



The Insolvency  
Service

Summary of Responses:

Bonding arrangements for insolvency  
practitioners

1<sup>st</sup> September 2017

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## Executive Summary

Following a review of bonding (security) arrangements for insolvency practitioners, a [Call for Evidence](#) was published in September 2016 to help the Government decide whether legislative change is required.

Insolvency practitioners are required by law to take out a bond to provide appropriate levels of security to cover any losses as a result of fraud or dishonesty on their part. Stakeholders had told us that the current arrangements are inflexible and prescriptive and fail to protect creditors.

The call for evidence considered:

- how the current bonding system works
- the weaknesses with the current bonding system
- what similar system operates in other professions
- potential non-legislative and regulatory changes
- potential options for legislative change

In all, 36 responses were received, largely from:

- Insolvency practitioners and firms, including those with experience in making bond claims.
- The Recognised Professional Bodies (RPBs) which license and regulate insolvency practitioners.
- Insurance brokers offering bond products.
- Creditor groups.

We would like to take this opportunity to thank all those who responded.

A list of those who replied is included at Annex 1 and the full responses of those we are able to publish are available at Annex 2. Where confidentiality was requested, the response has been left out but general views are included in the following analysis.

## Call for Evidence questions

The responses tended not to address all of the specific questions in the order set out in the Call for Evidence. This summary groups responses into themes and it is not an exhaustive review of each and every reply. The full responses will be helpful in guiding further work in this area.

In our Call for Evidence we asked 10 main questions. These are paraphrased below:

- Question 1: Do you agree with our assessment of the weaknesses of the current bonding system?
- Question 2: Are there other weaknesses with the current system that have not been identified?
- Question 3: Do you think that similar arrangements to those covering fraud and dishonesty in the legal profession would work in the insolvency profession?
- Question 4: Are there any other issues that should be addressed through a claims management protocol?
- Question 5: Do you think the introduction of a claims management protocol and regulatory action alone would be sufficient to resolve the identified weaknesses?
- Question 6: What do you consider would be the likely impact of removal of the statutory bonding requirements for a) insolvency practitioners and b) the protection of creditors?
- Question 7: Do you consider we have correctly assessed the advantages and disadvantages of the proposed options?
- Question 8: Do you agree the paper sets out the full range of issues, or is there anything further which should be considered?
- Question 9: Which would be your preferred option for legislative change?
- Question 10: Do you have any further comments you would like us to consider in relation to bonding?

The following table breaks down the responses to the questions that sought a direct answer. Where a reply did not specifically answer the question, we have reflected their agreement where possible:

## Breakdown of responses

Respondent type	Do you agree with our assessment of the weaknesses of the current system?	Are there other weaknesses to address?	Could similar arrangements to the legal profession be adopted?	Do you support the use of a protocol?  <i>% positive</i>	Is regulatory action alone sufficient?	Are the advantages and disadvantages correctly assessed?	Does the paper set out full range of issues?
<b>Bond provider</b>	100	60	0	80	0	100	80
<b>Creditor</b>	100	0	25	100	50	100	100
<b>Insolvency practitioner</b>	77	90	11	100	10	100	77
<b>Loss Adjuster</b>	100	100	0	100	-	-	-
<b>Public</b>	-	-	-	-	-	-	-
<b>RPB</b>	100	20	0	80	0	100	100

Respondents indicated their preferred option (of whom five gave no indication):

Amend legislation 26

Repeal legislation 0

Do nothing 4

## Themes of responses

### Need for protection for creditors

As can be seen from the summary of responses, there is broad agreement with the issues we found with the current bonding system, with 24 of the 27 respondents who gave a view agreed.

Respondents were unanimous that there must be protection available to creditors and that if the existing requirements for security were to be repealed there would need to be an alternative solution, the costs and benefits of which would have to be quantified.

Insolvency practitioners were generally supportive of improving the existing system to ensure that creditors are protected, and to achieve the proper cover at a reasonable cost. Those who have experience of bond claims are supportive of regulatory action such as a protocol to streamline the claims process.

