Government Consultation:

The Future of Insolvency Regulation

Insolvency Practitioners Association Response

March 2022

Contents

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1 IPA Response

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 the Insolvency (Northern Ireland) Order 1989. It is the only Recognised Professional Body (RPB) to be solely involved in insolvency and the only RPB covering all three jurisdictions of England and Wales, Scotland and Northern Ireland.

Established in 1961, the IPA is proud to have been at the forefront of developments and reform within the insolvency profession for over 60 years with 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 Licensed IPs. The IPA examination system was the forerunner of the Joint Insolvency Examination and the IPA has also initiated the CPI and CPPI exams as well as creating a unique system of monitoring IVA Volume Provider schemes. Over recent years, it has been advocating the necessity for the regulation of firms and has promoted other ideas which have finally been adopted in the Consultation Document.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 IPA's population of over 600 IPs are subject to a robust regulatory regime, applied by the IPA's dedicated regulation teams, carrying out complaints handling, monitoring and inspection functions, and comprised of a wealth of insolvency knowledge and experience. For these reasons, the IPA considers that its views should carry great weight with the government.

The comments and opinions expressed below represent the views of the IPA's Secretariat and follow a detailed survey plus direct consultations with the Association's members but are not intended to reflect the opinion of each individual and firm member of the IPA. Our comments in this response are based primarily on our role as an RPB and our regard for the Regulatory Objectives and the public interest.

We set out below our comments on the Consultation Document together with responses to the specific questions within the Consultation Document. Further enquiries should be addressed to:

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2 Government Consultation – The Future of Insolvency Regulation

2.1 Executive Summary

2.1.1 Having reflected on input from members, and formed its own views as a Regulator, the IPA consider that:

- the existing insolvency regulatory framework is neither fundamentally flawed nor not fit for purpose
- the thrust of the proposal for the 'Preferred Option' (PO) is based on perceptions rather than evidence
- the Single Regulator (SR), if created, should not be part of the Insolvency Service (IS)
- there would be an insurmountable conflict of interest between the SR and the IS as oversight regulator if they were both part of DBEIS
- there would be an insurmountable conflict of interest between the SR as part of the IS and the IS as the provider of insolvency services through Official Receivers who have an increasing ambition to compete with the private sector for insolvency work and fees
- the SR's role should include the regulation of Official Receivers
- the regulation of insolvency firms is long overdue; it will not, however, be as straightforward or cheap to implement as the PO envisages
- there is a severe risk that the SR as envisaged in the PO would be under-resourced in terms of the qualifications, knowledge and experience of its staff
- the PO would be likely to dissipate the knowledge, experience and expertise that currently exists in the RPBs, and the uncertainty associated with it gives rise to a high risk of regulatory failure during the implementation period
- in particular, the PO would have the effect of discarding the achievements of the IPA's IVA Volume Provider Scheme and abandoning the opportunity to further develop it
- the PO fails to recognise that an important aspect of insolvency monitoring and regulation is the opportunity it offers to improve the standards of

insolvency practice by offering positive, practical guidance and education to IPs

- the PO fails to address insolvency regulation in Scotland and Northern Ireland and therefore creates complexity

- the cost of implementing the PO would be greater than suggested as the Impact Assessment (IA) underestimates many of the associated costs and specifically excludes costs which fall within the scope of the “Better Regulation Framework”, but which would, nonetheless, be incurred

- the importance of RPBs to Anti-Money Laundering (AML) supervision is seriously neglected by the PO

- apart from the SR, the Consultation Document does not offer developed proposals but is largely an invitation for discussion

- further work is required on the possible introduction of an insolvency compensation scheme which, if it is to be more than a token scheme, would be complex and costly to implement

- the review of the bonding regime is welcome but similarly requires further work

- the proposed creation of a register of insolvency service providers, firms as well as IPs, is a welcome but overdue improvement on the existing Insolvency Practitioner Directory

- overall, the PO, as presented, is unworkable. Lower risk and more effective options for addressing the perceived shortcomings are available to government. Those options include:

    - forming a new single regulator body, to be designated as an RPB, utilising the expertise and experience of the existing RPBs. This would not require primary legislation.

    - making the IPA the sole regulator, separating its membership functions but utilising its established expertise, experience and systems, including the IVA Volume Provider Scheme. This would not require primary legislation.

    - retaining the existing RPBs but introducing a joint disciplinary tribunal to decide all disciplinary matters

2.2 General Comments

2.2.1 The IPA strongly disputes the underlying assertion of the Consultation Document that the existing insolvency regulatory system is dysfunctional and no longer provides a framework for effective regulation.

2.2.2 Nor does it accept that the outcome of the Government's Call for Evidence in 2019 supports that view.

2.2.3 Moreover, the proposals are based on certain fundamentally incorrect factual assertions, such as that the IPA employs 50 staff, not 36. There are not in fact four RPBs. The correct number of RPBs who license IPs is currently five as the Law Society NI remains as an RPB. Such basic inaccuracies undermine confidence in the Document.

2.2.4 However, the IPA is not complacent and is continuously working to develop insolvency regulation and the profession and therefore wishes to respond to this consultation.

2.2.5 The IPA rejects the central proposition that the new SR should be part of the IS. The IS does not currently have the qualified and experienced personnel necessary to perform the role, and this is key to effective regulation of the sector.

2.2.6 Neither can it acquire such knowledge and experience because it is only available within the existing RPBs whose staff are unlikely to be attracted to the idea of seeking replacement employment in the IS at reduced salaries as contemplated in the IA. This renders the proposal unworkable.

2.2.7 It is axiomatic that any successful system of regulation must be respected by IPs and operated by personnel with qualifications, real experience and practical knowledge of insolvency work. Any system which depends on unqualified and inexperienced staff, howsoever sourced, with no knowledge of insolvency law, rules and practice will undermine any effective regulation.

2.2.8 In any event, the government has a poor track record of regulating IPs. It is significant that when the DTI monitored IPs prior to 2015, it is almost universally accepted that the standard of that regulation was grossly inadequate. Moreover, the results of cases such as Keeping Kids Company reflect poorly on the IS's ability to handle complex matters. The government must therefore explain how it expects to be able to achieve effective regulation without utilising the experience and expertise of the existing RPB staff.

2.2.9 The extent to which the proposals have misunderstood the complexity of the regulatory process is exemplified by the advertisement recently published for the 'Policy Lead' to be recruited: "The post holder will be directly responsible for a major project to reform regulation of the insolvency profession, which is an important part of the Insolvency Service's overall re-set strategy and will require primary legislation to implement".

2.2.10 There is no requirement in the advertisement for the applicant who is to have charge of this major project to have qualifications, knowledge or practical experience of insolvency. Moreover, the advertised salary is too low to attract anyone near to being suitably qualified from the existing RPBs.

2.2.11 Government policy is now to reduce the size of the state. The objective is to reduce the civil service by 65,000. Such a policy is inconsistent with an intention to create a new regulator which is directly or indirectly part of the IS.

2.2.12 The IPA also considers that the SR being part of the IS would give rise to insurmountable conflicts of interest. Under the PO as put forward, the IS would combine the rule making, promoting, monitoring and enforcing roles over private sector insolvency practice, i.e. be the legislature, executive and adjudicator in one, without any checks and balances short of court proceedings, whilst simultaneously providing unregulated insolvency services itself through Official Receivers in competition with the private sector. The whole enterprise would be managed and staffed by unqualified individuals with no requirement to have insolvency experience.

2.2.13 As part of a government department the SR would also be potentially subject to political interference.

2.2.14 The results of the survey and meetings with IPA members strongly oppose the SR being within the IS with 82% of respondents strongly disagreeing or disagreeing with the proposal and 76% strongly disagreeing or disagreeing with the statement that there would not be any conflict of interest between the SR and the IS as oversight regulator. This rises to 83% strongly disagreeing or disagreeing with the statement that there will not be any conflict of interest between the SR and the IS as a provider of insolvency services via Official Receivers.

2.2.15 These results suggest that the profession would not have confidence in the SR if it were to be part of the IS. This is likely to reflect itself in regular legal challenges as IPs become more litigious and more likely to challenge the actions of an unqualified regulator.

2.2.16 The claimed cost savings in terms of regulatory fees paid to the SR (as per the Impact Assessment) arises from a reliance on cheaper staff in the public sector. This is an acknowledgment that the quality of regulation would be reduced. The IPA does not consider that a reduction in the quality of regulation is in the public interest or compatible with the stated objectives of the Consultation Document.

2.2.17 Noting that such alleged cost savings are caveated by the unquantified costs of procuring from external sources the expertise which the SR lacks to perform the delegable functions, the IPA is sceptical that the cost to IPs and their firms of the new regime will be lower than the current system. The report attached at Annex A commissioned from Oxford Economics in fact concludes that they are likely to be considerably higher. Moreover, it would not make business sense for an RPB solely to undertake monitoring as a delegated function. This is not a viable premise upon which the PO can stand.

2.2.18 The IPA does not consider that there can be any justification for Official Receivers not to be included in the proposed regulatory regime so, inter alia, they are not required to hold any professional insolvency qualification, to seek creditor approval of their remuneration, to prepare progress reports to creditors or to seek work since they are appointed by default in bankruptcy and compulsory liquidation cases. This anomaly perpetuates an uneven playing field between the state and private sector providers of insolvency services and cannot be said to be in the public interest.

2.2.19 The IPA does, however, agree that there are some elements of the Consultation Document that have merit, in particular, the acknowledgment of the need which it has long been articulating for the regulation of insolvency firms as well as individual IPs. This is necessitated by the conflicts which may arise between the professional duties and ethical constraints borne by IPs and the commercial priorities and financial requirements of the businesses that employ them. For some three years the IPA has been successfully addressing this conflict in its Volume Provider Scheme for the larger IVA providers.

2.2.20 The foundation of insolvency regulation, however, remains the authorisation of individuals as set out in the International Association of Insolvency Regulators' (IAIR's) Principles published in 2018: "Only natural persons should be eligible to seek authorisation. In order to meet its fundamental objectives, the regulatory regime imposes academic, professional, and character requirements that may only be fulfilled by natural persons, and only such persons may be held duly accountable under it".

2.2.21 The arguments raised in the Consultation Document focus on the hypothesis that the relatively small number of IPs in practice do not justify having "four" RPBs. In truth, over 98% of IPs in the UK are, in fact, monitored and regulated by just two RPBs. Moreover, the hypothesis loses sight of the thousands of staff that work for IPs whose conduct is indirectly regulated as the IPs are held to be ultimately responsible for their staff's actions.

2.2.22 The Consultation Document is confined to England and Wales and consequently does not consider the effect that removing the RPB status and role from the existing RPBs will have on the regulation of the profession in Scotland and Northern Ireland where insolvency law is respectively, partly and fully devolved. There is a considerable hole in the proposals. It appears that, contrary to the picture painted by the Consultation Document, in reality the consequence of the proposal is that the RPBs will be replaced with three regulators, namely the SR for England and Wales, a regulator for Scotland and another one for Northern Ireland. It is difficult to understand how this would increase efficiency or promote the public interest.

2.2.23 The Consultation Document also includes recommendations for introducing a formal system of compensation within the regulatory framework and for reforming the security bonding system intended to protect creditors from dishonesty on the part of IPs. These issues can be considered separately from the issue of an SR. They do not constitute developed proposals capable of implementation but are discussion topics.

2.2.24 The Consultation Document's assertion that the existing RPBs cannot act with independence because they are members' organisations overlooks the fact that their regulation committees have a majority of lay members specifically to achieve independence; moreover, a system controlled by the IS, subject to multiple conflicts of interest, can scarcely claim to be more independent.

2.2.25 The assertion under the heading ‘Designation of an existing body’ that “oversight monitoring identified a number of weaknesses with RPB processes” cannot be substantiated as concerns the IPA. The Insolvency Service’s own Oversight Regulator Report on the IPA for 2021 (attached hereto at Annex B) identified “welcome innovations and improvements, especially in relation to monitoring”. That Report itself concludes:

“The work of the monitoring team remains a high priority for the IPA and this is evident in the continued work to improve the efficiency of the team. We welcome work by the IPA to continue to extend good practice, and to ensure that the monitoring team works closely with the complaints team; and to ensure that high quality monitoring remains achievable in the light of changing risk assessments”.

The import of the Consultation Document’s assertion is flatly contradicted by the IS itself.

2.2.26 The Report also confirms that the development and expansion of the IPA’s IVA Volume Provider Scheme is a unique and “particularly welcomed” attempt to regulate the sector in the absence of the legislative changes which the IPA had identified as necessary to meet the developments in the commercial market. A comprehensive Benchmark Report on the performance of the VPR scheme during 2021 is attached hereto at Annex D.

2.2.27 The IPA considers any suggestion that the IS could replicate the high standards achieved by the IPA to be flawed.

2.3 Compensation

2.3.1 Insolvency is different from most other types of professional activity where the client, be it an individual or a corporate body, instructs the practitioner to perform some task for them and the practitioner owes duties to the client. The position of an IP is different. Often the IP's primary duty is to the general body of creditors, none of whom have instructed the IP at all, with secondary duties to the debtor, individual or company, and to other stakeholders such as employees.

2.3.2 Consequently, the general model where someone buys a service, there is something wrong with it or it causes loss or distress, so they deserve compensation from the service provider, does not apply. With insolvency, the overall starting position is one of loss and distress and the IP's role is to try to limit the damage within a recognised framework of entitlements and sharing of loss.

2.3.3 The relationship between the IP and stakeholders is often a statutory one rather than a client service provider one.

2.3.4 The IPA considers it is unlikely that parties who have demanded that there should be a formal insolvency compensation scheme will be satisfied by anything that does not provide full compensation for the loss/harm claimed to have been suffered. The token compensation payment as outlined in the Consultation Document does not, in the IPA's view, address the grievance underlying this proposal. The proposal does not pretend to offer a fully thought-through and workable solution which is a recognition that the issue of compensation is a complex problem to which there is no immediately obvious solution. The ideas discussed in the Consultation Document do not, in the IPA's opinion, provide a workable method of providing compensation. The IPA has already considered this issue under the current legislative framework and arrived at a solution which is reflected in its draft new rules.

2.3.5 The criterion of whether the compensation claimant has suffered stress or anxiety is potentially highly subjective and moves away from the question of whether the IP (or the firm) is at fault. It also raises the possibility of purely speculative claims which will impede the insolvency process, add to its costs and may well lead to a flood of speculative complaints with a consequential increase in regulatory costs. In particular, if claims management companies enter the market, the profession may face thousands of small-scale claims.

2.3.6 On the other hand, the proposal for a system that has the objective of "otherwise making good loss or damage" requires a means of assessing not only the loss or damage but also what will remedy it, neither of which is an easy process. Furthermore, there will need to be a proper process to establish a causal link between the loss or damage and the conduct of the IP (or the firm) to justify why they should pay compensation or otherwise make good.

2.3.7 There will also be practical difficulties in identifying who has suffered the loss or harm. Is it the estate or individual creditors (or debtors) and would the pari-passu principle apply? If so, the cost of identifying, quantifying and compensating all those affected will be even more substantial.

2.3.8 Any compensation scheme will also have to be compatible with existing remedies that are available through the Courts.

2.3.9 Any compensation scheme of the kind contemplated would require a whole bureaucracy of its own.

2.4 Bonding

2.4.1 The IPA welcomes the review of bonding particularly as the value of minimum and maximum levels of cover have not been changed for 35 + years and the insurance market and the products available have evolved during this period. The ideas discussed in the Consultation Document provide a starting point for discussion rather than a developed proposal and should be the subject of a separate consultation.

2.4.2 There is, however, an element of putting the cart before the horse as the PO fundamentally changes the structure of regulation which would supersede bonding's current underlying contractual arrangement between an IP, their RPB and the insurance underwriter. Will the SR replace the former RPB in that relationship or will an alternative contractual structure be devised?

2.5 Firm Regulation

2.5.1 The IPA has been advocating the regulation of insolvency firms for several years so welcomes the Government's decision to pursue the concept. It does, however, have wider ramifications which are not clearly addressed in the Proposal, in particular the extent of regulation and how it will be different for different sizes or types of firm. The Proposal includes statements such as "... additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market" but does not explain what that means or how that might be assessed.

2.5.2 The IS's long-standing concerns about the IVA Volume market and high-profile Administrations suggest that additional measures are planned for such practices but the IPA avers that such concerns must first be justified. The fact is that an analysis of 2021 shows that the IPA receives a complaint in only 1 in 2,472 VPR scheme cases, of which 1 in 35,317 is found to be justified. If the operation of the firms is considered to be a serious threat to the market, it is suggested that the best approach would be to make appropriate amendments to legislation and further develop the Volume Provider Scheme rather than concentrating the limited resources of the IS on volume providers and high profile Administrations and consequently curtailing the quantity and quality of the regulation of the majority of insolvency work.

2.5.3 The Consultation Document demonstrates such a serious under-estimation of the demands of the monitoring process as to make this particular proposal worthless absent significant further thought. The hypothesis in para 96 of the Impact Assessment that an effective inspection of a large firm can be completed in two person/days once every three years is both inaccurate and unrealistic, and casts doubt on the veracity of the broader Consultation Document.

2.5.4 In contrast the IPA's Volume Provider Scheme offers continuous, near real-time monitoring of some areas of its members' work and ICAEW's large firm rolling IP monitoring regime engages three monitors for six or seven days at each firm every year. Moreover, the proposal takes no account of the work which has to be performed after the completion of an inspection visit, including dealing with any possible disciplinary action.

2.5.5 The PO as drafted equates to a government policy of significantly reducing the regulation of the majority of IPs and offers less than the level of monitoring already undertaken by the IPA's Volume Provider Scheme for IVA firms and risks the loss of the skills and experience the existing RPB regimes have built up over the years. The IPA does not support such a policy.

2.5.6 Where insolvency work is not the only or principal activity of a firm, the introduction of insolvency firm regulation might make those firms subject to multiple regulators for some, or all, of their activities so careful consideration will be required to ensure that the additional burden is not disproportionate.

2.5.7 These concerns underline our view that successfully introducing the regulation of firms will require the expertise of those with the knowledge and experience of where and how such regulation is best effected and targeted.

2.6 Register of Insolvency Practitioners

2.6.1 Such a register is long overdue as the IS has not yet replaced the IP Directory which is based on a platform used by Business Link which ceased to exist more than 10 years ago.

2.6.2 The Consultation suggests, however, that the prerequisites for inclusion on the register would be determined by new legislation and may diverge in unspecified ways from current requirements for authorisation.

2.6.3 The criteria for firms to be registered have yet to be specified but potentially subjective criteria such as having "sufficient qualified and non-qualified staff to administer effectively the number of appointments being taken by practitioners at the firm" risk penalising the more efficient firms with established policies, procedures, systems that have been proven to diminish risk.

2.6.4 The Consultation Document fails to consider the existence of non-appointment-taking IPs yet includes them in its statistics as if they would pay the same fees as appointment-takers.

2.7 Past performance of the IS

2.7.1 One of the matters cited in the Consultation Document as evidence of the alleged failure of the self-regulation model is the IS's perception of the need to introduce legislation to regulate the sale of assets to connected parties in Administrations. This overlooks the fact that, due to inaction by the IS, the Secretary of State's power to make such regulations under the Small Business, Enterprise and Employment Act (2015) (SBEEA) lapsed in June 2020 and was only restored by late amendments to the Corporate Insolvency and Governance Bill 2020 in the House of Lords. This detail may give a better indication of the actual weight of this particular argument for an SR.

2.7.2 The Consultation Document is based on a number of inaccurate facts and unsupported assertions, in particular the fundamental assertion that “Despite close collaboration between regulators and the Insolvency Service, the current model has not achieved the levels of consistency, independence and transparency which were envisioned following the introduction of the statutory objectives”. That assertion is unexplained and unsupported and fails to take account of the role played by the IS / government in failing to respond to IPA initiatives, e.g. recommendations for firm regulation, case number limits and a single independent disciplinary tribunal which have been ignored. It also fails to take account of the fact that the IS has had the power to take direct action itself against IPs but has never once chosen to exercise it.

2.8 Expertise and experience requirements

2.8.1 Effective regulation requires the regulator to have a good understanding of legislation, rules and principles and their interpretation, including the important concept of natural justice or fairness. It is a quasi-judicial process which is open to challenge in the courts by way of judicial review. A poor standard of regulation will result in a plethora of judicial review applications and the costs and resourcing consequences of such applications may be expected to be very substantial. A single case may run into six figures. The Impact Assessment ignores this cost. Poor regulation also results in reputational damage and a loss of public confidence in the industry.

2.8.2 The IS Five Year Plan 2021 set an objective to improve the quality of its staff. That is an acknowledgment that the IS simply does not have the resources to deal with regulation.

2.8.3 The IPA’s staff consists of some 36 people spread across England and Wales. The PO is calculated on the erroneous basis that we employ 50 staff, most of whom are based in London. This is a basic error.

2.8.4 Our regulatory staff possess between them the following qualifications: a barrister who also has the JIE qualification, 2 solicitors, 13 JIE holders, 6 university degrees, 1 Chartered Accountant, 1 Certified Accountant, a Proceeds of Crime analyst, a certified fraud examiner and a Money Laundering consultant plus a former bank CEO. All bar one below the CEO has real practical experience of working in an insolvency practice. The combined insolvency experience of the team amounts to around 300 years. Added to that, the IPA is supported and enhanced by its 16 Member Board comprised of IPs and lay persons of significant experience and achievement.

2.8.5 The IPRS team do not have comparable experience or qualification, and have not demonstrated a track record of achieving meaningful change delivered at pace. The government must explain how it considers that the public interest justifies the replacement of such an overwhelming volume of knowledge and experience with such a paucity of skills.

2.8.6 Effective regulation also requires that those being regulated and other stakeholders have confidence in the skill and judgment of the regulator which will be jeopardised if the regulator's staff do not have the qualifications and experience to match those in the profession.

2.8.7 Effective regulation is not a simple, 'tickbox' exercise. It relies on continuous relationships, building knowledge of members' systems, sharing knowledge and encouraging improvements, as well as identifying serious errors and misconduct. At the IPA it starts with Member Engagement meetings for newly licensed IPs where the regulation system and its requirements are explained to new members. This is followed up by early engagement with the inspection team.

2.8.8 In accordance with the regulatory objectives, it is also proportionate and targeted where necessary, and at the IPA is based upon a detailed risk analysis system which has developed a valuable bank of intelligence which would take some years to re-create. Such standards of regulation are most unlikely to be achievable under the PO.

2.9 Out of date evidence

2.9.1 The Consultation makes reference to the OFT report of 2010 "The Market for Corporate Insolvency Practitioners" which it states identified that the relatively large number of regulators resulted in a duplication of regulatory efforts.

2.9.2 The research underlying that Report concentrated on the level of control of remuneration exercised by unsecured creditors in Administrations and Creditors' Voluntary Liquidations (CVLs). The Report's conclusions extended beyond their data and were challenged by the profession at the time.

2.9.3 The number of RPBs has halved since the 2010 report and regulatory practice has changed considerably so it is not at all clear that its conclusions still apply.

2.9.4 The Consultation Document also refers to a Report "Resolving Insolvency – Restoring Confidence in the System" published on 14 September 2021 by the All-Party Parliamentary Group (APPG) on Fair Business Banking. This is a report about banking, not specifically about insolvency. Although we acknowledge that the APPG carried out its own research supported by a City law firm, we would caution that it appears to have relied on complaints about certain insolvency cases some of which happened many years ago and which do not reflect current practice. Consequently, its perception of the insolvency profession is not a balanced one.

2.9.5 The Consultation Document attaches the IS's Reports on the IPA for 2016, 2019 and 2020 but not the Report for 2021, because the IS delayed its publication until after 21 December 2021. It does, however, mean the Consultation Document is not giving an up-to-date picture. The latest Report on the IPA dated 11 February 2022 recognises the continuing progress made in improving complaints handling and monitoring and the increase both in numbers and qualifications of regulatory staff. These factors again illustrate the IPA's longstanding and continuing commitment to improving standards in all areas of insolvency (and related) work.

3 Impact Assessment

3.1.1 The IPA has instructed Oxford Economics, a third-party leader in global economic forecasting and quantitative analysis, to review the Impact Assessment (IA) and their report is attached as Annex A. The IPA's summary of the matters highlighted is attached as Annex C. In particular, the £2.3m recurring annual benefit which the IA predicts could in fact translate to a £3.8m recurring annual cost. The conclusion is that the IA is seriously flawed in significant respects and fails to provide a satisfactory basis for future planning.

3.1.2 Furthermore, although not specifically addressed above, it should be noted that the time and considerable expertise of both IP and lay members of the regulatory and non-regulatory committees is provided at no cost to the IPA or the other existing RPBs. There is no basis to presume that such resources would be available to the SR, consequently the additional cost of replacing it should be factored into the analysis.

4 Conclusion

4.1.1 The IPA welcomes the opportunity to continue its contribution towards the development of professional regulation. It is anxious to utilise its highly specialised knowledge and experience to achieve realistic and effective practical results. To that end, its informed calls for regulatory changes should no longer be ignored.

4.1.2 On the other hand, for the many reasons stated, the PO is considered to be unrealistic, ill-considered and incapable of working, being likely to result in a failure of effective regulation at precisely the time when the demand for insolvency services will be at its highest.

4.1.3 The IPA is not opposed to the principle of a single regulator, however it is of the view that to address all the perceived shortcomings detailed in the Consultation it needs to be seen to be truly independent, and that there are other lower risk solutions that could and should be contemplated that will be more effective, and capable of being executed with much greater speed and certainty.

5 Consultation Questions

Question	Response/Comment
Proposals for reform of insolvency regulation	
Question 1. What are your views on the Government taking on the role of single regulator for the insolvency profession?	The SR proposal creates an inherent conflict of interest for the IS as it would be regulating the private sector providers of a service which it also provides but which is not regulated in the same way, e.g. Official Receivers are not required to hold the Joint Insolvency Exam qualification. It would also place any sub-contractors under a potential conflict because they might fear losing the contract if they act contrary to the wishes of the IS. If an SR is established it should be a separate entity from the IS. Above all, the proposal is impossible to implement because the IS does not possess, and could not acquire, staff of sufficient qualifications, experience and practical knowledge to make the system workable.
Question 2. Do you think this would achieve the objective of strengthening the insolvency regime and give those impacted by insolvency proceedings confidence in the regulatory regime?	No. It would have exactly the opposite effect. Effective regulation would diminish, and confidence would fall. The IPA denies that there is a general lack of confidence in the insolvency regulatory regime amongst those affected by it as is suggested in the Consultation Document. We deny that the transition to an SR would be as simple, quick, or cheap as described. Legislation needs to be put in place. The system to authorise firms remains to be devised. Thereafter firms will need to be licensed. The framework and level of sanctions for firms and any consequent changes of sanctions for IPs need to be implemented. At the same time as devising and implementing a new system, the IS would have to keep the existing system of regulation running properly. That is an unrealistic aspiration. There is a high degree of risk that the

Question	Response/Comment
	implementation of these proposals would permanently weaken the insolvency regulatory regime.
Question 3. Do you consider the proposed objectives would provide a suitable overarching framework for the new government regulator or do you have any other suggestions? Please explain your answer.	No. A single body could adopt some of the proposed changes to the regulatory objectives but the government is not an appropriate body. Specific reasons should be given to justify the need to move away from the existing regulatory objectives. The exact wording of the objectives requires detailed debate which cannot properly be conducted in a Q&A form but the removal of the requirement to act proportionately and in a targeted manner is regretted. The fault lies in pursuing this as part of government, rather than through an independent body (i.e. independent of government, licensed practitioners, licensed firms, and Official Receivers).
Question 4. Do you consider these to be the correct functions for the regulator in respect of Insolvency Practitioners and in respect of firms offering insolvency services? Please explain your answer.	Inclusion of the following functions, amongst others, should be considered: • The regulation of Official Receivers which should include qualification and licensing • Intervention in respect of failing firms
Question 5. Are there any other functions for which you consider the regulator would require powers? Please explain your answer.	AML Supervision. The current system of regulating or supervising the Anti Money Laundering responsibilities of IPs relies on the RPBs acting as Supervisory Authorities of their respective members, subject to certain conditions. The Proposal's only reference to this topic is that if the Proposal is implemented then the IS will discuss with the OPBAS and the (by then former) RPBs how this function might best be carried out under the new regulatory framework which does seem rather late in the process for such an important topic and overlooks the fact that the RPBs will have no operational status by that time.

Question	Response/Comment
Question 6. Do you agree that the single regulator should have responsibility for setting standards for the insolvency profession? Please explain your answer.	No, not if the SR were the IS. The IS has no practical experience of insolvency work as it is performed in the private sector and would not do this effectively. The tone of the Consultation documents and the subsequent presentation on them by the Insolvency Service on 7 February 2022 hosted by R3, suggests that the any standards would be set by the SR with little or no consultation with the profession or stakeholders affected by the standards. In the IPA's view that may lead to standards that are difficult, unrealistic, and costly to implement and which may not address the concerns of stakeholders. Over time such standards may also diverge from ethical and other standards applying in other areas of the accountancy profession. The IPA considers that the currently existing inclusive approach to setting standards is essential to produce standards that are: (i) authoritative and supported by users and regulators alike, (ii) relevant, as they address concerns raised by those affected by them including stakeholder and professionals, and (iii) realistic, as they are practical from both compliance and cost of compliance perspectives. The IPA is concerned that the IS as SR monopolising standard setting would lose these benefits and result in standards that are unworkable and or do not have support and engagement by the profession and the wider constituency of stakeholders.
Question 7. Do you agree that it would help to improve consistency and increase public confidence if the function of investigation of complaints was carried out directly by the single regulator? Please explain your answer.	The IPA is neither persuaded, nor is there any evidence to suggest, that the public lack confidence in the insolvency regulatory regime nor that there is significant inconsistency between the RPBs in investigating complaints as suggested in the Consultation Document.

