Insolvency Service Review of Current Regulatory Landscape

Insolvency Practitioners Association Position Paper

3 October 2019

Contents

Introduction

In October 2015, the Small Business, Enterprise and Employment Act 2015 (SBEEA15) included the introduction of:

- Regulatory Objectives (ROs) for insolvency regulators, which apply to the existing Recognised Professional Bodies (RPBs) and the Secretary of State, as oversight regulator;
- powers for the Secretary of State to act against RPBs and, where it is in the public interest, against IPs directly; and
- the power of the Secretary of State to create a single, independent, regulatory body in place of the current RPBs, should it be considered appropriate. This power expires in October 2022.

The Insolvency Service (IS), in its Call for Evidence (CFE) published on 12 July 2019, is now gathering evidence to help gauge the impact of the ROs, the levels of confidence in the UK regulatory framework, and how the current regime is working. As part of the CFE, stakeholders are being asked whether there would be potential benefits in making changes to the current system, including the establishment of a single regulator for insolvency practitioners.

The Insolvency Practitioners Association (IPA) is pleased to put forward this position paper on behalf of its members to inform the Insolvency Service and stakeholders of its views.

The IPA operates a robust, specialised regulatory system under the auspices of the ROs and the IS. We have, and we are, able to respond to changes in the market. We have implemented a wholesale change programme to our business processes to ensure we are fit for purpose. We set out in this paper our evidence that supports the view that the system is functioning and supporting a mature yet dynamic profession. We outline the changes that can make the system work better, but argue against the loss of adaptability, cost effectiveness and specialism that would come with a single regulator.

Executive Summary

We highlight the following:

(i) The IPA welcomes the IS's review of the effectiveness of the current insolvency regulatory regime and the effectiveness of the ROs. Having considered the strengths and weaknesses of the current regulatory framework, the IPA believes that there are, naturally, improvements that could be made and appreciates the opportunity to set these out. The IPA considers however, that any move to a single regulator, even if that were to be the IPA, would not bring about substantive benefits to stakeholders sufficient to offset the risks, costs, and other challenges, that would arise from such a significant change.

(ii) The IPA believes that the current system is functional and can robustly demonstrate that, in discharging its statutory duty as a regulator of insolvency practitioners, it meets the ROs. While there is always room for improvement, the current process shows no evidence of failure (e.g. repeated successful appeals; successful judicial reviews: or complaints about process failure).

(iii) The ROs incorporate the principles of better regulation, and the IPA recognises that good regulation must adapt and therefore the IPA operates under a process of continuous improvement. In particular, the IPA is acutely aware about the concerns about certain areas of the personal insolvency sector and efficiency of insolvency regulation processes. In 2019 the IPA introduced a series of measures to strengthen its effectiveness as a regulator. This included a re-organisation of the IPA's committee structure and the strengthening of its monitoring and complaints processes. In January 2019, in response to rapid evolution of the volume Individual Voluntary Arrangement (IVA) provider market, the IPA also launched a new regulatory framework for the monitoring of high-volume IVA providers with an unprecedented level of regulation, incorporating continuous monitoring with bespoke real time access to entire case systems. We do not believe that this level of regulation could be matched in other regulatory environments and therefore to change now, just as this new system is starting to deliver results, could be detrimental to the integrity of insolvency regulation. Other RPBs have not yet, but could, follow suit with similar regimes in this space.

(iv) We operate a system of regulation that works to raise standards and many sectors have not yet achieved this. We believe that maintaining and raising standards throughout the profession is not only a matter of imposing sanctions and penalties, but also of providing guidance and education, of sharing best practice and encouraging high standards, of identifying weaknesses and helping practitioners overcome them. We have evolved our monitoring and disciplinary processes over time and continue to evolve to achieve higher standards across the profession. Moreover, more than one regulatory body encourages challenge, which is vital to ensure that regulation is constantly under review and strengthened where needed through innovation. As the only specialist insolvency regulator, the IPA has always operated with a core aim of raising standards within the profession.

(v) The current regulatory system, despite its strengths and adaptability is vulnerable to a perception of self-interest and inconsistency. The existing regulatory framework has appropriate established processes in place to ensure uniformity, simplicity, and consistency. The Complaints Gateway provides a single entry-point for complaints against insolvency practitioners, and is operated and overseen by the IS, as oversight regulator. Additionally, the regulatory committees of all RPBs refer to the Common Sanctions Guidance when a case for disciplinary action has been found. Self-interest or a failure to regulate robustly for fear of favour, arbitrage, or lack of resources can no longer be an accusation: we operate with a lay majority in all regulatory decision-making, with numerous quality assurance steps, including from independent sources, and have many examples of having tackled disciplinary issues on some of the most complex, difficult and expensive regulatory actions.

(vi) Although the idea of a single regulator might appear as a simple solution to problems within insolvency, such a move would not address many problems that we can see are at the heart of concerns about insolvency (e.g. in the personal space, the exponential rise in consumer debt and in commercial insolvency, the change in consumer behaviour and the economics of retail) and there is much that could be lost from the current regime.

(vii) Whereas there used to be many RPBs, with the announcement in July 2019 by the Association of Chartered Certified Accountants (ACCA) that it is to relinquish its status as an RPB, the IPA will be one of just two regulatory bodies operating in the insolvency market in the UK as a whole (there are

a further two who predominantly authorise insolvency practitioners in Scotland and Northern Ireland), and the only RPB that concentrates solely on this profession.

(viii) If the experience in other sectors were to be replicated, establishing a new regulator would be an expensive exercise, either for the profession, the Exchequer or both, and could lead to rigid delivery models that fail to reflect the differences in the insolvency market. At a time when government and business are already facing significant challenges to maintain the UK's competitive place in the global economy, this is not the time for a more expensive, burdensome, and less adaptable regulatory regime. Getting this wrong risks destabilising a critical part of the economy that is responsible for attracting large investments in this country. Investors in the UK, who are already looking at a more complex set of risks when making decisions, need the surety that the stable and fair system of redress currently offers.

(ix) We cannot speak of a single insolvency market since restructuring, advisory and turnaround services are offered by many IPs whilst others specialise in contentious, commercial or personal insolvency. A 'one-size fits all' regulator is not suited to such a complex and diverse profession. There is a risk that a single regulator would, with possibly restrictive funding sources, be unable to offer services with sufficiently nuanced methodologies to respond to the particular challenges in the distinct parts of the profession. It is also likely that, over time, the staff of a single regulator could lose their connectivity to the profession and fail to develop the practical understanding required in complex insolvencies.

(x) The IPA operates a robust, specialised regulatory system under the auspices of the ROs and the IS. We have, and we are, able to respond to changes in the market. We have implemented a wholesale change programme to our business processes to ensure we are fit for purpose. We set out in this paper our evidence that supports the view that the system is functioning and supporting a mature yet dynamic profession. We outline the changes that can make the system work better, but argue against the loss of adaptability, cost effectiveness and specialism that would come with a single regulator.

Vision for the future – resilience and innovation

1. When considering the future of insolvency regulation it is worth stepping back and asking "what is insolvency regulation for?"

2. Insolvency is part of the bigger picture of doing business anywhere. How it is dealt with is part of the framework that gives people and business enterprises confidence to buy and sell, to enter into contracts, invest and innovate. People need to know that deals will be completed and, if they go wrong, there are recognised processes that will limit or mitigate their losses and help them to make recoveries quickly and transparently. They also want to know that they will be treated fairly.

3. Insolvency can affect anyone from ordinary people to celebrities, who through accident, illness, loss of job or other change of circumstance are no longer able to meet their liabilities or who have simply over-committed themselves, as well as businesses from sole traders, partnerships and small companies to giant corporations. Insolvency means that people or businesses are going to lose money, contracts will be broken, goods and services won't be provided and bills won't be paid.

