

MEMORANDUM OF UNDERSTANDING

BETWEEN

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

AND

**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES;
THE INSOLVENCY PRACTITIONERS ASSOCIATION;
THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS;
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 May 2018

MEMORANDUM OF UNDERSTANDING

1. Participants

The Participants to this Memorandum of Understanding are:

- a. **THE SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY**
- b. **THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES; THE INSOLVENCY PRACTITIONERS ASSOCIATION; THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS; THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND; and THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND** (each a “Recognised Professional Body” and together the “Regulators”)

2. Purpose of this Memorandum of Understanding

- a. Pursuant to the Insolvency Act 1986 the Secretary of State has the power to recognise professional bodies for the purpose of authorising and regulating suitable individuals as insolvency practitioners.
- b. The Regulators have decided to work to common standards by having in place an accessible, effective, fair and transparent procedure for dealing with complaints against persons authorised as insolvency practitioners.
- c. This Memorandum establishes a framework for co-operation between the Secretary of State, and the Regulators in relation to the assessment of complaints against persons authorised as insolvency practitioners.
- d. The Insolvency Service (‘The Authority’) will operate a complaints gateway in accordance with the specifications outlined in the schedule to this Memorandum. The Gateway will assess all new complaints which it receives. Any Complaints which, in the opinion of the Insolvency Service, present grounds for further consideration by a Recognised Professional Body will be referred to that Body.
- e. The Regulators will pay a fee 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:

“Authority” the Insolvency Service acting on behalf of the Secretary of State;

“Commencement Date” means 1 May 2018;

“Complaint” means a communication about a person authorised as an insolvency practitioner expressing dissatisfaction with that person’s conduct as it relates to his or her professional work as an insolvency practitioner in Great Britain and/or Northern Ireland, or with the conduct of others carrying out such work on that person’s behalf.

“Complaints Form” means the form designed by the Authority 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 Authority in accordance with paragraph 7.i.;

“Fee” means the fee for the provision of the Gateway calculated in accordance with paragraph 7.a.;

“Gateway” means the complaints gateway and related services to be provided to the Regulators by the Authority as described in the Specification;

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

“Maximum Per Capita Sum” means the sum of £80 (eighty pounds sterling);

“Memorandum” means this memorandum of understanding (including the schedule);

“Minimum Per Capita Sum” means the sum of £20 (twenty pounds sterling);

“Per Capita Sum” means the sum of £40 (forty pounds sterling);

“Review Point” means annually beginning 1 January 2019;

“Specification” means the description of the Gateway provided in writing by the Authority to the Regulators and scheduled hereto;

“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:

a 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

a 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;

a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision;

references to a “person” include a natural person

words in the singular include the plural and vice versa;

a reference to one gender includes a reference to the other gender; and

references to paragraphs and to schedules are to paragraphs in, and schedules to, this Memorandum.

4. Commencement and Duration

This Memorandum will come into operation on the Commencement Date.

5. Provision of Gateway

- a. The Authority will provide the Gateway to the Regulators in accordance with the Specification in all material respects.
- b. The Authority will use reasonable endeavours to meet any performance dates specified in the Specification but any such dates are estimates only.
- c. The Authority 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 Authority will notify the Regulators, and if appropriate seek their approval. The Regulators will not unreasonably withhold such approval.
- d. The Authority commits to provide the Gateway using reasonable care and skill.

The Authority will assess all Complaints which relate to the acts, omissions, or appointment of any member of the Regulators acting as an Insolvency Practitioner and authorised to act as such within Great Britain and Northern Ireland, by one of the Regulators.

6. Commitments of the Regulators

- a. The Regulators will co-operate with the Authority in all matters relating to the Gateway.
- b. The Regulators will supply the Authority with such information as the Authority may reasonably require in order to provide the Gateway and will ensure that such information is accurate in all material respects.
- c. Each Recognised Professional Body will prominently advertise the Gateway on a relevant page of its website and in the advertisement include this hyperlink <https://www.gov.uk/complain-about-insolvency-practitioner> In cross-referring to and maintaining any such hyperlink each Recognised Professional Body must not imply

endorsement of its site by the Authority or by any department or office of Her Majesty's Government. The Authority does not permit its pages to be loaded into frames on a Recognised Professional Body's site – the Authority's pages must load into the website visitor's entire window.