Question	Response/Comment
	The Consultation document offers no evidence in support of these points. If the IS were the SR, the answer to the question is No, the opposite would be true. Investigation needs to be carried out and be sufficiently staffed by experienced individuals. The level of staffing implied by the Impact Assessment strongly suggests that this would not be the case. If compensation is introduced the volume of complaints will increase exponentially. Appropriate skill sets would also need to be recruited, depending on the type of compensation that could be claimed, and the increase in volumes of complaints is likely to lead to a dilution of standards of complaint handling across all complaints reducing public confidence.
Question 8. What are your views of the proposed disciplinary and enforcement process and the scope to challenge the decision of the regulator? Please provide reasons to support your answer.	The description of the process in the Consultation Document is too brief and unspecific to be capable of comment. A highly complex topic has been reduced into effectively three paragraphs. If the system were actually to be as described, it would always be subject to court challenge. The inference is that the process would exclude any lay involvement and be entirely within government (including the Appeals Officer who would be appointed by government); there would be no first instance right to make written representation; the 'parties' are not identified; natural justice is disregarded. It appears autocratic. A proper process should be devised by experts. The process, as outlined states that the Regulator "*...would consider the findings and make a recommendation on whether a sanction was applicable and the proposed level of sanction*" Thus the benefit of the combination of professional expertise tempered by lay membership of the existing Investigation

Question	Response/Comment
	Committees and Regulation and Conduct Committee (as applicable) of the RPBs will be lost. The proposed creation of an “Appeals Officer”, apparently an individual appointed on an ad-hoc basis as cases arise, similarly abandons the tried and tested structures of pre-appointed Disciplinary and Appeal Committees from which Disciplinary Tribunals and Appeals Panels can be drawn which are operated by the existing RPBs. It is not clear from the Consultation documents whether the “parties involved” include those making a complaint (the ‘complainant’ or ‘informant’) and hence whether there would be a process analogous to the existing “Reviewer of Complaints” (RoC) process where misconduct has not been found. If the “Appeals Officer” is to fulfil such a role the charging of a fee for referral to the same represents a departure from the long-established custom of allowing complaints or informants access to the RoC without charge.
Question 9. Are there any other functions which you think should be carried out directly by the single regulator? Please explain your answer.	The regulation of the Official Receiver. As stressed elsewhere in this response the IPA considers that there will be a fundamental conflict of interest if the SR is part of the IS which would continue to apply if ORs were also to be regulated (which they should be in any event as they currently undertake some of the same work as IPs). Both factors are arguments in favour of any SR being separate from and independent of the IS. Intervention should be considered.
Question 10. In your view should the specified functions be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.	No, the IPA considers that only the existing bodies such as itself and the remaining RPBs have the knowledge, experience and expert staff to perform any or all of the functions listed. However, this question also raises the

Question	Response/Comment
	question of what is the point of having the IS as SR when the existing bodies can perform the task better. Delegation and a disjointed approach will create unnecessary bureaucracy, a reduction in the quality of regulation levels and delays. In particular, the separation of monitoring and complaints handling into different organisations would create an information gap which would jeopardise the effectiveness of any attempt to maintain an intelligence bank to inform risk-based regulation. This would particularly apply to VPR and seriously jeopardise the public interest. The IPA is concerned that delegation on some sort of fixed term or rolling contract basis (even if a qualified company would accept such a role) would not be practicable as the infrastructure and resources required to perform them to the standard currently achieved by the RPBs would be difficult to maintain in the face of the uncertainty inherent in such contracts. There is a real risk that the expertise and experience of the existing bodies will simply be dissipated.
Question 11. Are there any other functions that you think should be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.	Providing support to vulnerable IPs. The IPA considers that standard setting should be included as a delegable function. The existing mechanism is tried and tested and has been developed over more than 20 years and continues to evolve with changes in legislation and practice in insolvency. With reference to the Joint Insolvency Examination (JIE) qualification and the 'entry level' insolvency qualifications, the IPA has a long history of promoting professional insolvency qualifications and as the sole specialist insolvency RPB is well placed to perform the examination provision function. The IPA considers, however, that standard setting should be included as a delegable function to retain the proven benefits of stakeholder engagement that exists

Question	Response/Comment
	with the current involvement of the Joint Insolvency Committee (JIC). The removal of the JIC from standard setting will substantially reduce the level of independent guidance and engagement that the process currently receives from the profession and stakeholders and, at the very least, there should be an Advisory Committee put in place to ameliorate the loss of the JIC's valuable input.
Question 12. In your opinion would the introduction of the statutory regulation of firms help to improve professional standards and stamp out abuses by making firms accountable, alongside insolvency practitioners? Please explain your answer.	Yes, this follows from the recognition of the potential divergence between the professional duties and ethical constraints of Insolvency Practitioners and the commercial priorities and financial requirements of the businesses that employ them. The tone of the language used in the question should not be construed to mean that abuses are widespread in the profession or amongst insolvency firms as the IPA does not consider that they are. The introduction of firm regulation will, however, further reduce the risk of abuse. The IPA has long been calling for this change.
Question 13. The Government believes that all firms offering insolvency services should be authorised and meet certain minimum regulatory requirements, but that additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market. What is your view? Please explain your answer.	The provision of insolvency services is defined within the Consultation as offering the services of IPs. The expression "potential to cause most damage to the insolvency market" is not defined but seems to relate to the size of the firm in terms of the number of IPs it employs, the implication being that smaller firms with few IPs will be subject to less or different regulation in order to keep the regulatory burden proportionate. This may give rise to arbitrary inconsistencies in regulation experienced by different firms. An alternative criterion is the number of insolvency cases dealt with by the firm which is exemplified by the so called 'volume provider' IVA and PTD firms. The IPA has already developed the Volume Provider Scheme

Question	Response/Comment
	which constitutes near real time monitoring of its member firms and their individual IPs. The introduction of a limit on the number of cases which an individual IP (and/or firm) may hold would significantly help to manage any risk.
Question 14. In your view should certain firms be subject to an additional requirements regime before they can offer insolvency services? If so, what sort of firms do you think should be subject to an additional requirements regime? Please explain your answer.	No, not an additional requirements regime but all firms should also have a Licensed IP as Director and/or Beneficial Owner thereby helping to align the interests of the firm with those of the IPs working for it in order to protect the public interest.
Question 15. Do you think that regulation of firms should require a firm subject to an additional requirements regime to nominate a senior responsible person for ensuring that the firm meets the required standards for firm regulation? Please explain your answer.	Having a responsible individual who can be held accountable will help focus regulatory effort. The IPA, however, considers that all regulated firms should have such a responsible individual rather than just those subject to an additional requirements regime.
Question 16. If so, would you envisage that the senior responsible person would be an Insolvency Practitioner? If not, please specify what requirements there should be for that role?	It should not be a requirement for the SRP to be a Licensed IP although of course they could be and this might add to the confidence in the firm. However, the SRP should be a regulated individual (e.g. a lawyer or accountant) who is responsible for the firm's provision of insolvency services. This information should be available in the single public register.
Question 17. Do you think that a single public register for Insolvency Practitioners and firms that offer insolvency services will provide greater transparency and confidence in the regulatory regime? Please explain your answer.	Yes. It would raise awareness of the profession and promote it. Such a register is long overdue as the IS has not yet replaced the IP Directory which is based on a platform used by Business Link which ceased to exist more than 10 years ago. The Consultation suggests, however, that the prerequisites for inclusion on the register would be determined by new legislation and may diverge in unspecified ways from current requirements for authorisation.

Question	Response/Comment
	The proposed disclosure of disciplinary records and "other action taken against them", whilst this appears to be attractive as a means of increasing transparency, such information will have to be carefully explained and presented to avoid any unfair prejudice to IPs and firms as the appropriate sanctions reflect aggravating and mitigating factors which can be complex. One means of making such disclosure meaningful would be to show disciplinary findings as a proportion of the number of cases dealt with by an IP. In 2021 of the 247,219 cases subject to the IPA's VPR scheme, 7 findings were made which represents one finding in every 35,317 cases. The criteria for firms to be registered have yet to be specified but potentially subjective criteria such as having *"sufficient qualified and non-qualified staff to administer effectively the number of appointments being taken by practitioners at the firm."* risk penalising the more efficient firms. The disclosure of disciplinary or other action taken against firms will require careful thought to avoid prejudicing individual IPs at the firm who have no connection with the matter or conduct that gave rise to the said action.
Question 18. What is your view on the regulator having a statutory power to direct an Insolvency Practitioner or firm, to pay compensation or otherwise make good loss or damage due to their acts or omissions? Please explain your answer.	Although such an additional power is superficially attractive the quantification of losses and determining who has suffered them would be very difficult and will require a proper mechanism. Limiting it to a token compensation payment as outlined in the Consultation in the IPA's view would not address the grievance underlying this proposal. *"otherwise making good loss or damage"* requires a means of assessing not only the loss or damage but also what will remedy it, neither of which is an easy process.

Question	Response/Comment
	There are pre-existing mechanisms for addressing these issues within the civil Courts so the SR's processes would have to be compatible with the Court processes. Introducing any scheme will risk a very sharp rise in claims from affected parties who consider they have suffered some form of loss. It may also attract the attention of claims management companies which can generate a large volume of speculative claims which, in turn, will oblige IPs and their firms, and the regulator, to incur time and costs to process. If such an order were to be publicised, the risk of such an increase would rise significantly.
Question 19. What is your view on the amount of compensation that the regulator could direct an Insolvency Practitioner or firm to pay for financial loss? Please explain your answer.	The IPA considers it is unlikely that parties who have demanded that there should be a formal insolvency compensation scheme will be satisfied by anything that does not provide full compensation for the loss/harm claimed to have been suffered. But it will be an onerous requirement to calculate losses with potentially severe consequences if a robust process is not followed. There will also be practical difficulties in identifying who has suffered the loss or harm. Is it the estate or individual creditors (or debtors) and would the pari-passu principle apply?
Question 20. Which option or options do you consider would be most suitable to fund a compensation scheme for the insolvency profession? Alternatively, do you have a suggestion on how a compensation scheme for the insolvency profession might be funded? Please explain your answer.	There is a tension between the notion that the polluter pays, in this case the IP or firm which can be shown to have caused the alleged loss, and there being a levy across the profession to ensure that adequate funds are available to pay compensation (unless it is token compensation). Either approach would probably have to be supported by some form of insurance to ensure adequate resources were available to meet claims with premiums to be determined by the insurance underwriters' assessment of the risk posed by different firms and IPs.

Question	Response/Comment
	Such an assessment of risk might be overlaid with the consideration of the potential to cause damage to the insolvency market referred to in Q13 so, paradoxically, firms subject to additional regulatory requirements, i.e. the more regulated firms, would face higher premiums. Insurance based compensation would be separate from bonding as it addresses a fundamentally different sort of risk, the risk of error or mistake as opposed to the risk of dishonesty.
Question 21. Are there any further impacts (including social impacts) that you think need inclusion or further consideration in the Impact Assessment?	It appears massively underfunded in view of the set-up costs. It assumes that there will be no TUPE liability, which seems unrealistic, and the suggested processes may be subject to legal challenge The Impact Assessment underestimates many of the associated costs and specifically excludes costs which fall within the scope of the "Better Regulation Framework", but which will, nonetheless, be incurred. Page 27, para 2 – Has the IS considered the financial impact of these changes on the IPA as a small business?
Question 22. What are you views on the above proposals for funding of insolvency regulation? Do you have any other suggestions for self-funding of regulation?	Possible options are a licence, polluter pays, or a levy on all cases as with the IVA Volume Provider Scheme. The Impact Assessment assumes that the fees payable by IPs to the new SR will be approximately 1/3 less than the fees so paid to the existing RPBs apparently on the basis that public sector staff, (leaving aside the question of them having the expertise and experience acknowledged as being required to regulate the specialised area of insolvency) are paid less than private sector staff. But that assumption is caveated by the recognition that the costs of procurement of the delegated services, which are unknown, would be recharged to the profession. We are, therefore of the view that the cost estimates in the Impact Assessment understate the costs that will be

Question	Response/Comment
	incurred if the new SR is to operate at a quality level that is comparable to that achieved by the existing RPBs. The introduction of the regulation of firms will add additional costs which will exceed what we consider to be the serious underestimate of the time resources required to monitor firms set out in the Impact Assessment. It is likely that a suitable fee model will include a fixed element to represent the administration cost for authorisation and registration of IPs and firms and a variable fee to raise the additional amounts that will be required whilst taking into account the IPs' and firms' different risks of liability to disciplinary or regulatory action (the polluter pays) and reflecting their ability to pay. In order to generate sufficient revenue to fund regulation the variable element is likely to be based on fee income attributed to the firm and or IP weighted by a proxy for risk levels such as the number of cases. Such a relationship is, however, not linear as, for example, a large number of small cases may well be associated with well developed systems and controls and consequently represent a lower risk than a small number of small cases.
Proposals for reform of the current bonding arrangements	
Question 23. Should the current minimum statutory requirements of a bond be extended as proposed to include the following (if you disagree, please explain your answer including any alternative proposal or any additional factors to be included):	
1. An allowance for reasonable associated costs of a bond claim:	The costs of additional work to establish dishonesty on the part of a former office holder, which is a necessary condition for a bond claim, can be substantial and so an additional provision for such costs is reasonable.

Question	Response/Comment
	The level of such costs does not necessarily correlate with the value of the assets so there will still be cases where the return to creditors is eroded by costs.
2. A period of run off cover that allows for claims to be submitted for a period after the Insolvency Practitioner has left office;	Bonds typically have a run-off cover period of two years after the IP has ceased to act, however, investigations to gather evidence sufficient to demonstrate dishonesty can take longer than that period. This is particularly so in situations where the subsequent removal of an IP's licence prompts investigations by a successor IP into the conduct of all their cases, including recently closed cases. It is therefore arguable that the run-off period should be extended to six years.
3. Interest to be claimable against a bond to be calculated on the amount of the loss from the date it was incurred (if so, which interest rate benchmark should the rate be tied to?);	Yes – As a means of compensating the estate for the time taken to reimburse (at least to an extent) the loss due to dishonesty. SONIA is designed to be a Sterling risk free reference rate based on actual transactions to replace LIBOR which was previously used for similar purposes so appears to be a reasonable reference rate.
4. GPS cover to be available for all of an office-holder's appointments, including those where no SPS cover has been obtained.	Yes - It is not unusual in cases where bond claims arise following the removal of an IP's licence for some cases not to have a specific bond in place. Given that the purpose of bonding is to protect creditors from dishonesty by IPs it seems unfair that they should, in effect, be penalised for another failing on the part of the IP, namely the absence of SPS cover.
Question 24. Would extending the statutory minimum requirements of bonds remove the need for Secretary of State approval of bond wording? What would be the possible impacts of this change?	The RPBs are qualified to approve wording and would presumably approve the wordings of the standard providers.
Question 25. Should a minimum period of run-off cover be provided for in statute and should the period be 2 years? If not 2 years, what should it be? Do you see any disadvantages to applying a minimum period for run-off cover?	The minimum should be 6 years from ceasing to act. An extended runoff period will increase the cost of cover by an amount that will only be determinable after

Question	Response/Comment
	experience of claims arising under such an extension has been gained.
Question 26. Where a maximum indemnity period is applied by a bond provider:	
1. should the maximum period an insolvency estate is covered be at least 6 years from the date of appointment?	Yes – this would appear to be sufficient for most cases and cover the general statutory limitation period for initiating claims within an insolvency.
2. should the Insolvency Practitioner be able to extend cover past the maximum period if they are still appointed on the case, with agreements from the bond provider?	Yes – the theoretical possibility of a claim arising more than six years after the date of appointment continues, so should the protection available for creditors.
Question 27. Should cancellation of cover due to non-payment of premium only be allowed where application for payment has been made and reasonable notice has been given to the Insolvency Practitioner and their regulator? If yes, what would be considered reasonable notice?	Yes, 28 days
Question 28. Where a regulator has been notified that cover may be revoked due to non-payment of a premium, should the regulator be responsible for ensuring creditors of affected insolvency estates remain protected?	Yes, it seems reasonable to have a safeguard in place for creditors to avoid them being prejudiced by a failure by the IP to pay premiums. The difficulty lies in funding the unpaid premiums. This might be achieved by a general levy on bonds to cover such costs or by an insurance product designed to meet them.
Question 29. The Government proposes to increase GPS cover to £750,000. Is this sufficient? If not please explain why.	Yes, it should be revisited every 5 years. If, however the purpose of the GPS is to be revised so that it covers not only cases where insufficient or no cover was in place but also parallel, investigation and bond claim costs, then £750,000 may not be sufficient.
Question 30. The minimum insolvency estate specific cover is currently £5,000. Government proposes this should be increased to £20,000. Would this level provide sufficient cover for small insolvency cases?	This increase is probably sufficient to cover the majority of small cases. Although the £5,000 minimum has remained unchanged for many years and should, therefore be increased to reflect increased asset values, an increase by a factor of

Question	Response/Comment
	four may be excessive and have a disproportionate effect on the cost of obtaining a bond in minimal asset cases. The appropriate level should be reviewed in consultation with the bond providers.
Question 31. Should the GPS be reformed to cover interest, investigation, parallel and bond claim costs of the successor Insolvency Practitioner?	Yes, it should provide the costs to complete the case if there are no assets or prospect of recovery. The difficulty is that some of these costs will be incurred before any dishonesty is identified and it may be that it will only be found in relation to some but not all cases. These considerations are a commercial matter for the successor IP to consider.
Question 32. Should the specific cover obtained per insolvency estate be set at a higher level than the asset value to factor in interest, parallel and investigation costs and fees of a successor practitioner in bringing a claim? If so what percentage above the asset value is an appropriate amount, and why?	This happens already anyway due to bond cover falling into bands, rather than being for a specific sum.
Question 33. Should the option of a Global Bond, where the distinction between GPS and insolvency estate specific cover (SPS) is removed, be provided for? If so, who would benefit from such a product and can you foresee any disadvantages?	This is not a good idea. If the premium is not paid, then there would be no cover on any case. Keep the GPS and SPS system but automate the bordereaux submission process to provide real time information about IPs' caseloads.
Question 34. Would adding a requirement for Insolvency Practitioners to declare the level of cover specific to that estate as part of the initial report to creditors be helpful information for creditors? If so, should any changes to the level of cover also be reported?	Yes and Yes for both the IP and the firm. Such reporting would add transparency and provide information about revisions to cover which the IP should already be carrying out.
Question 35. Where a regulator takes action which may foreseeably result in revocation of an Insolvency Practitioner's authorisation, should the regulator have a duty to ensure that the Insolvency Practitioner's bond cover is maintained at a sufficient level, until such point as the action has concluded and either the practitioner is deemed fit to continue practising, their authorisation revoked and/or a	Yes, automating the bordereaux process will facilitate this.

Question	Response/Comment
successor practitioner appointed to their cases?	
Question 36. Where an Insolvency Practitioner is appointed as special manager, does a surety bond provide sufficient security? If not, please explain why.	It depends on the case and the potential liability. Generally, the IS Liquidations where Special Managers have been appointed are because there are insufficient assets to cover the cost of an IP dealing with the case commercially as Administrator, or the potentially unlimited liability from environmental issues. The insurers views will be relevant to this question and in particular their views on the likely cost of obtaining sufficient cover for a high-profile case such as the recent appointment in British Steel. As noted in the Consultation Document, the insolvency surety bond does not include any appointments as a special manger as they do not constitute acting as an 'Insolvency Practitioner' as defined in the Act, so it is not clear that if a claim for loss due to dishonesty or fraud on the part of a special manager were to arise it would be successful. The surety bond in its current form is only perceived to provide security when, in fact, it may not. That a special manager should be bonded but not the person primarily responsible, the OR as liquidator, is paradoxical. Bonding for ORs, to level the playing field, is required.
Question 37. Are the current rules requiring security for special managers fit for purpose (taking into account that they apply to all persons appointed special manager, including those who are not Insolvency Practitioners)? If not, what changes should be made?	Only IPs should be able to be appointed as Special Manager. They can instruct agents if specialist skills are needed to assist them.
Question 38. Do you agree that the proposed changes to the current requirements for bonding should be made now pending more significant changes to the regulatory regime?	Yes. Again, consult with the insurers and take their views into account so they can help devise a scheme that they will be willing to deliver.
Question 39. Considering the changes proposed to the bonding regime above, would the introduction of a single regulator present opportunities for more fundamental reform of the bonding regime? If so, please give reasons	Automating the bordereaux process would provide real time visibility of all IPs' appointments in the public domain. It could be accessible as part of the IP register.

Question	Response/Comment
for your answers including any suggestions you may have on a proposed reform.	The associated IT development needs to be competently executed, most likely through an outsourced supplier. The bonding regime is intended to provide protection to creditors from dishonesty by IPs by way of indemnity contracts between the individual IPs, their respective RPBs and the bond providers or sureties. It involves an assessment of the risk of losses due to dishonesty derived from information about the individual IPs their firms and systems of control. It is not apparent that changing one of the parties, the RPBs by substituting the SR would affect risk assessment. We also consider that the introduction of a compensation scheme would involve the assessment of other distinct sets of risks and therefore should not be conflated with the bonding system.
Question 40. Is the current balance in the UK between protection of creditors' interests and cost to the insolvency profession the right one? If not, how might this be addressed?	The bonds should provide adequate protection for creditors. The premiums should be risk based.
Question 41. Do you think that a levy funded scheme should replace the existing bonding regime, and cover not only acts of fraud or dishonesty by an Insolvency Practitioner but also a broader compensation regime? Please explain your answer.	No, as the notion of a levy implies a universal charge determined as a fixed sum or percentage or a scale of such charges, in our view the premiums for such a scheme should be risk based. Given that the risks of fraud or dishonesty by an IP are separate and distinct from the risks of circumstances arising that might give generate a liability to pay compensation we are sceptical that an all-purpose scheme could be workable. There would need to be consideration of how the SR could disclose factors that would affect the insurer's view of risk for an IP and Firm.

6 Glossary and abbreviations

AML	Anti-Money Laundering
APPG	All-Party Parliamentary Group
CVL	Creditors' Voluntary Liquidation
IA	Impact Assessment
IAIR	International Association of Insolvency Regulators
ICAEW	Institute of Chartered Accountants in England & Wales
IP	Insolvency Practitioner
IPA	Insolvency Practitioners Association
IPRS	Insolvency Practitioner Regulation Section
IS	Insolvency Service
IVA	Individual Voluntary Arrangement

JIC	Joint Insolvency Committee
JIE	Joint Insolvency Examination
NI	Northern Ireland
OFT	Office of Fair Trading
OR	Official Receiver
PO	Preferred Outcome – as set out in the Consultation Document
PTD	Protected Trust Deed
RPB	Recognised Professional Body
SBEEA	Small Business, Enterprise and Employment Act (2015)
SR	Single Regulator
VPR	Volume Provider Regulation

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Annex A

Oxford Economics Review of the Insolvency Service’s Impact Assessment

OXFORD ECONOMICS

PROPOSED INSOLVENCY PRACTITIONER REGULATION

A REVIEW OF THE INSOLVENCY SERVICE'S IMPACT ASSESSMENT

MARCH 2022

ABOUT OXFORD ECONOMICS

Oxford Economics was founded in 1981 as a commercial venture with Oxford University's business college to provide economic forecasting and modelling to UK companies and financial institutions expanding abroad. Since then, we have become one of the world's foremost independent global advisory firms, providing reports, forecasts and analytical tools on more than 200 countries, 250 industrial sectors, and 7,000 cities and regions. Our best-in-class global economic and industry models and analytical tools give us an unparalleled ability to forecast external market trends and assess their economic, social and business impact.

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March 2022

The modelling and results presented here are based on information provided by third parties, upon which Oxford Economics has relied in producing its report and forecasts in good faith. Any subsequent revision or update of those data will affect the assessments and projections shown.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

POLICY CONTEXT AND REPORT OBJECTIVES

Insolvency Practitioners (IPs) in the UK currently operate under a dual system of co-regulation, exercised, on the one hand, through five Recognised Professional Bodies (RPBs), and independent regulatory oversight, exercised on the other hand, by the Secretary of State through the Insolvency Service. Legislation in 2015 introduced a time-limited power, expiring in October 2022, that enables the Secretary of State to create a single, independent regulatory body in place of the current system. The Insolvency Service's "Review of Insolvency Practitioner Regulation"[1] proposes the introduction of such a Single Regulator that would sit within the Insolvency Service.

In December 2021, the Insolvency Service published an impact assessment (IA) of the proposed regulatory changes, which concluded that the policy's net present social value was -£5.0 million. This figure is derived as the sum of various costs and benefits that were monetized in the IA and appropriately discounted. Alongside these monetized effects, the IA also identified a range of other effects that could not be quantified.

Oxford Economics has been commissioned by the Insolvency Practitioners Association (IPA) and the Institute of Chartered Accountants in England and Wales (ICAEW), two RPBs that account for 91 percent of the total IPs authorised by the five RPBs in the UK,[2] to undertake an independent review of the economic coherence and logic of the costs and benefits presented within the IA and to consider the wider consequences of the proposed regulatory framework.

KEY FINDINGS: COSTS AND BENEFITS QUANTIFIED IN THE IMPACT ASSESSMENT

On balance, our review of available evidence indicates that the IA has **significantly underestimated** the **social cost** of introducing this reform. Fig. 1, presented at the end of this section, provides a comprehensive summary of our analysis. It outlines the various costs and benefits that were monetized in the IA and the findings from our review in each case.

The bullet points below describe the most material points that have emerged from our analysis:

- The IA concluded that IPs would receive a recurring annual benefit worth £2.3 million following the introduction of a Single Regulator, reflecting a reduction in the cost of regulatory enforcement. Our analysis indicates that the anticipated cost savings are likely to be significantly overestimated and, if introduced, there are risks that the cost of regulatory enforcement might realistically increase. **The IA has overestimated the recurring annual benefit by at least £1.1 million due to its overestimate of the current cost of regulatory enforcement**.

[1] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, accessed January 2022.

[2] Percentage estimate is based on Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, table 4, accessed January 2022, using the number of total IPs authorised and adding three IPs under Law Society of Northern Ireland as these have been omitted in the IA.

- The introduction of the new regulatory structure would impose a **one-off familiarisation cost** to IPs and firms. Our review suggests that the **methodology used by the IA underestimates the scale of these costs**. Although not possible to gauge precisely, our best estimate is that familiarisation costs are likely to be **at least £1.35 million higher** than in the IA.
- **The IA** estimates that the proposed reform will result in a cost to firms of **£0.76 million due to higher insurance payments**. Our analysis shows that the actual cost is likely to be materially higher due to the exclusion (in the IA) of wider legal costs and a lower loss ratio. Our best estimate is **that it will be £2.7 million higher than the IA.**

KEY FINDINGS: THE WIDER CONSEQUENCES OF THE PROPOSED REFORM

Beyond the somewhat narrow remit of the IA, the proposed reform could have wider consequences for IPs, financially distressed businesses and individuals, and creditors in the UK. Some of these factors are, indeed, acknowledged within the IA but classified as 'non-quantifiable'. In our review, we have focused on three key themes:

- Potential issues during the transition period
- The impact on competition and, therefore, choice for customers; and
- The impact of changes in regulatory incentives due to the new governance structure.

Potential issues during the transition period

The government expects that the introduction of the new system would take between two and four years to become operational. This will necessitate a transition period between the two regimes that the IA acknowledges may present a "temporary regulatory risk". In our view, the following risks are the most significant and require further evaluation:

- There may be a shortage of skilled personnel overseeing the IP market as skilled RPB staff may move to other jobs instead of switching to the new Single Regulator. Insolvency regulation is a highly specialist topic, therefore meaning that recruiting new personnel would be problematic.
- The potential regulatory vacuum may increase the likelihood of moral hazard by creating adverse incentives for IPs to take on additional risks. This would have wider adverse spillover effects for affected parties.
- Our analysis suggests that the financial costs of setting up the new regulatory systems - such as staffing and IT systems, governance arrangements, complaints gateway and compensation schemes - may be substantial. It will, therefore, be important for these to be credibly costed and to be incorporated into any follow-up IA.

Impact on competition and choice for customers

The IA estimates the proposed reform to yield a maximum benefit of £2.3 million accruing equally to all IPs irrespective of size. However, our estimates indicate that it is unlikely that these benefits will be realised, and in fact, **the proposed regulatory reform may lead to additional costs to IPs**. If shared equally among IPs, the burden of these additional costs can be expected to fall disproportionately on

IPs in micro and small businesses. Moreover, small firms may also find it difficult to bear the costs of handling additional complaints and visits associated with the new firm regulation proposals.

Such an increase in the regulatory burden could increase effective barriers to entry and, therefore, reduce competition in the market. This would have adverse consequences for customers in terms of reducing choice and pushing up the price of insolvency services. The size of any impact through this channel is highly uncertain but it should be a careful consideration for government when exploring the potential for unintended consequences.

Changes in regulatory incentives due to the new governance structure

Taking regulatory responsibilities away from RPBs would, in theory, correct any principal-agent issues that have been created by the current regulatory structure. Based on our review, however, we are not able to comment on the extent to which principal-agent conflicts may have distorted regulatory priorities to-date.

However, having the new Single Regulator sitting within the Insolvency Service may affect the regulator's independence from the government, especially given Her Majesty's Revenue and Customs' (HMRC) and the Redundancy Payments Service's (RPS) role as preferred creditors in the insolvency process. Conversely, the government's ability to examine the functioning of the market and provide feedback to the regulator at an arm's length would also be diminished without regulatory independence.

Moreover, the responsibility for appointing the Official Receiver (OR) in bankruptcy and compulsory winding up proceedings lies with the Insolvency Service. The proposed regulatory reform would create a situation where the role of the Insolvency Service as a regulator, independent of the market participants, conflicts with its role as the provider of ORs.

Fig. 1. Costs and benefits considered in the IA and the review by Oxford Economics

IA costs and benefits	IA quantification[3]	Oxford Economics Review
	Costs and benefits to IPs	
Ongoing benefit to IPs from lower fees *(IA paragraphs 107-115)*	£2.3 million	At least £1.1 million lower than IA estimate *(Detailed in section 2.1.1)*
Familiarisation cost to IPs *(IA paragraphs 66-69)*	£2.7 million	Over £1.35 million higher than IA estimate *(Detailed in section 2.1.2)*
	Costs and benefits to firms and RPBs	
One off redundancy cost to RPBs *(IA paragraphs 75-86)*	£0.2 million*	Not estimated as not included in IA net present social value estimate *(See section 2.2.1)*
Familiarisation cost to IP firms *(IA paragraphs 70-73)*	£0.1 million	Over £0.05 million higher than IA estimate *(Detailed in section* 2.2.2)
Ongoing cost to IP firms from firm regulation fees *(IA paragraphs 88-91)*	£0.7 million	Not estimated due to limited information on scope *(See section* 2.2.3)
Ongoing cost to business to comply with firm regulation *(IA paragraphs 92-99)*	£1.1 million	Not estimated due to limited information on scope *(See section* 2.2.4)
Costs to firms from compensation *(IA paragraphs 100-106)*	£0.76 million	£2.7 million higher than IA estimate *(Detailed in section* 2.2.5)
	Potential wider consequences of the proposed reform	
One off benefit to employees through redundancy transfer *(IA paragraphs 75-86)*	£0.2 million*	Not estimated as not included in IA net present social value estimate *(See section 2.2.1)*
Costs arising from potential issues incurred during the transition phase *(e.g., IA paragraph 119)*	No quantification*	Discussed in Section 3.1.
Economies of scale *(IA paragraph 117)*	No quantification*	Discussed in Section 2.1.1.
Improved public confidence in the regulatory regime and improved international reputation *(IA paragraph 117)*	No quantification*	Not included in this study
	Costs and benefits to the Single Regulator	
One off cost to set up the Single Regulator (including IT, recruitment etc.) *(IA paragraph 134)*	No quantification*	Discussed in Section 3.1.3.
Ongoing cost to the Single Regulator to contract out certain functions *(IA paragraph 128)*	No quantification*	Discussed in Section 2.1.1.
Ongoing benefit to the Single Regulator from IP fees to cover procurement costs for functions that will be contracted out *(IA paragraph 115)*	No quantification*	Not included in this study
Ongoing benefit to the Single Regulator from firm regulation fees *(IA page 3)*	No quantification*	Not included in this study

* Not part of the IA estimate of the net present social value

1. INTRODUCTION

Insolvency Practitioners (IPs) in the UK currently operate under a dual system of co-regulation, exercised, on the one hand, through five Recognised Professional Bodies (RPBs), and independent regulatory oversight, exercised on the other hand, by the Secretary of State through the Insolvency Service.

Legislation introduced in 2015 contained a time-limited power, expiring in October 2022, enabling the Secretary of State "to create a single, independent regulatory body in place of the current system".[4] In December 2021, pursuing its objective of strengthening confidence around the regulatory framework that governs the insolvency profession, the Insolvency Service launched a consultation on the future of insolvency regulation and some key proposals such as the introduction of a "Single Regulator". The Single Regulator would sit within the Insolvency Service and would have powers to cover a number of functions outlined in detail in the Government's consultation.[5] Current legislation does not allow for the Single Regulator to sit within the Government and hence the regulatory proposal would require primary legislation.

As part of the consultation, the Insolvency Service published its own analysis of the expected impacts of the proposed changes to the regulatory framework—the impact assessment (IA). Oxford Economics was commissioned by the IPA and the ICAEW, two of the RPBs, to undertake an independent review of the economic coherence and logic of the costs and benefits presented within the Government's IA and to consider the wider consequences of the proposed reform.

Oxford Economics collected high-level industry views through six interviews with IPs[6] which we combined with desk research and analysis of data and insights provided by IPA and ICAEW to conduct our review. Our review is comprised of two parts:

(1) A review of the validity of the monetised costs and benefits quantified in the IA in chapter 2; and,
(2) An evaluation of the potential wider consequences of the proposed reform in chapter 3.

