

This information is for general guidance only. The IPA's Articles of Association, its Investigation, Disciplinary and Appeal Committee Rules will apply where there is any doubt. You can find all this material at <http://www.insolvency-practitioners.org.uk/membership/members-handbook>

The following covers complaints made about IPA members, including insolvency practitioners ('IP's) who are licensed to take insolvency appointments.

### **Before you make a complaint**

Please remember that insolvency licences are given to individuals and not firms. Also an IP who has been appointed to deal with a case is responsible for that case individually, even when he or she is appointed with another IP. An IP will be responsible for any other person who is working on that case for him/her. Many of the complaints that come to IPA arise from a breakdown in communication, so it is in everyone's interests to try and sort out any misunderstandings first before making a complaint. Most firms and IPs have an internal complaints procedure which can be used to resolve a dispute before it escalates.

IPA is committed to ensuring that its members maintain the highest professional standards. We will act in the public interest first and where something has gone wrong we will work hard to investigate and establish the facts so that a sound decision can be taken on whether an IP should be disciplined.

It is in the very nature of an IP's work that he or she has to deal with conflicting interests, not least debtors and creditors. IPs cannot though get involved with or arbitrate in commercial or legal disputes and neither can the IPA. Those are matters for the courts. Complaints are not a substitute for taking your own action and asking the courts for help. Under the Insolvency Act interested parties have certain remedies available to them and we suggest you take advice on what to do at the earliest opportunity, particularly if your complaint is about the level of fees drawn by an IP.

### **How do I make a complaint?**

All complaints against IPs must first be made to a central system called the Complaints Gateway which is managed by the Insolvency Service<sup>1</sup>. The Gateway is the single entry point for any complaints made against IPs licenced by one of the following five Recognised Professional Bodies ('RPB's) (the IPA, the Institute of Chartered Accountants in England and Wales, the Association of Chartered Certified Accountants, the Institute of Chartered Accountants of Scotland and Chartered Accountants Ireland). <http://www.bis.gov.uk/insolvency/contact-us/IP-Complaints-Gateway>

However, complaints relating to an insolvency covered by Northern Ireland legislation may be made directly to the IPA. Other RPBs include the Law Society of Scotland and the Solicitors Regulation Authority.

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<sup>1</sup> The Insolvency Service is an executive agency of the government department for Business, Innovation & Skills

Complaints to the Gateway, if within the scope of the complaints system, will be passed to the IPA to be dealt with in accordance with our own procedures.

Any interested party can make a complaint if they are concerned about the standard of work or conduct of an IPA member. It is though essential that a detailed explanation is provided of what has happened, specifying the behaviour which has led to the complaint. Also any documentary evidence in support of the complaint and correspondence with the IPA member must be provided.

Once we have the complaint, it will be acknowledged within 10 working days and will then be assessed. This means that a senior member of staff will look at the complaint and all the material sent in support to decide whether or not it indicates that the IPA member **may** have become liable to disciplinary action. If there is insufficient information about the complaint the person making the complaint may be asked to provide more. Some complaints are closed at this stage but reasons will be given.

### **What happens next?**

Where a complaint is investigated, a Regulation Officer (RO) will write to the person who has made the complaint, known as the complainant, and explain those aspects which will not be investigated and what will be investigated. ROs have knowledge and experience of insolvency practice and work under the supervision of an established management team. The RO may ask questions about the complaint and ask for more supporting evidence. If a complainant does not provide all the available evidence this will slow down any investigation or may mean that it cannot progress at all.

The RO will write to the IPA member with a copy of the complaint, any documents sent in support and correspondence so far and ask for his/her response. The practitioner's response to the allegation(s) will be made primarily for the purpose of facilitating our investigation, and in due course the consideration of the complaint by our Investigation Committee. In the interests of transparency, that response (and, should we deem it appropriate, relevant attachments) will ordinarily be provided to the complainant. We will not routinely provide the complainant with further items of correspondence during the course of our enquiries, but we may do so where we consider it necessary to establish the facts and for the proper performance of our regulatory role. Where there are compelling and exceptional reasons for confidentiality (e.g. where disclosure would conflict with a legal or professional obligation), we will consider whether and if so in what terms we may share all or part of the response. Subject to the above, as a general rule, all correspondence between the Association and the parties to a complaint is private and confidential and should not be disclosed to any third parties or used for any other purpose. In the event that disciplinary proceedings are instigated, most Disciplinary and Appeal Tribunal hearings are open to the public. There are circumstances where information about complaints can be disclosed and correspondence may be disclosed to the IPA member's representative, his firm and to his own or his firm's insurer. [See our Investigation Committee Rules and in particular Rule 10.](#)

