

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL  
STRATEGY;**

**THE DEPARTMENT FOR THE ECONOMY**

**AND**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES;**

**THE INSOLVENCY PRACTITIONERS ASSOCIATION;**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND; and,**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND**

**AS REGARDS THE PROVISION OF A COMPLAINTS GATEWAY**

This Memorandum of Understanding comes into operation on 1st day of January 2021

**MEMORANDUM OF UNDERSTANDING**

**1. Participants**

The Participants to this Memorandum of Understanding are:

a. **THE SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL  
STRATEGY; THE DEPARTMENT FOR THE ECONOMY**

b. **THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND  
WALES; THE INSOLVENCY PRACTITIONERS ASSOCIATION; THE  
INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND; and THE  
INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND**

(each a “Recognised Professional Body” and together the “RPBs”)

## **2. Purpose of this Memorandum of Understanding**

- a. This Memorandum establishes a framework for co-operation between the Insolvency Service (acting on behalf of the Secretary of State), the Department for the Economy and the RPBs in relation to the assessment of Complaints against persons authorised as insolvency practitioners.
- b. The Insolvency Service will operate a Complaints Gateway (“the Gateway”) in accordance with the functions outlined in Annex A to this Memorandum. The Gateway will assess all new complaints which it receives. Any Complaint which, in the opinion of the Insolvency Service, present grounds for further consideration by a Recognised Professional Body will be referred to that body.
- c. Each Recognised Professional Body will pay a proportion of the Fixed Cost for the provision of the Gateway, calculated in accordance with paragraph 7 of this Memorandum.

## **3. Definitions and Interpretation**

- a. In this Memorandum, unless the context otherwise requires:

“Commencement Date” means 1 January 2021;

“Complaint” means a communication about a person authorised as an insolvency practitioner, expressing dissatisfaction with that person's conduct where they are undertaking insolvency work in Great Britain and/or Northern Ireland, or with the conduct of others carrying out such work on that person's behalf. For the purposes of this memorandum, a “Complaint” includes communications about an insolvency practitioner’s work on insolvency matters which may lead to an insolvency appointment or office holder role.

“Complaints Form” means the form designed by the Insolvency Service and the RPBs for the recording of communications to the Gateway;

“Due Date” means the date by which a Recognised Professional Body must pay the invoice submitted by the Insolvency Service in accordance with paragraph 7.f.;

“Fixed Cost” is the annual cost of operating the Gateway;

“Fee” means the sum of £69 (sixty-nine pounds sterling) exclusive of VAT per annum;

“Gateway” means the complaints gateway and related services to be provided to the RPBs by the Insolvency Service as described in Annex A;

“Annex A” means the description of the Gateway provided in writing by the Insolvency Service to the RPBs and scheduled hereto;

“Intellectual Property Rights” has the meaning given in paragraph 8;

“Memorandum” means this memorandum of understanding (including Annex A);

“Review Point” means biennially beginning 1 January 2021;

“VAT” means value added tax; and

“Working Day” means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in any part of the United Kingdom.

b. This Memorandum should be interpreted and construed as follows:

Reference to a “person authorised as an insolvency practitioner” is a reference to a person who is permitted to act as an insolvency practitioner by or under the rules of a Recognised Professional Body; reference to any statute, enactment, order, regulation or similar instrument is a reference to it as in force from time to time taking account of any amendment or re-enactment; reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision; references to a “person” include an individual; words in the singular include the plural and vice versa and references to paragraphs and to annexes are to paragraphs in, and annexes to, this Memorandum.

#### **4. Commencement**

This Memorandum will come into operation on the Commencement Date and replaces the previous Memorandum dated 1 May 2018.

#### **5. Provision of Gateway**

- a. The Insolvency Service will provide the Gateway to the RPBs in accordance with Annex A in all material respects.
- b. The Insolvency Service will ensure that the Gateway is always operational, other than when the website is unavailable due to maintenance.
- c. The Insolvency Service is permitted to make any changes to the Gateway which are necessary to comply with any applicable law, or which do not affect the nature or quality of the Gateway. Before making any such changes, the Insolvency Service will consult with the RPBs, and where appropriate seek their approval. The RPBs will not unreasonably withhold such approval.

