



The Insolvency
Service

CALL FOR EVIDENCE

Regulation of insolvency practitioners
Review of current regulatory landscape

Published July 2019

A BEIS SERVICE

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1. Introduction

The purpose of this document is to seek evidence that will help inform the government on whether changes are necessary to the current regulatory framework for insolvency practitioners (IPs) in the UK, including whether to consult on the use of existing legislative powers to create a single regulator for IPs.

In October 2015, the Small Business, Enterprise and Employment Act introduced significant changes to insolvency law, practice and the regulation of IPs¹. These included:

- the introduction of regulatory objectives for insolvency regulators, which apply to the Recognised Professional Bodies (RPBs) and the Secretary of State, as oversight regulator
- powers for the Secretary of State to take action against RPBs and, where it is in the public interest, against insolvency practitioners directly
- changes to the way that some insolvency practitioner fees and expenses are communicated and agreed with creditors

The legislation also included a power allowing the Secretary of State to create a single, independent regulatory body in place of the current system— which sees a number of RPBs authorise and regulate the IP profession— should it be considered appropriate. This power expires in 2022.

As the authority responsible for developing policy relating to the insolvency legislative framework, the Insolvency Service is now gathering evidence to help gauge the impact of the regulatory objectives and how the current regime is working. We want to gather as much information as possible on current levels of satisfaction amongst stakeholders and the public, to help inform the decision on whether or not government should consult on a move to a single regulator, or consider other improvements to the regulatory framework.

We would welcome responses from IPs, RPBs, trade bodies, creditors and their representatives, debt charities, and any other interested parties. We are available should respondents wish to meet to discuss their evidence and experiences of IP regulation. Any requests for a meeting should be sent to the postal or email address below.

We look forward to receiving your evidence and views.

Enquiries to: Judith Marsden

The Insolvency Service
Policy Team
4 Abbey Orchard Street
Westminster
London
SW1P 2HT

Email: IPregulation.Review@insolvency.gov.uk

¹ <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

2. Executive summary

In October 2015, the government introduced regulatory objectives for the insolvency practitioner profession, alongside new powers of sanction for the Secretary of State. These powers are exercised via the Insolvency Service, which acts as oversight regulator on behalf of the Secretary of State. The regulatory objectives were designed to provide insolvency regulators with a clearer, enhanced framework within which to carry out their functions of authorising and regulating the insolvency profession. The overall aim of the regulatory objectives was to improve confidence in the regulation of insolvency practitioners.

At the same time, provision was made for the Secretary of State to have the power to create a single, independent regulatory body in place of the current Recognised Professional Bodies. This power expires in October 2022.

We are publishing this call for evidence to enable the government to assess the impact of the regulatory objectives, and to measure current levels of confidence in the regulatory framework. We are also interested to hear whether the current regulatory regime could be improved.

In addition, we are seeking views on the role government should take in insolvency practitioner regulation in the future. We also want to gather views on how a single regulator might function and what benefits it might bring that the current regulatory system cannot realise, should such a determination be made.

Whilst we recognise that the current regulatory objectives were introduced relatively recently, it is necessary for government to start the process of review now in order that any substantive decisions can be made before the expiry of the power in October 2022.

Chapter 4 of this call for evidence gives a brief overview and history of the regulation of insolvency practitioners. Chapter 5 is split into a number of parts:

- Part 5.1 considers each of the regulatory objectives
- Part 5.2 covers the important criteria of confidence in the regulatory regime and how best that should be measured
- Part 5.3 seeks evidence and views on a single regulator

We should emphasise that no decision on use of the power has yet been made. This exercise is designed to gather evidence from those operating in the insolvency market and those who have been affected by insolvency; your views and experiences will help us evaluate the level of confidence in the current system. Any proposals emerging from this exercise would be subject to further consultation.

3. How to respond

This call for evidence opened on 12 July 2019 and will close on 4 October 2019.

When replying, please state in which capacity you are responding, e.g. as an insolvency practitioner, a creditor affected by financial failure, an individual or company subject to an insolvency procedure. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the form and, where applicable, indicate how the views of members were assembled.

