

**CONSULTATION ON REFORMS TO THE  
REGULATION OF INSOLVENCY PRACTITIONERS**

Summary of consultation responses

December 2011

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**Enquiries:** [policy.unit@insolvency.gsi.gov.uk](mailto:policy.unit@insolvency.gsi.gov.uk)

Policy Unit  
The Insolvency Service  
Zone B, 3<sup>rd</sup> Floor  
21 Bloomsbury Street  
London  
WC1B 3QW

Telephone: 020 7291 6772

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## 1. Introduction

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1.1 Fifty-five responses were received in response to the consultation. They were submitted by individuals and organisations representing businesses, creditors, insolvency practitioners, as well as regulators and others. A full list of respondents is attached at the end of this document.

1.2 The purpose of this document is to provide a high level overview of the main points raised by respondents as part of the consultation. Given the volume of responses received, it has not been possible to include in this summary every point raised. Given the detailed and expansive nature of many of the responses received, it has been necessary to distil some of the points raised in order to present them in an accessible and consistent format. For more detail, including individual respondents' views, we are publishing in parallel with this summary all substantive responses received from outside Government.

1.3 The consultation document set out the background to the concerns raised about the regulation of insolvency practitioners, and identified a number of possible options for change. The Government's objective was to establish further evidence about the extent and nature of the concerns and to ascertain what changes should be made.

### The consultation process

1.4 A wide range of interested parties were asked to take part in the consultation by way of email and publication on The Insolvency Service website. The consultation period lasted twelve weeks and closed on 6 May 2011. We are grateful to everyone who took the time to reply to the document. Your responses and opinions will be very useful in assisting us to clarify and further develop the Government's policy.

1.5 The views expressed in this summary do not necessarily reflect those of the Government.

The consultation responses can be found on The Insolvency Service website at <http://www.bis.gov.uk/insolvency/Consultations>.

## 2. Executive Summary

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2.1 Respondents to the consultation welcomed the opportunity to contribute to the debate about how improvements may be made to the regulation of insolvency practitioners. The consultation covered a number of areas and detailed policy proposals broadly divided into three main areas; an independent complaints body; changes to the regulatory framework; and detailed changes to insolvency legislation. Those areas are considered in more detail in the following three chapters.

2.2 The consultation generated a range of views on the need for changes to be made to the insolvency regulatory regime and on the desirability of the options proposed. Given the wide ranging nature of the consultation not all respondents considered all of the points raised. Broadly, views were polarised according to respondent type, with regulators and insolvency practitioners generally, although not unanimously, advocating that no substantive change be made to the current regime. Respondents representing creditors generally favoured change by way of implementing a combination of the options identified.

2.3 The main findings in this summary are:

- Insolvency practitioners and regulators are generally not persuaded that fundamental changes to the present regime are justified, and dispute the estimated benefits of reform outlined in the associated Impact Assessment
- There is widespread support from creditors and some insolvency practitioners for simplification of the present regime and a reduction in the number of regulators, and for greater consistency in the handling of complaints
- There is widespread support for a 'single portal' to receive all complaints
- Many respondents, particularly creditors and their representatives, raised the prospect of a single regulator as being the most effective way to address many of the concerns identified
- Many creditor respondents were strongly supportive of the proposals to enable insolvency practitioners' fees to be considered by the regulatory regime: conversely insolvency practitioners and regulators expressed strong reservations about how such a mechanism would interact with the statutory regime and that it may encourage vexatious complainants
- Whilst most respondents expressed preferences in relation to the specific complaints body models proposed, there was no overall consensus as to which of the models should be adopted
- There is widespread support for the Insolvency Service ceasing to act as a direct regulator of insolvency practitioners

- There is widespread support for the Insolvency Service to remain as oversight regulator, and for it to be given enhanced and proportionate powers to sanction the regulators, where regulatory failure has occurred.
- There is widespread support for greater creditor involvement in the standard setting process
- There was little substantive observation from creditors on the detailed changes to insolvency legislation proposed other than a recognition that increased transparency was a laudable aim. Insolvency practitioners, regulators and some creditors observed that further disclosure requirements around fees may only serve to discourage creditor engagement as a result of the increased complexity
- There was no support for amending the level of the 'prescribed part'
- Opinion was divided on the need for and desirability of the remaining detailed changes to insolvency legislation proposed

