Strengthening the regulatory regime and fee structure for Insolvency Practitioners
Response to a BIS consultation: R3, the insolvency trade body, March 2014

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1. Introduction

R3, the insolvency trade body, is the leading trade body for the UK's insolvency profession. We represent 97% of the UK's Insolvency Practitioners (IPs) and another 1,500 insolvency professionals and students. R3 represents IPs working in firms of all sizes, from the 'Big 4' to small local firms. R3 promotes best practice and provides a detailed programme of insolvency courses, conferences and technical information.

R3 broadly supports the regulatory proposals and two of the three proposals for IP fees but has serious concerns that there are elements of the consultation – namely the restriction of charging fees on a 'time-cost' basis where there is no secured creditor or creditor committee – that will have a negative impact on creditors and the insolvency profession.

The UK has a world leading insolvency regime, which is certainly not 'broken' nor in need of wholesale reform, as suggested in much of the consultation:

- The **UK's insolvency regime is the 7th best in the world** (according to World Bank data[1], which measure the speed of the insolvency process, the likelihood of business rescue, and the returns and costs to creditors).

- **The cost of insolvency in the UK is 6% of the estate,** with a recovery rate at 88.6 cents in the dollar, according to the World Bank. Japan is the only G8 or G20 economy that ranks above the UK in terms of 'resolving insolvency' – **the UK outperforms the United States, Germany and France**.

- Furthermore, in 2012 the **UK insolvency industry saved more than 750,000 jobs and 6,100 businesses and the total financial contribution of the insolvency industry to the UK economy in 2010 was £739m**[2].

- There are approximately **1,700 IPs in the UK, most are accountants or solicitors – all are qualified and highly regulated**. They are officers of the court and have a statutory objective to maximise returns to all creditors.

Given the nature of the consultation, which, if implemented as proposed (specifically with regard to the restriction of charging fees on a time-cost basis), would cause significant harm to creditors and UK insolvency regime, we are very disappointed that the consultation period is so short. We believe that the insolvency profession should have been given a 12 week response period – particularly when the regulation Impact Assessment was finalised in May 2013 and the fees Impact Assessment in December 2013.

R3 is concerned that the fees proposal, and a number of the proposals regarding changes to the regulation of IPs, are ill-considered. The consultation lacks evidence (or is based on out-of-date or flawed information), the proposals are wholly disproportionate to the 'problem' and will not achieve the Government's objectives.

We are also concerned at the lack of understanding from the Insolvency Service about the implications of the proposals on the profession it regulates. Given the significant redundancies and

[1] All references for the statistics used in the Introduction and Executive Summary are contained in the main body of the report
[2] http://www.r3.org.uk/media/documents/policy/policy_papers/insolvency_industry/R3_Value_of_Industry_FINAL_VERSION_01May2013.pdf

cost-cutting over the last few years in the Insolvency Service (including an approximate 40% cut in staff numbers), we are concerned that there is a 'knowledge-gap' in the department and so recommend that all relevant officials should work in an IP firm for a minimum of two weeks per year as 'on the job/CPD training'; R3 offers key staff no-cost places on its courses. We would be happy to propose other solutions in order to address the 'knowledge gap'.

Given our concerns outlined above, R3 believes that a review of the performance of the Insolvency Service as the 'regulator of regulators', as well as a wider review of its performance in its other areas, should take place in the context of this consultation. Such a review should be properly undertaken and resourced, with its findings made fully transparent.

Given the importance of insolvency to the economy, it is unquestionably right that Parliament and Government (present and future) give the Insolvency Service the resource and support required to function effectively.

2. Executive Summary

a. Regulation of Insolvency Practitioners

The consultation sets out proposals to:

- strengthen the regulatory framework through the introduction of clear regulatory objectives;
- give the oversight regulator (the Insolvency Service) more appropriate powers to deal with poor performance, misconduct and abuse;
- reserve a 'backstop' power to introduce a single regulator for the insolvency profession.

- R3 broadly supports the aims of the first two objectives listed above; however, based on feedback from our members and our own concerns, we believe the Insolvency Service would be better served by focusing on introducing a 'Single Regulatory Process' rather than working towards introducing a 'Single Regulator'.

- Although R3 is supportive of the objectives set out by the Insolvency Service with regard to the role of an 'oversight regulator' and the aims of the regulatory system, we have serious concerns about the ability of the Insolvency Service, as currently structured and resourced, to fulfil this role.

- While R3 supports proposals that would improve the performance, transparency and efficiency of the regulatory process, we are concerned that there is a lack of data against which performance can be judged to assess failure or success.

- R3 is concerned that there is a lack of clarity with regard to the criteria against which the performance of the regulatory regime and IPs will be judged. References to vague terms such as 'public interest' and 'value for money' in the consultation, without explicit definition, are unhelpful and potentially misleading.

- R3 believes the Insolvency Service should pay careful attention to existing legislation and guidance which may help achieve the Insolvency Service's objectives. The Insolvency Service should ensure that its latest proposals do not conflict with existing legislation and guidance.

- R3 is supportive of an 'oversight regulator' being given greater powers over the Recognised Professional Bodies (RPBs). However, it is important that the circumstances in which, and for what purpose, these new powers may be used are set out properly.

- The 'oversight regulator' should take care to avoid 'micro-managing' RPBs and their disciplinary processes. Effectively running a 'shadow' regulatory system on top of the existing, established processes would be confusing and damaging for the insolvency profession and those it serves.

b. Insolvency Practitioner fee regime

R3 broadly supports the proposals to enhance regulators' monitoring of fee complaints and increasing creditor engagement, **but firmly rejects the proposal to 'simplify' the fees structure as:**

- we have evidence to suggest that this proposal would not achieve the government's goal (to 'improve returns to unsecured creditors; and improve the reputation of the insolvency profession');
- instead, it would cause a significant amount of 'harm' to creditors, small insolvency firms and the UK's globally-renowned insolvency regime which is currently ranked 7th best in the world;
- it will not reduce or eliminate the reported 'noise' surrounding IPs' fees;
- and the proposed 'solution' is a disproportionate response.

We therefore urge Government to drop this proposal and review alternative recommendations (as proposed in previous government reports and by the insolvency profession) that address its goal of reforming IP fees and improving unsecured creditor engagement.

1. **R3 questions the government's assessment of £15m of 'over-charging' causing 'harm'; these are terms used throughout the consultation – both terms are inaccurate and misleading:**

- The government suggests that an IP has a duty to treat all creditors equally and that charging different rates for secured and unsecured creditors would constitute 'harm'. However the government's statutory 'order of priority' dictates that creditors cannot be treated equally.
- We are advised that the estimated £15m figure has been calculated on IPs' 'charge out' 'headline rates' rather than 'actual' rates. There is a huge difference between the headline rate and the fees that are actually charged, and therefore we question that estimate.
- The £15m figure is not just IPs' fees but is the total cost of insolvency (which includes everything from paying for lawyers to paying for heating and lighting if an insolvent business is 'traded'). The report estimates the total cost of insolvency to be £1bn, so even with a 'problem' claimed to amount to £15m: this is just 1.5% of the total cost of insolvency.
- The concept of 'over-charging' is predicated on the notion that there is a 'correct' level. It could be equally claimed that secured creditors are 'under-charged' – a more accurate assessment given that secured creditors are often able to negotiate discounts due to repeat work.
- Far from over-charging, where realisations are relatively low, IPs often do not receive enough money to cover the costs of the work they carry out. This is particularly evident in smaller practices (who would be hit hardest by these reforms) where 57% of R3's Smaller Practices Group ('SPG' – five or fewer appointment takers) received less in fee income than would have been warranted for work carried out in more than half of the completed insolvency cases that they worked on in the last 12 months.

2. **R3 believes that the proposal is disproportionate to the problem and would not reduce 'noise' around fees: the real challenge is unsecured creditor engagement:**

- R3 is concerned that the consultation is based on perception rather than fact. IPs' fees comprised just 2% of all complaints to government about IPs in 2013 (down from 7% in 2010). To put this in perspective, in 2013, there were approximately 120,000 new insolvency cases and

there were just 13 complaints to the government about insolvency fees (0.01%). Even accounting for the fact that many of these 120,000 cases would have been handled by the Official Receivers – about whose fees there have also been complaints – the proportion of cases that are attracting formal complaints about fees is negligible.

- The proposal would not address the 'problem' of a lack of engagement by unsecured creditors.
- R3 believes that the position of unsecured creditors in the priority order, as set out by government, is the main reason behind concerns about fees. No amount of regulatory change to IP remuneration would remedy that. It would require a change to the law and that could have an enormously detrimental effect on lending in the UK were banks and other secured lenders to find themselves fall down the priority order.
- IPs and business organisations have told R3 that fees are not generally the top concern for creditors. R3 asked members what they believe unsecured creditors' top three concerns to be: 93% of R3 members believe that the amount of money returned to creditors is one of the top three concerns; 86% think that taking action against directors responsible for misconduct is a top three concern; and 55% that transparency in terms of IPs work to justify fee levels (rather than the fee level itself) as a top-three concern.

3. R3's concerns with the proposed new method of remuneration:

- R3 supports a number of the fee proposals set out in previous government reports. However, this latest proposal to simplify the fee structure through prohibiting the use of charging by the hour ('time-costs') was not recommended in previous reviews. R3 is unaware of the proposed restricted method of remuneration being used anywhere else in the world. Therefore it is not 'tried and tested'.
- Either businesses or the IP will lose out in future insolvencies under the proposals: although IPs can provide a rough up-front 'guesstimate' of the cost of work up-front, this guesstimate would be an inappropriate basis for a final level of remuneration – IPs do not know until later in the case exactly what is involved and how long it will take to resolve. Fees may end up either significantly higher or lower than the 'guesstimate'. Relying on a fixed-fee or percentage of realisations as a method of remuneration without an option to review with creditors, would thus see either creditors or IPs short-changed. In either case, at least 40% of R3 members believe returns to creditors would decrease and at least 60% believe company rescues would decrease.
- IPs may err on the side of caution and provide a higher quotation than might be warranted to ensure that costs are recovered. Should the case be straight-forward without any 'surprises' it may mean that an IP's fee is higher than it would be if charged on a time-cost basis – resulting in less money returned to creditors.
- Many cases would not be taken on by IPs at all because the fixed/percentage of realisations fee would be too small to be economical. As a result, the number of cases that the Insolvency Service will be required to take on will rise, increasing cost to the taxpayer.
- The proposals will impact the small asset cases (where there is often no secured creditor or committee) and could lead to smaller insolvency practices leaving the market – and therefore leaving creditors in those cases without an IP to turn to when trying to recover debts.
- Because IPs cannot resign from a case, once they have reached their fixed-fee level, they will almost certainly not optimise additional recoveries as there is no incentive to do so. This would lead to lower returns for creditors.

- If IPs are unpaid, they would be disincentivised to take action against delinquent or fraudulent directors who can then go on (due to lack of evidence) to 'rip off' creditors and members of the public.

  A fixed-fee could lead to outsourcing of specific insolvency procedures to unregulated individuals. This would shift the cost rather than reduce it and bring less transparency to the fee setting process.

4. R3's recommendations to achieve Government's goals

R3 would like to see the government review alternative proposals which are proportionate to the 'problem' that it seeks to address, and achieve Government's goal of improving returns to unsecured creditors:

- The Government should drop its proposal (in the Red Tape Challenge) to remove the requirement for IPs to hold a creditors' meeting. This contradicts Government's objective of improving unsecured creditor engagement.
- Better and more information for unsecured creditors: the Insolvency Service could better direct useful information to creditors. The profession is also proactively working on solutions to improve engagement.
- The Insolvency Service should be more transparent about the fees and levies it exacts on insolvency cases. We know that many creditors and debtors are often unaware of these charges and wrongfully assume that fees and levies charged by the Insolvency Service are IPs' fees.
- Increased unsecured creditor engagement by HMRC (to which 24% of all unsecured debt is owed) would help set fee levels for all unsecured creditors.
- Creditors to be given an estimate of IPs' costs at the outset: this was recommended in a previous government report but has not been taken forward. This time-cost resolution would act as an initial 'cap' on fees. An IP would work to this figure, keeping detailed assessments on time. The IP could seek additional fees if the case demanded further work at a later date.
- Greater promotion of the cost-saving and hence fee-reducing options of the 2010 Insolvency Rules: some statutory work (e.g. sending progress reports to creditors) could be quoted on a fixed-fee basis. IPs should also be required to report work with more transparency e.g. break down time-use clearly into constituent parts such as 'communicating with x number of creditors to establish a meeting'.