[3] All IA estimates were sourced from Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, accessed January 2022. Specific IA paragraph references are provided in-table.

[4] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 8, accessed January 2022.

[5] UK Government, "The future of insolvency regulation", 2021, accessed February 2022.

[6] We conducted interviews with Chris Parkman from Purnells, Laura Prescott from Debt Movement, Laurence Pagden from Menzies, Rebecca Dacre from Mazars, Rob Lewis from PwC, and Tom Ahmad from Bailey Ahmad Business Recovery (BABR).

2. MONETISED COSTS AND BENEFITS QUANTIFIED IN THE IA

This chapter reviews the quantified estimates of costs and benefits included in the IA. These are summarized in Fig. 2. Costs and benefits are identified and quantified (monetized) from the perspective of both individual IPs and firms providing insolvency services. The validity of these estimates is assessed in sections 2.1 and 2.2 respectively.

At the outset it is worth noting that the IA does not claim to be comprehensive—various costs and benefits are theoretically identified but not quantified and several of these are addressed in more detailed in chapter 3.

Fig. 2. Costs and benefits considered in the IA

IA costs and benefits	IA quantification[7]
Costs and benefits to IPs (covered in section 2.1)	
Ongoing benefit to IPs from lower fees *(IA paragraphs 107-115)*	£2.3 million
Familiarisation cost to IPs *(IA paragraphs 66-69)*	£2.7 million
Costs and benefits to firms (covered in section 2.2)	
One off redundancy cost to RPBs *(IA paragraphs 75-86)*	£0.2 million*
Familiarisation cost to IP firms *(IA paragraphs 70-73)*	£0.1 million
Ongoing cost to IP firms from firm regulation fees *(IA paragraphs 88-91)*	£0.7 million
Ongoing cost to business to comply with firm regulation *(IA paragraphs 92-99)*	£1.1 million
Costs to firms from compensation *(IA paragraphs 100-106)*	£0.76 million

** Not part of the IA estimate of the net present social value.*

2.1 COSTS AND BENEFITS TO INSOLVENCY PRACTITIONERS

2.1.1 The ongoing benefit to IPs through lower annual fees

The IA concludes that the proposed reform will result in an ongoing benefit to IPs through a reduction in regulatory fees up to a maximum of £2.3 million per year. This is calculated as the difference

[7] All IA estimates were sourced from Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, accessed January 2022. Specific IA paragraph references are provided in-table.

between current RPB fee income (£6.4 million)[8] and the expected lower fees that the Single Regulator would charge (£4.1 million) based on its assumed operating costs[9].

In simple terms this section of the analysis reflects an assumption that the proposed reform will reduce the cost of regulatory enforcement. This will be fully passed on to IPs and, therefore, create a recurring benefit. Our analysis indicates that the IA's methodology, in this respect, is flawed meaning that this estimated benefit through this channel has been significantly over-estimated. In particular:

- **The current cost of regulatory enforcement**: income data provided by the IPA and ICAEW indicates that the income attributable to Insolvency Regulation, which reflects the current cost of regulation, is lower than estimated in the IA. IPs' current regulatory costs, reflected in payments IPs make to RPBs are £5.3 million[10], approximately 18% lower than estimated in the IA.
- **The future cost of regulatory enforcement**: The ultimate operating cost of the new regulator, and hence the passed-on cost to IPs, is clearly much **more uncertain**. Nevertheless, our review raises questions regarding the validity of the contention in the IA that the proposed reform has the potential to yield significant cost efficiency savings.

We take each in turn.

The current cost of regulatory enforcement: RPB fee income

The IA estimates that current RPB fee income from regulatory activities is £6.4 million. This value is derived by extrapolating the cost fee per authorised practitioner at the IPA in 2019 (£4,100) to other RPBs.[11] The breakdown of the total cost is illustrated in Fig. 3 with the two largest bodies (IPA and ICAEW) estimated to account for over 91% of fee income.

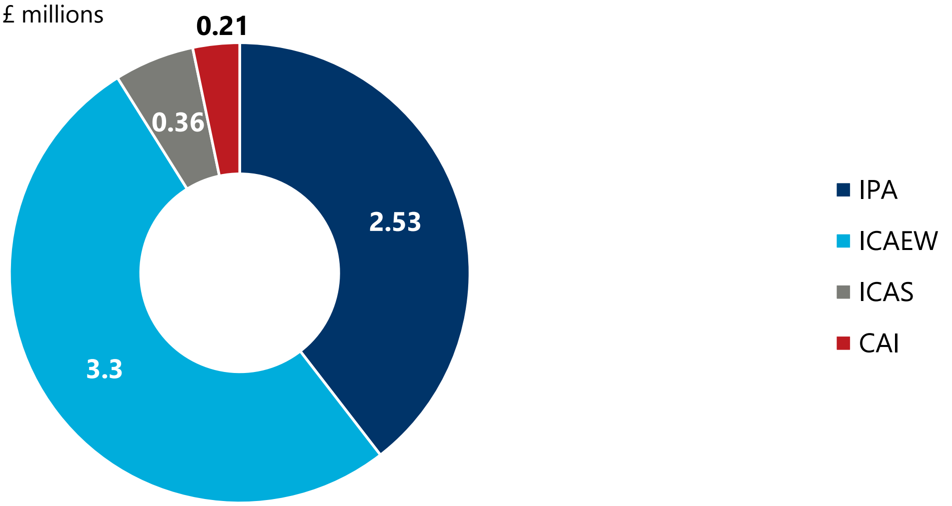
[8] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 112, accessed January 2022.

[9] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 135, accessed January 2022.

[10] These payments include the IPs' annual licence fees and any additional payments made to RPBs that are required for them to fulfil their regulatory responsibilities.

[11] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 110, accessed January 2022.

Fig. 3. Breakdown of estimated fee income by RPB in the IA



Source: Government IA estimates

Although not unreasonable *a priori*, the fact that IPA's membership composition differs significantly from that of other RPBs, both due to the size of the firms involved but also because IPA attracts volume providers due to the voluntary regulation scheme that it offers them, suggests that there is scope for the method used by the IA to produce a significant computational error.

As part of our review, we have collected data from ICAEW which showed that payments made by IPs to cover the costs of regulation in 2019 amounted to £2.2 million, approximately 50% lower than estimated in the IA. In total, this implies that the ongoing benefit to IPs from no longer paying regulatory costs to RPBs would be £5.3 million, approximately 18% lower than estimated in the IA.

The future cost of regulatory enforcement: the operating costs of the new Single Regulator

Under the proposed reform, the government would take on operational responsibility for regulatory enforcement. The IA assumes that the costs of a Single Regulator undertaking the same regulatory tasks will be £4.1 million (as shown in Fig. 4 below) comprising £2.5 million of direct staff costs, £1.5 million in indirect staff costs and travel costs of £50,000.[12] At the outset, it is important to note that the IA concedes that this estimate excludes the costs of procurement of goods and services (at this point not costed). As such, the IA's assumption is best characterized as being that cost of the Single Regulator will be *upwards from* £4.1 million.

Clearly, in comparison to the current level of RPB fee income, the future operating costs of the Single Regulator are subject to greater uncertainty. Apart from the high-level detail described in the previous paragraph there is no further information provided in the IA regarding the composition of these costs. This makes formally assessing the credibility of the £4.1 million figure challenging.

The IA cost estimates, of £4.1 million, along with its estimate of the current cost of regulatory enforcement of £6.4 million, imply that the government could achieve efficiency savings of

[12] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 135, accessed January 2022.

approximately 35%. Whereas, the revised fee income estimates, of £5.3 million along with the IA cost estimates of £4.1 million, imply an upper bound on cost savings of 23%. Whatever the figure, the assumed benefits within the IA rest on two key lines of argument:

- The cost of employment for the Single Regulator may be lower given existing variation in the **earnings of equivalent employees** in the private- and public-sectors.[13]
- The new Single Regulator will be able to achieve cost efficiencies through **economies of scale**. Given the net saving quantified in the IA, we think that it would be reasonable to characterise the government's view as being that these could be **up to 35%**.[14]

Fig. 4. Estimated ongoing costs associated with the new Single Regulator, £ millions

Description	Income or Costs, £ millions
Current costs of regulatory enforcement	**5.30**
New regulator costs (proposed new Single Regulator)	**4.10**
Direct staff costs	*2.50*
Indirect staff costs	*1.50*
Travel costs	*0.05*
Costs for services contracted out, i.e., consideration of applications, provision of training and education, and routine monitoring	Not included

Source: Oxford Economics analysis based on IPA/ICAEW inputs, Insolvency Service (2022) Paragraphs 135-136.

In the remainder of this section, we scrutinise the validity of these lines of argument by drawing on various sources of evidence including data provided by IPA and ICAEW, ONS data and past reports from the National Audit Office (NAO).

Will the Single Regulator face lower employment costs?

The IA highlights that the costs for the Single Regulator could be lower than projected based on the higher remuneration received by private sector employees compared to their public sector counterparts at the upper and upper-middle skill levels.[15] However, Fig. 5 below shows that when total pay (including bonuses, benefits-in-kind, overtime and employer pension contributions) are considered, public sector employees earn significantly more than their private sector counterparts for all organisations except those with more than 500 employees, where the difference is negligible.[16]

[13] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 114, accessed January 2022.

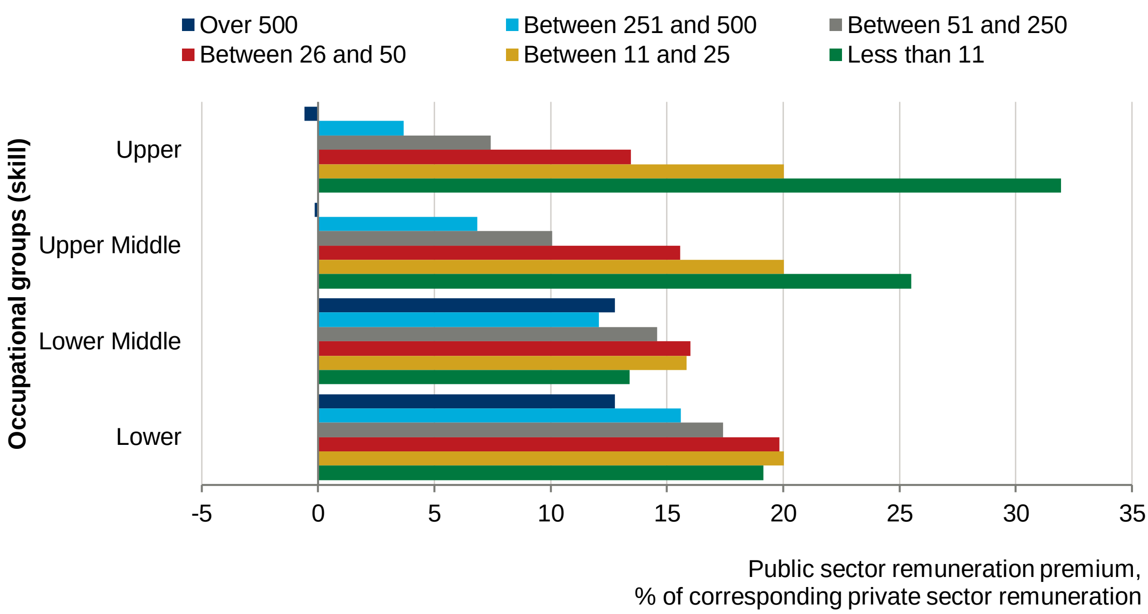
[14] Calculated as the percentage difference between £4.1 million and £6.4 million. Figure 4 in the IA document illustrates this conceptual view.

[15] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 114, accessed January 2022.

[16] Public and private sector earnings: 2019, Office for National Statistics, figure 3b. https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/publicandprivatesectorearnings/2019#:

Given that one of the organisations that accounts for more than 40% of the market, the IPA, is a small business we think that, in fact, labour market data points to the equivalent cost of employment being higher in the public sector than the private sector.

Fig. 5. Public sector remuneration premium by occupational groups (skills) and firm sizes, UK in 2019



Source: ONS

In general, therefore, we are not convinced by this line of argument in the IA.[17] We would also note that the assumption that there would be no staff transfer between the RPBs and the Single Regulator[18]—which we suspect was made for modelling simplicity rather than the expected reality—would likely push up recruitment costs. Insolvency regulation is a highly specialised field meaning that there will be a relatively small pool of talent to draw from.

What other efficiency benefits could be achieved?

The broader question of the extent to which the Single Regulator might achieve efficiency savings through economies of scale is difficult to ascertain at this stage. As part of our work, we have reviewed available literature to understand the extent of efficiency gains (or losses) that resulted in previous cases to provide benchmarks.

The most analogous recent case in the UK, where solid documentary evidence is available, involved the creation of Ofcom in 2002. This involved the consolidation of five regulatory organisations into a single body, although, in contrast to the current proposal, these organisations were previously responsible for regulating different industries.

[17] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 114, accessed January 2022.
[18] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 64, accessed January 2022.

The National Audit Office (NAO) reviewed the creation of Ofcom. Further details can be found in Box 1, overleaf, but, in general, the experience of Ofcom indicates that the scale of efficiency benefits envisaged in the IA are likely overstated. For example, the NAO concluded that Ofcom was able to achieve total efficiency savings of between 9% and 12% in its first two years. In comparison, as discussed above, the IA erroneously estimates cost savings of up to 35% whereas our analysis indicates that these efficiencies are likely to be significantly lower. Moreover, several of the key channels through which Ofcom's efficiencies were achieved are not applicable in the case of the prospective Single Regulator for IPs.

Finally, we think that two further points provide additional important context. First, the IA makes clear that certain responsibilities will be contracted out, although as highlighted these are not costed. On balance, we think that this decision will diminish the capacity for the reform to deliver efficiency savings through economies of scale. Indeed, there is a risk that outsourcing services to a very specialist market where supply is constrained could push up costs.

Second, the creation of a Single Regulator risks losing some of the economies of scale and scope currently enjoyed by ICAEW, and the IPA to a lesser extent. These organisations carry out several functions in addition to regulation, and benefit from spreading their overheads across these functions. These scale and scope benefits extend to operational and functional aspects as well: the ICAEW is able to use a combined legal team for its various regulatory and non-regulatory functions which improves staff utilisation and reduces costs.

BOX 1: EFFICIENCIES THROUGH REGULATORY CONSOLIDATION – THE OFCOM EXPERIENCE

To put these figures in perspective, Ofcom[19] was able to achieve efficiency savings of 9-12 percent in its first two years of existence.[20] Key areas for efficiency gains were the disposal of legacy regulators office property and leasing commitments – not applicable in the case of the Single Regulator – and through a reduction in staff costs through consolidation of roles and responsibilities and outsourcing operational functions.

For the new Single Regulator, **outsourcing of functions might not result in cost savings in the short term.** In fact, it is likely that these costs may increase in the short term as the regulatory systems are set up as regulatory staff are brought on board.

The efficiencies during the creation of Ofcom were managed by recruiting staff from legacy regulators using a job matching process. A full competency-based process may have been more appropriate but would have been more time consuming, as well as more expensive. The IA implies

[19] Ofcom (Office of Communications) is the UK regulator for telecommunications, broadcasting, radio and spectrum industries, as well as post (since 2012). The creation of Ofcom in 2002-2003 forms a useful point of reference to identify the potential costs involved in the creation of a new regulator. To put this in context, the setup of Ofcom took almost two years from receiving Royal Assent for the Ofcom Act in March 2002 to its vesting on 29 December 2003. The NAO considers a wider period from September 2001 to July 2005 to incorporate additional set-up processes related to legislative and organisational aspects. While the scope and industry are significantly different, the National Audit Office's (NAO) review of the costs involved in the creation of Ofcom provides helpful benchmarks to assess the proposed regulatory changes.

[20] National Audit Office (2006), The creation of Ofcom: Wider lessons for public sector mergers of regulatory agencies, paragraphs 3.12-3.13.

that the new Single Regulator will have to recruit in the 'open market', which suggests that it may have to compete with RPBs as well as IPs who will seek to hire regulatory experts to manage their interactions with the new regulator. In particular, key staff at RPBs will likely be courted by IPs who may be able to offer more attractive remuneration packages. **This will make the achievement of any staff cost efficiencies identified in the IA extremely challenging.**

The NAO identified that while Ofcom was able to achieve a reduction in headcount of 28%, this was accompanied by a reduction in staff costs of only 8%.[21] This implies that costs *per employee* increased by 28% despite the lack of a competitive hiring process. The increased costs were associated with higher compensation packages to retain more highly skilled staff. The Ofcom example indicates that achieving staff cost efficiencies identified in the IA is unlikely.

2.1.2 The one-off familiarisation cost to IPs

The IA estimates the total one-off familiarisation cost to IPs at £2.7 million**.** This is based on an assumption that each of the 1,570 IPs will require four hours to familiarise themselves with the new regulation. The time spent on familiarisation is treated as an opportunity cost as the IPs could instead be spending their time on profitable alternatives. To capture the opportunity cost, the IA has assumed an hourly rate of £431 which is scaled up to the market based on the number of currently operating IPs.

To assess the validity of the estimated familiarisation cost we have gathered evidence related to both the assumed time requirement and the opportunity cost of this time (IPs' hourly rates). In both cases, the balance of evidence suggests that the IA is likely to be conservative. Moreover, the IA assumes that there will be no familiarisation costs incurred by support staff.

Available data on hourly rates suggests, all else equal, that the methodology used by the IA would underestimate the familiarisation cost from the proposed reform by between 15% and 22%. Industry data suggest that the average IP hourly rate is higher than £431. We analysed data, provided by IPA and ICAEW, for 14 companies currently operating in the market. On average, the (mean) hourly charge out rate was £527 with a median price of £495 per hour.

Our interviews suggested that the time required for IPs to familiarise themselves with the new regulations may be longer than four hours. The IA has assumed that the familiarisation time for an IP would amount to four hours. However, a common issue raised in interviews with IPs was that the introduction of a compensation scheme adds a new complexity to the system that might require additional familiarisation time. We would emphasise that our limited sample size (six) means that considerable uncertainty relates to this point—our view, however, is that the risk is likely tilted to the upside.

The IA ignores IPs' support staff—illustrative modelling implies that incorporating this reality results in a significantly higher familiarisation cost. IPs' support staff will need to familiarise themselves with such significant regulatory changes and the time required for them can be higher

[21] National Audit Office (2006), The creation of Ofcom: Wider lessons for public sector mergers of regulatory agencies, paragraph 3.14.

compared to qualified experts such as the IPs themselves. These costs would be separate to firm-level familiarisation costs and have not been considered in the IA. Robust data on the numbers of total support staff employed by IPs and their firms and an average representative hourly rate are not available. Nevertheless, the table below provides a sensitivity check of the additional costs that could be involved under the conservative assumption that it would take support staff the same time as an IP to familiarise themselves.[22] While the hourly rates for support staff figures are illustrative they fall well within the hourly rates observed in IPA and ICAEW data from their members, suggesting that £100 is at the lower end of the range for even smaller firms and the high end of the range varying from £250 to £325, depending on firm size. The same holds for the support staff to IP ratio for which we used a very conservative range based on available data and discussions with our limited sample of interviewees. Volume providers can have a significant impact on this ratio as they employ a high number of support staff per IP.

Fig. 6. Illustrative range of opportunity costs associated with support staff familiarisation

Ratio of support staff to IPs	£100 hourly rate	£175 hourly rate	£250 hourly rate
1 support staff per IP	628,000	1,099,000	1,570,000
2 support staff per IP	1,256,000	2,198,000	3,140,000
3 support staff per IP	1,884,000	3,297,000	4,710,000

Source: Oxford Economics calculations based on sample of IPA and ICAEW members' data

Our review suggests that the **methodology used by the IA underestimates the scale of these costs**. Although not possible to gauge precisely, our best estimate is that familiarisation costs are likely to be **at least 50% higher** than in the IA.[23]

2.2 COSTS TO FIRMS AND RPBs

2.2.1 Costs to RPBs from redundancies, training and corporate restructuring

Green Book methodology treats redundancy costs as socially neutral given that they represent a transfer from the employer to employees. We do not consider it within scope to challenge the validity of this assumption, but our analysis has indicated that the estimated **value of redundancy payments** in the IA is **likely to be too low**.

- Data provided by RPBs showed a weighted average length of staff service of 6.2 years, as opposed to five years assumed in the IA.

[22] A review of a limited sample of 10 firms suggested an average of six support staff per IP and a minimum value of 1.5. The figures included in the illustrative table can therefore be considered conservative.

[23] This is based on the mid-point of our hourly rates range (i.e., 18.5%) and an additional 41% based on support staff familiarisation costs taken from Fig. 6, representing 1 support staff per IP, a conservative value, and a support staff hourly rate of £175 (i.e., the mid-range value of £100 and £250).

- The IA states that the one-off redundancy costs will not affect any small and micro businesses because the IPA has at least 50 employees based on a LinkedIn search. The IPA currently employs 36 employees which means **the one-off redundancy fees would fall on a small business.**
- In contrast to the IA's claim that any redundancies are expected to occur in London, IPA and ICAEW data highlights that 29 of IPA's current 36 employees and the majority of ICAEW employees are based outside London.

2.2.2 Firms' one-off familiarisation costs

One-off firm familiarisation costs, in addition to those that individual IPs will face, have been estimated differently for small, medium-sized, and large businesses, using the same Insolvency Practitioner rates of £431/hour across firm size but differing amounts of time required for familiarisation (15 minutes for small firms, one hour for medium-sized businesses and two hours for large businesses).[24] This is then multiplied with the total number of small, medium-sized and large businesses outlined in section 2.2.3 to derive the total one-off cost from firm regulation for each firm size category.

Our review of available evidence suggests that the estimated **familiarisation cost to firms** is **likely to be conservative**. In part, this reflects lines of argument presented in section 2.1.2. To reiterate, our analysis suggests that the assumed charge out rate for IPs, used in the IA to quantify the opportunity cost of familiarisation time, is below average market rates. In addition, the methodology used by the IA ignores costs to firms resulting from the time required for support staff to familiarise themselves with the new regulation.

In addition, depending on the nature of changes to firm regulation, a subset of firms could be required to introduce non-trivial changes to systems, processes, or documentation. These types of material cross-cutting changes have not been included in the IA's familiarisation time estimates. Most of the IPs we interviewed commonly highlighted that if system, process, or documentation changes are required in response to the new regulation then the familiarisation time accompanying such changes would be considerably higher compared to the IA estimates. Three of our interviewees, however, highlighted that such additional familiarisation costs are much less likely to apply to larger firms that already have established compliance systems in place and relatively automated processes rolled-out across their organisation.

Our review suggests that the **methodology used by the IA underestimates the scale of these costs**. Although not possible to gauge precisely, our best estimate is in line with our estimate presented in section 2.1.2 that familiarisation costs are likely to be **at least 50% higher** than in the IA.

[24] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraphs 71-73, accessed January 2022.

2.2.3 Ongoing costs from firm regulation fees

The IA assumes that 478 small businesses will need to pay an ongoing fee of £50 every year.[25] 113 medium-sized and large businesses are assumed to cover the remaining total ongoing cost to the Insolvency Service, which is expected at £0.7 million.[26]

The IA reports a total 587 insolvency businesses, and it classifies 478 of them as small businesses and 113 as medium-sized or large.[27] **The number of small businesses (478) plus the number of medium-sized and large businesses (113) adds up to 591 total business and does not tally with the reported total**.

We have not been able to validate the expected ongoing cost to the Insolvency Service of £0.7 million as there is no further information provided.

2.2.4 Costs to comply with firm regulation

The IA estimates the total ongoing annual costs to businesses of complying with firm regulation as £1.1 million, composed of opportunity costs of:

(1) annual registration and compliance (all firms): £0.1 million;
(2) additional registration and compliance requirements (large firms only): £0.9 million; and,
(3) investigations and firm visits (large firms only); £0.1 million.

The hourly rate used in the IA calculation depends on the size of the firm and the complexity of regulatory tasks. Further, as highlighted in section 2.1.2, the average IP hourly rate is likely to be higher than the £431 hourly rate in the IA. It is also likely that the hourly rates for a Senior Responsible Person might be higher than those of the average IP. For example, at a national IP practice with a number of regional offices, the typical hourly rate for a Director or a Senior Manager carrying out complex work would be £656 per hour and £556 per hour, respectively, 52% and 29% higher than the hourly rate used by the IA (coincidentally, the same as the hourly rate for a Manager carrying out complex work at a national practice).

As things stand, given the limited amount of detail on the regulatory requirement, the associated costs to firms are highly uncertain. Without additional detail on the specific requirements of visits in relation to firm regulation, it is not possible to gauge the appropriateness of the IA assumptions on the number of visits and the time required for this.

2.2.5 Costs to firms from compensation

The IA estimates the total cost to firms and IPs from compensation under the new Single Regulator to be £0.76 million based on the increased costs of insurance. This is calculated by applying the

[25] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 90, accessed January 2022.
[26] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 91, accessed January 2022.
[27] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraphs 90-91, accessed January 2022.

insurance loss ratio of 65% to an expected cost to business from compensation payments of £0.5 million. In other words, it is estimated by dividing £0.5 million by 65%.[28]

The expected costs from compensation, of £0.5 million, are estimated by combining:

i) Compensation for undue distress or worry of £0.05 million, estimated by combining the number of complaints not related to the sale/dealing of assets of 416 in 2019[29], and the expected value of the compensation payable for undue stress of £125 (calculated as the average of £0 and the maximum cap, of £250, under the Insolvency Service for Official Receivers).[30]
ii) Higher compensation costs of £0.44 million, estimated by combining:
   - the estimated number of IPs against whom complaints are likely to be upheld, i.e., five based on the number of complaints relating to the sale/dealing of assets in 2019 of 12[31] and assuming 38% are upheld based on the Financial Ombudsman Service statistics on complaints data on all financial products and services[32]; and
   - an expected compensation amount per upheld complaint, of £88,000 (based roughly on the 25th percentile of £0 and the maximum cap for compensation for acts or omissions under the Financial Ombudsman Scheme of £355,000[33]).

We believe that the IA assumption of 38 percent of the share of upheld complaints relating to sale/dealing of assets may not be applicable to IPs/firms. The Financial Ombudsman Service's statistics relate to all financial products including current accounts, credit cards, car or motorcycle insurance, personal loans, and packaged bank accounts.

The estimates above exclude the costs to businesses from additional legal expenses, administrative costs, and other associated costs relating to complaints. Firms and IPs will incur these costs even in cases where the complaints do not result in sanctions. Data on regulatory sanctions for 27 upheld complaints showed that a total of £28,700 was collected as contributions to legal costs in 12 instances by the RPBs. This is equivalent to a (mean) average of £2,400 and the median cost was £2,200 per complaint. To put this estimate in perspective, this is roughly equivalent to a single day's cost for investigating legal claims during the insolvency process.[34]

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[28] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 106, accessed January 2022.

[29] Annual Review of Insolvency Practitioner Regulation 2019, table 12. https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2019/annual-review-of-insolvency-practitioner-regulation-2019.

[30] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 103, accessed January 2022.

[31] Annual Review of Insolvency Practitioner Regulation 2019, table 12. https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2019/annual-review-of-insolvency-practitioner-regulation-2019

[32] Financial Ombudsman Service, Quarterly Complaints Data, https://www.financial-ombudsman.org.uk/data-insight/quarterly-complaints-data

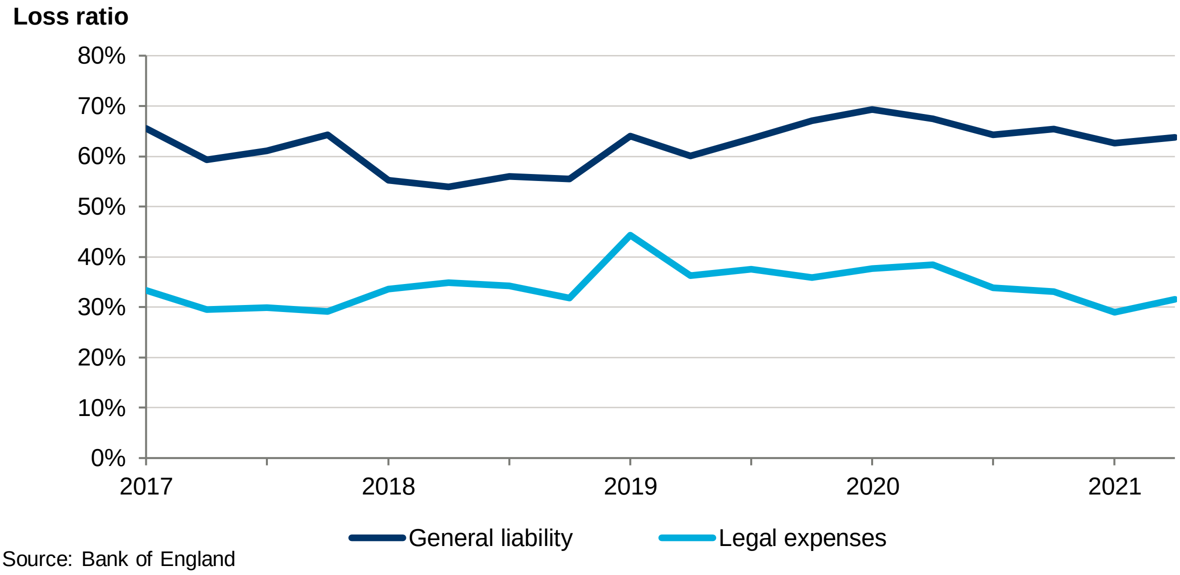
[33] Financial Ombudsman Service, Compensation, https://www.financial-ombudsman.org.uk/consumers/expect/compensation

[34] R3, 'Insolvency fees and the cost of regulation: the detail behind the headlines', 2022. Page 17. Average hourly rate of £289.49 translated into a day rate of £2,315 (based on an 8 hour workday).

Assuming that this total amount represents in equal measure the legal expenses incurred by IPs themselves and scaling these up by the number of complaints in 2019[35] gives us an estimate of £0.95 million per year in expected legal expenses.

Further, the loss ratio to insure legal expenses, of around 35 percent, is significantly lower than that of general insurance claims, of 65 percent, used in the IA assessment (as shown in Fig. 7 below).[36] **This translates into approximately £2.7 million in higher insurance premiums associated with legal expenses.** We believe this estimate is conservative as it is likely that the expenses incurred by IPs are higher than the amount paid as compensation for legal costs to the RPBs.

Fig. 7. Loss ratio for general liability and legal expenses, 2017Q1-2021Q2



Source: Bank of England

2.2.6 Overview of monetised costs and benefits

The figure below provides an overview of the monetised costs and benefits that have been quantified both in the IA and the Oxford Economics review.

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35 Annual Review of Insolvency Practitioner Regulation 2019, table 12. https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2019/annual-review-of-insolvency-practitioner-regulation-2019.

