster than IVAs. In Scotland sequestrations (the Scottish equivalent of bankruptcy) and Protected Trust Deeds rose by 43%, with sequestrations nearly double the level reached in 2007 – part of this increase being due to the introduction of a simplified procedure for Low Income Low Asset cases.

In addition to those entering bankruptcy or IVAs or their Scottish equivalents many other distressed personal debtors will have entered into informal "debt solutions", such as Debt Management Plans (DMPs), for which no comprehensive statistics are publicly available. The TDX Group, a leading creditors' agent, has estimated that 175,000 debtors entered into such agreements in 2006. Two sample survey estimates of the total stock of debtors



involved in DMPs carried out last year produced widely divergent figures of 325,000 – 375,000 (from Money Advice Trust) and 600,000 (from R3, the Association of Business Recovery Professionals). CCCS, probably the largest provider of DMPs, has recently announced that it has 100,000 of its clients in DMPs.

Table 1 – IVAs and Bankruptcies in England & Wales and Northern Ireland: 1999-2008

Calendar Year	IVAs approved	Bankruptcy orders	Totals
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
2008	39674	68507	108181

Source: The Insolvency Service

Table 2 – Protected Trust Deeds and Sequestrations in Scotland: 1999-2008

Calendar Year	PTDs approved	Sequestrations	Totals
1999	2144	3195	5339
2000	2801	2965	5766
2001	3779	3048	6827
2002	5174	3215	8389
2003	5452	3328	8780
2004	6024	3297	9321
2005	6881	4065	10946
2006	8208	5430	13638
2007	7595	6219	13814
2008	7542	12322	19864

Source: The Insolvency Service

We support the measures the Government has already taken to persuade creditors to manage customers with arrears on either secured or unsecured debts sensitively and give them a breathing space to restore their financial position. But we think it is also essential that, where debtors have no realistic prospect of repaying their debts within a reasonable period, they should have access to the statutory forms of debt relief, ie, bankruptcy or an IVA. In this context we welcome the introduction of the Debt Relief Order scheme for debtors with no or very low income and assets.

We remain concerned that some debtors whose circumstances would justify either bankruptcy or an IVA, are being denied statutory debt relief either by creditors, who rejected reasonable IVA proposals, or because some debt advisers may prefer to offer solutions other than bankruptcy. The agreement reached in early 2008 between the insolvency profession and the major creditors (the IVA Protocol) has, in the last few months, led to a removal of some but not all of the excessively high hurdle rates and other obstacles erected by creditors. But there are

widespread concerns among IPs and their regulators, also expressed in February by Citizens Advice, that debtors with relatively low surplus income, who can only make monthly repayments to their creditors of less than £200, find it difficult to get an IVA. This is because the new fee structure imposed by some creditors makes it uneconomic for IPs to take on such cases. Creditors should be pressed to resolve this problem. The Government should also re-introduce its proposals for a Simplified IVA (SIVA) which, disappointingly, were withdrawn in January.

We are also concerned about the lack of public information on the effectiveness of the main forms of "debt solution". We welcome the Insolvency Service's decision to start to publish meaningful statistics for the failure rates of IVAs in the course of this year (a topic we first raised in 2005). But it remains the case that no one (apart from the creditors and the debt advice organisations) is in a position to judge how DMPs are working and whether they represent the most appropriate solution for particular debtors. Few of the debt advice organisations publish any statistics and there is little public information available about the duration or performance of DMPs. They are not binding on all the creditors and may, according to anecdotal evidence, offer only short-term relief from interest charges on debts. The TDX Group has estimated that by the end of year one, 20-25% of debtors in DMPs have broken their agreements.

We believe a further coordinated effort is now needed from all the government agencies concerned (BERR, the IS, the OFT and the Ministry of Justice) to resolve these problems. The objective should be a suite of complementary statutory debt solutions which, taken together, will cover all distressed personal debtors at all income levels and levels of indebtedness, who have no prospect of repaying their debt in reasonable time, leaving no overlaps or underlaps. In addition, the Insolvency Service and the OFT should work through the IVA Standing Committee in cooperation with IPs, other debt advisers, the creditors and their agents to fill the gaps in information about IVAs and DMPs described above. We make a number of recommendations below on all these issues.