### **3. Independent Complaints Body**

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**3.1 The consultation invited views on whether the creation of an independent complaints body would improve confidence in the handling of complaints and appeals; whether such a body should have the power to review fees; and how the costs of any fee complaint mechanism should be dealt with. The consultation also proposed four specific models for an independent complaints body; a single first tier body (Model 1); an independent appeals body (Model 2); an independent decision making body (Model 3); and an independent decision making body overlaid with an investigative appeal function (Model 4).**

3.2 This part of the consultation generated a wide range of views on the need, or otherwise, for fundamental changes to be made to the current regime. The majority of regulators and insolvency practitioners argued that insufficient evidence had been provided that the present regime was failing to the extent that it required substantive reform. These respondents also questioned the evidence and recommendations made in the report published by the Office of Fair Trading, and were consequently not persuaded that reform would achieve the quantified benefits outlined in the associated Impact Assessment. Some respondents also argued that, in Scotland, legislative and procedural differences meant that the same issues did not arise to the same extent.

3.3 Creditors argued that there was a genuine need for reform, and that there are issues beyond problems of perception, particularly in relation to complaints handling, that need to be addressed. There was general agreement amongst creditor respondents that the present regime is too complicated, and is inconsistent and ineffective.

#### Responses on the specific models proposed

3.4 The vast majority of creditors and creditor representatives favoured a single first tier independent complaints body (Model 1). Many of these respondents indicated that the best way to achieve this would be by the introduction of a single regulator. One regulator also agreed that an independent first tier body would be the most appropriate solution, if the long term policy aim were to move to a single regulator.

3.5 Some regulators and insolvency practitioners were not supportive of any of the models proposed on the basis that insufficient evidence had been provided to justify such substantive change. As such, these respondents generally favoured an independent appeals body (Model 2) as the option requiring least change to the preset system. One regulator and some insolvency practitioners favoured a combination of Models 3 and 4, involving an independent decision making and appeal function.

3.6 Respondents generally favoured the introduction of a 'single portal' to receive all complaints to improve accessibility and consistency, although the need for this was questioned by some regulators.

## Fee complaints

3.7 The majority of creditors, and some regulators, agreed that the level of insolvency practitioners' fees should be capable of being considered by the regulatory regime, although there was general recognition from these respondents that appropriate mechanisms would be required to prevent vexatious complainants from abusing the process.

3.8 Most regulators and insolvency practitioners argued that a process for considering complaints about the level of insolvency practitioner fees is unnecessary, as creditors already agree the basis of remuneration at the outset of the insolvency. As such, these respondents were concerned as to how any regulatory fee approval mechanism would interact with the statutory approval regime. It was also observed that Government creditors could and should do more to seek to influence the level of insolvency practitioner fees through existing statutory mechanisms.

3.9 All respondents recognised that, if a fee complaint mechanism were introduced, appropriate safeguards would need to be put in place to ensure that the process did not become subject to abuse in the form of a 'no win no fee' culture.

3.10 There was general agreement that ultimately the court would have to remain the final arbiter of contentious or high-level fee disputes, with a variety of views expressed as to how the cost of such complaints should be borne. There was little support for a formal 'arbitration' system.

## Location of independent complaints body/appeals function

3.11 Respondents' views on the most appropriate location for any independent complaints body and/or appeals function ranged widely, depending on the nature of the body favoured. Overall, there was no consensus.

3.12 Some creditor and consumer organisations advocated the introduction of a separate Ombudsman-style scheme. Regulators and some creditors generally indicated that a new or independent body would need to be set up, whereas others indicated that any such function should be undertaken by the Insolvency Service.

3.13 There was little support for such a function being undertaken by the Adjudicator's Office.

## Funding

3.14 There was no overall consensus across any respondent type on which of the funding models identified for an independent complaints body should be chosen. There was most support for Models A (a levy on each RPB irrespective of whether their practitioners are subject to complaints) and model D (a levy on each RPB irrespective of whether their practitioners are the subject of complaints, with RPBs who have more than a certain number of complaints

made against their practitioners (whether proven or not) paying the cost of investigating that complaint) in the consultation.

## **4. Changes to the regulatory framework**

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**4.1 The consultation sought views on a number of issues associated with the structure of the present regime, including; the introduction of regulatory objectives; the role of the Insolvency Service as a direct regulator; the powers of the oversight regulator; standard setting and the role of the Insolvency Practices Council.**

### Regulatory objectives

4.2 There was general support across all respondents for the introduction of regulatory objectives for the insolvency regime, which it was broadly felt should be applicable to all parties involved in the regime, although some insolvency practitioners felt that they would be unnecessary.

4.3 Creditors generally agreed with the regulatory objectives proposed in the consultation, whereas regulators and insolvency practitioners strongly objected to the third and fourth proposed objectives, on the grounds that they concern matters of policy only achievable by changes to legislation as opposed to regulation.

### Insolvency Service as direct regulator

4.4 There was widespread support from most respondents for the proposal to cease the Insolvency Service's direct regulation function. Respondents generally observed that this would remove any potential conflict of interest perception with the 'oversight' function and would improve consistency, as the Insolvency Service does not have the same range of sanction powers as the RPBs.

### Powers of the oversight regulator

4.5 Most respondents, particularly creditors, agreed that the powers of the oversight regulator should be improved, as the lack of effective tools to sanction RPBs short of de-recognition was a central finding of the OFT report. However, some regulators and insolvency practitioners questioned whether additional powers were really necessary, and may be disproportionate in the circumstances.

4.6 Many respondents did not express firm views on how the cost of the oversight regulation should be recovered. Most respondents who did agreed that a mixture of fixed and variable funding based upon the number of appointment taking practitioners would be appropriate, although some regulators expressed concern that any fixed element should not be disproportionate.

### Standard setting

4.7 The role of the Insolvency Service in the standard setting process elicited a mixed range of views, particularly from creditor respondents, some of whom

felt that standards should not be set by the insolvency profession at all, but by the Insolvency Service or a single regulator.

4.8 Regulators generally did not feel it appropriate that the Insolvency Service become more involved in standard setting, or be given a 'power of veto', as the ability to legislate effectively already provides the oversight regulator with the ability to 'override' standards.

4.9 There was general support for increased creditor involvement in the standard setting process, although regulators and insolvency practitioners were also concerned that a strong element of professional input be retained.

4.10 A range of views were expressed as to the desirability of introducing a new standard setting body. However, many respondents, particularly regulators and insolvency practitioners, felt that in any regime involving many regulators such a body would be needed in any event to co-ordinate regulatory activities and that reform of the existing JIC was therefore appropriate. There was little support for the establishment of a new board on an 'advisory model' basis.

#### Insolvency Practices Council

4.11 A wide range of views were expressed as to the future of the Insolvency Practices Council. Many respondents acknowledged the role that the IPC has played, particularly in relation to consumer indebtedness issues, but recognised that their original remit may no longer be relevant.

4.12 Some creditors advocated that the IPC should continue as an important outlet for the 'consumer voice', but many respondents accepted that increased creditor involvement in the standard setting process and greater engagement by Government with stakeholders on insolvency policy issues has to an extent made the IPC's role redundant.

## 5. Detailed changes to insolvency legislation

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**5.1 The consultation sought views on whether detailed changes should be made to insolvency legislation, including; changing the level of the prescribed part; fixing hourly rates at the time of resolution; restricting certain types of administration appointment; reviewing the choice of liquidator following administration; clarifying Rule 2.106; providing cost estimates at the outset; cost bearing changes on fee challenges, and; the provision of clearer and more consistent information to Companies House.**

5.2 Many respondents did not address these issues in detail, particularly creditors and creditor representatives who did not feel able to comment on some of the more technical changes, whilst being supportive of the wider objective of improving transparency. Those creditors expressing a view often recognised that there was a balance to be struck in requiring further and more detailed information provision, as increasing the complexity of disclosures may only serve to increase costs whilst discouraging creditor engagement.

5.3 Regulators, insolvency practitioners and lawyers responding to the detailed proposals offered a range of views. These respondents did not generally accept that there was any basis for some of the proposed changes around fee disclosure, although there was some support for increasing creditor engagement surrounding the appointment of liquidators when moving from administration to creditors voluntary liquidation. There was little appetite from respondents for any measures seeking to restrict entry routes into administration.

