



Starting in Practice as an Insolvency Practitioner

A series of basic guides to starting in practice
as an Insolvency Practitioner

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HAVE YOU THE SKILL AND THE WILL?.....	3
THE INSOLVENCY PRACTITIONER'S PRACTICE.....	4
STATUS OF APPOINTMENT TAKER.....	4
KEY POINTS TO CONSIDER	5
IT – HOW MUCH, HOW SOON?.....	7
PRACTICE PHILOSOPHY	8
YOUR BUSINESS PLAN	9
MARKETING.....	10
REGISTRATION WITH HM REVENUE & CUSTOMS	11
BANKING ARRANGEMENTS	12
INSURANCE MATTERS.....	15
STAFF	16
HEALTH AND SAFETY	18
COMPLAINTS PROCEDURES	19
PLANNED AND UNPLANNED ABSENCES	20
EDUCATION AND TRAINING	21
EXIT STRATEGY / SUCCESSION PLANNING	22
REGULATION	23
WORKING IN REGULATED AREAS.....	24
BONDING	25
MONITORING VISITS	26
COMPLAINTS.....	27
CONTINUED PROFESSIONAL DEVELOPMENT	29
ANTI MONEY LAUNDERING	30
ANTI BRIBERY	31
DATA PROTECTION ACT.....	32
CONSUMER CREDIT LICENCE	34
ETHICAL CONSIDERATIONS	36
OVERSIGHT REGULATORS AND GUIDANCE	38
WORK PROVISION	41
MARKETING.....	41
FINDING NEW CLIENTS.....	44
FINDING NEW WORK.....	45
BUYING A PRACTICE OR BLOCK OF APPOINTMENTS	46
ADMINISTRATION OF APPOINTMENTS	47
RECORDS	47
CASE PROGRESSION AND CONTROLS.....	48
LEGISLATION/SIPS/ GUIDANCE	49
USE OF ADVISORS/AGENTS/CONSULTANTS	50
DOCUMENT STORAGE AND RETENTION	52
ICAS PRODUCTS SERVICES AND RESOURCES	54
USEFUL LINKS/RESOURCES	55
APPENDIX A – Example of Fit & Proper form for individuals	56

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HAVE YOU THE SKILL AND THE WILL?

Going into practice is a major move which requires a lot of commitment. It is not for the faint hearted but with it comes great rewards. It is an opportunity to build for you rather than work for someone else. You will need a new range of skills, but most important is the will to succeed.

Being an IP is not enough. You will need many specific skills in addition.

- **Personal skills** – To develop the business you will need to be outgoing and good with people. Being in practice is all about quality of service – it is a people business.
- **Marketing** – The business will not come to you automatically. You will have to go and get it. Marketing does not come naturally to most people but it is a skill which can be developed. It does, however, have to be used all the time – every contact with a current or potential business provider is a marketing opportunity.
- **Management** – General management skills are critical as you will be running your own business.
- **Taxation** – Virtually every appointment that you are involved in will have a tax aspect to it. You must have a sound knowledge of income tax, capital gains tax, corporation tax and PAYE – VAT is also vital. You will also need this knowledge in the running of your own practice.
- **IT** – From email and the internet to case management, business plans, spreadsheets and taxation, IT skills are essential in today's business world.
- **Investment business and consumer credit** – Although it is not immediately obvious, investment business and consumer credit activities will almost certainly become part of a practice as it develops. Thinking of the all-round service involving restructuring, working capital management as well as personal debt management advice, this is an important skill either to acquire or to resource. If you wish to practice in this area, make sure your firm is properly licensed for certain restricted activities by ICAS through [DPB authorisation](#) or fully authorised by the Financial Conduct Authority.
- **Time management is vital, particularly in the early stages** – Plan and target tasks and leave time to deal with the unexpected.

THE INSOLVENCY PRACTITIONER'S PRACTICE

STATUS OF APPOINTMENT TAKER

Starting as an appointment taking IP requires careful consideration of the business structure under which you will operate.

Sole practitioner – If setting up on your own you must ensure that you have sufficient capability and capacity to perform all necessary tasks. In some cases, this may include the appropriate use of agents or sub-contractors, in which case agreements must reflect those arrangements. Steps should also be taken to ensure that appropriate alternate arrangements are in place to deal with case progression in the event of illness or incapacity.

Partner – If you are joining a partnership or forming a new one, you must ensure that the partnership agreement sets out what will happen to appointments in your name if you leave the partnership.

Director – If you are joining a company or forming a new one, you must ensure that either your employee contract or a separate agreement (eg shareholders agreement) sets out what will happen to appointments in your name if you leave the company. The agreement should also set out any indemnities provided to you in respect of personal liabilities incurred as an office holder.

Consultant – If you are a consultant you must consider your contractual relationship with the principal before you start accepting appointments. It is important that both you and your principal are clear about the implications of accepting appointments and protocols are established and documented in relation to certain matters. For example, it is essential that your agreement sets out the mechanics for dealing with cases in your name if you leave the practice and the extent to which you are indemnified by your principal in relation to the appointments. You should also ensure that you are specifically included as an appointment taker in any relevant insurance policies.

Employee – If you are an employee you must consider your contractual relationship with your employer before you start accepting appointments. It is important that both you and your employer are clear about the implications of accepting appointments and protocols are established and documented in relation to certain matters. For example, it is essential that your agreement sets out the mechanics for dealing with cases in your name if you leave the practice and the extent to which you are indemnified by your employer in relation to the appointments. You should also ensure that you are specifically included as an appointment taker in any relevant insurance policies.

KEY POINTS TO CONSIDER

- **ICAS Regulations** – Professional indemnity insurance, practising certificate, insolvency permits, and investment business/general insurance requirements.
- **Legislative requirements** – Enabling bond, specific penalty (open cover facility), [Provision of Services Regulations](#)
- **Letter heading and business cards** – Take time now – consider the image and message you want to give. Use a professional printer and re-visit the image once the firm is established.
- **CA Logos** – If you are a CA you may want to use the logos to project a quality image.
- **Office services** – Consider using local typing services and only employ someone when ready. The firm's image is vital – make sure your letters, reports and accounts look well presented.
- **Communication services** – Consider the systems that you will require to be able to communicate and be contacted such as office based telephone systems, mobile devices email and fax/scanning facilities. Take time and choose systems capable of being upgraded – you may regret a cheap choice. Mobile communication requirements are almost essential these days and time should be taken to consider whether mobile (smart) phones or tablets can best serve your needs. Appropriate controls require to be put in place for email where you have staff to ensure that appropriate signing authority is in place for all external communications.
- **Internet** – Consider your web presence and what it aims to achieve. Consider what statutory information may need to be included on the website and, if used for marketing, whether it complies with [advertising rules](#) and the [code of ethics](#). Consider also what access should be given to the internet for staff and also security and firewall measures which should be put in place.
- **Photocopier and scanning** – Quite simply something no practitioner can live without. When choosing think ahead to future needs. Flexibility in a lease may be more important than price.
- **Premises :**
 - Be comfortable.
 - Have space for yourself.
 - Have space for filing and storage.
 - Have space for expansion.
 - Watch Health & Safety Regulations.
If you work from home, and especially if you employ staff there, you should remember that health and safety and other legislation can apply equally as it does to an office situation.
 - Have adequate security measures in place. You will be dealing with confidential information and it is important to ensure the premises have adequate physical security measures in place to protect such information.

- **Quality staff** – The key to good service and future expansion. Plan to expand and staff up before the system is too stretched – that frees up time to develop the practice and bring in more work rather than doing detailed work which should be delegated.
- In the early stages, consider using subcontract or part-time workers in order to reduce expense and degree of commitment. They do, however, require close control for standard of work and time taken on assignments. Expansion, however, involves full time staff to give flexibility and the ability to respond quickly.
- Good staff is the key to good service – Training is the key to good staff. Invest in training and the repayment will give you confidence when work is delegated.
- Ensure that you comply with all relevant employment legislation.
- **Money Laundering Regulations** – The provision of audit, accountancy, taxation and insolvency services are among those that are regulated under The Money Laundering Regulations 2007. You are legally required to establish and maintain a range of risk-sensitive policies and procedures in order to prevent activities related to money laundering and terrorist financing. Practical assistance can be found in the ICAS/CCAB [Guidance Note](#) .
- **Data Protection Act** – You are likely to require to register if you keep/process personal data. This now includes not just data held on computer files but also certain manually held data. [The Office of the Information Commissioner](#) provides further information including a self-assessment tool.
- **VAT, PAYE & NIC** – Remember your own affairs as well as in relation to appointments.
- **Public Liability Insurance**

IT – HOW MUCH, HOW SOON?

- **Use IT** from the outset – It is essential for case management, business plans and general office work, including time recording. Access to the Internet and email is vital for the modern office.
- **Use technical software** – Especially for case management. In the early stages of building a practice, you have time to devote to these things as well as developing new business; as the practice develops, such time is harder to come by. There are now a number of case management software suppliers in the market. Consider licence cost structure, support, technical updates and additional module availability.
- **Train yourself** – If you do not have IT skills, acquire them quickly.
- **Seek advice** on hardware and software. Talk to other practitioners as well as the resellers.
- **Do not go overboard** – Tailor your purchases to your anticipated needs and skills. But allow for expansion in the future.
- **When making IT purchases**, ensure that good maintenance and support is available – this is critical to the practice as delays in maintenance can be very damaging.
- **Using IT** will give the practice opportunities in the future to develop new markets – as you develop, so will skills and opportunities for new services.
- **Use IT** for good quality presentations, slides and for giving a quality image to your reports which will be seen by banks, the enterprise agencies, other lenders and potential business providers.
- **Develop a database** for contacts, mailshots – not just for existing business providers but also for general business contacts and potential business providers. It can save a great deal of time later. Sometimes database software is included as part of a suite of packages.

PRACTICE PHILOSOPHY

- **Decide** what type of practice you wish to develop at the outset.
- **Identify** the target work base and pursue it.
- **Identify** the key services which the practice will offer, develop the skills and market them.
- **Do not** take on work automatically if it does not fit the practice philosophy – you will regret it later.
- **Identify** the area being targeted and where the office is going to be established. Achieve a high profile in that area and other business will follow.
- **Set target dates** by which certain stages of practice development will be in place.
- **Set target dates** by which certain services will be offered and available.
- **Set a target date** for moving into permanent offices if this has not been done at the outset.
- **Set dates** for following up action to ensure that the business plan has been achieved.
- **Remember** that you are in business. Decide what you are worth and develop the business accordingly.
- **Don't** undervalue yourself, especially at the outset. If you undercharge it is very difficult to increase your rates at a later date.

