Strengthening the regulatory regime for IPs

Response by the Money Advice Trust
Date: MARCH 2014
Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money wisely.

The Trust’s main activities are giving advice, supporting advisers and improving the UK’s money and debt environment.

We give advice to around 140,000 people every year through National Debtline and around 30,000 businesses through Business Debtline.

We support advisers by providing training through Wiseradviser, innovation and infrastructure grants.

We use the intelligence and insight gained from these activities to improve the UK’s money and debt environment by contributing to policy developments and public debate around these issues.

We help approximately one million people per annum through our direct advice services and by supporting advisers through training, tools and information.

Public disclosure

Please note that we consent to the public disclosure of this response.
Introductory comment

We welcome the opportunity to comment on the Government proposals to reform the regulation of insolvency practitioners. We support the proposals in most instances to enhance the role of the Insolvency Service as overall regulator.

We hope that the plan to enable Government to create a single regulator for insolvency practitioners paves the way for this to take place in the medium term. We would also like to see an independent complaints’ mechanism put in place as part of this reform.

We have fewer comments to make in the area of insolvency practitioner fees as this is not our area of expertise. Detailed commentary will be best left to those with experience in running an insolvency practitioner business.
Responses to individual questions

Part 1 – Regulation of Insolvency Practitioners

Question 1 – Are the proposed regulatory objectives and the requirements for RPBs to reflect them appropriate for the insolvency regulatory regime?

The proposed regulatory objectives and requirements for RBS, as set out in the paper, appear to be appropriate and sensible.

Question 2 – Do you have any comments on the proposed procedure for revoking the recognition of an RPB?

The procedure appears sensible. However, we would suggest that a simple appeal process would be easier than relying on the complex and costly process of challenging the Secretary of State decision via the mechanism of judicial review.

Question 3 – Do you have any comments on the proposed scope and procedures for the Secretary of State to issue a direction to an RPB?

Again, we would suggest that a simple appeal process would be easier than relying on the complex and costly process of challenging the Secretary of State decision via the mechanism of judicial review.

Question 4 – Do you have any comments on the proposed scope and procedures for the Secretary of State to impose a financial penalty on an RPB?

We support the proposals as outlined in the paper. We also note that the procedures include an appeal process. We would suggest that this is adapted for use in appeals on directions on and the revoking of recognition of an RPB as well as the process for making representations.

Question 5 – Do you have any comments on the proposed scope and procedures for the Secretary of State to publicly reprimand an RPB?

We would hope that the procedure is robust as the process and scope mirrors the powers of the Legal Services Board to censure an approved regulator. Presumably the views of the LSB will have been sought to ensure that there are no useful changes to be made to the process.
Question 6 – Do you agree with the proposed arrangements for RPBs making representations?

We would suggest that a simple appeal process would be easier than relying on the complex and costly process of challenging the Secretary of State decision via the mechanism of judicial review.

Question 7 – Do you have any comments on the proposed procedure for the Secretary of State to be able to apply to Court to impose a sanction directly on an IP in exceptional circumstances?

We support the stated intention of this procedure to allow swifter and more effective regulatory action to be taken against an IP. However, we are concerned that this is in part being put forward because of a perception that RPBs may be slow or unwilling to act. The paper states at point 70 as follows:

“There have been examples that we consider would fall into this category where RPBs following their own procedures have been slow, or felt they were unable to bring disciplinary proceedings against an IP that they authorise.”

We would certainly support the idea that the Insolvency Service acting as regulator should be able to take further action against the RPB where their willingness to act promptly or efficiency is under question. Such cases should also call into question whether the RPBs have strong enough powers if the RPB felt unable to bring disciplinary procedures against an IP. If the RPB is not delivering “fair, effective and prompt outcomes” then their efficacy should be questioned.

Question 8 – Do you have any comments about the proposed procedure for the Secretary of State to require information and the people from whom information may be required?

The proposed procedure to require information seems very sensible. We do not have any further comments.

Question 9 – Do you agree with the proposal to provide a reserve power for the Secretary of State to designate a single insolvency regulator?

We fully support the proposal to provide a reserve power to designate a single insolvency regulator. This is an important step forward in creating a much less confusing landscape for insolvency practitioner regulation. We feel that a single regulator would be less confusing and would be more transparent for consumers. A body that has a clear role in enforcing the regulations, providing one set of guidance and code of practice and ensuring a common accredited training platform, would be an advantage. We have supported the establishment of a single regulator in the Money Advice Trust response to previous consultations. We feel that there needs to be regulation of the conduct of firms and not just the professional conduct of individual IPs.
Question 10 – Do you have any comments on the proposed functions and powers of a single regulator?

