|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Title:**  Insolvency Practitioner fees regime  **IA No:** RPC13-BIS-1970  **Lead department or agency:**  BIS  **Other departments or agencies:**  Insolvency Service | |  | | --- | | Impact Assessment (IA) | | **Date:** 04 December 2013 | | **Stage:** Consultation | | **Source of intervention:** | | **Type of measure:** Primary and secondary legislation | | **Contact for enquiries:** 020 7637 6365 | |  | |  | |  | |  | |  | |  | |
| **Summary: Intervention and Options** | **RPC Opinion:** AMBER |
|  | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Cost of Preferred (or more likely) Option** | | | | |
| **Total Net Present Value** | **Business Net Present Value** | **Net cost to business per year** (EANCB on 2009 prices) | **In scope of One-In, Two-Out?** | **Measure qualifies as** |
| -£15.39m | -£15.39m | £1.47m | In | £1.47m |
| **What is the problem under consideration? Why is government intervention necessary?**  A report by the OFT in 2010 into the market for corporate insolvency practitioners (IPs) and a recent review by Elaine Kempson of IP fees, found that the market does not work sufficiently where unsecured creditors are left to ‘control’ an office-holders fees and remuneration, which occurs in just over a third of cases. This becomes apparent where there are funds remaining after paying secured creditors and unsecured creditors bear the costs of the office-holders fees. Both reports found that fees charged to unsecured creditors can be higher due to unsecured creditors being in a weaker bargaining position than secured creditors. This can result in over charging by the IP and inefficiencies in administering the case, which leads to fees being higher than they might otherwise have been. This leads to a transfer of resources from unsecured creditors to IPs that for both fairness and efficiency reasons we wish to remove.  . | | | | |

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| --- |
| **What are the policy objectives and the intended effects?**  To remove the harm caused by the market failure. The total impact of the inability of unsecured creditors to control fees and actions of IPs is a reduction in distributions, estimated by the OFT at in the region of £15m per annum.  In removing this harm, we will improve returns to unsecured creditors; and improve the reputation of and confidence in the insolvency profession. |

|  |
| --- |
| **What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**   1. **Do nothing** – this would not address the market failure identified by the OFT and Professor Kempson. 2. **Option 1:** **Package of measures** to address the fee structure and regulatory regime. These aim to change the statutory basis for an IP’s remuneration where unsecured creditors have control and explicitly bring fee complaints within the current complaints process. **This is our preferred option as it addresses the market failure and is consistent with Professor Kempson’s recommendations.** 3. **Option 2:** **Alternatives to regulation**. Work with insolvency professionals to introduce a voluntary code to change the basis for an IP’s remuneration. We would also work with the regulatory bodies for IPs to draw up a voluntary code ensuring that they deal with complaints about fees. |

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| --- |
| **Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 04/2018 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Does implementation go beyond minimum EU requirements? | | | No | | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | **Micro**  Yes | **< 20**  **Yes** | **Small**  Yes | **Medium**Yes | | **Large**  Yes |
| What is the CO2 equivalent change in greenhouse gas emissions?  (Million tonnes CO2 equivalent) N/A | | | **Traded:** | | **Non-traded:** | |

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

|  |  |  |  |
| --- | --- | --- | --- |
| Signed by the responsible MINISTER | Jenny Willott | Date: | 29 January 2014 |

**Summary: Analysis & Evidence** Policy Option 1

**Description:** Regulatory changes to the structure for IP fees and to complaints handling process

**FULL ECONOMIC ASSESSMENT**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Price Base Year** 2013 | **PV Base Year** 2013 | **Time Period Years** 10 | **Net Benefit (Present Value (PV)) (£m)** | | |
| **Low**: -15.39 | **High:** -15.39 | **Best Estimate: -**15.39 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **COSTS (£m)** | **Total Transition** (Constant Price)Years | | **Average Annual** (excl. Transition) (Constant Price) | **Total Cost**  (Present Value) | |
| **Low** | 0.8 | 1 | 3.3 | **29.2** | |
| **High** | 0.8 | 17.7 | **153.1** | |
| **Best Estimate** | 0.8 | 11.2 | **97.2** | |
| **Description and scale of key monetised costs by ‘main affected groups’**  Cost include a one off **£0.8m** cost to IPs from familiarising with the new proposals. A transfer from IPs to unsecured creditors of £16m pa (**£138.5m NPV**) in the high case, £9.5m (**£82.5m NPV**) in the medium case and £1.6m (**£14.5m NPV**) in the low case. In addition we would also expect **£1.6m** annual cost (**£15.3m NPV**) to regulators from reviewing fee complaints (this is only assumed for the high and best estimate case as at the lower case the number for complaints is likely to be small). | | | | | |
| **Other key non-monetised costs by ‘main affected groups’**  Familiarisation costs to secured creditors who are users of the new legislation are also expected. These however have not been quantified at this stage given the lack of data. We are seeking further information as part of the consultation. | | | | | |
| **BENEFITS (£m)** | **Total Transition** (Constant Price)Years | | **Average Annual** (excl. Transition) (Constant Price) | **Total Benefit**  (Present Value) | |
| **Low** | N/A | N/A | 1.6 | **13.8** | |
| **High** | N/A | 16.0 | **137.7** | |
| **Best Estimate** | N/A | 9.5 | **81.8** | |
| **Description and scale of key monetised benefits by ‘main affected groups’**  Quantified benefits of this option include the transfer from IPs to unsecured creditors, which equals the costs to IP described in the above section. | | | | | |
| **Other key non-monetised benefits by ‘main affected groups’**  Unquantified benefits are increased efficiency in the market by addressing the market failure, fair allocation of fees between secured and unsecured creditors, increased IP market confidence, and specific benefits associated with the new complaint handling arrangements. | | | | | |
| **Key assumptions/sensitivities/risks Discount rate (%)** | | | | | 3.5 |
| It has been assumed that the benefits to secured creditors are weighted the same as costs to unsecured creditors even if the proposal is likely to have some benefits in terms of fairness. This is because no robust weighting methodology has been found in this case. For simplicity it has been assumed that fee complaints will increase by 300 both in the medium case and the high case scenario. The transfer from IPs to unsecured creditors has been removed in the overall Net Present Value calculation as it is only a transfer. | | | | | |

**BUSINESS ASSESSMENT (Option 1)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Direct impact on business (Equivalent Annual) £m:** | | | **In scope of OITO?** | **Measure qualifies as** |
| **Costs: £1.47m** | **Benefits:** Unknown | **Net:** £1.47m | Yes | In |