4. IPs, once they have satisfied the rigorous requirements of the JIEB qualification, and meet the criteria of experience, fitness and propriety set by the RPBs, are bestowed with great power and responsibility by statute. They are required to balance the competing interests, of all those directly affected by an insolvency in a way that is in accordance with the law, fair, timely, and is charged appropriately. The fundamental purpose of insolvency regulation is to ensure that this is what IPs do. As the ways in which businesses operate change, and the pace of that change increases, so IPs are presented with an ever increasingly complex commercial environment in which they must operate and it is the challenge of insolvency regulation to keep pace.

5. The most prominent challenge that private sector innovation has presented to insolvency regulation is in the development of the volume IVA sector in response to the unprecedented rise in consumer debt (which is still rising). Between 2015 and 2018 there has been a 78% growth (39,993 to 71,034)[6] in the number of new IVAs and in the first six months of 2019 there have been as many new IVAs (40,147)[7] as in the whole of 2015. The leading

[6] Insolvency Service – Insolvency Statistics October to December 2015(Q4 2015) and Q1 January to March 2019
[7] Insolvency Service – Individual insolvency statistics, Q2 April to June 2019

volume IVA providers (VIVAPs) typically utilise technology to allow them to provide advice to debtors remotely and in volume. As in many other sectors, technology has had a disruptive effect and regulation has had to adapt quickly to deal with the use of online customer interfaces and call centres. The corporate structure of these VIVAPs often has the IPs as employees without ownership or an unequivocal say in the operation of these firms.

6. In the first few years of its extraordinary growth, insolvency regulation was not fit for purpose in the face of the challenges presented by the VIVAP sector which included the charging of expenses across a wide portfolio and attempts to standardise the IVA debt solution. Additionally, the traditional means of monitoring IPs by way of periodic inspections were seen as not suitable or adequate (even in the face of requirements that VIVAP IPs be subject to an annual inspection).

7. In 2019, the IPA established a world-leading scheme with the participation of the top six volume providers (over 80% of the IVA market, and consequently, the vast majority of all UK insolvencies). The providers pay a fixed fee per case for enhanced 'continuous' monitoring. There are typically four monitoring visits per year, follow-up visits on key areas identified and, for two companies, instantaneous access to their entire systems. For the others, there are monthly returns of key performance statistics and full data files to help identify problem areas as well as global norms and trends. We are excited to be creating a regulatory regime with real-time monitoring of all these firms through their case management software to which the IPA will have access. We believe that the scheme is unprecedented in the financial services industry, offering a level of monitoring and access that would be difficult to replicate on this scale in other environments. However, as the IPA regulates the vast majority of this sector, it sees no reason why a smaller scale version might not be offered by other RPBs, or whether the IPA could offer their scheme to others. We hope, over time, that the scheme may also be suitable for smaller firms.

8. The scheme has been in place for six months and is beginning to show real benefits. Changing the scheme just as it was beginning to have an impact would be perverse. For example, through wide-scale monitoring of advice calls, the IPA has worked with the VIVAPs to establish standards of conduct with regard to advice, and in particular how vulnerable debtors and those on low incomes (to whom other debt options may be more suitable) should be treated and advised. Cases where it has been evidenced that

debtors are in the wrong debt solution have been referred for disciplinary action. We have required firms to cease charges where there is no benefit to an IVA and make refunds to cases. The practice of expenses being charged by connected parties has largely been eradicated and where firms have been unable to demonstrate that charges are fair and reasonable they have been referred for disciplinary action. The regulators are currently working with the IS to tighten up the poorly-worded regulations around costs and expenses that have allowed this area to develop into an issue. The RPBs are working with IS to strengthen the monitoring of all VIVAPs, including examining concerns about introducers and a closer working collaboration between the RPBs and the FCA (who regulate this sector).

9. Whilst the IPA are naturally proud of the framework developed for the regulation of VIVAP firms, we also see this as an ongoing challenge - the first of an increasing number of challenges that face insolvency regulators in the future. These challenges will, we suggest, include developing regulation of the firms themselves to ensure that the interests of their owners are aligned with the professional responsibilities of the IPs working within them.

10. The regulatory framework set up around the VIVAP firms has also had to address the requirement to understand and work with the IT systems that these firms utilise. Additionally, one of the largest VIVAP firms has a significant proportion of its operation based overseas. The IPA has had to develop processes for the periodic physical monitoring of an outsourced overseas operation and ongoing remote monitoring of that operation.

11. We are seeing the technology employed across the profession increasing and the use of more sophisticated document management and case management software systems. There is also a movement in some of the larger firms towards establishing regional case management teams involving a rapid transfer of insolvency cases subsequent to the initial work carried out upon appointment, often away from the local offices of the appointed IPs. The IPA foresees that the continuous monitoring being implemented in the VIVAP sector by utilising technology could act as a model for the future insolvency monitoring for the profession as a whole.

12. In August 2018 the UK government published “Insolvency and Corporate Governance, Government Response.” In line with the government’s stated aim of increasing the UK’s World Bank ranking for its insolvency framework it has announced a range of proposals, including a new

moratorium aimed at those companies that are struggling but not yet insolvent with the aim to allow "breathing space" to turn those companies around. These proposals have the potential to have a radical impact on the insolvency profession, especially given that the moratorium involves the appointment of a moratorium supervisor who will be required to be a licensed IP. We expect that these proposals are likely to feature in forthcoming government legislation and it will be for the insolvency regulators to demonstrate that they can effectively monitor and regulate this work from its outset.

13. The IPA strongly argues that the multiplicity (albeit limited) of RPBs is not something that should lightly be dispensed with. It should not be assumed that a change in the structure of regulation corresponds to an improvement in the quality of regulation. The current structure has allowed specialisms to develop and the framework in place at the IPA facilitates a rapid and effective response to the challenges facing the profession, which includes its regulators. Any move to a single regulator is likely to require a substantial lead time in which to establish itself causing regulatory uncertainty and the risk of public confidence in the profession deteriorating.

14. As well as technology enabled, continuous monitoring as a feature of the future regulatory environment, the IPA has also taken steps to modernise its internal committees structures – we continue to take advantages of our unique blend of lay majorities to give efficient decision making with specialist up-to-date insolvency experience from all areas of insolvency (insolvency is small but highly complex and specialised). But we have compressed our structures and professionalised our processes more closely aligning monitoring and regulatory outcomes such that we have increased efficiency and transparency. Other RPBs could be encouraged to follow suit.

The current regulatory framework

16. Since insolvency regulation was first introduced in 1986 any individual who acts as a liquidator, trustee in bankruptcy, administrative receiver, administrator, nominee or supervisor under a voluntary arrangement, must be personally authorised to act as an Insolvency Practitioner (IP). Authorisation may be made by one of five RPBs (this will be reduced to four when ACCA formally relinquishes its RPB status on 31 December 2019). Two of the current RPBs, the IPA and the Institute of Chartered Accountants in England and Wales (ICAEW) regulate IPs across the UK. The remaining two RPBs (Institute of Chartered Accountants in Scotland (ICAS) and Chartered Accountants Ireland (CAI)) specialise in their respective countries, albeit they can and to a limited extent do, authorise IPs who are not based in Scotland or Northern Ireland. IPA and ICAEW currently regulate 86% of all appointment-taking IPs with the IPA overseeing the majority of insolvencies, due to the concentration of VIVAPs coming under the auspices of the IPA's work.

17. The latest changes to the regulatory framework have been in place since October 2015. SBEEA15 introduced powers for the Secretary of State to act against RPBs and, where it is in the public interest, against IPs directly. The IPA is not aware of any instances to date where the Secretary of State deemed it appropriate to utilise these powers. SBEEA15 also introduced ROs intended to provide the RPBs with a clear structure within which to carry out their regulatory functions. The IPA welcomes the opportunity to demonstrate how it meets these objectives.

Regulatory Objectives

A. A system of regulating insolvency practitioners that secures fair treatment for people affected by their acts, is transparent, accountable, proportionate, and ensures consistent outcomes.

