



The Insolvency  
Service

Insolvency Practitioner Regulation Section  
3<sup>rd</sup> Floor  
Abbey Orchard Street  
London  
SW1P 2HT

Tel: 020 7291 6772  
[www.bis.gov.uk/insolvency](http://www.bis.gov.uk/insolvency)

## DEAR INSOLVENCY PRACTITIONER Issue 82 – November 2018

*Message from Angela Crossley  
Head of Insolvency Practitioner Regulation*

*Dear Reader*

*Attached is the latest edition of Dear IP.*

*You may be aware that the Chancellor announced during the recent budget that from the 6th April 2020 certain debts owed to HMRC will be treated as secondary preferential debts, moving them up the order of priority and providing HMRC with a greater ability to recover taxes paid by employees and customers.*

*The debts in question, which are proposed to include VAT, PAYE, NIC, and CIS deductions, will remain below ordinary preferential debts in the priority order as set out in s175 of the Insolvency Act, but will be given secondary preferential debt status, as defined in s386(1B).*

*The Policy Paper released by HM Treasury, “Protecting your taxes in insolvency” (available at <https://www.gov.uk/government/publications/protecting-your-taxes-in-insolvency-budget-2018-brief>) indicates that any impact on lending as a result of the announced change will be minimal, because financial institutions will continue to have precedent over HMRC in asset recovery in respect of fixed charges. Secondary preferential debts are however paid before those subject to floating charges.*

*The practical details of the announcement have yet to be agreed, in particular the extent to which those debts will qualify for secondary preferential status, but it is clear that the process currently used to distribute assets will need to be altered to accommodate it. The Insolvency Service will work closely with HMRC on how best*

*to deliver the announced change to ensure that the UK's insolvency framework continues to work for business rescue and recovery.*

*For the avoidance of doubt, Government's intention to increase the cap on the prescribed part from £600,000 to £800,000, as announced in the recent response to the Insolvency and Corporate Governance consultation, is unaffected by this new announcement.*

*If you have any queries regarding this announcement please direct them to [Policy.Unit@insolvency.gsi.gov.uk](mailto:Policy.Unit@insolvency.gsi.gov.uk).*

*I would also like to draw your attention to the most recent Dear CEO letter from the FCA regarding the provision of debt advice and counselling services which can be accessed here: <https://www.fca.org.uk/publication/correspondence/dear-ceo-fca-expectations-debt-packager-firms.pdf>.*

*Finally, we are currently reviewing the way in which we issue Dear IP and we would be grateful if you could assist us by completing the following survey:*

*<https://www.surveymonkey.co.uk/r/2F5KW9B>*

*I will provide you with an update in our next issue on any changes we propose to make. I thank you in advance for taking the time out to provide your feedback.*

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### **31) Block Transfer of cases**

The Secretary of State by virtue of Rule 12.37(6) Insolvency Rules 2016 receives a copy of all block transfer applications. Insolvency Practitioner Regulation Section (IPRS), as oversight regulator, considers the application and makes any relevant regulatory checks with the Recognised Professional Bodies.

It has been noted that contained within some recent applications, are clauses attributing the costs of the application to the various estates listed in the schedule.

When making an application, the insolvency practitioners and their legal representatives should be mindful of Rule 12.38(4). This states that except for administration cases, the Court should have regard for the following factors when making an order as to the costs of making the application.

- (a) the reasons for the making of the application;
- (b) the number of cases to which the application relates;
- (c) the value of assets comprised in those cases; and
- (d) the nature and extent of the costs involved.

IPRS will bring to the Courts' attention any costs contained in the application for consideration by the Judge. It should be noted that in a recent transfer the order was made, excluding costs which the Judge said should be picked up as an expense by the firm making the application.

Enquiries regarding this article may be sent to [IPregulation.section@insolvency.gsi.gov.uk](mailto:IPregulation.section@insolvency.gsi.gov.uk)

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## 76) Changes to Cheque Image Clearing

The process of cheque clearing in the UK will undergo an important and necessary change. The main difference is that instead of exchanging physical paper cheques, UK banks will begin to exchange digital images of these cheques.

This will enable faster cheque processing but it will not change how cheques are used. It means payments will clear quicker, in two working days rather than six currently.

These changes are being phased in and will continue to be phased in until the end of 2018.