**Summary: Analysis & Evidence** Policy Option 2

**Description:** Voluntary code to achieve changes to the structure for IP fees and to complaints handling process

**FULL ECONOMIC ASSESSMENT**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Price Base Year** N/A | **PV Base Year** N/A | **Time Period Years** N/A | **Net Benefit (Present Value (PV)) (£m)** | | |
| **Low:** N/A | **High:** N/A | **Best Estimate:** N/A |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **COSTS (£m)** | **Total Transition** (Constant Price)Years | | **Average Annual** (excl. Transition) (Constant Price) | **Total Cost**  (Present Value) | |
| **Low** | N/A | N/A | N/A | N/A | |
| **High** | N/A | N/A | N/A | |
| **Best Estimate** | N/A | N/A | N/A | |
| **Description and scale of key monetised costs by ‘main affected groups’**  As in option 1, it is expected that IPs will incur familiarisation costs. In this case related to the reading and becoming familiar with the new code of practice. See paragraphs  To be effective a code of practice would need to be drafted by the profession and the Insolvency Service. However in the past drafting by consensus has proved extremely difficult to get agreement and taken a long time. The industry has already been given opportunities to take action in this area but no changes have been forthcoming – getting consensus to a voluntary code is therefore unlikely. We are unable to estimate the cost of doing this as it would be dependant on the willingness of the regulators to contribute and agree to the code. Given this we would estimate the cost of doing this would outweigh the cost of regulation. | | | | | |
| **Other key non-monetised costs by ‘main affected groups’**  No further costs to other groups are expected from this proposal. | | | | | |
| **BENEFITS (£m)** | **Total Transition** (Constant Price)Years | | **Average Annual** (excl. Transition) (Constant Price) | **Total Benefit**  (Present Value) | |
| **Low** | N/A | N/A | Unknown | Unknown | |
| **High** | N/A | Unknown | Unknown | |
| **Best Estimate** | N/A | Unknown | Unknown | |
| **Description and scale of key monetised benefits by ‘main affected groups’**  No benefits have been quantified under this option, but see paragraph 76 for more detailed explanations. | | | | | |
| **Other key non-monetised benefits by ‘main affected groups’**  If this option was to be effective, it might deliver the same types of benefits as Option 1. However, given that there has been opportunity for the profession to take action voluntarily already, we do not think that this option would have sufficient impact and therefore the level of efficiency expected from this proposal is likely to be much lower than in Option 1. | | | | | |
| **Key assumptions/sensitivities/risks Discount rate (%)** | | | | |  |
| There have been opportunities for the profession to take voluntary actions in respect of fees, but little or no action has been taken. Therefore any benefits from a voluntary approach are expected to be minimal and much lower than any regulatory approach. | | | | | |

**BUSINESS ASSESSMENT (Option 2)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Direct impact on business (Equivalent Annual) £m:** | | | **In scope of OITO?** | **Measure qualifies as** |
| **Costs: N/A** | **Benefits:** N/A | **Net:** N/A | No | N/A |

**Evidence Base** **(for summary sheets)**

**Problem under consideration**;

1. IPs act as office-holders in insolvency procedures. To be qualified to act as an IP, the Insolvency Act 1986 requires a person to be authorised as a member of a professional body which has been recognised for this purpose by the Secretary of State. There are currently 7 of these recognised professional bodies (RPBs). Once authorised, IPs are regulated through a system of self-regulation by the RPBs, overseen by the Insolvency Service. Each of the RPBs has a set of rules and regulations to ensure that those individuals they authorise to act as IPs are fit and proper persons with the necessary experience, qualifications and insurance in place.
2. The OFT report into the market for corporate IPs in 2010[[1]](#footnote-1) found that in just over a third of insolvency cases, where unsecured creditors receive a pay-out and thereby bear the cost of the IPs fees, fees are estimated to be 9% higher in like-for-like cases than where secured creditors ‘control’ the IPs fees. The OFT estimated that in administration cases only, this amounted to £15m per year that unsecured creditors were paying in higher fees to IPs. Despite numerous discussions with the profession and the regulators little has changed to address this market failure and concerns continue to be raised by creditors about the fees (both remuneration and expenses) charged by IPs and the impact this has on the position of unsecured creditors in insolvency situations.
3. As a result of on-going concern, in December 2012 the Government announced a review, led by Professor Elaine Kempson, into IP fees to ensure that creditors are being charged fairly and to increase confidence in the insolvency regime. In July 2013 Professor Kempson published her report[[2]](#footnote-2) which found that the current system of controls on IP remuneration works as intended where a secured creditor plays an active part in an insolvency. In this situation there is a degree of competition, as banks are repeat customers and IPs want to join and remain on Bank panels.
4. On the other hand there is evidence that where control lies in the hands of unsecured creditors collectively, the current control mechanisms do not work as intended. In such circumstances there is little competition for jobs, no ‘identifiable’ client (as the IP is working to a number of unsecured creditors, most of which have no involvement) and creditors are required to work together, in circumstances where they don’t know, or find it difficult to contact, each other. This results in little effective oversight by unsecured creditors of the work undertaken by IPs. IPs take their remuneration on the basis of time and rate in the majority of cases, which requires creditors to have considerable knowledge and understanding of the process in order to question the amount of time spent. The only current route for complaining about quantum of fees is through the courts which is costly. For all these reasons, there is little control or oversight, and higher fees are paid where unsecured creditors are responsible for paying.
5. The decisions IPs make in any insolvency procedure, where they have wide powers, can have a substantial impact on the funds available to creditors. Creditors are reliant on IPs to act fairly in their best interests. Professor Kempson acknowledges that concerns are more muted in Voluntary Arrangements, where creditor voting power has tended to be used to exercise greater control over IP fees.
6. Over the last few years, culminating in the 2010 Insolvency Rules changes, Government has been seeking to improve the position for unsecured creditors by, for example: lowering the threshold of creditor value required to challenge remuneration from 25% to 10%, or otherwise as court allows and allowing creditors (5% or more as court allows) the right to requisition further information on receipt of a report. The 2010 Rules also opened up the possibility of an IP having more than one basis for remuneration; however, anecdotally, it seems that this option is seldom used.

