

## **Case Targeting**

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[This text has been withheld because of exemptions in the Freedom of Information Act 2000]

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### **List of Abbreviations**

IES IT – Intelligence: Targeting – the team in IES which vets and targets conduct reports received from IPs in non-compulsory and Scottish cases  
PTA - pre-targeting assessment

## **Part 1 Introduction**

### **1 What is case targeting?**

In this chapter, the phrase "case targeting" is used to describe the investigation pre-targeting assessment (PTA) and decision processes which take place up to the point where a case is allocated to an investigator for further investigation. These processes include:

- ☐ The vetting examiner's consideration of a case when preparing the PTA (and decision where vetting examiners are authorised to make their own decisions (known in the Service as self-signing))
- ☐ Submitting the PTA for decision
- ☐ Considering the PTA and making the targeting decision
- ☐ Prioritising the case for allocation to an investigator
- ☐ Selecting a case for allocation to an investigator

### **2 Which cases should be targeted?**

If there is criminality we have a duty to report it.

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Misconduct should be targeted where we believe that there is sufficient unfit conduct and sufficient evidence for a court to decide that it warrants at least a 2 year order. This will also include looking at potential defences and mitigation.

## **Part 2 The Public Interest**

### **3 Is it in the public interest to target this case?**

At every stage (and throughout any subsequent investigation) the prime consideration must always be "is it in the public interest to target this case?"

Consideration of the public interest is so vital throughout the targeting process that this chapter should be read in conjunction with the guidance that deals with public interest in detail.

There is a range of common public interest factors in every case, which include the following:

- ☐ the seriousness of the misconduct and/or criminality
- ☐ the harm caused (including, where appropriate, the value of monies lost)
- ☐ the resources required

- ☐ staleness
- ☐ personal mitigating factors
- ☐ the appropriate sanction given all of the relevant factors
- ☐ the level of sanction likely (i.e. the likely punishment for criminality, or period of order for misconduct)
- ☐ the timing of the sanction
- ☐ the likelihood of securing the outcome sought
- ☐ where the potential defendant is not likely to be available (for example, now lives permanently abroad)

Where there has been particularly serious criminality or misconduct it is usually clear that it is in the public interest to target the case, and although the public interest must still be considered and that consideration recorded, to do so is unlikely to be difficult. Similarly, it is clearly not in the public interest to target cases where there is no evidence of misconduct or criminality.

Considering the public interest is more difficult in the cases between those two extremes, and the most difficult of all tend to be the marginal cases.

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## **Part 3 Evidence**

### **4 What evidence is required?**

This guidance deals with the processes and broad principles of case targeting.

### **5 Is there (or will there be) sufficient evidence?**

It isn't necessary for all of the evidence required to support an allegation to be immediately available in order to target a case for investigation, but if it is apparent from the outset that there is no realistic prospect of assembling sufficient reliable evidence the case should not be targeted.

### **6 How much evidence is needed for the PTA?**

To target a case for investigation there needs to be enough evidence to **indicate**:

- ☐ misconduct
- ☐ that is sufficiently serious to justify proceedings

□ and it would be in the public interest to take proceedings

□ The evidence only has to indicate, not prove – obtaining evidence to prove misconduct is the purpose of any further investigation. It should also be borne in mind that in this context of indication, acceptable evidence to support the PTA can include the absence of something (e.g. gaps at crucial points in a sequence of documents).

□ In an ORS case, if the causes of the insolvency have been established, and explanations have been obtained and tested, the initial enquiries and preliminary examination should provide sufficient information to make the PTA. (In IES, where the vetting examiner is reliant on the information provided in the IP's report, it is a little different – see Part 4 below).

A robust but reasonable decision must be made using and supported by the evidence available. Feelings or suspicions unsupported by evidence are not grounds for targeting a case, nor do they justify further enquiries by the vetting examiner. If there is no evidence to indicate possible misconduct, the only possible PTA outcome is not to target the case. Speculative targeting or speculative enquiries – “fishing expeditions” – are unacceptable, and create unnecessary risks of accusations of oppressive or prejudicial behaviour.