The call for evidence response form is available in Annex 3 of this document.

The form can be submitted online, by email or by letter to:

Judith Marsden
The Insolvency Service
Policy Team
4 Abbey Orchard Street
Westminster
London
SW1P 2HT

Email: IPregulation.Review@insolvency.gov.uk

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Other versions of the document in Braille, other languages or audio-cassette are available on request.

3.1 Confidentiality and data protection

Information provided in this call for evidence, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information, including personal data, that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality

disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.

We will summarise all responses and place this summary on GOV.UK. This summary will include a list of names or organisations that responded but not the names and addresses of individuals.

3.2 Quality assurance

This call for evidence has been carried out in accordance with the government's consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any complaints about this process (as opposed to comments about the issues which are the subject of the call for evidence) please address these to:

beis.bru@beis.gov.uk

4. Regulation of Insolvency Practitioners

4.1 Background

The authorisation regime for insolvency practitioners in Great Britain and Northern Ireland was introduced by Part XIII of the Insolvency Act 1986. An insolvency practitioner (IP) is someone who is authorised to act in relation to an insolvent individual, partnership or company. There are currently 1,565 IPs in the UK, of which 1,244 are actively taking appointments.

Insolvency is a relatively small profession. IPs work within firms that range in size from the global financial services firms known as the 'Big Four'², through to Small to Medium Enterprises and sole practitioners. Some IPs take only personal or corporate insolvency appointments, but many work in both fields. Some practitioners hold authorisation to work in accountancy and audit, whilst others focus solely on insolvency. There are also geographical distinctions, with IPs taking appointments outside England and Wales having regard to different insolvency rules and legislation.

IPs are currently regulated by one of five Recognised Professional Bodies (RPBs) which are required to act in a way which is compatible with the regulatory objectives. The objectives are discussed in further detail in chapters 4.2 and 5.1 below.

In 2015 there were eight RPBs (including the Insolvency Service, which directly authorised IPs until September 2016). The number has reduced in recent years, to the current five:

- Association of Chartered Certified Accountants (ACCA)
- Chartered Accountants Ireland (CAI)
- Insolvency Practitioners Association (IPA)
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Institute of Chartered Accountants of Scotland (ICAS)

The following table shows the number of IPs regulated by each of the RPBs as at 1 January 2019:

	ACCA	CAI	IPA	ICAEW	ICAS
Appointment-taking IPs	78	43	455	594	74
Non-appointment-taking IPs	5	2	96	200	18
Total	83	45	551	794	92

The Insolvency Service's Insolvency Practitioner Regulation Section (IPRS) acts as the oversight regulator of RPBs in Great Britain on behalf of the Secretary of State. IPRS monitors the regulatory activities of the authorising bodies by undertaking on-site visits, desktop monitoring and themed reviews focusing on topical areas of concern. Monitoring activities and regulatory outcomes are reported in the Annual

² Deloitte, Ernst & Young, KPMG, PriceWaterhouseCoopers

Review of Insolvency Practitioner Regulation³. As part of this call for evidence we will be seeking views on the effectiveness of the oversight function.

Insolvency is a devolved function in Northern Ireland, although in practice the regime is closely aligned with that of England, Scotland and Wales. Oversight regulation in Northern Ireland is carried out by the Department for Economy (DfE).

4.2 The 2015 legislative changes

In 2010, a report by the Office of Fair Trading (OFT) into the market for corporate insolvency practitioners identified a number of failings in the regulatory system for IPs⁴. The need to strengthen the regime was also identified in a review of IP Fees prepared by Professor Elaine Kempson of Bristol University and published in July 2013⁵.

Both reports identified a number of areas where the existing legislation and regulatory system could be improved. They found that the regulatory regime for IPs lacked clear objectives against which the Insolvency Service could hold RPBs to account. The Insolvency Service's powers with which to regulate RPBs were also very limited; it did not have a range of sanctions to enable it to deal promptly with varying degrees of poor performance. Under the Insolvency Act 1986 it could revoke an RPB's recognition, but this action was felt to be disproportionate in all but the most serious circumstances.

There was also concern on the part of those affected by the work of insolvency practitioners about the fees charged for their work. Both the OFT study and the Kempson report raised specific concerns about the ability of unsecured creditors to control fees and the treatment of individual debtors where there is a surplus of assets.

In response the government took steps to create a set of statutory regulatory objectives to govern the regulatory regime, which took effect in October 2015⁶. Under the regulatory objectives, RPBs are required to act in the way they consider most appropriate for achieving the following:

- having a system of regulating insolvency practitioners that secures fair treatment for people affected by their acts, is transparent, accountable, proportionate, and ensures consistent outcomes.
- encouraging an independent and competitive insolvency practitioner profession whose members provide high quality services at a fair and reasonable cost, act transparently and with integrity, and consider the interests of all creditors in any particular case.
- promoting the maximisation of, and promptness of returns to, creditors.
- protecting and promoting the public interest.

³ The most recent report can be found at <https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2018>

⁴ https://webarchive.nationalarchives.gov.uk/20140402172033/http://oft.gov.uk/shared_oft/reports/Insolvency/oft1245

⁵ <https://www.gov.uk/government/publications/insolvency-practitioner-fees-a-review>

⁶ <http://www.legislation.gov.uk/ukpga/2015/26/notes/division/5/10/9>

Since the changes were introduced, the Insolvency Service's oversight activity has focused on providing guidance to RPBs on how to comply with the objectives and assessing whether RPBs are meeting those objectives. Guidance on the legislative changes was published in December 2015 but the Insolvency Service recognises that RPBs exercise their functions in different ways and that the objectives do not require all bodies to have an identical approach. Guidance on Common Sanctions was issued in 2016⁷ and is used by all RPBs to determine the appropriate sanction following a finding of IP misconduct. This encourages consistency and best practice in the application of the available penalties.

Since the introduction of the objectives, IPRS has conducted monitoring visits to all five RPBs, carrying out themed reviews on complaint handling, monitoring and regulatory functions and regulation of volume Individual Voluntary Arrangements (IVA) providers. It has produced a number of reports into the monitoring and complaints handling activities of RPBs.

The Secretary of State is required to have regard to the regulatory objectives when carrying out these oversight functions, therefore the fundamental principles of transparency, accountability, proportionality and consistency apply to the work of IPRS as well as the RPBs. This regulatory framework has now been in place since October 2015 and we are interested to hear your views on whether it is operating as intended.

When responding to the questions in this call for evidence please provide full explanations for your answer and include supporting evidence wherever possible.

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482904/Guidanceforpublication.pdf

5. Areas for consideration

5.1 The regulatory objectives

We are seeking views on the way the regulatory objectives are working currently, and whether they are having their intended effect.

5.1.1 Having a system of regulating insolvency practitioners that secures fair treatment for people affected by their acts, is transparent, accountable, proportionate, and ensures consistent outcomes.

We recognise that RPBs will need to exercise their expertise and judgement in deciding on what 'fair treatment' means in an insolvency context. The people impacted by an IP's decision or action often have limited knowledge of insolvency processes. Ensuring transparency and the provision of timely and appropriate information from IPs are therefore key features of this objective. Another of the key aspects to RPBs meeting this objective is the existence of effective systems for assessing and investigating complaints and the robust monitoring of their members.

Where IP misconduct is identified (whether through complaints handling, monitoring or case investigation), an RPB's disciplinary process should deliver fair and consistent outcomes. RPBs are encouraged to share information and outcomes with other RPBs to ensure that, where possible, a coherent and consistent approach is taken. As part of their oversight function, IPRS looks at whether the Common Sanctions Guidance is being consistently applied.

Government does not intend for the work of RPBs to impose an unnecessary burden on the insolvency industry. Nevertheless, their systems need to be robust enough to deter IPs from inappropriate or non-compliant behaviour. RPBs can achieve this by taking a targeted, timely and proportionate approach to their regulatory activities.

