



INSOLVENCY GUIDANCE PAPER

Dealing with complaints

Introduction to Insolvency Guidance Papers

Insolvency Guidance Papers (IGPs) provide guidance on certain matters in the practice of insolvency. Insolvency practitioners may, however, develop different approaches to the areas covered by the IGPs.

IGPs should be read in the context of applicable statute, Statements of Insolvency Practice (SIPs), and the Code of Ethics of the insolvency practitioner's authorising body. The Rules and Regulations of an insolvency practitioner's authorising body may impose regulatory requirements additional to, or in precedence to this guidance.

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

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1. Introduction to Complaint Handling

This paper includes recommendations of matters that should be considered in day-to-day dealing with complaints. It should be noted that the rules of individual authorising bodies can impose additional requirements, which might override the considerations included in this guidance paper. The same applies in relation to the rules imposed if authorised by the Financial Conduct Authority.

Some authorising bodies have issued guidance on what constitutes a good complaints procedure, which should be read in conjunction with this paper.

A complaint may, in some circumstances, have to be notified to an insurer in compliance with the terms of any insurance policy the insolvency practitioner may hold, including professional indemnity insurance or other policies such as legal cost insurance. In such cases, any action or response by the insolvency practitioner will necessarily be subject to any conditions imposed by the insurer.

2. Insolvency practitioners' duties

Insolvency practitioners have a duty to deal with complaints professionally and expeditiously. Failure to do so might exacerbate reported issues, prolong any sense of grievance felt by the complainant, and undermine confidence in the insolvency profession. As a result, insolvency practitioners, their firms and the profession may be brought into disrepute.

Due to the nature of the work undertaken by insolvency practitioners, complaints may arise because of an incomplete understanding of the insolvency legislation. In many cases, actions or outcomes that are obvious to insolvency practitioners may be seen as wrong or unfair by complainants, as the duties and powers of the office holder may be misunderstood.

When responding to a complaint, an insolvency practitioner should ensure that any communication with the complainant is clear and understandable to the complainant. The insolvency practitioner should provide a clear and accurate explanation of the matters affecting the duties of an office holder, including the relevant legislation, where appropriate.

Where the sole or partial recourse available to the complainant is a challenge through the courts, this should be explained to the complainant.

3. General considerations

Insolvency practitioners should consider the benefits of the following:

- A consistent, structured and transparent approach to complaints and having a clear, documented complaints policy outlining the procedure within the firm. The policy should as a minimum set out the complaints process, expected timeframes and routes for escalating a complaint if the complainant is not satisfied with the response. The policy can be communicated to the complainant and/or made available on the firm's website.
- Having policies and procedures which are proportionate to the practice's size and scope.
- Having a policy on unreasonable, vexatious or malicious complaints for consistency of approach to such complainants.
- Assessing the risk and likelihood of complaints associated with the specific type of appointment undertaken and ensuring that the relevant information and procedures are put in place.
- Monitoring the volume of complaints and ensuring that appropriate resource is available to meet demand.
- Ensuring that the parties are made aware of their right to complain and routes to do so. This should be communicated as early in the process as possible, including in any engagement letter issued.
- Establishing a tiered complaint process, where complaints are reviewed by an independent insolvency practitioner (e.g. the insolvency practitioner's alternate) or senior staff member in the firm.
- Having a system for reviewing complaints outcomes with a view to incorporate any "lessons learned" into revised policies and procedures, and/or staff training.

Insolvency practitioners should also consider whether a direction to the complaints policy is appropriate where there is a disgruntled party, or where there is an expression of dissatisfaction, that could lead to or generate a complaint.

4. Recommended approaches

It is recommended that insolvency practitioners consider the following when handling complaints:

- A complaint should be acknowledged promptly.
- ensuring that any communications in relation to complaint procedures, outcomes and decisions are clear, accurate and understandable to the recipient.

- ascertaining the background facts as quickly as possible and seek additional information from the complainant as required.
- The complainant should be kept aware of the steps that are being taken by the insolvency practitioner to review the complaint (including sharing any formal complaints policy document), the likely timetable for a response and reasons for any delay.
- Insolvency practitioners should be mindful that some complainants may be vulnerable and reasonable adjustments should be considered and made available to them.
- Exploring the options for an early resolution of a complaint.
- If an error has been made, the insolvency practitioner should rectify it and seek to identify and, if possible, rectify any other instances of the error promptly, offer an apology where appropriate, and change policies and procedures if required.
- If the insolvency practitioner establishes that a matter cannot be resolved, either in whole or in part, other than through an application to the Court, the complainants should be made aware that this is the correct route and be provided with an explanation of why that is the case.
- If the insolvency practitioner concludes that a complaint is unjustified, the complainant should be provided with a full and clear explanation of the reasons for that conclusion. The explanation would be an important piece of evidence should the complaint subsequently be made to the Insolvency Practitioner Complaints Gateway.
- Regardless of the outcome of a complaint, the insolvency practitioner should ensure that reasons for the decision are documented, including any supporting evidence such as correspondence or calls. The insolvency practitioner should consider whether any insurance policy in place requires the insurer to be notified or specific action to be taken.

5. Insolvency Practitioner Complaints Gateway

Any complainant should be informed of the correct route to escalate a complaint if they are not satisfied with the outcome. They should be signposted to the Insolvency Practitioner Complaints Gateway (the Gateway) in those circumstances.

The Gateway's consideration of the complaint includes matters such as the outcome of the complaint generally, the insolvency practitioner's correspondence with the complainant, clarity of the information provided to the complainant, and the practitioner's compliance with their own complaint guidance/procedures, as published or as communicated to the complainant.

A referral to the insolvency practitioner's authorising body will be made if the Gateway determines that there is an indication of an activity or behaviour that may result in the insolvency practitioner being liable to disciplinary action.