36 Bank of England, Performance metrics for key lines of business (non-life sector), https://www.bankofengland.co.uk/statistics/insurance-aggregate-data-report

Fig. 8. Monetised costs and benefits quantified in both the IA and the review by Oxford Economics

IA costs and benefits	IA quantification[37]	Oxford Economics Review
Ongoing benefit to IPs from lower fees *(IA paragraphs 107-115 and Oxford Economics report section 2.1.1)*	A. Current cost of regulation: £6.4 million B. Future cost of regulation: £4.1 million Ongoing benefit to IPs from lower fees: A-B = **£2.3 million**	A. Current cost of regulation: £5.3 million B. Future cost of regulation: over £4.1 million Ongoing benefit to IPs from lower fees: A-B = maximum of **£1.2 million**
Familiarisation cost to IPs *(IA paragraphs 66-69 and Oxford Economics report section 2.1.2)*	A. Number of IPs: 1,570 B. Familiarisation time required: 4 hours C. Average hourly IP rate: £431 One-off familiarisation cost to IPs: A*B*C = **£2.7 million**	A. Number of IPs: 1,570 B. Familiarisation time required: at least 4 hours C. Average hourly IP rate: 15% to 22% higher than £431 D. Additional support staff familiarisation costs: over 23% of total IA value One-off familiarisation cost to IPs: (A*B*C) + D = best estimate of at least 50% higher than IA value, i.e., over **£4.05 million**
Familiarisation cost to IP firms *(IA paragraphs 70-73 and Oxford Economics report section 2.2.2)*	£0.1 million	Based on IP familiarisation costs, apply a minimum 50% uplift to IA value. **One-off familiarisation cost to firms: £0.15 million**
Costs to firms from compensation *(IA paragraphs 100-106 and Oxford Economics report section 2.2.5)*	£0.76 million	Legal expenses of £0.95 million and loss ratio of 35% = additional £2.7 million cost associated with legal expenses Total cost to firms from compensation: 2.7+0.76 = £3.46 million

3. POTENTIAL WIDER CONSEQUENCES OF THE PROPOSED REFORM

The proposed reform would entail fundamental changes that might have significant implications for the insolvency profession and customers through several channels. Based on our conversations and wider reading we have identified three major areas, bulleted below, that are worthy of further consideration.

The three areas discussed in this chapter are:

- Potential issues during the transition period
- The impact on competition and, therefore, choice for customers; and
- The impact of changes in regulatory incentives due to the new governance structure.

3.1 POTENTIAL ISSUES DURING THE TRANSITION PERIOD

The IA suggests that the process of setting up a new regulator might take between two and four years, but also highlights the risk that the process may take longer depending on legislative time.[38] The early days of the life of a regulatory agency are often seen as critical in setting expectations for the future. However, they also constitute a fragile time in the life of the regulatory body as statutory frameworks and a common understanding of roles and responsibilities are being developed. There is consensus that these moments are significant for subsequent agency life.[39]

A prolonged period of uncertainty around the transition phase may lead to **moral hazard** among various market participants, and a **potential regulatory vacuum due to staff movements**. Further, the IA has not yet estimated the **costs likely to be incurred during the set-up and transition phase**. We discuss each of these in turn in this section.

3.1.1 Moral hazard

The IA recognises that there would be a risk of moral hazard on the part of RPBs as the transition period comes to an end.[40] However, the IA ignores the risk of moral hazard **on the part of the IPs or creditors** who may take on additional risks during the transition period. The problems created by this issue may be exacerbated as the transition is likely to occur in a post-pandemic period when insolvencies can be expected to be at historically high levels.

The lack of an established complaints-handling mechanism during the transition period may create a period of legal uncertainty, and certain market participants may risk potentially illegal behaviour in the knowledge that any future complaints may not be upheld by courts purely on the grounds that the legal framework was not clear. IPs, RPBs and subsequently the new Single Regulator may have to incur

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[38] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 33, accessed January 2022.

[39] Elizondo and Dussauge-Laguna, *Steering regulatory agencies through their infancy,* LSE Risk & Regulation, Summer 2019. https://www.lse.ac.uk/accounting/assets/CARR/documents/R-R/2019-Summer/190701-riskregulation-08.pdf

[40] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 119, accessed January 2022.

potentially avoidable additional administrative and legal expenses to handle complaints raised purely to take advantage of the transition period.

3.1.2 Skills shortage during the transition

The IA highlights the risk of understaffing during the initial days of the new Single Regulator as a key concern. It proposes mitigating this risk through a flexible open-ended transition period, which could be extended if necessary, to ensure that a fully functional Single Regulator is in place.[41] While some personnel may move to the new Single Regulator and take on regulatory responsibilities in a transitional arrangement, RPBs and IPs interviewed by us indicated that a significant number of RPB personnel may move to other IPs or remain with RPBs in different roles. This may create a shortage of skilled regulatory staff overseeing the market during the transition period.

Post-recruitment training may require extensions to the transition period which could increase regulatory uncertainty, especially if it proves difficult to hire skilled and experienced staff. The Single Regulator may need to hire staff without specific experience in IP-regulation to fill the gap left by RPB staff. For example, we understand from the ICAEW that it takes them six months or more, depending on the trainee's prior experience, to train a newly hired staff member with Insolvency qualifications (i.e., the Joint Insolvency Examination Board, or JIEB) before they are able to conduct visits independently. Our understanding from RPBs is that the required skills are mainly obtained through on-the-job learning which comes with experience but consequently would extend the transition period.

3.1.3 Set-up and transition costs

The IA does not quantify additional costs that may accrue to the Government or the Single Regulator during the set up or transition period. These costs, around the recruitment and training of current staff, setting up of IT systems, etc., are not included in the IA as they are not known at this stage, but are expected to be identified during the project set up phase.[42] Unlike Ofcom, the new Single Regulator will not be able to inherit legacy systems and will have to incur potentially significant set up costs. Our analysis suggests that these costs may be substantial and, therefore, should be formally considered before the introduction of any new regulation.

In the context of a Single Regulator, it is likely that significant funds would be required upfront to create a financial reserve required to fund cases in advance of potential fines. Further, in addition to staffing and IT systems costs identified (but not quantified) in the IA, costs will be incurred as policies and systems are set up and governance arrangements, such as the complaints gateway and the compensation scheme, are finalised.

The NAO report on the creation of Ofcom highlights the importance of set-up and transition costs, and how these may substantially add to the costs of the new regulator. The NAO estimated set up costs of around £79.3 million comprising planning, design, accommodation, recruitment, and IT

[41] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 119, accessed January 2022.

[42] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 134, accessed January 2022.

system design as well as transition costs accruing to legacy regulators.[43] Of the £79.3 million costs, legacy regulators' liabilities comprised £33.6 million and financing costs amounted to £4.5 million. Excluding these, Ofcom's set-up costs (£41.2 million) accounted for close to a third of its first-year operating expenditure of £122 million.

The setting up of the new Office for Professional Body Anti-Money Laundering Supervision (OPBAS) in 2018 provides another useful reference point for these costs. OPBAS, under the auspices of the Financial Conduct Authority (FCA), oversees professional body supervisors for money laundering to ensure a robust and consistent standard of anti-money laundering supervision across the legal and accounting sectors. According to the FCA, OPBAS' set-up costs were approximately £0.5 million comprising employment costs in addition to overheads such as accommodation, IT, and common services. To put these figures in perspective, OPBAS' set-up costs were roughly a third of its ongoing operation costs of £1.45 million in its first year of operation in 2018/19.[44] The OPBAS figures indicate that the inclusion of set-up costs could significantly alter the balance of costs and benefits of the new Single Regulator.

The costs of setting up the Single Regulator will depend heavily on the scope of regulation and the systems and staff required. Applying a rule of thumb measure of a third of estimated annual ongoing costs, based on the OPBAS and Ofcom examples, provides an estimate of £1.61 million in set-up costs. It should be reiterated that a more appropriate estimate of set-up costs should be based on bottom-up estimates based on the specifics of the proposed regulatory structure.

3.2 THE IMPACT ON COMPETITION AND CHOICE FOR CUSTOMERS

The IA, while in line with established government guidance (except otherwise specified in this report), does not give prominence to the impact of the proposed regulation on dynamic competition and the process of innovation in the IP market. The Competition and Markets Authority has identified that greater regulation typically reduces competition, and that policy makers must consider the costs of reduced competition, but this is not included in the regulatory IA template.[45]

The IA estimates the proposed reform to yield a *maximum* benefit of £2.3 million accruing equally to all IPs irrespective of size. [46] However, as shown in Section 2, our analysis indicates that it is unlikely that these benefits will be realised, and in fact, the proposed regulatory reform may lead to additional *costs* to IPs. If shared equally among IPs, the burden of these additional costs can be expected to fall disproportionately on IPs in micro and small businesses who constitute an estimated 46 percent of the profession.[47]

[43] National Audit Office (2006), The creation of Ofcom: Wider lessons for public sector mergers of regulatory agencies, table 5.
[44] Financial Conduct Authority (2019), Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS): further consultation on fees structure 2, CP19/13., paragraphs 2.15-2.16.
[45] *Regulation and Competition: A review of the evidence,* UK Competition and Markets Authority, January 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857024/Regulation_and_Competition_report_-_web_version.pdf
[46] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 128, accessed January 2022.
[47] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 127, accessed January 2022.

While small and micro businesses are expected to be exempt from firm regulation fees, the costs associated with handling complaints and visits will further add to the burden on businesses. Large businesses, and to some extent medium-sized businesses, typically have dedicated compliance teams and can benefit from economies of scale with respect to the opportunity costs of firm regulation. However, the burden of these measures may be disproportionate for small and micro businesses who may struggle to find resources to comply with the additional requirements of firm regulation.

A number of studies have highlighted how increased regulatory burden on small businesses in various markets has created barriers to entry and reduced competition in the market (see Box 3). A reduction in competitive intensity in the market—either through barriers to entry or through the exit of smaller firms—increases the market power of larger firms which in turn is likely to increase prices for end-customers.[48] Other impacts of reduced competition in the market include a reduction in quality of services and a slowdown in innovation.

BOX 3: RECENT STUDIES ON THE IMPACT OF INCREASED REGULATORY BURDEN ON SMALL BUSINESSES

Several studies have highlighted the potentially anti-competitive impacts of increased regulatory burden on small businesses:

- In a theoretical paper, Campbell, *et al*. (2015)[49] looked at the case of consumer data privacy regulation. They built a model which demonstrated that the requirements that were placed on companies to protect consumers would disproportionately affect smaller businesses. In their paper they showed that larger firms who were more likely to offer a suite of services would face a relatively smaller cost from asking for consent from a consumer relative to the benefit they offer, compared with a new and smaller entrant who might offer only a single service. This would make it more difficult for a new and smaller firm to enter the market and attract users.
- The impact of entry restrictions created by state certification processes was studied by Ohsfeldt and Li (2018)[50] in the context of the health sector in the US. They compared the impact on the quality of home health agencies (HHA) in states with certificate-of-need ("CON") programmes with those in states without such restrictions on entry. They found that HHAs in states with CON programmes were less likely to have 'High' quality ratings, and more likely to have 'Medium' quality ratings, compared to HHAs in states without the CON restrictions on entry.

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[48] RBB Economics. *Cost pass-through: theory, measurement and potential policy implications. A Report prepared for the Office of Fair Trading.* February 2014. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf

[49] Campbell, J., Goldfarb, A., & Tucker, C. (2015). Privacy regulation and market structure. Journal of Economics & Management Strategy, 24(1), 47-73.

[50] Ohsfeldt, R. L., & Li, P. (2018). State entry regulation and home health agency quality ratings. Journal of Regulatory Economics, 53(1), 1-19.

- The case of regulatory barriers has been more generally explored by Bailey and Thomas's (2017)[51] study of the impact of regulation in 215 different industries in the US. Their study showed that more-regulated industries experienced fewer new firm births and slower employment growth. They also found that that large firms were less likely to exit a heavily regulated industry than small firms.

Even if the financial costs to smaller businesses were designed to be proportional to their size, they may be at a disadvantage in engaging with regulators on issues relevant to small businesses. Larger incumbent firms would have the resources to dedicate to engaging with regulators and regulatory processes (e.g., consultations about changes to existing regulations) whereas smaller firms may not have the same resources to devote to these activities. For instance, McNally, *et al.* (2018)[52] point to a lack of participation on the part of smaller ISPs in the development of policies that directly affected them in relation to the provision of broadband services in remote and rural areas and indeed a lack of understanding of various policy mechanisms.

3.3 CHANGES IN REGULATORY INCENTIVES DUE TO THE NEW GOVERNANCE STRUCTURE

The Government's proposal is to create a new independent single regulator that will sit within the Insolvency Service. This would alter the incentives of various market participants.

The proposed regulatory reform would, in theory, address the principal-agent problem identified by the IA in the current regulatory system due to RPBs' conflicting interests to maintain their IP membership numbers and enforce discipline. The IA does not provide any indication or guidance on the extent to which these principal-agent problems may have distorted regulatory priorities or led to regulatory arbitrage in the current setting.

However, the suggested regulatory reform raises questions about the regulator's independence from the Government, which would need to be addressed through the implementation of a robust governance structure. Two other key points for consideration that are not addressed in the IA are the role of the Insolvency Service in appointing and managing Official Receivers and, more generally, the Government's role in providing effective oversight and feedback to the regulator. We address these four points in turn below.

3.3.1 Potential principal-agent problem due to RPBs' regulatory responsibilities

Taking regulatory responsibilities away from RPBs would, in theory, correct any principal-agent issues that may have been created in the current regulatory set up. As identified in the IA, RPBs were previously responsible for enforcing discipline among IPs but also had conflicting interests in maintaining their memberships, which could, according to the IA, create incentives to relax their disciplinary processes. The IA further argues that RPBs may choose to enfeeble their regulatory enforcement to attract greater membership, which could lead to the emergence of regulatory

[51] Bailey, J. B., & Thomas, D. W. (2017). Regulating away competition: The effect of regulation on entrepreneurship and employment. Journal of Regulatory Economics, 52(3), 237-254.

[52] McNally, M. B., Rathi, D., Joseph, K., Evaniew, J., & Adkisson, A. (2018). Ongoing Policy, Regulatory, and Competitive Challenges Facing Canada's Small Internet Service Providers. Journal of Information Policy, 8, 167-198.

arbitrage.[53] Based on our review, however, we are not able to comment on the extent to which principal-agent conflicts may have distorted regulatory priorities to-date.

3.3.2 Independence of regulators from regulated entities and the government

The independence of regulators is important as they must often balance competing needs from both regulated entities and the Government. Regulators must demonstrate impartiality, objectivity and consistency in carrying out regulation, and must act without conflict of interest, bias or undue influence.

An OECD survey of regulators[54] identifies a number of areas through which the independence of regulatory agencies can enhance the role of regulation in minimising market failures. When industry self-regulation or co-regulation exists and appears not to resolve market failures, there may be benefits from the creation of new independent regulators. However, a careful weighing of the costs and benefits of introducing a new regulatory structure is important. The OECD Roundtable on independent sector regulators highlighted the need to consider these given "the unanticipated consequences that can flow from regulation, and the potential for political intervention and political influencing activities once regulation is put in place".[55]

It is important to protect the independence of the regulator from regulatory oversight, especially in high profile liquidations. An independent regulator should be able to resist pressures to ease regulation at the expense of long-term maintenance of service quality in the regulated sector. The regulator's long-term mandate beyond the electoral cycle can help resolve time inconsistency and fluctuations linked to political as well as economic business cycles.

The proposed Single Regulator—a combined oversight and regulatory body—does not *per se* create an environment of independence required to give customers and IPs confidence in the regulatory body. Taking on regulatory responsibilities may be perceived as biasing the Insolvency Service's view on regulatory decisions which would have knock-on consequences for economic confidence. Further, given HMRC's role as a secondary preferential creditor following the Finance Act 2020, a government regulator may not be perceived to be fair and equitable in its treatment of claimants in the insolvency process. Similarly, the RPS, which pays employees sums owed by their employers, is a preferential creditor and currently sits within the Insolvency Service. The proposed Single Regulator would not be perceived to be fair and equitable if the RPS continues to remain a constituent part of the Insolvency Service.

Typically, regulators are accountable to Parliament through their sponsoring departments which sit outside the regulators. Most regulators have a distinct legal entity, either as non-ministerial departments (e.g., Ofwat), or as public corporations (e.g., the Civil Aviation Authority). Even where

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[53] Insolvency Service, "Review of Insolvency Practitioner Regulation", 2021, paragraph 25 III., accessed January 2022.

[54] OECD (2016), *Being an independent regulator,* The Governance of Regulators, OECD Publishing, Paris. https://read.oecd-ilibrary.org/governance/being-an-independent-regulator_9789264255401-en#page4

[55] *Executive Summary of the roundtable on Independent Sector Regulators,* OECD Directorate for Financial and Enterprise Affairs, Competition Committee, Annex to the summary record of the 68th meeting of Working Party 2. https://one.oecd.org/document/DAF/COMP/WP2/M(2019)2/ANN2/FINAL/en/pdf

regulators are independent bodies, formal arrangements are often put in place to ensure regulatory independence. These include budget independence, conditions for the appointment or dismissal of key staff, accountability and reporting to executives and to the market. It is not evident from the current proposals how a combined regulator would encourage independence along these dimensions. Within the proposed Single Regulator's combined structure, an even larger number of safeguards and protections will need to be put in place than would be the case with an independent regulatory body.

3.3.3 Appointment and oversight of Official Receivers

The Insolvency Service also provides Official Receivers (ORs), who are civil servants appointed by the court in bankruptcy, and compulsory winding up appointments. ORs are not regulated to the same extent as IPs, do not require approval of fees from creditors, and do not have the same transparency or disclosure requirements. With the Insolvency Service taking up regulatory responsibilities, the lack of regulatory oversight for ORs—part of the new Single Regulator—will be inconsistent with the burden on private IPs carrying out the same function.

In large or complex cases, the OR may appoint an IP as a special manager to assist with the case. High profile liquidations of Carillion in 2018 and Thomas Cook in 2019 were both overseen by ORs with IPs appointed as special managers. In these situations, the IPs' fees must be approved by the Insolvency Service. This may create a situation where the regulatory responsibilities of the Single Regulator, which must maintain its independence from the workings of the market, will conflict with its responsibilities as the provider of ORs.

3.3.4 Government oversight of the regulator

Finally, having the regulatory oversight function within the regulator reduces the ability of the government to examine and publicly express its views on the functioning of the market and the role of the regulator at an arm's length—a valuable outcome of having an independent regulator, as highlighted by Cathryn Ross, Ofwat Chief Executive.[56] As highlighted above, HMRC's role as a preferential creditor in the insolvency process may create conflicting interests for the Government as an overseer of the regulator. This may further limit the government's ability to provide feedback to the regulator or introduce legislative and regulatory policy 8changes in an independent and timely manner.

[56] *The future of Independent economic regulation,* Keynote lecture at the London School of Economics, Centre for Analysis of Risk and Regulation, 20 June 2017. https://www.ofwat.gov.uk/wp-content/uploads/2017/06/The-future-of-independent-economic-regulation-keynote-lecture-by-Cathryn-Ross-at-London-School-of-Economics.pdf

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Annex B

2021 Insolvency Service Monitoring Report on the IPA

IPA Monitoring Report: visit 21st – 25th June 2021

Published 11 February 2022

Summary

This report presents the findings of the Insolvency Service's monitoring visit to the IPA in June 2021. The visit also included examination of progress in relation to recommendations made by the Insolvency Service between 27-29th January 2020.

Welcome innovations and improvements have been made by the IPA, especially in relation to monitoring.

In response to previous findings and recommendations, we found good progress had been made by the IPA to ensure that the complaints and monitoring teams were working collaboratively. This has contributed to the significant reduction in delays previously identified in progression of complaints, and in relation to follow up for monitoring visits.

The IPA has also employed new staff all of whom have relevant qualifications and experience in insolvency.

The IPA is in the process of fully implementing some previous recommendations; and this report makes further recommendations in relation to complaints and committee outcomes.

The recommendations set out in this report are based on the evidence reviewed at this visit, and subsequent observation of the Regulation and Conduct Committee (RCC).

Context

The Insolvency Service has overall responsibility on behalf of the Secretary of State for ensuring that the activities of the Recognised Professional Bodies (RPBs) (which are responsible for authorising and licencing Insolvency Practitioners) are compatible with the regulatory objectives set out in Part XIII Insolvency Act 1986, insofar as is reasonably practicable; and which the RPB considers most appropriate for the purpose of meeting those objectives.

Amongst other things, the objectives include having a system of regulating Insolvency Practitioners that secures fair treatment and consistent outcomes; that encourages the profession to provide high-quality services at a fair and reasonable cost; that encourages IPs to act transparently and with integrity and promote the maximisation of returns to creditors; and protects and promotes the public interest.

As part of its statutory oversight activities, the Insolvency Service undertakes monitoring visits to the RPBs.

The Insolvency Practitioners' Association (IPA) is an RPB that authorises and regulates Insolvency Practitioners as defined under s391 Insolvency Act 1986.

The IPA is the second largest RPB by the number of IPs regulated and the largest by the number of cases. On 1 January 2021, the IPA licenced 615 practitioners of whom 522 were authorised to take insolvency appointments; and its regulated population covers 41.5% of the Insolvency Practitioner market, including several practitioners working at the UK's largest IVA providers.

Scope of the visit

The Insolvency Service carried out a monitoring visit to the IPA between 21st and 25th June 2021. The visit was undertaken remotely using video conferencing and file sharing software. The Insolvency Service agreed the scope of the visit in advance, which included a review of all regulatory functions as follows:

- An assessment of progress against the recommendations from the 2020 report (published September 2020) following our monitoring visits in 2018 and 2019.
- Monitoring of Insolvency Practitioners, including those who work in the volume IVA sector.
- Complaints' handling.
- The Regulatory and Conduct Committee (RCC).
- Authorisations of Insolvency Practitioners.
- Bonding by Insolvency Practitioners.
- Risk profiling.
- Use of Advisory Notices. And
- IPA's approach to poor advertisement by lead generators.

Annexes to this report include:

- a schedule of the pre visit information requested; and
- a schedule of recommendations with responses from the IPA.

Progress against previous recommendations

The following recommendations were made following a monitoring visit to the IPA which took place between January and May 2020 and reported in September 2020.

The IPA has made progress against many of these, particularly the development of risk profiling and in reviewing complaint files to ensure timely updates to all parties.

Recommendation

The IPA should ensure that full reasons for decisions of the RCC are always recorded.

Progress

The minutes have been developed to include more information than those previously reviewed, however there remains some further work to be done, particularly to make clear the rationale for a sanction including in those cases where consideration must be given to whether the Insolvency Practitioner remains a fit and proper person to hold a licence, and in documenting application of the Common Sanctions Guidance (CSG) as a factor in arriving at a fair outcome.

We are aware of forthcoming changes planned by IPA on this.

Recommendation

To avoid unnecessary delays, the secretariat should ensure that, in addition to the relevant report at the meeting, all the relevant information about the practitioner can be made available to the committee (including, recent monitoring reports, advisory notices, sanctions and intelligence). Where appropriate, this information can be put to the committee after a prima facie case is found.

Progress

Implemented.

At the observed RCC, following the finding of a prima facie case on all allegations, the RO had precedent and regulatory history information available.

Recommendation

The secretariat should consider further training for the committee on the different types of decision it may be expected to make, including in relation to allegations attached to monitoring visit reports.

Progress

Members of RCC now receive yearly training from IPA. At one of the observations of the RCC, members needed guidance on the decisions they were being asked to make and next steps which did show a degree of lack of understanding and confidence.

Recommendation

Pending introduction of its new IT system, the IPA should ensure that all correspondence is recorded and replied to within its published timeframes.

Progress

The IPA has made significant progress and has introduced a new IT programme, Microsoft Planner, which has ensured greater cross-team working and an ability to track progress of complaints.

Recommendation

The IPA should undertake a review of all complaint files to ensure that they are up to date.

Progress

Implemented.

This was completed after the January 2020 visit.

Recommendation

The IPA should ensure it substantively contacts all parties to a complaint at least quarterly, that all direct contact with the IPA is responded to in accordance with its published time frame, and that timeliness is monitored by the senior regulation officers who manage the complaints teams.

Progress

There were fewer cases at this visit which evidenced delays in keeping all parties appraised of progress, however there were still some examples of failure to provide quarterly updates.

Recommendation

The IPA should [explore] fully all [matters] put to the practitioner, in order to be able to evidence why an allegation was not put to the RCC for consideration.

Progress

IPA have amended their RCC reports and more information is now provided to the committee. No cases were sampled on this visit where there were concerns that not all of the matters raised by the informant were reviewed.

Recommendation

The IPA should consider how the advisory notices should feed into the complaints process for the RCC, including whether details of previous notices (for example, relating to a similar breach) should be noted in the complaint report and whether training needs to be provided to explain their significance to members of that committee.

Progress

The advisory notices are now being used more regularly as a tool to educate and warn practitioners of the IPA's expectations as their regulator.

Recommendation

The IPA should use all tools available to accurately risk profile practitioners into appropriate categories so that resource can be targeted to the highest risk practitioners.

Progress

Risk profiling has been further developed, with increased metrics and additional criteria to place practitioners in one of five categories. This feeds through into the amount of time between scheduled routine visits.

Recommendation

The IPA should report all advisory notices to the Insolvency Service in the same way it does with any other disciplinary or regulatory action.

Progress

This had not been actioned by the IPA however the Insolvency Service is now receiving notifications.

Recommendation

When the IPA inspectors listen to a SIP 3.1 advice call, they should consider whether there is evidence that an individual voluntary arrangement is an appropriate solution for the debtor and that it strikes a fair balance between the interests of the debtor and creditors (para 5 of SIP 3.1).

Progress

The IPA has employed three call reviewers in addition to the dedicated 3 inspectors, allowing targeted focus on this aspect of the IVA process.

Recommendation

Allegations put to the RCC for breaches of SIP 3.1 should consider requiring the Insolvency Practitioner to restore the debtor’s position where there is evidence that an IVA was not an appropriate solution and did not strike a fair balance between the interests of the debtor and creditors.

Progress

Whilst we did not see any VPR cases on this visit where this scenario occurred, we did see evidence in a non-VPR IVA case of the sample selected in which the IPA considered whether it could order restoration of the position of the consumer because the IVA may not have been the most appropriate solution. This was not, however, ordered.

Monitoring of Insolvency Practitioners

The files sampled during our visit represented a mix of monitoring inspections to volume IVA providers, mid-size firms and sole practitioners across a mix of full and targeted visits. In each case the IPA provided electronic copies of all documents relating to the visit strategy, risk profiling, queries raised by the inspector with the practitioner whilst onsite, and file inspection reports.

The monitoring team comprised five inspectors with a range of experience in practice (three of whom have joined the IPA since early 2020 following previous departures); and a manager who took up post in September 2020. In addition, the VPR-monitoring team includes three inspectors, including one trainee; three part-time call reviewers; and a part-time member of administrative staff. All are overseen by the Chief Inspector.

During the period 1 May 2020 to 20 April 2021 the IPA conducted monitoring visits to 94 Insolvency Practitioners, 18% of its appointment-taking population, and undertook desktop monitoring on a further 9 practitioners. Fourteen inspections were ongoing at the time of our visit. These figures exclude monitoring of the volume provider market, which is covered by the IPA's Volume Provider Regulation scheme and is covered separately below.

Risk Profiling

As part of the risk profiling process, the IPA assesses each practitioner against several criteria to determine a risk category, which is then monitored and updated from the IPA's own intelligence by a member of the inspection team on a monthly basis. Since the last monitoring visit, the IPA has introduced additional criteria to refine this process. Factors considered include, but are not limited to:

- Previous complaints
- Disciplinary record
- Advisory notices
- Regulatory findings
- Practice profile – for example, size, geography, experience, case profile and source
- Anti-money laundering (AML) risks

The IPA has also expanded its risk categories from three to five: low, medium-low, medium, medium-high and high. The frequency of monitoring visits is planned according to these categories, ranging from annual visits for a high-risk practitioner to every 6 years for a low-risk practitioner, supplemented by self-certification in the intervening period and ongoing analysis of risk and compliance (ARC). As of 30 April 2021, 71 practitioners were categorised as high risk (down from 95 at the January 2020 visit).

The IPA acts as AML supervisor for approximately 180 firms and has a separate risk register for this purpose. The IPA also utilises its discussions with the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) to feed into its general Insolvency Practitioner monitoring risk profile. Whilst all inspection visits cover AML considerations as standard, specific AML monitoring will be undertaken either as a standalone activity or be incorporated into the IPA's Insolvency Practitioner monitoring visits.

Overall, the IPA reports it has found that better risk profiling has benefitted its teams in allowing better highlighting of risk and more appropriate application of resource, including that they are able to be more focussed by targeting smaller case samples.

The development of the risk profile to include more risk matrix criteria and expand the categories of practitioners is welcomed. The IPA has stated that further work will be undertaken to ensure the profile is utilised to its full potential, and fully to use the expertise and knowledge of inspectors when inputting subjective responses to matrix questions.

Inspector engagement with Insolvency Practitioners and visit planning

For newly authorised practitioners, the IPA reviews bordereau submissions[1] to determine when IP appointments commence, and it plans visits from this point rather than relying on the date of authorisation to schedule initial inspections. A member of the monitoring team will also call a new practitioner to gauge what structures they have in place, the type of appointments they are taking/planning to take, and what support they might be receiving, for example from other practitioners at a firm.

The IPA has also implemented a point of contact for vulnerable Insolvency Practitioners, alongside drafting its own vulnerable Insolvency Practitioner policy, to offer support to Insolvency Practitioners who are experiencing their own difficulties, or who are dealing with clients with vulnerabilities.

Visits are scheduled up to two quarters in advance, with flexibility built in for any follow up or ad hoc visits that may be required, for example as a result of RCC findings. A pre-visit questionnaire (PVQ) is issued for completion by the practitioner, which is reviewed alongside the IPA's own intelligence, where available. This information informs the visit strategy and sample of cases.

We welcome the introduction of these procedures and will monitor progress of their use and impact.

Inspection reports and post visit procedures

An inspection report is produced after all visits. It records major and minor findings, any advisory notices issued, and other non-mandatory recommendations. The Insolvency Practitioner is invited to respond to the points made within 15 working days of issue, and any follow up actions can be recorded by the inspector upon receipt.

Due to the Covid-19 pandemic, most visits have been undertaken remotely, using file sharing systems such as Egress and SharePoint to access casefiles.

The IPA had already started to move towards undertaking some visits remotely, so the health restrictions during 2020 accelerated impetus to move to this way of working. The IPA has found that practitioners generally have engaged well with the new processes. Where more serious concerns or other issues are discovered, teams are remaining flexible, and will undertake on-site visits or use a hybrid approach.

The hybrid approach to inspections has proved to be a positive development for the IPA and is expected to give productivity gains as well as enabling the IPA to develop a more flexible plan of inspections more tailored to practitioners' practice and risk profile.

Volume Provider Scheme (VPR) monitoring

Insolvency practitioners registered for the IPA's VPR scheme are subject to continuous monitoring, including one full review and up to four focussed reviews per year, with monthly meetings for individual member firms and quarterly meetings across the member group.

During the period 1 May 2020 to 30 April 2021 the IPA completed 17 monitoring visits to firms registered with its VPR scheme, with a further 15 visits ongoing.

The IPA has been focussing on potential mis-selling of IVAs and has been using desktop monitoring, for example looking at online customer reviews, to look at cases and identify areas for focus during call reviews. The IPA engages with creditor representatives, credit unions and the wider debt advice market to gather intelligence, such as changes in disbursements and mass variations. As a result of this the IPA has been able to take swift action when necessary.

To support its volume provider scheme monitoring, the IPA has recruited a trainee inspector, working alongside its two established VPR inspectors, and has also employed three part-time call reviewers who focus on the advice being provided to consumers. As a result, the IPA has increased its call-review capacity to 800 per year (from 300) as part of its commitment to review 1% of advice calls. This new resource has enabled inspectors to focus on issues such as fees, payment of dividends, and on identifying procedural/SIP breaches. This has better enabled the issuing of advisory notices.

The IPA has also recently recruited an administrative member of staff to examine the data and information provided by the volume providers as part of their monthly returns, including annual progress reports and income and expenditure reviews. As a result, monthly statistics are produced that help with scheduling of visits and aids the IPA in early trend detection and wider matters. (For example, it was able to draw on data when responding to the recent call for evidence on the proposed changes to the monetary limits for Debt Relief Orders, as it was able to identify disposable income levels for IVA consumers.)

The IPA monitors online review sites, such as Trustpilot, to look at cases and identify areas of concern enabling focus on more serious issues when undertaking call reviews. The VPR team also works with other regulatory bodies to ensure they have the full intelligence picture in respect of the largest of the volume provider firms.

