The Insolvency Service

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DEAR INSOLVENCY PRACTITIONER
Issue 169 – January 2026

Dear Reader,

Please find enclosed the latest articles from the Insolvency Service:

In this issue:

125) Interim guidance on the handling of car finance claims

Guidance has been issued jointly by the Recognised Professional Bodies (RPBs), setting out expectations in relation to the handling of car finance

The guidance is reproduce in full below. For full details, visit ICAEW's guidance page, IPA's guidance page, or ICAS's guidance page.

On 1 August 2025, the Supreme Court delivered its judgment in the case of Hopcraft and another (Respondents) v Close Brothers Limited (Appellant) and the linked cases.

Following the Supreme Court ruling, the Financial Conduct Authority (FCA) has confirmed its plans to consult on a scheme to compensate motor finance customers who were treated unfairly. The consultation is expected to be published by early October and it's the FCA's stated intention that any redress scheme would come into operation in 2026.

This guidance sets out the Recognised Professional Bodies' (RPBs') expectations on how insolvency office holders should administer potentially affected personal insolvency cases before any redress scheme is set up.

As there is uncertainty about the scope of any scheme and the quantum of any possible awards, the potential recoveries for the creditors of insolvent estates are also uncertain. The RPBs therefore consider it unnecessary for office holders to undertake investigations into potential claims across their current portfolios of individual voluntary arrangements (IVAs), protected trust deeds (PTDs), sequestrations or bankruptcies or any such closed appointments. At this stage any such work would be highly speculative, and any attempt to recover the costs of investigations would fail to meet the test in Statement of Insolvency Practice 9 that payments to an office holder from an estate should be fair and reasonable reflections of the work necessarily and properly undertaken.

Further, the RPBs do not consider it would be appropriate for office holders to delay the closure of any IVAs or PTDs where the debtor has complied with their obligations in anticipation of an uncertain future compensation award. To delay closure would be contrary to the requirement that a fair balance is struck between the interests of the debtor and their creditors.

Finally, the FCA has stated publicly that its aim is to make any scheme easy for consumers to understand and participate in, without needing to use a claims management company (CMC) or law firm. Office holders should not at

this stage be seeking to instruct a CMC to assist with potential future claims nor should they be encouraging debtors to engage a CMC.

Given the publicity about the Supreme Court case, it's possible that debtors may ask office holders about the treatment of any compensation claims they think they may be able to claim.

- Someone who is currently in an IVA, PTD or sequestration which is due to close before the launch of any redress scheme should be informed that they will be able to keep any award made after the closure of the IVA (subject to any terms in the IVA regarding the continuation of the trust) or PTD or after the discharge of the trustee in sequestration.
- Where the IVA will continue after the launch of any redress scheme, debtors should be informed that any award could form part of the estate, subject to the terms of the IVA). Debtors who have entered a PTD or bankruptcy in Scotland should be informed that any award will form part of the estate.
- Someone who is considering entering into an IVA or PTD or applying for sequestration should be made aware of the treatment of any potential compensation payments. For PTDs, bankruptcy and sequestration cases, any future compensation payment will form part of the estate, irrespective of the discharge of the debtor.

The FCA intends to consult on its proposals and then review the feedback before launching any scheme. The RPBs will provide more guidance once the FCA has explained how any scheme will work.

Enquiries regarding this article may be sent to:
IPRegulation.Section@insolvency.gov.uk

126) Guidance for IPs on recent High Court decision about MVLs

Guidance has been issued jointly by the Recognised Professional Bodies (RPBs), setting out expectations in relation to Members Volntary Liquidations (MVL).

The guidance is reproduced in full below. For full details, visit ICAEW's guidance page, IPA's guidance page, or ICAS's guidance page.

The recent first instance High Court decision of Noal SCSP & Ors v Novalpina Capital LLP & Ors [2025] EWHC 1392 (Ch) contradicts the long-standing approach taken by much of the insolvency profession to Members Voluntary Liquidations (MVLs).

