

The Insolvency Service News

Issue 01

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Introduction

Welcome to the first edition of Insolvency Service News.

I hope that you will enjoy reading this edition, which is intended to give you a better understanding about the work of The Service. This edition takes a look at how The Service is protecting the public from unscrupulous traders and our plans to provide a remedy for people on low incomes who currently have no way to repay their debts within a reasonable time.

In a year which has seen record levels of bankruptcy, longer restrictions for bankruptcy are beginning to bite. Mass car production for Rover may have come to an end but The Insolvency Service helped to soften the blow for thousands of workers.

There's more than one side to insolvency and I hope that this newsletter will give you an insight into how we deal fairly and effectively with financial failure.

Desmond Flynn,
Chief Executive



Protecting the rugby-loving public from fraud

Swift intervention by The Insolvency Service followed by heavy penalties stopped rugby lovers from being duped into paying for non-existent all-inclusive packages for the Rugby World Cup. The person responsible, Sarah Hindle, was banned from acting as a company director for the maximum period of 15 years.

Ms Hindle ran a company called The Rugby World Cup 2003 (UK) Ltd, which claimed to sell tickets to Rugby World Cup matches in Australia in 2003, as well as arranging travel and accommodation. Members of the public paid at least £90,000 to the company, yet no match tickets, travel bookings or accommodation was ever provided, or shown to have existed.

The company was closed on 30 July 2003 in the public interest following the appointment of the Official Receiver in Manchester. The company had failed to pay money owed to Independent Magazines (UK) Ltd for advertising it had booked.

Rugby World Cup advertised its ability to sell tickets, travel and accommodation in magazines, newspapers and on the Internet. It used the logos of the travel governing bodies, leading customers to believe the company

was registered to sell air travel and that their money was protected when it was not. Company literature also claimed that the company was licensed by the International Rugby Board (IRB) to sell tickets. Despite specific warnings from the bodies concerned, the company continued these misrepresentations, which



were instrumental in persuading the public that the company was genuine.

Some customers began to get suspicious when they could not find flights scheduled for the dates and times stated on their itineraries. Ms Hindle stated in an email: "We are licensed to sell tickets for the RWC 2003. The tickets are fully guaranteed..." This was completely untrue. To another she wrote: "We are not under any circumstances operating a 'dodgy scam'." This email was sent two days after she received notice of a petition to wind

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What we do

The Insolvency Service carries out the initial administration of all compulsory liquidations and bankruptcies in England and Wales through its Official Receivers, to establish why they became insolvent. We also authorise and regulate the insolvency profession; deal with disqualification of directors in corporate failures; assess and pay statutory entitlement to redundancy payments when an employer cannot or will not pay employees; provide banking and investment services for bankruptcy and liquidation estate funds; and advise ministers and other government departments on insolvency law and practice.

continued from page 1

up the company, and also in the knowledge that the company was not licensed to sell tickets. Ms Hindle took a further £53,984 from clients after this date.

Investigation

As the Official Receiver carried out the investigation into the reasons for the company's failure, it was discovered that when the company went into compulsory liquidation, it had debts of £100,190.50.

During the course of the investigation, Ms Hindle failed to provide proper accounting records, or to account satisfactorily for the affairs and transactions of the company. In fact, she provided misleading and conflicting information, and failed to provide the documentation requested by the Official Receiver.

On 28 April 2004 Ms Hindle was convicted in the Maidenhead Magistrates Court on four counts against the Trade Descriptions Act 1968 and was fined a total of £250.

On 3 May 2005, following the investigation by the Official Receiver, Sarah Hindle was disqualified from acting as a director for the maximum period of 15 years. The judge commented that Ms Hindle had perpetrated a fraud on the rugby-loving public.

Consumer debt soars

Consumer debt hit £1 trillion in July 2004 and continues to rise steadily. The growth of credit is phenomenal. In 1974, there was just one credit card – Barclaycard – and individuals owed £32 million. There were 4,500 personal insolvencies that year.

In 2004, there were over 1,300 different credit cards. Individuals owed £56 billion and there were 47,000 personal insolvencies. So in 30 years, personal credit card debt rose about 2000 times, and personal insolvencies 10 times.

Heavy penalties imposed on those who flout bankruptcy restrictions

Those who disregard the restrictions imposed on them through bankruptcy or disqualification from company directorship face tough sanctions. The Insolvency Service works closely with the Department of Trade & Industry (DTI) solicitors who are able to refer cases for criminal charges.

CASE STUDY

A bankrupt who preyed on ailing companies and defrauded creditors on a massive scale is now serving four years in prison following a series of investigations.