IPA members are asked to cooperate in the investigation and under the Investigation Committee Rules they can be formally required to provide information. If they fail to do so they can be the subject of a separate complaint for the failure to cooperate. Also when necessary the RO may

contact third parties who have knowledge and relevant information about the complaint. This will always be on a confidential basis and where it can be avoided the third party will not be given any unnecessary detail.

The purpose of an investigation is to gather by a fair and thorough approach, all the relevant information and evidence to establish what has happened. Sometimes what is investigated will be very different to what the complainant was originally concerned about. This is because as the regulator the IPA has a duty to the wider public and must deal with misconduct in order to maintain standards. It must also act fairly to all involved but in particular the IPA member who may be accused of wrongdoing.

At the conclusion of an investigation we will have a clear picture of what has happened and if an IPA member appears to be at fault for what has gone wrong we will have a clearly worded complaint which will need to be considered by the Investigation Committee (IC). It is important to remember that ROs have to remain objective and they do not make any decisions. All decisions are entirely the responsibility of the committees involved, such as the IC.

### **How long will the Investigation take?**

In order to be able to process complaints as quickly as possible we rely on IPA members and complainants to give their time to the case and answer fully and as promptly as possible our correspondence. We ask for a response to letters within a reasonable time, say 15 business days, but ask IPA members to let us know if this is not possible. Also the time it will take to reach a conclusion will depend on the complexity of the case and whether we need to contact witnesses. It will also depend to a degree on how many complaints we have to deal with and the available resources of IPA at the time. In all cases we work to targets which are sensible because we understand that any investigation should be dealt with efficiently and as quickly as possible.

A complainant will be sent a notification of the outcome of the complaint within 15 working days of the conclusion of the complaint.

### **What is the Investigation Committee and what does it do?**

The IC is responsible for the conduct of an investigation and then making the decision as to whether or not there is a prima facie case on the complaint. This means in practice that the committee has to decide, based on the evidence before it, whether or not it finds there is a case for the IPA member to answer. On rare occasions, the IC will ask for the IPA member to attend a meeting to address the IC in person, but otherwise, IPA members do not have a right to attend IC meetings.

It is important to remember that it is not all mistakes by an IPA member nor each and every act or omission that will lead to an adverse finding. Breach of any code or guide or statute or any act or omission which is likely to bring discredit to the IPA member, the IPA or its members or the insolvency profession will more than likely lead to a finding but the IC looks at every case on its own particular facts before coming to a decision.

The IC works as a committee of at least five members with a ratio of four IPA members to one lay

member.

At any time after the IC has considered a complaint but not necessarily made a decision on whether or not there is a case, if it believes an IP's ability to hold a licence may have been affected by the complaint, the IC may refer the case to the Membership and Authorisation Committee which has responsibility for the assessment of whether or not the IP is a fit and proper person to hold an insolvency licence.

### **What happens if the IC finds there is a case?**

If the IC is satisfied that there is a case of misconduct on the complaint it can:

- Decide that no further action be taken;
- Issue a warning letter ;
- Invite the IPA member to consent to an order;
- Refer the complaint to the Disciplinary Committee ('DC').

Before the IC decides what to do it will consider all the relevant circumstances surrounding the complaint, the IPA member's response to the complaint and in particular if he/she has cooperated in the course of the investigation and any previous adverse findings recorded against the IPA member.

