IVAS AND RPBS

In response to November's Soapbox Challenge, David Kerr MCICM looks at what is on the agenda for IVAs.

THE creditor community and others are currently raising some understandable concerns about aspects of how the IVA world operates and is regulated, and last month's Soapbox Challenge touched on some interesting points in this regard. As regulators, collectively, we have a responsibility to make any changes necessary to restore stakeholder confidence. Any messages of reassurance will only be credible if we first acknowledge that some things need to change, and can demonstrate a willingness and capability to address them.

The regulators in this space are the Government's Insolvency Service (IS), the Recognised Professional Bodies (RPBs) that license Insolvency Practitioners (IPs), and the FCA. The Insolvency Practitioners Association (IPA) is one of the two largest RPBs in terms of the number of IPs it regulates, and has been actively engaged with other regulators to take forward this agenda and make sure any gaps are plugged. A number of different strands of work through the Joint Insolvency Committee (which Philip King chairs) and elsewhere will see new standards next year on the control of funds and potentially also changes to the bonding regime to ensure that creditors are adequately protected when things go wrong.

The IVA Standing Committee (IVASC), which oversees the protocol used in the most straightforward consumer cases is also addressing issues around fairness regarding the availability of equity in property, tackling some creditor concern about debtor retention of significant value at creditors' expense. This echoes an issue raised by the Accountant in Bankruptcy in Scotland in respect of Protected Trust Deeds (PTD). The IPA's latest guidance on the PTD equity issue is available on its website.

Monitoring by RPBs has a part to play. Some of last month's Soapbox Challenge issues are about the enforcement of IVA terms, and creditor frustration in this regard can be exacerbated where IPs are seen to be unduly lenient with defaulting debtors. That might be a communication issue more than one of substance, but there is a fundamental obligation to supervise the arrangement agreed between the debtor and creditors. One would need to consider the terms of each IVA and the discretion allowed when a debtor is defaulting, but generally where some flexibility is permitted it is usually with the aim of maximising the return to creditors – something that is now a statutory objective of the insolvency regime.

Where the IP or debtor wants to vary the terms, creditors will have a say. Clarity in reporting is key to creditors making informed decisions, whether that is at the outset or at variation stage.

As regards change generally in this area, the IS is embarking on a review of regulatory activity. Creditor representatives will have an opportunity to contribute to that through the IVASC and wider consultations.

However, as regulators we will need to be constantly vigilant to ensure that new developments in this sector adhere to the principles of the profession's code of ethics, and be prepared to address threats to those standards as they arise.

The number of regulators is reducing. The IPA and ACCA have announced a collaboration, which in effect consolidates the regulatory arrangements for more than 700 IPs from January 2017. This will help to streamline the approach to monitoring and facilitate consistency.

An IVA will still be the best option for debtors and creditors in many cases, not least given the increased costs in bankruptcy. However, as regulators we will need to be constantly vigilant to ensure that new developments in this sector adhere to the principles of the profession's code of ethics, and be prepared to address threats to those standards as they arise. The IPA will certainly play a part in tackling any abuse, in the interests of maintaining and enhancing pubic confidence. That is central to the IPA's mission, and now also embedded in the objectives set in the legislation.

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