Since mid- 2020 the IPA's two senior VPR inspectors have been given full access to some of the IVA providers' systems, which has facilitated real time access and continuity of monitoring despite the Covid-19 pandemic.

Following the introduction of the new insolvency Code of Ethics and closer scrutiny of advertisement practices, the IPA informed their practitioners that they needed to ensure their websites were compliant with Advertising Standards Agency (ASA) and Financial Conduct Agency (FCA) regulations. Where subsequent issues have been discovered, regulatory action has been taken, and/or referrals have been made to other RPBs, the ASA and the FCA. Issues addressed have included the reasonableness of claims of expected percentage debt write-off, claims relating to government backing, failure to be explicit that the offering is an IVA, and sites not listing all practitioners at a firm.

More recently the IPA has also started to issue advisory notices to practitioners in breach of the guidance, giving them 7 days to rectify the position. The majority have complied with the notices.

The IPA inspection team also report that the revised Code of Ethics has assisted in their approach, enabling early escalation of complaints.

The development and expansion of the volume provider scheme is particularly welcomed. There remains further work to do to ensure that the reports drafted by inspectors are actioned by the RCC. The number of advisory notices and sanctions in this sector remains a significant concern, although the increase in those being handed out by RCC provides confirmation that the inspectors are identifying and sufficiently setting out concerns about practices to the RCC. The conduct and behaviour of VPR members remains of concern and the impact of the scheme on that will remain of interest.

Advisory notices

The IPA are making wider use of advisory notices, including issuing notices to individual Insolvency Practitioners.

Where an advisory notice is issued, a clear timescale is given for improvements to be made and where appropriate allowing for matters to be escalated and reported to the RCC in a timely fashion where full compliance is not achieved. Advisory notices are considered as part of risk assessments conducted to inform the frequency of monitoring for example.

At present advisory notices can only be issued by inspectors following monitoring visits, however, it is proposed that all IPA staff will be able to issue advisory notices in future.

All advisory notices are submitted to the IPA's Regulatory and Conduct Committee for consideration.

The issuing of advisory notices is welcomed, along with their consideration by the relevant committee. Their use appears to be expanding and their development and use is testament to the IPA's identification of the need for a method to formally advise a practitioner to change their behaviour or technical approach. It was previously agreed that the IPA will share these with the Insolvency Service in order to track the expansion of the process and monitor whether any more significant sanctions subsequently resulted in a failure to follow that notice by any practitioners.

Recommendation

The IPA should provide notification to IPRS of all sanctions and advisory notices on a monthly basis.

Case reviews and detailed findings

A total of 34 inspections relating to 49 Insolvency Practitioners were reviewed. These included a mix of VPR and non-VPR cases, full reviews, focussed reviews, and initial visits.

It was clear that where some visits had been postponed due to the Covid-19 pandemic, timely risk assessments were conducted, and subsequent arrangements were made.

There was evidence that inspections demonstrated good use of standard forms to plan, gather information and record the outcomes of inspection visits. There were examples of strategy documents having been used to good effect to explain in detail why a full visit was required but not yet feasible; and of the strategy document explaining the rationale for case selection.

The use of the inspection report document to invite comments from the Insolvency Practitioner in response to findings, and the annotation of this in some cases by the inspector means there is a clear trail of decisions and actions, both by the Insolvency Practitioner and for the inspector at a future date.

The use of the standard forms also ensured that AML matters and any training needs were clearly highlighted where appropriate.

Advisory notices are used as a tool to educate practitioners who have fallen short of the standard expected by IPA. Generally advisory notices were used on cases appropriately, based on the level of breach identified, however there was one example where a report to RCC may have been warranted.

The work of the monitoring team remains a high priority for the IPA and this is evident in the continued work to improve the efficiency of the team. We welcome work by the IPA to continue and extend its good practice, and to ensure that the monitoring team works closely with the complaints team; and to ensure that high quality monitoring remains achievable in the light of changing risk assessments.

Complaints

Procedure for complaint handling

The IPA received 222 complaints in 2020/21 from the Insolvency Practitioner Complaints Gateway. The complaints are received and acknowledged by the IPA immediately. The complaints are assessed by the IPA's Head of Process to determine the facts and level of complexity. The case is then allocated to one of five Regulation Officers (ROs) for investigation.

The IPA has recruited 2 new ROs and at the time of the visit a third was to be starting soon. All have professional qualifications and practise experience. Two of these posts are new, one is a replacement for an RO who had left the IPA.

The IPA now refers to complainants as informants: this is a cultural shift with an emphasis now on the informant providing information which the IPA will consider and investigate to establish whether the IP may have become liable to disciplinary action, and whether misconduct may have taken place.

ROs have a mixed portfolio of complaints including cases with simple and more complex facts and a variety of types of insolvencies. If fully utilised, each RO has approximately 20-25 cases.

Correspondence is sent to the informant to acknowledge receipt of the complaint, introduce the RO and provide their contact details. The informant is encouraged to contact the assigned RO directly and information about the complaints process is provided to them at this point. The IPA has updated the introductory template letter; this now includes more information and better manages the expectations of the informant.

Once an investigation has commenced, the RO writes to the Insolvency Practitioner to set out the complaint and ask for comment. If there are specific questions, these are included and there is usually a period where there is an exchange of information to determine the facts.

If the RO, having considered the information, is of the opinion there is a case for the Insolvency Practitioner to answer they will draft allegations which will be put to the Insolvency Practitioner.

The Insolvency Practitioner has the right to provide representations in answer to those allegations and then a report is drafted by the RO explaining the legal and factual issues raised, the arguments advanced by both informant and IP, the RO's assessment of the case and including any relevant evidence. Copies of any evidence and any representations are annexed.

New-style reports on allegations (provided to the Regulatory and Conduct Committee) were introduced in 2020. They are shorter and more succinct, and have clear information on the position of the informant and Insolvency Practitioner. The ROs include an extract from the Common Sanctions Guidance (CSG) in the report and, if a prima facie case is found, they have precedents and regulatory history available for the RCC on request. The RCC are asked to take all relevant regulatory history into account. All reports drafted by ROs are reviewed and approved by both the Head of Process and Head of Committee Operations.

Where a RO considers there is no liability to disciplinary action for the Insolvency Practitioner, informants have a right to request that decision is reviewed by the RCC under rule 2.3 of the IPA's Conduct Rules 2019. If such a review is requested, the RO will draft a report for the RCC. There has been a reduction in the number of Rule 2.3 reports since the last visit which suggests that informants are generally satisfied with the outcomes that have been communicated by the ROs and have not sought to invoke this process as regularly.

We welcome the introduction of changes designed to move the culture to more of one which is aligned to the individual providing the IPA, as the regulator, information to investigate. However, the IPA must remain mindful that the informant might not always be able to prove the suggested misconduct and will not have detailed knowledge of the Insolvency regime. As a result, the IPA will need to ensure that they make relevant enquiries on both the issues raised by the informant and any linked or surrounding issues to satisfy themselves if a case may be closed without further action.

Case reviews and detailed findings

During the monitoring visit, we reviewed 24 complaints files at a range of different stages, including those open and under investigation, those closed, and those over 12 months old. The sample was a randomised selection. The review of these cases was focused on progress since the last monitoring visit in 2020.

In most cases reviewed, progress had been made, informants were kept informed of progress in a timely manner, and Insolvency Practitioners themselves were cooperative in the process.

We did observe some cases where there had been significant delays, some of which appeared to be caused by Insolvency Practitioners' requests for extensions (including some made close to deadlines). Multiple requests for extensions were evident on one case reviewed.

It is noted that some complaints cases are particularly complex and take time to process. The IS holds regular meetings with the IPA to discuss the progression of complaints, including complaints over 12 months old.

The IPA has spent considerable time reducing delays in complaint cases and in progression after RCC consideration. This is welcomed. Whereas significant numbers of cases were identified at our previous visit where responses to the informant and/or the practitioner had not been actioned, cases now appear to be reviewed more regularly, with generally good levels of communication. In a small number of cases, delays had occurred, and lessons learned from these instances have been identified and applied. It does appear to remain possible, however, for individuals to delay the consideration of complaints against them by making late or repeated requests for extensions.

Recommendation

The IPA should consider drafting a policy which sets out how staff should set deadlines for both Insolvency Practitioners and informants to respond to requests for extensions and set reasonable expectations with their members on how such requests would be dealt with. This will remain relevant to changes the IPA intends to make to its rules in respect of Regulation Officers having a more active role in the sanctioning process.

Regulatory and Conduct Committee (RCC) & regulatory outcomes

The RCC is an independent decision-making body appointed by the IPA and has been hearing cases since July 2019. It is made up of both lay and Insolvency Practitioner membership and sits with a lay majority. The RCC considers and makes determinations on both complaint and monitoring report cases, and uses the CSG to apply a sanction to that finding by consent order.

At the date of the visit, the list of current RCC members was available on the IPA’s website and is regularly reviewed by the IPA’s Board. All appointments to the committee are agreed by the Board. The IPA, at the time of the visit, was considering how it might develop a policy for how it will withdraw membership if any Insolvency Practitioner member were to receive a regulatory sanction against them.

Generally, the RCC sits twice a month, once for general matters and once for IVA/personal insolvency matters. This approach was adopted due to the volume of cases that required consideration at each meeting. This now means the meetings are of a more manageable length, the papers less sizeable, and the members invited can be tailored to the types of cases being considered to avoid any conflicts of interest.

Meeting minutes

In advance of the visit, we reviewed all meeting minutes from March 2020 to April 2021.

The minutes are drafted by the secretariat within 24 hours of the meeting and reviewed by the Head of Investigations and Regulatory Committee Operations. The minutes are then sent to the chair of the meeting for agreement and signature. Any consent orders agreed at the meeting are not drafted and sent to the Insolvency Practitioners until the meeting minutes are signed.

Meeting minutes include more information than on previous visits and are set out in an easier to read format. The RCC methodically reviews the reports and evidence, and if they find that a case is made out, the CSG is used as part of the process to decide a fair sanction against the Insolvency Practitioners. An extract of the relevant part of the guidance for the allegation is now included in the report by the RO. A full copy of the guidance is available at all meetings and all committee members undertake regular yearly training which includes use of the guidance.

Where the starting point in the CSG for a prima facie finding is exclusion, or if the facts of the case are sufficiently serious, the RCC may consider whether it is appropriate and proportionate in all the facts to withdraw the Insolvency Practitioner’s licence. In some cases, the minutes did not explain the RCC’s considerations on this matter, especially where that would support its decision not to withdraw the Insolvency Practitioner’s licence.

In a small number of cases, we identified that the RCC minutes needed more fully to record consideration of whether the Insolvency Practitioner remained a ‘fit and proper’ person to continue to hold a licence. It is noted that the minutes do address whether such consideration would be appropriate or proportionate for example, but further explanation of the conclusion reached would assist in ensuring the transparency of decision making.

It is recognised that the IPA has made improvements in both the presentation and content of the meeting minutes, however further detail should be added to ensure that the decision procedure, reason for application of certain mitigating and aggravating factors, and the weight placed on these in reaching an outcome, is fully understood.

It is particularly important for the meeting minutes to be clear and document the reasoning of the RCC decision not to remove the licence, especially if the facts are serious. The test of whether the practitioner remains a fit and proper person should be considered by the RCC whenever the CSG suggests a starting point of exclusion, or the RCC considers the facts to be sufficiently serious.

Recommendation

The IPA should share a copy of their newly developed policy on RCC appointments and removal of members, including for reasons of sanctioning by the IPA with the Insolvency Service.

Recommendation

The RCC meeting minutes should more fully detail the rationale for a decision, especially in cases where consideration is required as to whether an Insolvency Practitioner remains a fit and proper person to hold a licence.

Observations of the RCC

We observed the RCC on 20 July 2021 and 7 September 2021. In the July meeting, the RCC had clearly read the case files in advance, which led to appropriate debate on the key issues and largely facilitated achieving considered outcomes.

In the second observation there was less understanding by the RCC on what the secretariat was asking it to consider and some of the members had not fully read the papers, needing to be reminded of the facts of particular cases. However, the ROs present were well prepared and had brought precedent and previous regulatory history information, which was provided as appropriate to the RCC. ROs understood their role to provide a fair and balanced view to the Committee in relation to the allegations put and the defence provided by the IP.

There was evidence that the RCC's consideration of aggravating and mitigating factors was limited to those defined in the CSG, rather than more fully identifying and considering all potential factors.

The IPA appears to provide strong support to the RCC, with its staff preparing thoroughly, providing relevant information and understanding their roles. The RCC gave detailed consideration to the matters before them and acted with independence of mind in reaching its conclusions. These points are welcomed.

Recommendation

The IPA should designate a member of the Secretariat who can guide the committee and provide references to the IPA's Rules, particularly when the revised Rules are agreed and implemented, and the committee functions are updated.

RCC decision making

The IPA is developing a new decision document which will be completed for all cases where a prima facie case is found by the RCC. It will document further detail of the RCC's considerations, including the relative weighting applied to various aggravating and mitigating factors, and explanations for deviations from starting points. The IPA anticipate this will form part of the RCC's minutes in future.

All sanctions offered by the RCC are 'by consent' - i.e. with the agreement of the Insolvency Practitioner. If the IP does not consent having been offered the order on two separate occasions by the RCC, then the IPA may refer the case to the Disciplinary Committee for consideration. The Disciplinary Committee, which was not reviewed on this visit, consists of a three-person tribunal which hears the case in full and will make a finding having listened to both the IPA and the Insolvency Practitioner's arguments.

In reviewing a small number of cases, the following matters were observed:

The RCC has referred to use of the 'totality principle' in some cases when a practitioner has more than one allegation found against them. This principle is used by Criminal Courts in England and Wales when sentencing those who have been convicted of multiple offences. If the RCC is of the view that a level of fine is appropriate it needs to support that conclusion with detailed reasons, not only with reference to the totality principle. An explanation of why the totality principle has been applied should be included.

In cases where mitigation is offered to the RCC by the secretariat (either by way of representations by the Practitioner, or from information that the IPA has about previous conduct), it should be in line with the CSG and any associated publicity statement for a sanction must be clear about what the committee has considered in coming to its decision, in the application of mitigating factors, or when applying other principles, for example:

We were mistakenly concerned in one case that an inappropriate mitigation had been considered by the RCC, namely that there were no aggravating factors. We also observed examples where further explanation or clarification would be needed in order fully to understand the decision reached by the RCC. For example, in one case the statement explained that the practitioner had "attempted to rectify the position" by way of mitigation but did not comment on whether that attempt had been successful or not (in which case it would be a valid mitigation). Notices need to make this distinction clear in future.

We welcome the development of a new decision document and look forward to reviewing its effectiveness in the future.

We remain of the view that the RCC still, on occasions, have some uncertainty of their powers and what IPA is expecting of them on certain cases. Further, clear and unambiguous drafting in publicity notices and minutes is of key importance to avoid the risk of misunderstanding.

Recommendation

The IPA should review whether the RCC gives full consideration to factors that could influence a sanction, including whether the provisions of the CSG are used fully. The IPA should consider undertaking further training with the committee on mitigating and aggravating factors and how they should be applied to cases where a prima facie case is found.

Recommendation

The IPA Secretariat should ensure timely responses to any actions ordered by the RCC, detail of next steps and a deadline for return to the committee for further consideration are set. The IPA could consider use of the new decision form as a live document to be used to detail progress through the committee stage and set deadlines for progress.

Bonding

The IPA receives regular bordereau returns from most of its members and has a process to chase up late returns. The IPA has identified a small number of practitioners who are regularly late and is considering the use of an advisory notice and/or putting an allegation to these practitioners if their conduct does not improve.

Bonding is checked at all routine monitoring visits by inspectors and any concerns that are identified about under-bonding or failure to bond a case are highlighted in the report for the RCC.

We have seen further positive improvement in the process for checking cases when a practitioner hands-in or loses their licence, and the cases need transferring to another Insolvency Practitioner.

The IPA now requests information immediately from the Insolvency Service, bond provider and practitioner, and reconciles this information with their own records. A dip sample of cases are checked at Companies House to ensure the filing of all documents is up to date and that any cases the practitioner claims are closed and dissolved are complete.

Any discrepancies that are identified are put to the practitioner or further investigated before the schedule for a block transfer is prepared.

We welcome the work IPA has undertaken to ensure that bonding is properly recorded and utilised to inform monitoring practitioners. No recommendations.

Authorisations

The IPA currently authorises 615 Insolvency Practitioners and grants both appointment taking and non-appointment taking licences.

The IPA’s Rules state the criteria for granting a licence, and applications are sent out annually in October. Any new applications from newly qualified practitioners or those joining from another regulator must be considered by the RCC.

We reviewed a sample of 5 applications and found the IPA to have robust procedures and appropriate challenge by the committee when necessary.

The IPA's authorisation process appears robust, with appropriate procedures for the authorisation of practitioners. No recommendations.

The IPA's collaborative approach to regulation

The IPA are working to try and break down work silos and ensure that their staff work collaboratively to regulate IPA members.

The IPA has adopted the use Microsoft Planner for scheduling its visits and tracking progress of complaints, which has facilitated visibility of regulation work across the monitoring and complaints teams.

ROs have weekly catch ups with the Head of Process, and the whole complaints team meet regularly to discuss cases and trends. There are fortnightly meetings between the complaints and inspections teams to share information and intelligence. The senior management team meet fortnightly to consider high profile cases and strategic work.

ROs also meet after every RCC meeting to discuss the cases considered at that meeting and the outcomes reached.

The two monitoring teams (non-VPR and VPR) each meet fortnightly to discuss their work, in addition to conducting quarterly and 6-monthly reviews.

The IPA holds regular training events for its staff, including recent sessions for the whole of the monitoring and regulation teams to look at identification and presentation of misconduct and money laundering concerns.

Case-related issues can be raised and discussed at any of these forums, and the IPA employs an in-house legal advisor to provide further support on technical issues.

All of these measures are welcomed.

Recommendations

1. The IPA should provide notification to IPRS of all sanctions and advisory notices on a monthly basis.
2. The IPA should consider drafting a policy which sets out how staff should set deadlines for both Insolvency Practitioners and informants to respond to requests for extensions and set reasonable expectations with their members on how such requests would be dealt with. This will remain relevant to changes the IPA intends to make to its rules in respect of Regulation Officers having a more active role in the sanctioning process.
3. The IPA should share a copy of their newly developed policy on RCC appointments and removal of members, including for reasons of sanctioning by the IPA with the Insolvency Service.

4. The RCC meeting minutes should more fully, detail the rationale for a decision, especially in cases where consideration is required as to whether an Insolvency Practitioner remains a fit and proper person to hold a licence.
5. The IPA should ensure the RCC gives broader consideration to factors that could influence the sanction. The RCC should not just use factors that are listed on the CSG. The IPA should consider undertaking further training with the committee on mitigating and aggravating factors and how they should be applied to cases where a prima facie case is found.

6.The IPA Secretariat should ensure timely responses to any actions ordered by the RCC, detail of next steps and a deadline for return to the committee for further consideration are set. The IPA could consider use of the new decision form as a live document to be used to detail progress through the committee stage and set deadlines for progress.

[1] A bordereau is required by statute to be returned on 21st of each month by all appointment taking insolvency practitioners to their regulatory body and will state the cases that they are office holder for and the amount of bonding cover they have obtained for those appointments.

IPA reply to the Insolvency Service Report 2021 Recommendations

Complaints		
	Recommendations	**IPA's response**
1	The IPA should consider drafting a policy which sets out how staff should set deadlines for both Insolvency Practitioners and informants to respond to requests for extensions and set reasonable expectations with their members on how such requests would be dealt with. This will remain relevant to changes the IPA intends to make to its rules in respect of Regulation Officers having a more active role in the sanctioning process.	A formal policy will be considered to replace the guidelines in place since September 2020.
R&CC		
	Recommendations	**IPA's response**
1	The IPA should share a copy of their newly developed policy on RCC appointments and removal of members, including for reasons of sanctioning by the IPA with the Insolvency Service.	Actioned, copy attached.
2	The RCC meeting minutes should more fully, detail the rationale for a decision, especially in cases where consideration is required as to whether an Insolvency Practitioner remains a fit and proper person to hold a licence.	Noted; IPA will encourage RCC to consider when appropriate (based on the seriousness of the misconduct identified), the IPs ongoing fitness and propriety to retain their licence.
3	The IPA should designate a member of the Secretariat who can guide the committee and provide references to the IPA's Rules, particularly when the revised Rules are agreed and implemented, and the committee functions are updated.	There is always a legal adviser or other appropriate person available to advise on rules and procedures.
4	The IPA should ensure the RCC gives broader consideration to factors that could influence the sanction. The RCC should not just use factors that are listed on the CSG. The IPA should consider undertaking further training with the committee on mitigating and aggravating factors and how they should be applied to cases where a prima facie case is found.	IPA will encourage this and already adopts that practice.
5	The IPA Secretariat should ensure timely responses to any actions ordered by the RCC, detail of next steps and a deadline for return to	IPA accepts that in a very small number of cases there were delays in issuing letters however

	the committee for further consideration are set. The IPA could consider use of the new decision form as a live document to be used to detail progress through the committee stage and set deadlines for progress.	those cases do not accurately reflect the IPA's process. The Decision Sheet is already in use.
6	The IPA should provide notification to IPRS of all sanctions and advisory notices on a monthly basis.	Agreed and already actioned and fully compliant since agreed during visit.

Annex C

IPA Summary Notes on the Oxford Economics Review of the Insolvency Service’s Impact Assessment

IPA Summary Notes of Oxford Economics Review of the Insolvency Service's Impact Assessment

Overview

In December 2021, following a Call for Evidence, and alongside a consultation document on "The Future of Insolvency Regulation", the Insolvency Service (IS) published an impact assessment (IA) of the proposed regulatory changes which highlighted a preferred outcome of the creation of a single, independent regulatory body, in place of the current system, that would sit within the IS.

In February 2022, Oxford Economics (OE) were commissioned by the Insolvency Practitioners Association (IPA) and the Institute of Chartered Accountants in England and Wales (ICAEW), two of the Recognised Professional Bodies (RPBs), to undertake an independent review (the Review) of the underlying assumptions and logic of the costs and benefits outlined within the IA and to consider the wider consequences of the proposed regulatory framework.

This paper has been prepared by the IPA wholly independently of the Review itself with the purpose of highlighting particular points that the IPA wishes to draw to the reader's attention.

IPA View of Key Findings from Oxford Economics Review

A. Underestimated Costs:

The Review indicates that the IA has significantly underestimated the cost of introducing the proposed structure set out in the IA.

There are four key areas in which Oxford Economics have been able to quantify a monetised value using assumptions which they feel are better suited than the IAs own. These are:

- Ongoing benefit to IPs from lower fees
- Familiarisation costs to IPs
- Familiarisation costs to firms
- Cost to firms from compensation

A. (i) IPA Summary of Impact

Using the four key areas where Oxford Economics were able to calculate a monetised value, and comparing them to the IAs values, we see a significant negative variance in the estimate of costs and benefits of the preferred outcome proposed.

As the table below illustrates, in year 1 we see a **negative variance** in estimated costs/benefits to the insolvency profession of **-£5.2m**, with an ongoing **negative variance** estimate of **-£3.8m** in year 2 onwards. These figures are calculated before adding any costs for the outsourcing of the "delegable functions" contemplated in the consultation.

These revised estimates reverse any perceived benefit that may be implied in the IA and indicates the potential for a substantial increase in the cost of regulation under the proposed changes.

(Table is in £m)	Year 1			Ongoing		
	IA	OE	Variance	IA	OE	Variance
1. Ongoing benefit to IPs (lower fees)	+2.30	+1.20	**-1.10**	+2.30	+1.20	**-1.10**
2. Cost to firms from compensation	-0.76	-3.46	**-2.70**	-0.76	-3.46	**-2.70**
3. Familiarisation costs to IPs	-2.70	-4.05	**-1.35**	n/a	n/a	n/a
4. Familiarisation costs to firms	-0.10	-0.15	**-0.05**	n/a	n/a	n/a
Total	**-1.26**	**-6.46**	**-5.20**	**+1.54**	**-2.26**	**-3.80**

Please note that no positive variances to cost/benefit assumptions were identified in the Review. The above variances are explained in more detail below.

A. (ii) IPA Summarised Commentary on Oxford Economics Review of Assumptions

1. Ongoing benefit to IPs from lower fees (ongoing)

Section 2.1.1	Impact Assessment	Oxford Economics
Summary	The IA estimates the recurring maximum annual benefit to IPs will be worth **£2.3m** following the introduction of a Single Regulator (SR)	OE concluded that the actual recurring maximum annual benefit to IPs would be **£1.2m (i.e. £1.1m lower than the IA estimate)**
Assumptions	**RPB fee income:** Total RPB fee income of £6.4m, in the IA, assumes the ICAEW generates income of £3.3m from IPs licence fees **SR operating costs:** IA assumes that the operating costs for the proposed SR will £4.1m. This excludes the cost of contracted out goods and services. IA argues that operating costs of SR are likely to be lower than status quo due to i) having a lower cost of employment and ii) achieving economies of scale The £4.1m is subtracted from RPB income of £6.4m from IPs fees to achieve an estimated maximum £2.3m saving for IPs from lower fees	**RPB fee income:** The £6.4m stated in the IA was misguided as the ICAEWs license fee income was only £2.2m, not £3.3m (50% overstatement in IA). OE has correctly calculated total RPB fee income of £5.3m. **SR operating costs:** OE does not have evidence to directly challenge the operating cost estimate in the IA without further detail. OE is sceptical about the lines of argument presented in the IA. Evidence does not support the argument that employment costs will be lower in the public sector. Based on historical precedent, and the decision to continue outsourcing services, the scale of economies of scale implicitly assumed in the IA are unlikely to be achieved.

Negative Variance	**£1.10m** £2.30m - £1.20m = £1.10m

2. Cost to firms from proposed compensation (ongoing)

Section 2.2.5	Impact Assessment	Oxford Economics
Summary	The IA estimates a cost to firms from the introduction of a compensation scheme of **£0.76m**	OE conclude that the cost to firms from the compensation scheme is likely to be significantly higher. OE's best estimate of this cost is **£3.46m**
Assumptions	The IA calculated the cost to firms from compensation in two parts: i) £0.05m - combining the number of complaints not related to the sale/dealing of assets of 416 in 2019[1], and the expected value of the compensation payable for undue stress of £125 ii) £0.44m - estimated from: • estimated number of IPs complaints likely to be upheld, i.e., five based on number of complaints relating to the sale/dealing of assets in 2019 of 12[2] and assuming 38% are upheld based on the Financial Ombudsman Service statistics on complaints data on all	OE research identified that legal expenses are not included in the IA estimates. OE estimated that RPBs have an average cost of £2,400 per complaint. Using the number of complaints in 2019, this gives an estimate of £0.95m per year in expected legal expenses. OE also concluded that the appropriate loss ratio for legal expenses was around 35%. The £0.95m per year expected legal expenses is then divided by the 35% loss ratio to achieve the additional cost of £2.7m associated with legal expenses.

[1] Annual Review of Insolvency Practitioner Regulation 2019, table 12. https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2019/annual-review-of-insolvency-practitioner-regulation-2019.

[2] Annual Review of Insolvency Practitioner Regulation 2019, table 12. https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2019/annual-review-of-insolvency-practitioner-regulation-2019

	financial products and services[3]; and • expected compensation amount per upheld complaint of £88,000 [4]	
Negative Variance	**£2.7m** £3.46m – £0.76m = £2.7m	

3. Familiarisation costs to IPs (one-off)

Section 2.1.2	Impact Assessment	Oxford Economics
Summary	The IA estimates a total one-off familiarisation cost to IPs of **£2.7m**	OE conclude that the familiarisation costs are very likely to be higher than assumed in the IA. OE concludes that even a conservative set of assumptions would result in a familiarisation cost that is over 50% higher than IA i.e., **£4.05m**
Assumptions	Assumption based on all 1,570 IPs requiring four hours of familiarisation, incurring an opportunity cost with an average hourly charge-out rate of £431	OE research showed actual average hourly charge out rates are 15% to 22% higher than the IA uses. Further, through interviews, OE concluded the 4 hours required according to the IA was underestimated. Additionally, OEs calculation includes illustrative modelling of support staff familiarisation costs, which are neglected in the IA and, if incorporated would result in significantly higher costs.
Negative Variance	**£1.35m** £4.05m - £2.70m = £1.35m	

[3] Financial Ombudsman Service, Quarterly Complaints Data, https://www.financial-ombudsman.org.uk/data-insight/quarterly-complaints-data

[4] Financial Ombudsman Service, Compensation, https://www.financial-ombudsman.org.uk/consumers/expect/compensation

4. Familiarisation costs to firms (one-off)

Section 2.2.2	Impact Assessment	Oxford Economics
Summary	The IA estimates a total one-off familiarisation cost to firms of **£0.10m**	OE conclude that the familiarisation costs to firms could be over 50% higher than IA, indicating a familiarisation cost of around **£0.15m**
Assumptions	Same average hourly charge-out rate used of £431 but with differing amounts of time used for small, medium, and large businesses	Similar points apply as to the familiarisation costs to IPs. Using a more appropriate average hourly charge-out rate and including support staff gives a more accurate and holistic view
Negative Variance	**£0.05m** £0.15m – £0.10m = £0.05m	

B. Further points not quantified

The Review from Oxford Economics looks at further points to the abovementioned. However, due to the nature of the points, Oxford Economics could not draw any monetised conclusions. They do, however, suggest that these points should be looked at in more detail before any decisions are finalised from the Insolvency Service.

C. Wider consequences of the proposed reform

The Review from Oxford Economics also investigated the wider consequences of the proposed Single Regulator. Although this has not been monetised, there are important considerations which have been outlined and discussed in the Review

Three key areas that the Review has considered are:

- Potential issues during the transition period
- The impact on competition and, therefore, choice for consumers; and
- The impact of changes in regulatory incentives due to the new governance structure.

C. (i) Potential issues during the transition period

- Possible shortage of skilled personnel overseeing the IP market as skilled RPB staff may move to other jobs/industries rather than joining the SR. Insolvency regulation is a highly specialist sector so recruiting new personnel would be problematic.
- The potential regulatory vacuum may increase the likelihood of moral hazard by creating adverse incentives for IPs to take on additional risks.

- Oxford Economics analysis suggests that the financial costs of setting up the new regulatory systems - such as staffing and IT systems, governance arrangements, complaints gateway and compensation schemes - may be substantial.

C. (ii) Impact on competition and choice for consumers

As reflected above, the Review suggests that the proposed regulatory reform may lead to additional costs to IPs. These additional costs can be expected to fall disproportionately on IPs in micro and small businesses. Moreover, small firms may also find it difficult to bear the costs of handling additional complaints and visits associated with the new firm regulation proposals.

Such an increase in the regulatory cost burden could increase effective barriers to entry and, therefore, reduce competition in the market. This would have adverse consequences for customers in terms of reducing choice and pushing up the price of insolvency services.

C. (iii) Changes in regulatory incentives due to the new governance structure

The Review discusses the proposed regulator's independence from the government, especially given the HMRC's role as a preferential creditor in the insolvency process. Conversely, the government's ability to examine the functioning of the market and provide feedback to the regulator at an arm's length would also be diminished without regulatory independence.

Additionally, the Review discussed further conflicts of interest such as the responsibility for the Insolvency Service to appoint Official Receivers (OR) in bankruptcy and compulsory winding up proceedings which lies with the Insolvency Service.

D. Confirmation

Unless otherwise stated, the data used in this document is taken from the Oxford Economics Review of the Insolvency Service's Impact Assessment. The views expressed within this document are, however, those of the IPA.