At the time of writing this report, we understand the Government is still considering whether or not to introduce legislation to create a Regulated Debt Management Plan. We do not see how a rational judgement on the merits of this idea can be made in the absence of reliable statistical information on the numbers, characteristics and success rates of DMPs. A Regulated DMP, which significantly overlapped with IVAs, would only make the "debt solutions" market even more confusing for debtors and their advisers.

Corporate Insolvencies

The use of pre-pack sales of insolvent businesses is continuing to increase both in absolute numbers and as a proportion of business sales from administration. This trend has been the subject of recent press comment and Parliamentary interest, mainly because of concerns that they may have an unfair impact on the unsecured creditors of the insolvent company and particularly its trade suppliers. The main characteristics of a "pre-pack" sale are that the insolvent business is sold by the administrator immediately or very shortly after his/her appointment on terms which have previously been negotiated with the buyer, without seeking the consent of the full body of creditors and often with limited or no marketing of the business. Around 50% of pre-pack sales are to connected parties, such as the directors of the insolvent company; though such sales may also take place in "normal" administrations.

We agree with the Insolvency Service, the regulators and the insolvency profession that in the right circumstances a properly conducted pre-pack sale can be the best and, sometimes, the only solution available primarily when any sale has to be carried out urgently to prevent the collapse of businesses or when trading in administration pending a sale of the company is unrealistic because financing cannot be obtained. Returns to unsecured creditors are lower in pre-packs than in other business sales from administration. But the evidence suggests that unsecured creditors of businesses sold through pre-packs would fare no better through a normal administration. It is, of course, essential in the case of all insolvencies that any insolvency practitioner advising the company

warns the directors of the risks associated with continuing to incur liabilities and that there is no fraudulent or wrongful trading while a pre-pack is being either set up or implemented.

We drew attention to the risks involved in pre-pack sales in our Annual Report for 2006. We welcome the fact that the insolvency regulators have now issued a mandatory Statement of Insolvency Practice (SIP 16), which requires IPs to report promptly to creditors, giving them a full explanation of why a pre-pack sale was justified and of how it was conducted. We also welcome the recent statement by the Insolvency Service that they will monitor all the reports made to creditors by IPs under SIP 16. Our recommendations below make some further suggestions on tightening up the monitoring of pre-packs by both the insolvency regulators and the Insolvency Service.

Company Directors Disqualification Act 1996: Investigation of "D" Reports

We drew attention two years ago to cuts which had then been made in the government for funding available to the Insolvency Service to finance its investigations into the "D" reports, which have to be produced by IPs in their capacity as statutory office-holders into the conduct of the directors of insolvent companies. These reports provide the basis on which the Secretary of State decides whether or not to seek further evidence with a view to disqualifying the directors.

We welcome the assurances that the Insolvency Service has given that over the past two years the financing of this work has been put on a more secure footing and that the work of this part of the IS is being reorganised to improve its productivity.

The number of "D" Reports requiring investigation is bound to increase as more companies go into administration as a result of the recession. We believe it is crucial that the Insolvency Service is given sufficient government funding to enable it to investigate all "D" Reports which suggest there are reasonable grounds for pursuing a case for possible disqualification.

Complaints Handling by the Insolvency Profession and Insolvency Regulators

In last year's Annual Report we made a number of recommendations on the basis of research carried out by Professors Seneviratne and Walters on the handling of complaints by IPs and their regulators. Our recommendations focussed on the arrangements for handling complaints from personal debtors that they had been badly advised. We are disappointed that these recommendations have not yet been accepted by the Joint Insolvency Committee, which brings together all the insolvency regulators.

The case for changes in the insolvency regulators' complaints and disciplinary systems has been further strengthened by a second report, which we commissioned from Professors Seneviratne and Walters, that compares the insolvency regulators' complaints systems with those in other professions and in financial services. We make a number of further recommendations, based on this report, which we aim to discuss with the Joint Insolvency Committee in the near future.