**Background;**

1. Each year IPs realise approximately £5bn worth of assets from corporate insolvency processes, and in doing so charge about £1bn in fees, and distribute some £4bn to creditors[[3]](#footnote-3). IPs can also advise on business restructuring and continuity prior to insolvency and are part of the wider business restructuring market.
2. At present an IP’s remuneration can be set a) on a time-cost basis, b) as a percentage of realisations or c) since 2010, as a fixed fee. It is the IP who proposes which basis they wish to take their remuneration under and the creditors vote on the his/her proposal. Professor Kempson found that in the great majority of cases remuneration was taken on a time-cost basis.
3. The requirement to set the basis of remuneration, for all insolvency procedures, is set out in secondary legislation, namely the Insolvency Rules 1986. This provides that an office-holder must hold a creditors meeting within 14 days of a resolution to wind up a company, or within 10 weeks of start of administration. At this meeting it is common practice for the IP to seek approval of his/her appointment and the basis for their remuneration. In bankruptcy, where an IP is appointed trustee rather than the official receiver, the basis for their remuneration should be set within 18 months of appointment. This is the fall back position for all insolvency procedures.
4. The only existing route to challenge high fees is by an application to court. In addition, although fees can be reviewed by the court, as the process is expensive it often outweighs the benefit for unsecured creditors to challenge.
5. Given that both OFT and Professor Kempson believe that significant harm is occurring to unsecured creditors, the ability to effectively review fees has been identified as a significant reform.
6. Both the OFT report of 2010 and Professor Kempson’s report acknowledge that there is no single solution to address the market failure for unsecured creditors and instead sets out a number of recommendations, which collectively would address the issues highlighted by the review.
7. The Kempson report offers a wide-ranging number of options that could be considered. These fall into three main categories:

* Transparency Measures and increasing creditor engagement: these concentrate around ensuring that sufficient and clear information is available generally and specific to a particular case to encourage greater engagement by unsecured creditors. This could include an estimate at the start of the case of the likely fees that will be charged.
* Simplifying the fee structure: here Professor Kempson says consideration should be given to changing the presumed basis for remuneration (which is time and rate in almost all administration, winding up and bankruptcy cases). She proposes two options; having percentage of realisations as the presumed basis for charging fees in all cases or using different bases for different aspects of a case. For example fixed fees could be charged for statutory work where the costs are known, and a realisation percentage where the work involves asset realisation.
* Enhanced monitoring of fee complaints by regulators: Professor Kempson raised the issue of whether a single regulator would be beneficial in this sector. Her main comment here is around the need for regulators to exercise a greater degree of compliance monitoring of fees.

Government is proposing a package of measures which aim to address these three main strands identified. This Impact Assessment considers the way in which the fee structure may be simplified and how we can enhance the monitoring of fee complaints by regulators. In addition to these statutory measures we are proposing to assist unsecured creditors by working with the profession to produce a basic information sheet on the role that creditors can play in influencing the fees charged. We are also scoping the feasibility of publicising comparative fee data that may provide a basis for challenging an IP’s fees.

1. In addition, we are also consulting on proposals to increase the powers of the Secretary of State for Business as the oversight regulator and to provide regulatory objectives which will provide regulators with a framework within which to carry out their activities. The Impact Assessment for these proposals is entitled ‘Insolvency Practitioner Regulation – regulatory objectives and oversight powers’ (RPC13-BIS-1767(2)).

**Rationale for intervention;**

1. Government intervention is necessary in this instance for two main reasons;

*Market failure*

1. The first one is to address the **market failure** identified by the OFT and Professor Kempson, by which unsecured creditors are unable to exercise effective control over IPs which leads to IPs taking advantage of their **market power**, which results in increased cost and/or reduced quality of work (by taking longer to do the same job) for unsecured creditors, for the same type of service.
2. This is considered in economic terms a potential **inefficiency in the market**. IPs are obtaining fees above the market rate; the transfer of returns from IPs to unsecured creditors has the potential to deliver a more efficient dynamic economic allocation of resources as these creditors are more likely to reinvest these resources in growth driving activities. Indeed, increased insolvency recovery rates to this class of investor could well increase the absolute amounts of credit made available[[4]](#footnote-4), to the benefit of the wider economy. Reduction of the current profit margin in servicing unsecured creditors will also incentivise cost effectiveness/minimisation by IPs.

*Fairness grounds*

1. In addition, there are also fairness reasons why Government should intervene in this particular case. It appears from the evidence that unsecured creditors are seemingly facing higher fees than secured creditors for the same service. From a fairness perspective this is not desirable as unsecured creditors are disadvantaged. Government intervention is necessary to redress this bias.

**Policy objective;**

1. The overall aim of these measures is to increase returns to unsecured creditors and at the same time increase confidence in the work of IPs. This will be achieved through a package of measures aimed at improving and strengthening the regulatory regime for IPs. This impact assessment concerns the changes we are proposing to the basis for an IP’s remuneration as well as changes to the complaint handling process for fee complaints. It is anticipated that these measures will drive behaviour by IPs and prevent excessive fee charging.
2. It is not proposed that these measures should apply to the fees charged by the Official Receiver which are already set out by regulations. Nor should they apply in the case of an Individual Voluntary Arrangement or a Company Voluntary Arrangement, where IP fees are closely controlled by creditors. They should not apply in the case of Members Voluntary Liquidation, where the company is solvent and all creditors are paid in full.

**Description of options considered (including do nothing);**

**Do nothing option**

1. Do nothing would be to continue with the status quo whereby IPs are able to charge higher fees to unsecured creditors. Given the weakness for unsecured creditors of the current regime, identified by the OFT and more recently by Professor Kempson’s review, doing nothing is not considered a credible option as it would allow the current inefficiency and unfairness in the market to continue unchecked.

**Option 1: Changes to the basis for remuneration and bringing quantum of fees within the remit of the regulatory framework**

1. For the purposes of this impact assessment, we have provided an estimated average of the costs and benefits. We propose to use the consultation to seek further information on the impact the changes would have on (i) the current levels of over-charging by IPs and (ii) the costs associated with including quantum of IP fees within the regulatory framework by including giving value for money within the proposed regulatory objectives[[5]](#footnote-5). Information gathered at the consultation stage will be used to assess the costs and benefits in the Final Impact Assessment.
2. The proposed change to the **fee structure** is to r**equire office-holders to take their remuneration as a percentage of assets or fixed fee in all insolvency cases** with the exception of;

* Cases in which a creditors committee is established, as these committees oversee the remuneration of the office-holder; or
* Cases where secured creditors will not be paid in full and so remain in control of fees. The market works well in this instance so we do not want to interfere with the ability for secured creditors to successfully negotiate down fees. If however it later becomes apparent that secured creditor(s) will be paid in full, at this point office-holders would be required to seek approval from unsecured creditors for the basis and percentage (if relevant) for their remuneration going forward. The basis would need to be either percentage of realisations or fixed fee; or
* IVAs, CVAs, or MVLs

1. Where the office-holder seeks to take their remuneration as a percentage of realisations, he or she will be required to get **positive approval from a simple majority (in value) of creditors voting** (that is more than 50%) for the percentage, or a range of different percentages for different assets, that they seek to take. This is the same threshold as is required currently –deemed consent would not be sufficient. Where approval is sought after it becomes apparent that secured creditors will be paid in full, approval is required from a simple majority of **unsecured creditors**. The **fall-back position,** for all insolvency procedures, would be that the statutory scale, which currently applies to compulsory liquidations and bankruptcies, will apply. This is set out in schedule 6 to the Insolvency Rules 1986 and allows an IP to take their remuneration as:

* 20% on the first £5k
* 15% on the next £5k
* 10% on the next £90k and
* 5% on everything above.