- d. The Insolvency Service commits to provide the Gateway using reasonable care and skill and cooperate with the RPBs on all matters relating to the Gateway.
- e. The Insolvency Service will assess all Complaints which relate to the acts, omissions, or appointment of any person acting as an insolvency practitioner and authorised to act as such within Great Britain and Northern Ireland, by one of the RPBs.
- f. The Insolvency Service will provide a Recognised Professional Body with such information relating to the Gateway as it may reasonably require and will ensure that such information is accurate in all material respects. Any security incident relating to shared data will be notified to the relevant Recognised Professional Body.
- g. The Insolvency Service will, six months prior to the Review Point, provide the RPBs with information regarding the number of Complaints the Insolvency Service has received and the time spent by the Insolvency Service's staff on the processing of Complaints, for the purposes of calculating the Fixed Cost. The Insolvency Service will ensure that such information is accurate in all material respects.
- h. The Insolvency Service will maintain a record of all complaints received.

## **6. Commitments of the RPBs**

- a. The RPBs will co-operate with the Insolvency Service in all matters relating to the Gateway.
- b. The RPBs will supply the Insolvency Service with such information as the Insolvency Service may reasonably require in order to provide the Gateway and will ensure that such information is accurate in all material respects. Any security incident relating to shared data will be notified to the Insolvency Service.
- c. Each Recognised Professional Body will advertise the Gateway on its website and in the advertisement include this hyperlink <https://www.gov.uk/complain-about-insolvency-practitioner>. In crossreferring to and maintaining any such hyperlink each Recognised Professional Body must not imply endorsement of its site by the Insolvency Service or by any department or office of Her Majesty's Government. The Insolvency Service does not permit its pages to be loaded into frames on a Recognised Professional Body's site – the Insolvency Service's pages must load into the website visitor's entire window.

- d. Each Recognised Professional Body will forward to the Insolvency Service any Complaint received by it within five Working Days of receipt. Time will not run on Working Days on which the Recognised Professional Body is closed for business.

## **7. Fee and Payment**

- a. The Fixed Cost of operating the Gateway will be provided by the Insolvency Service to the RPBs for discussion, and where appropriate agreement, six months prior to the Review Point. The Fixed Cost is based on the resource required to fulfil the functions of the Gateway set out in Annex A.
- b. Where the increase in the Fixed Cost is calculated according to the Retail Prices Index reported in September of the preceding calendar year, no separate approval will be required from the RPBs. Where the increase in the Fixed Cost exceeds the Retail Prices Index reported in September of the preceding calendar year, the Insolvency Service is required under this Memorandum to seek approval from each Recognised Professional Body having provided information set out in 7.a.
- c. The Fee is based on the Fixed Cost at Commencement Date.
- d. Each Recognised Professional Body will pay a proportion of the Fixed Cost calculated by multiplying the Fee (represented by 'x') by the number of persons who, pursuant to its rules, were authorised as insolvency practitioners as at 1 January of the same calendar year (represented by 'y').
  - i.  $\text{RPB Fixed Cost} = (y \times x)$
- e. The Insolvency Service will invoice each Recognised Professional Body for their proportion of the Fixed Cost per annum by 1 March 2021 and then annually thereafter.
- f. Each Recognised Professional Body will pay the invoices submitted by the Insolvency Service, in full and cleared funds, to a bank account nominated in writing by the Insolvency Service within 30 days of the date of receiving the invoice.
- g. If a Recognised Professional Body fails to make a payment due to the Insolvency Service under the Memorandum by the Due Date, the Insolvency Service is permitted to charge the body for the reasonable costs which it incurs in procuring the body's payment of the overdue amount.
- h. A Recognised Professional Body will pay all amounts due under the Memorandum in full without any deduction or withholding except as required by law and will not assert any credit, set-off or counterclaim against the

Insolvency Service in order to justify withholding payment of any such amount in whole or in part.

## **8. Intellectual Property Rights**

- a. In this paragraph “Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or not), applications for any of those rights, copyright (including Crown copyright), database rights, domain names, trade or business names, moral rights and other similar rights or obligations, whether registrable or not, in any country (including but not limited to, the United Kingdom) and the right to sue for passing off.
- b. Subject to any pre-existing Intellectual Property Rights of the RPBs or any third party, the Intellectual Property Rights comprised in all reports, data, databases, plans, drawings, patents, patterns, models or other material prepared in the provision of or in connection with the Gateway will remain with and be the property of the Insolvency Service.

