



REGULATORY OBJECTIVES

THE Small Business, Enterprise and Employment Bill is working its way through Parliament, and should be law by April 2015, with implementation taking effect later in the year. It contains for the first time a number of objectives for the insolvency regime – objectives that affect both regulators (the Recognised Professional Bodies (RPBs)) and Insolvency Practitioners (IPs), and in turn therefore users of the system (eg creditors).

The Government's aim (acting through the Department for Business, Innovation and Skills, and its executive agency The Insolvency Service) is to ensure that the regime operates for the benefit of those impacted by decisions made by IPs. Some of the objectives restate principles already embedded in what IPs and RPBs do now, but others are designed to raise the bar.

FAIR TREATMENT

The intention of the Insolvency Service here is to encourage IPs to consider the impact of their decisions on those who may have only a limited understanding of insolvency proceedings and ensure that they are advised of their rights. For RPBs, the Service wants to promote fair and consistent outcomes in disciplinary and other regulatory matters, making sure that the complaints process is accessible (such as through the complaints gateway), and that RPBs separate their membership and regulation functions appropriately and in such a way as to instil confidence in their impartiality.

COMPETITIVE PROFESSION

RPBs should authorise only those IPs who meet the required standards (as now), and in future be prepared to authorise partial licence holders, encourage best practice, and be alert to overcharging. IPs of course must act in the best interests of creditors, free from any inappropriate influences (as required by the ethics code), and must comply with that code. The Service sees competition as guarantor, to a degree, of

the provision of quality services at a fair and reasonable cost.

FAIR AND REASONABLE FEES

The Bill sets out an objective for RPBs to encourage IPs to charge costs that are reasonable. Whilst it is not part of the draft legislation, the Service is looking to the RPBs to address quantum issues – fees that might be considered excessive. That has largely been the preserve of the courts to date. The extent to which RPBs can tackle amounts charged and provide redress is subject to ongoing discussion – the RPBs already deal with fees matters through monitoring and have sanctioned unauthorised fees (usually insisting on repayment in those circumstances), but most insolvencies are collective procedures and compensation orders for the benefit of individual creditors would not be appropriate.

IPs already have an obligation to ensure that fees charged are commensurate with work necessarily done in furtherance of their duties to creditors and other stakeholders, and the 2010 Insolvency Rules provide relatively new mechanisms for creditors to hold IPs to account. There may be limits on the extent to which RPBs can intervene where creditors have approved fees and the fees have not been challenged through the statutory system. However, everyone concerned can encourage imaginative use of the most appropriate fee basis for the type of task undertaken, where relevant using a mix of bases (fixed, percentage or time cost) for different aspects of work in the same case.

A new practice statement is likely to focus on the need to provide fee estimates at the outset of a case, and for that to be treated as a cap which can only be exceeded by the IP seeking express further authorisation after explaining and justifying the reason(s) for the excess. The ICM is involved in discussions with the Service, RPBs, IPs and others to take this forward.

MAXIMISING RETURNS TO CREDITORS

IPs are expected to work effectively and efficiently, not unduly delay closure of proceedings and payment of dividends. Case progression has been a recurring theme in feedback from monitors, and RPBs will be expected to watch for timeliness.

PROMOTING PUBLIC INTEREST

The general aim here, consistent with the underlying purposes of any insolvency regime arguably, is to inspire confidence in those who find themselves caught up in insolvencies, the business community, and wider public, that robust standards will be applied. There is also an obligation to educate debtors, creditors and public about insolvency, the regulated regime and how it works.

OVERSIGHT

All of the above is linked to the Service seeking new powers to strengthen its role as oversight regulator. Expect the Service to hold the profession to account in ways it has not been able to before, applying new sanctions where the objectives are not met. The key to how that is done will be in the interpretation of the draft legislation; the further work to be progressed by the profession with the ICM and others around perceptions, and occasional complaints about fees, will be an important element of that.

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