Will this change affect how I write and pay in cheques and what are the benefits of these changes?

There are no changes in how you use, issue and pay in cheques. The new Image Clearing System will speed up the time it takes a cheque to clear meaning funds will be available much quicker than they are currently.

Why are these changes happening and when will they be introduced?

These changes are part of an industry wide directive to improve the efficiency and speed of the clearing process. The Image Clearing System started to be phased in across UK banks and building societies from the end of October 2017 and will continue until the end of 2018.

Can a cheque take longer than two working days to clear when the Image Clearing changes come into effect?

Until the new system is fully implemented, cheques paid in may still take longer than two working days to clear.

What do I need to consider if I need to stop a cheque?

There will be less time to cancel a cheque in the new clearing system once it has been deposited by the recipient. Please contact us to stop a cheque as soon as possible after it has been issued.

Any enquiries regarding this article may be sent to [CustomerServices.EAS@insolvency.gsi.gov.uk](mailto:CustomerServices.EAS@insolvency.gsi.gov.uk)

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### **30) Filing Documents with Companies House**

This article is being issued to assist insolvency practitioners in their filing requirements with the Registrar.

#### **LIQ10 – Notice of removal of Liquidator by Court Order.**

Resignation dates and form 600 appointment dates must reflect the correct date as per the Order of Court. There have been occasions when the dates have been based on the Court Seal date rather than the date on which the Order was granted.

#### **LIQ03 – Notice of progress report in voluntary winding up.**

Page 2 Section 6: Period of progress report must be completed.

#### **LIQ02 - Notice of Statement of Affairs.**

Page 2 Section 6: Please ensure the date on the form matches the statement of affairs attached.

Companies House creates images of documents received. Poor quality attachments can result in complaints and requests for clearer images. Further details on document quality were included in Dear IP 81.

There have been quite a few occurrences whereby form LIQ02 is accompanied by form 4.18 which relates to the date of the opinion formed by the liquidator, rather than form 4.19 statement of affairs.

#### **Form 600 Notice of appointment of liquidator**

Continuation sheets are only required if there is an additional liquidator who is not already detailed on the form.

#### **AM22 Notice of move from Administration to Creditors Voluntary Liquidation**

The move from administration to creditors voluntary liquidation takes place on the date of registration of the documents at Companies House (Schedule B1 Para 83(6)(b)). Registration of the documents cannot be backdated.

General enquiries may be sent to [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk)

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## 49) DCRS Form Completion

Following queries and feedback regarding completion of the Director Conduct Reporting Service form (DCRS) and submission of additional information, this article provides guidance for the most common matters raised.

### Books and Records

In cases where no books and records have been delivered up, insolvency practitioners should answer “yes” to the question “Having regard to the size and nature of the company's trading, are there material deficiencies in the company's available books and records?”

If there are no books and records (including computerised records) insolvency practitioners and their staff will be unable to verify the accuracy of transactions and the financial position of the company.

An examiner from the Insolvency Service will contact the insolvency practitioner to clarify the exact position regarding the books and records and any detriment that has stemmed from their absence.

### Liabilities to HMRC

When asking what percentage of the company's unsecured liabilities is owed to HMRC, the form does not give an option between 0 and 39%. Insolvency practitioners are advised to select the option of 40-60% in these circumstances.

### Additional/New Information

Insolvency practitioners have provided feedback that on occasions, the DCRS does not cover the misconduct they wish to report and that it would be helpful to be able to enter free text.

When the DCRS is submitted, it passes through an initial rules engine that recognises set answers to specific questions. This rules engine is unable to process free text responses and therefore any reports containing free text would be automatically rejected by the rules engine.

In cases where the misconduct is not connected to the question set in the DCRS, insolvency practitioners can send this information separately by clicking on “contact” at the bottom of each page of the DCRS. Any new information that comes to light after the report has been submitted or after the Insolvency Service has made a decision on whether further investigation is appropriate should also be submitted using this method.

Any new or additional information submitted will automatically be received by the Insolvent Targeting Team and will be reviewed.

Yes or No Answers

Some insolvency practitioners have raised concerns that they do not always have sufficient information to be able to satisfactorily answer questions where the option is “yes” or “no”. Practitioners should answer these questions based on the balance of probabilities.