Annex D

IPA Volume Provider Regulation Scheme 2021 Benchmark Report

Insolvency Practitioners Association

Volume Provider Regulation Scheme

2021 Benchmark Report

David Holland
Chief Inspector

Contents

CEO Introduction

Paul Smith

Welcome to the third benchmark report of the Insolvency Practitioners Association (IPA) Volume Provider Regulation Scheme (the Scheme).

The Scheme was developed in consultation with key stakeholders in 2018 and came into effect on 1 January 2019 in response to the rapid change being seen in the Individual Voluntary Arrangement (IVA) market. It was clear to the IPA that the market needed a new form of regulation to provide assurance that it was functioning as it should, and in response we implemented the Scheme with the cooperation of the Volume IVA Providers and following additional conversations with IPs, the Government, debt charities and creditors. In July 2019, the Scheme was extended to cover Scottish Protected Trust Deeds (PTDs) administered at volume.

The Scheme has continued to grow in its third year, welcoming both new IVA and PTD provider members Harper McDermott, StepChange Voluntary Arrangements and The IVA Advisor. During 2021 the Scheme covered 68% of the IVA market and 79% of the PTD market. The Scheme market coverage is expected to increase further during 2022 with new members joining.

The Scheme is the only example of continuous monitoring in insolvency regulation, and we believe it offers as close or higher a level of scrutiny of any financial services provider in any sector. Improving standards is a key aim of the Scheme. In this regard, we were particularly pleased to see a reduction in complaints across Scheme members during 2021, down to 100 from 205 in 2020, which suggests that the Scheme is being successful in achieving a marked improvement in standards.

The IPA are committed to tackling any inconsistencies in the volume IVA and PTD market but have to work within the existing regulatory confines whilst still seeking to achieve meaningful regulatory impact. The IPA has considered for some time that more change is needed in the volume space. The IPA's view is that the IVA market has outgrown legislation which was designed for a different era and did not anticipate the commercial developments which now dominate the market. The IPA have campaigned for an audit of the commercial landscape in the IVA market, the introduction of new regulatory powers to regulate firms, and a review of debt management products in their entirety. As a consequence, the IPA welcome the

Insolvency Service's review of the personal insolvency landscape which was announced in September 2021 as part of their five-year strategy.

As noted above, the Scheme is the only example of monitoring of this level and scrutiny across Insolvency regulators. The Scheme is unique to the IPA, and as a consequence there is a resulting inconsistency in how volume providers are regulated across the market more broadly. The IPA consider that this is an important area to be considered, along with the introduction of new regulatory powers to regulate firms, in the Insolvency Service's consultation on a Single Regulator which was released on 21 December 2021.

The flexibility of the Scheme is one of its key benefits, and we can tailor activity according to particular areas of focus. 2021 has seen the Scheme increase further its intense activity on advice call reviewing, increasing the number of calls reviewed to 1,010 calls (being 2% of IVA new work and 0.5% of PTD new work) across our Scheme members, an uplift of 564% on 2020. The full detail on the call reviews can be found in Chapter 10 of this report.

The Scheme has continued its focus of reviewing case failures during 2021, as we know this remains an area of concern. 5.74% of IVAs failed across Scheme members during 2021, which is a noteworthy improvement on the 8.4% sector statistic relating to failures released by the Insolvency Service for 2019. As with the 2020 review into failures, the 2021 review identified that there are no particular reasons or trends for the failure of an IVA/PTD. The full detail on the failure review can be found in Chapter 8 of this report.

2021 also saw us turn our focus to reasons why individuals choose an IVA over other debt solutions in response to concerns raised by the Insolvency Service. As you will see from the full detail on this review, which is in in Chapter 9 of this report, the review did not identify any underlying problems. The IPA consider it to be an individual's choice as to what solution they select and whilst to a third party it may not appear to be the 'best' choice for them and their circumstances, ultimately it is their choice. The role of the Insolvency Practitioner is to ensure that detail on all options available for which they are eligible is provided, and to ensure the individual fully understands the options, in order to make their informed choice. Scheme members are expected to obtain reasons for not choosing other available debt solutions in order to ascertain the individual's understanding of the solutions. The reasons are presented in Chapter 9.

The IPA are concerned about the potential impact that the rising cost of living is going to have on existing IVAs and PTDs in 2022. The IPA consider the changes will also result in more people needing to seek advice and enter into debt solutions. The IPA will once again strive to be at the forefront of developments in this area, and we have already begun to raise this issue with members as well as entering into discussions with the Insolvency Service, the IVA Standing Committee and the Accountant in Bankruptcy. This will ensure that the profession responds to this changing environment in a positive and proactive way to help people at a time when help is most needed. 2022 will no doubt be yet another challenging time for the IPA but I know that the team will respond and continue to achieve the highest standards across the sector.

Paul Smith
Chief Executive Officer

Chief Inspector Introduction

David Holland

In the three years since the inception of the Scheme, I am pleased with the progress made. We have modernised the monitoring processes and seen improvements in respect of standards, controls and outcomes for all interested parties. The creation of the Scheme has allowed monitoring to adapt to the changes in an industry that has commercialised and has now opened up the Individual Voluntary Arrangement (IVA) and Protected Trust Deed (PTD) debt solutions to a wider potential audience. Whilst regulation has caught up, it is the legislation that now needs to modernise to give more certainty to IVA outcomes. This can easily be achieved by defining more clearly the entry requirements and suitability of all the debt solutions and minimizing some of the overlap and hurdles to enter different solutions. This in turn will assist the decision process for potential clients by making the choices simpler, future proof and flexible.

Last year I mentioned the success of IVA protocol and in particular how the Covid Protocol changes were enacted at pace and how the Scheme data helped make a lot of the changes possible. The Covid Protocol ultimately helped thousands maintain their IVAs. The current crisis for living standards is an area that once again will require creditors to be more flexible in their expectation of repayment. The current IVA protocol only allows for Supervisors to have discretion to vary repayments by 15%. This level has worked well during recent times when inflation rates have remained stable, but in the current climate expectations should be reviewed. This will allow IVA Supervisors more discretion for reductions in payments and still ensure that clients can successfully complete their IVA, without it being necessary to seek further creditor approval to agree increases of expenditure outside of the original limits.

Despite the facts available, there continues to be skepticism of IVAs and PTDs. The debt solutions sit firmly between the current options of complete debt forgiveness (via a Debt Relief Order (DRO) and bankruptcy) and payment in full (via a Debt Management Plan (DMP)). IVAs and PTDs are a valuable middle ground to allow a formal and legally binding agreement that allows the debtor to pay back only part of the debt. It is unfortunate that plans for Statutory Debt Repayment Plan in England and Wales have not yet been implemented. The lack of simple legislation in this field would complete the three tiers of debt management that is shown to work better in Scotland by giving people more defined choice with less overlap.

As part of the DRO consultation, we were able use the data available to show the impact of the proposed changes. Specifically, we were able to demonstrate that IVAs play a significant role in keeping credit affordable and widely available. Bank of England figures for the quarter to September 2020 showed credit card write off of £365million and debt repayment plans and IVAs produce a significant repayment mechanism (£185m from scheme member for 2021) to keep this level down. The debt under management in IVAs is in the region of £7bn and this is similar to the £6bn disclosed in the last FCA review of the DMP market in March 2019.

Despite the similarities of debt under management there continues to be a huge difference in the availability of information on outcomes. For IVAs there continues to be a huge amount of interest in failure rates for what is a voluntary agreement supported by law. This report will highlight the work undertaken on this area. We tripled the number of reviews to assist our understanding and to verify that our risk-based approach was capturing the correct information on this subject. Further details of the failure review are in Section 8 of the report. It is unfortunate that work on a further independent review of this area had to be paused due to the consultation on the future of insolvency regulation.

The Insolvency Service recently published a 'Commentary - Individual Voluntary Arrangements Outcomes and Providers 2021'. The details presented show some encouraging improvements in outcomes on more recent IVAs and this reflects some of the data we hold. As mentioned already, there is a continued focus on the cases that fail in what is a voluntary agreement. The overall positive outcomes of the successful cases of over 80% is continually overlooked and the focus is on the negative failures.

I have highlighted to the Insolvency Service concern over the accuracy of the data used to calculate prior failure rates. During last year's Insolvency Live 2020, requests were made by debt advisors for IVA failure rates and they were referred to the following statistics, which at table 1 shows a similarly improving failure rates total of 23.3% for 2015, 25.1% in 2016 and to 19% in 2017. What is more striking from the figures is how two firms stand out as disproportionately high failures, with the first firm failures at 68% and 75%, and the second firm at 80% and 88.7% for 2015 and 2016, which really skews the overall average figures for the periods. It is only with industry knowledge that you would know that the two firms concerned, One Advice and Knightsbridge Insolvency Services, had all their cases passed over to new firms and the administration of the cases continued. This is clearly an error in the statistics which has a big impact on the statistics and people's opinions. The failure results published by the Insolvency Service still show an increased figure for 2016 failures with a further 8% failure rate for cases which are likely to be in the last year of an IVA.

I think it is appropriate all information is presented, but it needs to be accurate to allow informed decisions to be made. There needs to be a clearer focus on the success of IVAs and PTDs for individuals and creditors. As regulators we will continue to focus on ensuring that advice is clear and that clients understand the debt agreements require engagement and commitment to complete. As the pressures of the cost of living crisis increase, creditors will also play an important role on the future success rates of IVAs. Creditors will need to be more flexible in their expectations of receiving the expected dividend. The 15% discretion in outcomes is unlikely to be realistic for a growing number of cases and we are working with the Insolvency Service and creditor groups to see if IVAs can be easily amended to allow greater discretion by the Supervisor.

David Holland
Chief Inspector

1. Background and Scheme Outline

1.1 The Insolvency Practitioners Association (IPA) is the only professional body whose sole purpose is to inform and regulate Insolvency Practitioners (IPs) licensed to operate within the UK.

1.2 The IPA has around 1,400 individual and firm members and is the largest of the Recognised Professional Bodies (RPBs) in terms of case numbers, since the IPA's IPs are responsible for 90% of the UK market overall.

1.3 The IPA's principal aim is to promote and maintain high standards of performance and professional conduct amongst those engaged in insolvency and insolvency-related practice.

1.4 The IPA also look to encourage wider knowledge and understanding of insolvency within and outside the insolvency profession. The IPA maintains a leading role in the development of professional insolvency standards and its IPs are licensed in relation to formal insolvencies conducted in England, Wales, Scotland and Northern Ireland.

1.5 The IPA have amongst its regulatory population, the largest share of IPs and firms operating in the Personal Insolvency market, especially at scale ("volume providers").

1.6 At the beginning of 2019 the IPA launched a new regulatory framework, the Volume Provider Regulation (VPR) Scheme (the Scheme) in response to the Insolvency Service's (IS) call for more stringent monitoring of volume Individual Voluntary Arrangement (IVA) providers (those who conduct more than 2% of the IVA market – entry level is currently around 6,500 IVAs). In July 2019 the Scheme was extended to also include volume Protected Trust Deed (PTD) providers (those who conduct more than 10% of the PTD market – entry level is currently around 3,100 PTDs).

1.7 Whilst the Scheme is voluntary, all volume providers who are regulated by the IPA are expected to join.

1.8 The additional monitoring provided by the Scheme covers the principles outlined in this guidance.

1.9 Scheme members agree to pay for the ongoing additional VPR monitoring service provided by the Scheme.

1.10 Whilst the IPA do not have formal powers to regulate firms, the Scheme members acknowledge the role of their firms in providing the environment in which their IPs operate, and offer great insight at firm level than other regulatory activity.

1.11 The Scheme is overseen by the IPA's Chief Inspector and carried out by a dedicated team.

1.12 The key features of the Scheme are as follows:

- Continuous monitoring through Monthly Data Returns
- One full visit and up to four focused reviews a year
- Regular call monitoring
- Bespoke investigations into identified areas of concern
- Scheme members provide annual accounts, detail of their corporate structures and other data as required
- Monthly meetings between the Chief Inspector and each Scheme member
- Quarterly meetings between the IPA and the Scheme member group

1.13 The IPA's Regulation and Conduct Committee (the Committee) is charged with a responsibility to ensure that each of the IPA's licensed IPs continues to be a fit and proper person to hold an insolvency authorisation. Where possible and practicable during 2020, the Committee's work was separated to allow a dedicated IVA/PTD committee to consider those areas. The IVA/PTD Committee comprises insolvency specialists with particular expertise in the IVA/PTD field and a majority of lay members. Together, their primary objective is to promote the highest standards of practice and carry out the Committee's functions in accordance with the Government's Better Regulation principles.

1.14 Every inspection visit, review outcome and substantiated complaint is referred to the Committee for consideration. Should the Committee find a prima facie case of misconduct then it will refer to the IS's Common Sanctions Guidance (CSG) to consider the appropriate sanction, or if it is more serious and it is appropriate, refer the matter to the Disciplinary and Appeals Committee. Under current legislation there is no maximum number of reprimands that an IP can receive but the Committee continues to consider an IP's fitness to practice. A copy of the current CSG can be found here.

1.15 The IPA continue to be committed to tackling iniquities in the volume IVA and PTD market but have to work within the existing regulatory confines whilst still seeking to achieve significant regulatory impact. The IPA considers that more change is needed in the volume space. The IPA's view is that the IVA market has outgrown legislation which was designed for a different era and did not anticipate the commercial developments which now dominate the market.

1.16 The IPA have campaigned for some time now for an audit of the commercial landscape, the introduction of new regulatory powers to regulate firms, and a review of debt management products in their entirety, and the IVA in particular.

1.17 The IPA welcome the IS's review of the personal insolvency landscape which was announced in September 2021 as part of their five-year strategy.

1.18 The IPA were also particularly pleased to see that a proposal for extending regulation to firms that offer insolvency services was included in the IS's Single Regulator consultation which was released on 21 December 2021. This has been identified by the IPA as a weakness in the regulation landscape for some time.

1.19 This report provides more detail on the operation of the Scheme during its third year, 2021.

1.20 Previous years' Benchmark reports can be found here:

2020 | 2019

2. The Scheme in 2021 in Numbers

3
year old scheme

8,376
Figures scrutinised

44
Inspections

489
Cases reviewed

100
Complaints processed

1,010
Call reviews

22,397
Successfully Completed IVAs

£185m IVA and **£18m** PTD Dividends paid

3,751
Successfully Completed PTDs

222,625
IVAs

43,255
Nominees

24,594
PTDs

3. Scheme Members

IVA Providers

- Creditfix
- Debt Movement
- Freeman Jones
- Hanover Insolvency
- Oakfield Financial
- Payplan Partnership
- Payplan Bespoke Solutions
- Quality Insolvency Services
- StepChange Voluntary Arrangements
- The IVA Advisor

PTD Providers

- Carrington Dean
- Harper McDermott
- Payplan Scotland
- Wilson Andrews

3.1 Jarvis Insolvency rebranded to Debt Movement in February 2021.

3.2 Whilst predominately an IVA provider, Hanover also administer a small percentage of PTDs.

3.3 Harper McDermott joined the Scheme at the beginning of 2021.

3.4 Oakfield Financial acquired the live book of cases of Vanguard Insolvency Practitioners when they ceased to trade in August 2020. Oakfield Financial do not take new appointments.

3.5 StepChange Voluntary Arrangements (StepChange VA) joined the Scheme in March 2021.

3.6 The IVA Advisor joined the Scheme part way through the year in July 2021.

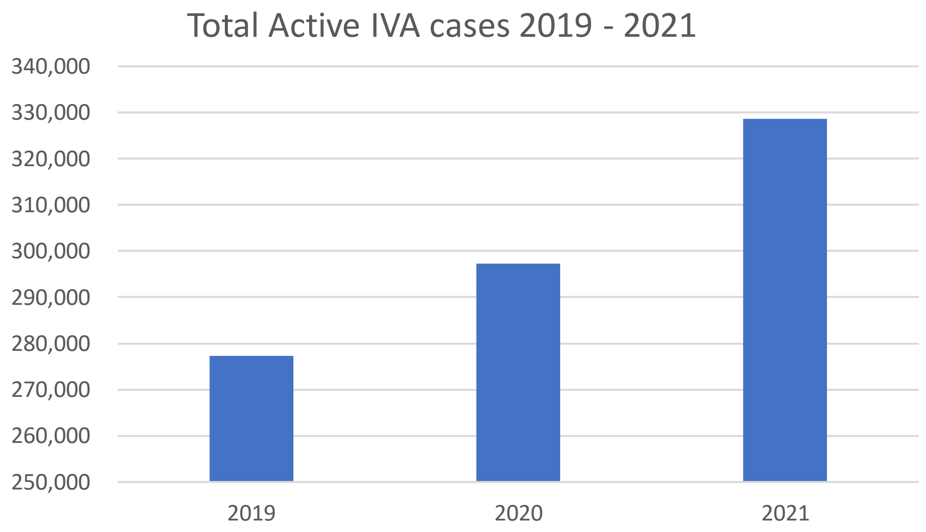
3.7 Wilson Andrews transferred their cases to Carrington Dean in November 2021 and therefore ceased to be a member of the Scheme from that date.

4. IVAs and PTDs in Numbers

IVAs

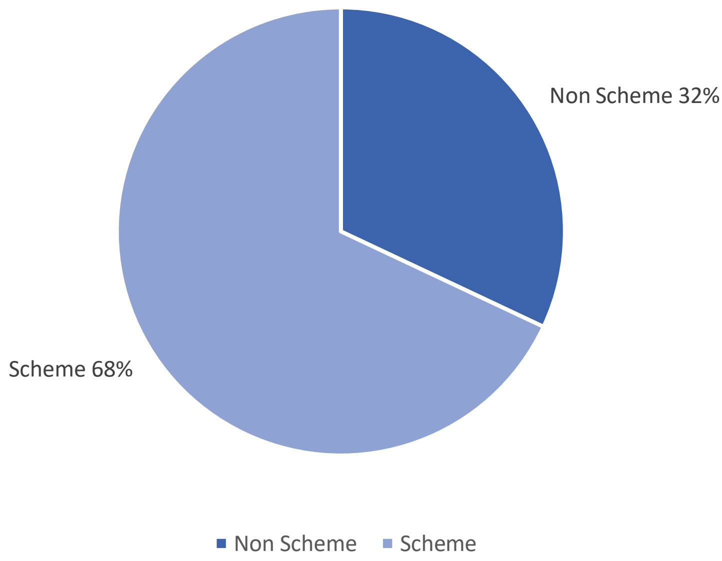
4.1 As at 31 December 2021 the total number of IVA cases was 328,666[1]. This figure represents the number of both new and existing IVAs.

4.2 As at 31 December 2020 the total number of IVA cases was 297,311[1]. IVAs have therefore increased by 31,355 during 2021. As at 31 December 2019 the total number of IVA cases was 277,295[1].

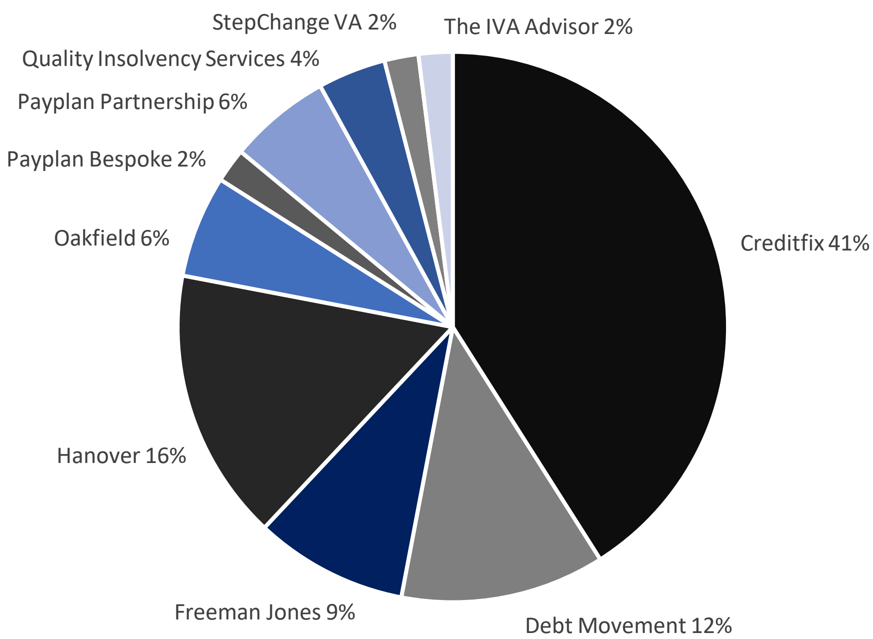


4.3 Of the 328,666[1] cases, 222,625 were Scheme member cases. This is 68% of the IVA market. The charts overleaf set out the current position of the IVA market represented by Scheme members.

[1] Figure provided by the Insolvency Service



Non Scheme 32%
Scheme 68%
Non Scheme
Scheme

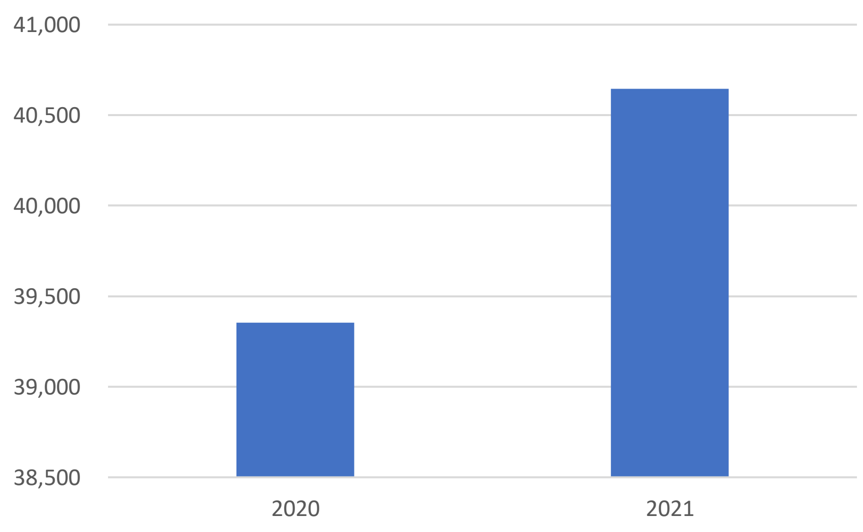


StepChange VA 2%
The IVA Advisor 2%
Quality Insolvency Services 4%
Payplan Partnership 6%
Payplan Bespoke 2%
Oakfield 6%
Creditfix 41%
Hanover 16%
Freeman Jones 9%
Debt Movement 12%

Scheme Member	Number of Cases as at 31/12/2021
Creditfix	92,448
Debt Movement	25,816
Freeman Jones	19,892
Hanover	35,972
Oakfield	12,641
Payplan Bespoke	4,183
Payplan Partnership	12,809
Quality Insolvency Services	9,696
StepChange Voluntary Arrangements	5,174
The IVA Advisor	3,994
Total	**222,625**

4.4 During 2021 Scheme members represented 68% of the IVA market. The Scheme members represented 68% of the IVA market in 2020, and 69% of the market in 2019. Scheme member representation has not increased during 2021 despite the two new Scheme members.

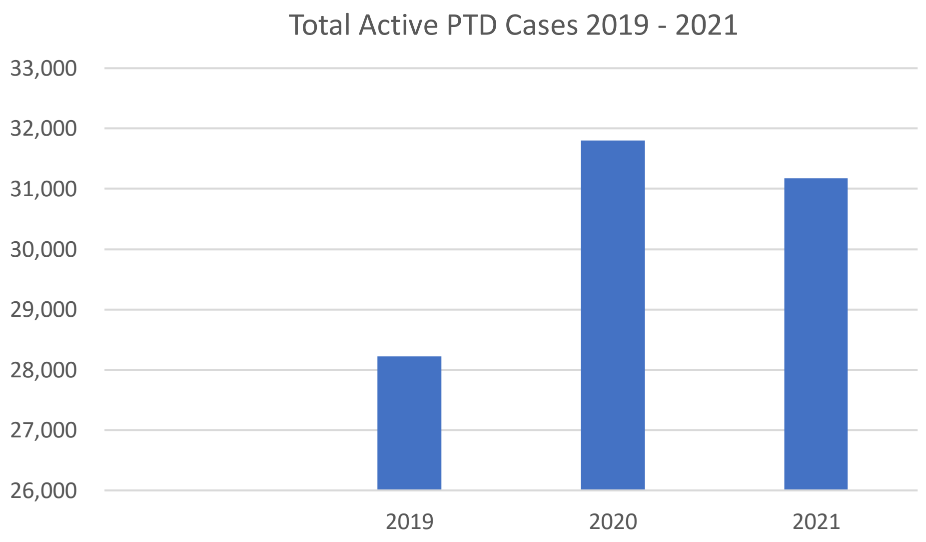
4.5 There were 40,647 new IVA appointments across the Scheme members in 2021. During 2020 there were 39,354 new IVA appointments across Scheme members. Scheme member new IVA appointments have therefore increased by 1,293 during 2021.



PTDs

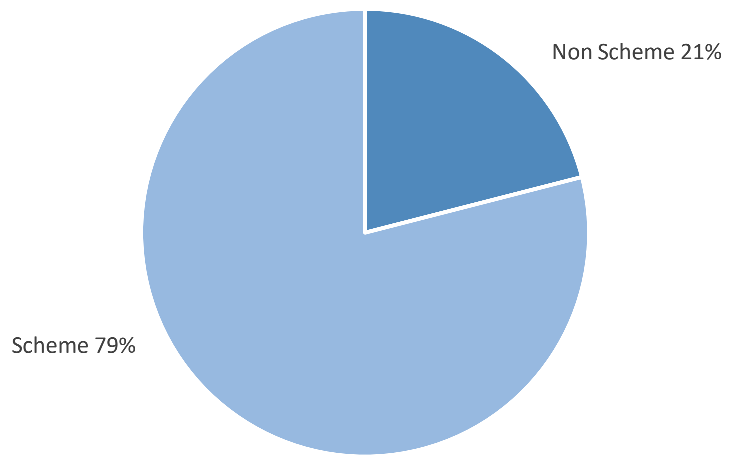
4.6 As at 31 December 2021 the total number of PTD cases was 31,173[2] . This figure represents both new and existing PTDs.

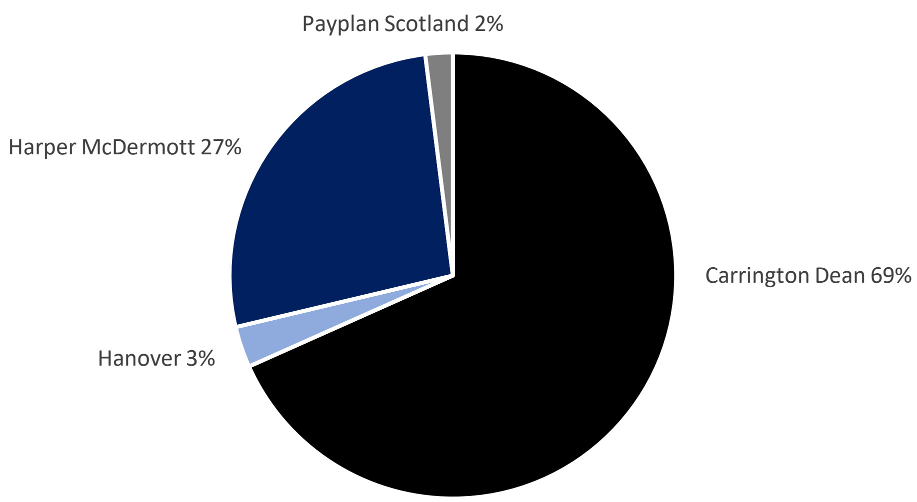
4.7 As at 31 December 2020 the total number of PTD cases was 31,798[2]. PTDs have therefore decreased by 625 during 2021. As at 31 December 2019 the total number of PTD cases was 28,226[2].



4.8 Of the 31,173 total PTD cases 24,594 were Scheme member cases. The charts overleaf set out the current position of the PTD market represented by Scheme members.

[2] Figure provided by the Accountant in Bankruptcy



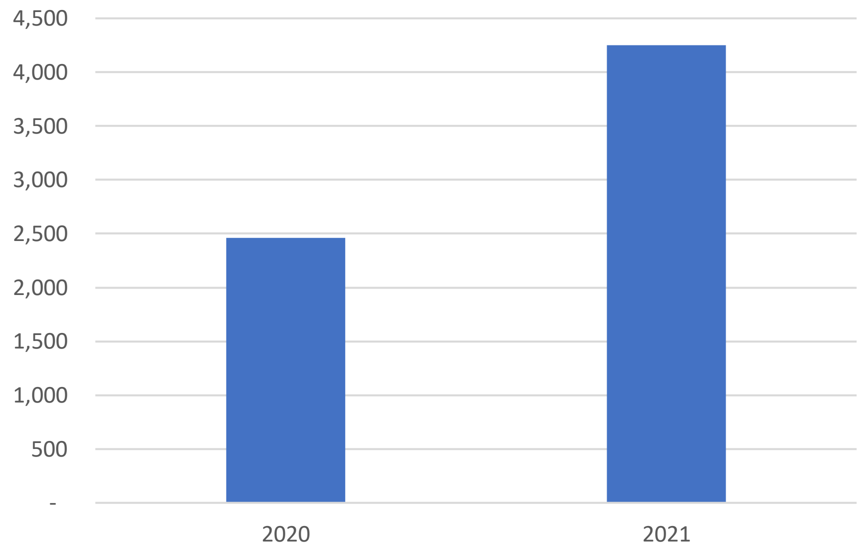


Scheme Member	Number of Cases as at 31/12/2021
Carrington Dean	17,016
Hanover	675
Harper McDermott	6,524
Payplan Scotland	379
Wilson Andrews	0*
Total	**24,594**

*See 3.7.

4.9 During 2021 Scheme members represented 79% of the PTD market. The Scheme members represented 54% of the PTD market in 2020, and 57% of the market in 2019. The increase in representation is largely due to the addition of a new Scheme member, Harper McDermott, in 2021.

4.10 There were 4,248 new PTD appointments across the Scheme members in 2021. During 2020 there were 2,463 new PTD appointments across Scheme members.



4.11 The main reason for the increase in new appointments across Scheme members in 2021 compared to 2020 is the addition of a new member, Harper McDermott, in 2021.

5. Scheme Activity 2021

5.1 This chapter sets out the monitoring activity undertaken in 2021 in order to meet the objectives of the Scheme.

5.2 As the Covid restrictions of 2020 continued into and throughout 2021 all but two of the inspections and reviews were carried out remotely.

5.3 During 2021 the majority of the Scheme members arranged for remote access to their system for the full visits. This enabled the Inspectors to dial in remotely and have the same level of access as they would have on site.

5.4 Please see below for a summary of reviews carried out in 2021:

Type of Review	Carried Out	Cases reviewed
Full Inspection Visit	14	214
Focused Review	30	275
Call Review	17	207
Additional Call Monitoring	-	899

5.5 Further detail on the Full Inspection Visits, Focused Reviews and Call Reviews/Additional Call Monitoring is given in Chapters 6, 7, 8, 9 and 10.

5.6 Scheme members have continued to submit their monthly data returns throughout 2021. The monthly data return covers 21 areas.

5.7 The monthly data return template was updated and expanded upon for 2021 providing for separate IVA and PTD templates along with additional requests for supporting information.

5.8 The data returns assist with the early identification of any anomalies which can then be followed up and investigated further where necessary in a timely manner.

5.9 The data returns also assist in other areas such as responding to the Debt Relief Order (DRO) consultation issued by the IS, the changes from which came into effect from 29 June 2021. The statistics gathered from the monthly data returns which the IPA were able to submit with their response to the consultation proved invaluable and enabled an informed outcome to be achieved.

5.10 Whilst StepChange VA did not join the Scheme until March 2021, they provided retrospective data for both January and February 2021, enabling a full 12 months' data to be captured.