1. Do you think Recognised Professional Bodies (RPBs) investigate complaints about insolvency practitioners in a way that is fair, and delivers consistent outcomes for all parties? Please share examples of good and bad practice.

2. What level of confidence do you have that RPBs will deal with insolvency practitioner misconduct swiftly and impartially, using the full range of available sanctions set out in the Common Sanctions Guidance?

3. Do you believe the sanctions that the RPBs can currently apply are adequate and sufficient to provide fair and reasonable redress when a complaint is upheld? If not, what sanctions do you believe an RPB should be able to apply?

4. What evidence is there to demonstrate that RPBs collaborate to ensure there is consistency in monitoring and enforcement outcomes?

5.1.2 Encouraging an independent and competitive insolvency practitioner profession whose members provide high quality services at a fair and reasonable cost, act transparently and with integrity, and consider the interests of all creditors in any particular case.

RPBs are expected to encourage an independent and competitive profession, by ensuring high standards of professionalism and competence amongst their members. Since 1999 the production of industry standard advice has been undertaken by the Joint Insolvency Committee (JIC). The JIC is made up of representatives from each of the five RPBs, five lay members, and representatives from the Insolvency Service and the Insolvency Service, Northern Ireland. The intention behind establishing the JIC was to promote a stakeholder-driven, transparent forum for setting best practice.

The standards expected of IPs are set out in their Code of Ethics and Statements of Insolvency Practice (SIPs), which are issued by the JIC and adopted by all RPBs. The RPBs should be helping their members to comply with these requirements, providing training and development where necessary.

This objective also requires that RPBs act with transparency and with integrity. Put simply, this means that everyone should know where they stand. For example, all of the parties involved in an investigation should be kept informed of its progress, and be told the outcome. By using all of the available evidence to inform its decision-making, an RPB will be seen to be acting impartially, and in the interests of all creditors.

Prior to 2015, RPBs were not obliged to consider complaints about the level of fees charged by IPs. They could, however, look at whether or not the fees had been correctly drawn with proper authorisation. The new objective requires RPBs to regulate their members to provide high quality services at a 'fair and reasonable cost'. RPBs are therefore now required to consider the quantum of costs, as well as whether the correct procedures have been followed. An RPB may investigate where an IP regularly returns to creditors for an increase in fees, but can also look at cases where the costs fall within the original estimate.

In England and Wales there is a further statutory requirement that where fees are based on time costs, IPs must provide an up-front estimate of their fees for creditor approval. In Scottish insolvencies, a trustee's fee can be approved retrospectively by creditors, the Accountant in Bankruptcy (AiB) or by the Court.

Ultimately, RPBs need to ensure that IP charges represent fair value for the work undertaken, and fee abuse should be challenged wherever it is found.

5. Are RPBs doing enough to promote an independent and competitive insolvency practitioner profession that considers the interests of all creditors? Please share examples of good and bad practice.

6. In what ways have the RPBs used the introduction of regulatory objectives to improve professional standards within the insolvency profession?

7. When dealing with insolvency practitioner conduct, how transparent are RPBs in their decision making?

8. Does the current system of regulation provide for the effective scrutiny of insolvency practitioner fees? If not, what improvements would you suggest?

5.1.3 Promoting the maximisation of, and promptness of returns to, creditors.

RPBs are required to promote the maximisation and promptness of returns to creditors. This means that cases should be administered efficiently and closed promptly, with payments made to creditors as soon as practicable.

5.1.4 Protecting and promoting the public interest.

This objective requires RPBs to take a proactive approach to regulation. As well as dealing promptly and appropriately with IPs who cause (or have potential to cause) harm to the public, RPBs should also use intelligence gathered from complaints or other sources to focus their regulatory activities on IPs that are likely to damage the public interest.

RPBs are expected to uphold the reputation of the profession by maintaining proper standards and encouraging effective self-regulation, thereby improving public confidence.

9. What are RPBs doing to promote the maximisation and promptness of returns to creditors? Please share examples of good and bad practice.

10. Is there confidence that people who are in financial difficulty and wish to enter a statutory solution are routinely offered the best option for their circumstances?