1. Under this system, the IP can also receive payment for distributing funds to creditors –

* 10% on the first £5k
* 7.5% on the next £5k
* 5% on the next £90k and
* 2.5% on everything above

1. We believe that the advantages of this as a basis for remuneration are that:

* It gives tight control over the amount an IP can charge,
* It ensures that there are funds available for distribution and not all realisations are swallowed up in fees,
* It allows creditors to use the statutory scale as a comparison on which to question the percentage the IP is proposing, and
* From the outset of a case, creditors will have more idea of the final outcome because they will be able to reasonably assess the IP’s remuneration.

**Q: What impact do you think the proposed change to the fee structure will have on IP fees and returns to unsecured creditors?**

**Q: 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?**

1. We appreciate that a balance needs to be struck between incentivising IPs to undertake work to identify and realise assets and investigate misconduct and ensuring that fees charged represent value for money for creditors. We have therefore considered whether it would be useful **to allow time and rate in specified circumstances**, for example for investigations into the conduct of directors or individuals, or investigations to uncover realisable assets. However, while we recognise that this would allow IPs to recover costs for more time-consuming and unpredictable work, there is potential for over-charging for these aspects of a case to cover losses made on non-investigative work. It would also be very difficult to define what should be covered by investigation work especially in relation to uncovering assets. Allowing time and rate in these circumstances would not remove the uncertainty that currently exists in requiring creditors to approve an hourly rate, without any indication of how long a job will take or what work will be done for that time.
2. Where there is strong support amongst unsecured creditors for such investigation work to be undertaken, and where those creditors would be willing to agree a time and rate basis for the work, the IP has the option of putting together a creditors committee, which will allow an exception to be made.

**Q: Do you think there are further circumstances in which time and rate should be able to be charged?**

1. Professor Kempson’s review highlights that enhanced monitoring by the regulators of IPs (Regulated Professional Bodies – RPBs) is particularly important both for the reputation of the profession and to ensure that work is properly undertaken and the levels of remuneration are appropriate. She highlights that the starting point for reforms in this area should be on providing greater oversight, therefore reducing the numbers of complaints and challenges relating to fees.
2. Underpinning the regulation of IPs in Great Britain is the dual regulatory approach, combining both self-regulation by the profession and independent oversight regulation by the Government. In practice, the Insolvency Service carries out oversight regulation acting on behalf of the Secretary of State.
3. Self-regulation is carried out by the RPBs that authorise IPs – these are bodies established by statute and some are trading companies and are therefore businesses for the purpose of this IA. These bodies are the:

* Association of Chartered Certified Accountants (ACCA);
* Insolvency Practitioners Association (IPA);
* Institute of Chartered Accountants in England and Wales (ICAEW);
* Institute of Chartered Accountants in Ireland (CARB);
* Institute of Chartered Accountants of Scotland (ICAS);
* Solicitors Regulation Authority (SRA, formerly the Law Society); and
* Law Society of Scotland (LSS).

1. In tandem with the proposed change to the basis for remuneration, we are working on **proposals to reform the landscape of IP regulation** (see separate IA entitled ‘Insolvency Practitioner Regulation – Regulatory objectives and oversight powers), by bringing in regulatory objectives and strengthening the Secretary of State powers of oversight. The RPBs do not currently monitor levels of IP fees. We would like them to do more in this respect and therefore intend to include **IP fees offering value for money as a regulatory objective**.The purpose of the regulatory objectives as a whole is not to introduce additional regulatory burdens but rather they would direct and focus regulatory activity to produce better and more consistent outcomes and to tackle misconduct in the small minority of cases where regulatory action is required. Adding this objective will ensure that RPBs can direct and focus their regulatory activity onto the quantum of fees charged as well as the process in which fees were taken.
2. We do recognise that giving the RPBs a regulatory role in monitoring fees will increase the burden on them when dealing with complaints around the quantum of fees. We have, therefore, included the estimated cost of this.

Costs of Option 1

**Fee structure**

Familiarisation Costs

1. Changes to legislation and in particular to the way in which an IP’s fees may be charged will need familiarisation time.
2. Based on our experience and data sought in relation to other legislative changes, we would estimate that familiarisation would take up to 1.5 hours of an IP’s time based on the assumption that this change is not complex to understand and would only need to be understood once before being applied. There are currently 1,352 IPs who take appointments and we have assumed an average hourly rate for an IP of £375 per hour. This is based on the average hourly charge out of an IP firm, at director/partner level.[[6]](#footnote-6) Based on these figures, **we would expect familiarisation costs to be in the region of £760,000.**

**Q: Do you agree with this estimation for familiarisation costs for the changes to the fee structure.**

1. Given the involvement of secured creditors in appointing IPs and negotiating down fees, we would assume that they are already familiar with the legislative requirements surrounding the remuneration of IPs. For these creditors, who are mainly made up of banks and asset based financiers, who regularly deal with insolvency processes there will be familiarisation costs for the new fee charging structure. We are unable to estimate the level of these costs and intend to use the consultation to gain more data.

**Q: As a secured creditor, how much time/cost do you anticipate these changes will require in order to familiarise yourself with the new fee structure?**

1. It is not expected that unsecured creditors will incur any additional familiarisation costs. Creditors are given the necessary information by an IP when the IP is asking for his/her basis for remuneration to be agreed. There is no need for an unsecured creditor to have regard to the legislation prior to this.

