

Principles of Good Enforcement

Policy and Procedures

This document sets out what insolvency practitioners authorised by the Secretary of State can expect from the officials with whom they have contact in Insolvency Practitioner Section, London and Insolvency Practitioner Control Unit, Birmingham. It commits us to good enforcement policies and procedures. It is not intended as a complete statement of enforcement policy. It may be supplemented by additional statements of enforcement policy.

The primary function of the enforcement activities of the Insolvency Practitioner Section of The Insolvency Service is to protect the public interest. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner assists in raising professional standards. We are committed to these aims and to seeking to ensure that insolvency practitioners are able to compete with one another on level terms.

The effectiveness of legislation in protecting the public depends crucially on the compliance of insolvency practitioners with the legislation. We recognise that insolvency practitioners want to comply with the law. We will, therefore, take care to help insolvency practitioners authorised by the Secretary of State to meet their statutory obligations without unnecessary expense, while taking firm action when serious breaches are found or where there has been non-cooperation in getting things put right, including prosecution where appropriate.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term "enforcement" are advisory and monitoring visits as well as authorisation and formal enforcement action. By adopting the concordat we commit ourselves to following policies and procedures, which contribute to improving standards, and will provide information to show that we are observing them.

Principles of Good Enforcement:

Policy

Standards

In consultation with insolvency practitioners, the professional bodies recognised by the Secretary of State to authorise practitioners (RPBs), and the Society of Practitioners of Insolvency (SPI), we have drawn up clear standards setting out the level of service and performance which the public and insolvency practitioners authorised by the Secretary of State can expect to receive. We will publish these standards and our annual performance against them in our Annual Report and Accounts. The standards will also be available to insolvency practitioners who are authorised by the Secretary of State.

Openness

We will be open about the way we work, consulting insolvency practitioners authorised by the Secretary of State, RPBs and SPI. We will discuss general issues or specific compliance failures or problems and will provide information and assistance. Although it is not possible to give legal advice, we will, when consulted, draw your attention to the requirements of the legislation in specific circumstances. We will also provide quarterly updates to all insolvency practitioners on technical matters relevant to the insolvency profession in our "Dear IP" publication, and issue guidelines on best practice and ethical standards in consultation with the recognised professional bodies and SPI.

Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with insolvency practitioners authorised by the Secretary of State to advise on and assist with their compliance with the regulations, particularly through regular monitoring visits and guidance visits on disqualification issues. We will encourage users to seek information and suggestions from us. We will ensure that wherever practicable our enforcement services are effectively co-ordinated to minimise unnecessary overlaps or time delays.

We will provide a courteous and efficient service. Applications for authorisation will be dealt with efficiently and promptly. Staff will identify themselves by name when contacted by telephone, and those you meet in our offices will wear name badges. All of our letters will contain the name of the person dealing with the matter, their extension number and a fax number.

Complaints about Service

We will provide an effective and timely complaints procedure easily accessible to the public and to insolvency practitioners who are authorised by the Secretary of State. In cases where you remain dissatisfied, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

We will minimise the costs of compliance for insolvency practitioners authorised by the Secretary of State by taking enforcement or regulatory action proportionate to the risks. If there is non-compliance, the action we take will depend on the seriousness of the breach. We will advise you in writing on how to comply when a minor breach has occurred. When serious breaches are found or where there has been non-cooperation in getting things put right, these matters will be taken into account in considering fitness and, in appropriate cases we will consider prosecution.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. We will have arrangements in place to promote consistency. We will issue guidelines on the standards with which our monitoring teams will comply in carrying out monitoring visits and will liaise with the recognised professional bodies through the medium of the licensing forum, which is held biannually, to improve standards and ensure a consistency of approach between the authorising bodies.

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Procedures

Enquiries and complaints received from insolvency practitioners will be dealt with promptly and accurately and within a specified timescale. Enquiries of a vital or urgent nature will be given priority and where possible dealt with within two working days. Enquiries of a routine nature will be dealt with within 15 working days of receipt or we will let you know within 5 working days why this is not possible in the particular case and when a full reply will follow. We

will make it clear when responding to enquiries whether we are indicating what we consider best practice to be in the particular circumstances or whether we are informing you of your obligations under the legislation, and this will be put simply and clearly and confirmed in writing

We carry out various functions on behalf of the Secretary of State. Our target is to register all information relating to individual voluntary arrangements on the day of receipt. Our target is to respond to applications for extensions for holding annual meetings; for local bank accounts; for the fixing of remuneration in old Act bankruptcies; and for release where there are dissenting creditors, within two working days of receipt.