Geoffrey Fitchew
Chairman

Personal Indebtedness, IVAs and Debt Management Plans

The number of personal debtors in difficulties is increasing sharply as the recession deepens. It is crucial that, when they seek help, they are given objective advice on the best way out of their difficulties and that, when statutory debt relief through a bankruptcy or an Individual Voluntary Arrangement (IVA) is justified, there are no obstacles to the most appropriate solutions. We are concerned that some debtors, who have no realistic prospect of repaying their debts within a reasonable period, may be denied the form of debt relief most appropriate for them, either by creditors who reject reasonable proposals for IVAs, or because some debt advisers and IPs prefer to guide the debtor to an IVA or an informal Debt Management Plan (DMP) when bankruptcy may be the better option.

To help debt advisers give the right advice and debtors to make well-informed choices, there is also a need for better information and statistics about the different debt solutions, in particular the average duration and success rates of both IVAs and DMPs. The Insolvency Service is already committed to producing better statistics on IVAs, but there is very little information about either the numbers of debtors entering DMPs or how DMPs perform.

The introduction by the Government in April of the Debt Relief Order will provide a much needed solution for debtors with low income and assets. But we believe that further coordinated efforts by government departments, the regulators of both IPs and the OFT (which licenses debt advisers) and the cooperation of the major creditors are needed to ensure that the appropriate forms of debt relief are accessible for all debtors, at all income levels and all levels of indebtedness, who are unlikely to be able to repay their debts within a reasonable period.

Individual Voluntary Arrangements

Although the IVA Protocol agreed last year between the insolvency profession and the major creditors represented by the British Bankers' Association is now working reasonably well, there is still a concern shared by IVA providers, insolvency regulators and the Citizens Advice Bureaux that debtors with debts in the range of £15,000 to £25,000, who can only afford to make monthly repayments of less than £200, are finding it difficult to get an IVA, because the new fee structure imposed by some of the creditors makes it uneconomic for IPs to handle such cases. Against this background we make the following recommendations:-

- The Insolvency Service and the insolvency regulators should monitor the IVA market to determine whether debtors, who can only make modest monthly repayments, are being unreasonably refused IVAs. If this gap is shown to exist, the Government should put pressure on creditors to allow such IVAs to be adopted, if necessary using more flexible fee structures where the IVAs are likely to provide a better return than bankruptcy;
- The Insolvency Service should take the earliest legislative opportunity to reintroduce the substance of their proposals for Simplified IVAs. We understand that the Insolvency Service is planning to use secondary legislation to remove the current requirement on IPs to register IVAs with the court and to authorise insolvency regulators to license IPs who are qualified only to handle IVAs. In addition, the Government should initiate primary legislation to reduce the majority required to approve an IVA from 75% to 50% of the weighted creditors' votes. These measures should reduce the costs of IVAs and make it easier to get them approved by creditors;
- The insolvency regulators should monitor the advice given by IPs to satisfy themselves that debtors, who have insufficient surplus income to repay their debts within a reasonable period and for whom statutory debt relief is therefore justified, are appropriately advised about the option of bankruptcy; and
- The Insolvency Service should proceed with its proposal to publish regular aggregate statistics on the failure rates of IVAs. It should also provide the RPBs with regular IVA failure statistics for each licensed IP to help them focus their monitoring. The Insolvency Service should also carry out further survey research into the reasons for IVAs failing.

Debt Management Plans

We recommend that:-

- The Insolvency Service and the OFT should work through the IVA Standing Committee to obtain commitments from debt-advice firms and the creditors or their agents to produce meaningful aggregate statistics on the average duration and success/failure rates of DMPs to enable debt advisers and debtors to make more informed decisions; and
- The Government should, with the help of the FSA and the Financial Reporting Council, investigate whether, as is widely believed in the debt advice sector, differences in the accounting and solvency rules or the way in which they are applied, allow creditors to reduce the extent to which they write down or defer the writing down of impaired debts covered by DMPs, which they cannot do in the case of similarly impaired debts covered under IVAs and bankruptcies.