Kevin Sykes, who had a total of 94 companies wound up by the Insolvency Service, persuaded directors to take him on as an insolvency and so-called "white knight" in "credit resistance" strategies. In some instances Sykes set up a shell company and generated false invoices to make that shell company the main creditor of the ailing business. The firm would then go into liquidation, with most of the assets transferring to the shell company – now the main creditor.

But instead of transferring the assets back to the company owners as promised, Sykes charged extortionate fees to claim back the hidden money.

Facts & Figures

Individual bankruptcies England and Wales	
2003	28,021
2004	35,898
2005 (9 months)	34,782

The Company Investigations Branch has had dealings with Kevin Sykes since 1993. In June 2003 alone, investigators wound up 75 companies which he had incorporated while serving a suspended sentence for another case. All these companies were operated whilst Sykes was still an undischarged bankrupt and disqualified director.

DTI investigators also wound up CW Cheney & Son Ltd, a company involved in a £3 million pension fund theft which was subsequently dealt with by the Serious Fraud Office. This saw Sykes sentenced to eight years imprisonment at Birmingham Crown Court in October 2004.

Sykes was sentenced on 2 November 2005 to an additional four years in prison, to run concurrently, and disqualified from being a company director for the maximum 15 years.

Companies Investigation Branch

The Insolvency Service works closely with the Companies Investigation Branch (CIB), which is currently part of the regulatory arm of the Department of Trade and Industry but from April 2006 will come under the umbrella of the Insolvency Service.

Under the Companies Act the CIB has the power to investigate trading companies. If it finds evidence of misconduct, the CIB can ask the court to wind the company up, at which point the case is passed to the Official Receiver. The CIB investigations are not criminal investigations but if necessary, can go forward to DTI solicitors who decide whether or not to pursue a prosecution in the criminal courts.

Proposals improve solutions to over-indebtedness

Major changes are proposed to the system of Individual Voluntary Agreements to make them a more accessible alternative to bankruptcy. IVAs are formal arrangements between debtors and their creditors to pay part or all of their debt and their use has more than doubled in the last two years. However, because of the relative costs involved creditors have not considered them suitable for those with relatively low levels of debt.

The new recommendations have been the subject of wide consultation by the IVA Stakeholder Group, set up in September 2004 and made up of insolvency practitioners, IVA providers, and representatives of the debt advice and debt management plan sector. The Group reported in July 2005 and the proposals were put out to wide consultation among creditors, government departments, insolvency practitioners, regulators, the debt advice sector and other stakeholders. The consultation closed in October and the proposals of the Stakeholders Group Report are now being considered in the light of consultation feedback by a Working Group of Stakeholder Group members which met in December.

The proposals include the establishment of two types of Simple Individual Voluntary Agreements, one for debt under £30,000 (SIVA 1), and one for debt in the £30,000 to



The IVA Stakeholders Group

£75,000 bracket (SIVA2). SIVA 1s could be put in place by the Insolvency Practitioner, with no vote by creditors but with the right for creditors to appeal to the court. SIVA 2s would involve a 'paper' meeting of creditors with a posting and email voting system and a simple majority deciding if the agreement goes forward or not. However, creditors would have no right to modify the agreement. The advantage of a paper meeting is that it reduces cost and therefore makes the process more accessible for debtors with low debt levels.

Changes to IVAs need to be implemented by means of a regulatory reform order and secondary legislation could come into force some time in late 2006.

"To date a significant number of individuals who would benefit from the advantages of an IVA are effectively denied access to the service due to the excessive requirements, which in my opinion add little value to any stakeholder," says Mark Allen, Partner, Grant Thornton.

"I believe that the changes proposed by the working party will play a significant role in enhancing the options available to the over-indebted individuals in the UK. I would expect the increase in volume of IVA as a direct result of the changes to be significant," he concludes.

"Change is necessary to reflect the shift from trader to consumer debtor that has occurred over the past 10 years," says Pat Boyden, Partner in Charge of Personal Insolvency at PriceWaterhouseCoopers.

"Whilst the existing IVA procedure has its place, it does not serve the vast majority of individuals who find themselves in financial difficulty. A less cumbersome and more accessible approach should appeal to those who find themselves unable to cope with credit card and bank debt, and, at the same time, provide a more controlled remedy for creditors. Transparency and simplicity are key; the individual knows what he or she has to do, and the creditor knows what to expect."

Take up of IVAs

Year	IVAs
2000	7,978
2001	6,298
2002	6,295
2003	7,583
2004	10,752
2005 (Jan-Sept)	13,291

Speedy payments help soften the blow

The insolvency of MG Rover represents by far the largest number of claims ever received by the Redundancy Payment Directorate from staff of one employer at any one time. A total of 5,981 former employees have made claims through Birmingham's two Redundancy Payment Offices (RPOs), which have paid out some £55.58 million in redundancy payments, holiday pay, notice pay and protective award payments.