### Prescribed part

5.4 Respondents addressing this issue in detail were unanimous in their desire to leave the level of the prescribed part unchanged. These respondents observed that the level of the prescribed part had been set at an amount approximately equivalent to that given up by the abolition of the Crown's preferential status following the introduction of the Enterprise Act 2002. Respondents also observed that insufficient evidence was available to justify a change in the level, which could have a consequential impact on the cost of lending.

### Fixing hourly rates at the time of resolution

5.5 Regulators and insolvency practitioners indicated mixed views on the desirability of this proposal. Some argued that it was unnecessary, as indicative rates were already routinely provided to creditors. Others observed that if such a measure were introduced, a mechanism would be needed to alter the rates agreed if circumstances changed materially.

5.6 Creditors and creditor representatives were broadly supportive of the proposal.

### Reviewing the choice of liquidator following administration

5.7 There was broad support amongst most respondents for creating a more accessible opportunity for creditors to choose the identity of liquidator when following on from an administration. However, some regulators and insolvency practitioners argued that such a measure was unnecessary, as creditors already have an opportunity to agree the identity of any subsequent liquidator.

### Clarifying when creditors may vote on remuneration proposals (Rule 2.106)

5.8 Most respondents who addressed this issue did not indicate that there was a need for any clarification of this point, although some regulators indicated that clarification would be useful. It was generally felt that any clarification could form a part of the wider review and modernisation of insolvency secondary legislation.

### Providing cost estimations at the outset of proceedings

5.9 Creditors and creditor representatives were broadly supportive of this proposal. Regulators and insolvency practitioners had mixed views, with some indicating that any estimated rates should be indicative only in order for such a measure to be practicable.

### Cost bearing changes on fee challenges

5.10 Regulators and insolvency practitioners generally opposed any changes to the present way in which costs were apportioned following fee challenges. Some of these respondents indicated cautious support subject to the court retaining overall discretion. Creditors were broadly supportive of the proposal.

### The provision of clearer and more consistent information to Companies House

5.11 This proposal generated support from some creditor respondents who observed that any improvement in the consistency of information contained with reports sent to Companies House would be beneficial. The majority of regulators and insolvency practitioners observed that there were already detailed reporting requirements contained within insolvency legislation and SIPs, and that further detailed requirements were unnecessary. These respondents also observed that in many cases narrative information was necessary to give creditors a proper understanding of the insolvency, which could be lost in any attempt to try and further standardise reporting requirements.

## Alphabetical List of Respondents

Asset Based Finance Association  
Association of British Insurers (ABI)  
Association of Chartered Certified Accountants (ACCA)  
Baker Tilly  
Bankruptcy Advisory Service  
British Bankers' Association (BBA)  
British Property Federation (BPF)  
Campbell Dallas  
Capewell, Robert  
Carson & Trotter  
Centrica  
Chartered Accountants Regulatory Board (CARB)  
Citizens Advice Bureaux (CAB)  
City of London Law Society (CLLS)  
Compliance on Call  
Consumer Credit Counselling Service (CCCS)  
Cowan & Partners  
Dalyco  
Daniels Silverman  
Daniels, Sarah  
Debtwise  
Deloitte LLP  
Ernst & Young LLP  
F Simms & Partners  
Finance and Leasing Association (FLA)  
French Duncan Business Recovery  
Grant Thornton LLP  
Haddon, John  
Henderson Loggie  
HSBC  
Institute of Chartered Accountants in England and Wales (ICAEW)  
Institute of Chartered Accountants in Scotland (ICAS)  
Institute of Credit Management (ICM)  
Insolvency Lawyers Association (ILA)  
Insolvency Practitioners Association (IPA)  
Insolvency Practices Council (IPC)  
James Cowper LLP  
Joint Insolvency Committee  
KPMG  
Lancaster University  
Law Society  
Law Society Scotland  
Legal Ombudsman  
Money Advice Trust  
Moore Stephens  
Outram Electrical Services Ltd  
P&A Partnership Ltd  
PricewaterhouseCoopers LLP (PWC)

R3 (Association of Business Recovery Professionals)  
Royal Bank of Scotland  
Solicitors Regulation Authority  
TDX Group Ltd  
Think Money Group  
Tessera Group plc  
Thomson Cooper Accountants

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