### **The IC's options**

**No further action:** This will often follow where the IC finds that the IPA member's conduct is excusable or if it has already been the subject of a penalty or regulatory action. There will be no publicity in such cases. Although the IC may decide that no further action is necessary, the finding will be recorded against the IPA member and in the event that another complaint is considered at a later date the IC will be reminded of its previous decision so it can decide whether or not it should be taken into account in relation to its decision on what to do with the subsequent complaint. Members are entitled to reject the prima facie case finding within 20 business days of being notified. If so, the IC will consider whether the complaint should be referred to the DC (see below). If no rejection is received within 20 business days, the complaint will be treated as concluded.

**A warning:** A warning will often follow where the IC is particularly keen to ensure the IPA member understands what he has done wrong and that it should not be repeated through lack of awareness. There will be no publicity of a warning. A warning will remain on an IPA member's record for three years and may be taken into account by the IC when it considers what to do on any later complaint. Members are entitled to reject the prima facie case finding and warning within 20 business days of being notified. If so, the IC will consider whether the complaint should be referred to the DC (see below). If no rejection is received within 20 business days, the complaint will be treated as concluded.

**Consent order:** If the IC believes a consent order is suitable it is likely to be because it has found that although the complaint may be serious it is not a case where the misconduct should lead to loss of membership. However, a consent order may not be offered where an IPA member has shown that he does not accept or is unlikely to accept that he has done anything wrong. To help with

the decision on penalty the IC will refer to the Common Sanctions Guidance.

<http://www.bis.gov.uk/insolvency/contact-us/IP-Complaints-Gateway/Common-Sanctions>

The same guidance for the sentencing process is used by the other RPBs and the intention is to try and ensure, in so far as it is practicable, that penalties imposed are reasonably consistent as between the regulators. The order may comprise a penalty such as a reprimand and a fine. The IC will look at each case on its own particular facts and will take into account all the relevant circumstances and aggravating and mitigating factors. The order may also include a sum to be paid in costs. Consent orders are published.

The IPA member will be given an opportunity to make written representations to the IC on the order offered but if he/she declines or fails to respond within the time given for his response, the complaint will be referred to the DC.

***Refer the complaint to the Disciplinary Committee:*** The IC will only refer the most serious complaints to the DC or where an IPA member has not responded to or declined a consent order offer. A tribunal (three people, two IPA members and a lay member) will consider the formal complaint and the IC and the IPA member can be represented at the hearing. The tribunal will also sit with an independent Legal Assessor who takes no part in the decision making but is there to assist the tribunal on any matters of law.

Tribunal hearings are normally open to the public unless the tribunal has been persuaded that the hearing or part of the hearing should be held in private.

If the tribunal finds the formal complaint proved it has a range of sanctions available to it including removal of an IP's insolvency licence and exclusion from membership. The tribunal can also order the IPA member to pay for the costs of the hearing and the investigation.

***(See our Disciplinary Committee Rules)***

A formal record of the tribunal's decision will be prepared and sent to the IPA member after the case is finished. The complainant will also be told the outcome.

If the formal complaint is found proved there is a right of appeal for the IPA member to the Appeal Committee provided it is made within fifteen business days of the order of the tribunal. The order of the tribunal is published. ***(See our Appeal Committee Rules)***

### **What happens if the IC decides there is no case?**

If the IC decides there is no prima face case on the complaint then the IPA member and complainant will be informed and the case will be closed. However, the complainant can ask within three months of that decision, for the case to be referred to an independent reviewer of complaints. This can be because the complainant believes a procedural aspect has not been followed or that on the facts presented the IC could not reasonably have come to the decision that there was no case. The reviewer will ordinarily complete the review within three months of the referral. The reviewer cannot overturn a decision of the IC nor reassess the level of any financial penalty, but can refer the complaint back to the IC with a recommendation that the complaint be considered again. The complainant may present new information in support of his request that the

reviewer refer the case back to the IC. [\*\(See our Reviewer of Complaints Regulations\)\*](#)

Copies of the IPA's Constitutional Documents, Rules and Regulations may be found at:

[\*http://www.insolvency-practitioners.org.uk/membership/members-handbook\*](http://www.insolvency-practitioners.org.uk/membership/members-handbook)

Printed copies are available upon request: 0207 397 6430 / [regulation@ipa.uk.com](mailto:regulation@ipa.uk.com)

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