Creditors also wish to see that there is proper protection from further losses once insolvency commences, and to maximise returns from insolvency. They believe that the regulatory system should be capable of identifying potential wrongdoing by insolvency practitioners at an early stage and to ensure that a proper investigation is carried out at a reasonable cost.

Bond providers are supportive of streamlining the claims process, and believe that the regulatory system should oversee the claims process, acting on behalf of creditors who are less easily engaged by the time a bond claim is progressed.

### Similar systems in other professions

All respondents agreed that a model such as the Solicitors Compensation Fund would not be practical for the insolvency profession given the relative size of the two professions, and the costs of establishing and maintaining such a fund. Many queried who would be responsible for administering a fund and how claims would be investigated. It was also highlighted that the Solicitors Compensation Fund is discretionary and there is no entitlement to a claim.

Several respondents, particularly those in the insurance market and insolvency practitioners who have acted as successor practitioners, advocated pooling the risk of claims for fraud and dishonesty; for example, through a single bond provider for the whole profession. By pooling the risk and critically the premiums paid by insolvency practitioners, it could reduce the cost of obtaining cover for small firms.

## Our summary of the issues

For example, while cover limits were generally agreed to be outdated, the majority of respondents agreed that it is the General Penalty Sum (GPS) of £250,000 that was the principal limiting factor. In practice the Specific Penalty Sum between £5,000 and £5,000,000 has rarely been exceeded, but successor practitioners and bond providers have given examples where the value of the assets had been incorrectly estimated by the principal insolvency practitioner, limiting the cover available.

There were differing views about the extent that creditors benefit under the current system bearing in mind the costs of investigations carried out by successor IPs. While there is agreement that the fees and costs of investigating fraud should be proportionate, and support for some element of ring-fencing the proceeds of claims, it was also recognised by many respondents that there must be a mechanism whereby the reasonable costs of investigating fraud can be met.

There was broad agreement that there should be protection for losses caused by employees or other staff in an insolvency practitioner's firm, with 20 respondents agreeing that fidelity cover should be considered in addition to bonding arrangements, subject to an analysis of the costs and benefits.

Respondents were not in favour of legislation requiring Professional Indemnity Insurance, as it is currently a regulatory requirement and so held by all authorised insolvency practitioners. While respondents recognise that Professional Indemnity Insurance is a regulatory requirement of authorisation, it was highlighted that there is a need for consistent requirements by each of the RPBs and for a uniform period of run-off cover, suggested to be between three and six years, as policies cease as soon as the principal insolvency practitioner surrenders or otherwise loses their insolvency authorisation.

## Need for legislative change

The majority of respondents (26 of 30 who offered a view) favoured amending the existing legislation for bonding, including regulatory action to improve the claims process. There is some difference of opinions as to the nature of reform required.

Seven respondents favoured the introduction of a single prescribed bond wording for the whole industry, including a proposal for a competitive tender to identify a single bond provider to underwrite the bond for several years at a time, pooling the risk to reduce premiums for individual insolvency practitioners.

There is support for there to be clarity and consistency in the minimum terms prescribed, including a standard definition of fraud and dishonesty.

While there was some support for the removal of cover schedules, most insolvency practitioners stated that the cost of submitting cover schedules is not onerous and cited concerns that if there was a move to a global bond, rather than premiums being paid according to the assets in each case, this could increase insurance premiums, particularly for smaller insolvency practices. It was also highlighted by insolvency practitioners, bond providers and RPBs that the cover schedules provide useful intelligence for RPBs on an insolvency practitioner's caseload.

## Claims management protocol

There was broad support, from the 21 of 23 respondents who expressed a view, for the introduction of a form of claims management protocol to streamline the claims process. Respondents were unanimous that any such protocol would not be a complete solution and should complement other changes to regulatory requirements and the law.