18. The IS set out criteria for the achievement of this RO. Firstly, that an RPB has a complaints system that is accessible, even-handed and transparent. The IPA has a well-established and structured complaints process that interfaces with the single Complaints Gateway operated by the IS. Complaints are passed to an assessment team to ascertain whether there is a potential liability to disciplinary action which can be evidenced and prepare it for consideration by the Investigation Committee (now part of

the Regulation & Conduct Committee). Both the complainant and the IP are kept informed throughout the process, including the basis of decisions taken in relation to the complaint. Additionally, they both have a right of review of the Committee's decision if they do not accept it. The IPA recognises the importance, for both the complainant and the IP, that any complaint is resolved as quickly as possible whilst still maintaining the integrity of the complaints process. In the past, progression issues have occurred, but in the previous 12 months case progression processes have been implemented and aged complaint numbers have fallen significantly. Sanctions and warnings are published and complainants have full sight of the progression of their cases. In the three years from 2016 to 2018, the IPA received 775 new complaints and completed 757.

19. The RO states that an RPB should have disciplinary procedures which secure fair and consistent outcomes. As set out above, the IPA's regulatory committees refer to the Common Sanctions Guidance when a case for disciplinary action has been found, and precedent is brought to bear in decision-making so that consistency is applied across decisions. Following a review of governance in 2018 in which it identified that its committee structure had grown in complexity with much overlap, the IPA changed the way its committees are structured and in 2019 moved to a two-tier system. The Tier 1, Regulation & Conduct Committee (a merger of the previous Membership & Authorisation Committee and Investigation Committee) considers complaints, monitoring reports, and licence requests. The merger of these two committees is resulting in both a faster process and improved consistency between investigation and monitoring outcomes. The Tier 2 Disciplinary and Appeals Committee handles disciplinary and appeal matters.

20. The other criteria are that an RPB performs timely, proportionate, and targeted monitoring of its practitioners. In 2014, the IS issued the Principles for Monitoring, a memorandum of understanding between the IS and the RPBs which sets out how the monitoring of IPs should be conducted. All appointment-taking IPs licenced by the IPA have typically been subject to monitoring visits on a three-year visit cycle. As part of the governance review in 2018 it was identified that this system was delivered on the basis of 'one size fits all' and not tailored to an IP's practice. These routine visits have been supplemented with targeted visits if necessary or by accelerated routine visits if risk factors indicate that would be appropriate. In 2019 the IPA announced, and is currently in the process of moving to, risk-based

monitoring which has allowed us to align our monitoring regime to that of other RPBs. This new risk-based monitoring has allowed us to implement a system of continuous monitoring across all our IPs – the first RPB to do so – that will deepen our insight, ability to act and yet offer a proportionate and pragmatic regime for the IPs we monitor.

21. The IPA has developed a new risk profile system, with a strategic risk-based analysis. Newly-licenced IPs are subject to a monitoring visit within the first 12 months of being licensed, and IPs are now being categorised according to risk. This is based on criteria such as the outcome of the previous inspection visit, the nature and volume of the work performed, the IP's length of qualification and previous disciplinary record, and is to be used principally to determine frequency of full inspection visits. Throughout the period, the inspector will carry out a continuous assessment of risk and may shorten or lengthen the monitoring cycle as circumstances change and more information becomes available. The inspector will be assisted in the continuous assessment process by self-certification submissions, which will be required of the IP at least every two years, and by brief mid-cycle inspections, which will take place for those IPs on a longer monitoring cycle.

B. Encouraging an independent and competitive IP profession whose members provide high quality services at a fair and reasonable cost, act transparently and with integrity, and consider the interests of all creditors in any particular case

22. The IPA provides an independent, transparent regulation regime that has been shown to uphold the highest professional standards and actively participates in standing setting in its role with the Joint Insolvency Committee (JIC). In terms of guidance and information, the IPA runs an annual programme of conferences, insolvency roadshows and other professional events. Additionally, the IPA issues a handbook annually with a comprehensive selection of guidance and technical resources. Further information and resources are available on the IPA website.

23. Historically the IPA was the first RPB to introduce insolvency examinations and practice statements which later evolved into the Statements of Insolvency Practice (SIPs). The IPA introduced the Certificate of Proficiency in Insolvency (CPI) exam which has established itself as the insolvency industry's introductory qualification of choice. The IPA is a founding member of the Joint Insolvency Examination Board

(JIEB) which sets the mandatory examination which all IPs must now pass before they can be licensed.

24. Misconduct in all forms is identified and considered through the IPA's monitoring and complaints processes and subject to regulatory or disciplinary action including licence suspension and withdrawal where it is deemed appropriate.

25. Remuneration, fees and expenses, are examined on monitoring visits and challenged when it appears to IPA inspectors, Secretariat or the Regulatory & Conduct Committee that there are concerns, including whether their level is fair and reasonable. Such matters can also be referred for disciplinary action if appropriate. The drawing of any remuneration without proper authority is always referred for disciplinary action. It should be noted that on 1 October 2015, The Insolvency (Amendment) Rules 2015 (the 2015 Rules) came into force requiring IPs to provide creditors with an upfront summary of estimated costs, narrative disclosure including the work anticipated to be undertaken and, where an hourly rate is proposed, an estimate of the time they expect to be working on that case. Additionally, SIP 9 was revised to set out the narrative disclosures required in these fee estimates. This has provided the RPBs with an effective framework to utilise in order to assess not only an IP's compliance with the disclosure requirements of the 2015 Rules and SIP 9 regarding fee estimates, but also to assess ongoing costs which are reported to creditors periodically with reference to the original estimate.

C. Promoting the maximisation of, and promptness of returns to, creditors

26. Case progression is examined on monitoring visits and challenged when it appears to inspectors that there are concerns, in particular when distributions to creditors have been unnecessarily delayed. In 2018 there were four referrals to the IPA Investigation Committee relating to case progression issues identified on monitoring visits. Such matters can also be referred for disciplinary action if raised during the course of a complaint investigation.

D. Protecting and promoting the public interest

27. When setting out this RO, the IS clarified that, in respect of the term 'the public interest' they expect an RPB to seek to deal promptly with an act or omission by an insolvency practitioner which is serious enough to cause harm to the public, brings the reputation of the insolvency profession into

disrepute by reducing public confidence, or fails to uphold proper standards of conduct and performance. In the three years 2016 to 2018, IPA has received 775 new complaints and completed its investigations into 757 of those. These resulted in 59 Consent Orders, reprimands and fines being issued to IPs all of which were published. In terms of monitoring, in the same period 28 targeted visits were carried out and the outcomes of visits led to the restriction of four insolvency licences and the removal of a further two licences.

Strengths of the current regime

28. The current system has significant strengths:

A. Having more than one regulator promotes a robust regulatory environment as specialisms develop and continuous improvement is encouraged through competition.

29. The evolving nature of the current regulatory environment also extends to the changes in the UK insolvency market place. IPs work with financially distressed businesses and individuals within various forms of statutory insolvency procedures but increasingly outside this framework through advisory, turnaround and restructuring work. Insolvency professionals are not just accountants, they are counsellors, lawyers, negotiators and adjudicators. They are often dealing with people at particularly vulnerable times either personally or through a business, and they deserve the highest levels of regulated support. The IPA regulates the majority of the specialist insolvency and restructuring firms as well as practitioners in the VIVAP sector. The IPA is also the only RPB specialising in insolvency, meaning it is 100% focused on the specialist and complex areas of corporate and personal insolvency.

B. The current system is flexible and allows for a commercial response to this fast paced, dynamic market.

30. In 2019, in response to concerns about the rapidly evolving volume IVA sector, the IPA introduced a new regulatory framework for this sector. It is noteworthy that these VIVAP firms utilise technology to achieve the capabilities to handle the volume of cases and the IPA scheme has embraced this technology in the design of its framework. The scheme incorporates continuous monitoring with real-time access to systems. The IPA sees the solutions implemented in this sector as providing the foundations for the further development of a high-class insolvency

regulation regime that the IPA intends to continue to pioneer over the next five years. The development of this scheme demonstrates that the current system has the flexibility and commerciality to allow effective and rapid regulatory change where there is will and intent to do so. Any system not based on a market approach or that has a single funding methodology, such as a levy, would lose this ability to raise funds quickly to respond as the market changes. Whereas some of the other RPBs may be larger in size than the IPA, over its long history the organisation has built up sufficiently strong foundations to tackle even the most complicated regulatory issue.