Reduced fees

1. There will be costs to IPs in terms of fee reduction. This will be a monetary transfer from IPs to unsecured creditors and therefore it has also been considered on the assessment of benefits.
2. According to the OFT report, there is an overall overpayment in fees from unsecured creditors to IPs of £15m (9% more than secured creditors fees). The new fees structure is expected to reduce this overpayment; however no data is available to quantify the extent of the reduction. This is mainly because the amount will differ depending on the circumstances of the case and the way individual IP firms currently use the fee charging structure. It will also be dependant on the percentage of assets, agreed between the IP and the creditors, against which the IP can take his remuneration. We propose to use the consultation period to seek further data on this.
3. Given the lack of data, three scenarios have been set in this consultation stage IA which provide a possible range of the extent of the costs to IPs (and the benefit to unsecured creditors):
   * High case scenario: the new fee structure reduces the overpayment by 100% - fees charged by IPs are £15m less (£16m in 2013 prices) a year (where unsecured creditors control fees) compared to the Do nothing.
   * Low case scenario: the new fee structure reduces the overpayment by 10% - that is £1.5m reduction in IPs fees (£1.6m in 2013 prices)
   * Middle case scenario: the new fee structure reduces the overpayment by 60% - fees charged by IPs are reduced by 60% of the £15m a year. That is £9m (£9.5m in 2013 prices)
4. It is also important to mention that the £15m figure only represents the overpayment in administration cases, and does not reflect the other procedures to which this policy will apply and is therefore likely to be a significant underestimation. The OFT reported that the level of fee overpayment was likely to be similar for creditors voluntary liquidation (CVL), as the procedures in both CVL and administration are similar[[7]](#footnote-7). With CVLs accounting for around half the level of IP fees compared to administration, this is likely to mean the level of overpayment is around an additional £7.5m (half of £15m) for CVLs. This amount would be similarly increased by the overpayment in bankruptcy cases, to which this proposal will apply. However due to the paucity of data, the overpayment has only calculated for administration.
5. The extent of the costs to IPs (and the benefit to unsecured creditors) will depend on the final structure of fees, that is whether the preferred option is Option 1a, Option 1b or Option 1c. This however, is unknown at this stage.

**Q: To what extent do you expect the new fee structure to reduce the current level of overpayment?**

Other Costs:

1. The requirement to seek approval from creditors for the percentage of assets, against which remuneration can be taken, is an additional burden on IPs. However IPs are already required to seek the approval of creditors for the basis on which their remuneration is taken and it is anticipated that at the same time they will seek agreement to the percentage they are proposing to take. We do not therefore anticipate any additional costs associated with this.

**Q: Do you agree with the assessment that the requirement to seek approval of creditors for the percentage of assets against which remuneration will be taken, will not add any additional costs**?

**Quantum of fees – monitoring by the regulators**

Costs:

1. This proposal is likely to have costs mainly to regulators. We have not included any set-up costs as this measure is based on fee complaints following the existing structure for all complaints.
2. In terms of on going costs, the proposal is likely to have increased costs to RPBs in terms of dealing with increased complaints.
3. Currently there are very few fee related complaints handled by the RPBs, but this is likely to be a result of RPBs stating publicly that they do not consider fee-related complaints and does not reflect the current level of concern around fees. In the past 6 months 23% of all IP related ministerial correspondence has been in relation to fees.
4. If RPBs were to investigate fee complaints we estimate that fee complaints would amount to 300 per annum. This estimation is based on the number of complaints dealt with by RPBs over the past 3 years (578 in 2012, 517 in 2011 and 531 in 2010) and represents more than 50% of the total complaints received in 2012. We have assumed 50 appeals (17%) on fee related complaints. This is a high number of appeals but is based on IPs and complainants having much to gain in over-turning a fee decision which goes against them. These figures were also used for our assessment of the costs of RPBs taking fee complaints in our consultation on reforms to the regulation of IPs in 2011[[8]](#footnote-8).[[9]](#footnote-9) We appreciate that this might not reflect the total number of fee complaints received, but given that RPBs do not currently consider fee complaints and complaints to the court are very low due to the high cost, this is a best estimate for opening up the current system of complaints to a new category. We also believe that the proposed changes to the fee structure will ensure that fee complaints are less common than they might otherwise have been, as creditors will be in a position to agree the percentage of assets the IP is allowed to draw his remuneration from.
5. The annual additional costs for RPBs to consider and investigate fee complaints is set out below, the main being staffing costs and panel costs as the structure is already in place[[10]](#footnote-10). This is the total costs so would be split between the 7 RPBs. We would anticipate that these costs will be passed onto IPs in higher regulatory costs:

Initial Complaint:

Staff and overhead cost[[11]](#footnote-11) £810,000

Investigation and discipline committee[[12]](#footnote-12) £420,000

Appeal Process[[13]](#footnote-13):

Staff and oversight cost £140,000

Appeals committee £130,000

Other costs:

Legal contingency £150,000

**Total Annual Costs – split between all RPBs £1,650,000** (in 2011 prices - £1,684,650 in 2013 prices)

**Q: Do you agree with the assessment of the costs associated with fee complaints being reviewed by RPBs?**

Benefits of Option 1

1. As mentioned earlier the benefits of this proposal have been considered for the package as a whole, rather than for each particular sub option or each measure in the package. Benefits of the proposal are expected be:
   * Reduction in fees for unsecured creditors – as mentioned earlier this is considered to be a transfer from IPs to unsecured creditors and therefore is also considered on the costs side
   * Increased efficiency in the market
   * Increased fairness in the market place
   * Increased IP market confidence
   * In addition this section also highlights some specific benefits associated with the new complaint handling arrangements.

**Quantifiable benefits**

*Reduction in fees for unsecured creditors*

1. The only quantifiable benefit identified is the 9% or £15m overpayment in fees by unsecured creditors to IPs.
2. The benefit, and conversely the cost, of these proposals is a transfer of funds (£15m) from IPs back to unsecured creditors. As stated in the costs section, we are unable to quantify by how much these proposals will reduce or extinguish the overpayment by unsecured creditors, and therefore the same scenarios as in paragraph 36 have been used.
3. At the top end (high case scenario), all excessive fee charging would be prevented and the full £15m would be returned back to creditors. This would equate to an additional 0.1 pence in the pound recovery rate for unsecured creditors[[14]](#footnote-14). At the lower end the proposals will have minimal impact on the amount IPs charge where creditors ‘control’ the fees and return only 10% or £1.5m of the £15m overpayment back to unsecured creditors..
4. What we would expect to see is that the measures will have some impact somewhere in the middle of the two scenarios, and increase returns to unsecured creditors by 60% or £9m per annum.

**Q: Do you agree with these assumptions? Do you have any data to support how the changes to the fee structure will impact on the fees currently charged?**

**Non-quantifiable Benefits**

*Efficiency*

1. Although a transfer from one group to another, it is expected that these reforms will correct the market failure by allocating resources more efficiently which will in turn provide a net benefit to the economy.
2. We cannot define exactly what impact on the economy this might have, but we feel it is a reasonable assumption that creditors will reinvest these funds back into the economy. It could be argued that this investment will be more productive than payment to IPs, given that IPs payment is over the market/competitive rate.
3. The OFT report states that some unsecured creditors say that if their recovery rate from insolvency increased, they would extend more credit. While this effect is likely to be slight, even a small increase in the £80bn[[15]](#footnote-15) of unsecured credit extended by SME's will amount to many millions of pounds.
4. There may be additional efficiency gains if the removal of the IPs excessive market power versus unsecured creditors means that they would be forced to produce efficiently, given they had previously been able to operate without needing to minimise costs. Effectively productive efficiency could increase.