11. Are RPBs doing enough to promote the public interest and protect the public from harm? Please share examples of good and bad practice.

5.2 Confidence in the regime

The 2010 OFT report found that, under the previous system of regulation, unsecured creditors were unlikely to take an active part in insolvency processes. They did not trust the complaints system, and it was unclear whether IPs were being adequately disciplined for wrongdoing. Media and political comment about the profession was often negative, and IPs' close relationships with secured creditors meant they were not always trusted to act in the wider interest of creditors. IPs themselves had little faith that the system was effective at dealing with misconduct. We would like to assess whether this situation has improved since the introduction of the regulatory objectives in 2015.

The Insolvency Service receives and assesses complaints about IPs before referring them on to RPBs, via an online function known as the Complaints Gateway. The Gateway was established by the Insolvency Service in June 2013 to provide a single point of entry for complaints about insolvency practitioners. As well as providing straightforward access for those wishing to make a complaint about the conduct of an insolvency practitioner, the Gateway allows the Insolvency Service to monitor the

number and nature of complaints and associated regulatory outcomes, including the timeliness of disciplinary hearings and appeal processes.

Statistics from the Complaints Gateway show that the total number of annual complaints varies from year to year:

	2016	2017	2018
Complaints Received	849	757	830
% of Complaints Referred to RPB	57%	48%	46%
Total number of insolvencies	107,432	116,439	132,738

Using complaints as a gauge of public confidence is problematic. A reduction in the number of complaints about IPs might be seen to indicate increasing levels of confidence in the insolvency profession, however we recognise that if people have lost faith that action will be taken as a result of a complaint, and they may not consider it worthwhile going through the process. Relief from creditor pressure may lead a debtor to overrate the service they have received, or they may be unaware that there was a more suitable insolvency procedure available to them, and likewise they may not make a complaint. Hence, a falling number of complaints may indicate a lack of confidence, whilst increased complaints might indicate an improving position.

Taken alone, the number of complaints may well not be a true reflection of public concern. We are therefore interested to obtain your views on whether the system of regulation introduced in 2015 has improved levels of confidence in the regulatory framework.

We accept that confidence is a difficult concept to measure, which is why we are keen to hear from those who use the system. The responses you provide to the following questions will help us to evaluate the impact of the regulatory objectives and determine whether they have helped to achieve higher levels of assurance.

On a scale of 1 to 5, to what extent do you agree with the following statements? (1 being strongly agree, 5 being strongly disagree.) Please provide an explanation for your score and supporting evidence if possible.

- 12. “The regulatory objectives are fit for purpose”**
- 13. “The RPBs function in a way that delivers the regulatory objectives and this has increased confidence in the system”**
- 14. “There are matters of significant concern, which are currently affecting confidence in the regime, which are not addressed adequately by the regulatory objectives”**

The Insolvency Service, via IPRS, acts as the oversight regulator for all RPBs on behalf of the Secretary of State. In 2015 the Secretary of State obtained new powers of sanction to address varying degrees of poor performance by RPBs. If an RPB carries out an act (or omission) which adversely impacts on one or more of the objectives the Insolvency Service may:

- direct an RPB to take action or to refrain from taking a particular course of action
- impose a financial penalty on an RPB
- issue a reprimand to an RPB
- revoke recognition of an RPB
- apply to court to directly sanction an insolvency practitioner, where it is in the public interest to do so.

Generally, the Insolvency Service aims to resolve any issues through discussion and agreement with the relevant RPB and when introduced it was anticipated that the power of direct sanction would be used only rarely. The Insolvency Service will publicise the outcome of any direct action where appropriate.

On a scale of 1 to 5, to what extent do you agree with the following statement? (1 being strongly agree, 5 being strongly disagree.) Please provide an explanation for your score and supporting evidence if possible.

- 15. “There is confidence that government oversight sufficiently holds the RPBs to account to deliver the regulatory objectives”**

5.3 A single regulator?

When the regulatory objectives were brought into force, the Secretary of State was given the power to establish a single regulator of insolvency practitioners.

