



Strengthening insolvency regulation

THE Insolvency Service, part of the Department for Business, Innovation & Skills, has announced new proposals to impose stricter controls on insolvency practitioners' conduct and fees.

Changes to the way that insolvency fees are charged by the profession were announced by Business Minister on 17 February. They are subject to a short consultation.

Under the proposals, insolvency practitioners (IPs) will have limitations placed on their ability to charge by the hour for their work – they will only be able to do so (in England & Wales) where there is a creditors' committee, or where a secured creditor has control. There are, however, some important questions in the consultation on whether, for example, time costs might be allowed where one or two creditors make up a majority, and can therefore effectively exercise control. Other than in those circumstances, IPs will ordinarily have to base their fees on a percentage of property/assets dealt with or realised, or as a fixed fee, or as a combination of the two. The Service believes this will mean that creditors will have a clearer idea at the beginning of the insolvency process of how much the IP will charge.

The Service acknowledges that the majority of IPs do a good job, and quite reasonably expect to be paid, but that where creditors wish to challenge fees, it is difficult and costly to do so. IPs will be expected to provide more helpful information and estimates at the outset, and regulators are encouraged to ensure that IPs' fees represent value for money, by looking more closely at the level of fees and work done. The process for determining a 'fair' fee has still to be

worked out; this is something that has hitherto generally been the preserve of the courts. It represents difficult new territory, and it remains to be seen whether out-of-court decisions can be made in respect of fees as they are currently made on professional conduct matters, within the present regulatory structure.

The Service intends to take stronger powers to effectively monitor and regulate IPs and regulators. The new measures will introduce regulatory objectives to strengthen the regulation of the insolvency profession and give the Service the power to enforce them, including imposing and publicising fines and sanctions. Those objectives, in addition to the above points on fees, include:

- Protecting the public interest
- Fair treatment for those affected by insolvency
- Maximising returns to creditors and the speed of returns

These 'clear' objectives may need to be clarified and/or interpreted to become effective.

The Service proposes to challenge and where appropriate sanction the regulators, as well as taking powers to seek direct sanction of IPs where it believes it is in the public interest to do so. The latter point raises a number of interesting issues for IPs, regulators and the Service, and no doubt more details will emerge in dialogue between the parties over the coming weeks.

A 'backstop' power to introduce a new single insolvency regulator is included in the provisions, though not for implementation at this stage, if ever, but rather as a power in reserve should

the present proposals not prove to have the desired impact.

None of these proposals affect Northern Ireland, and those relating to fees do not affect Scotland.

The Service sees these measures in the context of building confidence in the profession, and considers that the proposed regulatory objectives will protect the public, and promote fair treatment for those affected by IPs' acts or omissions.

Philip King has welcomed the consultation and its proposals towards addressing a number of important issues around the regulation of IPs and the insolvency fees structure. In his new role as chairman of the regulators' Joint Insolvency Committee, (the standards-setting body in the regulatory mix), Philip will have an important part to play in ensuring that the new regulatory objectives feed in to statements of insolvency practice, against which the regulators monitor their IPs.

There are some important challenges here for the insolvency profession. The proposed measures represent a degree of change to insolvency regulation that is as significant as anything that has been proposed since the licensing regime was introduced in 1986. Regulators will have to show that their rules are designed to ensure that the regulatory objectives are met, and that they can enforce new standards, particularly on IPs' fees, that enhance transparency and trust in the system.



David Kerr is the Chief Executive of the Insolvency Practitioners Association.