31. The Insolvency (England and Wales) Rules 2016, which came into force on 6 April 2017, introduced one of the biggest changes to the insolvency profession in a generation. The introduction of the General Data Protection Regulation (GDPR) on 25 May 2018 has required all insolvency practitioners and their firms to re-assess their processes for data handling and the Money Laundering Regulations 2017 remains a major compliance focus for insolvency firms. These significant changes in legislation and insolvency procedure have caused IPs material practical challenges and have required the current RPBs to respond rapidly to both the needs of their licensed IPs to understand the compliance expected of them, and to adapt their own regulatory regime to monitor that compliance. The IPA monitoring team has the best possible understanding of the work of insolvency practitioners as they visit them week in and week out. That specific expertise is not available in other financial and professional services regulators.

C. The current system offers consistency. In this regard, the RPBs have worked with the Secretary of State to establish the effective implementation of processes where homogeneity and simplicity is required:

32. The Complaints Gateway, in place since June 2013, provides a single, straightforward, and easy to access entry-point for complaints against insolvency practitioners. The Gateway is operated and overseen by IS, as oversight regulator.

33. The Joint Insolvency Committee (JIC), made up of representatives from each of the RPBs, the IS and five lay members (being key stakeholders in UK commercial marketplace), acts as a forum for the discussion of insolvency issues and standard setting. It has responsibility for the development and revision of the Code of Ethics applicable to insolvency practitioners, Statements of Insolvency Practice and Insolvency Guidance

Papers. The JIC is provided with resources by the RPBs and actively consults with stakeholders is setting standards.

34. The Common Sanctions Guidance, issued by the Secretary of State in 2016, and referred to by the regulatory committees of all RPBs, ensures consistency in outcomes when a case for disciplinary action has been found.

35. From November 2014, all published disciplinary sanctions are included on the IS's website in an agreed format.

36. There have been longstanding quarterly Meetings of Monitors, which are chaired by the IS and at which inspectors from RPBs share intelligence, jointly consider findings from monitoring of IPs, seeking guidance from the IS where appropriate, and agree a common approach to such matters.

D. The current RPB regulation structure also has the benefit of stable regulator fees.

37. The introduction of any new single regulator would be likely to lead to increased costs arising principally from its set-up. These costs will have to be met from either the public purse or passed onto the insolvency industry, which in turn would ultimately lead to costs passed on to clients and creditors. The numbers of IPs might also be reduced and price competition would be weakened. Additionally, a single regulator is unlikely to be able demonstrate the ability of the RPBs in the current system to raise funds quickly where there is a need to do so.

E. The current regime allows for an appropriate level of specialist knowledge while also being fair and collaborative

38. A common concern expressed about "self-regulation", and extended to insolvency regulation, assumes a vested interest in IPs making decisions about the conduct of their colleagues. However, the conduct of an insolvency process is often of a technical nature and can be best understood by those with a specialist knowledge of that process. It is difficult to imagine how a regulatory system that did not involve regulators having an up-to-date, in-depth, detailed knowledge of insolvency could operate fairly and effectively. Firstly, the presence of IPs on the committees of the IPA is firmly balanced by the presence of lay majorities on the IPA's regulatory committees to ensure impartial decision-making. Secondly, there is a rigorous process to avoid any conflict of interest and any Committee member who has a connection to an IPA member whose conduct is being

considered is required to recuse themselves from the sitting of that committee. Finally, all IPs have a vested interest in a robust regulatory system – they have daily interaction with a variety of stakeholders including the general public, all of whose perception of the profession can be negatively influenced by the activities of a small minority whose actions can bring the profession into disrepute.

39. The insolvency profession understands the importance of demonstrating that bad practice is quickly and appropriately addressed. The presence of IPs on the committees which deal with regulatory and disciplinary matters is a factor which, therefore, is likely to produce a critical rather than a lenient attitude to a fellow practitioner.

F. The current system works

40. Significant regulatory change in any industry has an unsettling and disruptive effect as uncertainty is created until changes bed in. The IPA recognises that the current review of the insolvency regulatory landscape including the power introduced by SBEEA15 to create a single regulator for UK IPs is necessitated by the timing of the expiration of that power (October 2022). Such a significant regulatory change as that conceived by the introduction of a single regulator can only be appropriate when, firstly, there are serious problems identified with the current regulatory framework. Secondly it would also have to be the case that potential solutions to any such problems identified could only be implemented by a move to a single regulator. As set out above a number of the criticisms levelled against the current system would not address the problems people perceive with the insolvency framework. We have set out that there is scope for improvements to the current system where needed that would enhance any regulator's ability to deal with the issues at hand and increase public confidence. Finally, an analysis of the impact of a single regulator would need to show significant net benefit from such a measure being implemented.

41. The IPA will await the results of the IS's call for evidence with great interest but observes that it is not aware of any case since the powers introduced by SBEEA15 arose of the Secretary of State using the power to act against an RPB. The current regulatory framework has seen the oversight regulator carry out regular reviews of the RPBs and the framework under which they operate. This has run alongside internal regulatory reviews carried out by the IPA itself. Both these processes have

led to a process of continuous improvement within the IPA whereby it has evolved into a regulator readily equipped to meet the challenges of the insolvency profession both today and well into the future.

Ways to strengthen the current regime

Although the IPA firmly believes that the current system is functional, there are always ways to improve. The current system could be further enhanced by:

A. Firm regulation

42. Currently, IPs are authorised on an individual basis and there is no insolvency authorisation of the firms in which IPs operate. It has been noted that the structure of some firms (including IVA volume providers and other large accountancy firms e.g. the 'Big 4') have all or some of the IPs as employees. In such cases there is scope for tension between an IP's regulatory responsibilities and the actions or policies of the firm. The current draft of the revised Insolvency Code of Ethics produced by JIC in response to a consultation in 2017 includes a section on the IP as employee, which recognises these tensions and sets out an IP's responsibilities to ensure compliance with the fundamental ethical principles. The IPA recognises, in the interests of regulation continuing to remain effective and to retain public confidence, that the authorisation of the firms in which IPs operate (in addition to the IPs themselves) is both desirable and necessary. Effective regulation requires that a regulator is not fettered in its ability to take appropriate and timely action against any party that contravenes regulatory standards. Regulation of firms in which IPs work would ensure the alignment of the interests and responsibilities of a firm's senior management with those of that firm's IPs (where there is a separation between the two). Any such system would need thinking through carefully to ensure it worked well in practice, was enforceable in reality and worked in harmony with individual regulation.

B. Compensation and redress

43. At present there is no regulatory mechanism for compensation from either IPs directly or the RPBs in relation to IP conduct that is alleged to have caused loss (financial or non-financial) to a third party. The IPA is supportive of efforts by the IS to explore options on introduction of such a system, whilst at the same time understanding that such a system requires careful design. There are few insolvency processes where there is an

identifiable client and consequently the duties of care to individual parties that are well-established in other professions are not present in insolvency work. It is also important to note that IPs operate under the general supervision and powers of the Court and any such mechanism cannot be a substitute for any legal remedies available to individual complainants through the Courts. This RPB has committed to work with the IS to develop a system of simple redress and compensation in certain circumstances.

44. Any system for compensation is likely to have to be administered by the RPBs and tied into the complaints handling mechanism. This will allow an ability to effectively separate out claims by those whose grievance arises from any loss caused by an insolvency process, from those whose grievance arises from an IP's conduct in handling an insolvency case.