YOUR BUSINESS PLAN

- **Building a business** is your own personal target. You need a business plan to identify the steps involved.
- **Use objectives** and targets.
- **Be ambitious** but also be realistic and not too disappointed if your expectations are not met initially.
- **Working capital** is critical to your survival – the cycle of a new appointment through work and feeing to cash in the bank can be long. In the meantime, you have to survive while the practice develops.
- **Credit lines** with suppliers, Gazettes, advertising agents are essential. Also consider credit card usage for smaller and ad hoc expenses.
- **Consider a practice loan** from a bank, especially if any significant purchases are required at the outset. The practice loan will need to cover working capital requirements as well.
- **Budgets and cash flow projections** – In the business plan these have to be realistic, bearing in mind the time lag between work and invoicing and the likely delay in new work coming in from marketing contacts.
- **Fees** – Initially, you may have to accept doing different grades of work and therefore full charge out rates are unlikely to be recovered. The target, however, is to employ staff, delegate and ensure that you do only the added value work.
- **Grant support** may be available in your local area. Even if you draw a blank, the enquiry may produce useful information and contacts.
- **The marketing plan** is central to the business plan. Without it the figures are meaningless.
- **Developing a practice** is all about marketing, once the main services are available.

MARKETING

Marketing is a highly specialised skill and often something which does not come naturally to most people. Marketing may require additional internal or external resources to fulfil effectively. The overall marketing umbrella covers advertising, public relations, social media, promotions and sales. Without marketing, you may offer the best services, but no one will know about it. It is important therefore to develop a marketing plan for your services.

Any advertising or other form of marketing undertaking must be:

- Fair and not misleading;
- Avoid unsubstantiated or disparaging statements; and
- Comply with relevant codes of practice and guidance in relation to advertising.

Further consideration of marketing issues is included within the [work provision](#) section of this guide.

REGISTRATION WITH HM REVENUE & CUSTOMS

Some or all of the following registrations or notifications may be required to be made to HM Revenue & Customs:

Self employment notification

If commencing as a sole practitioner, a partner in a partnership or as a self-employed consultant then you will need to notify HM Revenue & Customs of this for self-assessment and National Insurance purposes. Further information can be obtained from [HMRC website](#)

PAYE

If you intend to employ staff then you will require to register as an employer. This must be done before the staff's first pay day and so should be carried out in sufficient time. Registration can be done electronically on the [.gov.uk website](#).

VAT

You must register for VAT with HM Revenue and Customs if your business' VAT taxable turnover is more than the statutory limit. You can register voluntarily if it is below the statutory limit. Further details and to apply for a VAT Registration electronically can be found on the [.gov.uk website](#).

BANKING ARRANGEMENTS

Practice

Consideration should be given to the overall requirements for banking arrangements for the practice. This will include arrangements for the firm's own banking as well as insolvency case funds. Arrangements may require to be made for:

- Firm Current account
- Working capital facilities
- Individual Case accounts
- Client bank account
- Disbursement account
- Credit card processing
- Direct debit facilities

Arrangements will also have to be made for a cashiering function within the practice. This will include arrangements for cases as well as the practice itself. Consideration should be given to the skills and knowledge required for this function. In the early stages of a new practice the use of outsourced cashiering or a part time cashier may be beneficial.

SIP 11 and Clients Money Regulations

An office holder must comply with the requirements in [SIP 11](#) (The handling of funds in formal insolvency appointments). You must ensure that all funds in relation to an insolvency appointment are dealt with in accordance with the Client Money Regulations.

[Client Money Regulations](#)

[Client Money Regulations Help sheet](#)

Insolvency appointments

Funds in relation to individual insolvency appointments are required to be banked separately from firm funds and from funds from other cases. Case funds may be held in individual accounts for each case or a 'global' account where funds for each case are held and are separately identifiable at the bank.

You must ensure that the bank is holding the funds on trust and that case funds are not capable of set-off against any other funds due to the bank in relation to the practice, personally or any other case and cannot be combined with any other funds held personally, by the practice or relating to any other case.

The bank must describe the account in its records in such a way to make it clear that the funds do not belong to the office holder or the firm. For example an account in relation to the liquidation of IJKLM Ltd where John Smith is the liquidator may be opened with an account named "John Smith as liquidator of IJKLM Ltd".

Funds should be held in bank accounts which attract interest unless interest earned would be immaterial.

Case funds should be dealt with in accordance with the [Clients' Money Regulations](#).

Signatories, controls and electronic banking

The appointed office holder must be able to exercise control over the funds in relation to their appointment. It is recommended that an office holder is a signatory to accounts in respect of their appointments, including where possible any general account through which insolvency funds pass.

Where electronic banking is used, sufficient controls over authorisation must be in place to ensure that the office holder has approved any payments in relation to a case prior to funds being drawn even although they may not in themselves actually authorise the payments within the electronic banking system. Controls must also be in place to ensure that only payments authorised by the office holder are actually paid from a case account using electronic banking.

Recording of cheques received

Procedures should be put in place to record cheques received in the post and to ensure that these are then banked promptly. A register of cheques received should be recorded as post is being opened and then frequently reconciled to these cheques being banked in the case bank account.

Insolvency Services Account

The Insolvency Regulations 1994 (as amended) require the liquidator of a company wound up by the court in England and Wales or trustee in bankruptcy in England & Wales to pay all money received by him/her in the course of carrying out his/her functions as such, without any deduction, into the Insolvency Services Account (ISA) kept by the Secretary of State. The money is required to be paid into the account to the credit of the company or bankrupt once every 14 days or forthwith if £5,000 or more has been received.

Transactions are managed through [ISCIS](#) (Insolvency Service Case Information System). If you are likely to be appointed as an office holder in cases where the ISA must be used then you should contact the [Insolvency Service Estate Account Services](#) team to request access to the system.

Banking linked to insolvency software

A number of software suppliers provide facilities to integrate banking services with insolvency case management. These facilities can assist with automation of receipts and payments processing, bank reconciliations, together with other facilities such as direct debit collection. Facilities such as these can assist to strengthen control of insolvency case management.

Disbursement account

It may be useful to set up a disbursement account, separate from the firm's own operating account, to assist with controlling and monitoring amounts which have to be paid by the firm in respect of case expenses where case funds are not currently available.

General client funds account non-interest bearing

In addition to individual case accounts, you may also wish to consider setting up a general client bank account. This would be used in circumstances where funds were received to which the firm has no entitlement but which are unable to be lodged in a specific case account. As an example, it is not uncommon for a cheque in relation to a book debt within a specific case to be made payable to the office holder's firm rather than the specific case. The firm is not entitled to those funds and therefore they cannot be lodged in the general firm account and also would not be able to be lodged in the specific case account. The funds could therefore be lodged in the general client account before being drawn once cleared and paid into the case account.

This account should be non-interest bearing as it could contain funds relating to a number of clients/cases at any point in time and would present difficulties in calculating and apportioning interest earned as a result.

It is important that any funds held in a general client account are withdrawn as soon as practically possible and should not be held in the account for any extended period of time. The account must be reconciled frequently against a detailed listing of the clients/cases the funds belong and in accordance with the Clients' Money Regulations.

Alternate arrangements

In addition to arrangements which may be in place to ensure adequate control and progression of cases during any period of incapacity, you should also ensure that arrangements are in place to allow case bank accounts to be operated effectively during any period of absence. The Clients' Money Regulations require that Alternate arrangements are in place for sole practitioners.

You may wish to seek independent legal advice on your own position in relation to any alternate arrangements to be put in place.

Annual compliance review of client accounts

The firm must conduct a review at least annually, to consider whether the systems it has maintained have been adequate to enable it to:

- Comply with the Clients' Money Regulations;
- Carry out the reconciliations in accordance with the Clients' Money Regulations;
- Prepare any return required under the Clients' Money Regulations and to confirm compliance with the Clients' Money Regulations.

The annual compliance review should be conducted by a partner or other senior person who is not involved in the oversight of clients' money. Significant breaches of the regulations are required to be reported by the firm to ICAS.

Supporting accounting systems

In addition to case management accounting, you will also require to have in place adequate accounting systems for the practice generally.

INSURANCE MATTERS

Insurance is essential in a number of areas.

Professional Indemnity Insurance

A requirement of obtaining an Insolvency Permit is that you have appropriate professional indemnity insurance. Guidance on this is available from [icas.com](https://www.icas.com) by searching 'PII'.

In addition to compulsory professional indemnity insurance, you should consider:

Permanent Health Insurance

It is a means of providing regular monthly income if you are unable to work because of accident or illness.

Critical or Serious Illness Insurance

Pays out a lump sum on diagnosis of serious illness, disability or accident that leaves you permanently disabled. Funds can be used for replacement income or to repay outstanding debts, eg mortgage, loan, etc.

Personal Pension Plans and Self Invested Personal Pensions

It is not uncommon for sole practitioners or partners in small firms to have made inadequate provision for their retirement. Personal Pension Plans and Self Invested Personal Pensions are well known to practitioners as a tax-efficient means of making provision.

Employee Pension Arrangements

Every employer with at least one member of staff has a duty to put those employees who meet certain criteria into a workplace pension scheme and contribute towards it. This is called automatic enrolment ('auto-enrolment'). It is called this because it is automatic for your staff – they do not have to do anything to be enrolled into your pension scheme. But it is not automatic for you. You need to take steps to make sure they are enrolled. Further information and guidance is available from [The Pensions Regulator](https://www.thepensionsregulator.gov.uk)

General insurance matters

In addition to the **All Risks** policy which covers property, contents, etc, consideration should be given to insurance covering:

- **Interruption of business** through, for instance, fire. You may wish to extend the cover to provide for malicious damage.
- **Specialist cover for computers** should be looked at closely. Practices are often heavily reliant on computers and can be hit hard if something goes badly wrong. Consider cover for laptops, including those away from the premises, software and disks in use or stored away from the office.
- **Employer's liability** insurance is compulsory and is necessary to cover potential claims from staff who may have accidents at work.
- **Fidelity insurance cover** for all employees. This may be extended to cover third party computer fraud.
- **Public liability cover** for protection of members of the public while visiting your premises.

STAFF

Staff are the key resource to the delivery of service for your firm. It may be that in the early stages of the business you do not need staff. As the practice grows you will require staff to ensure that you are able to devote more time to development or winning business or just simply to ensure that your working practices are more cost efficient.

All principals, staff and subcontractors should be competent to carry out their work and procedures should be put in place to ensure such competency.

The main areas to consider are:

- Recruitment
- Development and training
- Allocation of staff to assignments
- Supervision and review of work
- Access to reference material and other resources

Recruitment

Before recruiting any members of staff, you should identify your requirements. This will include consideration of current and future expected work volumes and any existing staff structure. You will also need to consider the specific qualities required to fill any identified vacancy.

References should be requested for any persons being offered a position. Depending upon the type of work being undertaken you should also consider whether contact with vulnerable persons will be part of the employee duties and whether it would be appropriate to request [PVG](#) disclosure checks.