Corporate Insolvency: Pre-packs in Administrations

As regards the conduct of pre-packs by IPs, we recommend that:-

- In monitoring the reports of IPs to creditors under SIP 16 both the insolvency regulators and the Insolvency Service should check that the administrators in such cases have taken all reasonable steps to market the business or to approach other possible buyers;
- The Insolvency Service and the insolvency regulators should also monitor compliance with the requirement in the new Code of Insolvency Ethics that IPs, who have previously advised the directors of a company prior to its entering administration, should not accept an appointment as the administrator when there is a material risk that they may be seen as lacking the necessary objectivity and independence to serve the interests of all the creditors. IP partnerships and firms should have procedures in place to prevent such appointments and the insolvency regulators should monitor compliance in individual cases; and
- Any review of the conduct of directors following a pre-pack should consider whether either fraudulent or wrongful trading has taken place. Appropriate action should then be taken by IPs and the Insolvency Service where either is found to have occurred.

Complaints Handling

In our Annual Report for 2007 we made a number of recommendations on complaints handling in the insolvency profession based on a report produced for us by Professors Mary Seneviratne and Adrian Walters at the Nottingham Law School, Nottingham Trent University. We also announced that we intended to commission a follow-up piece of research, comparing the complaints handling and disciplinary systems applied by the RPBs to the work of IPs (which in the case of the four accountancy RPBs apply to all the accountants they license) with those applying in the medical and legal professions, chartered surveyors and estate agents and in financial services. The second Seneviratne and Walters report can be found on the Social Science Research Network website at <http://ssrn.com/abstract=1310791>.

Their report identifies three main differences between the arrangements for handling complaints in the comparator professions and those in the RPBs:-

- The comparator professions have separate arrangements for handling complaints from those dealing with disciplinary proceedings;
- The comparator professions provide an independent external tribunal or Reviewer, who can rehear a complaint de novo and issue a binding decision and who is accessible free of charge to the complainant.

Although some of the RPBs have independent Complaints Reviewers/Assessors to whom a complainant may take his/her case, this can only take place when the Investigation Committee has ruled that the complaint does not merit disciplinary proceedings and the Reviewer can only ask the Investigation Committee to look at the case again; and finally

- The comparator professions have empowered their independent complaints examiners to require an apology or to award financial or other redress to a complainant, whose complaint is upheld, even where there is no disciplinary proceeding. The amount of financial redress is usually limited in amount and in some cases limited to compensation for distress or inconvenience. Among the RPBs only ACCA can award compensation (up to a maximum of £5,000), but has not done so in the last five years. The other RPBs' Disciplinary Committees can require IPs to remit or reduce fees or order them to remedy the particular grievance raised by the complainant, but not to make any other form of financial redress.

We have supplemented the Seneviratne and Walters research by obtaining from the RPBs details of the Alternative Dispute Resolution options which some of them offer to complainants as an alternative to disciplinary action. We have concluded that, while these ADR options provide a useful alternative to the normal disciplinary procedures and that conciliation is being successfully used in a significant minority of cases, they do not provide an independent external review of complaints equivalent to those offered by the comparator organisations. This is principally because complainants can only use these alternatives with the consent of the IP or accountant complained against and also because a complainant wishing to use the arbitration or mediation options has to pay significant fees.

Seneviratne and Walters make two suggestions at the end of their report. First, they conclude that "there appears to be a clear case for extending the jurisdiction of the Financial Ombudsman Service (FOS) to all IPs in the provision of debt advice or debt resolution to personal debtors."

Second, they suggest that "the profession and its regulators may wish to consider whether the wider case for an Insolvency Ombudsman should be the subject of a full, independent review". They add that any such review should consider whether "the insolvency ombudsman function could be established within the FOS" in order to avoid the proliferation of ombudsmen.



The IPC endorses the first of these conclusions, which is in effect identical with a recommendation we made in our Annual Report last year. We therefore recommend that all personal debtors, who believe that they have been badly advised by an IP, should be able to bring a complaint to the FOS. The OFT regards debt advice as a “high risk activity” for consumers. Furthermore this requirement already applies to the generality of debt advice companies, including all the volume IVA providers, who need to hold a standard licence from the OFT as well as to all IPs licensed by the IPA and the Insolvency Service. It is only IPs licensed by the accountancy RPBs which are outside the jurisdiction of the FOS. We suggest that a relatively straightforward way to end this anomaly is for the accountancy RPBs to agree with the OFT that debt advice should no longer be covered by the group licences, which these RPBs currently hold for their IPs. The RPBs may need to consider whether or not the same solution should apply if some accountant members of the RPBs, who are not IPs, provide debt advice.

