

INSOLVENCY CODE OF ETHICS

Definitions

Authorising Body	<ul style="list-style-type: none">• A body declared by Order of the Secretary of State for Trade and Industry or the Department of Enterprise, Trade and Investment to be a recognised professional body for the purposes of the Insolvency Act 1986 or the Insolvency (NI) Order 1989 (as amended);• the Department of Trade and Industry; or• the Department of Enterprise, Trade and Investment.
Close or immediate family Entity	<p>A spouse (or equivalent), dependant, parent, child or sibling.</p> <p>An individual, partnership or corporate body.</p>
Individual within the practice	The <i>Insolvency Practitioner</i> , any <i>principals</i> in the <i>practice</i> and any employees within the <i>practice</i> .
Insolvency appointment	A formal appointment which, under the terms of legislation must be undertaken by an <i>Insolvency Practitioner</i> .
Insolvency Practitioner	An individual who is authorised to act as an Insolvency Practitioner in England, Wales, Scotland or Northern Ireland by a Recognised Professional Body or the Secretary of State or the Department of Enterprise, Trade and Investment. Additionally, the Code applies to other members of the Institute of Chartered Accountants in Ireland in respect of insolvency related work in the Republic of Ireland.
Insolvency team	Any person under the control of an <i>Insolvency Practitioner</i> .
Practice	The organisation in which the <i>Insolvency Practitioner</i> practises.
Principal	In respect of a corporate practice: a director; in respect of a partnership; a partner; in respect of a limited liability partnership; a member; in respect of a sole practitioner; that person, or any person who is held out as being a director, partner or member.

CODE OF ETHICS FOR INSOLVENCY PRACTITIONERS

PART 1 GENERAL APPLICATION OF THE CODE

Section 100 The Practice of Insolvency

Introduction

- 100.1 The practice of insolvency is principally governed by statute and secondary legislation. This document assists *Insolvency Practitioners* in the application of the legislation and also in matters not covered by legislation. [An Insolvency Practitioner's principal guide will be the fundamental principles contained in the Code of Ethics. The full Code is in [ref] but elements are considered below in the context of work performed by Insolvency Practitioners.]¹
- 100.2 This Code applies to all *Insolvency Practitioners*. Where *Insolvency Practitioners* are also subject to another professional Code of Ethics of an *Authorising Body*, they should also have regard to the other professional code. This Code does not apply any higher duty on an *Insolvency Practitioner* when undertaking professional work which does not involve an *insolvency appointment*, than any ethical code of an *Authorising Body*. Where *Insolvency Practitioners* are not subject to another professional Code of Ethics of an *Authorising Body*, they are expected to apply the fundamental principles to all their professional work.
- 100.3 *Insolvency Practitioners* should take steps to ensure that the code is applied to *insolvency appointments*, or any work that may lead to such an appointment, by the *Insolvency Practitioner* and all members of the *insolvency team*.

Fundamental Principles

- 100.4 An *Insolvency Practitioner* is required to comply with the following fundamental principles:
- (a) Integrity
An *Insolvency Practitioner* should be straightforward and honest in all professional and business relationships.
 - (b) Objectivity
An *Insolvency Practitioner* should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.
 - (c) Professional Competence and Due Care
An *Insolvency Practitioner* has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. An *Insolvency Practitioner* should act diligently and in accordance with applicable technical and professional standards when providing professional services.
 - (d) Confidentiality
An *Insolvency Practitioner* should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential

¹ This sentence will vary by body to include a cross reference to its 'full' ethical guide, where one exists.

information acquired as a result of professional and business relationships should not be used for the personal advantage of the Insolvency Practitioner or third parties.

(e) Professional Behaviour

An *Insolvency Practitioner* should comply with relevant laws and regulations and should avoid any action that discredits the profession.

- 100.5 It is the Code of Ethics, and the spirit that underlies it, that govern the conduct of practitioners. Failure to observe the Code may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an *Insolvency Practitioner*.

Framework Approach

- 100.6 The framework approach is a method which *Insolvency Practitioners* can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them.
- 100.7 Many different circumstances, or combination of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to the fundamental principles and specify the appropriate mitigating action that should be taken. The nature of an *insolvency appointment* may differ and consequently different threats may exist, requiring the application of different safeguards.
- 100.8 A conceptual framework that requires an *Insolvency Practitioner* to identify, evaluate and address threats to the fundamental principles, rather than merely comply with a set of specific rules which may not cover every eventuality, is, therefore, in the public interest.
- 100.9 Many threats fall into five categories:
- (a) Self-interest threats, which may occur as a result of the financial or other interests of a practice or an *Insolvency Practitioner* or of an immediate or close family member of an *individual within the practice*;
 - (b) Self-review threats, which may occur when a previous judgement made by an individual *within the practice* needs to be re-evaluated by the *Insolvency Practitioner*;
 - (c) Advocacy threats, which may occur when an *individual within the practice* promotes a position or opinion to the point that subsequent objectivity may be compromised;
 - (d) Familiarity threats, which may occur when, because of a close relationship, an *individual within the practice* becomes too sympathetic to the interests of others; and
 - (e) Intimidation threats, which may occur when an *Insolvency Practitioner* may be deterred from acting objectively by threats, actual or perceived.
- 100.10 The following paragraphs give examples of the possible threats that an *Insolvency Practitioner* may face. The individual examples are illustrative and should not be regarded as exhaustive.
- 100.11 Examples of circumstances that may create self-interest threats for an *Insolvency Practitioner* include:
- (a) An interest in a major creditor which could influence the level of fees paid to the *Insolvency Practitioner*.
 - (b) Concern about the possibility of damaging a business relationship.
 - (c) Concerns about potential future employment.