ICC Judge Agnelo KC held that, for the purposes of deciding whether a s.89 IA 1986 declaration of solvency can be made (and the associated question of whether a company in MVL should be converted into a Creditors Voluntary Liquidation (CVL) by s.95 IA 1986), the relevant test is whether payment of the company's debts together with interest will be made within the 12 month period (or such shorter period as is stated in the s.89 declaration).

In summary, the case held that the test for s.89 or 95 IA 1986 is not one of balance sheet solvency but whether payment in full (with interest) will be made within 12 months (or, if shorter, the period stated in the s.89 declaration).

The case suggests that a company would not be 'solvent' for the purposes of s.89 or s.95 merely because there were sufficient funds to pay a company's debts and interest, rather s.89 and s.95 both require that those debts and interest will in fact be paid within 12 months of the commencement of the MVL (or such shorter period stated in the s.89 declaration), failing which the liquidation should not be commenced as an MVL (or, if commenced as an MVL should be converted to a CVL).

ICAEW, ICAS and the IPA understand that the judgement is being appealed. In the interim, as a first instance decision of the High Court, it is persuasive but not binding so may or may not be followed in future cases before the High Court. So, what should IPs do in the meantime?

From a regulatory and disciplinary perspective, given the pending appeal, ICAEW, ICAS and the IPA are taking a pragmatic approach in relation to existing MVLs with outstanding debts. IPs should review any existing MVLs with outstanding debts to check that there remain sufficient assets to settle the outstanding debts, plus statutory interest. If there aren't, they should take steps to convert the MVL to a CVL in accordance with sections 95 and 96 of the Insolvency Act. Wherever possible, creditors should be paid within 12 months of commencement (or such shorter period as stated in the s.89 declaration of solvency). IPs should take appropriate advice on individual cases and document their decisions for the file.

Pending the outcome of the appeal, provided that (in any case) there is good reason for payment not to have been made within the period stated in the s.89 declaration and the liquidator is satisfied that there are (or will be within a reasonable time) sufficient realisations to pay any outstanding debts, plus the accruing interest, regulatory or disciplinary action will not be commenced against the liquidator of an MVL merely on the grounds that:

- an MVL has existed for longer than 12 months (or the period in the s.89 declaration), or
- creditors were not paid (or can not be paid) within 12 months (or the period in the s.89 declaration), or
- the MVL was not converted to a CVL within 12 months (or the period in the s.89 declaration).

The judgment (at paragraph 52) confirms that an MVL can last for more than 12 months, if debts and interest thereon have been paid in full. Therefore, if there are no creditors, or if they have been paid in full, section 95 would not apply and an MVL can exceed 12 months, even if the liquidator's remuneration and other expenses or capital distribution to members have not been paid.

In relation to new cases (where the liquidation has not yet commenced), IPs should seek advice where required and document the reasons for their decision on the case file. If there are any unusual or uncertain claims which could impact solvency, IPs should consider the timing of the liquidation. If time isn't critical to the liquidation IPs may want to consider whether it would be useful to defer the liquidation until the appeal has been heard. When discussing with stakeholders whether a company should enter MVL or CVL, IPs should consider highlighting the current case law, which is first instance and subject to appeal, and the individual case specific risks to stakeholders.

Enquiries regarding this article may be sent to:
IPRegulation.Section@Insolvency.gov.uk

7) Retention of Records - Section 218(4) Insolvency Act 1986

As set out below, recent events have given us the opportunity to review guidance around retention of records, particularly where there is known to be ongoing criminal proceedings.

In a recent case that was being prosecuted by the Insolvency Service, it became apparent that records that were relevant to the case during the trial had not been retained by the insolvency practitioner despite them being asked to do so by the Insolvency Service. This resulted in an application to dismiss the case being successfully argued by the defence.

We would therefore take this opportunity to remind all insolvency practitioners that they have a duty to retain all records that they hold until the conclusion of Court proceedings. This is not limited to the company's books and records themselves but should also include the insolvency practitioner's internal records / file notes and particularly, those notes that record when the company's books and records were obtained or delivered up and what was included in those records. Insolvency practitioners should be able to produce a record or inventory of how and when such records were delivered and how that was recorded appropriately. Insolvency Service representatives dealing with the investigation and resulting legal proceedings will endeavour to ensure that there are clear communications with the insolvency practitioners before, during and after Court cases so that they are aware of the status of proceedings and can act accordingly with regards to safe storage of books, records and files.

To try to ensure that future cases are not impacted by a failure to retain records, we are now reissuing guidance that had previously been issued in Dear IP no. 49 in March 2000 This guidance remains accurate and has been updated below for ease of reference:

Following consideration of reports made to the Insolvency Service under Section 218(4) Insolvency Act 1986 (and otherwise), a criminal investigation may result. The criminal investigation is carried out by investigation officers within the Insolvency Service. They are likely to contact the insolvency practitioner as part of that investigation.

The investigation officer will often wish to review the company's books, papers, relevant case files etc and should a criminal prosecution ensue, all of the company's records and case files will be required. These will be needed until such time as a resulting case has been heard by the Court and decided so it is imperative that where an insolvency practitioner is aware of a criminal investigation, they should retain all records and case files securely and should not destroy those records until the position has been discussed with the

investigation officer and they have confirmed that the case or proceedings have concluded.

Enquiries regarding this article may be sent to:
legalservices@insolvency.gov.uk

64) Joint nominee agreements – guidance for insolvency practitioners

Guidance has been issued jointly by the Recognised Professional Bodies (RPBs), setting out expectations in relation to joint nominee agreements for individual voluntary arrangements (IVAs).

This guidance is reproduced in full below. The guidance takes effect from **1 January 2026**. For full details, visit ICAEW's guidance page, IPA's guidance page, or ICAS's guidance page.

Joint nominee agreements

1. With the increasing prevalence of joint nominee agreements in the volume IVA market, this document sets out the Recognised Professional Bodies' (RPBs') expectations on insolvency practitioners who enter into joint nominee agreements.

2. The terms of such agreements can, and do vary, with insolvency practitioners undertaking various tasks in the lead up to the creditors' decision procedure to approve the proposed voluntary arrangement and the appointment of a supervisor, depending on the nature of the agreement. What is common is that one insolvency practitioner will identify an individual who may be suitable for an IVA and at a later stage will be appointed nominee together with another insolvency practitioner who will subsequently become the sole supervisor. For ease, in this document, these roles are described as the referring insolvency practitioner and the receiving insolvency practitioner.

3. All insolvency practitioners are required to comply with the law, the statements of insolvency practice and their RPB's code of ethics irrespective of the nature of their role in relation to a particular insolvency appointment. The existence of a joint nominee agreement does not negate or dilute these requirements.

4. An insolvency practitioner could be an employee and have limited control over the arrangements entered into by their employer. Insolvency practitioners in this situation should take note of the requirements in their RPB's code of ethics relating to employed IPs. It is not acceptable for an insolvency practitioner to rely on their status as an employee as justification for carrying out functions under any joint nominee agreement which are contrary to the fundamental principles or to fail to implement necessary changes to the way the agreement operates.

5. SIP 1 imposes a reporting obligation on insolvency practitioners should they become aware of any insolvency practitioner who they consider is

not complying or who has not complied with the relevant laws and regulations and whose actions discredit the profession. The insolvency practitioner's RPB may impose additional reporting requirements including requirements to report their own conduct. If failings in the operation of any joint nominee agreement are identified this could trigger a reporting requirement.

6. As a general principle the RPBs do not consider the fact that something has been prepared by another insolvency practitioner to be a reasonable explanation for the use of inaccurate documentation.

Role of the referring insolvency practitioner

1. The referring insolvency practitioner should explain to the debtor/(s) the roles of everyone involved in the process and who they work for and take steps to limit any confusion on the part of the debtor.

2. If the agreement requires the referring insolvency practitioner to use scripts or documentation produced by the receiving insolvency practitioner, the referring insolvency practitioner needs to satisfy themselves that they are appropriate and accurate.

