Response to the Insolvency Service Consultation:
Bank Accounts for Bankrupts
Consultation Issued: November 2011

INTRODUCTION

There follows our response to "Consultation on Bank Accounts for Bankrupts", as prepared by the Personal Insolvency Committee of the IPA; a committee comprised of IPA members with particular interest and expertise in the field of personal insolvency. Further information about the IPA may be found at the end of this document.

This response is not intended to reflect the views of every member of the Association, who are themselves at liberty to submit their own responses, but rather to reflect the broadly agreed views of the Association and its Personal Insolvency Committee (PIC).

OVERVIEW OF RESPONSE AND GENERAL REMARKS

We consider that the subject matter of the consultation does not impact greatly upon the performance of the functions of a Trustee in Bankruptcy, save for Option 4, (issuing guidance for trustees). We are of the view that this is ostensibly a matter between the banks, bankrupts and those responsible for the social policy issues surrounding access to bank accounts, and in that context, we are opposed to the alternative of endeavouring to address the perceived problem with guidance for trustees.

We have confined our responses to those areas which directly affect the trustee and have not responded those that are outside our sphere of direct knowledge.

QUESTIONS IN THE CONSULTATION

Option 1 – do nothing

It is not within the knowledge of the IPA to respond to the questions 1-6.

Option 2 – Promoting the current Market Providers

Q7	What is the qualitative impact upon the market of implementing this option, including upon the two existing providers and their customers?
	We are of the view that this is not an appropriate activity for the Insolvency Service, given the Official Receiver's role in the administration of bankrupts' estates in conjunction with the proposal for petition reform, which envisage the Insolvency Service also assuming the role of Adjudicator. We would further question whether it is appropriate for public funds to be expended in promoting the services of private companies in this manner.
Q8	We understand that historically other banks offered basic accounts to undischarged bankrupts and if that is the case we would welcome information on the reasons why that changed.
	We have no information on this point.
Q9	Presuming that there is a problem that needs addressing with undischarged bankrupts and

	their access to banking facilities, would this option solve the problem?
	We are unconvinced that this option would address the perceived problem.

Option 3 – A Voluntary Code for Banks

Q10	Is additional monitoring a necessary feature of providing basic bank accounts to undischarged bankrupts?
	It would seem that the perceived risks of operating such accounts appear to substantially exceed the actual risks to the account provider, given that reportedly, no claim for after-acquired property has ever been made by a trustee against a bank. We would question whether the banks' existing procedures for flagging unusual transactions are already sufficiently robust to mitigate any actual risks.
Q11	What purpose does it serve to ask about bankruptcy status on an application for a basic bank account with no credit facilities? Could it be discontinued?
	It facilitates the bank being on notice of the bankruptcy and the restriction placed upon the bankrupt in incurring credit whilst undischarged. Were this question removed and a bank to provide an overdraft facility, the bankrupt could have unwittingly committed a bankruptcy offence.
Q12	Presuming that there is a problem that needs addressing with undischarged bankrupts and their access to banking facilities, would the introduction or amendment of a voluntary code solve the problem?
	We consider this doubtful as the banks have already indicated an unwillingness to sign up to changes to a voluntary code. However, we would suggest that the government is strategically placed to encourage those banks in public ownership to extend account facilities, should it deem it appropriate or necessary to do so.

Option 4 – Guidance for Trustees

Q13	Presuming that there is a problem that needs addressing with undischarged bankrupts and their access to banking facilities, would the introduction of guidance for trustees solve the problem?
	No. Insolvency Guidance Papers are developed and approved by the Joint Insolvency Committee and adopted by each of the Recognised Professional Bodies and the Insolvency Service (in its role as a Competent Authority) who are empowered to authorise insolvency practitioners. Their purpose is to provide guidance on matters that may require consideration in the conduct of insolvency work or within an Insolvency Practitioner's practice. They do not have regulatory force and do not seek to fetter the statutory powers or restrict the functions of insolvency office holders.

	We are not aware of there being any ambiguity in the statutory provisions as they relate to after-acquired property, neither does there appear to be any divergence in practice (it being noted that there is no record of a claim under these provisions ever having been made against a bank by a trustee). In the absence of either ambiguity or divergence in practice, we cannot see what useful function would be served by issuing an IGP on this subject and believe that it can only serve to confuse the position of trustees. We would suggest that it is illogical and wholly inappropriate to address a problem of the perceived risk experienced by one party (namely the banks) by confusing the position for another party (namely trustees). The consultation itself notes that such guidance may not, in any event, serve to provide banks with the reassurance they apparently seek.

Option 5 – Legislative Change

Q14	Are you aware of any claims for loss or after acquired property made against banks and the result of those claims? If you are responding as an insolvency practitioner it would be helpful if you could advise how many bankruptcy cases you dealt with in that year, what the costs of recovery were and what the value to creditors was, after costs of recovery.
	No
Q15	Do you think that either of the suggested changes to s307 will make it more difficult for trustees to recover after acquired property? Is there anything that could be done to mitigate that?
	Whilst these options appear unlikely to significantly affect the trustee's ability to recover after-acquired assets from the receiving bank (it having been noted that no such claims have been brought) we would question whether it is appropriate to make a legislative change which could adversely affect the trustee's position in appropriate cases, for the sake of providing comfort in respect of a perceived, rather than actual, risk.
Q16	The risks to banks in option 5a seem negligible. What is your view?
	See above. The risks to banks are apparently already negligible.
Q17	We have stated that the risks to estates in option 5b are likely to be negligible. What is your view?
	Option 5b removes liability for a bank acting in bad faith, which we consider unacceptable and contrary to the principles of equity.
Q18	Presuming that there is a problem that needs addressing with undischarged bankrupts and their access to banking facilities, would option 5a or 5b (or both) solve the problem?
	Given the stance currently adopted by the banks in the face of already negligible risk, we are doubtful that either change would have the desired effect. The decision not to extend account facilities to undischarged bankrupts, and others with a poor credit history, is ostensibly a commercial one and in the absence of a requirement

	upon the banks to extend such facilities, we consider the position would remain largely unchanged.
Q19	If you have a preference between options 5a and 5b please explain why. If you are responding as a bank, would either option 5a or 5b cause you to change your current policy in regard to offering bank accounts to undischarged bankrupts?
	There is apparently little justification of either of the suggested legislative changes.

QUESTIONS IN THE IMPACT ASSESSMENT

We have no specific comments upon the impact assessment, although wish to make some general remarks. Clearly, the costs to banks of extending account facilities to bankrupts is not something upon which the IPA is in a position to comment. We would, however, note that the costs of producing Insolvency Guidance Papers are born by the Insolvency Profession, via their participation in the Joint Insolvency Committee. Resources are largely donated by the participants, and as such, the direct costs are absorbed into the overheads of the regulatory process. We would question whether it is fair, or indeed appropriate, that the insolvency profession bear the cost of endeavouring to address what is ostensibly a risk-management issue for the banking sector, particularly at a time when resources are necessarily being devoted to matters of direct regulatory impact, such as the complaints process and the various options for regulatory reform.

ABOUT THE IPA

The Insolvency Practitioners Association (IPA) is a membership body recognised by the Secretary of State for Business, Innovation & Skills (BIS) for the purposes of authorising Insolvency Practitioners (IPs) under the Insolvency Act 1986. It is the only recognised professional body to be solely involved in insolvency and for over fifty years, the IPA is proud to have been at the forefront of development and reform within the industry.

As of 01 January 2012, the IPA has over 2,000 members, of whom 518 are currently licensed insolvency practitioners (IPs). In addition to its recognition under the Insolvency Act for the purpose of licensing IPs, the IPA is also a Competent Authority approved by the Official Receiver for the purpose of authorising intermediaries to assist with debtors' applications for Debt Relief Orders.

The IPA currently license approximately one third of all UK insolvency appointment takers, who are subject to a robust regulatory regime, applied by the IPA's dedicated regulation teams carrying out complaints handling, monitoring and inspection functions. Additionally, the IPA conducts inspection visits of those appointment-takers licensed by the Law Society (Solicitors Regulation Authority), one of the other recognised professional bodies under the Insolvency Act. The IPA also undertakes monitoring visit work for the Debt Resolution Forum, a membership body which sets standards for its members when involved in providing non-statutory debt solutions to insolvent individuals (such as Debt Management Plans).

The IPA has a longstanding and continuing commitment to improving standards in all areas of insolvency (and related) work. It was the first of the recognised bodies to introduce insolvency-specific ethics guidance for IPs, and the IPA continues to be a leading voice on insolvency matters such as the development of professional standards, widening access to insolvency knowledge and

understanding, and encouraging those involved in insolvency case administration and insolvency-related work to acquire and maintain appropriate levels of competence and skills.

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