The proposed functions and powers of the single regulator set out in the paper appear to cover most requirements. We have a concern that part of the powers of the regulator is to investigate complaints against IPs. We would prefer to see an independent body such as an ombudsman to deal with complaints against IPs.

This should go further than the complaints gateway and its remit should be widened to include any wider consumer detriment. This could cover lead generation companies, text messaging and cold-calling, the failure to give holistic advice on the full range of debt options, churning debt options, failure to explain fees transparently, the mis-selling of an IVA in inappropriate circumstances and so on.

Part 2 – Insolvency Practitioner fee regime

We do not get involved - with any regularity - in personal bankruptcy cases which have IP involvement post-bankruptcy. We are most likely to come across cases where a client has a query about the high costs of annulment where they have been made bankrupt perhaps for council tax or for HMRC debts. The Local Government Ombudsman recent focus report included cases where the combined costs of the bankruptcy order in trustee fees and official receiver legal costs far outweighed the amount owed in council tax.¹

Question 11 – Do you agree with the assessment of the costs associated with fee complaints being reviewed by RPBs?

We would agree that RPBs should have a monitoring role to review fee complaints. We cannot comment on the costs of this process.

Question 12 – Do you agree that by adding IP fees representing value for money to the regulatory framework, greater compliance monitoring, oversight and complaint handling of fees can be delivered by the regulators?

It is to be hoped that asking the RPBs to monitor fees will lead to improved compliance monitoring and reduce complaints about fees. We can see that it would be expensive and complicated to create a new body and system for adjudicating on fee complaints. However, if there was a single regulator established, it would be most suitable for fee adjudication to be handled by the single regulatory body.

Question 13 – Do you believe that publishing information on approving fees, how to appoint an IP, obtain quotes and negotiate fees and comparative fee data by asset size, will assist unsecured creditors to negotiate competitive fee rates?

¹ Cant’ pay, won’t pay Using bankruptcy for council tax debts http://www.lgo.org.uk/publications/advice-and-guidance#focus
We would always be supportive of the provision of information using plain English. We would expect any such information to help unassisted creditors, many of whom will be small traders with no access to expert legal advice. It is difficult to say whether such measures will be successful in promoting engagement and helping unsecured creditors to negotiate competitive fee rates, but it is certainly a helpful step forward.

**Question 14 – Do you think that any further exceptions should apply?**
For example, if one or two unconnected unsecured creditors make up a simple majority by value?

We do not have a particular view on whether any further exceptions should apply.

**Question 15 – Do you have any comments on the proposal set out in Annex A to restrict time and rate as a basis of remuneration to cases where there is a creditors committee or where secured creditors will not be paid in full?**

We can see that the use of time and rate as a basis of remuneration can be problematic for parties who may see returns to creditors diminishing in fees and charges. The proposals to restrict its use to cases where there is a creditors committee or where secured creditors will not be paid in may appear sensible at first glance, but we will leave it to insolvency practitioners to comment in more detail.

**Question 16 – What impact do you think the proposed changes to the fee structure will have on IP fees and returns to unsecured creditors?**

We will leave it to insolvency practitioners with a detailed knowledge of their business models to explain the impact the proposed changes will have on their fees and the viability of their businesses. We note that in their press comment, R3 stated:

>“These proposals will have unintended and unwanted consequences, and it would be the UK’s creditor community that would lose out were they to be implemented.”

They went on to say:

>“In practice, insolvency practitioners and creditors would find enforced fixed-fee caps or setting fees as a proportion of realisations unfair – indeed, the latter was abandoned as a standard practice decades ago. Arbitrary measures such as these are not always compatible with the unpredictable nature of insolvency work, and would routinely leave both creditors and insolvency practitioners out of pocket.”

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1 [http://www.r3.org.uk/index.cfm?page=1114&element=19734&refpage=1008]
Question 17 – Do you agree that the proposed changes to basis for remuneration should not apply to company voluntary arrangements, members’ voluntary liquidation or individual voluntary arrangements?

These exemption proposals appear to be sensible.

Question 18 – Where the basis is set as a percentage of realisations, do you favour setting a prescribed scale for the amount available to be taken as fees, as the default position with the option of seeking approval from creditors for a variation of that amount?

This proposal seems sensible.

Question 19 – Is the current statutory scale commercially viable? If not what might a commercial scale, appropriate for the majority of cases, look like and how do you suggest such a scale should be set?

Again, we do not have detailed knowledge of insolvency practitioner business models, so cannot respond to this question.

Question 20 – Do you think there are further circumstances in which time and rate should be able to be charged?

We are not able to comment on this question.

Impact Assessment questions:

We have no comment to make on the impact assessment questions. We would suggest that they would require detailed insolvency practitioner expertise to provide the required evidence.