*Fairness*

1. It is possible to argue that the transfer of resources from the unsecured creditor to IPs is unfair as unsecured creditors are being disadvantaged versus secured creditors for no apparent reason. Whilst unsecured creditors are disadvantaged against secured creditors by legislation in terms of order of priority of disbursements, there is no reason why they should pay higher fees on like-for-like cases compared to secured creditors for the same service.
2. We have not included any quantification of benefits from a fairness standpoint in the IA. This is because no evidence is available in order to attach a value for redistributing money from IPs to unsecured creditors. Both parties tend to be companies so it would not be possible to compare the relative prosperity of IPs against unsecured creditors in order to make a distributional adjustment as suggested by the Green Book.[[16]](#footnote-16) Other factors would need to be taken into account in terms of weighting the relative costs and benefits to each group.

**Q: Do you agree or disagree in adding a weight in the relative costs and benefits to IPs and unsecured creditors? If you agree, what would the weight be?**

*Market confidence*

1. One of the benefits the OFT anticipated from reforms, is an increased market confidence in IPs, leading to businesses making more use of IPs other services. The OFT expects this to lead to businesses in trouble seeking earlier advice from IPs than they currently do. This is expected to lead to better business outcomes for these businesses, potentially saving a business from an insolvency proceeding and leading to a positive impact on the economy. It would also lead to an increase in demand for IP advisory services increasing their fees.

**Q: Do consultees believe these measures will improve the market confidence?**

*Specific benefits of the proposed complaint handling arrangement*

1. The benefit would be an accessible and free route for creditors to dispute excessive fee charging. Once action is seen to be taken against IPs who have over-charged, the profession as a whole will be encouraged to charge fairly. This will lead to more funds available for distribution to creditors as fees are reduced. This will ultimately lead to an improved reputation of the profession.

**Q: Do consultees believe these measures will improve the reputation of the insolvency profession?**

**Risks and Assumptions**

1. The OFT contend that the 9% higher fees arise as a consequence of the reduced market power unsecured creditors face relative to secured creditors. Whilst these fee and regulatory changes will increase the market power enjoyed by the unsecured creditors, in no way will this replicate the level of market power enjoyed by secured creditors who tend to be repeat customers and have the power to appoint IPs in many cases. It is also very difficult to assess exactly what impact the changes to the fee structure will have on the amount of fees charged by IPs as it is impossible to assess the percentage at which creditors will agree for fees to be taken, or the amount of the fixed fee. For this reason we can only estimate a likely range of between £1.5m and £15m on which these proposals will impact.
2. It should however be noted that the £15m is only an estimation of the harm in administration cases so is likely to be much higher when you include CVL and bankruptcy cases, so perhaps it is not so unfair to assume that the full £15m harm will be alleviated.
3. There is also a risk that if the percentage is set too low, IPs will be unwilling to take on these cases as it would not be financially viable for them to do so. In compulsory winding up and bankruptcy cases these would fall to the Official Receiver to deal with and could result in costs being incurred with no benefit or prospect of repayment (for example where assets are not investigated and do not materialise or where the costs of realising them are more than the value of the asset). In administration and voluntary liquidation this could mean that insolvent companies continue to trade with a detrimental impact on the economy as a whole (‘zombie companies). Creditors will be out of pocket as their debts will be written off with no prospect of a return and more assets will be written off. However, we believe that this risk is overcome by the introduction of IP fees offering value for money in the regulatory objectives as RPBs will, through their monitoring activity, be able to monitor what is happening in relation to fees.
4. Some may argue that creditors do not engage currently so again will not engage with the office-holder in setting the percentage on which he can take his remuneration. We believe that the inclusion of fees offering value for money in the regulatory objectives will counter this risk. Taking their remuneration as a percentage of assets ensures Ips and creditors interests are aligned in maximising the realisation of assets.
5. It can be argued that creditors already approve fees during the process of the case so should not have an additional opportunity to question fees at a later date. However statutory powers to agree the basis of remuneration and approve fees are ‘after the event’ powers, with fees being approved after they have already been incurred by the office-holder.
6. There is a risk that IPs will increase their charge out rates to cover the costs of the system as well as to mitigate any potential loss in claims made against excessive fee charging. However we believe this risk is small.

**Option 2: Introduce voluntary codes which (1) agree changes to the basis for an IP’s remuneration and (2) ensure that RPBs will look at complaints about their members’ fees where they are deemed to be excessive.**

1. This option would be to reach agreement setting out best practice with all IPs about their fee charging structure and with all the RPBs such that they would take complaints about their member IPs that concerned the quantum of fees, rather than using the regulatory route described above.
2. As noted earlier in this impact assessment there is already an option for IPs to use more than one basis for remuneration. However, Professor Kempson found that by far the most common way for IPs to set their remuneration is on a time-cost basis where different hourly rates for different grades of staff are set at the outset and staff subsequently record the time they have taken. Her report goes on to acknowledge that a fixed fee basis for remuneration is found sometimes in corporate insolvency cases. This basis for remuneration was introduced in the Insolvency Rules 2010 at the request of the industry as a way in which work on a members voluntary liquidation could be effectively charged.
3. Following on-going discussions with the RPBs they say that they already consider complaints of alleged excessive fees where there is a suggestion that this could be due to IP misconduct. An enquiry into possible misconduct might then look at whether the IP was charging levels of fees that were clearly out of proportion to the work done (e.g. excessive hours being falsely charged to the estate), although RPBs were concerned that this would be difficult to evidence in all but the most obvious of cases. We have concerns that not all RPBs will look at complaints about fees as being potential misconduct.
4. We have experienced working with the RPBs to set up voluntary measures. For example, in tandem with setting up the Complaints Gateway (whereby all complaints about IPs come through one portal before being passed over to the relevant RPB) we tried working with the RPBs to set up a list of common sanctions that would be used by RPBs when taking action against IPs following complaints. However, we have not been able to get agreement from all 7 RPBs and there are differences in the “common” sanctions.
5. Setting up a code of best practice could not take away any of the current options on which an IP may base his/her remuneration; however, it could provide guidance on when each basis for remuneration might be appropriate, whether that is for certain types of case, or certain aspects of the same case.

