## Consultation on Statements of Insolvency Practice

## STATEMENT OF INSOLVENCY PRACTICE 14 (England & Wales)

## A RECEIVER'S RESPONSIBILITY TO PREFERENTIAL CREDITORS

### Introduction

The Joint Insolvency Committee (JIC) is consulting on changes to the Statement of Insolvency Practice 14 A Receiver's Responsibility to Preferential Creditors.

SIP 14 was last updated in 1999, and since that time, there have been considerable changes in insolvency legislation and practice. These changes have transformed not only receiverships, rendering administrative receivership almost redundant, but also the nature of preferential creditors, first with the removal of Crown preference in 2003 and then, to an extent, its restoration, in the form of secondary preferential status for certain HMRC claims, in 2020.

Consequently, whilst SIP 14 had largely fallen into disuse, the JIC decided that the SIP should be updated not only to reflect the most recent legislative changes to the status of preferential creditors but also renamed to clarify that it applies to all types of insolvency appointment, not just receiverships. The proposed updates are also intended to harmonise the SIP in all of the jurisdictions.

A working group of the Joint Insolvency Committee (JIC) was therefore established to review SIP 14. The working group was comprised of insolvency professionals, representatives of the RPBS, a leading academic and HMRC.

The principal changes to the SIP proposed are:

1. Revisions to clarify that the scope of the SIP covered all types of insolvency appointment, not just Administrative Receivers.
2. Revised opening paragraphs and introduction,
3. Inclusion of a table of contents,
4. Introduction of the modern structure of a SIP including sections for Principles, Key Compliance Standards and Provisions of General Application,
5. Removal of the summaries of statutory provisions,
6. Rewording to include Scotland and Northern Ireland.

The Working Group proposed a revised SIP 14 and the JIC has approved its circulation to the profession and other stakeholders for consultation.

A copy of the proposed revised SIP is attached together with a comparison with the version of the SIP currently in force.

The consultation will commence on 12 June 2025 and will be open for a period of twelve weeks, closing on 5 September 2025.

The JIC recognises that whilst these are extensive modifications, they are, however, only proposed changes. There is no intention to amend the SIP without careful consideration of the responses received and any plan to introduce changes will take into account any continuing challenges faced by the insolvency profession.

The JIC is now seeking your views on the proposed changes to SIP 14 and there is an opportunity in the consultation questionnaire to suggest other changes to SIP 14.

The Proposed revised SIP 14 will apply in England and Wales, Scotland and Northern Ireland and will replace the individual SIP 14s which apply in each jurisdiction.

**Consultation Response from the Association of Business Recovery Professionals (R3).**

## About R3

R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices.

The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession promotes economic regeneration, resolves financial distress for businesses and individuals, saves jobs, and creates confidence and public trust which underpin trading, lending and investment.

R3 has produced this response in collaboration with members of the R3 General Technical Committee ('GTC'). GTC deals with the issues of general importance and significance to the profession as they relate to the UK, keeping under review Scotland, Scottish Parliament and EU legislation, prospective legislation and other matters relating to insolvency law and practice.

GTC is multi-disciplinary and has a good spread of representation, both geographically and in terms of size of practice, including current practitioners, solicitors, academics and others working within the insolvency profession.

## Summary

Whilst R3 agrees that a revision of SIP 14 is necessary, we believe the current draft is too broad and lacks clarity and cohesion. The draft tries to accomplish too much and, as a result, contains ambiguous language and sometimes repeats existing insolvency rules. R3 proposes that the SIP be split into two separate SIPs to provide clearer, more practical guidance for Insolvency Practitioners (IPs). Furthermore, R3 is firm in its belief that SIPs are intended for IPs and their staff, not for external stakeholders. Information for other stakeholders should be provided through different channels, such as the R3 and RPB websites. R3 is already developing a new website with a dedicated section for employees to provide guidance and resources.

***1. Is further guidance required regarding the level of assistance an IP should provide to preferential creditors, particularly employees, when they are submitting their claims?***

***Please explain the reasons for your answer.***

**Yes**, further guidance is required for agreeing preferential creditor claims.

**Employee Claims -** Many Insolvency Practitioners (IPs) already provide help to employees, often outsourcing this work to specialists, to prevent a lengthy claims process. However, the draft SIP appears to confuse the ethical duty on IPs to help employees to submit claims both to the RPS and for dividend purposes and an office holder's duty to invite and adjudicate on claims for dividend purposes. For example, the draft SIP states that an office holder should obtain information from the insolvent's records or from the preferential creditor "before calculating their claim", but this fails to have regard for the need for an office holder to exercise proportionality in their work of adjudicating on claims, having regard for the quantum of the claim and the funds available for a dividend, and it appears to overlook the fact that the Rules require all creditors first to submit a proof of debt to the office holder before their claim may be adjudicated on. On the other hand, if an employee had first lodged a claim with the Redundancy Payments Service (RPS), it is accepted that the legislation requires a certain amount of exploration of the employer's records, but again there is no requirement on the office holder to "calculate" the claims. The employment and pension legislation requires insolvency office holders to state what "appears to be owed," which does not imply a need for full verification. If the SIP is intended to inform IPs of the RPBs' expectations as regards diligence in populating forms RP14 and RP15, it would be helpful if the SIP were to make this clear and provide guidance on how IPs should act when employers' records are incomplete or unreliable. In line with the legislation, IPs should be able to qualify their submissions to the RPS, which would help protect the IP and provide an explanation to the RPS to enable it to take a view on the claim. It is also odd that the SIP covers what is expected of office holders dealing with employees with preferential claims but does not extend the principles to dealing with employees with non-preferential unsecured claims where a dividend is anticipated. We would refer you to our answer at question 4 as to how the SIP could more usefully be designed.

**Creditor Proofs -** The draft SIP does not sit well alongside the statutory requirement for all creditors, including employees, to prove their claims. Submitting an RP1 form to the RPS is not the same as submitting a statement of claim to the IP. IPs should be able to ask employees to confirm their claim in the insolvency.

**Disclosure and Information -** Paragraph 25, which requires an IP to provide *"Any further information which a creditor with a preferential debt reasonably requires,"* is too broad and could lead to abuse. This statement should be restricted to information *"in relation to their claim in the insolvency"*.

**National Insurance Fund (NIF)** - Paragraph 23 contains an inaccurate statement that the NIF has priority over other preferential claims. This is contrary to the principle of *pari-passu*, as the Enterprise Act 2002 repealed the section of the Employment Rights Act 1996 that gave the NIF precedence.

***2. The SIP is intended to be used by IPs and their staff although it is accepted that other stakeholders may refer to it. Should any additional content be added to the SIP for the benefit of other stakeholders? And, if so, what?***

**Please explain the reasons for your answer.**

**No.** R3 believes that SIPs are intended for IPs and their staff. Providing guidance for external stakeholders would compromise the clarity of the SIP for its intended purpose. Other channels, such as the R3 and RPB websites, should be used to provide information for external stakeholders.

***3. Do you consider that including information for other stakeholders, such as paragraph 6 regarding types of charges and crystallisation, is worthwhile?***

**Please explain the reasons for your answer.**

**Yes.** R3 supports the inclusion of paragraph 6 because it is valuable for IPs, not just other stakeholders. The paragraph clarifies the nature of charges at creation and the impact of a floating charge crystallising into a fixed charge, which directly affects preferential debts.

***4. We would welcome any feedback on the draft and revisions generally.***

R3 advocates for a **"clean sheet"** approach to rewriting the SIP rather than simply revising the existing draft. The current draft is attempting to cover too many topics, making it difficult to understand and lacking coherence.

This draft replicates insolvency rules, deviating from the purpose of other SIPs which provide practical guidance with appropriate cross-referencing to the rules. Replicating insolvency legislation may impair the SIP's ability to withstand future legal or regulatory changes.

R3 has found some of the phrasing to be ambiguous and in need of clearer definition. In addition, using plain English and active language would further improve the clarity of the SIP. For example:

- The phrase "benefits actually obtained for those financially interested" in paragraph 17 needs more explicit clarification.

- The term "maintaining a proper balance" in paragraph 18 is also subject to interpretation.

- The phrase “assist preferential creditors” in paragraph 9 requires clarification as to what action is required by insolvency practitioners.

We also suggest that some of the content related to fees and cost allocation could be more appropriately placed within SIP 9.

**5.** ***Should any other changes be made to SIP 14?***

***Please explain the reasons for your answer and set out the changes you wish to be made to the SIP.***

**Yes.** As noted in our previous responses, we believe that SIP 14 would benefit from a narrower scope. We propose splitting the document into two separate SIPs:

1. **SIP 14: Categorisation of Assets and Allocation of Costs:** This SIP would focus on asset classification, covering not only fixed and floating charges but also other asset types like client money, customer assets, and trust claims. This would enable the SIP to provide clear guidance on how to deal with different asset classes, including in the context of special administration regimes.

2. **A New SIP for Employee Claims:** A separate SIP would be created to specifically address how IPs should handle employee claims. This new SIP would provide guidance on topics such as:

   - Completion of forms RP14 and RP15 as regards employee data, including when the employer’s records are incomplete.

   - The role and expectations of the RPS and RPBs.

   - The appropriate level of assistance to provide to employees.

   - How office holders may assist employees while observing the statutory requirement for employees to prove their claims for dividend purposes.

**Specific Paragraph-by-Paragraph Feedback**

- **Para 1 and throughout:** The categories of preferential creditors are "ordinary and secondary," not "primary and secondary". The SIP may be future-proofed by acknowledging, in general terms, the existence of multiple classes of preferential creditors rather than naming them. Furthermore, and as noted previously, the current draft mirrors the insolvency rules which diverges from the established purpose and approach of other SIPs.

- **Para 3 and throughout:** The SIP should acknowledge that there may be assets not subject to any charge at all. It should also note that where there are floating charges over only some assets, preferential creditors are directed to the uncharged assets first, and only then do they become a priority claim on the floating charge assets. The SIP should also acknowledge other asset types like client money, customer assets, and trust claims.

- **Para 6:** R3 supports the inclusion of this paragraph, as it's useful for IPs, not just other stakeholders. It covers the nature of charges at creation and the impact of crystallization on preferential debts. Reference to "the date of appointment of a liquidator" should be amended to apply the sentence to the correct date in all relevant insolvencies.

- **Para 10:** IPs should be cautious about agreeing with a charge-holder to treat an asset as subject to a fixed charge when there's doubt, as this could prejudice preferential creditors. R3 suggest that this paragraph be re-drafted as follows:

  *An office holder must accurately determine the categorisation of assets to distribute funds in line with statute and case law. It is not sufficient for a charging document alone to state an asset is subject to a fixed charge for it to be correct. If there is doubt about the correct categorisation, the office holder should seek legal advice in the context of the appointment. Where the fixed charge holder disagrees, and the office holder cannot determine the correct categorisation after considering the interests of all other creditors, they should document how they have resolved the issue and the rationale for their decision. While an application to the court for directions may appropriate in some instances, it is important to explore other avenues and make a professional, reasoned decision that can be documented for future reference."*

- **Para 17:** It would be helpful to reference the principles of Statement of Insolvency Practice No. 9 (SIP 9) for clarity on costs, especially regarding concepts like value for money. The wording in the second bullet point regarding "benefits actually obtained" is ambiguous and needs clarification.

- **Para 18:** This paragraph is seen as unnecessary.

- **Para 19:** The mention of remuneration is unnecessary and could be handled more simply by adding a sentence to the end of paragraph 13 to clarify that costs include remuneration.

- **Para 20 and 21:** As noted previously, there is an opportunity to future-proof the SIP by acknowledging, in general terms, the existence of multiple classes of preferential creditors rather than naming them. In addition, it would be useful for these paragraphs to accommodate cases where there are funds for priority preferential creditors but not for those ranking lower.

- **Para 22:** This paragraph mixes the "subrogated wages claim" with the entirely different matter of employee wage claims transferring to the RPS post-insolvency. The instruction for IPs to "calculate" claims doesn't align with the legislative requirement for an office holder to adjudicate on claims that must be proven by the creditors.

- **Para 23:** The statement that the National Insurance Fund (NIF) has priority over other preferential claims is incorrect. Since 2003, it has been pari passu (on equal footing) with the employee, according to how much of the claim the NIF has paid.

- **Para 24:** This paragraph is seen as unnecessary and redundant, as silence in the SIP should be enough to indicate no additional reporting requirement.

- **Para 25:** The statement that an IP must provide "any further information which a creditor with a preferential debt reasonably requires" is too open-ended and could be abused. It should be restricted to information "in relation to their claim in the insolvency"