C. Better use of the pre-pack pool for connected party purchasers

45. The IPA recognises the important part 'pre-pack' administrations play in the UK's rescue culture. Pre-pack sales to connected parties are often commercially justified, especially when a connected party is the only one to express an interest in purchasing a business, and the alternative is a break-up sale of the company's assets. Additionally, a revised version of SIP 16 was issued in November 2015, which significantly increased the disclosure requirements in relation to all 'pre-pack' sales, with additional requirements for connected party sales.

46. Pre-pack administrations continue to be in the public spotlight and while general understanding of the pre-pack process has increased there will always be intense scrutiny by stakeholders of any sale to connected parties, especially where it is reported subsequent to its completion. In such situations there is naturally a demand for assurance that any such sale was the proper outcome given the circumstances.

47. The pre-pack pool was set-up in November 2015, (arising from the recommendations set out in Teresa Graham's 2014 report[8]) to review pre-pack sales to connected parties and provide an independent, expert opinion on the case for that sale. This was designed to provide assurance to creditors that some independent oversight had been exercised prior to the sale. At present use of the pool is voluntary by connected purchasers and unfortunately the number of cases referred to the pool by connected

[8] Graham Review into Pre-pack Administration - Report to The Rt Hon Vince Cable MP

purchasers remains low (of the 241 connected party sales in 2018, there were only 24 referrals)[9]. In its most recent annual report, the Pre-Pack Pool Limited reported *"that connected party purchasers do not currently worry about the consequences of not making a referral. There are no regulatory penalties against the purchaser for not making a referral; and, just as importantly, there appears to be little pressure from suppliers and customers on purchasers to approach the pool."*

48. As a result the IPA supports the consideration of changes to the pre-pack pool to better scrutinise connected party purchases.

D. Great consistency across decision-making

49. The IPA currently operates its regulatory regime under its own rules and regulations, (which include lay membership of its regulatory committees) with these being reviewed and evaluated by the oversight regulator, the IS, as being fit for purpose. In the interests of addressing issues of public perception and defending the regulatory system against criticism, the IPA would be in favour of certain processes and actions being laid down, for example a uniform tier at the appeal stage. This would further collaboration and consistency amongst remaining RPBs and further discourage any suggestion of RPBs lacking independence or objectivity. An example of such a process is the establishment of a single senior disciplinary committee consisting of members of each RPB.

Risks associated with significant change

50. There are some significant risks from introducing wholesale change that far outweigh the benefits:

A. It would be a grave risk to destabilise our redress system at a time when the UK needs to be as attractive to inward investment as possible.

51. The UK's insolvency framework is ranked as one of the best (14th) in the world by the World Bank for 'resolving insolvency', this ranking is based on a number of measures including cost, outcome, recovery rate, time, and strength of insolvency framework. The ranking aggregates scores looking at the commencement of insolvency proceedings, management of debtor's assets, reorganisation proceedings and creditor participation. The UK

[9] Pre-Pack Pool Annual Review 2018

government has announced plans to implement measures that will increase our ranking further including a new moratorium and a restructuring tool.

52. The UK is perceived to be a "creditor-friendly" jurisdiction with a legal and regulatory framework that provides investors and creditors surety in recovering amounts due from insolvent debtors. UK law is the preferred governing law for commercial agreements worldwide, and UK Courts are the forum of choice in disputes between parties in those agreements. Part of the reason for this has been the flexibility and accessibility of the UK insolvency environment. Significant change risks that stability and further gives the impression that the UK economy can no longer be trusted to secure creditor's rights.

53. The UK commercial sector is going through a period of unprecedented change and uncertainty driven by market and technological development, changes to consumer behaviour, and Brexit. As a consequence, the UK insolvency marketplace is experiencing a significant upturn (corporate insolvencies rose by 2.6% in Q2 2019 compared to Q1 2019 and rose by 11.9% compared to Q2 2018). As well as this upturn, the UK insolvency marketplace is struggling with some of the uncertainties brought about by Brexit, not least the potential loss of automatic recognition of UK insolvency proceedings by EU member states and the implication for cross-border restructuring for which the UK has been a worldwide hub.

B. Further change could be extremely expensive

54. Should any decision to exercise the power to create a single regulator be taken, the government will naturally have to undertake an impact assessment which thoroughly assesses all the costs and benefits of such a move. In relation to costs the current system does not impact the taxpayer and the IS receives income through levies to IPs which amount to £428 per IP.

55. The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is a recent example of a new regulator set up by government to oversee the work of professional body AML supervisors (including the IPA). OPBAS is entirely funded by fees recovered from the professional bodies. According to figures produced by the Financial Conduct Authority (FCA), the set-up costs were estimated at £900k over the four months from November 2017 to March 2018 and annual operating costs are estimated at £1.7-1.9m. It should be noted that with a staff of approximately 20 people

to monitor 22 professional body supervisors, OPBAS is significantly smaller than any single insolvency regulator would need to be. Their monitoring regime is far lighter than that carried out by the current IS regime.

56. In addition there is always the possibility that a regulator will face litigation when carrying out its functions and must therefore build reserves against this possibility. The existing RPBs already have these in place but a new body would need to accumulate them or be dependent on the public purse.

C. Wholesale change risks losing a collaborative regulatory framework that understands insolvency

57. As set out above, insolvency is unique in the professional sphere, sufficiently wide-ranging and complex that it encompasses areas from debt solutions for individuals to cross-border insolvencies of large multi-national companies. The requirements prescribed for the conduct of this range of insolvency processes are often legally and technically complicated. The input of practising expert knowledge amongst all the various specialisms that comprise the profession into the regulatory process is key to keeping regulation fit for purpose and up-to-date. Collaborative frameworks such as the JIC, and the IPA's Standards, Ethics and Regulatory Liaison Committee, are in place to facilitate the input of this knowledge and expertise.

58. The insolvency profession, knows the value of its reputation and through the development and operation of SIPs holds itself to higher standards than those prescribed by the statutory framework. A move to a single regulator risks losing this engagement with the profession and there is likely to be an inescapable reversion to more rules-based regulation focused on 'box-ticking' that fails to educate and improve standards. Monitoring levels could deteriorate, and regulation would reverse.

59. IPs are often working with people in very difficult circumstances and helping them to manage and resolve otherwise intractable problems. The ability to do this might be at risk if mechanical compliance became the norm.

Conclusion

60. The IPA is not complacent about the current insolvency regulatory landscape and recognises that it must continue to evolve as the business and

practice of insolvency itself changes and adapts to new commercial realities. It does not, however, consider that there is evidence to show either that the existing regime is so dysfunctional that it should be swept away or that there are any benefits of a single regulator that would outweigh what are likely to be the considerable costs, risks and challenges of establishing one.

Question	Comments:
1. Do you think Recognised Professional Bodies (RPBs) investigate complaints about insolvency practitioners in a way that is fair, and delivers consistent outcomes for all parties? Please share examples of good and bad practice.	Yes. The Recognised Professional Bodies (RPBs) have procedures that have been developed over time to investigate complaints and balance the rights and interests of complainants with the rights, duties and responsibilities of insolvency practitioners (IPs). The introduction of the Complaints Gateway, means that there is a single, simple, route for complaints to be made. There are no signs of evidence that the system itself is failing: there have been no recent formal complaints that we know of about the system itself from stakeholders, which is a positive indication that the system works given the number of complaints passed to RPBs (this RPB alone deals with over 200 a year); there have been few successful appeals; and few independent reviews of the RPBs' own decisions. The Insolvency Service has not had cause to utilise its powers to sanction the RPBs or intervene, suggesting that it is content with complaints processes and the outcomes The relevant committees refer to the Common Sanctions Guidance in order to promote consistency both between the RPBs and over time. There are of course, complexities and particular circumstances that give rise to differences, but publishing the outcomes, and keeping complainants up to date as cases progress, has improved the understanding of the system. Precedents are considered in determining sanctions and disciplinary proceedings. Fairness is assured through the committee's deliberations and a lay majority, giving an appropriate degree of independence.

Question	Comments:
	The process has multiple layers of quality assurance[1] and independence inherent through the system, including through independent review. The RPBs all participate, under the aegis of the Insolvency Service, in regular meetings of monitors to ensure consistency and uniform awareness of issues arising in the profession and of the regulators' responses to such issues. The system could be improved by allowing RPBs themselves to record complaints on the Gateway on behalf of members of the public who have contacted them directly, rather than having to refer them on to the Gateway. This might feel less bureaucratic for members of the public. The RPBs would inform the 'complainants' of the referral to make them aware of the initial assessment process performed by the Gateway. Transparency could be improved by RPBs doing more to publicise their practices (we are producing an online video guide with other RPBs), and by publicising benchmarking reports (which we are introducing with our scheme for volume provider reviews). Critics of the system sometimes complain of the length of time taken to process complaints. All RPBs have service level agreements that strike a good balance between making sure complaints are processed quickly, but with sufficient thoroughness. We have recently instigated a number of initiatives to improve and ensure efficiency. There will, however, always be some cases that are complicated which will take a long time to conclude or which do not have the outcomes that the complainants expect.

Question	Comments:
2. What level of confidence do you have that RPBs will deal with insolvency practitioner misconduct swiftly and impartially, using the full range of available sanctions set out in the Common Sanctions Guidance?	The RPBs' regulatory and disciplinary committees all have lay members to help ensure objectivity and impartiality. The IPA has instigated lay majorities so that there can be no accusations of professional self-interest. There are also very tight restrictions and strictly observed processes for managing conflicts of interest. All members sign confidentiality agreements, and abuses would lead to immediate dismissal from the committee. In order to ensure that misconduct is dealt with swiftly (though with the appropriate rigour for such a serious issue), this RPB has recently taken steps to changes its structures (reducing the number of committees), and processes (to remove unnecessary hand overs and process steps) to further improve the speed with which cases can be concluded. This means, for example, that a single committee hearing can deal with misconduct found during an inspection, rather than having to refer it to another committee for consideration. The regulatory committees all refer to the Common Sanctions Guidance when considering taking disciplinary action. The IPA has taken measures this year to enhance committee members' understanding of the Common Sanctions Guidance through compulsory training and better operating procedures to ensure the Common Sanctions Guidance is observed at all times. Improvements were noted in our most recent review by the Insolvency Service. In the past, criticism has been levelled at the system suggesting that the RPBs have been unwilling to tackle some of the worst kinds of malpractice, either because they are beholden to their members, or because they do not have the financial wherewithal to take on organisations with the financial capacity to fight any attempts to bring them to account. Recent high-profile regulation cases brought by this RPB disprove this theory, and demonstrate, that this organisation

Question	Comments:
	is willing and able to address any instance of misconduct, wherever and by whomever it is conducted.
3. Do you believe the sanctions that the RPBs can currently apply are adequate and sufficient to provide fair and reasonable redress when a complaint is upheld? If not, what sanctions do you believe an RPB should be able to apply?	It is settled law that the purpose of sanctions issued by a professional regulatory body is to protect the public interest[2]. The public interest must be at the forefront of any decision on sanction and this includes the collective need to maintain the confidence of the public in the insolvency profession and the particular need to declare and uphold proper standards of conduct and performance. The levels of fines levied recently also demonstrate that the Common Sanctions Guidance is now embedded, understood, and is being utilised. The sanctions available to RPBs are not currently designed to provide redress, compensation or reimbursement. Some firms offer these but it is not a consistently adopted practice. Historically RPBs have viewed compensation as an area for the courts where a proper assessment of any losses suffered and the appropriate level of compensation can be made. However, this RPB believes that the system and public confidence in it could be further enhanced to include a system of redress and compensation in some circumstances, and this RPB has agreed to work with the Insolvency Service to develop and introduce such a system.

[2] R (on the application of Abrahaem) v General Medical Council

Question	Comments:
4. What evidence is there to demonstrate that RPBs collaborate to ensure there is consistency in monitoring and enforcement outcomes?	The RPBs all participate, under the aegis of the Insolvency Service, in regular meetings of monitors to ensure consistency and uniform awareness of issues arising in the profession and of the regulators' responses to such issues. In the past there may have been a concern about complexity, but as the RPB numbers have radically reduced (there are only two RPBs across all of the UK dealing with 86% of IPs, with a further two in the specific jurisdictions of Scotland and Northern Ireland), the degree of collaboration has increased significantly, such that the system operates smoothly and the public can engage through the mechanisms that have been developed. The RPBs also all participate in the activities of the Joint Insolvency Committee to devise, implement and promote regulatory guidance. The RPBs all use the Common Sanctions Guidance. The RPBs share information with each other under Part 6 of the Memorandum of Understanding between the Secretary of State for Business Innovation & Skills and the RPBs. There are recent examples of the RPBs collaborating on particular instances of apparent misconduct where IPs operating in one environment have been operating across RPBs. The RPBs share an Appeal Chairman, such that at the highest level there is an apex. However, this RPB believes that this could be enhanced by the introduction of a shared appeal tier across all RPBs, but, would be prepared to consider other options.

Question	Comments:
	There is very little evidence to support the concern that there is systematic 'regulatory arbitrage' where IPs exploit differences between RPBs and move from one to another if they do not like the views of a particular RPB or consider that there are variances in the application of standards between them. Processes are in place to ensure all RPBs share information about IPs who move from one RPB to another should this take place.
5. Are RPBs doing enough to promote an independent and competitive insolvency practitioner profession that considers the interests of all creditors? Please share examples of good and bad practice.	By devising, implementing, maintaining and promoting professional standards including the Insolvency Code of Ethics which includes, inter alia, a fundamental principle of independence and objectivity, the RPBs are promoting the independence of the profession from undue influence by any individual or collective stakeholders such as creditors, debtors, directors or finance providers. This RPB has had participation in its regulatory committees by members of the creditor and creditor community for over twelve years to ensure their interests are considered in regulatory decision-making. More recently, this RPB has moved to a lay majority on its regulatory committees. Our inspections and complaints processes put creditors and the public interest first. The IPA's flagship curriculum of training and professional accreditation[3] puts creditors and the public interest first. Furthermore, by adapting regulatory processes and guidance to changing market conditions the RPBs (with their monitoring and intelligence gathering activities)

[3] Please see the attached extract from the Certificate of Proficiency in Insolvency syllabus

Question	Comments:
	can, within the regulated sector, take action against unfair trading practices such as misleading or inaccurate advertising or websites etc. This RPB believes that it has an important role to play in collectively sharing its best practice findings from its work with individuals through monitoring and investigations. It therefore has a full programme of information, training and outreach to ensure these messages are shared and understood by our member community. Because the insolvency profession is complex and heterogeneous for its relatively small size, this RPB believes that the current system allows for the appropriate level of specialist knowledge to be brought to bear in decision-making, and then for the relevant knowledge and experience to be shared across its member community. As the only RPB which concentrates on insolvency and puts it first in its thinking, we can bring a distinctly practical perspective and level of understanding to the challenges IPs face when sharing best practice and making sure that they are independent. Our approach is not diluted by potential conflicts of interest with the provision of other types of accounting and financial services. This RPB is always looking for ways to further mature the profession, and in doing so, introduced the Registered Property Receiver scheme. Promoting a competitive profession is more complex. There remain a large number of firms which have IPs providing insolvency advice and taking

Question	Comments:
	insolvency appointments, both in the personal and corporate sector and generally this is a competitive marketplace. One area where there are fewer firms (and consequently fewer IPs) than previously is in the consumer Individual Voluntary Arrangement (IVA) area and the equivalent system of Protected Trust Deeds in Scotland. This has partly arisen as an unintended consequence of the restrictions to the debt advice market taken together with the unprecedented increase in consumer debt, twinned with a significant pressure on fees such that, we are told, the profitability of the firms depends on operating at or above a certain scale. There has been a contraction in the number of IVA providers and a concentration of provision of this insolvency procedure with a few volume providers of IVAs. This change is largely the result of market forces but we have adapted our regulatory approach to ensure it remains relevant and applicable across the market. We are helping to maintain a 'level playing field'. The IPA already regulates 86% of the IPs in this area. We have recently taken the lead in ensuring that a panel of support is established should there be a failure of a large participant in the market and we understand and are able to respond to lessons learned from recent high-profile cases. The IPA would welcome more powers to operate in this space, in particular, measures moving to a system of firm regulation. We are alive to potential restrictive practices and actively discourage them.