## **9. Freedom of Information**

- a. The RPBs acknowledge that the Insolvency Service is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (SI 2004/3391) and will assist and cooperate with the Insolvency Service to enable the Insolvency Service to comply with this legislation.
- b. Whilst the Insolvency Service may consult a Recognised Professional Body and take its views into account, the RPBs acknowledge that the Insolvency Service will be responsible for determining at its absolute discretion whether any information is exempt from disclosure under the Freedom of Information Act 2000 or falls to be disclosed in response to a request for information or direction from the Information Commissioner, the First-Tier Tribunal (Information Rights), the Upper Tribunal or the Courts.

## **10. Data Protection**

The Participants will take all necessary steps to comply with the Data Protection Act 2018 (DPA 2018) and the General Data Protection Regulation (GDPR) in their handling of any personal data exchanged through the Gateway and will do nothing which causes, or may cause, any other Participant to be in breach of its obligations under DPA 2018 and GDPR.

## **11. Transparency**

In order to comply with the Government's policy on transparency the Memorandum will be published by the Insolvency Service on GOV.UK.

## **12. Amendment**

This Memorandum may be added to or amended at any time by the mutual consent of the Participants.

## **13. Settlement of disputes**

Any dispute or differences arising out of the interpretation or implementation of the Memorandum will be settled amicably through negotiation between the relevant Participants.

## **14. Termination**

- a. The Insolvency Service may terminate the arrangements in this Memorandum at any time by giving to the RPBs at least six months notice of termination in writing. The RPBs acting collectively may do the same by giving to the Insolvency Service at least six months notice of termination in writing.
- b. A Recognised Professional Body may withdraw from the arrangement in this Memorandum at any time by giving to the Insolvency Service and all other RPBs at least six months notice in writing.
- c. In the event of early termination, the Recognised Professional Body or RPBs, as applicable, will receive a refund of the portion of the fees they have paid for the period from the date of termination to the end of the applicable calendar year.
- d. In the event of a Recognised Professional Body withdrawing from the arrangement, the Insolvency Service will review the proportion of the Fixed Cost calculation for the participating RPBs for the remainder of the applicable calendar year.

## **15. Status of this Memorandum**

This Memorandum does not constitute, nor is it intended to be a legally binding arrangement or agreement. It does not create any legally binding or enforceable obligations, express or implied. It serves only as a record of the intentions of the Insolvency Service and the RPBs.

## **16. Counterparts**

This Memorandum may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Memorandum.

## **Annex A**

The functions of the Gateway: -

- a. The Insolvency Service will assess all new Complaints which it receives.
- b. The Insolvency Service in assessing a new Complaint will review any supporting documentation provided and where appropriate, seek from the complainant further supporting documentation or clarification of the complaint that has been made.
- c. A Complaint is not a new Complaint if it is substantially similar to a Complaint already received from the same complainant and assessed by the Insolvency Service and/or the RPB.
- d. A Complaint of the type described in paragraph c. is not excluded from assessment by the Insolvency Service, if the complainant has provided relevant new information.
- e. Where the Insolvency Service considers a Complaint to present grounds for further assessment, it will refer the Complaint to the relevant Recognised Professional Body.
- f. Where the Insolvency Service does not consider a Complaint to present grounds for further assessment it will not refer the Complaint to the relevant Recognised Professional Body or bodies.
- g. In both the instances outlined in paragraphs e. and f., the Insolvency Service will send a response to the complainant informing them of the decision. If the Insolvency Service does not consider a Complaint to present grounds for further assessment, the Insolvency Service will set out the reasons for this and the complainant's rights to an appeal.
- h. It will be for the Insolvency Service alone to determine whether a Complaint presents grounds for further assessment by the Recognised Professional Body.



- i. Should the Recognised Professional Body not agree with the Insolvency Service's determination that a Complaint presents grounds for further assessment, this will be resolved as set out in paragraph 13 of the Memorandum.
- j. The Insolvency Service will use reasonable endeavours to assess 85% of Complaints received and complete the appropriate actions under paragraphs e.- g. within 15 Working Days of receipt.
- k. For the purposes of the time limit referred to in paragraph j., a Complaint is only deemed to have been received when all relevant questions on the Complaints Form have been completed to the Insolvency Service's satisfaction.