Association of Business Recovery Professionals

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The Rt. Hon. Sir Julian Flaux
Chancellor of the High Court
Royal Courts of Justice
London, WC2A 2LL

Email - chancellorspo@judiciary.uk

13 June 2025

Dear Sir,

Consultation on the Practice Statement for schemes of arrangement under Part 26 and restructuring plans under Part 26A of the Companies Act 2006

- **Association of Business Recovery Professionals ("R3") comments**

1. INTRODUCTION

1.1. R3 is the trade association, representing 3,300 insolvency, restructuring, advisory, and turnaround professionals across the UK. We represent licensed insolvency practitioners (IPs), lawyers, turnaround and restructuring experts, students, and others in the profession. Our members work across the spectrum of the profession, with representation from 750 firms, from global legal and accountancy firms through to smaller, local practices.

1.2. The insolvency, restructuring and turnaround profession is a vital part of the UK economy. Through the work of the profession, our members promote economic regeneration, resolve financial distress for businesses and individuals, save jobs, and create confidence and public trust which underpin trading, lending and investment.

1.3. This response to the draft replacement Practice Statement has been prepared by R3 in collaboration with its Part 26A Restructuring Plan Working Group and Policy Group. We welcome the opportunity to engage with, and support, the drafting of an updated Practice Statement.

1.4. Overall, we consider that the Statement appears to achieve the aim of saving court time however, our members raised some concerns with the approach suggested regarding the issuing of claim forms before the date for any court hearings are arranged with the court, which may have unforeseen consequences, particularly in exceptional or urgent cases.

1.5. We would suggest the following amendments and clarifications, which are outlined below:

1.6. R3 would be delighted to discuss the points raised below in greater detail. If you would like to meet us, please contact R3's Policy and Public Affairs Officer, Lyle Horne – lyle.horne@r3.org.uk.

2. PRACTICE STATEMENT PARAGRAPH 5

2.1. The requirement in paragraph 5 to issue the claim form in the name of the company before the date for any court hearings is arranged with the court may create significant practical difficulties. Filing claims on CE-File may trigger a notification and potentially give rise to events of default or breaches of confidentiality which may potentially undermine the RP. Our members have asked whether it would be possible to use a reference number, instead of the company name, in order to minimise breaches of confidentiality and unintended consequences.

2.2. We appreciate that in paragraph 5 it states that "the company may apply for an order restricting access to the court file if the same is essential for reasons of commercial confidentiality". However, we are concerned that this in itself may not be enough to protect commercially sensitive information.

2.3. Even if access to documents is restricted, filing claim forms on CE-File can expose the company name and trigger market speculation or defaults, regardless of sealing. Less central stakeholders may also seek to escalate their concerns publicly.

2.4. Concerns have also been raised around situations where court time is not available, as this could lead to potentially longer periods between lodging the claim form and the hearing.

2.5. Where there are exceptional circumstances or urgent cases, this may lead to requests to the court for these cases to be dealt with differently, with those circumstances being reflected in the PSL.

2.6. Overall, whilst we appreciate what is being sought by this requirement for early disclosure, we have concerns that this will actually lead to other processes being considered instead of a scheme or an RP, to avoid the consequences highlighted above.

3. PARAGRAPH 6

3.1. Paragraph 6(c) states that the indicative timetable must include time for any application(s) for permission to appeal. Given that appeals are happening more frequently, or if there is a need for urgency, there may be a need to truncate the appeal process in some cases. At the very least there will need to be an opportunity to fully engage with the court listing process, to ensure that speed and certainty are built in for those cases which are deemed to be urgent.

4. PARAGRAPH 10

4.1. We would appreciate further clarity on the meaning of "identify". Is this an instruction to form an opinion on all the points in paragraph 10, or simply an indication of matters which could be flagged as potential issues?

5. PARAGRAPH 16

5.1. Paragraph 16 states that no changes should be made to the proposed explanatory statement or annexures without a further court order if said changes are "capable of affecting the approach which a creditor or member may take to casting their vote". Given the need to reduce costs and the use of court time, this requirement may open a broad avenue for unnecessary litigation.

5.2. We would suggest that instead of a requirement to obtain a court order, a procedure is introduced by which any changes are notified to the judge in a tracked document uploaded to the CE-file. The court is then free to use its discretion and could allow amendments to be made where deals have been made with creditors/key stakeholders between the convening hearing and the meeting, saving valuable court time and cost.

6. PARAGRAPH 24

6.1. While accepting the point in 24(b) that the court has discretion to give direction as to the order and timetable by which issues are to be resolved, there needs to be full engagement with the court listing process. A firmer commitment in the practice statement about timings for fixing hearings will help users better predict how long the process is likely to take.

6.2. In 24(d) regarding expert witnesses, given that in large cases there can be a multitude of classes and broad issues, time should be allowed for the meeting of witnesses to narrow down the issues before the court.

6.3. In 24(f) when making provision for the costs of those appearing before the court to support or oppose the scheme or plan, the court must be careful not to be overly lenient to challenging creditors, leading to longer hearings and potentially impacting the attractiveness of the jurisdiction. There needs to be clearer guidance on when costs will and will not be recoverable.