Contracts

It is important that all staff, including sub-contractors and consultants, have up to date contracts of employment or agreements. These contracts and agreements should include a clear statement that the individual should at all times operate within the ICAS Code of Ethics and that failure to do so is a disciplinary matter or can lead to termination of the agreement. This brings the matters in the fit and proper form etc. within the contract of employment and ensures that the practice has the appropriate sanction available in the event of a gross breach of the code of ethics.

Every employer has a legal obligation to provide employees with a written statement of the terms and conditions of employment. This applies to all employees, irrespective of the hours they work. The written terms and conditions must be provided within eight weeks of the start of employment.

You must ensure that employees receive the [National Minimum Wage](#). You may wish to consider adopting the [Living Wage](#) and becoming a [Living Wage Accredited Employer](#).

Staff handbook

A staff handbook is a useful document to collate all policies and procedures which an employee requires to be aware of. The staff handbook can be a useful resource for staff during the course of their employment and can also be useful as part of a staff induction programme.

The handbook may cover such areas as:

- Introduction to the firm – background, values, etc.
- Definitions – terms used through the handbook.
- Payroll information – when payment is made, overtime cut off arrangements, other benefits, etc.
- Holiday policy – entitlement, approval procedures, etc.
- Work life balance policies – flexible working requests, working from home, maternity/paternity/adoption leave, etc.

- Expectations about behaviour – standards of conduct (including computer acceptable use), absence reporting, etc.
- Disciplinary, complaints and grievance procedures.
- Office procedures – mail, e-mail, internet usage, signing protocols, telephone, expense approval, etc.
- Health and safety.
- Leaving the firm.

Employees should sign a statement acknowledging that they have read, understood and agree to adhere to the policies and procedures within the staff handbook.

Staff evaluation and training

It is important that the staff employed are competent to carry out the work they are to perform. You should therefore ensure that there are processes in place to evaluate staff performance, identify any gaps that exist in knowledge or identify areas for improvement, and to follow up with appropriate training or development opportunities. Staff may also have specific Continuing Professional Development (CPD) requirements if they are members of professional bodies.

The ICAS approach to CPD requirements of its members (and which can be used as a method for all staff) aims to make CPD relevant and focussed by supporting them in their lifelong learning, helping them to remain effective in their chosen careers and gaining them respect for continually updating their professional expertise. The process involves 4 steps:

Step 1: Define current and future role(s)

Step 2: Decide on training and development needs

Step 3: Develop and undertake a personal development or CPD programme.

Step 4: Reflect and record

Further information is available by [searching 'CPD' on icas.com](#)

Annual Fit and Proper review

You must consider whether employees and others involved in insolvency work are fit and proper. In addition to any procedures that are put in place to consider the fit and proper status when a person joins the practice, the fit and proper status should be reviewed at regular intervals. While immediate notification should be encouraged of anything that has a bearing on an individual's fit and proper status, it may be beneficial to update this information annually as part of independence confirmation procedures or appraisal systems to ensure that a regular review is completed and to provide an opportunity for any missed disclosures to be provided.

Further information on fit and proper checks can be found in the [ETHICAL CONSIDERATIONS](#) section.

Annual Anti Money Laundering Training

Compliance with the Money Laundering Regulations is a high risk area for any professional practice. It is therefore important that regular training is undertaken by all principals and employees operating within a firm to ensure that they are not only up to date with current requirements but also to act as a refresher and keep awareness high in their mind of priorities. It is therefore recommended that anti money laundering training is carried out on an annual basis.

Further information is available within the [ANTI MONEY LAUNDERING](#) section.

HEALTH AND SAFETY

Obligations under health and safety legislation shall fall into two areas:

- Health and safety relating to your practice
- Health and safety responsibilities in respect of insolvency appointments

Protecting the health and safety of employees or members of the public who interact with you is a key obligation as breaches of health and safety legislation can have a catastrophic effect. In addition to reputational issues, penalties under the legislation will be personal and can include fines, imprisonment and director disqualification.

Duties

Health and safety is primarily governed by the Health and Safety at Work Act 1974 (HSWA) and supporting regulations. In summary, employers have a duty to conduct their business in such a way as to ensure, so far as is reasonable practicable, that employees and the public alike are not exposed to reasonably foreseeable risks of injury which can be attributed to a way in which the business was conducted.

Insolvency appointments

While it is clear that health and safety duties will apply to your employees and business premises, this duty will also extend to you as an insolvency practitioner, in relation to appointments as HSWA extends this duty to a person who has, to any extent, control of premises, plant or substance. The terms of appointment of an insolvency practitioner are such that they are likely to be considered to be 'in control'.

Because of the personal responsibility it will not be possible to rely, for instance, on any health and safety officer or any other employee of the insolvent who may have previously had responsibility in this area. You may therefore wish to consider whether it would be beneficial to have a health and safety audit carried out at the commencement of an appointment which will highlight risks to be addressed.

It is recommended you ensure that your professional indemnity insurance provides adequate cover in this area.

Health and safety policy

While it is a legal obligation to provide a written health and safety policy where you have 5 or more employees, ICAS recommends that in all instances a health and safety policy should be developed. This should cover your approach to health and safety encompassing your responsibilities directly in relation to the practice and also responsibilities in relation to appointments.

The Institute of Directors and Health and Safety Executive have published a useful [guide](#) which can assist you with meeting your legal obligations. Further information can also be obtained from the [Health and Safety Executive website](#).

COMPLAINTS PROCEDURES

The nature of insolvency appointments is such that people are regularly aggrieved. They may not distinguish between what they consider unjust treatment due to the position they are in through the insolvency and what they consider as unjust treatment by the insolvency practitioner or their staff. They may wish to raise a complaint and therefore it is important that complaint procedures and policies are in place.

Complaints should be regarded as any significant expression of dissatisfaction about the manner in which a person has been dealt with or situation handled. The disaffected party may not say "I wish to complain about..." or put their position in writing and therefore case staff should be encouraged to listen carefully and identify possible complaints at an early stage and discuss these with the insolvency practitioner.

An Insolvency Guidance Paper on dealing with complaints has been issued jointly by all RPBs:

[Insolvency Guidance Paper 5](#) – Dealing with complaints

Internal complaints process

If a complaint is received or identified, you should immediately investigate it. If the investigation finds that the complaint is wholly or partially justified, then appropriate action should be taken to resolve the complaint. This may be by way of apology, provision of information or whatever other action is appropriate.

The duty to investigate complaints does not require a formal complaints procedure however, it might be advisable to have one in place. A good complaints procedure should include:

1. Review of the complaint by an insolvency practitioner or partner within the firm other than the insolvency practitioner responsible for the case;
2. Reference to the complainant where the facts are not clearly established;
3. Prompt rectification of the error, with apology where appropriate;
4. Full explanation to complainant if complaint unjustified. This may best be achieved face to face, but in any case the explanation should be sent to the complainant in writing;
5. If the complainant remains dissatisfied, notify them of their right to make a complaint to the Complaints Gateway;
6. Drawing serious complaints to the attention of the senior partner in the firm.

It is important that consideration of a formal complaints procedure is made and that the procedures adopted are evidenced in writing. In the event of a complaint being made against you, in order for ICAS to consider as part of a referral from the Complaints Gateway, it is essential that such a complaint be documented and the processes followed to investigate the complaint are also fully documented, including file notes of conversations with the complainant.

You should always consider at the earliest possible opportunity whether the complaint should be notified to your PI insurers.

Disciplinary process

The firm should have a disciplinary process in place to deal with minor and serious breaches of conduct which may be identified during a complaint. A disciplinary policy in relation to staff should be set out in the staff handbook. It is recommended that appropriate provisions are contained within the partnership agreement, shareholders agreement or similar to deal with the conduct of firm principals.

PLANNED AND UNPLANNED ABSENCES

Part of being in business is planning to be able to take holidays. Not a number one priority in the first few months, but a break is essential to recharge the batteries. The sole practitioner also has to:

- **Arrange back-up**, especially to deal with cover for unexpected illness or urgent matters when on holiday. A formal arrangement with an alternate should be regarded as best practice and is as much in your own interests as that of those involved in your cases. Under the **Clients' Money Regulations**, an alternate is compulsory for the sole practitioner who intends handling clients' money. Access to specialist assistance, membership of training groups, etc, can also be very helpful.
- **Plan holidays** well in advance. Tell key people who may need to contact you at short notice when you will be away – if they know and their enquiry is not time critical they will be willing to wait until your return.
- **Long-term illness** poses the greatest problem for a practitioner until quality staff and partners are around. Until that point consider making arrangements as outlined above. Insurance should also be considered.
- **Plan for succession** some years in advance.

EDUCATION AND TRAINING

Training is of the utmost importance for your practice. As a professional firm, you must ensure that you have the technical capabilities to carry out the work which you are requested to perform. The level of training you will require will depend on your work base, the areas in which you are authorised to carry out specialist work, and what work you are being asked to do.

Continuing Professional Development

Your training does not stop when you qualify as an Insolvency Practitioner! As a professional, you have a responsibility to keep up to date with all relevant developments within the profession. The nature of your work as a Chartered Accountant is evolutionary; the insolvency profession has seen the introduction of many new standards; the Joint Insolvency Committee is constantly devoting its attention to finding new solutions to difficult insolvency problems.

In an environment where there are so many changes, you must keep up to date with these developments to give the best possible service.

You should therefore, as a minimum, ensure that you and your staff undertake suitable professional development in your practice areas. Most people still prefer to take some face to face courses. Typically, these sorts of courses would be useful:

- **Annual technical update courses** for insolvency explaining all new insolvency standards, changes to legislation and case law updates.
- **Industry specific courses** on a "need to know" basis for the people who will be working in these sectors.
- **Soft skills courses** covering areas such as IT skills, management practices, and interpersonal skills.

Training, however, can also involve keeping up to date through reading business newspapers and magazines, network meetings, online material and so on.

The ICAS CPD model places the onus on each member to decide what their professional development needs are and how to address them through a variety of CPD activities. Members are asked to focus on the outcome of CPD activities, as opposed to the time spent on them. Further information on CPD can be found by searching 'CPD' on [icas.com](https://www.icas.com).

ICAS offer a range of learning and development courses in association with BPP. Further information is available by searching 'learning and development' on [icas.com](https://www.icas.com)

Exit Strategy / Succession Planning

While the focus of starting in practice will be on the short and medium term, it is worth considering at an early stage your exit strategy or succession plans. Succession issues vary from firm to firm and having a strategy in place is imperative for the continuity of the practice. Planning for succession or exit can take many years. Issues such as ensuring the structure of the business is appropriate and taxation considerations as well as the time to actually find the right successor all takes significant time. While it is unlikely that future plans will ever fall in place exactly as envisaged, some planning will assist in making any transition smoother and more effective.