- (d) A personal connection with an *entity* or a *principal* of an *entity*.
- (e) The acquisition of assets of the *entity*.

100.12 Examples of circumstances that may create self-review threats include:

- (a) The acceptance of an *insolvency appointment* for an *entity* where an *individual within the practice* has recently been employed by that *entity* and is now in a position to exert direct and significant influence over the conduct of the *insolvency appointment*.
- (b) The acceptance of an appointment for an *entity* where the *Insolvency Practitioner* or the *practice* has carried out professional work of any description, including sequential *insolvency appointments*, for that *entity*.

However, such self-review threats may diminish over the passage of time.

100.13 Examples of circumstances that may create advocacy threats include:

- (a) Acting in an advisory capacity for a creditor or group of creditors of an *entity*, prior to an *insolvency appointment* in respect of that *entity*.
- (b) Acting as an advocate for a client in litigation or disputes with third parties, prior to an *insolvency appointment* in respect of that client.

100.14 Examples of circumstances that may create familiarity threats include:

- (a) An *individual within the practice* having a close or immediate family relationship with an *entity* or *principal* of an *entity*.
- (b) An *individual within the practice* having a close or immediate family relationship with an employee of the *entity* who is in a position to exert direct and significant influence over the conduct of an *insolvency appointment*.
- (c) A principal or employee an *entity* who was or is an *individual within the practice*.

100.15 Examples of circumstances that may create intimidation threats include:

- (a) Being threatened with dismissal or replacement in relation to a professional service, whether by a creditor or any other person.
- (b) Being threatened with litigation.
- (c) Being pressured not to follow regulations, this code, any other applicable code, technical or professional standards.
- (d) Where the *Insolvency Practitioner* is an employee rather than a *principal* of the *practice* and has insufficient control, as an officeholder, over the *insolvency appointment*.

100.16 The next few paragraphs discuss the safeguards that may be available to reduce the level of any threat.

In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise *practice*-wide safeguards and specific safeguards relating to professional work.

100.17 Safeguards in the practice may include:

- (a) Leadership that stresses the importance of compliance with the fundamental principles.
- (b) Policies and procedures to implement and monitor quality control of

- engagements.
- (c) Documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level.
 - (d) Documented internal policies and procedures requiring compliance with the fundamental principles.
 - (e) Policies and procedures to consider the fundamental principles of the Code before the acceptance of an *insolvency appointment*.
 - (f) Policies and procedures regarding the identification of interests or relationships between *individuals within the practice* and third parties.
 - (g) Policies and procedures to prohibit individuals who are not members of the *insolvency team* from inappropriately influencing the outcome of an *insolvency appointment*.
 - (h) Timely communication of a *practice's* policies and procedures, including any changes to them, to all *individuals within the practice*, and appropriate training and education on such policies and procedures.
 - (i) Designating a member of senior management to be responsible for overseeing the adequate functioning of the safeguarding system.
 - (j) A disciplinary mechanism to promote compliance with policies and procedures.
 - (k) Published policies and procedures to encourage and empower individuals within the *practice* to communicate to senior levels within the *practice* and/or the *Insolvency Practitioner* any issue relating to compliance with the fundamental principles that concerns them.

100.18 Safeguards specific to an appointment may include:

- (a) Involving and/or consulting another *Insolvency Practitioner* from within the *practice* to review the work done.
- (b) Consulting an independent third party, such as a committee of creditors, a licensing or professional body or another *Insolvency Practitioner*.
- (c) Involving another *Insolvency Practitioner* to perform part of the work, which may include another *Insolvency Practitioner* taking a joint appointment where the conflict arises during the course of the appointment.
- (d) Seeking directions from the court.

100.19 An *Insolvency Practitioner* should exercise judgment to determine how to best deal with an identified threat. In exercising this judgment, an *Insolvency Practitioner* should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would reasonably conclude to be acceptable. This consideration will be affected by matters such as the significance of the threat, the nature of the work and the structure of the *practice*.

100.20 It will always be for the *Insolvency Practitioner* to justify his or her actions in cases of doubt. Whether the *Insolvency Practitioner* takes or continues an appointment will depend on what threats there are and whether, in that event, the introduction of safeguards would overcome those threats. Sometimes, though, the mere perception of risk or conflict will tend to undermine confidence in the practitioner's objectivity, and so make acceptance or continuation unwise.