Question	Comments:
	In other areas of the market, the risk to competition is through the contraction in IP numbers, in the aging profile of the current IP population, and its diversity. This RPB has been lobbying for a review of diversity in the system and stands willing to participate in any thinking and consideration in this area.
6. In what ways have the RPBs used the introduction of regulatory objectives to improve professional standards within the insolvency profession?	The RPBs have used the regulatory objectives to extend and support their activities, e.g. in monitoring visits to challenge the fairness and reasonableness of fees and disbursements, and by ensuring that they are a core part of its professional accreditation curriculum. For example, the first paragraph of the syllabus for the Certificate of Proficiency in Insolvency exam requires candidates to "*Demonstrate an awareness of the Statements of Insolvency Practice (SIPs), The Ethics Code, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Guidance Papers and Technical Bulletins.*" It is because of the regulatory objectives, that we have been able to adopt a risk profiling system that allows for a far more sophisticated level of insolvency regulatory regime based on the analysis of a level of risk against set criteria with their foundations in the objectives.
7. When dealing with insolvency practitioner conduct, how transparent are RPBs in their decision making?	Disciplinary findings are published by the RPBs and are also reported by the Insolvency Service in their annual reviews of insolvency regulation. Disciplinary hearings are held in public unless there are specific reasons why that would not be appropriate.

Question	Comments:
	During the course of complaint investigations both the complainant and the IP are kept informed of the progress of the investigation. Generally correspondence between the RPB and one party to a complaint is disclosed to the other party unless there is a specific reason not to. When a complaint is rejected or otherwise not investigated an explanation for that decision is provided to the parties. There is also a mechanism for appealing against such decisions although the particulars of the appeal process vary between the RPBs and depend on the particular stage of the complaints investigation process that has been reached. Transparency could be improved by RPBs doing more to publicise their practices (we are producing an online video guide with other RPBs), and by publicising benchmarking reports (which we are introducing with our scheme for volume provider reviews).
8. Does the current system of regulation provide for the effective scrutiny of insolvency practitioner fees? If not, what improvements would you suggest?	The disclosure requirements to which IPs are subject are extensive and detailed. The relevant best practice standard, SIP 9 - *Payments to Office Holders and Their Associates,* has been refined over time and is subject to periodic review. The legislation provides procedures for creditors to challenge office holders' remuneration which they can choose to use. Office holders' remuneration and disbursements are also subject to review by monitoring visits to IPs While it is right that there is an appropriate degree of scrutiny of fees, it is important to ensure that there is balance and consideration when doing so. It is arguable that creditor pressure has had an effect on levels of fees and expenses

Question	Comments:
	in some sectors of the insolvency market, for example IVAs, which could have affected the structure of that sector. .
9. What are RPBs doing to promote the maximisation and promptness of returns to creditors? Please share examples of good and bad practice.	The RPBs undertake regular case progression reviews of IP's work to maximise and ensure prompt returns to creditors both via monitoring visits and desktop reviews and external compliance requirements. In our new scheme for volume providers of IVAs, we undertake monthly reviews (and in two firms, have real time access to systems) to access all returns to creditors. Any deviation from the norm can be spotted, or if raised as a concern, can be checked immediately, and action taken if needed. This was recently used most effectively, when a concern raised by a creditor representative was checked on the same day that it arose. The scrutiny of remuneration and expenses through regular monitoring also contributes to maximisation of returns to creditors.
10. Is there confidence that people who are in financial difficulty and wish to enter a statutory solution are routinely offered the best option for their circumstances?	The nature and quality of advice given by IPs and their staff in contemplation of insolvency appointments (as distinct from debt advice given under FCA regulation) is considered in the context of monitoring visits and complaints investigation. The "best option" is not necessarily an objective test. Subjectively people in debt may prefer to pay less whereas, other things being equal, creditors would prefer to receive more. A person in debt might be equally eligible for more than one solution and have to exercise a measure of consumer choice and select what is

Question	Comments:
	the most attractive option to them. Other factors, such as wishing to avoid the perceived stigma of bankruptcy, may outweigh monetary considerations and lead to what might otherwise appear to be a sub-optimal choice. We have not seen evidence of widespread mis-selling, but, where it has been identified it is addressed. These factors must be considered against the background of exploding numbers of consumer IVAs, (39,993 new IVAs in 2015[4] up to 71,034 in 2018[5]) and the consequent dramatic increase in the number of IVAs in place at any time. In our new scheme to monitor the volume providers of IVAs we are able to review an unprecedented number of calls and advice given which has allowed a degree of scrutiny not previously possible. While some firms still have work to do, all have improved, and there are some examples of what we consider best practice. Benchmark reports will enable us to share that best practice, across not just to volume IVA providers, but to all providers of debt solutions. We remain concerned that 'introducers' may not be upholding the highest standards, and we scrutinise arrangements our IPs have with such bodies, and what checks they undertake themselves to ensure that impartial advice is offered and in an accessible format. We are also working in support of the Insolvency Service's work to require introducers to be regulated.

[4] Insolvency Service - Individual Voluntary Arrangement Outcomes and Providers 1990 to 2015

[5] Insolvency Service – Individual Insolvency Statistics Q1 January to March 2019

Question	Comments:
11. Are RPBs doing enough to promote the public interest and protect the public from harm? Please share examples of good and bad practice.	Promoting the public interest is dealt with by this RPB's disciplinary and regulatory processes. There are very current examples where this RPB has intervened to protect the public from harm. Disciplinary and the more serious regulatory findings are published on IPA's website and in the professional press. This has the dual effect of educating both the profession and the public about what is not acceptable behaviour and raising public confidence in the system. In addition, the RPBs provide information and guidance through the press and other media on insolvency matters in support of the public interest. Where there has been perceived to be a risk to the public, such as with 'pre-pack' sales in administrations the RPBs have supported the introduction of new standards (SIP 16) through the Joint Insolvency Committee (JIC) and the Pre-pack Pool. We go further and would support this approach being adopted as a non-voluntary requirement. In other areas such as the volume IVA market, the IPA has implemented a new model of regulation to meet the challenge of protecting the public from harm and promoting the public interest and has recent examples where it has taken such steps. The regulatory committees have sometimes requested more guidance on the nature of the public interest and the IPA would be willing to work with colleagues across the RPBs, the JIC and the Insolvency Service to develop some guidance.

For questions 12-15 only

On a scale of 1 to 5, to what extent do you agree with the following statements? (1 being strongly agree, 5 being strongly disagree.)

Please provide an explanation for your score and supporting evidence if possible.

Question	1	2	3	4	5
12. "The regulatory objectives are fit for purpose"	**X**				
Comments: The regulatory objectives are fit for purpose, remain extant, and we envisage they will for some time. The objectives' efficacy could be extended through broader promotion through campaigns and other activity. On the back of this process, this RPB will be offering a training module and developing guidance material for its members solely on the objectives.					

Question	1	2	3	4	5
13. "The RPBs function in a way that delivers the regulatory objectives and this has increased confidence in the system"	**X**				
Comments: This RPB recognises that it is difficult to identify confidence and perceptions when there is no precedent. The fact that there is no counter-factual will make it difficult to derive a meaningful level of insight from this process, but nevertheless, trying to determine some level of correlation is an important step. We doubt that many would necessarily answer this question as positively as the objectives deserve because we think that confidence has improved. There is no doubt that the profession has matured hugely over time but we do not think the public or many stakeholders will necessarily correlate the regulatory objectives with this improvement, even though it is probably clear that those inside the profession or its regulation would recognise it as a significant upturn.					