A protocol would have to have regulatory force in order to tackle instances of non-compliance. It should also be principles based as this would be more easily enforced and be of general application in wide ranging circumstances.

As part of a regulatory response to the issues identified, bond providers and several insolvency practitioners suggested that RPBs should undertake a greater role in the initial investigation of fraud before a successor practitioner is appointed.

## Next Steps

We will continue to liaise with stakeholders, particularly those who have shown an interest in the Call for Evidence, to develop changes to the bonding system. We will



consider the costs and benefits of legislative change in this area, which in the event of Ministerial agreement can be achieved through secondary legislation and so will require less parliamentary time. If a decision is taken to consider amending the legislation this will require further consultation. The intention is that such consultation would commence by the end of 2017.

At the same time we will work with the bonding industry and RPBs to streamline the claims process, during which we will engage with insolvency practitioners with experience of making bond claims.

## Annex 1 - List of respondents

<b>Organisation</b>	<b>Category</b>
Wilkins Kennedy LLP	Insolvency practitioner
Philmore & Co.	Insolvency practitioner
Law Society of Scotland	Trade association
Gibson Booth Business Solutions & Insolvency Ltd	Insolvency practitioner
In-House IP Ltd	Insolvency practitioner
K Kelleher	Individual
Stones & Co.	Insolvency practitioner
Price Bailey LLP	Insolvency practitioner
BHP Clough Corporate Solutions LLP	Insolvency practitioner
ReSolve Group UK	Insolvency practitioner
Chartered Institute of Credit Management	Creditor
Rothmans Recovery	Insolvency practitioner
Grant Thornton UK LLP	Insolvency practitioner
Edward Walsh Corporate Services Limited	Insolvency practitioner
Herbert Smith Freehills LLP	Solicitor
Haslocks Limited	Loss Adjuster
Willis Towers Watson <sup>+</sup>	Bond provider
James Cowper Kreston	Insolvency practitioner
KPMG LLP (UK)	Insolvency practitioner
J.P.Morgan	Creditor
PwC	Insolvency practitioner
Insolvency Risk Services	Bond provider
R3 (Association of Business Recovery Professionals)	Trade association

Menzies LLP	Insolvency practitioner
British Bankers' Association	Creditor
Institute of Chartered Accountants in England and Wales	Recognised Professional Body
RSM Restructuring Advisory LLP	Insolvency practitioner
Association of Chartered Certified Accountants	Recognised Professional Body
TDX Group	Creditor
Institute of Chartered Accounts of Scotland	Recognised Professional Body
Chartered Accountants Ireland	Recognised Professional Body
Mira Makar	Individual
JLT Specialty Limited	Bond provider
Marsh Insolvency Practice	Bond provider
Griffins	Insolvency practitioner
Insolvency Practitioners Association	Recognised Professional Body

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± These respondents asked that their responses be kept confidential or provided responses that could not be published (e.g. for copyright reasons).

## Annex 2 – Responses

[Link to responses](#)

Wilkins Kennedy LLP

Philmore & Co.

Law Society of Scotland

Gibson Booth Business Solutions & Insolvency Ltd

In-House IP Ltd

K Kelleher

Stones & Co.

Price Bailey LLP

BHP Clough Corporate Solutions LLP

ReSolve Group UK

Chartered Institute of Credit Management

Rothmans Recovery

Grant Thornton UK LLP

Edward Walsh Corporate Services Limited

Herbert Smith Freehills LLP

Haslocks Limited

James Cowper Kreston

KPMG LLP (UK)

J.P.Morgan

PwC

Insolvency Risk Services

R3 (Association of Business Recovery Professionals)

Menzies LLP

British Bankers' Association

Institute of Chartered Accountants in England and Wales

RSM Restructuring Advisory LLP

Association of Chartered Certified Accountants

TDX Group

Institute of Chartered Accounts of Scotland

Chartered Accountants Ireland

Mira Makar

JLT Specialty Limited

Marsh Insolvency Practice

Griffins

Insolvency Practitioners Association