100.21 The *Insolvency Practitioner* must not only be satisfied as to the actual objectivity which he or she can bring to their judgement, decisions and conduct, but also must be mindful of how they will be perceived by others.

- 100.22 Threats may be general in nature or peculiar to the particular circumstances of the case. They require an *Insolvency Practitioner* to consider them in the light of the circumstances in which the engagement is offered or undertaken.
- 100.23 Where a threat cannot be eliminated, an *Insolvency Practitioner* should evaluate the significance of such threat. If the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible. In considering the significance of any particular matter, qualitative as well as quantitative factors should be taken into account.
- 100.24 An *Insolvency Practitioner* will encounter situations where no safeguards can mitigate a threat. Where this is the case, an *Insolvency Practitioner* should conclude that it is not appropriate to accept an *insolvency appointment*.
- 100.25 There may be occasions when the *Insolvency Practitioner* is no longer in compliance with this Code because of changed circumstances or something has been inadvertently overlooked. This would generally not be an issue provided the *Insolvency Practitioner* has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied

PART 2: INSOLVENCY PRACTITIONERS

Section 200 Introduction

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Section 200

Introduction

- 200.1 This part illustrates how the conceptual framework of fundamental principles and threats and safeguards can be applied to the work of Insolvency Practitioners. Some of the examples in the following sections are general in nature, but those in Section 290 are more specific. The examples are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by an *Insolvency Practitioner* that may create threats to compliance with the principles. Consequently, it is not sufficient for an *Insolvency Practitioner* merely to comply with the examples presented; rather, the framework should be applied to the particular circumstances faced.
- 200.2 An *Insolvency Practitioner* should not engage in any business, occupation or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.
- 200.3 Some of the threats referred to in this section require the *Insolvency Practitioner* to decline or resign an engagement, unless there are safeguards which can reduce the threat to a level which allows the engagement to be accepted or continued.

Section 210

Insolvency Appointments

- 210.1 Before agreeing to accept any *insolvency appointment*, an *Insolvency Practitioner* should consider whether acceptance would create any threats to compliance with the fundamental principles.
- 210.2 The significance of any threats should be evaluated. If identified threats are other than trivial, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.
- 210.3 Appropriate safeguards may include :
- (a) Obtaining knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities.
 - (b) Acquiring an appropriate understanding of the nature of the *entity's* business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
 - (c) Acquiring knowledge of relevant industries or subject matters.
 - (d) Possessing or obtaining experience with relevant regulatory or reporting requirements.
 - (e) Assigning sufficient staff with the necessary competencies.
 - (f) Using experts where necessary.
 - (g) Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.
- 210.4 The additional powers and duties arising in an *insolvency appointment* and the additional elements of control that an *Insolvency Practitioner* may impose on the *entity* may reduce the threats to an acceptable level. However, where it is not possible to reduce the threats to an acceptable level, an *Insolvency Practitioner* should decline to accept the *insolvency appointment*.
- 210.5 Following acceptance, any threats should continue to be kept under appropriate review and an *Insolvency Practitioner* should be mindful that other threats may come to light or arise.
- 210.6 *Insolvency Practitioners* should be mindful of how they will be perceived by others. Sometimes the mere perception of conflict will tend to undermine public confidence in an *Insolvency Practitioner's* ability to carry out the engagement and so make acceptance inappropriate.
- 210.7 Maintaining professional competence requires a continuing awareness and understanding of relevant technical and professional developments, including:
- (a) Developments in insolvency legislation,
 - (b) The regulations of their licensing body,
 - (c) Technical issues being discussed within the profession,
 - (d) Guidance issued by their licensing body or the DTI Insolvency Service,
 - (e) Statements of Insolvency Practice.
- 210.8 *Insolvency Practitioners* should document their consideration of the fundamental principles and the reasons behind their agreement or otherwise to accept an *insolvency appointment*.

Section 220

Conflicts of Interest

220.1 An *Insolvency Practitioner* should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. Examples of where a conflict of interest may arise are where:

- (a) an *Insolvency Practitioner* has to deal with claims between the separate and conflicting interests of entities over whom he is appointed.
- (b) there are succession appointments (see section 290 for examples).
- (c) a significant relationship has existed with the *entity* or someone connected with the *entity*. (See section 290 for examples).

220.2 Where the *Insolvency Practitioner* owes a duty of care to more than one party, this should be declared to all parties and the *Insolvency Practitioner* should ensure that the parties are content for the practitioner to act.

220.3 An *Insolvency Practitioner* should evaluate the significance of any threats. Evaluation includes considering, before accepting an *insolvency appointment*, whether the *Insolvency Practitioner* or the *practice* has any business interests, or relationships with the *entity* that could give rise to threats. If threats are other than trivial, safeguards may be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

220.4 Where a conflict of interest poses a threat to one or more of the fundamental principles that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the *Insolvency Practitioner* should conclude that it is not appropriate to accept the *insolvency appointment* or that resignation from one or more conflicting appointments is required.

