

Technology is key but risks commodifying the insolvency process

With AI forcing change in how the profession delivers services, the pressure to demonstrate value at competitive cost will continue, says **Eileen Maclean**

In my over three decades as an insolvency practitioner, the principles of insolvency and the role of the IP remain the same, but how we deliver the outcome has changed considerably. Technology has inevitably played a large part in that change, and we face a further revolution with more artificial intelligence and systematisation being introduced into professional services generally and insolvency specifically. It is against this background that we have seen an increase in outsourcing aspects of case administration. What does outsourcing look like now, what are the benefits and associated risks, and what further change may we see in this area?

Although outsourcing in insolvency may seem a relatively recent phenomenon, IPs have always outsourced – it is just that we have not called it that. We have always looked to third parties for advice and expertise. We have appointed solicitors to assist us with the legal aspects of a case; valuers and auctioneers to deal with asset realisation; agents to run hotels; and specialists to advise on tax recovery, to name just a few. Gradually, however, we have seen an increase in casework being outsourced and the rise of the ‘back office’.

Back office

It may be counterintuitive to talk about outsourcing when referring to internal teams but arguably locating the centralised case management or delivery team in a lower-cost part of the country (in other words, not London or the southeast) has become common in national or larger boutique firms. This has the advantage of keeping costs down but centralises the case management skills in one team. Equally, trading and complex case resolution skills sit elsewhere in the firm. The challenge is to ensure that the delivery team is integrated with the client-facing teams, and that inter-firm engagement recognises that the strength of the relationship determines its success. The delivery team also has to be seen as an equivalent career option for staff versus the sexier client-facing role.

“

There are downsides to outsourcing and like everything in insolvency, it comes with risk. You risk losing control of the case or aspect that is being outsourced, even though you are still ultimately responsible for the appointment”

Decision to outsource

The decision to outsource externally can be driven by a number of pressure factors, mainly resourcing, required expertise, and cost. These are not mutually exclusive.

We have seen a rise in specific elements of case administration being outsourced: case closure programmes; regular or complex case reviews; adjudication of claims and calculation of associated dividends and, perhaps most commonly, the outsourcing of employee claims to specialist Employment Rights Act (ERA) consultants. The decision to do so can be driven by a shortage of resources and capacity in the business at any given time, usually over the short to medium term. Some businesses will have an ongoing relationship with an outsourced service provider that is, in effect, part of their team. There may be a requirement to buy in expertise rather than replace it in-house over a long term, or conversely to support the development of that expertise within the business. The low-fee/fixed-fee model that dominates the IVA and increasingly the CVL and MVL markets means constant pressure on costs and the allocation of resources, and outsourcing to a low-cost base is a common feature in the volume IVA market.

Benefits of outsourcing

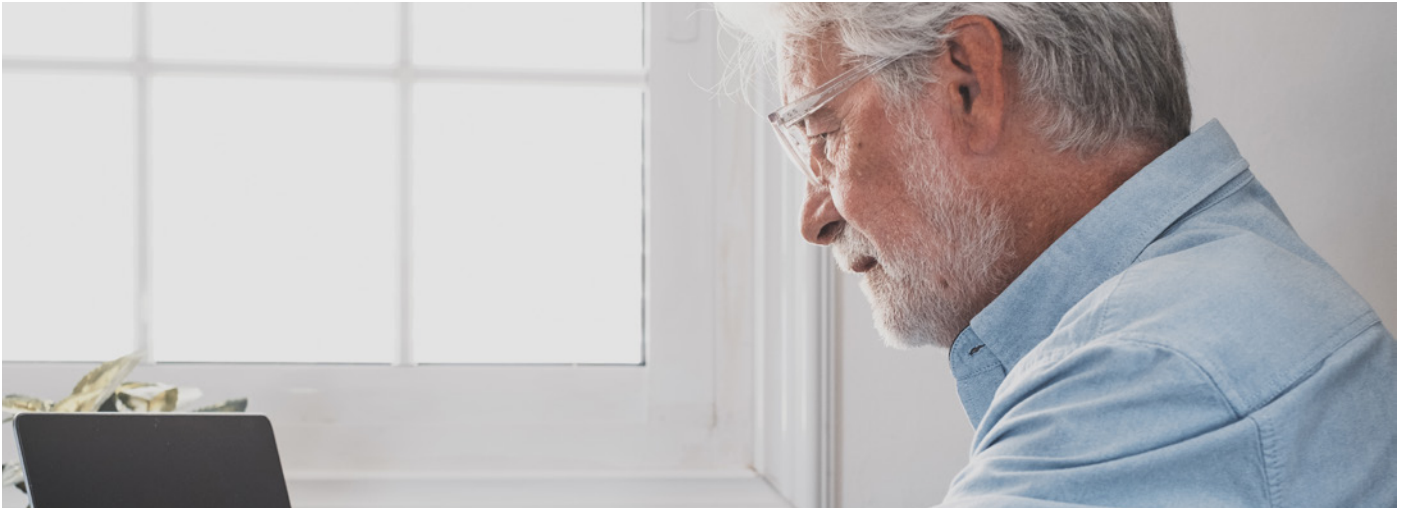
There are some clear benefits to outsourcing. A firm does not need to carry a permanent staff cost or overhead at a time when case levels are fluctuating. Outsourcing a distinct element of case administration allows backlogs to be cleared or avoided altogether. Expertise can be bought in relation to a particular aspect of a case. Employee claims are an increasingly complex area of law for example, and relying on regular external experience of dealing with the Redundancy Payments Service has its attractions. The calculation of holiday pay and a gig economy worker’s right to holiday pay are recent examples of growing complexity, and likely further complexity (for example compensation for short-notice cancellations of shifts) will be added by the Employment Rights Bill when it clears Parliament.