Insolvency practitioners authorised by the Secretary of State will receive monitoring visits at such regular intervals as the authorisation officer deems to be necessary and which is proportionate to the risks involved. We will normally contact you before a visit to agree a mutually convenient time and will seek to ensure that our monitoring visits cause the minimum of disruption to your practice. We will provide a copy of a draft report of the monitoring visit in order to enable you to comment and make representations and, if possible, resolve points of difference. The draft report will be provided to you within 20 working days of the visit, but if for any reason we are unable to do so, we will explain within this period why this is not possible and how long we expect to take to provide the draft report. We will either provide you with a final copy of the report within 10 working days of the conclusion of representations, or explain why this is not possible and when the final report will be provided. Unannounced visits will not normally be made, but may sometimes be necessary - for instance, where we become aware of matters which indicate there are causes for serious concern.

We will examine copies of returns submitted by practitioners to Companies House under section 192 of the Insolvency Act 1986, and will write to practitioners for an explanation where there appears to be a default in remitting funds to the Insolvency Services Account ("ISA"). Where we have particular concerns about poor levels of compliance in this area by a practitioner, we may arrange a compliance visit to discuss the cases, seek explanations, try and resolve points of difference, and, where appropriate, to ask for undertakings. We will take account of failure to comply in considering whether a practitioner remains fit and proper.

We will issue reminders to practitioners who are late in filing disqualification returns. Where practitioners have significant levels of defaults in complying with their reporting duties under the Company Directors Disqualification Act 1986 ("CDDA"), we may arrange a compliance visit to discuss the cases, seek explanations, try and resolve points of difference, and, where appropriate, to ask for undertakings. We may also consider prosecution in cases where defaults are particularly serious. We will take account of failure to comply with reporting duties under the CDDA in considering whether a practitioner remains fit and proper.

We are concerned to ensure that you are satisfied with the service that you receive, but if, nonetheless, a complaint arises in relation to our enforcement procedures, we aim to deal with it courteously and promptly. If your complaint relates to monitoring visits, ISA and CDDA compliance procedures or Secretary of State functions, please contact the Head of Monitoring Unit, Insolvency Practitioners Control Unit, Ladywood House, 45/46 Stephenson Street, Birmingham B2 4UZ. If your complaint relates to all other aspects of enforcement, please contact the Head of Insolvency Practitioner Section, Room 112, PO Box 203, 21 Bloomsbury Street, London WC1B 3QW. If after doing this you are still dissatisfied you can write to the Inspector General and Chief Executive of The Insolvency Service, PO Box 203, 21 Bloomsbury Street, London WC1B 3QW.

If you are dissatisfied with a decision of the Secretary of State that he is minded to refuse your application for authorisation, or to revoke your authorisation as an insolvency practitioner then you have the right to make written representations to the Secretary of State within 14 days of service on you of the Notice informing you of the decision. You also have the right to require the Secretary of State to refer your case to the Insolvency Practitioners Tribunal, an independent Tribunal established under the legislation. Any such Notice will set out clearly those rights and how they are to be exercised. Further information can be found in a leaflet entitled "A Guide to the Insolvency Practitioners Tribunal" which can be obtained by contacting The Secretary, Insolvency Practitioners Tribunal, Area 5.4, PO Box 203, 21 Bloomsbury Street, London, WC1B 3QW (telephone 0171 291 6895).

If we receive a complaint about the conduct of a practitioner whilst acting as an office holder, we will investigate this. We will advise the practitioner of the name of the complainant and details of their complaint and give them opportunity to answer the complaint and to provide an explanation. We will advise the practitioner of the outcome of our investigation and give you opportunity to make representations. If the practitioner is still unhappy with the decision then we will tell you how to complain. If the complaint is proved we will take account of this in considering whether a practitioner remains fit and proper.

This leaflet and other Insolvency Service publications are available on The Service's website at:

http://www.open.gov.uk/insolv_s

Enforcement Concordat



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Information for Insolvency Practitioners



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An Executive Agency within the Department of Trade and Industry