



The Insolvency
Service

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DEAR INSOLVENCY PRACTITIONER Issue 162 – December 2023

Dear Reader,

Please find enclosed the latest articles from the Insolvency Service:

In this issue:

Chapter 22 Release and vacation of office

Article 10 Insolvency Practitioner action prior to vacation
of office – best practice protocol for Official
Receiver's cases

10) Insolvency Practitioner action prior to vacation of office – best practice protocol for Official Receiver’s cases

The Senior Official Receiver has worked with members of R3’s Smaller Practice Group to agree a best practice protocol to be followed when Insolvency Practitioners are vacating office on Official Receiver bankruptcy and company cases.

The aim of the protocol is to minimise queries for Insolvency Practitioners and Official Receivers when case administration matters are raised with the Official Receiver after the Insolvency Practitioner has vacated office.

Final reports should be sent to

- The OR at ORAftercare.IPReports@insolvency.gov.uk and
- Estate Accounts and Scanning (EAS) at CustomerServices.EAS@insolvency.gov.uk

Any queries on the protocol can be sent to SOR.Operations@insolvency.gov.uk

1. Properties

There are a number of cases where the OR is required to take further action to deal with Land Registry (HMLR) or take action to deal with property matters following the Insolvency Practitioner vacating office.

Generally, the following action would be taken by the Insolvency Practitioner prior to vacation:

a. Bankruptcy cases – section 283A qualifying properties

All qualifying family homes to be dealt with prior to vacation either by way of

- revesting, or
- realisation (sale or third-party offer).

Revesting:

- appropriate certificates to be filed at HMLR and served on parties,
- any HMLR restrictions (bankruptcy or Form J) to be removed.

Realisation:

- appropriate documents to be filed at HMLR,
- any HMLR restrictions (bankruptcy or Form J) to be removed.

Generally, qualifying family home properties should not be returned to the OR for re-vesting if the Insolvency Practitioner considers that value might accrue to the estate before the three-year period expires.

If a qualifying property is to be returned, then this should be clearly identified with the reason for handing the asset back to the OR.

Properties should not be returned to the OR to complete the re-vesting process or when consideration for the property interest has been received by the Insolvency Practitioner and no action has been taken to notify HMLR.

b. Bankruptcy - Non qualifying properties

All non-qualifying properties to be dealt with prior to vacation either by way of:

- realisation, or
- disclaimer.

Realisation

Where there is a realisation either by sale or third-party offer, then the appropriate forms to be filed at HMLR to ensure bankruptcy restrictions (bankruptcy or J restrictions) are removed.

Disclaimer

If a realisation would not be commercially viable within a reasonable timeframe and the property is onerous to the estate, then the Insolvency Practitioner should disclaim. Where a disclaimer is issued, the appropriate forms should be served on the parties and filed and recorded at HMLR as appropriate.

If the Insolvency Practitioner considers that value might accrue to the estate, this should be clearly identified, with the reason for handing the asset back to the OR to monitor and realise.

c. Properties generally

All realisations or disposals of properties should be recorded at HMLR, so that the register is updated. The OR often gets queries on aged cases relating to restrictions still in place on properties where there has been a sale/transfer or disclaimer, but restrictions remain on the property register.

With a solely owned property (qualifying or non-qualifying), where the Insolvency Practitioner has accepted funds for the beneficial interest only, the TR1 should be completed in order to deal with the legal interest.

If legal interests are being handed back details should be provided to the OR as below.

3. Unrealised assets

Where assets are passed back to the OR, the reasons for this are to be explained, including why the IP believes that a benefit to the estate will accrue in the future.

4. Paid in full estates (where assets remain unrealised)

Where an estate's debts and expenses are paid in full and there remain assets, non-qualifying properties in particular, the Insolvency Practitioner should inform the former debtor that they may wish to seek an annulment of the bankruptcy order. The former bankrupt should be made aware that if the bankruptcy order is not annulled, then unrealised assets remain vested in the bankruptcy estate. On vacating office, the IP should provide the OR with details of all assets that remain vested in the estate.

5. Suspension of discharge cases

On vacating office, the Insolvency Practitioner should include a note on any ongoing or concluded suspension of discharge matters to confirm as follows:

- Application made by the OR:
Where a suspension of discharge remains in place when the IP is vacating office, the Insolvency Practitioner should inform the OR as to whether they believe there are any continuing non-cooperation matters or whether in their view the suspension could be lifted.
- Application made by the Insolvency Practitioner:
Where an application has been made by the Insolvency Practitioner and the bankrupt has subsequently cooperated, the Insolvency Practitioner, on vacating office, should check that the compliance has been reported to the Court so that the suspension can be lifted.