If further information comes to light that would have changed the original opinion, this can be submitted as new information.

Any enquiries regarding this article may be sent to [intelligence.insolvent@insolvency.gsi.gov.uk](mailto:intelligence.insolvent@insolvency.gsi.gov.uk)

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## **62) Directors and Rate of Pay**

Due to changes in employment case law over the last 10 years, the number of directors who are now deemed to be employees and are therefore entitled to payments from the Redundancy Payments Service (RPS), has significantly increased. Their remuneration can vary to that of other employees and will therefore be calculated differently.

### **A weeks pay and dividends**

Payments made by the RPS are with reference to 'a week's pay'. A week's pay for the purposes of S220 ERA can only include remuneration that is paid in respect of services provided under a contract of employment. Dividends should be removed from the calculation of a weeks pay, when making statutory declarations to the RPS.

### **Director's fees**

The payment of a director's fee cannot also be said to be remuneration for employment. A director's fee is paid solely in respect of the director's office holding. Solely being an office holder does not give rise to employment status.

### **National Minimum Wage**

If the removal of dividends / directors fee from 'a weeks pay' means the remaining rate of pay is below the applicable National Minimum Wage (NMW), the rate of pay used by the RPS would be uplifted to the NMW. This is because employees have the right to be paid at least the NMW for their employment. This includes payments from the RPS.

### **Director Loans**

When assessing payment, consideration must be given to any sums owed to the employer by the employee, as under Rules 14.24 and 14.25 of the Insolvency Rules 2016, and case law, these should be offset. Any payments that are due from the RPS can be offset by any outstanding director's loans.

General enquiries regarding this article may be sent to [RPS.TAR@insolvency.gsi.gov.uk](mailto:RPS.TAR@insolvency.gsi.gov.uk)

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### **63) A New Case Management System for the Insolvency Service**

The Insolvency Service is currently developing a new case management system using the Microsoft Dynamics 365 solution. The new system will provide a single, fully integrated platform for all of the agency's operational business areas including its Redundancy Payments Service (RPS), its Official Receiver Services, and its civil and criminal investigation teams. Dynamics 365 will introduce up to date technological capability to support the Insolvency Service's operations, including the ability to integrate with external data sources.

At the end of January 2019 RPS will be the first of the Insolvency Service's business areas to go live with the new case management service. Insolvency Practitioners will be impacted by this change in two main ways.

Firstly, the new case management system will modernise and automate the calculation of redundancy payment entitlements, enabling RPS to respond in real time to changes to legislation and tax rules, as well as to any directions arising from employment case law. The immediate effect of this is that from the end of January the basis of the calculations of certain types of payments will change, and insolvency practitioners and their service providers may therefore wish to take action to align their own calculation models with those of RPS.

Secondly, the introduction of the new case management system will coincide with a change to the way insolvency practitioners submit RP14/A forms. Instead of using the existing portal, insolvency practitioners and their agents will need to submit these forms via the online Director Conduct Report Service (DCRS), which practitioners will be familiar with as the tool for submitting information to the Insolvency Service's Investigation and Enforcement Service. The DCRS offers a ready made and at the same time more modern, reliable and secure facility for the transmission of information relating to redundancy claims. Switching to this channel now will also enable changes and improvements to the RP14/A upload service to be implemented quickly and easily in future.

In the weeks and months leading up to Go Live at the end of January, the Insolvency Service will be issuing further communications about these changes to ensure that IPs and other stakeholders have a full awareness and understanding of what they will need to do to prepare for them..

General enquiries regarding this article may be sent to [CaseManagementServices@insolvency.gsi.gov.uk](mailto:CaseManagementServices@insolvency.gsi.gov.uk)

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## 97) Issuing the Statement of Affairs post-GDPR

This article is being issued to clarify, in the Insolvency Service's view, the impact of the GDPR on the disclosure of individual creditors' information contained in a statement of affairs.

When processing personal data, there needs to be a valid and lawful basis for doing so. One such valid lawful basis is a legal obligation, either common law or statute, to process such information.

Insolvency legislation states that a statement of affairs must contain the names and postal addresses of creditors; that these details for employees and consumers paying in advance for goods or services should be set in a separate schedule; and that such a schedule should not be sent to Companies House.