220.5 The following safeguards may be considered:

- (a) The use of separate Insolvency Practitioners and/or staff; and
- (b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing); and
- (c) Clear guidelines for *individuals within the practice* on issues of security and confidentiality; and
- (d) The use of confidentiality agreements signed by *individuals within the practice* and
- (e) Regular review of the application of safeguards by a senior individual within the *practice* not involved with the *insolvency appointment*.
- (f) Seeking directions from the court.

SECTION 230

Obtaining Specialist Advice and Services

- 230.1. When an *Insolvency Practitioner* intends to rely on the advice or work of another, the *Insolvency Practitioner* should evaluate whether such reliance is warranted. The *Insolvency Practitioner* should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others
- 230.2. Familiarity threats can arise if services are provided by a regular source and safeguards to mitigate such threats should ensure that a proper business relationship was maintained between the parties and such relationships should be reviewed periodically to ensure that best value is being obtained.
- 230.3. An *Insolvency Practitioner* should take particular care where services are provided from within the *practice* or by a party with whom its *practice*, or an *individual within the practice*, has a business relationship.
- 230.4. Safeguards may include clear guidelines and policies within the *practice* on such appointments, particularly concerning disclosure of relevant information to creditors committees.
- 230.5. *Insolvency Practitioners* may build relationships with firms of agents (including legal and tax advisors) where a regular flow of work is beneficial for both parties. Such relationships should be reviewed at regular periods to ensure that best value is being obtained for creditors.

Section 240

Fees and Other Types of Remuneration

- 240.1 The special nature of *insolvency appointments* makes the payment or offer of any commission for, or the furnishing of any valuable consideration towards, the introduction of *insolvency appointments* inappropriate. This does not, however, preclude an arrangement between an *Insolvency Practitioner* and a bona fide employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the practitioner through the efforts of the employee.
- 240.2 In *insolvency appointments*, the acceptance of referral fees or commissions represent a significant threat to objectivity and should not therefore be accepted, other than where it is for the benefit of the insolvent estate. It is unlikely that any safeguards will be sufficient to mitigate this threat.
- 240.3 Where an engagement is work leading to an *insolvency appointment*, an *Insolvency Practitioner* should make any party to the work aware of the terms of the work and, in particular, the basis on which fees are charged and which services are covered by those fees.
- 240.4 In respect of *insolvency appointments*, *Insolvency Practitioners* must follow the requirements laid down within legislation, regulations and Statements of Insolvency Practice.
- 240.5 Where an engagement may lead to an *insolvency appointment*, *Insolvency Practitioners* should not receive such fees or commissions unless they have established safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards will include disclosure in advance of any arrangements to receive fees for referring any *entity* to a third party.
- 240.6 In situations where a third party has undertaken work on which the *Insolvency Practitioner* intends to rely, the *Insolvency Practitioner* should be satisfied as to the quality and the accuracy of the work. Any payment to the third party should reflect the value of the work undertaken.

Section 250

Marketing

250.1 When *Insolvency Practitioners* seek *insolvency appointments* and other new work through advertising or other forms of marketing, there may be potential threats to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behavior might arise if services, achievements or products are marketed in a way that is inconsistent with that principle.

250.2 Safeguards against such a threat include:

- (a) Providing information fairly and in a manner that is not misleading.
- (b) Avoiding unsubstantiated or disparaging statements.
- (c) Complying with relevant codes of practice.

250.3 Advertisements and other forms of marketing should be clearly distinguishable as such and have regard to principles of legality, decency, honesty and truthfulness.

250.4 If reference is made in advertisements or other forms of marketing to fees, the basis on which fees are calculated should be provided and care should be taken to ensure that such reference does not mislead as to the precise range of services and the time commitment that the reference is intended to cover.

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

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

Section 260

Gifts and Hospitality

- 260.1 An *Insolvency Practitioner*, or a close or immediate family member, may be offered gifts and hospitality. Such an offer ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.
- 260.2 The significance of such threats will depend on the nature, value and intent behind the offer. Where gifts or hospitality which a reasonable and informed third party having knowledge of all relevant information, would consider trivial are made, an *Insolvency Practitioner* may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, the *Insolvency Practitioner* may generally conclude that there is no significant threat to compliance with the fundamental principles.
- 260.3 If evaluated threats are other than trivial, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, an *Insolvency Practitioner* should not accept such an offer.
- 260.4 An *Insolvency Practitioner* should not offer or provide gifts or hospitality where this would give rise to threats to compliance with the fundamental principles.

Section 270

Significant Professional and Personal Relationships

- 270.1 The environment in which *Insolvency Practitioners* work can lead to threats to the principle of objectivity. Independence may also be regarded as part of objectivity. The most common threats arise from ongoing and previous relationships. In addition to objectivity, the principle of integrity can also be threatened by relationships.
- 270.2 The principle of integrity applies throughout the working environment. *Insolvency Practitioners* should ensure that all business and professional relationships are conducted in a fair and transparent manner. *Insolvency Practitioners* are the custodians of the assets of others. An *Insolvency Practitioner* should therefore act and be seen to act with integrity. An *Insolvency Practitioner's* actions may ultimately affect the amount received by creditors.