As regards other types of complaint against IPs, the IPC considers that, with some exceptions, there is a strong case for bringing the complaints and disciplinary procedures relating to IPs more closely into line with those applying in the other professions as described in the Seneviratne and Walters report. In particular, we believe that there should be:-

- A distinct complaints procedure for handling those complaints which fall short of the threshold required for disciplinary action (e.g. isolated cases of inadequate professional service);
- An independent external reviewer of complaints to whom a complainant can appeal if their complaint is rejected at first instance; and
- The independent reviewer should be able to award appropriate redress to complainants, whose complaint is upheld. In many cases an apology will be sufficient, but in a minority of cases a consolatory monetary award for distress or inconvenience suffered may be justified.

Many of the complaints against IPs will come from companies or individuals involved as creditors, or in other ways in an insolvency situation, who are not clients of the IP concerned. Such complainants may, through no choice of their own, be dependent on the professional skills and integrity of the IP and, in the absence of other remedies, they should have access to an effective complaints system. We recognise, however, that recourse to the courts is likely to be the appropriate solution where creditors are seeking to challenge the conduct of an insolvency procedure by an IP acting as a statutory office-holder.

We therefore invite the RPBs and the Insolvency Service to consider the case for reform of their current complaints and disciplinary systems to take account of the three bullet points above. We recognise that the accountancy RPBs may see an awkwardness in amending their general complaints handling systems solely in respect of complaints made against IPs, who are only a small proportion of their membership. It is for this reason, among others, that we have not at this stage taken up the suggestion made by Seneviratne and Walters that there should be a full, independent review of the case for an Insolvency Ombudsman. However, if the case set out above for amending the RPBs’ complaints systems has merit for IPs, the RPBs may wish to consider whether or not the same changes would also be justified in the case of their accountant members. The Law Societies, which also license IPs, have already reformed their complaints systems along the lines recommended above. The IPC believes that the changes we would like to see in the handling of complaints against IPs could be equally achieved either by changes to the accountancy RPBs’ general procedures or by agreement to set up specific procedures for IPs.

We will look for an opportunity to discuss the report and our recommendations with the Joint Insolvency Committee in the course of the next few months.

The IVA Forum and Standing Committee

The IPC participated in the second IVA Forum plenary session on 29 January, at which agreement was reached between the insolvency profession and the British Bankers' Association on a Protocol for Straightforward Consumer IVAs. Subsequently, the IPC was invited to be an observer on the IVA Standing Committee, which monitors the working of the Protocol.

Enterprise Act 2002 Evaluation and Future Development

Members of the IPC attended the Insolvency Service's seminar held on 12 February, which reviewed the working of the Enterprise Act 2002 on corporate insolvencies. The IPC subsequently discussed various ideas put forward by participants at the seminar and elsewhere for amending the Act, including suggestions for incorporating elements of the US Chapter 11 regime, though recognising that R3, on behalf of the insolvency profession, believed that only minor changes to the Act were needed. IPC members noted that (apart from pre-packaged administrations which it had already addressed) none of the ideas put forward appeared to be directly relevant to the IPC's primary remit to focus on the professional standards and ethics of insolvency practitioners. We decided, however, to continue to follow the debate, noting that the effectiveness of the Act was likely to be tested in the economic downturn.

The Ministry of Justice Consultation Paper

The IPC submitted comments and a completed questionnaire on 16 April to the Ministry of Justice consultation paper entitled Administration and Enforcement Restriction Orders.

In its response the IPC suggested that the various government departments and agencies with policy responsibilities relating to personal indebtedness should work together to provide a well coordinated suite of statutory solutions, covering all distressed personal debtors at all income levels and all levels of debt; and that, in particular, the degree of overlap between the different statutory schemes should be minimised to avoid adding further complexity to an already confused marketplace.

Against this background, the IPC welcomed the introduction of Debt Relief Orders (DROs) as filling an important gap in the existing range of statutory solutions. However, it remained unconvinced that there was any need for the proposed Enforcement Restriction Order. Where a debtor's problems were genuinely temporary and likely to be resolved within twelve months, it would be reasonable to assume that the debtor and the creditors could agree to a moratorium without recourse to the courts.

