



Complaints and fees

JENNY Willott, the Minister responsible for insolvency at the Department for Business, Innovation & Skills (BIS), commented in the Commons recently on the numbers of complaints received against Insolvency Practitioners (IPs) in 2013. The full details of the year's activity will be published in a couple of months as part of the Government's annual report on insolvency regulation. In the meantime, the minister confirmed that: In 2013 there were 748 complaints about insolvency practitioners; two percent of the total related to IPs' fees; the 2013 total represents an increase of just under 30 percent on 2012; and fees complaints were down by about a third.

This is interesting given that the Insolvency Service (part of BIS) cites concerns about fees, and the sense that they are a dominant issue in letters to MPs and consequently in ministers' mailbags, as a driver for the changes proposed in the latest consultation on 'Strengthening the regulatory regime and fee structure for insolvency practitioners'. In the forward to that consultation document Jenny Willott referred to 'the difficulty creditors face in controlling IPs' fees' and reports by the Office of Fair Trading (OFT) and Professor Kempson, and their findings that there is 'little effective oversight by unsecured creditors'.

It is perhaps surprising therefore that complaints about fees form a very small proportion of the total, and a reducing number. The minister says that the complaints system is not currently able to deal fully with complaints about the quantum of fees and the figures above should be taken in that context. That may be part of the picture. Actually, the regulatory process does deal with fees issues in the sense that it addresses cases in which fees are drawn without the requisite authority – something that usually arises through inadvertent procedural irregularity and is almost

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always corrected without loss to creditors.

The Service wishes to see 'fee disputes' settled out of court through a system operated within the regulatory regime. That presents something of a challenge; aside from legal and technical issues around the dispute resolution concept and its application to insolvency circumstances, due to the absence of a client relationship and the current minimum 10 percent creditor claim threshold, there is a not insignificant hurdle to overcome in persuading some creditors of the merits of fees ranking before returns to ordinary unsecured creditors.

Most though would share the objective of ensuring that creditors can have confidence that fees properly reflect the value of work necessarily done by the IP. The Service proposes to remove the time-cost basis of fee approval, though this will be permitted where a creditors' committee is involved in scrutinising the IP's fees. In this respect there is potentially a greater role for creditors to play in the future.

Perhaps, as the minister suggests, the regulators' reluctance or inability, hitherto, to intervene in arguments about the amounts of fees charged (something arguably reserved to the courts) has been a suppressant in the complaints statistics, though that is difficult, if not impossible, to measure. In our experience, fees are sometimes raised as a concern in the context of a complaint about other matters, seldom as a single issue complaint. Often, concerns about fees are not always directly related to whether the complainant is 'in the money', and some too easily overlook the fact that the absence of a return to creditors is more

to do with the conduct of the former directors or debtor than the actions of the IP.

- The issue giving rise to the most complaints in 2013 was a breach of ethical guidance
- In previous years the issue giving rise to the most complaints was a communication breakdown.

IP conduct generally is of course the focus of most complaints. Ethical 'breach' can comprise conflicts or other issues around objectivity (or perceived objectivity) or professional behaviour/competence generally. Approximately one quarter of complaints through the new Insolvency Service gateway in the second half of 2013 were about compliance with regulators' guidance or practice statements.

Of particular significance is the fact that more than 50 percent of the gateway complaints relate to personal insolvency (mostly consumer) cases, in which the creditors are mostly financial institutions; in many of these it may be the debtor who complains, perhaps with some justification but on many occasions due to an understandable lack of appreciation of the insolvency procedure and its impact on them.

And that brings us to an important point about perspective. All of the above figures refer to the gross number of complaints in the system (subject to some light filtering by the Service, which rejects around 10 percent of those received). Only half of the complaints are evidenced sufficiently to warrant detailed investigation, and fewer still result in adverse findings. That reflects the nature of insolvency work and sometimes difficult circumstances in which IPs, debtors and others find themselves. 