What makes this case remarkable is not simply the numbers of claims dealt with in record time; it is the quick action and flexibility demonstrated by the Directorate in a difficult situation. It demonstrates that a government agency can quickly adapt its procedures and arrangements to cope with a sudden surge in the demand for its services, and work with other government agencies, private sector firms such as the administrator PriceWaterhouseCoopers, and the human resources department of MG Rover itself.

Record speed

The numbers are impressive – some 4,450 payments were processed in the first week and a half.

When the administrator was called in on 8 April 2005, the collapse caused huge distress to staff, many of whom had worked for Rover for decades. It also presented a major logistical challenge to the Directorate.

Birmingham's two RPOs worked closely with the administrator from the outset. Fifty staff were immediately assigned to deal with the avalanche of claims.

"We did a lot of representational work, sending 10 staff out to Long-



bridge, where PWC had set up a drop-in centre," says explains Barbara Morris, Redundancy Payments Manager. "We also took on eight temporary staff to ensure there were no delays in inputting the claims."

The process was structured for maximum efficiency. Former employees were asked to attend the drop-in centre on different days according to their names, and because the administrator was on

Around 4,450 payments were processed in the first week and a half.

the spot, claims could be cleared with PWC and taken back to the RPO in two daily batches. Around 1,000 claims a day were processed, and the majority of payments – made up of redundancy and holiday pay – were made with astonishing speed. The average time taken was 3.2 days, well ahead of the Directorate's target of 70% in three weeks and 92% in six weeks.

In the meantime, Birmingham staff were still answering phone queries – 3,000 to 4,000 in a typical month – and dealing with existing cases. Edinburgh and Watford RPOs stepped into the breach and

took on all the other new claims that would normally be dealt with in Birmingham. Extra temps were taken on at both offices to cope with the additional workload.

Representatives of RPO were also present at Northfields Jobcentre to deal with questions from MG Rover workers. The Jobcentre stayed open until 10pm each night for over three weeks to cope with the volume of enquiries.

"We've had a lot of compliments from Rover employees," says Barbara. "It was a big advantage that we helped at the drop-in centre, because we could tell people that we were going to try to make the payments within 10 days. They thought they were looking at not being paid for six weeks, but we pulled out the stops and did it a lot quicker than that."

The vast majority of former Rover workers – 78.3% – had over 12 years' service. In total the RPO paid out £55.58 million, an average of £9,434 per worker.

All payments made by Redundancy Payments Offices are subject to statutory limits, the most important being the limit on weekly pay that is currently £280 a week. This meant that MG Rover workers, many of who earned more than £500 a week and were entitled to 12 weeks' notice pay, currently £280 a week, covering notice pay and redundancy and protective award payments.

Bankruptcy Restrictions Orders start to bite

Bankrupts acting dishonestly either before or during the bankruptcy face strict sanctions. The Official Receiver may apply to the court for a Bankruptcy Restrictions Order, which can last from two to 15 years, depending on the court's judgement of the behaviour. This means the person is subject to the restrictions of bankruptcy for that period. An individual can make a Bankruptcy Restrictions Undertaking which has the same effect as an Order, but means the matter does not have to go to court.

CASE STUDY 1

Elliott Sandat, a 28-year-old self-employed driver from Romford in Essex, declared himself bankrupt in November 2004, with liabilities of £79,352 accrued through credit and store cards, two loans and legal fees.

The Official Receiver looked into the case to establish whether Elliott Sandat had contributed to his bankruptcy through his own misconduct.

He found that Mr Sandat and his wife had sold their jointly-owned house in June, realising £46,282. Although Mr Sandat knew he was insolvent and a creditor had successfully obtained a County Court judgement for £1,074 against him, in July 2004 he withdrew £36,000 from his joint bank account – his half of the

equity plus £12,859 of his wife's money. He then travelled to Las Vegas on 6 August and in two days lost all the cash gambling, leaving no money to pay his creditors. A BRO was made against him for a period of eight years.

CASE STUDY 2

By 1 September 2004, 31 year-old Phillip Hoare had debts of at least £35,920 and was considering bankruptcy. He resigned from his job on 21 September 2004 believing that he could not serve as a police officer if bankrupt, but between 20 September and 30 November 2004 he ran up additional debts of £21,529 at a time when he knew, or ought to have known, that he had no reasonable prospect of meeting the repayments as he had failed to obtain alternative employment.