Costs of Option 2

1. If we were to pursue this option, there would be a need to set up a working group (of, say, 6-8 members from IPs, the RPBs and creditor bodies) to talk devise a code. We would be able to draw on the working group model currently used by the Joint Insolvency Committee when setting Statements of Insolvency Practice. This might entail a series of 6-12 meetings of the working group, with additional work expected outside of the meetings to draw up the code itself. We would then expect consultation with the profession at large, potentially with the need for redrafting. It is difficult to put a cost on such an exercise as the charge out rate for individuals will vary tremendously.

1. There would also be costs to IPs for familiarising themselves with the new code of practice around how their fees could be charged. We would estimate that these costs would be in the same region as those for familiarisation with new legislation. That is **costs in the region of £760,000** (see paragraph 34).
2. The costs of RPBs dealing with complaints about the quantum of fees would be the same, if RPBs were to agree to look at this area under a voluntary code, as we have estimated under the legislative option – see paragraphs 43 to 47.

Benefits of Option 2

1. It is expected that this option, if implemented effectively, could have similar type of benefits as option 1. That is efficiency and fairness benefits. However, due to the on-going issues and concerns around IP fees and the fact that there has been opportunity for the profession to take action voluntarily, we do not think that this option would have sufficient impact and therefore the level of efficiency and fairness expected from this proposal is likely to be much lower than in Option 1.

**Q Would you agree with this assumption about a non-regulatory approach?**

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);**

1. We believe the level of evidence provided in this Impact Assessment is proportional for the following reasons:

* Policy development stage: As far as possible this impact assessment has quantified (but not monetised in some instances) the costs and benefits of each proposal. We believe this is adequate at consultation stage. As we progress through the policy developments we expect to close the evidence gaps highlighted in this IA and in particular use the consultation stage to gather evidence from the relevant stakeholders.
  + Data availability (costs): IPs are required to report to creditors annually (or 6 monthly in the case of administrations) with their hourly rates (if they take their remuneration on the basis of time and rate), setting out the fees and costs they have incurred during that period. These reports also contain general categories to which fees relate, for example asset realisations, investigations etc. This requirement is set out in Statement of Insolvency Practice 9 (SIP9)[[17]](#footnote-17). For corporate insolvencies, these reports are filed at Companies House and can be obtained for a fee. However given the length of the reports and the variable level of detail provided in them, we have only been able to review a very small number and therefore unable to obtain any meaningful conclusions. From the cases we have looked at, it is apparent that the amount of fees taken in a case, varies enormously and as a percentage of assets can range from 5% to 90%. Data is available for the 500 administration cases considered by the OFT study. This however still does not breakdown the fees into categories of work undertaken. This means that the distribution under the Do Nothing option and the additional changes from the policy options can not be determined. This is unlikely to be resolved at the final impact assessment stage, but we are aiming to obtain a view from stakeholders on the direction of change.
  + Data availability (benefits): data on the benefits associated with the policy options in this impact assessment is also limited and is mainly based on the results of the study by Professors Kempson and the OFT. We will use the consultation stage to gather further information, from amongst other sources, the profession itself, which we will quote in the final stage Impact Assessment.

**Direct costs and benefits to business calculations (following OITO methodology);**

The preferred option is likely to impose costs and benefits to businesses. These are the following:

* There will be direct one-off costs to IPs from familiarising with the new regulatory requirement, estimated at £0.76m.
* An annual net cost of including fee related complaints within the current complaints system, which is estimated at £1.6m across all RPBs. This is largely attributable to increased staff and panel costs for the RPBs to investigate complaints about fees. This cost will be wholly borne by the 7 regulatory bodies.

The benefits stated in this impact assessment are wider benefits to the overall economy, society and the overall functioning of the market and therefore are not considered to be direct to businesses (although they will have an impact on businesses).

Hence, based on the analysis stated above, this proposal constitutes an **In** of £1.47m under the OITO methodology.

**Small and micro business assessment;**

The proposed changes to the fee structure and the regulatory regime will require amendment to secondary legislation and are part of a wider package of reforms around insolvency regulation, such as the introduction of regulatory objective and increased powers of oversight (some of which require primary legislation). None of the measures will come into force until after 31 March 2014. It is anticipated that the secondary Rule changes will be incorporated within the new Insolvency Rules project, which we anticipate coming into force in 2015.

Changes to regulatory regime

The changes to the regulatory regime to ensure the RPBs consider fee related complaints are not targeted directly at IPs, instead the requirement and cost would be binding on the 7 independent RPBs. However we do recognise there is an onward impact on IPs in terms of tighter regulation over what they charge and possibly transfer of the cost of the system.

To assess whether any of the RPBs fall in to the definition of a micro or small business we have considered information published by the RPBs (e.g. annual reviews) and contacted them directly for confirmation of staff numbers.

None of the RPBs are micro-businesses (fewer than 10 employees) and one falls into the definition of a small business (fewer than 50 employees). Three of the RPBs have between 100 and 150 staff and three have in excess of 500 staff. We propose that the same requirement to consider complaints in relation to excessive fee charging is applied to all the RPBs regardless of size. It would be inappropriate and unworkable to distinguish between the RPBs on the basis of scale as different complaints systems would then apply to different IPs depending on the status of their licensing body. This would create confusion and uncertainty for debtors, creditors and other stakeholders in insolvency cases. In addition, it is likely that at least some IPs would switch to an institution outside the scope of considering complaints (potentially resulting in a merry-go-round of IPs between the RPBs) which would be to the further detriment of perceptions around the insolvency profession generally.

R3, The Association of Business Recovery Professionals which represents 97% of the IP profession, estimate that a significant proportion of its IP members can be classified as micro and small businesses. Figures provided by R3 in response to consultation show that there are 366 small firms (based on a firm having five or fewer insolvency appointment takers) of which 135 (37%) are micro-businesses (fewer than 10 employees). In practice, the changes to the regulatory regime to allow complaints about fees, should have minimal impact for individual IPs, particularly for those who already act in compliance with the existing legal and regulatory framework. If the costs of doing this are passed on to IPs it is highly likely they will pass these costs onto creditors in increased fees.

Changes to the fee structure

The proposed changes to the fee structure will impact on both IPs and creditors in relation to a transfer of benefit from IPs to creditors.