There is a simple test to avoid speculative targeting – if you were subsequently accused of victimising the person in question, perhaps because of race or gender, would you be able to respond to the accusation by saying “I targeted this person/made these enquiries because [this evidence] indicated [this misconduct]”? If not, you have insufficient grounds to target that person or make that enquiry.

## **Part 4 IP Cases**

### **7 Vetting processes in Intelligence: Targeting**

Intelligence: Targeting (IES IT), a team in IES, vets and targets conduct reports received from IPs about the directors of companies in creditors' voluntary liquidation (and compulsory liquidation in Scotland), administration and administrative receivership. IES IT also handles the reports of possible criminal offences which liquidators are required to make to the Secretary of State under section 218 of the Insolvency Act 1986.

Some reports from IPs do not contain sufficient information to enable a pre-targeting assessment to be made, and in those cases a further vetting stage takes place, which is known as verification. The examiner makes further enquiries with the IP and, if necessary, with third parties such as creditors, the company's bankers or company's accountants until sufficient information has been gathered to be able to carry out the pre-targeting assessment.

## **Part 5 The pre-targeting assessment**

### **8 Purpose of the pre-targeting assessment**

The pre-targeting assessment (PTA) is the first stage in the conduct assessment process, where the vetting examiner assesses, in an OR case, whether any misconduct (including offences) has been revealed during the preliminary examination, investigation of the causes of the insolvency and administration of the estate or, in an IP case, the conduct report submitted by the IP.

## **9 Outcomes**

There are three possible outcomes of the PTA:

- ☐ there is no evidence of misconduct
- ☐ there is evidence of misconduct, but the vetting examiner considers that it would not be in the public interest to investigate further
- ☐ there is evidence of misconduct and the vetting examiner considers that it is in the public interest to investigate further

A case must only be targeted when there is adequate information to support that assessment and it is in the public interest to do so. A case must never be targeted speculatively.

## **10 Recording the assessment**

The vetting examiner must make a record of the assessment.

In IES IT this is recorded using the standard Word case assessment sheet format and filed in the case file plan.

In ORS the record may be recorded in an ISCIS Conduct Assessment Note (although there is a maximum limit of 2,500 characters, further notes can be added and will appear consecutively). Alternatively the assessment may be recorded in a Word document saved in the case file plan (but details of the document title must be provided in an ISCIS Conduct Assessment Note). In ORS the assessment record must also contain details of the causes of the insolvency, the explanations given for the insolvency and details of the testing of those explanations.

The assessment record must include:

- ☐ a description of any misconduct alleged (and in a company identifying who is targeted for each allegation)
- ☐ the date when any alleged misconduct took place
- ☐ the amount of any monetary loss
- ☐ if the misconduct continued over time or was repeated, details of the period over which it occurred and of the frequency of any repetitions
- ☐ details of who suffered as a result of the misconduct

☐ how the vetting examiner became aware of the misconduct (e.g. was it revealed at interview, reported by a third party or discovered following an examination of the records)

☐ the public interest criteria that have been considered for recommending whether or not the case should be investigated further

☐ what action needs to be taken (and details of any action that has already been taken)

☐ what additional information (if any) is needed

☐ The recommendation, which will be one of the following:

- ☐ Targeted for Investigation

- ☐ Targeted - Link to existing investigation

- ☐ No further assessment

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## **Part 7 The targeting decision**

### **13 Self-signing**

Vetting examiners who are authorised to self-sign will make targeting decisions rather than PTAs where the decision is within the limits of their authority to self-sign. However, if a vetting examiner is authorised to make the decision but in a particular case has doubts, or considers that the re-assurance of a second opinion is desirable or necessary, the case must be submitted to the AOR (ORS) or Targeting Manager (IES IT) for decision.

### **14 Making and recording the targeting decision**

The Targeting Manager or AOR must record whether or not they agree with the assessment and, if they disagree, fully explain why.

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