Further information which may be of assistance can be obtained by searching 'succession planning' on [icas.com](https://www.icas.com)

A [guidance note](#) for IPs leaving a practice has been issued by ICAS and is available by searching 'insolvency guidance' on [icas.com](https://www.icas.com)

REGULATION

The key points to be considered in an increasingly regulated world are:

- **Practising certificate** – If you are a CA then you will require a practising certificate in addition to an insolvency permit. Further information can be found by searching 'practising certificate' on [icas.com](https://www.icas.com).
- **Insolvency** – Discuss with ICAS any notifications that may be required to reflect changes to your Insolvency Permit.
- **Consumer credit** – IPs are excluded from the requirement to be licensed in relation to certain debt related activities under consumer credit legislation. If you intend to provide services beyond the scope of the exclusion (which would include debt advice where you do not anticipate being able to take an appointment) then you will require either authorisation from the FCA or to be authorised under the [DPB](#) scheme. Further information is available on [icas.com](https://www.icas.com) by searching 'consumer credit'.
- **Investment business/general insurance** – This may not appear essential but you may find that some activities which can be linked to insolvency require authorisation under The Financial Services and Markets Act 2000. This can be a bit of a minefield. Further information on when authorisation is required can be obtained on [icas.com](https://www.icas.com) by searching 'DPB'.
- **Training CA Students** – Needs authorisation from ICAS. Consider it and plan well in advance. Looking to the medium term it can be useful for expansion and succession.

WORKING IN REGULATED AREAS

Insolvency

Do I need to be authorised?

ICAS members who act as insolvency practitioners are required to hold an ICAS Insolvency Permit or, with the permission of the Council, an equivalent licence from another body. Insolvency practitioners who are not CAs can also hold an Insolvency Permit issued by ICAS.

Insolvency practice covers the following appointments in relation to companies:

- Company liquidators, including liquidators in members' voluntary winding up;
- Company administrators and receivers; and
- Supervisors of compositions or schemes for companies under Part I of the Act.

In relation to individuals, it covers:

- Interim trustee or trustees in sequestrations, trustees in bankruptcy or interim receivers of property;
- Trustees under trust deeds for creditors or under deeds of arrangement for the benefit of creditors;
- Supervisors of compositions or schemes under Part VIII of the Act; and
- Administrators of insolvent estates of deceased individuals.

Investment Business/General Insurance

Since financial services first became regulated with the Financial Services Act 1986, the trend towards consumer protection has continued to grow and the current legislation is now contained in The Financial Services and Markets Act 2000 (the Act). ICAS is a Designated Professional Body (DPB) under the Act. This enables ICAS to license firms so that they may take advantage of an exemption from the general prohibition on carrying on activities that are regulated under the Act.

ICAS has published a [Designated Professional Body Handbook](#) for licensed firms. This is also available to download from icas.com. The handbook contains provisions about the conduct of activities within the DPB arrangements including those relating to general insurance.

Do I need to be licensed?

Investment business/general insurance can be a minefield – it is important to make sure that you are not caught out. Offering investment business or general insurance services without a DPB licence or direct authorisation by the Financial Conduct Authority (FCA) is a criminal offence. On the other hand, the new DPB regime offers firms much greater scope to become involved in a holistic approach for instance to a restructuring assignment and usually leads to greater rewards, directly or indirectly, for the firm. So, it is one area of practice to which serious consideration should be given.

Applications

All applications to work in any of the regulated areas should be made to [ICAS Regulation](#).

BONDING

If you hold a licence and are taking appointments, you must have in place security for the proper performance of your functions. The security takes the form of a bond issued by a surety or cautioner. There are two elements to the security; the enabling bond and the specific penalty. Details of the bonding requirements are set out in Part 3 and Schedule 2 of the [Insolvency Practitioners Regulations 2005](#).

Every appointment taker must have an enabling bond under which the surety or cautioner covers a liability of £250,000. This is renewed annually. The original copy of the enabling bond must be sent to ICAS. If you are on their rotas, a copy should also be sent to HM Revenue & Customs and the Official Receiver, and is normally required to accompany any consent to act in relation to court appointments.

In addition, for each insolvency appointment, there is issued under that bond a specific penalty which indemnifies creditors of that case against losses caused by the fraud or dishonesty of the insolvency practitioner, or where the fraud or dishonesty is committed by any person with the connivance of the insolvency practitioner. The specific penalty bond must be for the level of assets available to preferential and unsecured creditors subject to being a minimum amount of £5,000 and a maximum of £5m being insured. You must obtain a specific penalty bond for every case on which you are appointed, which includes voluntary arrangements where you are appointed as nominee.

A return of specific penalties must be filed with ICAS and the insurer on a monthly basis. This return must include details of new appointments, cases for which the bond needs increasing and cases on which you have obtained your release. Where the bond provider issues specific penalty bonds that have to be renewed periodically, then details of those bonds that are renewed should also be provided. A nil return must be submitted for any month where you have no new appointments, increases or releases.

You must ensure that systems and procedures are in place to identify cases where a specific bond should be increased due to higher than anticipated asset realisations.

Details of brokers who can assist with bonding requirements can be obtained by contacting ICAS insolvency regulation.

Email: icasinsolvency@icas.com

Tel: +44 (0)131 347 0244

MONITORING VISITS

Practice monitoring visits

Upholding standards is one of ICAS's main missions and ICAS Practice Monitoring is committed to achieving this mission.

The ICAS Practice Monitoring regime has been designed to support the work of its Practising Certificate holders by reassuring the public and other regulators that its firms are complying with regulatory requirements.

The Practice Monitoring function monitors all areas of accountancy practice, except for audit and insolvency activities which are dealt with by different teams in the Regulatory Monitoring department.

The goals of Practice Monitoring are:

- Maintenance and enhancement of standards within accountancy practice.
- Helping and educating members to achieve this.

Further details on Practice Monitoring are available on the [ICAS website](#).

Insolvency monitoring visits

The Insolvency Act 1986 empowers the Secretary of State to recognise certain professional bodies (known as Recognised Professional Bodies (RPBs)) for the purposes of authorising suitable individuals to act as insolvency practitioners (IPs).

All IPs in the UK require to be authorised by an RPB or by The Insolvency Service as a Competent Authority. ICAS is an RPB and not only authorises ICAS members as IPs, but also authorises non-members, known as Affiliates, who have met the examination and competence requirements.

Every RPB is required to regulate the practice of their insolvency professionals. ICAS therefore maintains and enforces rules to ensure that our authorised IPs are fit and proper persons and meet acceptable requirements as to education, practical training and experience. ICAS conducts all regulatory activities in accordance with the [Memorandum of Understanding](#).

Each RPB is responsible for ensuring that all their authorised IPs are monitored in accordance with the [Principles for Monitoring](#).

Upholding standards is one of ICAS's main missions and ICAS Insolvency Monitoring is committed to achieving this mission.

[ICAS Insolvency monitoring](#)

[A Guide to your Insolvency Monitoring Visit](#)

COMPLAINTS

Complaints gateway

All complaints against Insolvency Practitioners operating in Great Britain must be submitted in the first instance to a [single complaints gateway](#) operated by the Insolvency Service, which is part of the Department for Business, Innovation and Skills.

Insolvency practitioners should ensure that insolvency staff is aware of the firm's complaints procedure and policy and that a complaint can be raised at any time against an insolvency practitioner through the Complaints Gateway and be able to appropriately direct those indicating they wish to make a complaint to the appropriate place.

The Insolvency Service reviews complaints to ensure that they fall within the scope of complaints that the licensing bodies can consider. If they consider that the complaint has any prima facie evidence of being valid then they will refer the complaint to ICAS for investigation. Further information can be found on the [Insolvency Service's complaints gateway](#).

Disciplinary process

Investigation

If a complaint is referred to ICAS by the Insolvency Service a Case officer will be appointed to make preliminary enquiries to determine whether or not there are sufficient grounds for further investigation. You may be contacted to seek your response to the complaint or asked to provide further information. In some cases, the complaint may be dismissed without any contact with you.

When the Case officer is satisfied that sufficient enquiries have been made, the complaint will be assessed to determine whether there are grounds for further investigation. If it is concluded that there are grounds for further investigation, the Case officer will refer the matter to the Investigation Committee.

The Investigation Committee is responsible for the investigation and assessment of complaints referred to it by Case Officers in the Investigations Department. It decides whether or not a complaint should be upheld and the level of sanction which should be applied.

The Investigation Committee is made up of a combination of Chartered Accountants and Public Interest Members, with a broad and varied range of professional experience.

When a complaint is referred to the Investigation Committee, the Convener of the Committee will appoint an Investigator to conduct detailed enquiries. The Investigator will usually be the Case Officer, with assistance from a member of the Committee. However in certain circumstances, it will be more appropriate to appoint a Panel of Committee members to act as Investigators; for example, if the facts involved in the complaint are particularly complex or technical.

At the conclusion of the investigation, the Investigator will assess the heads of complaint in light of the available evidence. A report will then be prepared, including a summary of the investigation and making a recommendation for disposal of the complaint. In most cases, the Investigator's report is referred to an Adjudication Committee, which is responsible for deciding whether or not the complaint should be upheld. Adjudication Committees consist of three or more members of the Investigation Committee, including at least one Chartered Accountant and one Public Interest Member. If one or more of the heads of complaint is upheld, the Committee will determine a fair and appropriate sanction.

In some circumstances, the Committee will decide to refer the matter to the Discipline Panel for determination. This would involve a formal hearing before a Discipline Tribunal.

Sanctions

Where a complaint is upheld, the Investigation Committee will make reference to its sanctions guidance when assessing the appropriate level of penalty. This document sets out the process which the Investigation Committee will follow when making a decision. It also includes guidance on the level of sanction which may be appropriate for certain offences; together with general information on orders and financial penalties. The ICAS Sanctions Guidance incorporates the Common Sanctions Guidelines agreed between the RPBs and the Insolvency Service.

Download [ICAS Sanctions Guidance PDF \[1.093 KB\]](#)

Publicity

If a complaint is upheld by the Committee, the outcome will be publicised on the ICAS website, in CA Magazine and on the Insolvency Service website.

Further information on the ICAS complaints and disciplinary process is available by searching 'insolvency complaints' on icas.com

CONTINUED PROFESSIONAL DEVELOPMENT

[See Education and training](#)

ANTI MONEY LAUNDERING

In UK law, money laundering is defined very widely, and includes all forms of handling or possessing criminal property, including possessing the proceeds of one's own crime, and facilitating any handling or possession of criminal property. Criminal property may take any form, including in money or money's worth, securities, tangible property and intangible property.

Money laundering can be carried out in respect of the proceeds of conduct that is an offence in the UK as well as most conduct occurring elsewhere that would have been an offence if it had taken place in the UK.

As an Insolvency Practitioner you require to have appropriate policies and procedures in place to meet obligations in respect of appointments being taken.

The General Practice Procedures Manual (GPPM) contains further information and templates.