The aspects to consider

- 270.3 In considering whether objectivity may be threatened, an *Insolvency Practitioner* should identify and analyse the significance of any professional or personal relationship which may affect compliance with the fundamental principles in connection *insolvency appointments*. The threats arising from any significant relationships should then be considered, together with the introduction of any possible safeguards.
- 270.4 An *Insolvency Practitioner* should consider whether any *individual within the practice*, or the *practice* itself, has or had a professional or personal relationship with a *principal* or employee of an *entity* for which an *insolvency appointment* is being considered, or any business controlled by or under the same control as the *entity* or any part of it.
- 270.5 Where *practices* merge, they should subsequently be treated as one for the purposes of assessing previous professional or personal relationships. At the time of the merger, existing appointments should be reviewed. *Principals* and employees of the merged *practice* become subject to common ethical constraints in relation to accepting new *insolvency appointments* to *clients* of either of the former *practices*. However existing appointments which are rendered in apparent breach of guidance by such merger need not be determined automatically, provided that a considered review of the situation by the *practice* discloses no obvious and immediate conflict, such as a potential need to sue a new colleague.
- 270.6 Where an *individual within the practice* has, in any former practice, undertaken work upon the affairs of an entity in a capacity that is incompatible with an *insolvency appointment* of the new *practice*, the individual should not work or be employed on that assignment, save in the case of an employee of such junior status that their duties in the former practice did not involve the exercise of any material professional judgement or discretion.
- 270.7 A professional relationship includes where an *individual within the practice* is carrying out or has carried out audit work or any other professional work, or where the *practice* has been appointed to carry out audit work or any other professional work. A professional relationship may also arise from an *individual within the*

practice having an interest in an *entity*. Such professional relationships will include those which arise from work undertaken from within another *practice*.

- 270.8 Professional or personal relationships may exist where work has been carried out by firms with which the *Insolvency Practitioner* is or has been associated, including relationships whereby they or their *practice* are held out by name, association or other public statement as being part of a national or international association.
- 270.9 An *Insolvency Practitioner* should not accept an *insolvency appointment* in relation to an *entity* where any personal, professional or business connection with a *principal* is such as to impair or reasonably appear to impair the *Insolvency Practitioner's* objectivity.
- 270.10 An *Insolvency Practitioner* should also be aware of the threat to objectivity if he were to engage in regular or reciprocal arrangements in relation to *insolvency appointments* with another organisation.

Is the relationship significant to the conduct of the engagement?

- 270.11 An *Insolvency Practitioner* should review whether the nature of the professional or personal relationship is of significance to the conduct of *insolvency appointment*. In doing so, consideration should also be given to how others may regard the significance of the relationship. Issues to consider may include the following:
- (a) The perception of the relationship. Whilst an *Insolvency Practitioner* may regard a relationship as not being significant to the *insolvency appointment* owing to their detailed knowledge of the circumstances, the perception of others may differ and this may be sufficient to make the relationship significant. An *Insolvency Practitioner* should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would reasonably conclude to be acceptable.
 - (b) How recently any work was carried out. Where an *insolvency appointment* immediately follows a previous relationship, this would increase the significance of the work. While it is likely that work carried out for such an *entity* within the previous three years will be regarded as significant, there may still be instances where, in respect of non-audit work, it would be appropriate to accept the *insolvency appointment*. Conversely, there may be situations whereby the work carried out was such that a considerably longer time scale should elapse before the *Insolvency Practitioner* should consider accepting an *insolvency appointment*.
 - (c) Whether the fee received for the work by the *practice* is or was significant to the *practice* itself or is or was substantial.
 - (d) The impact of the work conducted by the *practice* on the financial state and/or the financial stability of the *entity*.
 - (e) Whether the *insolvency appointment* to be conducted involves any consideration of any work previously undertaken by the *practice* for that *entity*.
 - (f) The nature of the previous duties undertaken by a *practice* during an earlier relationship with the *entity*.

- (g) The nature of the previous duties undertaken by an *individual within the practice* during any earlier relationship with the *entity*. Consideration should be given to the status of the individual and whether the individual exercised material professional judgement or discretion in the conduct of that previous work.
- (h) The extent of the *insolvency team's* familiarity with the individuals connected with *insolvency appointment*.

The threats created by a significant relationship and possible safeguards

270.12 If there is a significant relationship, an *Insolvency Practitioner* should consider whether that relationship gives rise to any threat. The existence of threats to objectivity will depend upon the particular circumstances and the nature of the *insolvency appointment* that the *Insolvency Practitioner* is performing. In situations where no threat arises, an *Insolvency Practitioner* will be able to undertake or continue the *insolvency appointment*.

270.13 Where a threat arises from a significant relationship, and the threat cannot be overcome by safeguards, the professional work cannot be undertaken or continued.