As it stands, the legislation provides that the designated single regulator could be either:

- a new body established by regulations or
- a body already in existence (Practically speaking this could mean one of the current RPBs assuming the role of single regulator or an existing regulator outside the insolvency profession)

The power does *not* allow for the Insolvency Service to be a future single regulator.

We would be grateful to know your views on whether the power provides the correct options for any single regulator, or whether there should be the possibility for us to consider other options, including the government being able to take on this role.

We also wish to consider the potential benefits of different regulatory models, including possible changes to the current system, short of creating a new regulator. Examples might include the creation of an independent complaints body to oversee and progress complaints against all RPBs, an independent collective monitoring regime or an independent disciplinary tribunal to deal with IP misconduct. Such changes would not be provided for by the existing power and may require further

primary legislation, but the government would welcome alternative suggestions that could help to ensure confidence in the system.

As part of this call for evidence we are also seeking your views on whether IPs could be authorised at the firm level, either as an alternative to individual authorisation or alongside it. A current example of where this approach may have particular benefits is where IPs are working within firms offering significant numbers of IVAs and protected trust deeds (PTDs).

Since 2015 there have been developments in the way the insolvency market operates. One area which has changed considerably is the way IVAs and PTDs are administered. An IVA is a statutory debt management procedure under which an individual, with the agreement of their creditors, repays part of what they owe to their creditors (largely credit institutions in respect of credit cards and loans). An IVA must be supervised by an authorised IP.

A PTD is an agreement in Scotland between an individual and their trustee, that has been approved by the creditors, whereby the trustee will manage the debtor's estate and income in order to pay the creditors all, or part of, what they are owed.

The number of people seeking debt relief through an IVA has increased significantly. In 2018, there were over 71,000 IVAs compared to 59,000 in 2017. (Up until 2003 there were fewer than 10,000 annually.) The IVA market has consolidated in recent years into a number of 'volume' providers with eight of those now accounting for over 80% of new IVAs registered in 2018.

The number of people in Scotland seeking debt relief through a PTD has also increased significantly. In 2018/19, 7,915 trust deeds were protected compared to 5,958 in 2017/18. The PTD market is now dominated by three 'volume' providers, who registered 71% of all trust deeds protected in 2018/19.

The structure of some firms means that the IP is often an employee, supervising several thousand cases, with little control or say over the actions and policies of the firm. This represents a different way of working compared to a traditional insolvency practice, and we are interested to hear whether you think that regulation for this type of business needs to change—for example by way of firm regulation in place of, or alongside, individual authorisation.

Firm authorisation might also be appropriate in other circumstances. Again, this is likely to require additional legislation, but the government is keen to seek your views on this and how it may improve the regulatory framework.

The current system of regulation is self-funded, with RPBs charging fees to each licenced insolvency practitioner. The cost of oversight regulation by the Insolvency Service is also paid for by a statutory annual levy payable by each IP. The financing of any future single regulator would need careful consideration.

The legislation provides that any new regulatory body could set and charge fees to fund its activities, however there may be difficulties in setting up a self-funding model because of the relatively small number of insolvency practitioners. If funding is insufficient then the current regulations also allow for the Secretary of State to make grants to the body. Potential funding options will be explored further should there be any future consultation; however we would welcome your ideas should you wish to provide them at this time.

It is important to emphasise that at this stage government does not have a preferred option, nor has it concluded that a single regulator or alternative model would be the best way forward. At this point we are simply collating views on what type of framework you think would best deliver public confidence.

Any ideas that are developed following this call for evidence would require detailed consideration and further consultation with stakeholders.

16. Does the reserve power provide sufficient flexibility in the options for a single regulator? If so, which option would most effectively deliver the regulatory objectives?

17. Should government look to create a different type of regulatory framework that better suits the current insolvency system (for example firm regulation in certain sectors)? If so, what type of framework would best deliver improvements to public confidence?