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

7. Fee and Payment

- a. The Fee per annum will be calculated by multiplying the Per Capita Sum by the aggregate number of persons who, pursuant to the rules of each Recognised Professional Body, were authorised as Insolvency Practitioners as at 1 January of the preceding calendar year.
- b. Each Recognised Professional Body will pay a proportion of the Fee calculated by multiplying the Per Capita Sum by the number of persons who, pursuant to its rules, were authorised as insolvency practitioners as at 1 January of the preceding calendar year
- c. The Participants acknowledge that the Per Capita Sum (and indirectly the amount of the Fee in paragraph 7.b.) is on the basis of the Authority receiving 917 Complaints annually pursuant to its provision of the Gateway.
 - i. If, by the Review Point, the Authority has received in excess of 1100 Complaints, the Authority is permitted to increase the Per Capita Sum provided that such figure does not exceed the Maximum Per Capita Sum.
 - ii. If, by the Review Point, the Authority has received fewer than 732 Complaints, the Per Capita Sum will be decreased provided that such figure does not go below the Minimum Per Capita Sum.
 - iii. The Authority and the participants may review additional bases for calculating the fee at each Review Point
- d. A Complaint will only count as having been received by the Review Point if:
 - i. it has been communicated to the Gateway by a phone call to the Authority's Insolvency Enquiry Line; communicated to another area of Government and passed to the Gateway; or communicated to an Recognised Professional Body and forwarded to the Authority in accordance with paragraph 6.d.; and has been recorded on the Complaints Form by a member of the Authority's staff with all mandatory fields having been completed; or
 - ii. it has been recorded on the Complaints Form with all mandatory fields having been completed and submitted to the Gateway by email to ip.complaints@insolvency.gov.uk; or by post to IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA.
- e. The Authority will provide such information to a Recognised Professional Body as it may reasonably require regarding the number of Complaints the Authority has received and the

time spent by the Authority's staff on the processing of Complaints, upon that Body's request. The Authority will ensure that such information is accurate in all material respects.

f. The Fee is exclusive of VAT. Each Recognised Professional Body will pay to the Authority a sum equal to the VAT chargeable on the amounts payable by it for the provision of the Gateway.

g. The Authority will invoice each Recognised Professional Body for the Fee per annum:

i The Authority will submit its invoices on 1 January 2019 or shortly thereafter and then annually thereafter. The amounts payable by each Recognised Professional Body will be calculated on the following basis where 'x' represents the fee payable and 'y' represents the number of persons who, pursuant to the rules of each Recognised Professional Body, were authorised as insolvency practitioners as at 1 January of the preceding calendar year.

ii :

$$\text{RPB: } \text{£}x (y \times \text{£}40 \times 12/12)$$

h. Each Recognised Professional Body will pay the invoices submitted by the Authority, in full and cleared funds, to a bank account nominated in writing by the Authority within 30 days of the date of receiving the invoice.

i. If a Recognised Professional Body fails to make a payment due to the Authority under the Memorandum by the Due Date, the Authority is permitted to charge the Body for the reasonable costs which it incurs in procuring the Body's payment of the overdue amount.

j. 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 Authority 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, trade marks, 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 Regulators 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 Authority.

9. Freedom of Information

- a. The Regulators acknowledge that the Authority 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 Authority to enable the Authority to comply with this legislation.
- b. Whilst the Authority may consult a Recognised Professional Body and take its views into account, the Regulators acknowledge that the Authority 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 1998 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 the Data Protection Act 1998.

11. Transparency

In order to comply with the Government's policy on transparency the Memorandum will be published by the Authority on a designated web site.

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 Authority may terminate the arrangements in this Memorandum at any time by giving to the Regulators at least two months notice of termination in writing. The Regulators acting collectively may do the same by giving to the Authority at least two months notice of termination in writing.
- b. Individual Regulators may withdraw from the arrangement in this Memorandum at any time by giving to the Authority and all other Regulators at least two months notice in writing.
- c. In the event of early termination, the Regulators 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 Term.

- d. In the event of an individual Regulator withdrawing from the arrangement, the Authority will review the fee calculation for the participating Regulators for the remainder of the Term.

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 Authority and the Regulators.

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.

Schedule

The Specification

Nature of Gateway:-

- a. The Authority will assess all new Complaints which it receives.
- b. 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 Authority.
- c. A Complaint of the type described in sub-paragraph b. is not excluded from consideration by the Authority, if the complainant has provided relevant new information.
- d. Where the Authority considers a Complaint to present grounds for further consideration, it will refer the Complaint to the relevant Recognised Professional Body or Bodies, in the event of a joint appointment involving two or more Recognised Professional Bodies as authorisers.
- e. Where the Authority does not consider a Complaint to present grounds for further consideration it will not refer the Complaint to the relevant Recognised Professional Body or Bodies.
- f. In both the instances outlined in paragraphs d. and e., the Authority will send a response to the complainant informing them of the decision. If rejecting the Complaint, the Authority will set out the reasons for this in the response to the complainant.
- g. It will be for the Authority alone to determine whether a Complaint presents grounds for further consideration by the Recognised Professional Body.
- h. The Authority will aim to assess a Complaint and complete the appropriate actions under paragraphs d.- f within 15 Working Days of receipt.
- i. For the purposes of the time limit referred to in paragraph h., a Complaint is only deemed to have been received when all relevant questions on the Complaints Form have been completed to the Authority's satisfaction.

IN WITNESS WHEREOF the undersigned duly authorised thereto by the Secretary of State or their respective Recognised professional body, have executed this memorandum.

FOR THE SECRETARY OF STATE

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

THE INSOLVENCY PRACTITIONERS ASSOCIATION

THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND