

Response of the Insolvency Practitioners Association to the Bar Standards Board Consultation on Changes to the Public and Licensed Access Rules

Consultation Closing Date: 26 September 2017

About the IPA

The Insolvency Practitioners Association (“IPA”) is a membership body recognised in statute for the purposes of authorising Insolvency Practitioners (“IPs”) under the Insolvency Act 1986 and Insolvency (Northern Ireland) Order 1989. 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 profession.

The IPA has approaching 2,000 members, of whom approximately 600 are licensed IPs. In addition, the IPA regulates a further 100 IPs licensed by the Association of Chartered Certified Accountants, under a collaboration agreement with that body. Those 700 IPs collectively represent approximately 43% of all UK IPs, the majority of whom actively take insolvency appointments and are subject to a robust regulatory regime, applied by the IPA’s dedicated regulation teams carrying out complaints handling, monitoring and inspection functions. The IPA also carries out monitoring work for the Royal Institution of Chartered Surveyors under a joint voluntary regulation scheme for registered property receivers.

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.

The comments and opinions expressed below represent the views of the IPA’s Corporate Consultation Committee, a committee comprised of practitioners with a specialism and particular expertise in the area of corporate insolvency and restructuring, and are not intended to reflect the opinion of each individual and firm member of the IPA (who remain at liberty to express their own views within their responses to this consultation).

General Remarks

Our responses are limited to those question which relate to the Licensed Access Scheme (as opposed to the Public Access Scheme), and are provided in respect of only those questions where we have a particular view upon the question posed. In general, we are supportive of the proposals to simplify access to Counsel.

Question 1: do you agree with the conclusion that the status quo should be maintained i.e. that the cab-rank rule should not be applied to Public and Licensed Access cases? If not, please state why not.

We strongly agree that the cab-rank rule should **not** be applied to Licensed Access cases. Our practitioners advise us that they wish to be at liberty to select Counsel on the basis of their particular expertise and merits.

Question 2: do you agree with the proposed changes to the Public Access Rules (at Annex B)? In particular, do you agree with the proposals to:

a) remove the requirement for barristers who are of less than three years' standing to maintain a Public Access log; and

b) require that the written notification given to Public Access clients discloses the level of professional indemnity insurance held by the barrister?

If not, please state why not.

N/A

Question 3: have you identified any further opportunities to simplify or improve the Public Access Rules (at Annex B)? If yes, please explain your answer.

N/A

Question 4: do you agree with the proposed changes to the Licensed Access Rules (at Annex C)? In particular, do you agree with the proposal to remove references to the Licensed Access Terms of Work? If not, please state why not.

We agree with the proposals and have no objections to the removal of references to the Licensed Access Terms of Work.

Question 5: do you agree with the proposed changes to the Licensed Access Recognition Regulations (at Annex D)? In particular, do you agree with the proposals to:

a) only impose limitations and conditions on licences in exceptional circumstances?;

Yes

b) if appropriate, permit members of the professional bodies listed in the First Schedule to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal?;

Yes

c) move the First and Second Schedules to guidance?;

Not if the consequence of doing so would then attract fees to the bodies currently listed.

d) devise application processes for bodies to be added to the First and Second Schedules?; and

We do not believe that those bodies recognised by the Secretary of State for the purposes of authorising insolvency (the Recognised Professional Bodies “RPBs”) should be required to make an application to be admitted to the First Schedule. Such bodies should be automatically included as they have already demonstrated their suitability to their oversight regulator.

Currently, whilst the other RPBs (ICAEW, ACCA, CAI, ICAS) are listed under accountancy and taxations advisers, they are not listed within the category of insolvency practitioners. These bodies will have authorised insolvency practitioners who are not accountants, and currently it appears that such practitioners may not fall within the First Schedule (or, at least it is less than clear whether they would do so).

Given that the Secretary of State has the power to both recognise and remove recognition from RPBs, (who could continue to be regulators for other purposes, such as accountancy services) we suggest that the definition used in the first schedule under “Insolvency Practitioners” should be by reference to those bodies recognised from time to time by the Secretary of State pursuant to s.391 of the Insolvency Act 1986. This would “future proof” the schedule in respect of future recognitions or revocations and would ensure that all insolvency practitioners fall within the Scheme.

e) only charge a fee for applications by professional bodies to be added to the First Schedule?

We do not believe a fee should be charged to RPBs, and their inclusion should be automatic, (by reference to their recognition by the Secretary of State). We can understand that an application fee might be appropriate in instances where an assessment of a body’s suitability is required to be undertaken, in order to meet the administrative costs of doing so.

Question 6: do you agree or disagree that, in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes)? Please state why.

We can see no difficulty with insolvency practitioners being at liberty to instruct any Counsel of their choosing.

Question 7: in these scenarios of clients instructing barristers directly, have you identified any risks in not requiring compliance with the Public and Licensed Access Rules? If yes, please explain your answer.

No – not in the context of insolvency practitioners.

Question 8: do you consider that any of the proposals in the consultation could create any adverse impacts for any of those with protected characteristics under the Equality Act 2010? If yes, please explain your answer.

No

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