Further information to help you comply with legislative requirements is available by searching 'anti money laundering' on [icas.com](https://www.icas.com)

ANTI BRIBERY

Bribery involves the provision of money or a gift to effect a change in the behaviour of the recipient of that money or gift.

Prior to the Bribery Act 2010 being introduced, bribery was recorded within UK legislation as a common law offence. The introduction of the Act and its application from 1 July 2011 onwards has formalised the law around bribery and made it clearer to businesses what constitutes an offence and what they should be doing to address the risk of bribery within their organisations.

International enforcement agencies such as the Serious Fraud Office are collaborating on cross border cases, increasing the chance of detection of bribery and successful prosecution. Companies should review their existing procedures, processes, controls, governance and culture, their risk profile and anti-bribery programmes.

The Bribery Act 2010 came into law on 1 July 2011 and includes:

- A general bribery offence of offering a bribe;
- A specific offence relating to the bribery of foreign public officials;
- A new crime of "failure to prevent" bribery

The "failure to prevent" crime means that commercial organisations unable to demonstrate that they have implemented "adequate procedures" to prevent corrupt practices within their organisation or by third parties on their behalf, could be exposed to unlimited fines as well as other consequences, such as prevention from tendering for government business.

Punishments under the new law:

- The offences of bribing another person, being bribed and bribing a foreign public official are punishable either by an unlimited fine, imprisonment of up to 10 years or both.
- The new corporate offence of failure to prevent bribery is punishable by an unlimited fine.

In order to assist with implementing "adequate procedures" to prevent corrupt practices, you should establish and document an anti-bribery policy. This should cover:

- Reporting responsibilities within the firm.
- A risk assessment covering the firm's potential exposure to bribery.
- A code of conduct for all employees (including details of what you consider to be reasonable and proportionate limits for corporate hospitality and gifts).

Should you become aware, or suspect, that an act of bribery has occurred in an insolvency appointment situation you must bear in mind your responsibilities under the Money Laundering Regulations and report this to your MLRO.

Further information and access to further resources is available by searching 'anti bribery' on icas.com.

DATA PROTECTION ACT

The Data Protection Act 1998 (DPA) sets out how 'personal information' about living individuals should be processed and how an individual's right to privacy should be protected. It places duties on those who decide how and why such data is processed.

Processing personal information includes obtaining, recording, using, holding, retrieving, disclosing, erasing or destroying personal data.

Personal information held could relate to cases, employees, suppliers, prospective cases or other members of the public.

Data controller notification

An insolvency practitioner will have to consider the requirements of the DPA not only in relation to their own practice but in relation to specific insolvency appointments. A distinction can be drawn between personal data which is attributable to the activities of the insolvent company or individual for whom they act (company data) and personal data which they generate as a result of their responsibilities as practitioners (practitioner data).

Insolvency practitioners will usually need to notify the [Information Commissioners Office](#) (register as a Data Controller) individually:

- For personal data which they generate as a result of their personal responsibilities as a practitioner;
- When dealing with an insolvency in which they do not have agency status to ensure this notification also covers any processing which their actions or decisions cause to happen;
- When acting as agent of an insolvent company, to ensure that the company is notified and complies with the DPA.

The terms of appointment of insolvency practitioners are important. The DPA will have different implications for the different types of appointments.

You should also consider whether the firm requires to notify the ICO of their processing of personal data in their own right.

Registrations as Data Controllers require to be renewed annually.

Data protection principles

Every company or business that holds paper or electronic data that relates to living individuals has an obligation under the Data Protection Act 1998 to safeguard personal and other such data and must meet the eight data protection principles of good information handling.

Procedures to ensure confidentiality and proper use of personal data held should include:

- 1) **Fairly and lawfully processed** – *Individuals should be told what their data will be used for and how it will be processed.*
- 2) **Processed for specified purposes** – *There should be a specific reason for processing personal information eg records required to send out invoices, quotations, marketing literature, services/products etc.*
- 3) **Adequate, relevant and not excessive** – *Only information that is necessary for the purpose for which it was obtained should be held. Eg banking details should not be held if no banking transactions take place.*
- 4) **Accurate and where necessary kept up to date** – *Personal data should be accurate and kept up to date.*
- 5) **Not kept for longer than is necessary** – *In some instances the law requires certain information to be held for a set period; for example, annual accounts.*

- 6) **Processed in line with the rights of the individual** – *Personal details held should not be made available to any other source without an individual's express permission.*
- 7) **Kept secure** – *Systems and procedures should be in place to ensure security and confidentiality of information held. Such systems would include:*
- All employees should sign a formal undertaking concerning the need to protect confidentiality of information. It is suggested that all employees should be required to sign a formal undertaking annually. It is suggested that this is carried out at the same time as confirming 'fit and proper' status, independence and AML confirmations.
 - All employees should take reasonable precautions to prevent unauthorised access to personal data.
 - E-mail should be used to send and receive confidential information only where no other methods are available, or with the express permission of the individuals concerned. In the various monetary penalties and undertakings issued by the ICO he has effectively created case law requiring encryption of personal data.
 - Businesses should set up password protection procedures and should appropriately authorise access to personal data only where necessary in order for an employee to carry out their duties.
 - Appropriate back-up procedures should be in place to ensure safety of personal data held and precautions taken to protect back-up media from theft, loss or damage (including water and fire damage).
- 8) **Not be transferred to countries outside the European Economic Area unless there is adequate protection for the information** – *When operating with companies outside the UK, precautions should be taken to ensure the sending of employee or supplier data overseas is handled correctly and the individual's right to privacy is maintained.*

Right to access information

The DPA also gives 'individuals' the right to see what information an organisation holds on them and the right to have the information corrected if it is wrong. This request by an individual is known as the 'right of subject access'. If such a request is received it must be dealt with within 40 days of the date of receiving it. Organisations can charge a fee of up to £10 for responding to a request.

As an insolvency practitioner you should take care to ascertain whether any application received is being made in respect of data held by you as the insolvency practitioner or by the insolvent.

In limited circumstances, it may be possible to claim an exemption from subject access requests by virtue of a statutory order made under section 31 of the DPA. This may for instance enable personal data held by office holders for the purposes of their functions under the Company Directors Disqualification Act 1986 to be withheld on a subject access request in any case in which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions. There are no exemptions for commercial sensitivity of information.

Non-compliance with the Data Protection Act can result in hefty fines or a complete ban on holding such data.

Lexis Nexis have produced a useful [summary of data protection issues for IPs](#).

CONSUMER CREDIT LICENCE

Where a firm is involved in consumer credit activities they must either be authorised to do so by the Financial Conduct Authority (FCA) or be exempt from such authorisation by conducting activities under the oversight of ICAS, a Designated Professional Body (DPB) under Part 20 of the Financial Services and Markets Act 2000.

If your firm is authorised by the FCA for investment business activities then you must also be authorised by the FCA for consumer credit activities. Exemption from being authorised by the FCA for consumer credit activities can only be provided where the consumer credit activity being carried out is incidental and complementary to other professional services being carried out for a client which in themselves are not consumer credit activities and which are regulated by the DPB.

What are consumer credit activities?

Firstly there must be a 'consumer client'. That is services are being provided to either:

- A natural person;
- A partnership of two or three persons, one of whom is a natural person; or
- An unincorporated body that does not consist entirely of bodies' corporates and is not a partnership.

Secondly the service must be credit activities. These are:

- Credit broking;
- Debt adjusting;
- Debt counselling;
- Debt administration;
- Entering into a regulated credit agreement as a lender;
- Exercising/right to exercise lenders rights and duties under regulated credit agreement;
- Agreeing to carry on a regulated credit activity; or
- Providing credit information services

Exclusion for insolvency practitioners

Where an insolvency practitioner, or a member of their staff, is carrying out certain regulated consumer credit activities as an office holder or in reasonable contemplation of themselves being appointed as an office holder then they are excluded from the requirement to be regulated under the consumer credit regulation regime. It should be noted that the circumstances are limited and therefore this exclusion cannot be relied upon for all services and work that you may carry out as an insolvency practitioner.

While acting as an insolvency practitioner, they and their staff are excluded in respect of the activities of:

- Debt adjusting;
- Debt counselling;
- Debt collecting;
- Debt administration; and
- Providing credit information services.

When acting in 'reasonable contemplation of appointment' an insolvency practitioner and their staff are excluded in respect of the activities of:

- Debt adjusting;
- Debt counselling; and
- Providing credit information services.

You should note that DAS is debt adjusting for consumer credit regulation purposes and will not result in an appointment as an insolvency practitioner. If you are advising on this then you will not be able to rely on the 'reasonable contemplation of an appointment' exclusion.

Licence requirement

Careful consideration must be given to whether you will be carrying out consumer credit activities which will not be covered by the insolvency exclusion provisions and if so whether you will be able to be exempt from FCA authorisation under the DPB exclusion. Carrying out regulated consumer credit activities without the appropriate authorisation, exemption or exclusion is a criminal offence and could result in serious consequences.

The process of a firm obtaining FCA authorisation is complex and detailed. Consequently it is likely that the process will take a number of months to complete. You should therefore consider at an early stage whether FCA authorisation will be required and ensure that sufficient time is allowed for this to be obtained before commencing practice.

For further information search 'consumer credit' on [icas.com](https://www.icas.com)

ETHICAL CONSIDERATIONS

ICAS's ethical guidance provides practical assistance for the general practitioner. You should therefore ensure that you are aware of and follow the guidance given in it.

In particular:

- **Independence**

As an ICAS IP you must be, and be seen to be, acting in an independent manner. Factors which may impinge on this include being dependent on the fees from a particular source or performing insolvency services for a client of the firm. In all cases, you must watch for issues in which your independence could be seen to be impaired. If you have a conflict of interest, you must consider this carefully.

- **Conflicts of interest**

From time to time situations may arise where there is a potential for conflict between the firm and its clients or conflicting interests arise between different clients.

You should have in place procedures to identify any such conflicts and should take all reasonable steps to manage these, bearing in mind that perception is always a more difficult hurdle to overcome. Various safeguards can be implemented and, of course, the ultimate safeguard is to refuse to act.

- **Confidentiality**

You must respect the confidentiality of the information which you receive about your client in carrying out your duties as a professional advisor. Any staff on the assignments should also respect the confidentiality of the information they receive.

You can receive guidance from the ICAS Legal Services Department where you have a question to which you cannot find a solution. However, if using this service, it is very important that you give the Legal Services Department the full facts so they can give you the most appropriate advice.

Email: ethicalenquiries@icas.com

Tel: +44 (0) 131 347 0271

In all cases, an overall rule for guiding your activities should be that where there is a conflict between your professional duty and economic benefit, **professional duty should come first**.

Demonstration of consideration of ethical matters for each appointment

You should ensure that procedures are in place to demonstrate the steps that you have taken and the conclusions you have reached to identify, evaluate and respond to any threats in the lead up to and during each insolvency appointment. The records maintained should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of your actions.