Question	1	2	3	4	5
14. "There are matters of significant concern, which are currently affecting confidence in the regime, which are not addressed adequately by the regulatory objectives"				**X**	

Comments: The regime is functional, and there are no evidential markers of system failure (no successful Judicial Reviews (JRs) or many appeals, no long list of complaints about the execution of the system, and, as far as we are aware, the Insolvency Service has not had to use its powers to compel an RPB to act). As with all systems, however, there is room for improvement. In particular, this RPB believes that regulation of firms, especially those operating on a large scale, would significantly enhance our ability to bring misconduct to account. In the volume IVA provider space, for example, there can sometimes be a tension between the IPs and the operating environment in which they conduct themselves – whereas this RPB believes that an IP is responsible for ensuring they are operating in a robust environment, it acknowledges that misalignment can occur which is to the detriment of the Profession, and the public interest, and where robust regulation can be frustrated by ownership and blurred responsibility. Having the ability to regulate both the firm and the IPs working within it in would limit the opportunities to frustrate the regulatory process through exploitation of those discrepancies.

One of the consequences of firm regulation, is that it would require the RPBs to have the ability to raise funds sufficient to regulate effectively and to withstand challenge. A commercial RPB arrangement is critical for this and therefore this RPB is against any levy funding models that would stymie an RPB's ability to determine its own commercial arrangements with firms and IPs. We would however, welcome a review of the IPs' or firms' abilities to frustrate the process through excessive challenge and malicious use of the steps in the system.

We would counsel against moving regulation away from those with specialist insolvency knowledge and to give time for the current new regime to embed. We see little activity by any other existing RPB to respond to the challenges in this area.

Question	1	2	3	4	5
15. "There is confidence that government oversight sufficiently holds the RPBs to account to deliver the regulatory objectives"		**X**			
Comments: We find the review relationship carried out by the Insolvency Service provides the appropriate degree of challenge and oversight. We approve of the arrangement that allows for an enlightened form of regulation, that focuses on raised standards as well as punishing malpractice.					

END OF SCORED QUESTIONS

Question	Comments:
16. Does the reserve power provide sufficient flexibility in the options for a single regulator? If so, which option would most effectively deliver the regulatory objectives?	This question appears to presuppose that having a single regulator is the best way of delivering the regulatory objectives despite the evidence that there is no need for a single regulator. The legislation does not require the reserve power to be used and provides for its expiry.
17. Should government look to create a different type of regulatory framework that better suits the current insolvency system (for example firm regulation in certain sectors)? If so, what type of framework would best deliver	It is arguable that the feature that gives rise to the call for firm regulation, namely the distinction between owners and controllers of a firm and the IPs in that firm, i.e. the IP as an employee, is not limited to particular sectors of the market, e.g. the IVA volume providers, and it exists elsewhere, e.g. the 'Big 4' firms. Therefore, a move or

Question	Comments:
improvements to public confidence?	extension towards firm regulation should cover the Insolvency Profession as a whole. Traditionally in this and many other jurisdictions, the appointment of an Insolvency Practitioner has always been a personal appointment due to the fiduciary or trustee relationship between that office and the creditors and debtors. This has advantages in that a named person is always responsible. This contrasts with corporate responsibility where a change in the structure, ownership or control can mean that the responsible body has ceased to exist before it can be held accountable. Any firm regulation would require careful design to ensure it would work in alignment with current IP regulation.
18. Should government have a role within any new or improved regulatory framework?	A limited oversight role to allow for stability and consistency of the framework as now works well and provides appropriate oversight and challenge.
19. How might any future single regulator, or alternative framework, be funded?	The current system of self-funding has the advantage that it is flexible and can be modified to fund initiatives in an agile way. For example the new funding arrangements the IPA has introduced for the IVA volume provider sector. It also follows the 'user pays' principle with the fees reflecting both the risk and the ability to pay of the IPs involved.

Question	Comments:
	There is a concern that a single regulator might lose that flexibility and that a newly established body might well be considerably more expensive than continuing with the existing framework.
Do you have any other comments that might aid the consultation process as a whole?	We hope to have demonstrated that the current system is functional, and while there are refinements that could improve the regime, we do not believe there is evidence to demand the level of upheaval and wholescale change that the use of the single regulator power would engender. The threats such a power could present, to funding, to flexibility and to the perceptions of our regulatory regime abroad at a time of great upheaval elsewhere would be significantly risky to the perception of the UK as a place to do business (having in place a stable regulatory regime that provides surety, is one of the key reasons businesses often cite as being why they want to do business in the UK).

Please use this space for any general comments that you may have, comments on the layout of this call for evidence would also be welcomed.

Comments: Please see the attached Position Paper

Extract from the Certificate of Proficiency in Insolvency – Syllabus 2019

Matters relating to insolvency procedures generally

1. Demonstrate an awareness of the Statements of Insolvency Practice (SIPs), The Ethics Code, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Guidance Papers and Technical Bulletins.

2. Demonstrate an awareness of the legislation and other rules relevant to insolvency including: Insolvency Act 1986 (as amended), Insolvency (England & Wales) Rules 2016 (as amended), Company Directors Disqualification Act 1986, Insolvency Practitioners Regulations 2005, Limited Liability Partnerships Act 2000, Limited Liability Partnerships Regulations 2001 (as amended), EU Regulations, Companies Act 2006 in relation to directors' duties and company meetings / resolutions, Insolvent Partnership Order 1994, Law of Property Act 1925, EU Regulations.

3. State the requirements to be fulfilled for an individual to act as an Insolvency Practitioner (qualifications and licensing).

4. Demonstrate an ability to provide best advice to debtors and directors re the range of insolvency options available to individuals, partnerships and companies, given a particular set of circumstances, including the advantages and disadvantages of each option recommended.

5. Explain how office holders' remuneration is authorised and the different bases of calculation.

6. State the requirements for an IP to maintain a Statutory Record.

7. Demonstrate an understanding of the need to maintain a diary system for statutory returns.

8. State the classes of assets that arise and describe the characteristics of each.

9. Explain the purpose of bonding and how the amount of the bond is calculated.

10. Demonstrate an awareness of the office holder's duty to investigate and/or recover assets.

11. Explain the antecedent transaction provisions and how they may be applied in particular circumstances.

12. Demonstrate a knowledge of how and when the ISA account is used including the calculation of Secretary of State fees and other charges.

13. Demonstrate an awareness of potential tax/VAT liabilities on bank interest received and sales of assets.

14. Demonstrate an awareness of basic financial accounting procedures including: maintaining a cash book, maintaining separate accounts for fixed and floating charge monies, preparations of bank reconciliations, analysis of receipts and payments accounts, preparation of receipts and payments accounts.

15. Understand what books and records should be collected from the insolvent entity and why, and explain the office holders' right to such records.

16. Demonstrate a knowledge of documents including leases, debentures, other charges, HP and leasing agreements, ledgers, day books and cash books.

17. Understand the voting rights of creditors and the rules relating to proxies.

18. Demonstrate an understanding of the process for adjudication of creditors' claims and the rules of priority.

19. Demonstrate an awareness of how to calculate dividends, produce distribution statements and final receipts and payments accounts.

20. Understand how to deal with unclaimed dividends.

21. Consideration of the immediate steps to be taken on appointment including: checking on and taking out insurance; instructing agents; landlords; distress and execution; public services; HP/leasing; obtaining legal advice where necessary; disclaimer of onerous contracts.

22. Understand the rights of employees including ERA claims and preferential and unsecured additional claims.

23. Show how an ERA claim is calculated, how such claims are distributed and fees calculated.

24. Explain what returns are required to be completed for government departments: HM Revenue and Customs and the Department for Work and Pensions.