3. If the referring insolvency practitioner identifies any errors in standard documents or scripts, they should be notified to the receiving insolvency practitioner as soon as possible (and vice versa) and steps taken to get these corrected promptly. The joint nominee agreement should include a mechanism to address any such errors promptly. The referring insolvency practitioner should not continue to use incorrect documentation, and if errors are not corrected promptly, consideration should be given to terminating the joint nominee agreement.

4. Where the proposal and/or nominee's report is prepared by the receiving insolvency practitioner, the referring insolvency practitioner should have procedures in place to review the proposal and report to ensure that the documents accurately reflect the information they provided. Where there are differences, explanations should be sought from the receiving insolvency practitioner as it could be indicative of shortcomings or failings in the referring insolvency practitioner's own processes if information needs to be updated or errors corrected.

5. There should be procedures in place for the referring insolvency practitioner to be informed of their appointment as nominee promptly. It is not acceptable for the referring insolvency practitioner to become aware of their appointment on receipt of a monthly cover schedule.
6. The referring insolvency practitioner should also make themselves aware of the RPBs' expectations regarding the receiving insolvency practitioner's role, and should provide any information reasonably

requested by the receiving insolvency practitioner within an appropriate time period.

Role of the receiving insolvency practitioner

1. Where the initial calls are made by the referring insolvency practitioner, the receiving insolvency practitioner will need to satisfy themselves that the referring insolvency practitioner has complied with the requirements of SIP 3.1.

2. The receiving insolvency practitioner should also be alert to the possibility of unethical behaviours such as the individual being coached in favour of an IVA in order for the referring insolvency practitioner to receive a proportion of the nominee fee, or that income and expenditure is being manipulated to meet criteria set by the receiving insolvency practitioner, again in order for the referring insolvency practitioner to receive a proportion of the nominee fee. Where the receiving insolvency practitioner cannot be confident that there are adequate safeguards in place to reduce any such threats to the fundamental principles to an acceptable level, they should not continue to accept joint nominee appointments and should terminate the agreement.

3. In addition to adequate due diligence being undertaken before entering into a joint nominee agreement, quality control should be applied during the lifetime of the agreement. This should include, for example:
    - Unfettered access to call recordings
    - Listening to a sample of calls
    - Reviewing the referring insolvency practitioner's website and social media presence
    - Reviewing scripts used by call handlers
    - Checking I & E calculations against the available evidence such as bank statements or wage slips
    - Reviewing documentation sent to debtors

4. The RPBs will expect the receiving insolvency practitioner to be able to demonstrate that they have effective mechanisms in place to monitor the quality of the referring insolvency practitioner's activities.

5. Mechanisms should also exist to alert the referring insolvency practitioner to any proposals which are not accepted by creditors or where an IVA fails in its early stages as these could be indicative of shortcomings in the initial stages of the process.

6. The agreement should include routes to address any shortcomings in the activities carried out by the referring insolvency practitioner. If these are not addressed promptly, consideration should be given to terminating the joint nominee agreement. Where such failings are found

to be systemic, the RPB may require the receiving insolvency practitioner to review all cases received from the referring insolvency practitioner.

7. If calls are divided up between the referring insolvency practitioner and the receiving insolvency practitioner, all parties will need to be mindful of the potential confusion this could cause for the debtor, and take steps to limit any potential confusion.

8. The receiving insolvency practitioner should in all cases obtain a full understanding of the route by which the individual came to be proposing an IVA, whether direct from the referring insolvency practitioner or whether other parties were involved at an earlier stage, and if so, the identity of all those parties and their regulated status.

9. Where the receiving insolvency practitioner re-performs any of the activities carried out by the referring insolvency practitioner, the receiving insolvency practitioner will be expected to identify why this was necessary. If such steps were necessary because of shortcomings on the part of the referring insolvency practitioner, the RPBs will expect the receiving insolvency practitioner to address these failings with the referring insolvency practitioner.

10. Additionally, the RPBs do not consider it to be acceptable for the receiving insolvency practitioner to have no involvement in the case as nominee except for convening the decision procedure. The receiving insolvency practitioner will not be able fulfil their obligations as nominee and report objectively if they have limited knowledge of the case and maybe unlikely to be able to properly explain the impact of any modifications to the debtor.