18. Should government have a role within any new or improved regulatory framework?

19. How might any future single regulator, or alternative framework, be funded?

6. Call for evidence questions

1. Do you think Recognised Professional Bodies (RPBs) investigate complaints about insolvency practitioners in a way that is fair, and delivers consistent outcomes for all parties? Please share examples of good and bad practice.

2. What level of confidence do you have that RPBs will deal with insolvency practitioner misconduct swiftly and impartially, using the full range of available sanctions set out in the Common Sanctions Guidance?

3. Do you believe the sanctions that the RPBs can currently apply are adequate and sufficient to provide fair and reasonable redress when a complaint is upheld? If not, what sanctions do you believe an RPB should be able to apply?

4. What evidence is there to demonstrate that RPBs collaborate to ensure there is consistency in monitoring and enforcement outcomes?

5. Are RPBs doing enough to promote an independent and competitive insolvency practitioner profession that considers the interests of all creditors? Please share examples of good and bad practice.

6. In what ways have the RPBs used the introduction of regulatory objectives to improve professional standards within the insolvency profession?

7. When dealing with insolvency practitioner conduct, how transparent are RPBs in their decision making?

8. Does the current system of regulation provide for the effective scrutiny of insolvency practitioner fees? If not, what improvements would you suggest?

9. What are RPBs doing to promote the maximisation and promptness of returns to creditors? Please share examples of good and bad practice.

10. Is there confidence that people who are in financial difficulty and wish to enter a statutory solution are routinely offered the best option for their circumstances?

11. Are RPBs doing enough to promote the public interest and protect the public from harm? Please share examples of good and bad practice.

On a scale of 1 to 5, to what extent do you agree with the following statements? (1 being strongly agree, 5 being strongly disagree.) Please provide an explanation for your score and supporting evidence if possible.

12. "The regulatory objectives are fit for purpose"

13. "The RPBs function in a way that delivers the regulatory objectives and this has increased confidence in the system"

14. "There are matters of significant concern, which are currently affecting confidence in the regime, which are not addressed adequately by the regulatory objectives"

15. “There is confidence that government oversight sufficiently holds the RPBs to account to deliver the regulatory objectives”

16. Does the reserve power provide sufficient flexibility in the options for a single regulator? If so, which option would most effectively deliver the regulatory objectives?

17. Should government look to create a different type of regulatory framework that better suits the current insolvency system (for example firm regulation in certain sectors)? If so, what type of framework would best deliver improvements to public confidence?

18. Should government have a role within any new or improved regulatory framework?

19. How might any future single regulator, or alternative framework, be funded?

7. What happens next?

We will consider all the information presented as part of this call for evidence when determining what, if any, further action may be required. Any formal proposals related to the creation of a single regulator will be subject to further consultation and full Parliamentary scrutiny.

8. Annexes

Annex 1: Links to relevant legislation and reports

Annex 2: List of individuals contacted

Annex 3: Response form

Annex 1: Links to relevant legislation and reports

The Small Business, Enterprise and Employment Act 2015 (SBEE):

<http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

The Insolvency Service Annual Review of Insolvency Practitioner Regulation 2018:

<https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2018>

The market for corporate insolvency practitioners (Office of Fair Trading, June 2010):

https://webarchive.nationalarchives.gov.uk/20140402172033/http://oft.gov.uk/shared_oft/reports/Insolvency/oft1245

Review of Insolvency Practitioner Fees, Report to the Insolvency Service (Elaine Kempson, July 2013):

<https://www.gov.uk/government/publications/insolvency-practitioner-fees-a-review>

SBEE Section 138: Regulatory objectives:

<http://www.legislation.gov.uk/ukpga/2015/26/notes/division/5/10/9>

Insolvency practitioner regulation – regulatory objectives and oversight powers
Legislative changes introduced on 1 October 2015:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482904/Guidanceforpublication.pdf

Annex 2: List of organisations and individuals consulted

This call for evidence has been sent to organisations and individuals that represent the following sectors:

- Legal
- Academia
- Professional and Regulatory Bodies
- Creditor organisations
- Debt charities
- Government departments
- Other interested parties

A full list of consultees is available on request from:

IPregulation.Review@insolvency.gov.uk

Annex 3: Response form

The closing date for responses is 4 October 2019

Please return completed forms to:

Judith Marsden
The Insolvency Service
Policy Team
4 Abbey Orchard Street
Westminster
London
SW1P 2HT

Email: IPregulation.Review@insolvency.gov.uk

Please be aware that we intend to publish all responses to this call for evidence. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the section 4 for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.