270.14 It is always a matter for an *Insolvency Practitioner* to assess whether to undertake professional work or accept and/or continue an insolvency appointment or participate in the team in the particular circumstance that obtains at the time. Careful consideration should always be given to the implications of acceptance and *Insolvency Practitioners* should satisfy themselves that objectivity is unlikely to be, or appear to be, impaired, by a perceived conflict of interest arising from a professional or personal relationship.

Safeguards

270.15 Some of the safeguards which may be considered to mitigate the threat created by a significant professional or personal relationship are considered in paragraph 220.5. Other safeguards may include:

- (a) Withdrawing from the *insolvency team*.
- (b) Supervisory procedures.
- (c) Terminating (where possible) the financial or business relationship giving rise to the threat.
- (d) Discussing the issue with higher levels of management within the *practice* (where possible).

270.16 However, the *Insolvency Practitioner* should always bear in mind that safeguards may not be sufficient to mitigate a threat to a level whereby the *insolvency appointment* can be commenced or continued.

270.17 The evaluation of threats to objectivity and independence and subsequent action should be supported by evidence obtained before accepting the engagement and while it is being performed. The obligation to make such an evaluation and take action arises when an *Insolvency Practitioner* or member of the *insolvency team* knows, or could reasonably be expected to know, of circumstances or relationships that might compromise independence.

Section 290

THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

Introduction to specific situations

290.1 The following examples describe specific circumstances and relationships that will create threats to the fundamental principles. The examples describe the threats and the safeguards that may in some circumstances be appropriate to eliminate the threats or reduce them to an acceptable level in each case. In practice, the *Insolvency Practitioner* and the members of the *insolvency team* will be required to assess the implications of similar, but different, circumstances and relationships and to determine whether safeguards, can be applied to satisfactorily address the threats to the fundamental principles.

290.2 When threats that are not trivial are identified, and the *Insolvency Practitioner* decides to accept or continue the *insolvency appointment*, the decision should be recorded. The record should include a description of the threats identified and the safeguards applied to eliminate or reduce the threats to an acceptable level.

290.3 The examples are not intended to be exhaustive.

290.4 Audit work previously undertaken for a company or individual to which an appointment is being considered

Where the *Insolvency Practitioner* or a *practice* has previously carried out audit work within the previous 3 years for a company or individual to which the appointment is being considered, the *Insolvency Practitioner* should not accept an appointment.

This example should not be interpreted to indicate that where the audit work was conducted over 3 years prior to the consideration of an appointment, this would necessarily be acceptable as a self-review threat may still arise. This should be considered and where necessary, safeguards imposed before an appointment can be accepted. In some situations, no safeguards will be sufficient and the appointment will need to be declined.

290.5 Professional work undertaken by an individual within the practice for an entity or any principal of an entity to which an insolvency appointment is being considered

Where an individual within the practice is undertaking professional work for an entity or any principal of an entity to whom an *insolvency appointment* is being considered, this will give rise to a threat to independence. The nature of the tax work undertaken will need to be considered. For example, basic tax work for a director of the entity may not be regarded as so significant as tax planning work undertaken for the entity.

290.6 Appointment as Nominee and/or Supervisor of a Company Voluntary Arrangement, Administrator, Administrative or Other Receiver

Where there has been a significant professional relationship with a company or a personal relationship with a director, former director or shadow director of a company, no individual within the practice should accept appointment as nominee or supervisor of a voluntary arrangement, administrator or administrative or other receiver in relation to that company. (See also paragraph 290.11 below.)

290.7 Appointment as Nominee and/or Supervisor of an Individual Voluntary Arrangement, Trustee in Bankruptcy or Trustee under a Deed of Arrangement

Where there has been a significant professional or personal relationship with an individual, no *individual within the practice* should accept appointment as nominee or supervisor of a voluntary arrangement or as trustee in bankruptcy or as a trustee under a deed registered under the Deeds of Arrangement Act 1914 in relation to that individual.

290.8 Appointment as Liquidator

Where there has been a significant professional relationship with a company or a personal relationship with a director, former director or shadow director thereof, no *individual within the practice* should accept appointment as liquidator of the company if the company is insolvent. Where the company is solvent such appointments should not be accepted without careful consideration being given to all the implications of acceptance in the particular case, and *Insolvency Practitioners* should satisfy themselves that the directors' declaration of solvency is likely to be substantiated by events.

290.9 Appointment as Investigating Accountant at the Instigation of a Creditor

A significant professional relationship would not normally arise where the relationship is one which springs from the appointment of the *practice* by, or at the instigation of, a creditor or other party having a financial interest in a company or business, to investigate, monitor or advise on its affairs provided that:

- (a) there has not been a direct involvement by *an individual within the practice* in the management of the company or business, and
- (b) the *practice* continues to have its principal *client* relationship with the creditor or other party, rather than with the company or proprietor of the business, and the company or the proprietor of the business is aware of this.

If the circumstances of the initial appointment are such as to prevent the open discussion of the financial affairs of the company with the directors, an investigating *Insolvency Practitioner* or other *principal* in the *practice* may be called upon to justify the propriety of their acceptance of the subsequent appointment.