Fit and Proper review

The [Memorandum of Understanding](#) requires ICAS, as a Recognised Professional Body, to have adequate rules and practices to make sure that those granted an insolvency permit are fit and proper to act as an insolvency practitioner. The RPB must have regard to the matters set out in Regulation 6 of the Insolvency Practitioners Regulations 2005, amongst other things.

IPs should be complying with the fundamental ethical principles to be fit and proper.

If an individual admits that they do not meet all the fit and proper standards, this does not necessarily prevent that individual from being authorised. The Insolvency Permit Committee will weigh up the implications of all the circumstances. An individual who knowingly withheld information from the Insolvency Permit Committee would not be fit and proper to act as an insolvency practitioner.

Employees and other parties working on insolvency appointments

An insolvency practitioner should also consider whether employees and others involved in insolvency work are fit and proper. It is recommended that procedures cover:

- Other principals in the firm;
- Employees involved in insolvency work (including students);
- Consultants involved in insolvency work on the firm's behalf;
- Sub-contractors doing insolvency work on the firm's behalf; and
- Anyone else whose work the insolvency practitioner relies on when carrying out insolvency work.

The procedures which a firm should introduce to assess the fit and proper status of those mentioned above will vary depending on the size and structure of the firm.

APPENDIX A – **Example of Fit & Proper form for individuals** provides a template that may be of use in assessing fit and proper status. New recruits, employees newly involved in insolvency work and others mentioned above for the first time should be required to fill in such a form. It may be easier to apply these procedures to all employees rather than make artificial distinctions.

The fit and proper status should be revised and updated, or a new form completed, at regular intervals. It may be easier to update this information annually as part of independence confirmation procedures or appraisal systems. Immediate notification should be encouraged of anything that has a bearing on an individual's fit and proper status.

In accordance with quality control standards, annual written confirmation of compliance with a firm's policies and procedures on independence should be obtained from all firm personnel required to be independent.

OVERSIGHT REGULATORS AND GUIDANCE

Insolvency Service

The Insolvency Service is an executive agency of the Department of Business Innovation and Skills with headquarters in London. They have around 1,900 staff, operating from 31 locations across Great Britain. They deal with redundancy payments, malpractice investigations and regulatory enforcement of personal, company insolvency and investigations into live companies, and carry out our duties as the official receiver.

The Insolvency Service is responsible for oversight functions relating to the authorisation and regulation of the insolvency profession. In addition they also:

- Administer and look into the affairs of bankrupts, people subject to debt relief orders, and liquidated companies, making reports of any directors' misconduct
- Carry out investigations into live companies.
- Act as trustee/liquidator where no private sector insolvency practitioner is in place (E&W and NI only).
- Act as nominee and supervisor in fast-track individual voluntary arrangements.
- Deal with the disqualification of unfit directors in all corporate failures.
- Deal with bankruptcy and debt relief restrictions orders and undertakings.
- Advise BIS ministers and other government departments and agencies on insolvency, redundancy and related issues.
- Issue redundancy payments via the National Insurance Fund.
- Provide information on insolvency and redundancy matters.

Further information on the Insolvency Service is available from the [.gov.uk](https://www.gov.uk) website

Accountant in Bankruptcy

Accountant in Bankruptcy is an Agency of the Scottish Government in terms of the Scotland Act 1998. The Chief Executive is also The Accountant in Bankruptcy (the Accountant), who is an independent statutory officer appointed under section 1 of the Bankruptcy (Scotland) Act 1985. The Accountant in Bankruptcy (AiB) is responsible for administering the process of personal bankruptcy and recording corporate insolvencies in Scotland. The key functions that the AiB fulfill are:

- Supporting Ministers to develop and refine policy by:
 - Developing policy for personal and corporate insolvency and diligence in Scotland; and
 - Developing policy for the [Debt Arrangement Scheme \(DAS\)](#).
- Supervising the bankruptcy process by:
 - Supervising the regulation of the bankruptcy process including the performance of trustees and commissioners in the exercise of their statutory duty;
 - Regulating and supervising the registration and administration of Trust Deeds (PTDs), including the performance of trustees;
 - Investigating and applying for Bankruptcy Restriction Orders or agreeing Bankruptcy Restriction Undertakings (BRO/BRU);
 - Maintaining a public Register of Insolvencies (ROI), which records bankruptcies awarded by the Scottish courts or by the Agency;
 - Maintaining a record of PTDs, BROs and BRUs as well as company insolvencies on the ROI;
 - Registering company insolvency documents required to be filed by receivers and liquidators in terms of the Insolvency Act 1986; and
 - Maintaining the DAS register.
- Delivering, with stakeholders, a range of options for individuals seeking debt relief and debt management by:
 - Determining debtor applications for bankruptcy;
 - Acting as trustee in all bankruptcies awarded by the Agency, where The Accountant does not appoint a named person to be the trustee;
 - Acting as trustee in all bankruptcies awarded by the Sheriff courts, where a Sheriff does not appoint a named person to be trustee;
 - Acting as interim trustee before the award of bankruptcy except in those cases where an alternative interim trustee is appointed when nominated by the petitioning creditor;

- Acting as trustee as appointed by the Sheriff on the resignation or death of the original trustee where no new trustee is elected;
- Undertaking the functions of the commissioners in bankruptcies where none are elected by creditors; and
- Approving Debt Payment Programmes (DPPs) and approving money advisors.
- Achieving best value services to customers by:
 - Reducing the requirement for public funding; and
 - Embedding efficient systems and processes.

Further information on the AiB is available on the [AiB website](#)

Memorandum of Understanding

The Secretary of State is empowered under the Insolvency Act 1986 to recognise certain professional bodies (known as Recognised Professional Bodies) for the purpose of authorising suitable individuals to act as insolvency practitioners. To underpin the insolvency regime the Secretary of State has agreed a set of principles with those Recognised Bodies for the purposes of achieving consistency in the authorisation and regulation of insolvency practitioners. Each Recognised Professional Body is monitored by the Secretary of State for adherence to these principles.

The Principles cover:

- i. Granting of authorisations
- ii. Maintenance of authorisations
- iii. Ethics and professional standards
- iv. Handling of complaints
- v. Security and caution
- vi. Disclosures and exchange of information
- vii. Retention of records
- viii. Reporting to the Secretary of State

A copy of the Memorandum of Understanding is available on the [.gov.uk](#) website.

Principles for Monitoring

Principle 2 of the Memorandum of Understanding incorporates a requirement for each Recognised Professional Body to monitor the practitioners it authorises. [The Principles for Monitoring](#) sets out the principles in accordance with which monitoring will take place. These include:

- i. The monitoring objective;
- ii. Responsibility for monitoring functions;
- iii. Monitoring procedures;
- iv. Key monitoring issues;
- v. How practices with more than one authorising body will be treated; and
- vi. The monitoring visit report.

Dear IP

Dear IP is a quarterly newsletter issued by the Insolvency Service to insolvency practitioners and other interested stakeholders. Dear IP contains technical updates and revisions to legislation together with updates from policy and other departments within the Insolvency Service. Dear IP also contains guidance to insolvency practitioners.

[Dear IP Index](#)

DETINI Dear IP

The Department of Enterprise, Trade and Investment Northern Ireland (DETINI) is responsible for insolvency in Northern Ireland in the same way as the Insolvency Service is in the UK. DETINI also publish a Dear IP newsletter containing technical updates and revisions to NI legislation.

[DETINI Dear IP Index](#)

AiB Dear Trustee

The Accountant in Bankruptcy frequently contacts agents and trustees to keep them apprised of changes to policy and changes within AiB. This information is conveyed in a 'Dear Trustee' letter. Copies of all issued communications are available on the [AiB website](#)

WORK PROVISION

MARKETING

Ethics

The [Code of Ethics](#) sets out a number of specific considerations in relation to marketing and the obtaining of appointments.

Any advertising or other form of marketing must:

- i. Be fair and not misleading;
- ii. Avoid unsubstantiated or disparaging statements; and
- iii. Comply with relevant codes of practice and guidance in relation to advertising.

Advertisements and other forms of marketing should be clearly distinguishable as such and be legal, decent, honest and truthful.

If reference is made to fees or to the cost of the services to be provided in any advertisement or other form of marketing, the basis of calculation and the range of services that the reference is intended to cover should be provided. Care should be taken to ensure that such references do not mislead as to the precise range of services and the time commitment that the reference is intended to cover.

An IP should never promote or seek to promote his services, or the services of another IP, in such a way, or to such an extent as to amount to harassment.

Where an IP or the practice advertises for work via a third party, the IP is responsible for ensuring that the third party follows the above guidance.

In carrying out marketing, you may offer or be offered gifts and hospitality. These give rise to threats to compliance with the fundamental principles within the Code of Ethics. The significance of such threats will depend on the nature, value and intent behind the offer and regard should be given to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. You must not offer or provide gifts or hospitality or accept gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Where the gift or hospitality is made in the normal course of business without the specific intent to influence decision making or obtain information it may generally be concluded that there is no significant threat to compliance with the fundamental principles.

Advertising Standards Authority

The Advertising Standards Authority is the UK's regulator of advertising across all media. They apply the [Advertising Codes](#), which are written by the Committee of Advertising Practice. They will act on complaints and proactively check the media to take action against misleading, harmful or offensive advertisements, sales promotions or direct marketing.

The Advertising Codes require that all claims must be substantiated before being published or aired. The vast majority of TV and radio ads are pre-cleared before they are broadcast as broadcasters must take reasonable steps to ensure that the ads they broadcast are compliant with the UK Code of Broadcast Advertising.

Further information on general advertising requirements is obtainable on the [ASA website](#).

Anti-bribery policy

The [Anti-Bribery](#) section provides further details on the background, legislative and regulatory aspects of anti-bribery. The anti-bribery provisions within legislation are not designed to prevent genuine hospitality or similar business expenditure that is reasonable and proportionate.

To demonstrate “adequate procedures” as a defence to the “failure to prevent” offence, it is recommended that the Anti-bribery policy established, should include a code of conduct for all employees and include details of what you consider to be reasonable and proportionate limits for corporate hospitality and gifts.

Adequate controls should be established to ensure that the anti-bribery policy is being complied with.

Websites, adverts and those of any associated organisations

IPs are permitted to advertise their professional services. ICAS have produced a Guidance Note to assist you to ensure that websites and other adverts are appropriate and compliant.

[Guidance on advertising by Insolvency Practitioners](#)

Internet

The internet has expanded beyond the website. You should consider and plan not only how and why you will use a website but also consider whether you wish to use other areas such as blogs and social media.

Websites

Consider what the purpose of your website will be. Is it simply to act as a digital brochure for your services or will it be used to actively engage potential leads? You will also need to consider whether it will be used as a channel of communication to creditors in cases where digital communication is permitted.