He failed to provide the OR with a full and satisfactory account of how he had spent £21,760 withdrawn as cash during this period. He claimed to have spent it on prostitutes, gambling, alcohol and his social life, though he could provide no proof of this.

Nor did he adequately explain what happened to his Honda motor-bike and a cherished number plate. He said he had sold them for £300 and £150 respectively, even though the items had been advertised for £3,995 and £3,000. The OR was unable to verify the sale prices or what happened to the money.

Mr Hoare also made a repayment of £3,000 to his parents at the end of September in preference to his other creditors, when he knew he was insolvent.

The OR considered that Mr Hoare's actions had disadvantaged the majority of his creditors and therefore sought a BRO. The bankrupt agreed that the allegations made against him in the OR's report to Court were accurate and gave a Bankruptcy Restrictions Undertaking for a period of eight years.

What does disqualification mean?

Company directors who abuse the privilege of limited liability can be brought to account and if necessary disqualified under the Company Directors Disqualification Act 1986 (see example on p1). When a company goes into compulsory liquidation or bankruptcy, the Official Receiver carries out an investigation into the affairs and causes of failure and the conduct of the directors.

The court can disqualify a person for between two to 15 years from:

- ✗ Acting as a director of a company.
- ✗ Taking part, directly or indirectly, in the promotion, formation or management of a company.
- ✗ Being a liquidator or an administrator of a company.
- ✗ Being a receiver or manager of a company's property.

Examples of conduct that may lead to disqualification include:

- ✗ Continuing to trade to the detriment of creditors at a time when the company was insolvent.
- ✗ Failure to keep proper accounting records.
- ✗ Failure to prepare and file accounts or make returns to Companies House.
- ✗ Failure to submit tax returns or pay tax or other money due to the Government.
- ✗ Failure to co-operate with the Official Receiver/Insolvency Practitioner.

The figures

April to November 2005

Bankrupts with restrictions 292

Disqualified directors 414

Income Payment Orders and Agreements 6,758 cases

Total generated from the Income Payment Orders and Agreements £5,596,033

Counting out their money

Manchester's Official Receiver's Office spent 17 November counting other people's money. But this was very different to its normal day job. The money in question was the entire collection of the Farnworth and Kearsley Royal British Legion Poppy Appeal. The Office's 50 staff all lent a hand to count the many tonnes of coins collected – £8,083 in total – in just one day. The exercise would have taken the British Legion branch over two weeks to count itself.

The idea to help out followed a suggestion by Examiner Ann Murphy, who with her husband sits on the Committee of the British Legion branch. It was a massive exercise with an average of 12 staff counting at any one time, but the effort was greatly appreciated by the branch, who have asked if the Office can help out again next year!



"It's great for community relations, and the staff really enjoyed the feeling of being able to put something back," says Official Receiver Roger Gardner. The Office also organises a five-a-side football tournament for insolvency practitioners each year with sponsorship going to Macmillan Cancer Care, and gives presentations to local Citizens Advice Bureaux and courts in the North West to heighten awareness of what it does and developments such as the facility for bankrupts to file online. "It helps to put a friendly face on our organisation and it all helps to break down some of the myths around us," concludes Roger Gardner.

Striving for excellence in customer service

Customer service is the primary focus of all work by the Insolvency Service, a fact that has been recognised by the Service receiving Charter Mark accreditation no fewer than three times. Charter Mark is the Government's national standard for excellence in customer service and is renewable every three years.

To gain the Charter Mark, public sector organisations have to satisfy six criteria. These act as a tool to improve customer focus and value for money, while the emphasis on self-assessment encourages organisations to concentrate on their strengths and to strive for continuous

improvement. Charter Mark organisations must:

- Set standards and perform well.
- Actively engage with customers, partners and staff.
- Be fair and accessible to everyone and promote choice.
- Continuously develop and improve.
- Use resources effectively and imaginatively.
- Contribute to improving opportunities and quality of life in the communities served.



CUSTOMER SERVICE EXCELLENCE

The Insolvency Service first achieved Charter Mark accreditation in 1998, and gained re-accreditation in 2001 and 2004.

"Charter Mark is an invaluable tool in making sure that we do not lose sight of the fact that we must retain our focus on delivery," says Marian Joyce, Head of Secretariat. "It was particularly pleasing how well the Service did on a recent Charter Mark surveillance visit, despite the increased case numbers."

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Feedback

- Would you like to receive future editions of this newsletter?
- How would you prefer to receive this newsletter?

- How often would you like to receive future editions?
- How would you like to improve the newsletter?

Replies via email to the Press Office at press.office@insolvency.gsi.gov.uk

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