Disadvantages of outsourcing

There are downsides to outsourcing and like everything in insolvency, it comes with risk. You risk losing control of the case or an aspect of it that is being outsourced, even though you are still ultimately responsible for the appointment. While outsourcing may be seen as a time and cost saver, in our experience it takes a bit of time to set up the client process, identify who in the client team is the main point of contact with the outsource supplier, and agree on KPIs and service levels. There is an evident risk in relinquishing or sharing control over estate funds, so the obvious advice is do not. Keep funds control in-house at all times, subject to your SIP 11 protocols and your regulator’s client money regulations.

IT-enabled outsourcing

IT has been the key to off-site outsourcing, allowing case access to be shared across disparate parties with an interest or a role in a case. It has allowed outsourcers to upload and interrogate case records, diaries and cash books remotely and for the system controller to monitor that access. Case management systems are no longer for the exclusive use of IPs and their staff. Increasingly, creditors can



Insolvency appointments are personal to an IP: The ‘control of cases’ guidance paper by the JIC outlines risks to case management and progression that could be solved with outsourced help, but counter risks identified include an over reliance on AI and automation

upload proof of debt and supporting evidence via portal access. Microsoft SharePoint or an equivalent allows directors to upload the books and records of a company directly, open-source banking allows individuals to share bank account details for income and expenditure verification or director loan account analysis. The historic cost of a member of staff checking and chasing for information or contributions can be replaced with text and email alerts.

All of this is great in terms of the allocation of resources and associated costs to a case. Chicken and egg: has the reliance on systems and automated processes brought the cost of an insolvency down, or is there now an expectation that the cost will be lower as a result of automation? Arguably this focus on cost has diverted us from any discussion on value. From many perspectives, insolvency risks becoming just a process and as a result, just a commodity. The challenge for us as a profession is to bring discernible value for stakeholders, even while recognising our costs are under intense pressure.

Insolvency guidance paper – control of cases

The recently updated ‘Control of Cases’ insolvency guidance paper provided by the Joint Insolvency Committee addresses issues that may arise in an outsourcing context. It reminds us that insolvency appointments are personal to an IP, regardless of who is involved in case management and progression, and that we must ensure that cases are properly managed and controlled at all times. IPs should maintain overall management of their portfolio and have ultimate control over decisions, including how decisions are documented, and determine who has what level of delegated authority in relation to cases generally or a case specifically. IPs must be able to justify their decisions and demonstrate appropriate levels of control.

Helpfully the guidance paper identifies risk indicators and emerging threats to the effective control of cases. Many of these risks could be addressed by outsourcing: delays in, or lack of, case progression; failure to conclude cases in a timely manner; loss of key staff or changes in staff resources; focus on new work, or specific areas such as asset recovery, to the detriment of timely case progression. Counter risks in the context of outsourcing are also identified and include potential over-reliance on artificial intelligence or other automated processes and the use of external consultants without appropriate key performance indicators or reporting requirements.

“

If you do decide to outsource, make sure that you have pre-agreed terms on recording information and record keeping in the context of the case or cases ”

If, therefore, you do decide to outsource, in whatever definition that form of outsourcing takes, make sure that you have pre-agreed terms on recording information and record keeping in the context of the case or cases. You may have limited control over the choice of IT systems in terms of their adequateness and robustness in processing high volumes of data and storage capacity, but if how your case information is stored, processed and transferred is an issue, make that clear at the outset. As an aside, most contracts will contain provisions surrounding data handling in terms of the

Data Protection Act or its GDPR predecessor but, if not, a side agreement addressing those terms is recommended.

SIP 9

Statement of Insolvency Practice 9, ‘payments to insolvency office-holder and their associates from an estate’, makes mention of outsourced services. The outsourced activity should not duplicate an activity of the IP. If you are outsourcing to an associate, you should disclose all payments arising from an insolvency appointment to the office-holder or associates, and the form and nature of any professional or personal relationships between the office-holder and associate. Where an office holder sub-contracts work that could otherwise be carried out by the office-holder or their staff, this should be drawn to the attention of creditors and other interested parties with an explanation of why it is being done, what is being done and how much it will cost. If you are outsourcing to an associated business or entity, then specific SIP9 category 2 approval will be required. Even with a category 1 expense, where the provider is not an associated party, you should be prepared to demonstrate that the expense was reasonable in the circumstances of the case and did not duplicate any work completed in-house.

Looking to the future, AI will continue to force change in the way we deliver our services, and in ways that we have not yet imagined. The pressure to demonstrate value at a competitive cost will continue.



Eileen Maclean is the founding director of Insolvency Support Services