Numerous micro and small businesses will have an interest in insolvency outcomes both as creditors and debtors in those cases. This proposal aims to remove the harm suffered by unsecured creditors as a result of their weak market power. As a result the changes are expected to lead to better, fairer and more consistent outcomes for creditors, debtors and all those with an interest in insolvency cases. The creditor profile of most insolvent businesses is reflected by the general business population meaning that the vast majority of creditors can be expected to be small or micro businesses and according to the BIS Business Population Estimate 2012 small and micro businesses accounted for 99% of all private sector businesses in the UK (with fewer than 49 employees). It is unsecured creditors who are expected to gain from the reduction in IP fees, being a straight transfer from the IP to the creditors, so it would be detrimental to unsecured creditors if we were to exempt businesses that are micro or small from gaining from these proposals (as this is the exact group we are trying to benefit from changing the fee charging structure for IPs).

We do not propose to exempt IP firms or trade creditors, who are small or micro businesses from the new provisions as this would be detrimental to the policy objective of addressing the market failure for unsecured creditors. In terms of small and micro unsecured creditors, it would not be in their interest to be exempted from these proposals as they aim to protect them.

As the majority of IP firms are small or micro businesses, to exempt these firms from being bound by the new charging structure, would have the effect of making the new system redundant. It would also be inequitable to allow smaller firms to charge under any basis of remuneration whilst restricting it for larger firms – this would give smaller firms a commercial advantage. This would not address the market failure identified in two independent reports and is likely to add to the significantly compromised position of unsecured creditors as by their very nature these creditors are nearly always small businesses.

A full exemption from these proposals was considered for small and micro businesses but was rejected as the intended benefits from the new regulation in relation to the charging structure for IP firms, could only be achieved if this policy was applied to all IP firms. Conversely the ‘vulnerable’ group we are trying to benefit from the proposals (unsecured creditors) are mainly made up of small or micro businesses (99% of trade creditors) so there would be very little benefit to the general creditor population. This would result in the market failure for unsecured creditors existing as it does now.

For the same reasons a partial or temporary exemption would not achieve the overall policy outcome as sufficient benefit would not be transferred to the main body who we are trying to protect – unsecured creditors. No small or micro business would want a temporary or partial exemption.

If a partial or temporary exemption were given to IP firms, this would give a commercial advantage to those firms over others. A partial exemption is not applicable as there is no way of partially applying the proposals –either the current or new structure would apply to the charging basis for IPs. The proportion of the industry which could potentially apply for a temporary exemption is so high that it would remove any benefit proposed.

It would also make the landscape and fee structure much more complex for creditors to understand.

**Wider Impacts;**

**Economic/Financial**

*Competition*: The proposals aim to address the market failure for unsecured creditors by increasing competition between IPs. We do not however anticipate that these reforms will have a negative impact on IPs ability to compete or reduce the number of IPs in the market. A separate impact assessment has not been completed for this reason.

*Justice*: there is no impact on legal aid, criminal offences or court workloads. The courts will need to be aware of the changes to the fee structure, in order to deal with fee complaints that are made to the court (as they are already). However we estimate this to be minimal as the majority of complaints will now be dealt with by the RPBs, this change is likely to reduce the workload of the court.

*Small firms*: This is dealt with under the small and micro business assessment

There are no further wider impacts identified.

**Social**

*Health and well being*: No impact

*Equality*: The policy will not have any negative impact on all identified equality groups.

*Human rights*: No impact

**Environmental**

*Rural proofing*: No impact

*Sustainable development*: no impact

*Environment*: no impact

**Summary and preferred option with description of implementation plan;**

Our preferred option is option 1 – package of measures to address the market failure. This includes making changes to the fee structure to restrict the use of time and rate as a basis on which IPs can take their remuneration, and allowing fee complaints to be dealt with under the current complaint system. Progressing the non regulatory route has been attempted over the past few years with no success. It is anticipated that the secondary Rule changes will be incorporated within the new Insolvency Rules project, which we anticipate coming into force in April 2015.

1. http://www.oft.gov.uk/shared\_oft/reports/Insolvency/oft1245 [↑](#footnote-ref-1)
2. <http://www.bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees> [↑](#footnote-ref-2)
3. Paragraph 1.5 ‘Market for Corporate Insolvency Practitioners – a market study’ - <http://www.oft.gov.uk/shared_oft/reports/Insolvency/oft1245> [↑](#footnote-ref-3)
4. http://www.oft.gov.uk/shared\_oft/reports/Insolvency/oft1245 [↑](#footnote-ref-4)
5. See Impact Assessment ‘Insolvency Practitioner Regulation – regulatory objectives and oversight powers’. [↑](#footnote-ref-5)
6. See para 3.1 http://www.bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees [↑](#footnote-ref-6)
7. http://www.oft.gov.uk/shared\_oft/reports/Insolvency/oft1245 [↑](#footnote-ref-7)
8. http://www.bis.gov.uk/assets/insolvency/docs/insolvency%20profession/consultations/ipconsult.pdf [↑](#footnote-ref-8)
9. http://www.bis.gov.uk/assets/insolvency/docs/insolvency%20profession/consultations/ipconsult.pdf [↑](#footnote-ref-9)
10. These figures were provided by one of the regulators in 2011 for the consultation ‘reforms to the regulation of IPs’ - <http://www.bis.gov.uk/insolvency/Consultations/IPConsultation?cat=closedwithresponse> [↑](#footnote-ref-10)
11. Staffing and overhead cost is based on a cost of £2715 per case review multiplied by the 300 cases and rounded to the nearest £10,000. This figure was provided by one of the regulators in 2011. [↑](#footnote-ref-11)
12. The costs associated with the investigation and disciplinary committees, which already exist within the RPBs, considering the case are calculated as;

    150 cases going to investigation committee (50% of total number of fee complaints)

    10% of the 150 cases being reviewed by the disciplinary committee (15)

    5 committee members on each panel

    £500 meeting attendance fee per committee member

    Expenses of £50 per committee hearing

    Total cost rounded = (150+15\*5\*500) + (165\*50) = £420,000 [↑](#footnote-ref-12)
13. Calculations for appeal process: Staff and oversight cost rounded = £2715 \*50 cases and appeals committee = (£500 per committee member \* 5 members \* 50 cases) + £50 expenses \* 50 cases) [↑](#footnote-ref-13)
14. http://www.oft.gov.uk/shared\_oft/reports/Insolvency/oft1245 [↑](#footnote-ref-14)
15. http://www.oft.gov.uk/shared\_oft/reports/Insolvency/oft1245 [↑](#footnote-ref-15)
16. See Annex 5 of the Green Book for a full discussion of distributional impacts and their calculation. <http://www.hm-treasury.gov.uk/data_greenbook_index.htm> [↑](#footnote-ref-16)
17. http://www.r3.org.uk/media/documents/technical\_library/SIPS/SIP9\_EW\_Payments\_to\_Insolvency\_Office\_Holders\_and\_their\_Associates.pdf [↑](#footnote-ref-17)