The IPC also remained concerned that there could be some overlap between the revised Administration Order and IVAs for debtors at or close to the £15,000 ceiling and able to afford to repay £250 per month or more. The risk of such an overlap will be increased the greater the number of types of debt which are excluded from the ambit of the Administration Order. We therefore suggested that the MoJ should monitor the effects of the revised Administration Order jointly with the Insolvency Service and, if necessary, agree on how to deal with any unnecessary overlap.

We also suggested that the MoJ should, in co-ordination with the OFT and the Insolvency Service, provide clear guidance to the debt advice industry on how the new DROs and the revised Administration and Enforcement Restriction Orders are intended to work and for which type of debtors they are judged to be appropriate.

Simplified IVAs (SIVAs)

The IPC, together with others on the IVA Standing Committee, was disappointed by the Insolvency Service's decision in December to withdraw its proposal to introduce SIVAs by means of a Legislative Reform Order. The IPC welcomes the IS's confirmation that it intends to take another Parliamentary opportunity to remove the requirement on IPs to file IVA proposals at court, but believes that primary legislation to reduce the majority required to approve SIVAs is still desirable.

Statement of Insolvency Practice 16 (SIP 16) – Pre-packaged sales in administrations

The IPC commented on the Joint Insolvency Committee's fourth draft of SIP 16 on 24 May. We were strongly in agreement with the general thrust of the draft and particularly welcomed the proposed requirements on disclosure.

We also welcomed the requirement imposed by the draft SIP on the administrator to explain in the report to creditors whether the insolvent business had been marketed and, if not, to explain the reasons. We, however, asked the JIC to amend SIP16 to strengthen this point by making it an explicit duty of the administrator to consider how possible purchasers of the business might be approached and to do so, wherever this was practicable, without detriment to the interests of the creditors.

The Code of Ethics for Insolvency Practitioners

The IPC was invited to comment to the Joint Insolvency Committee on the revised draft. Our submission of 30 May stated that, whilst the latest draft was still too long, it was a considerable improvement on its predecessor. We suggested four further amendments to the Code:-

- An explicit recognition of the public interest in the Code and its enforcement;
- A statement that material breach of any of the four fundamental principles in the Code should constitute professional misconduct;
- Clarification of which of the provisions in the Code constituted mandatory requirements, breach of which might lead to disciplinary action; and
- Clarification of a provision which appeared to limit the application of the Code to the giving of advice only to those cases where the advice might lead to an appointment for the IP. We recommended that IPs should be bound by the Code in all cases where they were advising personal debtors, even when the recommended option would not lead to an appointment for the IP.

The JIC accepted the third of these recommendations, but rejected the first two on the grounds that the requested amendments did not feature in the IFAC Code of Ethics on which the new Code for IPs was based. We are still seeking clarification on the last point.

Other meetings

During 2008 the IPC met on 5 occasions.

The Chairman met with the BERR Better Regulation Review team.

The Chairman and Secretary had several meetings with members of the Insolvency Service and with the Chairman and Secretary of the Joint Insolvency Committee.

The Chairman met with the Chairman of the JIC and the Chief Executive Officer of R3.

The Chairman attended a board meeting of IPR Service Ltd.

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

A meeting was held with the Money Advice Trust and a Member attended the Money Advice Liaison Group annual conference.

The Secretary attended the launch of the CCCS Statistical Yearbook 2007.

Three IPC members attended the IVA Forum plenary session with the Chairman or a Member being an observer on the IVA Standing Committee (3 meetings).

The Chairman and Secretary had meetings with members and staff of the ICAS, IPA, ICAEW, CARB, ACCA and R3.

The Chairman (as a speaker) and Secretary attended the ICAS Insolvency Practitioners annual conference.

The Chairman attended the R3 annual conference and participated in a panel discussion on personal insolvencies.

The Chairman, Secretary and a member attended the R3 Smaller Practice Group annual Forum. The Chairman was a member of a panel.

A member attended the RICS Insolvency Forum.

A member attended a Nottingham Trent University inaugural insolvency lecture.

