Insolvency Service Review of Current Regulatory Landscape

Insolvency Practitioners Association Position Paper

3 October 2019

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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)[1]

[1] Insolvency Service – Insolvency Statistics October to December 2015(Q4 2015) and Q1 January to March 2019

in the number of new IVAs and in the first six months of 2019 there have been as many new IVAs (40,147)[2] as in the whole of 2015. The leading 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

[2] Insolvency Service – Individual insolvency statistics, Q2 April to June 2019

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[3]) 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

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

sale. At present use of the pool is voluntary by connected purchasers and unfortunately the number of cases referred to the pool by connected purchasers remains low (of the 241 connected party sales in 2018, there were only 24 referrals)[4]. 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

[4] Pre-Pack Pool Annual Review 2018

assets, reorganisation proceedings and creditor participation. The UK 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.