It is possible to build websites using little knowledge and freeware templates if all you want is a basic digital brochure. You may however want to engage a website builder to assist you to plan and implement a website strategy.

Remember that as technology and consumer patterns change it is likely that a website will require to be maintained and refreshed at regular and frequent intervals.

Social Media

Increasingly social media is becoming an important part of marketing. Most businesses now have a presence on twitter, LinkedIn and Facebook. As with all forms of media promotion you should be clear about why you are using that channel and what you intend to gain from it. Is it simply a presence and profile, imparting knowledge or something greater?

Consider how much time you have available and wish to dedicate to maintaining your social media presence. You may wish to consider employing a third party to manage your social media presence.

Publications

While digital marketing and advertising increases in popularity, the potential for traditional marketing through publications still remains. Consider whether the publication reaches your target market and the message which you want to communicate.

Publications often have a long lead time for copy to be provided and therefore it is essential to think months ahead if you intend using publications within your marketing plan.

Networking

Relationships in business are often the most important area to develop. The saying that people do business with people they like has a large degree of truth in it. Networking is not something that everyone is natural at. To successfully network you should:

- **Determine the people you want in your network.** What relationships would dramatically increase your odds of success? What expertise do you need access to? Who can bridge you to important resources or contacts? Make a list and keep adding to it.
- **Identify the "introducers."** Start brainstorming who might know the people you want in your network. Ask them for their help. When you make a connection, immediately follow up and get a conversation or meeting scheduled.
- **Learn to listen.** Listening is the key interpersonal skill that makes conversation work. Train yourself to just listen – not problem solve, not generate ideas. Just listen.
- **Plan what you want out of a networking meeting or event.** Determine what you would like to ask before you go, then listen more than you speak.
- **Use what's already on your calendar.** One of the best strategies is to use the meetings and events you are already scheduled to attend. Go with the intention to connect and build your network. Go ten minutes early. Introduce yourself to those you don't know. Plan to stay ten minutes late.
- **Listen for what you can learn.** People will reveal their passions and concerns if you listen for them. Once you become aware of what matters to people, you can ask questions that get you into productive conversations. Make notes after conversations. Don't trust your memory with the networking.
- **Keep track.** If you want to create and maintain great relationships, find a simple way to capture what you learn about people and keep track of it. When you're keeping track, you notice more about what people tell you and you can more readily access it for follow-up conversations.

FINDING NEW CLIENTS

Some pointers to creating a client base:

Write down all your existing personal and business contacts, however unlikely they may be as a source of new business.

- **Contact** each one personally to make sure they know that you are in business and keen to take on new work. Try to get them to give you other contacts that you might approach.
- **Follow up** these contacts if they have not borne fruit after the first approach. There is a clear dividing line between a simple follow up and harassing people, but your aim is to make sure that they remember you whenever a business opportunity arises.
- **Identify** the most likely useful contacts and arrange to go and see them personally. Have something positive to offer them, not just a begging bowl.
- **Maintain links** with fellow practitioners in your area through discussion groups, social meetings, and Area Committee events. See and be seen.
- **Traditional sources** of new business such as banks, solicitors, enterprise agencies are still important. As traditional lines become blurred, they may be seen partly as competitors in some areas but generally the skills of each are complementary to the others.
- **Differentiate yourself.** Identify your unique selling points (USP) and find ways of communicating them differently. Remember the selling points should be truly unique and not just “personal service from a partner” or “business start-up specialist”. Lots of firms say such things.
- **Keep in touch** with your contacts. Try to go to them with a proposal and show that you have something to offer them as well as looking to them to give you business.
- **Direct mail** can be useful in bringing your new practice to the attention of the local business community. On its own it won't work – it needs to be part of a much broader campaign. Emphasise your strengths and the benefits they will get from coming to you, not just the services you have on offer (saying you do insolvency is unlikely to bring much new business: telling people that you will attempt to recover monies they are due or will assist them to strengthen their financially distressed business is much more attractive).
- **Aim for action** from a direct mailshot – you want to get a response. Consider offering a free initial meeting, a free booklet or newsletter such as *Briefing* on a specific point – use a pre-paid (first class) post-card so that anyone reading it knows that you expect a response.
- **Check with the Ethical Guide** to be sure you are within the rules. If in doubt, send details of what you plan to do or say to Legal Services at ICAS. Email: ethicalenquiries@icas.com
Tel: +44 (0) 131 347 0271

FINDING NEW WORK

Agency contracts

Official Receiver Rota (England & Wales and Northern Ireland only)

The Official Receiver ('OR') operates a rota of insolvency practitioners for Secretary of State trustee and liquidator appointments. The rota lists are compiled on a geographical basis for each OR office. It is firms rather than individual IPs that are included on each rota and the firm must operate within the area covered by the OR office and have a genuine local presence. Applications for a firm's inclusion on an OR Rota should be made to the local [OR office](#).

Accountant in Bankruptcy Contracted Services

The Accountant in Bankruptcy contracts out services where the Accountant has been appointed as Trustee in sequestration. These services are contracted out to private sector providers via a tendering process with contracts normally running on a Framework Agreement basis for a period of three or four years. Further details about the procurement procedure can be obtained from the [AiB](#)

HM Revenue & Customs

HM Revenue and Customs operate a panel of insolvency practitioners whom they will nominate to act as Interim Liquidator or Trustee in sequestrations. In many cases HM Customs and Excise will agree to underwrite the liquidator's remuneration to a pre-agreed level to cover basic costs should there be no assets available within the company to which appointed. Enquiries to be considered by HM Revenue & Customs for nomination should be made to:

Andrew Douglas
Technical Advisor
HM Revenue & Customs
Enforcement & Insolvency
Elgin House
20 Haymarket Yards
Edinburgh
EH12 5WT
Tel: 03000 561693
Fax 0131 346 5610
E-mail andrew.douglas@hmrc.gsi.gov.uk

Court Reporter

Where remuneration is to be determined by the Courts by legislation, the Courts have developed a practice of appointing Court Reporters to assist them with their considerations. Although there are no set criteria for becoming a Court Reporter, anyone undertaking this work would be expected to have many years' experience of insolvency work to draw upon in order to assess the work carried out by the IP and the suitable remuneration for that work. The work to be undertaken by the Court Reporter is determined by the terms of the interlocutor issued by the court making the appointment.

The Court of Session, Glasgow Sheriff Court and Aberdeen Sheriff Court have appointed panels for court reporters. It is expected that these shall be reviewed periodically through re-advertisement for applications to the panel. Other Sheriff Courts will normally consider a nomination made within the Note to Court asking them to carry out the audit and determination.

Code of ethics

In considering new work, an IP must comply with the Code of Ethics. In addition to other considerations within the Code of Ethics the IP should specifically ensure that they have the appropriate skills, knowledge and resources available to carry out the work to a competent level.

BUYING A PRACTICE OR BLOCK OF APPOINTMENTS

While marketing is the key to expanding your practice, you may have the opportunity to buy another practice or block of fees.

From the buyer's point of view, the main points to be considered are set out below.

- Due to the nature of insolvency appointments there are no recurring fees. The normal methods of establishing a purchase price for an accountancy practice are unlikely to apply.
- Consider the current work in progress value and stage of completion of cases. Remember work in progress is likely initially to be stated using charge out rates which will include an element of profit. Work in progress should be adjusted back to cost price.
- Consider building in a clawback provision for work in progress which is not recoverable due to insufficient assets in cases or where time is disallowed by the approving body or where the case appointment isn't transferred to you for whatever reason.
- The agreement should provide for part payment at the outset, the balance after any clawback is established. Payment terms are, of course, negotiable, as is interest.
- In all but the smallest of cases, be prepared to do some homework on the case base. Consider the type of appointment, the basis for any fees that have been agreed, the stage of case progression, whether fees claimed have already been restricted by the approving body, and so on.

All the time you are trying to establish: is there a fit with your own practice philosophy and profile; you have the experience necessary to handle the case base; there is no potential for conflict with your existing cases.

- Also, you need to assess issues of compatibility in other areas such as fee levels and charging structures, staff numbers (and requirements/redundancy) and salaries, premises (often a stumbling block), equipment (including leases) and so on.

There are so many issues to consider that it is often worthwhile using the services of a specialist such as the ICAS [Practice Advisory Service](#). That service also operates a [Practice Opportunities Register](#) exchange forum for those interested in this area of practice.

- The agreement should be in writing and drawn up by a solicitor.
- Consideration will also have to be given to the implications of the VAT Tribunal decision in *Paymex Ltd v HMRC*. [HMRC Guidance note](#) and [Trust Deeds – Guide to the practical implications of Paymex](#) provide further guidance.

ADMINISTRATION OF APPOINTMENTS

RECORDS

Case records

Records can be maintained either in a hard format or electronically. You should consider ease of access to information and bear in mind that as well as your own staff requiring access to case records there will also be occasions when other persons shall require access to your case records. This will include for example ICAS reviewers, third parties with rights to inspect records under legislative provisions and the AiB if auditing and determining remuneration.

File structures should also be considered. It is recommended that there is a consistent file structure across case types which will assist with familiarity and efficiency of filing and information retrieval.

Information should be held securely as not only will the files contain confidential information but in certain circumstances will also contain sensitive information. In addition to requirements under the Data Protection Act 1998 the Code of Ethics requires you and your staff to maintain confidentiality. Bear in mind that information may be able to be accessed by for instance cleaners and tradesmen and other visitors who access your premises and appropriate steps should be put in place to ensure that unauthorised access to information is prevented. This may include file storage in locked areas or files being worked on being locked away overnight rather than being left on desks.

[Insolvency Guidance Paper 4](#) – Systems for control of accounting and other business records.

Insolvency Practitioner Record

The Insolvency Practitioners Regulations 2005 (as amended) requires insolvency practitioners to maintain records in respect of each case which contain information which is sufficient to show and explain the administration of the case and any decisions of the insolvency practitioner which materially affect the case. It is therefore important to ensure that file notes are maintained of important decisions and phone calls as well as recording correspondence.

Time records

Arrangements should be made to ensure that time records are maintained for all cases. Software either linked to case management or separate practice management software will often assist with this. Time recording should be set up in such a way that reports can be produced in accordance with SIP 9. You should consider not only the number of minutes per unit of time charged but also work areas and supporting narrative requirements.

Disbursements and outlays can be recorded through many time recording systems also as part of 'work in progress'. Consideration should be given to how these are to be recorded through the case accounts and how amounts due to the firm are reconciled between case records and the firm's debtor/WIP records.

CASE PROGRESSION AND CONTROLS

Diary system

Control of cases on a day to day basis and to ensure compliance with statutory deadlines is often best controlled through the use of a diary system. This is mostly provided as part of case management software available from third party suppliers. The use of other diary systems such as diary entries in Outlook or other calendar software may also be appropriate. Some of the case management software diary systems also link direct to calendars so that entries are created in diaries as well as held within the case management software system for increased visibility.