Comments:

Response Form

Name:

Organisation (if applicable):

Address:

I want my response to be treated as confidential

Please select which best describes you or your organisation:

Respondent type (please tick)

<input type="checkbox"/>	Insolvency practitioner
<input type="checkbox"/>	Recognised Professional Body
<input type="checkbox"/>	Trade body
<input type="checkbox"/>	Creditor organisation
<input type="checkbox"/>	Creditor affected by financial failure
<input type="checkbox"/>	Individual subject to insolvency proceedings
<input type="checkbox"/>	Company subject to insolvency proceedings
<input type="checkbox"/>	Government department (please specify)
<input type="checkbox"/>	Other organisation (please specify)
<input type="checkbox"/>	Other individual (please specify)

1. Do you think Recognised Professional Bodies (RPBs) investigate complaints about insolvency practitioners in a way that is fair, and delivers consistent outcomes for all parties? Please share examples of good and bad practice.

Comments:

2. What level of confidence do you have that RPBs will deal with insolvency practitioner misconduct swiftly and impartially, using the full range of available sanctions set out in the Common Sanctions Guidance?

Comments:

3. Do you believe the sanctions that the RPBs can currently apply are adequate and sufficient to provide fair and reasonable redress when a complaint is upheld? If not, what sanctions do you believe an RPB should be able to apply?

Comments:

4. What evidence is there to demonstrate that RPBs collaborate to ensure there is consistency in monitoring and enforcement outcomes?

Comments:

5. Are RPBs doing enough to promote an independent and competitive insolvency practitioner profession that considers the interests of all creditors? Please share examples of good and bad practice.

Comments:

6. In what ways have the RPBs used the introduction of regulatory objectives to improve professional standards within the insolvency profession?

Comments:

7. When dealing with insolvency practitioner conduct, how transparent are RPBs in their decision making?

Comments:

8. Does the current system of regulation provide for the effective scrutiny of insolvency practitioner fees? If not, what improvements would you suggest?

Comments:

9. What are RPBs doing to promote the maximisation and promptness of returns to creditors? Please share examples of good and bad practice.

Comments:

10. Is there confidence that people who are in financial difficulty and wish to enter a statutory solution are routinely offered the best option for their circumstances?

Comments:

11. Are RPBs doing enough to promote the public interest and protect the public from harm? Please share examples of good and bad practice.

Comments:

For questions 12-15 only

On a scale of 1 to 5, to what extent do you agree with the following statements? (1 being strongly agree, 5 being strongly disagree.) Please provide an explanation for your score and supporting evidence if possible.

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12. “The regulatory objectives are fit for purpose”

1 2 3 4 5

Comments:

13. “The RPBs function in a way that delivers the regulatory objectives and this has increased confidence in the system”

1 2 3 4 5

Comments:

14. “There are matters of significant concern, which are currently affecting confidence in the regime, which are not addressed adequately by the regulatory objectives”

1 2 3 4 5

Comments:

15. “There is confidence that government oversight sufficiently holds the RPBs to account to deliver the regulatory objectives”

1 2 3 4 5

Comments:

END OF SCORED QUESTIONS

16. Does the reserve power provide sufficient flexibility in the options for a single regulator? If so, which option would most effectively deliver the regulatory objectives?

Comments:

17. Should government look to create a different type of regulatory framework that better suits the current insolvency system (for example firm regulation in certain sectors)? If so, what type of framework would best deliver improvements to public confidence?

Comments:

18. Should government have a role within any new or improved regulatory framework?

Comments:

19. How might any future single regulator, or alternative framework, be funded?

Comments:

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this call for evidence would also be welcomed.

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply