

 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Insolvency practitioner fees - upfront estimates	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Final	
IA number	BISINSS012	
Origin	Domestic	
Expected date of implementation	1 October 2015 (SNR10)	
Date submitted to RPC	4 November 2014	
RPC opinion date and reference	19 January 2015	RPC14-BIS-2272
Departmental assessment		
One-in, Two-out (OITO) status	IN	
Estimate of the equivalent net cost to business (EANCB)	£0.49 million	
RPC overall assessment	GREEN	
RPC comments		
<p>The IA is fit for purpose. The RPC is able to validate the estimated equivalent annual net cost to business (EANCB) of £0.49 million. The Department has produced robust estimates of the one-off and ongoing costs to insolvency practitioners of having to agree their fees with unsecured creditors upfront.</p>		
Background (extracted from IA)		
What is the problem under consideration? Why is government intervention necessary?		
<p><i>A report by the OFT in 2010 into the market for corporate insolvency practitioners (IPs) and a review by Elaine Kempson of insolvency practitioner (IP) fees published in 2013, found that the market does not work sufficiently well where unsecured creditors are left to 'control' an office holder's fees (IPs) and remuneration. This occurs in just over a third of cases. Unsecured creditors do not effectively engage in oversight of IPs' remuneration. This leads to IPs using their market power to increase their costs and/or reduce quality by taking longer to do the same work.</i></p> <p><i>This can result in over charging by the IP and inefficiencies in administering cases, 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, the Government wish to remove.</i></p>		
What are the policy objectives and the intended effects?		
<p><i>To remove the harm caused by this market failure by providing more useful information to creditors, which should increase engagement by unsecured creditors and so improve scrutiny of the remuneration of IPs. It is anticipated that this will also drive behaviour by IPs and encourage the use of different bases for remuneration for handling different aspects of a case. This will allow for greater challenge of fees by creditors when it is appropriate to do so.</i></p>		

Comments on the robustness of the OITO assessment

The IA says this is a regulatory proposal that would impose a net cost on business (an IN) with an equivalent annual net cost to business of £0.49 million. Based on the evidence presented, this provides a reasonable assessment of the likely impacts and is consistent with paragraph 1.9.10 of the Better Regulation Framework Manual (July 2013). Increasing transparency may reduce fees that IPs charge. This could result in a transfer of resources from IPs to creditors, some of which will be non-business creditors (e.g. HMRC). The Department has not included these costs in its estimates of the direct costs to business because it considers the effect to be indirect.

Comments on the robustness of the small & micro-business assessment (SaMBA)

The proposals increase the scope of regulation on business. A SaMBA is, therefore, required.

The IA includes a SaMBA. It explains that the main beneficiaries of the proposals will be unsecured creditors, most of which will be small and micro-businesses. Exemption from the proposals would, therefore, not be in their interests.

It states that a significant number of IP firms are small or micro-businesses, and to exempt these from being bound by the new charging structure would have the effect of negating the policy objectives of the proposals. It also states that it would be inequitable to exempt smaller firms from providing transparent cost estimates to creditors while requiring it of larger firms, which would give smaller firms a commercial advantage. This would not address the market failure identified 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.

This seems to be a reasonable approach. The SaMBA is sufficient.

Quality of the analysis and evidence presented in the IA

The impact assessment (IA) explains how the Government propose that an IP seeking remuneration should include an upfront estimate of the anticipated costs, which must be approved by creditors. There must be a positive agreement to this; if no creditors respond, then the IP would have to seek agreement from the court. A summary of the work that will be undertaken, the likely time it will take, the grade of staff undertaking the work and a breakdown of the likely costs (e.g. advertising, legal costs, agents' costs) should accompany each estimate.

Where IPs become aware that fees will be higher than the estimate, they will need to seek creditors' approval for any increase. An explanation and justification for the increase should accompany this request.

The IA states the proposals will ensure that IPs' fees are transparent and clearly communicated to creditors at an early stage in a case. Providing unsecured creditors with more information about how fees work and why they are being charged will enable them to exercise oversight over fees. This increased transparency may lead to greater challenge from creditors, which could in turn lead to a reduction in fees charged by IPs. This could be net costly to business as a proportion of creditors are not businesses (e.g. HMRC). However, the Department considers that the impact on business of potentially lower fees is an indirect effect because it relies on a behaviour change by IPs and unsecured creditors.

The IA states that IPs will incur ongoing costs to produce estimates for unsecured creditors. It states that IPs currently produce estimates of the work they will be undertaking for their own budgeting purposes. The IA also states that the infrastructure and information necessary is, therefore, already in place. The Department assumes, therefore, that there will be no additional costs of gathering information although it acknowledges that small additional costs could result from IPs needing to provide information in the correct format. The IA assumes that it will take 15 minutes of support staff time at a cost of £106 per hour to produce estimates in about 18,000 cases each year. The Department estimates the total cost of this to be £0.48 million each year.

Additionally, in cases where there is unforeseen work or where work takes longer than originally envisaged, IPs will need to produce revised estimates. In the first year, the Department estimates there will be around 7,000 such cases at a cost of £0.19 million. The Department assumes that experience of producing these estimates should result in greater accuracy over time and, therefore, assumes that the cost will fall by 5% each year.

The IA states that, in addition, IPs will incur familiarisation costs to understand the new requirements to provide upfront estimates of the cost of their work for every case. The IA estimates that directors/partners in 1,355 appointment-taking IP firms will spend one hour each, at a rate of £375 per hour, learning about the changes. The Department estimates that the total familiarisation costs will be £0.5 million. The Department has explained that it has used a director/partner salary rate for this as it anticipates that the estimates will be approved at this level.

The analysis and the estimates of the costs and benefits in the IA appear reasonable.

Signed



Michael Gibbons, Chairman