Where an *Insolvency Practitioner* or the *practice* has undertaken an investigation into the financial affairs of a company at the request of a secured creditor of the company, and is asked, as a consequence, by that creditor to accept appointment as administrator or administrative receiver, the *Insolvency Practitioner* should be satisfied that the company, acting by its board of directors, does not object to the acceptance of the appointment. If the company does object, but the creditor still wishes to appoint the *Insolvency Practitioner*, he should separately consider whether the circumstances are such that, in accepting the appointment, the practitioner will be able to act and be seen to act independently and effectively.

Where in exceptional circumstances, the secured creditor does not give prior warning of an appointment to the company, the *Insolvency Practitioner* should objectively and independently consider all relevant issues, including the reasons for such decision, before accepting appointment.

290.10 Conversion of Members' Voluntary Winding-up into Creditors' Voluntary Winding-up

Where an *Insolvency Practitioner* has accepted appointment as liquidator in a members' voluntary winding up and is obliged to summon a creditors' meeting because it appears that the company will be unable to pay its debts in full within the period stated in the directors' declaration of solvency, the *Insolvency Practitioner's* continuance as liquidator will depend on whether he or she believes that the company will eventually be able to pay its debts in full or not.

- (a) If the company will not be able to pay its debts in full and the *Insolvency Practitioner* has previously had a significant professional relationship with the company or a personal relationship with a director, former director or shadow director thereof, the *Insolvency Practitioner* should not accept nomination under the creditors' winding up.
- (b) If the company will not be able to pay its debts in full but the *Insolvency Practitioner* has had no such significant professional or personal relationship, the *Insolvency Practitioner* may accept nomination by the creditors and continue as liquidator with the creditors' approval, subject to giving careful consideration to principles referred to in this Code.
- (c) If the *Insolvency Practitioner* believes that the company will eventually be able to pay its debts in full the *Insolvency Practitioner* may accept nomination by the creditors and continue as liquidator. However, if it should subsequently appear that this belief was mistaken, the *Insolvency Practitioner* should then resign, and may not accept re-appointment, if he or she has previously had a significant professional relationship with the company or a personal relationship with a director, former director or shadow director.

290.11 Insolvent Liquidation Following an Appointment as Administrative or Other Receiver

Where an *individual within the practice* (subject to the provisions of paragraph (290.23 below) is, or, in the previous three years, has been administrative receiver of a company, or a receiver under the Law of Property Act 1925 or otherwise, of any of its assets, no *individual within the practice* should accept appointment as liquidator of the company in an insolvent liquidation. This restriction does not apply where the previous appointment was made by the Court. However, before a Court-appointed receiver accepts subsequent appointment as liquidator, he should give careful consideration as to whether his objectivity could be, or appear to be, impaired and, if so, the appointment should be refused.

290.12 Liquidation Following Appointment as Supervisor of a Voluntary Arrangement or Administrator

Where an *individual within the practice* has been supervisor of a voluntary arrangement or administrator of a company, the *Insolvency Practitioner* may, subject to giving careful consideration to the principles set out in this Code, accept appointment as liquidator. However, where the relevant previous role is that of administrator, the *Insolvency Practitioner* should not accept nomination or appointment as liquidator unless either:

- (a) the *Insolvency Practitioner* has the support of a creditors' committee appointed; or
- (b) the *Insolvency Practitioner* has the support of a meeting of creditors called either under the Act or informally, of which all known creditors have been given notice.

290.13 Administration Following Appointment as Supervisor of Voluntary Arrangement

Where *an individual within the practice* has been the supervisor of a voluntary arrangement in relation to a company, the *Insolvency Practitioner* may, subject to giving careful consideration to the principles set out in this Code, accept appointment as administrator of the company where the Administration Order is made by the court or by the holder of a floating charge

290.14 Bankruptcy Following Appointment as Supervisor of an Individual Voluntary Arrangement

Where an *individual within the practice*, has been supervisor of a voluntary arrangement in relation to a debtor, the *Insolvency Practitioner* may, subject to giving careful consideration to the principles set out in this Code, accept appointment as trustee in bankruptcy of the debtor.

290.15 Administrator, Nominee and/or Supervisor of a Voluntary Arrangement Following Appointment as Administrative Receiver or LPA or Other Receiver

Where *an individual within the practice* (subject to the provisions of paragraph (290.23 below) is, or in the previous three years has been, an administrative receiver of a company, or a receiver under the Law of Property Act 1925 or otherwise, of any of its assets, no *individual within the practice* should accept appointment as administrator or nominee and/or supervisor of a voluntary arrangement of the company, unless the previous appointment was made by the Court.

290.16 Audit Following Appointment as Supervisor of a Voluntary Arrangement, Administrator or Administrative or other Receiver

Where *an individual within the practice* has acted as supervisor of a voluntary arrangement, administrator or administrative receiver of a company, or receiver of any of its assets, no *individual within the practice* should accept appointment as auditor of the company for any accounting period during which the supervisor, administrator or receiver acted.