5.11 As The IVA Advisor did not join the Scheme until July 2021, a full 12 months' statistics are not held for them and therefore they have not been included where noted in the data provided throughout this report.

5.12 Quarterly meetings with the Scheme member representatives, the IPA's Chief Inspector and the IPA Scheme Inspection team have continued throughout 2021. As during 2020, these meetings were held remotely due to the Covid restrictions. These meetings are held to discuss the Scheme and industry-wide issues in an open forum.

5.13 Individual monthly calls between the Scheme member representatives and IPA's Chief Inspector continued throughout 2021.

6. Full Inspection Visits

6.1 During 2021 full inspection visits have been carried out to all 14 Scheme members.

6.2 Prior to a full inspection visit, a Pre-Visit Questionnaire is issued to the Insolvency Practitioner(s) for completion and return prior to the visit. The questionnaire assists the Inspectors with planning the visit and includes questions on the following:

- The Insolvency Practitioner(s) details
- Practice information
- Office procedures
- Anti-Money Laundering procedures
- Staff numbers and structure
- Client money regulations
- Sources of work
- Fee size and basis
- Training and ongoing development

6.3 From the case data provided with the monthly data return, a selection is made of the cases which are to be reviewed during the inspection. The number of cases selected is dependent on the number of appointments held. A full review will be carried out on a proportion of the cases selected, with the remainder subject to specific consideration of the following areas:

- Annual reporting to creditors and individual
- Arrears and whether payments are being followed up
- Breaches of arrangements and the treatment of those
- Completion and how quickly final payment arrangements are finalised
- Distributions and fees, checking timing and quantum accords with proposal
- Failure, checking that failure arrangements have been processed properly
- Income and Expenditure reviews to check arrangement progression
- Progression of cases generally
- Property 'month 54' reviews in relation to equity
- Time expired cases, where the initial proposal period has been exceeded
- Variations to arrangements and the processes for obtaining those

- Source of introduction and evidence of work undertaken by them

6.4 Meetings are also held with staff members to review the processes and procedures such as the cashiering function.

6.5 Out of 14 full inspections, 12 have been carried out remotely rather than on site due to the Covid 19 restrictions; however the process has remained largely the same with meetings held virtually.

6.6 The outcome of each full inspection visit is used to determine the areas for the focused reviews.

6.7 There were no common risk areas identified across the members in the course of the full inspection visits.

7. Focused Reviews

7.1 The purpose of a focused review is to look at specific areas, such as case progression, income & expenditure (I&E) reviews etc. The need for this type of review may arise as a result of a number of factors. These could include any findings from a full inspection visit, intelligence from a complaint, or as a result of the Committee asking for a review to be focused on a particular area.

7.2 A total of 30 focused reviews were carried out during 2021. 14 reviews were carried out across Scheme members on Case Failure reviewing 132 cases; full details of this review can be found in Chapter 8.

7.3 A further 16 focused reviews were carried out reviewing 144 cases. Please see below for a summary of those reviews.

	Member	Area of Focus	# of cases
1	Freeman Jones	**Time Expired Cases** Following a focused review on case progression in 2020 the level of cases that remained open aged 6 years plus was of concern to the Inspectors. A 12-month strategy was put in place by Freeman Jones to reduce and close the cases. This was monitored by the Inspectors on a monthly basis.	-
2	Creditfix	**Modifications extending term of the IVA** Following the 2019 full visit a finding was made against one of the IPs for failing to properly advise a debtor regarding a proposed creditor modification in one case. This review was carried out to check for any systemic issues.	20
3	Hanover	**Annual Reporting** A selection of cases were reviewed to check that annual reports are issued within the statutory timeframes and are compliant.	20
4	Oakfield	**Issues identified from IVA forums** A review of the forums and discussions with the Insolvency Service highlighted some areas of concern in relation to the transfer of the Vanguard book to Oakfield and also the outsourcing function utilised by Oakfield. These	-

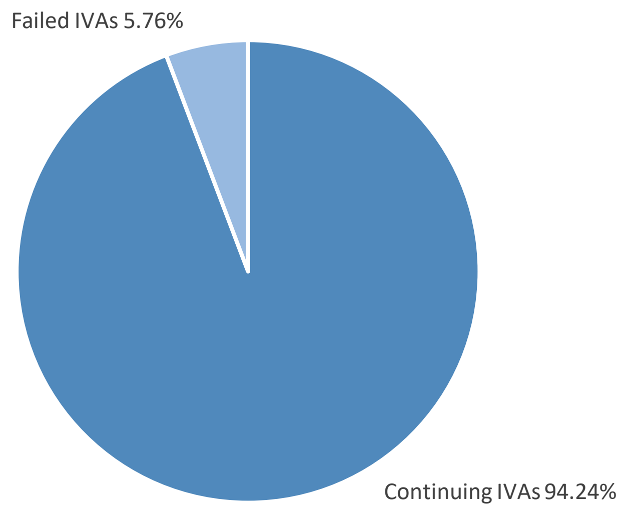
	Member	Area of Focus	# of cases
		areas of concern were reviewed by the Inspectors.	
5	Payplan Bespoke	**Variations and Full & Final Settlements** A selection of cases were reviewed to check the processes on cases where a variation is required and/or a full and final settlement offered.	4
6	Payplan Partnership	**Variations and Full & Final Settlements** A selection of cases were reviewed to check the processes on cases where a variation is required and/or a full and final settlement offered.	8
7	Debt Movement	**Progression** A selection of cases were reviewed to check they are being progressed in a timely manner and to identify any issues or delays.	30
8	Debt Movement	**Post IVA Trust (PIVAT) Cases** As reported in last year's report, in 2020 Debt Movement acquired the active IVA cases of Aperture Debt Solutions LLP. In April 2021 Debt Movement acquired the Aperture PIVAT cases. This review focused on the progression of the PIVAT cases.	10
9	Harper McDermott	**Initial Review** As a new member in 2021 an initial review was carried out to gauge an understanding of how the firm works. A review was carried out of the firm's standard documentation, call scripts, internal compliance reviews, complaints policy and the firm's staff.	-
10	Hanover	**Month 54 / Property** A selection of cases with a property were reviewed to check the Month 54 process.	4
11	The IVA Advisor	**Initial Review** As a new member in 2021 an initial review was carried out to gauge an understanding of how the firm works. A review was carried out of the firm's standard documentation, call scripts, internal compliance reviews, complaints policy and the firm's staff.	-
12	Carrington Dean	**Property**	12

	Member	Area of Focus	# of cases
		A selection of cases with a property were reviewed to check how the equity had been dealt with.	
13	Freeman Jones	**Complaints** A review of the complaints received and how they had been dealt with.	-
14	Wilson Andrews	**Complaints** As above.	-
15	Quality Insolvency Services	**Annual Reporting** A selection of cases were reviewed to check that annual reports are issued within the statutory timeframes and are compliant.	18
16	Quality Insolvency Services	**I&E Reviews** A selection of cases were reviewed to check the process for carrying out I&E reviews.	18
		Total cases reviewed	**144**

8. Case Failure Review

8.1 Statistics from the Insolvency Service showed that 8.4% of IVAs had failed in the first year in 2019. This was an increase from previous years.

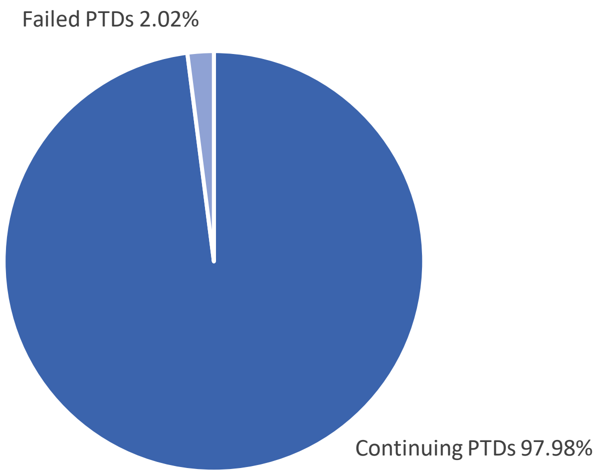
8.2 During 2021 a total of 12,833 cases failed across Scheme members. This is 5.74% of cases based on the total number of Scheme member cases as at 31 December 2021. Please note this is based on all Scheme members excluding The IVA Advisor as a full 12 months data is not held for them. This is demonstrated in the chart below.



8.3 In 2020 a total of 13,173 IVAs failed across Scheme members. This was 6.49% of cases based on the total number of Scheme member cases as at 31 December 2020.

8.4 The percentage of IVA failures was consistent across all Scheme providers with no one provider having a considerably higher failure rate than others.

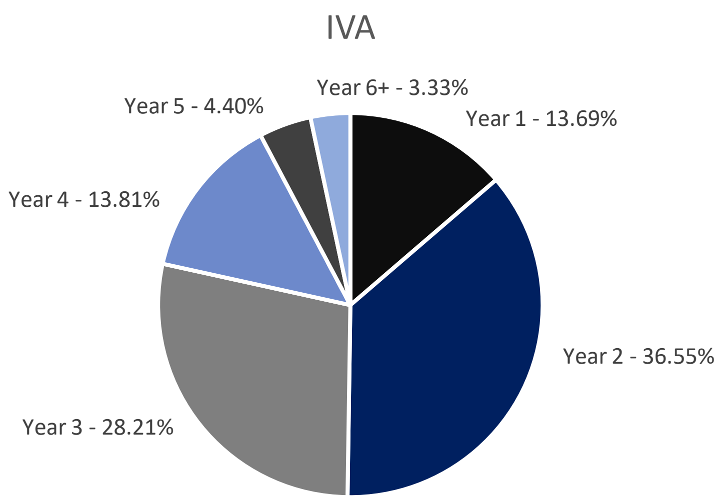
8.5 In 2021, 496 PTD cases failed across Scheme members. This is 2.02% of cases based on the total number of Scheme member cases as at 31 December 2021. This is demonstrated in the chart overleaf.

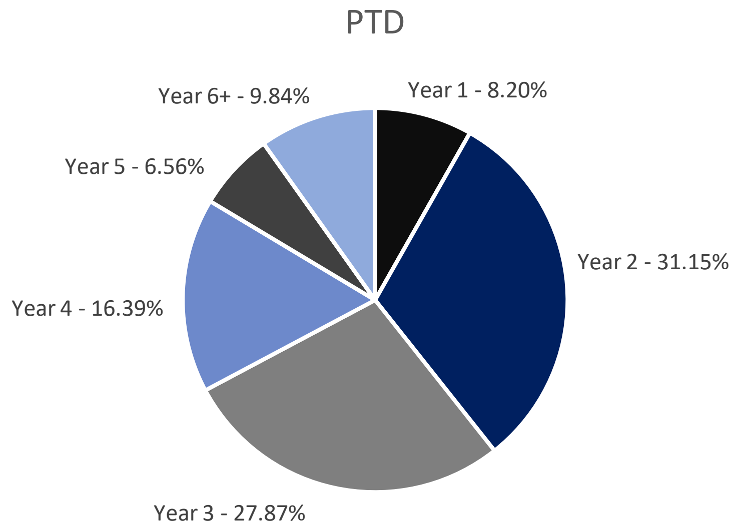


8.6 In 2020 a total of 254 PTD cases failed across Scheme members. This was 1.48% of cases based on the total number of Scheme member cases as at 31 December 2020.

8.7 The percentage of PTD failures was consistent across all Scheme providers with no one provider having a considerably higher failure rate than others.

8.8 For cases which failed in December 2021, the charts below detail in which year of the IVA/PTD the case failed. From the data held it can be concluded that case failures are more prevalent in years two and three for both IVAs and PTDs.





8.9 As per 2020, during 2021 a focused review on failures was carried out by the Scheme Inspectors in order to assess if there are any underlying concerns or trends regarding failure rates.

8.10 The review concentrated on cases which had failed within 30 months of appointment in order to establish the reasons for failure.

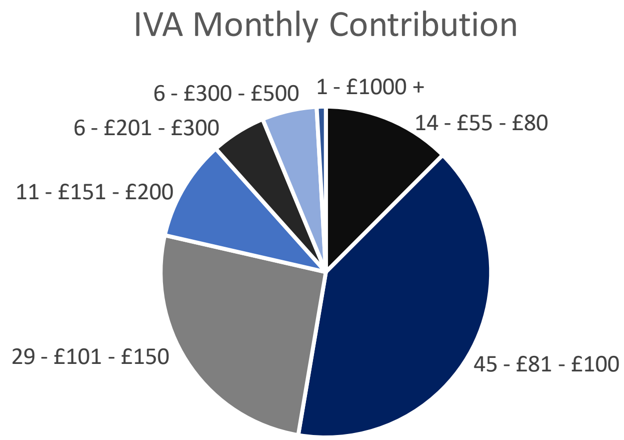
8.11 The review also sought to ascertain whether the advice given prior to appointment had had any impact on the failure or had been a contributing factor.

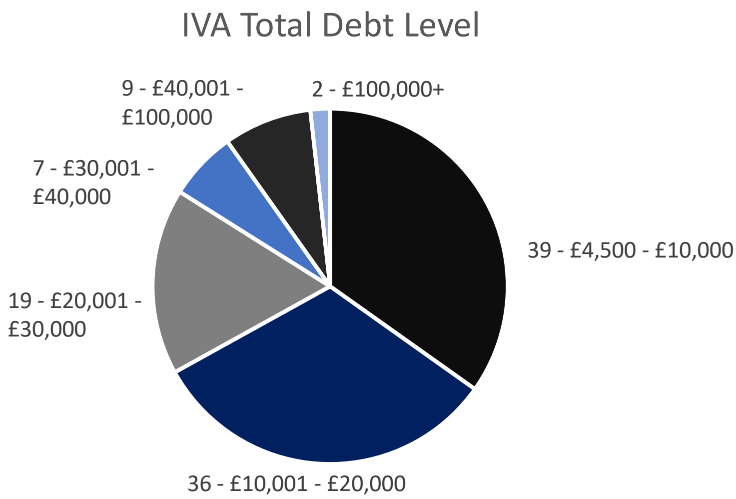
8.12 For this specific review 112 IVA cases and 20 PTD cases have been sampled. Please see below for a breakdown of the cases reviewed for each Scheme member together with the age of the case at failure:

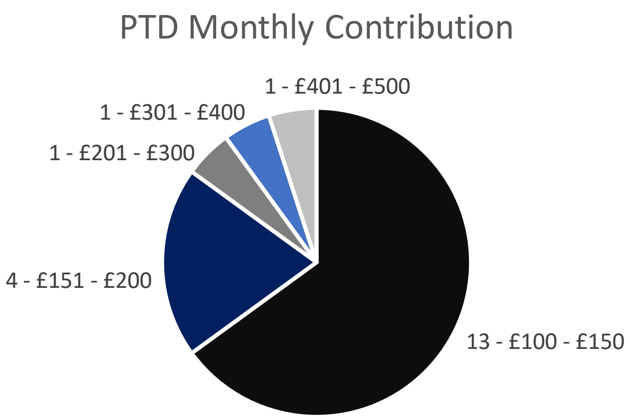
	Members	**Failed within (months)**					**Total**
		6	**6 - 12**	**13 - 18**	**19 – 24**	**25 - 30**	
	IVA						
1	Creditfix	8	6	5	10	1	**30**
2	Debt Movement	2	-	10	1	5	**18**
3	Freeman Jones	1	-	8	1	-	**10**
4	Hanover	4	6	-	-	-	**10**
5	Oakfield	-	-	3	5	-	**8**
6	Payplan Bespoke	-	-	-	3	-	**3**
7	Payplan Partnership	1	1	1	2	2	**7**

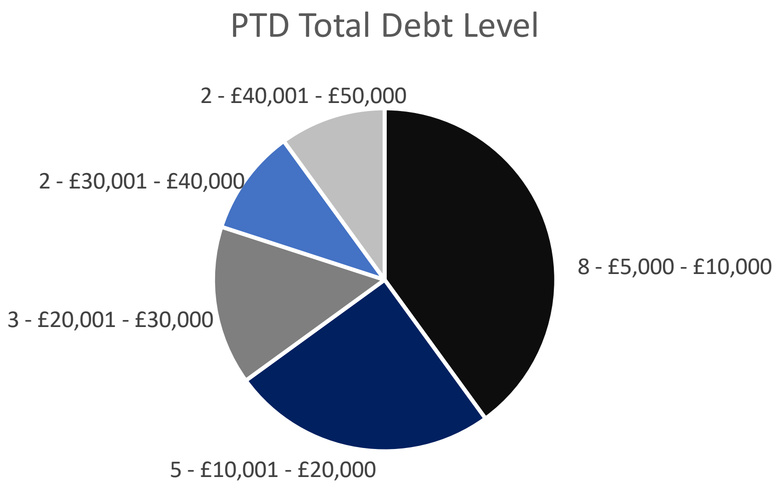
8	Quality Insolvency Services	6	3	1	-	-	**10**
9	StepChange VA	5	5	1	-	-	**11**
10	The IVA Advisor	5	-	-	-	-	**5**
		32	**21**	**29**	**22**	**8**	**112**
	PTD						
11	Carrington Dean	2	2	5	1	-	**10**
12	Harper McDermott	1	2	3	-	-	**6**
13	Payplan Scotland	1	-	-	1	-	**2**
14	Wilson Andrews	-	1	1	-	-	**2**
		4	**5**	**9**	**2**	**-**	**20**

8.14 The cases reviewed were selected by the Inspectors and covered a range of different criteria such as level of contribution and total debt level. Please see below charts for a breakdown of the monthly contribution and total debt level for the cases reviewed.

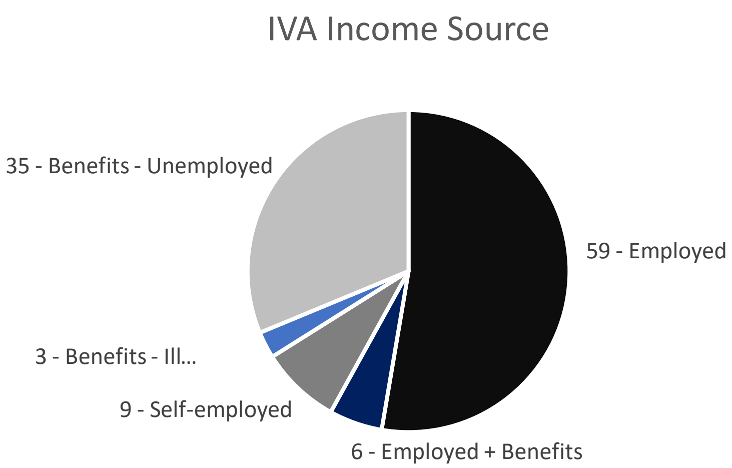


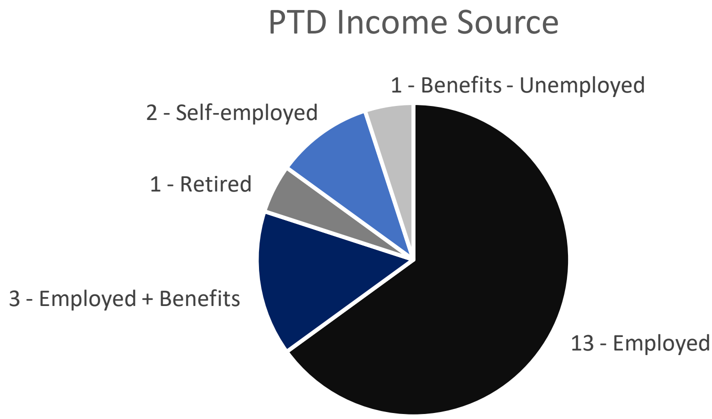






8.15 The cases reviewed were also selected to encompass a range of different income sources such as employed, self-employed and benefit only income. Please see the following charts for a breakdown.





8.16 The Inspectors reviewed the documentation for each case together with the pre appointment calls.

8.17 Reasons for failure were noted as follows.

Reason	**Number of cases IVA**		**Number of cases PTD**	
Arrears	44	39%	3	15%
Change in Circumstances (CIC)	26	23%	12	60%
Covid	14	13%	3	15%
Debtor’s request	23	21%	0	0%
Other	5	4%	2	10%
Total cases reviewed	**112**	**100%**	**20**	**100%**

8.18 The reason for failure on some cases fell into more than one category. For instance, a case may have failed due to arrears however the arrears had accrued due to a CIC. Another reason may have been that the debtor requested the termination due to a CIC. In cases of this nature the most pertinent reason has been allocated. For the 2021 review, Covid was also included as a reason for failure where it was the primary reason given for a CIC, arrears or request for termination.

8.19 Cases where arrears have been noted as the reason for failure are cases where arrears have accrued and either no reason has been provided by the debtor for the arrears or the debtor has failed to engage in any communication with the Scheme member to address the arrears.

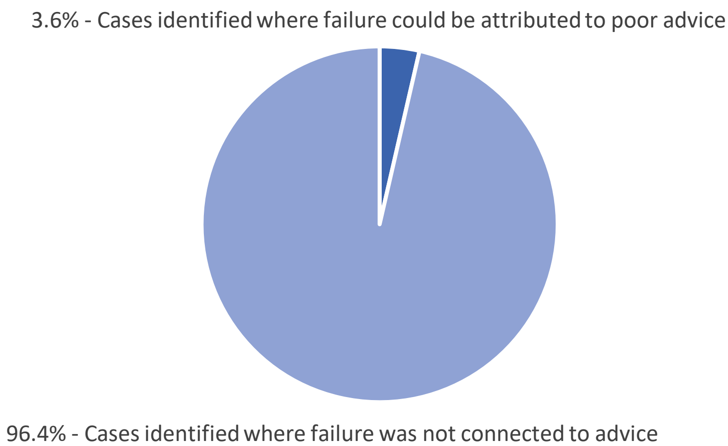
8.20 CIC is where the debtor’s circumstances have changed, impacting on their income and expenditure, making the IVA/PTD no longer sustainable or viable. Changes include illness, divorce/separation, loss of employment, changes to benefit income and death. For example, in one IVA case, the debtor had gained new employment with a salary increase meaning the IVA was no longer required.

8.21 A debtor's request is where the debtor has requested that their IVA be terminated without a change in circumstances prompting the request. In these cases, the debtor had changed their mind, had decided to pursue another available solution/option, or was not happy with how the arrangement was progressing.

8.22 Where the reason for failure is noted as 'other' this relates to 4 IVA cases of material irregularities and 1 case where the IVA was approved in error. The two PTD cases noted as 'other' were where the case was terminated by the Trustee for non-compliance by the debtor.

8.23 The 2021 review reached the same conclusion as the review carried out in 2020 in that there was no overriding trend identified from the cases reviewed. The failures did not fall into any specific category of case characteristic.

8.24 Out of the total 112 IVA cases reviewed, 4 cases have been identified where the Inspectors consider that the failure could be attributed to poor advice. There were no PTD cases where failure was identified to be attributed to advice on the cases reviewed. The 4 cases were across three Scheme members.



8.25 The four cases are as follows:

- One case – the debtor was not informed that their loan guarantor would become liable for the debt upon the debtor entering an IVA.
- One case – the Inspectors did not consider that the Bankruptcy option was sufficiently explored to ensure the debtor was making an informed decision.
- One case – a debt had been incorrectly included which could not be included in an IVA.
- One case – the call handler did not ensure that the debtor considered the monthly contribution to be affordable and sustainable.

8.26 By contrast to the failures, during 2021 22,397 IVAs and 3,751 PTDs were successfully completed during 2021.

9. Review of reasons why debtors do not choose other available Personal Insolvency solutions over IVA

9.1 Under the Scheme, members are subject to regular call reviews. As part of those reviews the Inspectors check that the debtor has made an informed decision when choosing a Personal Insolvency (PI) solution.

9.2 All Scheme members are expected to ask, and check, the reasons why a debtor does not wish to choose another available PI solution over an IVA. This is so that the call handler can be satisfied that the debtor fully understands all options available and is therefore making an informed decision.

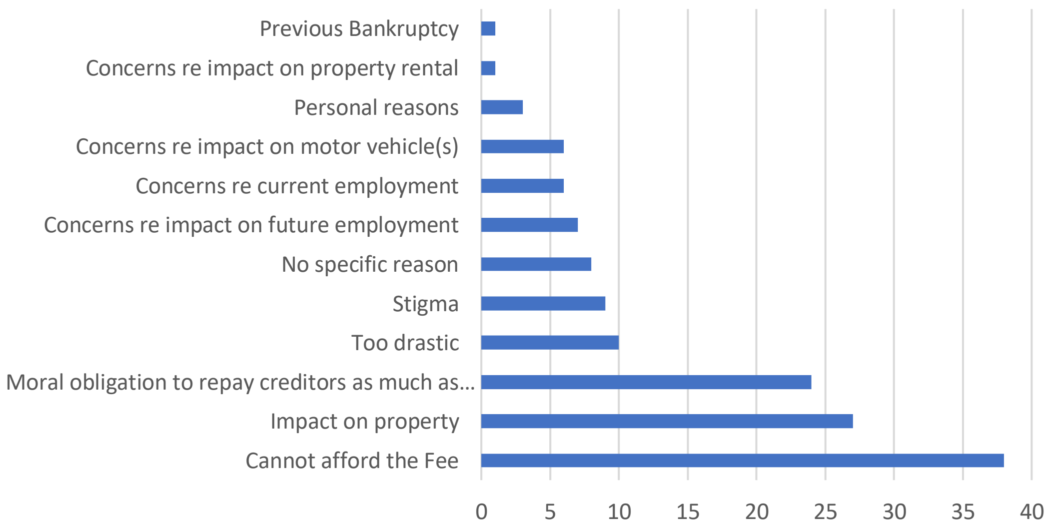
9.3 The other formal PI solutions are Bankruptcy, Debt Management Plan and Debt Relief Order.

9.4 For this review, 98 cases were selected across Scheme members and the particular reasons noted for why the debtor did not wish to choose any of the other available formal PI solutions.

9.5 The cases reviewed were selected by the Inspectors. The cases covered calls conducted on appointments from April 2019 – October 2021.

Bankruptcy

9.6 The reasons given by debtors for not wishing to proceed with the Bankruptcy solution are detailed below. It should be noted that in some cases debtors gave more than one reason for not wishing to proceed with Bankruptcy. All reasons have been recorded.



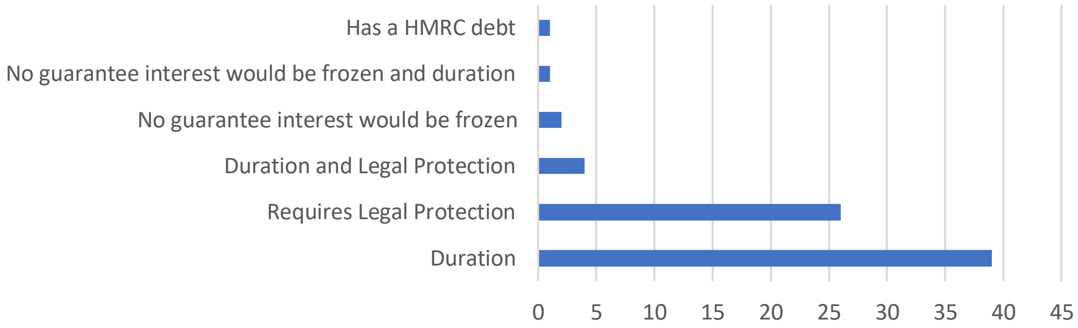
Reason for not choosing Bankruptcy	Number of Debtors	Percentage of Debtors
Cannot afford the Fee	38	51%
Impact on property	27	36%
Moral obligation to repay creditors as much as possible	24	32%
Too drastic	10	13%
Stigma	9	12%
No specific reason	8	11%
Concerns re impact on future employment	7	9%
Concerns re current employment	6	8%
Concerns re impact on motor vehicle(s)	6	8%
Personal reasons	3	4%
Concerns re impact on property rental	1	1%
Previous Bankruptcy	1	1%
Total	**140**	

9.7 In all of the cases where the debtor cited not being able to afford the fee in Bankruptcy as the dominant or one of the reasons for not choosing Bankruptcy, they were advised that the fee could be paid in instalments. All debtors responded that they did not want to wait whilst they paid the fee in instalments as they required a more immediate solution. Reasons given for a more immediate solution were creditor pressure and mental health.

9.8 Where 'no specific reason' has been recorded, these are cases where the debtor was adamant they did not wish to proceed with Bankruptcy but could not give a particular reason as to why. In all cases the call handler took steps to assess that the debtor understood the Bankruptcy option.

Debt Management Plan (DMP)

9.9 Out of the 98 cases reviewed, reasons were also noted for why the debtor did not wish to choose DMP in 73 cases as follows overleaf.



Reason for not choosing DMP	Number of Debtors	Percentage of Debtors
Duration	39	53%
Requires Legal Protection	26	36%
Duration and Legal Protection	4	5%
No guarantee interest would be frozen	2	3%
No guarantee interest would be frozen and duration	1	1%
Has a HMRC debt	1	1%
Total	**73**	

Debt Relief Order (DRO)

9.10 In all 98 cases reviewed the debtor did not meet the DRO eligibility criteria at the date of the SIP3.1 call(s).

10. Call Monitoring

10.1 Upon inception of the Scheme in 2019, the initial main area of focus was to review the consistency of the advice given to debtors by the Scheme members as this was considered to be a primary concern of stakeholders.

10.2 The call monitoring process evolved over 2019 and continued throughout 2020 with introducer details being requested for each case and the Scheme members' internal due diligence of their introducers was reviewed. Where a case has come by way of a direct approach to the Scheme member, or one of their connected companies, these calls are also required for review in addition to the SIP/Verification calls so that every stage of the debtor's journey from initial contact to appointment can be reviewed. This continued in 2021.

10.3 In order to increase the quantum of calls reviewed during 2021 the IPA recruited three dedicated call reviewers on a sub-contract basis to carry out call reviews in addition to the Scheme Inspectors. The call reviews carried out by the dedicated call reviewers are supervised and monitored by the Scheme Inspectors.

10.4 The additional call reviewing commenced in March 2021 with calls being requested for review for cases appointed in the previous month. The number of cases selected for a call review per month is dependent on the number of appointments held by the Scheme member – the more appointments held, the more cases that are selected.

10.5 The Scheme Inspection team select the cases for all call reviewing. The cases are selected using a number of criteria including vulnerable debtors, low disposable income, total debt level, different income types (eg employed, self-employed, benefits and pension), debtors with property together with a number of random cases. A number of rejected cases will also be selected for call review.

10.6 All calls for each case selected are requested for review which includes, but is not limited to, any introduction/initial contact call, appointment making call and advice calls. The proposals and any pre appointment letters and records are also requested for review alongside the call. The call handler's scripts are also requested for review.

10.7 During 2021, a total of 1,010 cases have been call reviewed, being 884 IVA cases and 126 PTD cases.

10.8 The Scheme Inspection Team have reviewed the calls of 207 cases, and the dedicated call reviewers have reviewed the calls of 803 cases. The calls reviewed took place in 2021.

10.9 2.17% of new IVA appointments for Scheme members in 2021 have been call reviewed and 0.51% of new PTD appointments.