Dr Sandra Frisby addressed the IPC about the research she is undertaking for R3 about Pre-packs.

Three members attended the Insolvency Service EA 2002 conference

The Chairman and Secretary attended the 3rd IS/R3 research conference

The Chairman was a guest at the R3 President's Evening and Annual Dinner.

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.



Our aims for 2009 include the following:

- Maintain contact with the Financial Ombudsman Service, the Office of Fair Trading, Citizens Advice, the Money Advice Trust and the Bankruptcy Advisory Service.
- Meet regularly with the Insolvency Service, the Joint Insolvency Committee and the RPBs plus R3 and other bodies as appropriate, eg, the Ministry of Justice;
- Maintain pressure on the insolvency profession to progress recommendations made in previous IPC Annual Reports;
- Continue to contribute to the work of the IVA Standing Committee and its sub-Committee, in particular concerning IVA and DMP statistics and the Debtors' Guide;
- Follow-up with the insolvency regulators our recommendations following the two pieces of Complaints Handling research undertaken by Nottingham Trent University;
- Commission further research as appropriate;
- Visit Scotland to maintain contact with the Accountant in Bankruptcy and Citizens Advice Scotland and to keep a watching brief on Scottish insolvency developments;
- Keep abreast of 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 (supported for by a grant from the Barbican Trustees of Farringdon Insurance Company Limited);
- Attend the ICAS and R3 Lite annual conferences;
- Respond to questions posed via the IPC website and telephone;
- Monitor press reports concerning the insolvency profession.

Funding

The members of the insolvency profession fund the IPC - the levy being equivalent to £53 per insolvency licence holder. The levy has remained at this level for five 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 2008.

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). Independent Investigator, the Financial Services Compensation Scheme

Dr Dianne Hayter
Chair, Property Standards Board and Consumer Panel of the Bar Standards Board. Member, Board for Actuarial Standards and Determination Panel of the Pensions Regulator. 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 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

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

Peter Souster
Consultant to Baker Tilly Restructuring and Recovery LLP. A former 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

Glossary of Terms used in the Report

ACCA	Association of Chartered Certified Accountants
AiB	Accountant in Bankruptcy – an executive agency of the Scottish Executive administering personal insolvencies in Scotland.
BERR	The Department of Business, Enterprise and Regulatory Reform
CA	Citizens Advice - responsible for the Citizens Advice Bureaux
CARB	Chartered Accountants Regulatory Board – regulates ICAI licensed IPs
CCCS	Consumer Credit Counselling Service – delivers debt counselling
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.
DAS	Debt Arrangement Scheme – for over-indebted individuals, applying in Scotland only.
DMP	Debt Management Plan – a non-statutory arrangement between a debtor and creditors, currently not the subject of any formal regulatory process.
DRO	Debt Relief Order – 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.
DRF	Debt Resolution Forum – an industry body for debt resolution companies formed in 2006 with administrative support from the IPA.
ICAEW	Institute of Chartered Accountants in England & Wales
ICAI	Institute of Chartered Accountants in Ireland
ICAS	Institute of Chartered Accountants of Scotland
IPA	Insolvency Practitioners Association
IPC	Insolvency Practices Council – represents the public interest in insolvency.
IP	Insolvency Practitioner – an individual licensed and regulated by the Secretary of State or one of the RPBs to practise insolvency and take cases.
IS	The Insolvency Service – the agency of the Department for Business, Enterprise and Regulatory Reform (BERR) that acts as the regulator of the RPBs.
IVA	Individual Voluntary Arrangement – a formal (statutory) arrangement made by debtors for payments to be made to his/her 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.
OFT	The Office of Fair Trading
PTD	Protected Trust Deed – in Scotland only (similar to IVA)
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 drafts SIPs and co-ordinates changes to them on behalf of the profession.
RPB	Recognised Professional Body – a professional institution, authorised by the Secretary of State for Trade & Industry for the purpose to set the ethical and professional standards for its members being responsible for regulation, encouragement of proficiency of members, monitoring performance, discipline and complaints.
SIP	Statement of Insolvency Practice – detailed standards relating to the day-to-day work of insolvency practitioners.
SIVA	Simple Individual Voluntary Arrangement – proposed simplified IVA for consumer debtors.