290.17 Personal Relationships

The legislation includes specific duties to report on the conduct of directors or shadow directors of an insolvent company. An *Insolvency Practitioner* should have regard at all times to the spirit of objectivity and should not accept an *insolvency appointment* in relation to a company where any personal connection with a director, former director or shadow director of the company is such as to impair or reasonably appear to impair the *Insolvency Practitioner's* objectivity.

Nor should an *Insolvency Practitioner* accept an *insolvency appointment* in relation to an individual where any personal connection with the individual is such as to impair or reasonably appear to impair the *Insolvency Practitioner's* objectivity.

The attention of *Insolvency Practitioners* is also drawn to the definitions relating to persons "connected" with a company in Sections 249 and 435 of the Insolvency Act 1986. This concept of "connection" or "relationship" is explored in a different context in paragraphs 290.21 and 290.22.

290.18 Relationship with a Debenture Holder

An *Insolvency Practitioner* should, in general, decline to accept an *insolvency appointment* in relation to a company if an *individual within the practice*, has such a personal or close and distinct business connection with the debenture holder as might impair or appear to impair the *Insolvency Practitioner's* objectivity. It is not considered likely that a "close and distinct business connection" would normally exist between an *Insolvency Practitioner* and, for example, a clearing bank or other major financial institution. However, such a close and distinct business connection would exist where an *individual within the practice*, holds an *insolvency appointment* in relation to such a bank or financial institution.

290.19 Purchase of the Assets of an Insolvent Company or Debtor

The Insolvency Rules contain prohibitions on members of a liquidation or creditors' committee acquiring any asset in the estate of an insolvent company or debtor (save with leave of the Court or the committee). Save in circumstances which clearly do not impair the *Insolvency Practitioner's* objectivity, *Insolvency Practitioners* appointed to any *insolvency appointment* in relation to a company or debtor, should not themselves acquire, directly or indirectly, any of the assets of the company or debtor, nor knowingly permit any *individual within the practice*, or any close relative of the *Insolvency Practitioner* or of an *individual within the practice*, directly or indirectly, to do so.

Where a contract is already in existence between the insolvent entity and an *individual within the practice*, the *Insolvency Practitioner* should seek guidance from his *authorising body*.

290.20 Pre-agreed business sales

Where the assets and business of an insolvent company are sold by an *Insolvency Practitioner* shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to independence. It may also be considered as a threat to independence by creditors or others not involved in the prior agreement. This threat or perceived lack of independence could be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.

290.21 Group, Associated and Family-Connected Companies

An *Insolvency Practitioner* should be particularly aware of the difficulties likely to arise from the existence of inter-company transactions or guarantees in-group, associated or "family-connected" company situations. Acceptance of an *insolvency appointment* in relation to more than one company in the group or association may raise issues of conflict of interest. Nevertheless, it may be impracticable for a series of different *Insolvency Practitioners* to act. An *Insolvency Practitioner* should not accept multiple appointments in such situations unless the *Insolvency Practitioner* is satisfied that steps can be taken to minimise problems of conflict and that the *Insolvency Practitioner's* overall integrity and objectivity are, and are seen to be, maintained.

290.22 Relationships Between Insolvent Individuals and Insolvent Companies

An *Insolvency Practitioner* who, or an *individual within the practice* who acts as an *Insolvency Practitioner* in relation to an individual may be asked to accept an

insolvency appointment in relation to a company of which the debtor is a major shareholder or creditor or where the company is a creditor of the debtor. It is essential, if the *Insolvency Practitioner* is to accept the new appointment, that the *Insolvency Practitioner* should be able to show that the steps indicated in the paragraph above have been taken. Similar considerations apply if it is the company appointment which precedes the individual appointment.

290.23 Joint Appointments

An *Insolvency Practitioner* who is invited to accept an *insolvency appointment* jointly with another *Insolvency Practitioner* should be guided by similar principles to those set out in relation to sole appointments. Where an *Insolvency Practitioner* is specifically precluded by the guidance herein from accepting an *insolvency appointment* as an individual, a joint appointment will not render the appointment acceptable.

Examples in respect of cases conducted under Scottish Law

290.24 Appointment as Trustee under a Trust Deed for creditors, Trustee in bankruptcy or as an agent of the Accountant in Bankruptcy

Where there has been a significant professional relationship with a *client*, no *principal* or employee of the *practice* should accept appointment as Trustee in a Trust Deed or as Interim or Permanent Trustee in Sequestration or as an agent of the Accountant in Bankruptcy in relation to that *client*.

290.25 Sequestration following appointment as Trustee under a Trust Deed for creditors and where the Accountant in Bankruptcy is Permanent Trustee

Where a member, or any *principal* or employee of his practice, has been Trustee under a Trust Deed for creditors, the member may, provided the considerations under the self-review threat and the material professional relationship clauses are satisfied, accept appointments as Interim or Permanent Trustee in Sequestration.

Where the Accountant in Bankruptcy is the Permanent Trustee, a member may, provided the considerations above are satisfied, accept appointments as agent in the Sequestration.