10.10 Please see below breakdown of the reviews carried out across Scheme members:

Member	Inspection Team	Call Reviewers	Total
IVA			
Creditfix	44	216	260
Debt Movement	12	106	118
Freeman Jones	22	104	126
Hanover	11	145	156
Payplan Bespoke	8	24	32
Payplan Partnership	12	45	57
Quality Insolvency Services	22	50	72
StepChange VA	19	32	51
The IVA Advisor	12	-	12
IVA Total	***162***	***722***	***884***
PTD			
Carrington Dean	15	35	50
Hanover	-	4	4
Harper McDermott	20	33	53
Payplan Scotland	2	8	10
Wilson Andrews	8	1	9
PTD Total	***45***	***81***	***126***
Overall Total	**207**	**803**	**1,010**

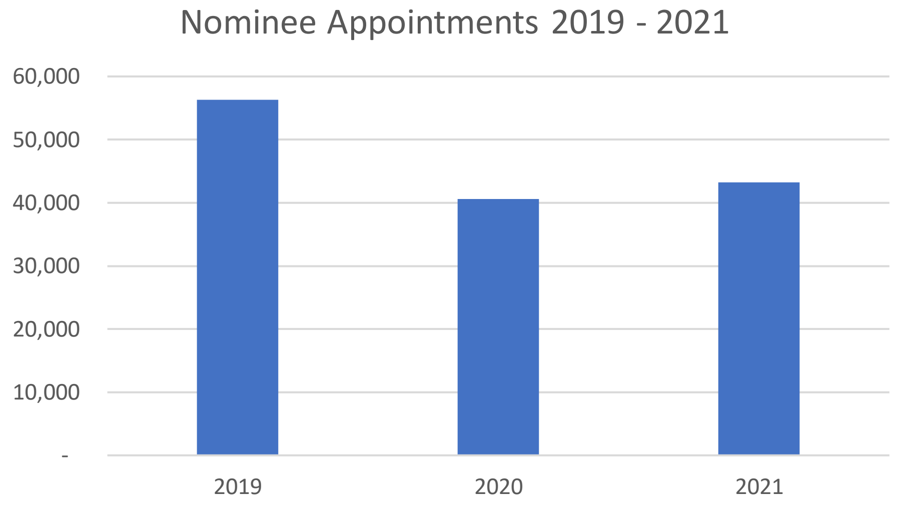
10.11 The IPA consider that the quality of call advice has improved since the inception of the Scheme in 2019 with standards rising and a consistency in approach across all Scheme members. Scheme members are expected to adhere to best practice as well as the requirements of the SIPs. Advice calls are the first area to be monitored for new members to the Scheme to ensure their approach is consistent with other members.

11. Focus Areas Summary and Statistics

11.1 IVA New Appointments / Rejections

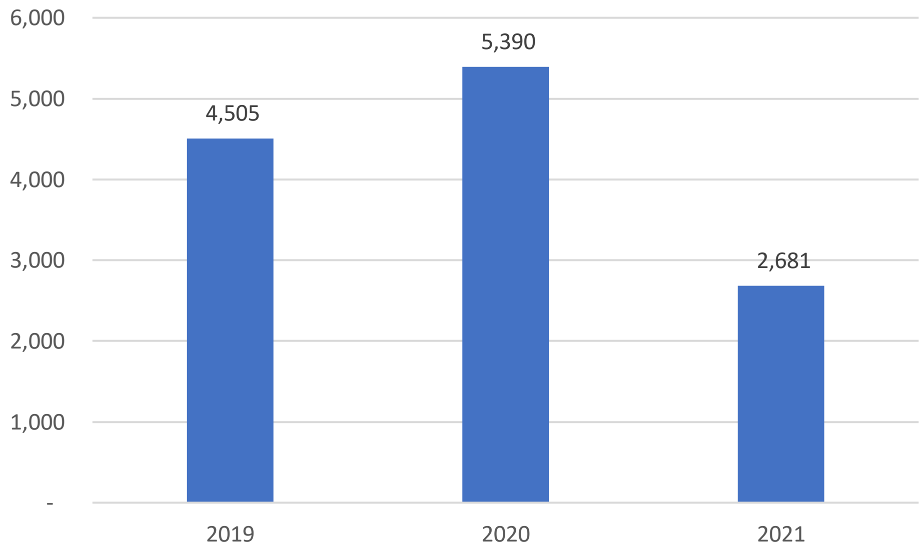
11.1.1 The total number of new IVA Nominee appointments for 2021 for Scheme members was 43,255. Please note this is based on all Scheme members excluding The IVA Advisor as a full 12 months' data is not held for them. The chart below shows a breakdown of the Nominee appointments each month. With this data we can look for any trends such as whether appointments are seasonal.

11.1.2 There were 40,575 Nominee appointments during 2020 and 56,312 Nominee appointments in 2019 across Scheme members. Therefore for 2021, Nominee appointments increased by 2,680 (40,575 (2020) to 43,255(2021)) but have still not returned to the pre Covid-19 pandemic levels.



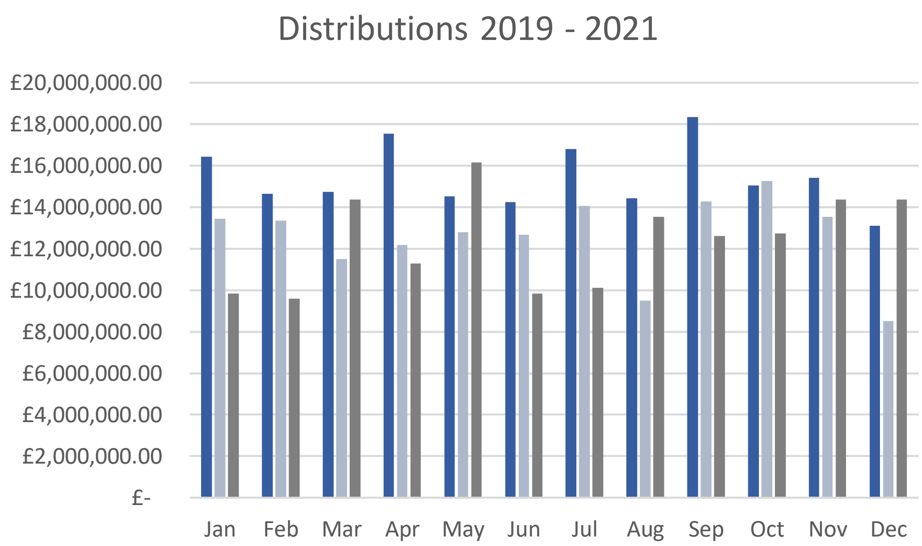
11.1.3 Of the 43,255 Nominee appointments in 2021, 2,681 (6.20%) proposals were rejected by creditors. Please note this is based on all Scheme members excluding The IVA Advisor as a full 12 months' data is not held for them.

11.1.4 During 2020, 5,390 (13.28%) proposals were rejected and in 2019, 4,505 (8%) of proposals were rejected.



11.2 Distributions

11.2.1 Between 1 January and 31 December 2021, a total of £185,337,753 was distributed to creditors by IVA Scheme members. The sum distributed for the same period in 2020 was £151,148,736 and in 2019 £148,833,623.



11.2.2 Between 1 January and 31 December 2021, a total of £18,014,388.77 was distributed to creditors by PTD Scheme members.

11.2.3 The monthly data return provides the monthly distribution total for each Scheme member. A selection of cases were reviewed for distribution at each full inspection visit during 2021.

11.3 Property / Month 54 (IVA)

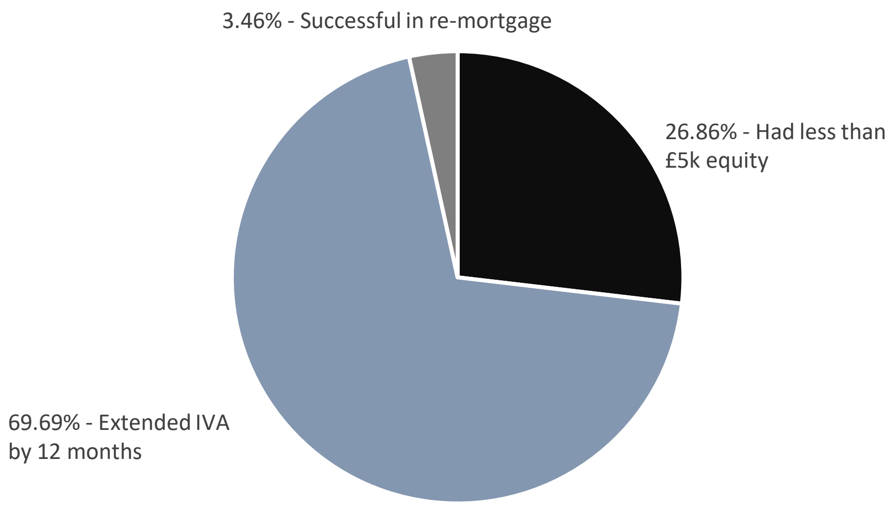
11.3.1 In IVA cases where the debtor(s) owns or jointly owns a mortgaged property (or properties) a valuation of the property will be carried out by a third party on behalf of the Supervisor six months before the expected end of the IVA (Month 54).

11.3.2 The Straightforward Consumer IVA Protocol 2021 defines the requirements to review the equity and the obligations to try and release funds to the IVA.

11.3.3 As per 2019 and 2020, property continued to be an area of focus in 2021 to ensure that the process is carried out in accordance with the requirements.

11.3.4 3,444 cases reached Month 54 during 2021. Out of those cases:

- 925 had less than £5k equity and therefore no action was required
- 2,400 were not successful in securing a re-mortgage and therefore extended the IVA term by 12 months in lieu of equity
- 119 were successful in securing a re-mortgage in order to release equity



11.3.5 A selection of cases were reviewed for Month 54 at each full inspection visit during 2021.

11.4 Property (PTD)

11.4.1 In cases where the debtor has a property in a PTD, any equity in the property is calculated prior to the commencement of the Trust Deed. An amount is then offered to creditors in lieu of any equity - the details of such offer are provided to creditors in the Trust Deed proposal document.

11.4.2 There is no prescribed calculation or statutory requirement on how the offer in lieu of equity is calculated. During the 2021 full visits and reviews, a number of PTD cases with property were selected for review to ensure consistency across members when calculating the offer. The offer is based on the debtor’s monthly surplus and contribution to the Trust Deed and is usually an extra 12 – 24 months contributions.

It should be noted that where 2021 figures have been compared to previous year’s figures in the sections above these are not directly comparable due to the changes in Scheme members over the last three years.

12. Other Areas of Focus

12.1 Advertising / Marketing

12.1.1 As noted in the 2020 Benchmark report, the Ethics Code for Members was revised with effect from 1 May 2020. A significant area of revision was in respect of advertising and marketing. Advertising and marketing was an area of focus in 2020 and continued to be so during 2021.

12.1.2 The Scheme Inspection team, as well as the wider IPA Secretariat have continued to investigate cases of poor advertising standards and these have been repeatedly reported to the Financial Conduct Authority (FCA).

12.1.3 The IPA have attended working group meetings with the Insolvency Service, FCA and other RPBs focusing on advertising and marketing in the IVA and PTD arenas.

12.2 Work Introducers

12.2.1 In 2019 the IPA commenced work with the FCA in sharing intelligence and training in order to improve the advice given prior to an IP receiving the case. This work continued throughout 2020 and again throughout 2021.

12.2.2 During 2021, the IPA have continued to work in conjunction with the Insolvency Service and other RPBs in liaising with the FCA and Advertising Standards Agency (ASA) on areas of concern and action to improve standards in this area.

12.2.3 On 17 November 2021, the FCA published a consultation on proposals for new rules in respect of debt packagers. The closing date of the consultation was 22 December 2021. The IPA submitted a response and the outcome is awaited.

12.2.4 Throughout 2021, with the assistance of IVA provider members (both Scheme and non-Scheme members), the IPA have continued to carry out work into investigating bogus websites. A bogus website is a website which purports to be, or to be connected to, a regulated IVA provider when in fact they are not. The number of these websites continues to be considerable, and they appear in many guises.

12.3 IVA Protocol

12.3.1 The Straightforward Consumer IVA Protocol has been redrafted by the IVA Standing Committee and was published in April 2021. The IPA is represented on the IVA Standing Committee. Since its publication the IPA have worked with members on the implementation of the changes in the Protocol.
Key changes to the Protocol include:

- Changes to the way in which equity in a debtor’s home is dealt with, including the introduction of a 72-month IVA for those who have equity over £5,000 and are unlikely to be able to remortgage at the end of their IVA term.
- Highlighting the need to consider vulnerability of debtors and providing further guidance on what practitioners should do if vulnerabilities are identified.
- Requiring the IP to record more information in respect of any lead who has referred the case to them.
- An obligation that the IP ensures that the debtor has received appropriate debt advice from either an FCA regulated firm or an individual working under the IP exclusion and, as part of that, considers the sustainability of that IVA.
- Several practical annex documents which include a guide to the regulatory framework, a sample letter for use in full or part by an IP when the proposal is put together and a more detailed estimated outcomes template for comparing IVA to Bankruptcy.

12.4 PTD Protocol

12.4.1 In July 2021 the Accountant in Bankruptcy published a PTD Protocol Agreement. The IPA, along with PTD Scheme members, assisted the working group with the content of the Protocol.

12.5 Changes to DRO Criteria

12.5.1 In January 2021 the Insolvency Service released a consultation on the proposed changes to the Debt Relief Order (DRO) eligibility criteria. The IPA were able to provide a substantive response to the consultation using the data provided by Scheme members on their monthly data returns. The data submitted by the IPA was instrumental in contributing to the conclusion reached by the consultation.

12.5.2 On 29 June 2021 the changes to the eligibility criteria were released as follows:

- Increase in debt level from £20,000 to £30,000
- Increase in value of owned assets from £1,000 to £2,000
- Increase the level of surplus income from £50 to £75

12.5.3 Since the changes have been released, the IPA have worked with their members to ascertain the effect of these criteria changes on existing IVA customers.

12.6 Trust Cases

12.6.1 As reported in the 2020 Benchmark report, during 2019 and 2020 the Trust cases of all Scheme members were reviewed. The majority of Scheme members sever the Trust either on closure of the IVA or after 12 months from the date of closure of the IVA. One member however had a large number of Trust cases which raised concern and was therefore monitored and progressed with the member concerned.

12.6.2 During 2021 the Trust cases in question have continued to be monitored as well as Trust cases in general across all Scheme members.

12.6.3 The Monthly Data Returns provide data on Trust cases which enables any changes in numbers to be monitored.

12.7 Creditor Relations

12.7.1 Throughout 2021 the IPA's Chief Inspector has continued to have regular meetings with the Creditors Groups as well as additional conversations as and when matters so require.

12.7.2 Links which were further established with the free debt advice sector, online forums and Credit Unions have continued to be strengthened throughout 2021.

12.8 Mis-selling

12.8.1 The 2020 report highlighted a rise in potential claims being made to members of the Scheme. This has continued in 2021 and the numbers received remain very low. There is a continued concern over claims made on agents' websites which often claim widespread mis-selling in the industry and make bold claims of being able to successfully write-off debt. The examples seen typically result in payments into the IVA being stopped or even paid to the agent and unfortunately the cases seen are examples of clients with clear repayment records and even property interests to protect and there is typically limited positive engagement by parties concerned. We have continued to raise with the Insolvency Service our concerns over how the IVA register is being used by agents. Through our monitoring, or any complaints received, we have not seen any successful claims being completed.

12.8.2 It is progress that the FCA published a warning in August 2021 about one firm (unfortunately we are aware that a new firm owned by the same individual appears to be running a similar operation). We would encourage any individual with a concern to first engage with the Insolvency Practitioner and their firm direct and in the event that a complaint cannot be resolved then the procedure outlined on the following website should be followed: complain about an insolvency practitioner.

12.9 Fixed Fee

12.9.1 At the inception of the Scheme in 2019, a number of members were proposing IVA cases on a fixed fee basis. The feedback was that many creditors and creditor groups were in favour of the fixed fee model, albeit the quantum of the fee charged by some members was not agreed with all creditors.

12.9.2 The IPA was, and continues to be, in support of the general principle of the fixed fee model. The IPA considers that, in line with the Statement of Insolvency Practice, the fixed fee model offers transparency and avoids the many issues previously found relating to disbursements and payments to associates.

12.9.3 Whilst the majority of Scheme members now propose cases on a fixed fee basis, the fee quantum differs with not all creditors/creditor groups agreeing on the same amount of fee and also differing fees agreed with different members. Furthermore, not all creditors agree to a fixed fee and submit modifications to change the fee basis to a nominee fee of a set amount and supervisors fees on a percentage basis.

12.10 Statutory Debt Repayment Plan (SDRP) and transparency of debt solutions

12.10.1 Section 9.9 highlighted a significant reluctance of clients to consider a current DMP due to lack of statutory legal protection. The concerns of potential clients could easily be addressed by the introduction of a statutory element to DMPs. Whilst there would appear to be an easier fix to the solution than the SDRP solution, it is unfortunate that there is no implementation date for the SDRP. The general principles of the SDRP scheme could work well if the fees and funding issues are addressed and it mirrored more the solutions seen in Scotland.

12.10.2 To allow consumers and those advising on debt issues to make informed decisions, the IPA considers that it is important that more transparent information is disclosed on the performance of all debt solutions. This should include the performance of bankruptcy in terms dividends paid and number of individuals requested to pay income payments. For DROs the number revoked should be published. For DMPs statistics should be recorded and published on the number of plans in existence, the amount of debt under management, performance and timeframes. This will also enable those in charge of the legislative change to make clearer decisions on reform.

12.11 Anti-Money Laundering

12.11.1 In the 2020 report we highlighted the potential risk of vulnerable individuals being used as money mules, with their personal accounts being compromised to launder the proceeds of crime. The risk has been incorporated into Scheme members' training and review processes by making sure that staff are aware of the importance of the issue and are able to flag this issue and any other suspicion and report accordingly.

12.11.2 The risk of the insolvency solutions in the Scheme being exploited for criminal gain remains relatively low but nevertheless under the Scheme we ensure that each firm regularly reviews their risk assessments.

12.12 VPR logo

12.12.1 The IPA has developed a Scheme logo to assist with the promotion of the benefits of the Scheme in terms of providing better oversight, better outcomes, better service to individuals in debt, better serving the public interest and improving confidence. The general values of the Scheme are defined on the IPA's website and it is hoped that, along with the proposed changes to Debt Packagers by the FCA, individuals will be better served by a smoother journey to resolving their debt problems.

13. Complaints Overview

13.1 Complaints Overview

13.1.1 The majority of complaints dealt with by the IPA are referred from the Insolvency Service's dedicated Complaints Gateway which provides a single access point to register a complaint about an IP.

13.1.2 The Complaints Gateway undertakes an initial assessment of the complaint and, if it decides there are grounds for the matter to proceed, it will refer the complaint to the regulator responsible for licensing the IP.

13.1.3 Investigations may also arise as a result of monitoring visits, decisions of the IPA's Regulation and Conduct Committee (the Committee) or other intelligence.

13.2 Complaints Handling Process

13.2.1 Stage 1 (initial assessment): The Secretariat undertakes a review of the complaint to establish whether there are facts or matters that indicate the IP has potentially become liable to disciplinary action. A decision will be made at this stage as to whether the complaint should be rejected or taken forward for a consideration of potential of professional misconduct.

13.2.2 Intelligence sharing / Risk Profiling: If, during the initial assessment of the complaint, the Secretariat does not consider that it is sufficiently serious to constitute professional misconduct but is not considered 'good practice', the matter will be drawn to the attention of the Inspection team and it may influence the specific areas requiring a focused review.

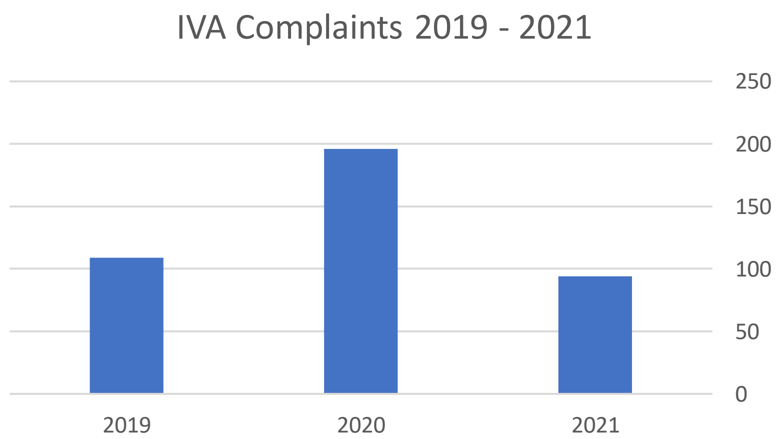
13.2.3 Stage 2 (potential misconduct): A draft allegation of misconduct will be formulated and put to the IP for their final representations before the complaint is then presented to the Committee for a final determination on whether there is a prima-facie case of misconduct.

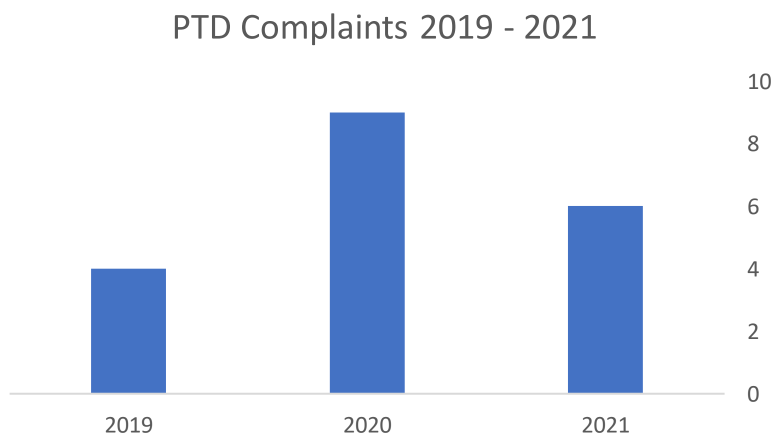
13.2.4 The Committee is responsible for considering any matter the Secretariat identifies as requiring Committee attention relating to the fitness of licensed IPs or liability to disciplinary action. The Committee also consider all applications for authorisation. If, on consideration of the complaint, the Committee determines that there is a prima-facie case of misconduct, it has the power to invoke a licence restriction / withdrawal proceedings and invite agreement to disciplinary sanctions by consent, including reprimands and fines.

13.3 Complaints in 2021

13.3.1 During 2021 there were 100 complaints received against the firms in the Scheme, of which 94 related to IVAs and 6 related to PTDs. In 2021 there were an additional 32 IVA related complaints against former scheme member Aperture Debt Solutions LLP, which ceased to trade in 2020 (29 of these complaints are now closed).

13.3.2 In 2020 there were 205 complaints (196 related to IVAs and 9 related to PTDs)[3], and there were 109 complaints in 2019 (105 related to IVA and 4 related to PTD).





[3] The 2020 figures have been restated from 185 (180 related to IVAs and 5 related to PTDs) due to an unidentified reconciling item.

13.3.3 Complaints received in 2021 remain low, representing 0.03% of IVAs and 0.02% of PTDs administered by the Scheme members.

13.3.4 There were 76 complaint closures in 2021, either by the Secretariat at the initial assessment stage or, in cases where a formal investigation was opened, following consideration/sanction by the Committee.

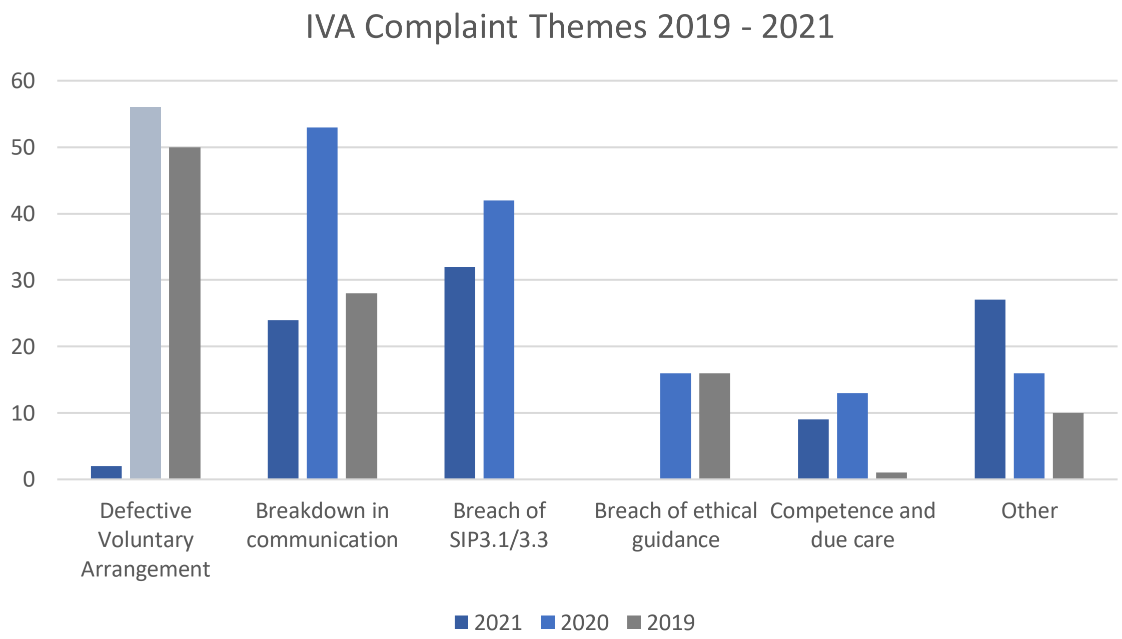
13.3.5 The table below provides an overview of the number of cases where a Committee decision was requested in 2021:

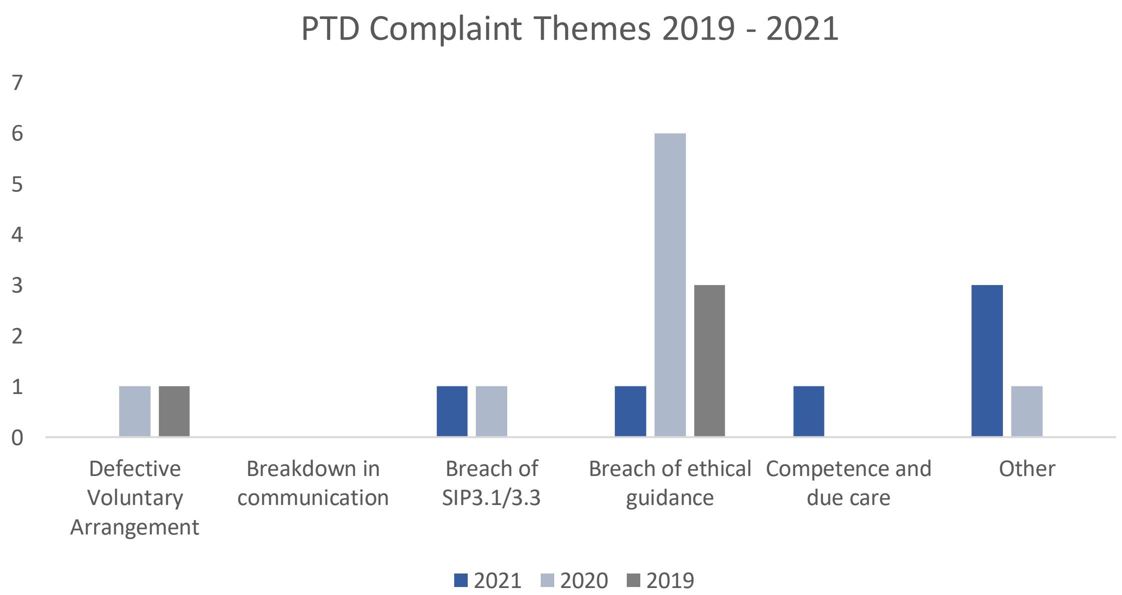
	IVA	PTD
Number referred and outcome reached	9	3
Number where a prima-facie case of misconduct was made out by the Committee	4	3
Nature of complaints	- Unauthorised remuneration - disregarding, rejecting and failing to act on modifications - Failure to retain adequate records - Closure delay - Failure to obtain a professional property valuation	- Failure to carry out proper closure formalities - Failure to realise an asset for the benefit of creditors - Failure to obtain a professional property valuation

13.4 Complaint Themes in 2021

13.4.1 Communication issues (i.e. inaccurate information, delays and/or failures to respond) and potential breaches of SIP 3.1 generated the majority of complaints in 2021. There were also a number of complaints referred in relation to initial advice given and alleged mis-sold IVAs, potential breaches of advertising (i.e. the inclusion of misleading statements on websites and in online advertisements) and potential claims in relation to mis-sold PPI.

	IVAs			PTDs		
	2021	**2020**	**2019**	**2021**	**2020**	**2019**
Defective Voluntary Arrangement	2	56	50	-	1	1
Breakdown in communication	24	53	28	-	-	-
Breach of SIP3.1/3.3	32	42	-	1	1	-
Breach of ethical guidance	-	16	16	1	6	3
Competence and due care	9	13	1	1	-	-
Other	27	16	10	3	1	-
Total Complaints	**94**	**196**	**105**	**6**	**9**	**4**





14 The Scheme Focus in 2022

14.1 Predicted Impact on IVA and PTD cases

14.1.1 At the onset of Covid, we anticipated a big impact on the economy and the ability of debtors to meet their monthly IVA contributions. The IVA Covid Protocol was enacted (as reported on in the 2020 Benchmark report), which was utilised by several thousand individuals. Whilst Covid turned out to have a small effect on IVAs, the industry had been proactive and not reactive and had considered the potential impacts in advance.

14.1.2 The IPA consider that we need to respond in a similar way with the additional real threats on the horizon of energy price rises, tax increases and inflation.

14.1.3 The rise in energy prices has a big potential impact on IVAs and PTDs and the ability of debtors to make their agreed monthly payments. In addition, there is the impending National Insurance increase, which, along with the general consumer price inflation, will reduce debtors' agreed monthly surplus income and is likely to increase non-payments. This recent pressure could never have been predicted when an IVA/PTD was first being advised even as recently as 12 months ago.

14.1.4 The IPA consider the recent changes will also result in more people needing to seek advice and enter into debt solutions.

14.1.5 The IPA will be raising this issue with members as well as entering into discussions with the Insolvency Service, the IVA Standing Committee and the Accountant in Bankruptcy on the matter.

14.2 Scheme Membership

14.2.1 It is anticipated that membership of the Scheme will continue to grow during 2022 with new members joining as and when they meet the criteria.

14.2.2 As advised in the last Benchmark report, in order to align the IPA's regulation, the Scheme Inspection team was to take forward the monitoring of the non-Scheme IVA and PTD providers (those providers who have a lower number of cases but are still regarded as part of this market) to provide consistency across the monitoring of all IVA and PTD providers. For 2022 a new Inspector has been recruited who will manage the monitoring of these providers alongside the Scheme Inspection team.

14.3 SIP3.1/3.3 Advice

14.3.1 SIP 3.1/3.3 advice will continue to be monitored during 2022 as the IPA consider that continuous monitoring is key in this area.

14.3.2 The revision of SIP3.1 is ongoing with the IPA taking an active role in the working group.

14.4 Modifications submitted by creditors

14.4.1 As noted at 12.9, a number of opposing modifications can be received on one case in relation to the fee of the appointed IP. In addition, numerous other modifications can also be received, a large number of which appear to be standard modifications for a particular creditor. The number of modifications submitted on a case can be substantial and, given the opposing nature of some modifications, can cause unnecessary complication.

14.4.2 The purpose of the IVA protocol was to negate the need for modification on cases that were protocol compliant; however this does not happen in practice.

14.4.3 During 2022 the IPA intend to work with Scheme members to identify new and unusual modifications and attempt to work with creditor groups in order to reduce the number of modifications proposed.

14.5 Work Introducers

14.5.1 The IPA will continue its work in the work introducer/lead generator area and will determine what steps to take once the outcome of the FCA consultation is known.

14.5.2 The IPA will continue to further its working relationship with the FCA and other parties in this arena.

14.6 Review of Personal Insolvency Landscape

14.6.1 The IPA will take an active role in the Insolvency Service's review of the personal insolvency landscape.

14.7 Anti-Money Laundering

14.7.1 The IPA will continue to review risks in the IVA and PTD markets and ensure that firms have effective policies and procedures in place that are able to both identify current risks and adapt as risks change.

General Data Protection Regulation (GDPR) Statement
The IPA is committed to ensuring the security and protection of the personal information that we process, and to provide a compliant and consistent approach to data protection. If you have any questions related to our GDPR compliance, please contact us.

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