Procedure checklists

A series of case review checklists have been prepared and made available to ICAS IPs. The objective of these checklists is to provide documentary evidence of the conduct of the case and of periodic case review. It is accepted that there are alternative methods of demonstrating that periodic reviews have been completed. Use of these review forms is not mandatory where it can be demonstrated that other appropriate methods of review are employed.

Checklists are available for the following insolvency procedures:

- Sequestration
- Trust Deeds
- Administration
- Receivership
- Creditors' Voluntary Liquidation
- Court Liquidation
- Members' Voluntary Liquidation

[Checklists](#) are available from icas.com (member login required)

LEGISLATION/SIPS/ GUIDANCE

Legislation

Insolvency is governed by legislation which is constantly under review. Personal insolvency in Scotland is devolved to the Scottish Government whereas responsibility for legislation on corporate insolvencies in Scotland is divided between the Scottish and Westminster Governments. Legislation is too voluminous to be included here however you can access insolvency legislation by following this link to the UK Government legislation website.

- [Insolvency legislation](#)

Legislation relating to personal insolvency in Scotland, which is different from procedures operating in England & Wales, can be accessed by visiting the Accountant in Bankruptcy's website.

- [AiB website – Legislation](#)

Statements of Insolvency Practice

SIPs set principles and key compliance standards with which insolvency practitioners are required to comply. They are issued to insolvency practitioners under procedures agreed between the authorising bodies acting through the Joint Insolvency Committee. To reflect any legislative differences between the jurisdictions separate SIPs have been issued for England & Wales, Scotland, and Northern Ireland but the thrust of a particular SIP is common to the various geographical areas. Current SIPs can be accessed by searching 'SIPs' on [icas.com](https://www.icas.com)

Insolvency Guidance Papers

Insolvency Guidance Papers (IGPs) are agreed by the Joint Insolvency Committee (JIC) and issued by the Recognised Professional Bodies (RPBs) to Insolvency Practitioners to provide guidance on matters that may require consideration in the conduct of insolvency work or in an Insolvency Practitioner's practice.

Unlike Statements of Insolvency Practice (SIPs), which set out required practice, IGPs are purely guidance and practitioners may develop different approaches to the areas covered by the IGPs.

IGPs are developed and approved by the Joint Insolvency Committee, and adopted by each of the insolvency authorising bodies.

[Current Insolvency Guidance Papers](#)

Other guidance/help sheets

ICAS develops and issues guidance on specific insolvency related issues, aimed at assisting its insolvency practitioners. ICAS IPs are expected to comply with the guidance however should they not do so they must be in a position to provide valid explanations for any departure. ICAS has also issued a number of Case Review Checklists aimed at assisting practitioners in smaller firms to provide documentary evidence of periodic review of their cases.

[Guidance and Checklists](#) (member login required)

Accountant in Bankruptcy Guidance

The Accountant in Bankruptcy also issues Notes for Guidance in relation to sequestrations and trust deeds. These can be accessed from the AiB website.

USE OF ADVISORS/AGENTS/CONSULTANTS

During the course of most cases you will require to engage advisors, agents or consultants to assist with matters. These could include for example solicitors, surveyors, estate agents, auctioneers, health and safety advisors, etc. For the purposes of this section all such parties shall be referred to as 'agents'.

Terms of engagement

It is important that the terms of engagement in respect of any agent used during a case are clearly documented. You may wish to consider putting in place general terms of engagement in respect of those agents whose services may be utilised on a regular basis and which can then be referred to when engaging on specific cases. The terms of engagement should cover areas such as:

- Extent and scope of arrangement or services to be provided
- Fee and expense arrangements
- Acknowledging that services are in relation to insolvency appointments and information available may be limited
- Inability to provide warranties
- Agent requirement to hold adequate insurance
- Agent requirement to hold funds on trust and arrangements for interest/settlement to the office holder
- Conditions relating to authorised payments to third parties
- Requirements of reporting to the office holder
- Procedures relating to the receipt and acceptance of offers
- Compliance with legislation

Expertise

It is important that in engaging agents you consider whether they have the appropriate expertise to deliver the required service in respect of the case. This may include not only whether they have the appropriate skills or qualifications but whether they have appropriate knowledge.

Legislative compliance

As mentioned above, the terms of engagement should encompass a requirement that the agent shall comply with all relevant legislative provisions. In particular you will want to ensure that the agent complies with legislation in relation to:

- Data protection
- Health and safety
- Environment
- Anti-money laundering
- Anti-bribery

In addition to the terms and conditions you should make enquiries to ascertain what procedures your agent has in place to ensure compliance with such legislative requirements. This may include for example being provided with a copy of their relevant policies and procedures.

Risk

You should also ensure that the agent will inform you immediately of any matters which they discover while working on a case in relation to high risk areas such as those set out in the legislative compliance section above. They should also undertake to act promptly on any instruction given by you.

You should also ensure that they undertake to comply with all relevant open cover insurance requirements (particularly for instance in relation to vacant properties), and that they will hold adequate insurance cover particularly in relation to professional indemnity insurance and client funds.

You may also wish to ensure that all conditions and risks which are dealt with in relation to the agent will be applied to any sub-contractors that the agent may use.

Signing authorities

You should clearly set out and agree with the agent the extent and scope of any signing authorities which they will have. This is important as otherwise they would be in a position to legally bind you into certain transactions or conditions, including warranties, which may not be compatible with your ability to perform such arrangements.

DOCUMENT STORAGE AND RETENTION

[R3 Technical Bulletin 104](#) contains useful information on the capture, maintenance, destruction and storage of records. Whilst this is based on the position in England and Wales, many of the principles and themes are applicable to all legal jurisdictions.

All documents should be stored securely as they will contain confidential and sensitive financial information and personal data. It is a requirement under the Data Protection Act 1998 that personal data is held securely and a requirement of the Code of Ethics that an insolvency practitioner and his staff maintain confidentiality.

Insolvents' books and records, open and closed cases

Arrangements will require to be made at the commencement of any case to take possession of and secure all relevant books and records in relation to the appointment. An inventory of the books and records should be made as soon as possible in order to document what has been received and also assist with any future retrieval requirements.

While access to books and records may be required more frequently at the commencement of a case it may be possible and desirable to store records off site from your business premises.

Arrangements should be made to maintain a record of dates when books and records in relation to closed cases may be destroyed. This will ensure that unnecessary costs for the storage of records will not be incurred. It is recommended that a certificate of destruction is placed on the case permanent/closure file.

Own working papers

Working papers should be held by the insolvency practitioner in respect of each case. These may be held in hard copy format or electronically. In addition to statutory requirements, the working papers should be sufficient to record and control progress in each case and explain any significant decisions made by the insolvency practitioner.

Whilst the case remains open the working papers should be readily accessible to the relevant case staff. A file retention policy should be established which sets out how the practice will deal with working papers following conclusion of the case.

It will be useful to retain working papers which will remain readily accessible for a period. As time progresses the requirement to access closed case files will diminish and files can be stored off site and eventually destroyed. You may wish to retain a small permanent file containing key documents in relation to the case on site for a longer period of time.

It is recommended that working files are maintained for a minimum of 6 years after the appointment ceases. In certain circumstances, for instance where the likelihood of a claim or an action is possible, then records may require to be held for a longer period.

Arrangements should be made to maintain a record of dates when working papers in relation to closed cases may be destroyed. This will ensure that unnecessary costs for the storage of records will not be incurred. It is recommended that a certificate of destruction is placed on the case permanent/closure file.

Working paper files may require to be accessed as part of monitoring visits even after the case has been closed.

Practice records

Practice records will require to be maintained and accessed at different intervals and frequencies depending upon their nature. Certain records are required to be maintained for minimum periods in legislation and you should ensure that your document retention policy reflects those requirements as a minimum. It is recommended that practice records for the current and previous year are kept accessible and retained on site, while older records can be stored off site.

HMRC have produced a [help sheet](#) on keeping business records for tax purposes which may be of assistance.

Arrangements should be made to maintain a record of dates when practice records may be destroyed. This will ensure that unnecessary costs for the storage of records will not be incurred.

Electronic storage and retention

The principles of document storage and retention apply equally to electronic storage and retention as they do to physical hard copy documents. In addition you should ensure that back ups are taken at frequent intervals.

Electronic storage may offer advantages over physical storage in terms of cost and capacity. This however also may lead to documents being retained for longer than necessary. It is important that the retention policy is adhered to in relation to electronic storage and retention as well as in relation to physical hard copy.

ICAS PRODUCTS SERVICES AND RESOURCES

Your institute can assist you in practice with a range of [low-cost products, toolkits and services](#).

Subscribers to the [CA Practitioner Service \(CAPS\)](#) program receive these products either free or at a discounted rate.

For further information contact:

Practice Support
ICAS
CA House
21 Haymarket Yards
EDINBURGH EH12 5BH
Tel 0131 347 0254
Fax 0131 347 0110
Email: practicesupport@icas.com

USEFUL LINKS/RESOURCES

[ICAS website](#)

[Insolvency Service](#)

[Accountant in Bankruptcy](#)

[Financial Conduct Authority](#)

[Information Commissioners Office](#)

[Advertising Standards Authority](#)

[HM Revenue & Customs](#)

[UK Legislation](#)

[The Pensions Regulator](#)

[The Pension Protection Fund](#)

[Consultative Committee of Accountancy Bodies \(CCAB\)](#)

[Scottish Courts Service](#)

[Companies House](#)

APPENDIX A – Example of Fit & Proper form for individuals

Example of a 'fit and proper' form for individuals			
Set out below are the questions that a firm should ask each principal, employee or other individual involved in or connected with insolvency work to allow the firm to assess the individual's fit and proper status. The answers will be 'yes' or 'no' but a 'yes' will need further explanation.			
Financial integrity and reliability			
1	In the last ten years have you made any compromise arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	No
2	Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom, Ireland or elsewhere, or has a bankruptcy petition ever been served on you?		
3	Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?		
Civil liabilities			
4	In the last five years have you been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?		
Good reputation and character			
Note: There is no need to mention offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974, similar legislation in Ireland, offences committed before the age of 17 (unless committed within the last ten years) or road traffic offences that did not lead to a prison sentence.			
5	Have you at any time pleaded guilty to or been found guilty of any offence?		
	If so, give details of the court which convicted you, the offence, the penalty imposed and date of conviction.		
6	Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?		
7	In the last ten years have you been:		
	- refused the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?		
	- investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?		
	- the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?		
	- reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?		
	- refused entry to or excluded from membership of any profession or vocation?		
	- dismissed from any office (other than as an insolvency practitioner) or employment or requested to resign from any office, employment or firm?		
	- reprimanded, warned about future conduct, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?		
	- the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?		
8	Are you currently undergoing any investigation or disciplinary procedures as described in 7 above?		