It is therefore the view of the Insolvency Service that a fully completed statement of affairs should be circulated to creditors. In terms of individual cases, it is expected that the insolvency practitioner as office holder would use his/her discretion and where it may not be appropriate to share some creditors' names and addresses with other creditors, then they should not do so. Insolvency practitioners should ensure that case notes fully explain any decisions in this regard.

Any enquiries regarding this article may be sent to [Policy.Unit@insolvency.gsi.gov.uk](mailto:Policy.Unit@insolvency.gsi.gov.uk)

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## 98) Insolvency Code of Ethics – update

During the first half of 2017, the Joint Insolvency Committee issued a revised draft of the Insolvency Code of Ethics (the Code) for consultation. That consultation closed in July 2017 and since then the group set up to consider revisions to the Code has been undertaking further steps.

The group, comprising a variety of insolvency stakeholders including HM Revenue and Customs, Max Recovery and representatives from the Recognised Professional Bodies (the RPBs) and the Insolvency Service has considered the consultation responses, drafted further amendments to the Code and discussed the revised draft with the RPBs who will require to adopt the Code.

### Consultation responses

A total of 22 consultation responses were received broken down as follows:

IPs/IP Firms	11
Creditors/Creditor representative bodies	3
RPBs/IP trade body	6
Debtor representative bodies	2

Over 300 specific comments were raised by those who responded to the consultation.

Most respondents thought that the revised Code provided a clear structure and language under which to operate. There was also strong support that broadly the provisions in the Code relating to an insolvency practitioner obtaining specialist advice or services (Part 2 Section C) were appropriate although this was less evident when considering provisions relating to where the specialist advice or services provider is an entity or person where a personal or business relationship exists.

A significant majority thought that the new provisions relating to the specific application of the Code where the insolvency practitioner is an employee required further refinement.

There was no clear consensus on whether additional guidance would assist stakeholders to understand the application of the framework to specific situations.

As was perhaps expected the consultation questions on obtaining insolvency appointments generated polarised views with no clear conclusion from respondents. Over 80% of respondents considered that the Code should not

make any significant distinction in its application to personal insolvency appointments and corporate insolvency appointments.

## Post consultation revised Code

The working group considered all points made from consultation respondents and has provided a revised draft of the Code to the Joint Insolvency Committee and the RPBs.

The revised draft incorporated the following amendments:

- Changes in emphasis to reduce perception or impression that there will always be appropriate safeguards available.
- Inclusion of insolvency practitioners under consultancy arrangements within the scope of the section dealing with practitioners as employees due to similar issues affecting both. The section was significantly redrafted to provide further examples of safeguards that may be available and highlighting that the safeguards available should be considered prior to accepting employment as well as during employment.
- Widening the scope of the section on obtaining specialist advice and services to deal with referrals for specialist advice/services for example to include to other group companies and clarifying that any preferential trading terms must be passed for the benefit of the estate.
- The section on fees and other types of remuneration was reworked to deal only with referral fees and commissions. The structure of the section was amended to deal separately with payment and acceptance with a similar approach adopted for the section on hospitality and gifts. The consultation did not give a clear indication of whether there should be any relaxation in an insolvency practitioners being permitted to pay referral fees and therefore the status quo position was maintained.
- Consequently, the section on obtaining insolvency appointments was realigned to dealing only with advertising and marketing for insolvency appointments.
- Sections A-I were reordered into a more logical order.
- A new section J was added to deal with the application of the Code in the Republic of Ireland.

## IESBA Code of Ethics

As was highlighted in the note accompanying the consultation draft in 2017, IESBA have been undertaking a revision of their Code of Ethics. This will impact in particular on ACCA, ICAEW, ICAS and CAI Code of Ethics as these bodies are required to reflect the IESBA Code of Ethics within their own Code. IESBA have now finalised their restructured code which will become effective 15 June 2019.

The revised IESBA Code is significantly different in several areas beyond the current Code. Changes include those to make it easier to navigate, use and enforce. Major revisions have been made to the unifying conceptual framework—the approach used by all professional accountants to identify, evaluate and address threats to compliance with the fundamental principles and, where applicable, independence.

This includes:

- Revised “safeguards” provisions better aligned to threats to compliance with the fundamental principles;
- New guidance to emphasize the importance of understanding facts and circumstances when exercising professional judgment; and
- what a professional accountant should do if they encounter actual or suspected “Non-Compliance with laws and Regulations (NOCLAR)”

The impact of the restructured IESBA code as adopted by the accounting bodies is being fully assessed, however is anticipated that the restructured code will impact on the insolvency code of ethics.

### Adoption of a new Code

The accountancy RPBs have indicated that they will be adopting the new IESBA Code between June 2019 and January 2020. In light of the IESBA changes which will require to be incorporated into an Insolvency Code of Ethics, the Joint Insolvency Committee and Insolvency Service considered whether it was desirable to introduce a new Code which would require to be replaced again within a relatively short period of time. It was concluded that as the fundamental principles within the Code have not changed any revised Code at this stage would not significantly alter insolvency practitioners obligations under the Code. The revised Code will therefore be updated to reflect the amended structure, revised safeguard provisions and other matters under the new IESBA Code prior to being issued and being brought into effect.

Any enquiries regarding this article may be sent to [IPRegulation.section@insolvency.gsi.gov.uk](mailto:IPRegulation.section@insolvency.gsi.gov.uk)

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## 15) Re-use of company names: New guidance and complaint page

We have published [guidance](#) on GOV.UK to provide more information for directors and others about the re-use of company names after insolvent liquidation.

This guidance aims to increase awareness and address some of the common errors where directors have partially complied with the rules. The guidance includes examples of common scenarios, a fuller explanation of the exceptions and considers what action a director might take if they are using a prohibited name including how to apply for permission.

The guidance explains how to complain about the re-use of a company name and how such complaints are dealt. Insolvency practitioners may wish to refer to the guidance where appropriate, for example, when informing a director that a breach may have been committed, or the issues to consider in relation to a proposed successor company.

The guidance can be found on GOV.UK by searching 'Re-use of company names' or within the [Investigations and Enforcement collection](#) from the Insolvency Service's home page.

There is a separate [page](#) for anyone who would like to complain about the re-use of a prohibited name. This is also located on GOV.UK, within the Investigations and Enforcement collection or can be found by searching 'Complain about the re-use of a company name'.

Any enquiries regarding this article may be sent to [compliance.targeting@insolvency.gsi.gov.uk](mailto:compliance.targeting@insolvency.gsi.gov.uk)

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## 1) The Adjudicator process and pending petitions

The Adjudicator's Office assumed responsibility from the Court for making bankruptcy orders in April 2016.

A bankruptcy application is now completed online and, on submission, is subject to a number of automated checks. The Adjudicator team undertakes further checks to ensure the applicant meets the required criteria before the decision is made to make a bankruptcy order. The Adjudicator's Office has 28 days within which to decide to make a bankruptcy order or to refuse the application, although over 98% of bankruptcy orders are made within two working days of the application having been submitted.

One of the key checks made by the Adjudicator team is whether there is a pending bankruptcy petition for the individual who has made the application. If there is a live pending petition the Adjudicator must refuse to make a bankruptcy order on the application. Sometimes this check fails and an order is made when it should not. In these circumstances the Adjudicator will apply to the court for an annulment of the bankruptcy order on the grounds it ought not to have been made. In most cases the court will grant the annulment without the need for a hearing.

If an insolvency practitioner becomes aware of a case where a pending petition was lodged prior to an application and bankruptcy order being made to the Adjudicator under the online system (whether or not a bankruptcy order has been made on the petition) the practitioner should email the Adjudicator team at [adjudicator@insolvency.gsi.gov.uk](mailto:adjudicator@insolvency.gsi.gov.uk) with the details and the team will take steps to have the adjudicator order annulled.

It is important to note that where the petition was presented prior to the application being submitted to the Adjudicator it is the Adjudicator case which needs to be annulled and not any order made by the court on the pending petition.

Any enquiries regarding this article may be directed to [adjudicator@insolvency.gsi.gov.uk](mailto:adjudicator@insolvency.gsi.gov.uk)

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## **2) The Adjudicator Process and notice of closure**

We have recently received a number of enquiries from insolvency practitioners who have completed the administration of cases and want to know where to send the notice of closure. All correspondence, including the notice of closure, should be sent to the Official Receiver who was the original trustee.

Any enquiries regarding this article may be directed to [adjudicator@insolvency.gsi.gov.uk](mailto:adjudicator@insolvency.gsi.gov.uk)

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