11. The receiving insolvency practitioner should also be mindful that a joint nominee agreement could be a means of avoiding the ban on debt packagers receiving remuneration from debt solution providers (see below).

Provisions applying to both the referring and the receiving insolvency practitioners

12. Both insolvency practitioners need to be satisfied that they are able to fulfil their obligations as nominee and report objectively. This will involve being confident in the accuracy of the proposal and report. It should not be carried out as a “rubber stamping” exercise.
13. The RPBs expect both IPs to have documented processes which set out the work required by each of them to ensure the accuracy of proposals and nominee reports and compliance with SIP 3.1. IPs should have

sufficient controls and review procedures in place to ensure that those processes are working effectively.

14. Both insolvency practitioners should sign the nominee's report.

15. Where there are inaccuracies or errors in the proposal or nominees' report, the joint nominee agreement should include a mechanism to get these corrected promptly. If errors in these formal documents are not corrected promptly, consideration should be given to terminating the joint nominee agreement.

Nature of the joint nominee agreement

1. The RPBs and the FCA have concerns that joint nominee agreements could be used as means of subverting the ban on debt packagers receiving remuneration from debt solution providers introduced by the FCA in October 2023. The ban was introduced as the FCA identified that consumers were at risk of harm as the best interests of consumers were often secondary to the maximisation of revenue for the debt packager firm.

2. There is a risk that joint nominee agreements could replicate these consumer harms. With this in mind, the RPBs will closely scrutinise any joint nominee agreements entered into by insolvency practitioners.

3. Typically, joint nominee agreements rely on the referring insolvency practitioner being in reasonable contemplation of an insolvency appointment and therefore being able to use the IP exclusion (see note 1).

4. The RPBs will take a particular interest in the division of activities and the split of the nominee's fee between the referring and receiving insolvency practitioners as this could be an indicator that the agreement is being used to disguise paying for leads. Similar considerations will arise where the referring insolvency practitioner is FCA authorised.

5. The RPBs consider that some characteristics of an agreement or of a practice's business model could be indicative of arrangements that are a means of avoiding the ban on receiving remuneration. These include but are not limited to the following:

For the referring IP

- Fee income received from joint nominee agreements exceeding that received from cases where no joint nominee agreement is in place.
- A practice structure where resource is concentrated at the nominee and pre-nominee stage rather than in supervision.
- Marketing that generates more enquiries than a practice is resourced to accept in-house.
- The use of multiple trading styles or identities to generate enquiries from individuals.
- Receiving a proportion of the nominee fee from the receiving insolvency practitioner which does not reflect/exceeds the value of the work undertaken by the referring insolvency practitioner.

For the receiving IP

- Re-performing or placing limited reliance on the actions undertaken by the referring insolvency practitioner to ensure compliance with SIP 3.1.
- Paying a proportion of the nominee fee to the referring insolvency practitioner which does not reflect/exceeds the value of the work undertaken.

6. Insolvency practitioners who have entered into joint nominee agreements should expect to be challenged on the nature of the arrangement either during a monitoring visit or otherwise, irrespective of whether or not the arrangement displays any of the characteristics listed above.

7. Joint nominee agreements entered into since the introduction of the debt packager ban will automatically be of interest to the RPBs.

Effective date: 1 January 2026

Note 1:

PERG 2.9.26G01/04/2014RP - These exclusions apply to a person acting as an insolvency practitioner. The term “insolvency practitioner” is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to debt adjusting, debt counselling and providing credit information services also apply to any activity carried on by a person acting in reasonable contemplation of that person’s appointment as an insolvency practitioner.
PERG 2.9.27G01/04/2014RP - A person acting as an insolvency practitioner or in reasonable contemplation of that person’s appointment as an insolvency practitioner include anything done by the person’s firm in connection with that

person so acting. For these purposes, the reference to "the person's firm" means the person's employer, the partnership in which he is a partner or the limited liability partnership of which he is a member, as the case may be.

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