R3 has already demonstrated its commitment to working with the government to ensure IPs and creditors get a fair deal on IP fees:

- R3's 2013 proposal to reduce the expense involved in paying very small dividends was adopted by the Government's Red Tape Challenge. This will reduce IPs' fees.

3. Regulation of Insolvency Practitioners: response to the consultation questions

1. Are the proposed regulatory objectives and the requirements for RPBs to reflect them appropriate for the insolvency regulatory regime?

1. R3 is fully supportive of the government's desire for an effective and robust regulatory regime and we naturally support proposals that improve the standard of regulation, improve the reputation of the insolvency profession and were beneficial to creditors.

2. The proposals contained within this consultation prompt us to suggest that now is the time to look at, in a fundamental way, the role of the Insolvency Service, as presently structured, funded, resourced and whether it is the most appropriate body to direct and oversee as important a part of the UK's financial support service sector as the insolvency profession (see paragraphs 3, 11, 21, 38, 39, 40, and section 4).

3. R3 believes that further detail about the proposals outlined by the Insolvency Service must be provided. We do not believe that sufficient, reliable and informative data are currently available to prove or disprove the Insolvency Service's concerns about the regulation of the profession in all respects. There are, for example, no publicly available data on stakeholder 'approval' of the system.

4. Notwithstanding the lack of data[3], R3 has previously expressed concern about aspects of the existing regulatory process. Indeed, R3's members' views on the existing regulatory framework are mixed. While in some cases R3 members believe the framework works well, particularly in terms of meeting creditors' interests, members are less convinced by the consistency and speed of the process. In terms of the current regulatory framework, our members believe that:

% of R3 members that believe the existing regulatory system works well/poorly with regard to…	Performs Well	Performs Poorly
Acting in creditors' interests	81%	12%
Transparency of how to make an initial complaint	74%	11%
Transparency of the outcome of a complaint/disciplinary action	73%	14%
Transparency in keeping track of a complaint/disciplinary action	64%	17%
Effectiveness of sanctions in deterring future 'bad' behaviour by IPs	63%	26%
Fairness to IPs subject to disciplinary hearings	63%	17%
Effectiveness of sanctions in preventing 'bad' IPs from operating	55%	36%
Speed of disciplinary process	48%	32%
Consistency of the regulatory processes between regulators	48%	27%
Consistency of regulators' sanctions	43%	30%

[3] R3 has based concerns on comments from R3 membership surveys, as outlined in R3's response to the Government's 2011 'Consultation on reforms to the regulation of insolvency practitioners' http://www.bis.gov.uk/insolvency/Consultations/IPConsultation?cat=closedwithresponse

5. A number of the Insolvency Service's proposals would appear to be already contained within the existing Memorandum of Understanding[4] (MOU) between the Insolvency Service and the RPBs.

6. While the broad aims of the proposals are acceptable and could enhance the credibility of the profession, R3 is concerned that key concepts in the proposals – particularly references to 'value for money' and the 'public interest' – upon which the Insolvency Service's justification for action relies, require clarification as to meaning and application.

7. 'Public interest' is a vague and subjective term that is open to multiple interpretations, the objection being that (a) no one can know in advance what it may subsequently be held to mean, and (b) its meaning may change over time, leading to risk of serious uncertainty and inconsistency. Therefore, we are unsure how 'public interest' could be clearly defined but there must be a consistent definition as any conflict between the interpretations would cause problems for the Recognised Professional Bodies (RPBs), wider stakeholders and IPs expected to meet competing objectives. Reference is made to 'public interest' in the Insolvency Rules and the Act, although a clear definition is not provided. Indeed, the only references we can find in the Act are to winding-up petitions on public interest grounds (which have been around for a long time and are well understood), the role of the official petitioner in criminal bankruptcy cases, and debt relief and bankruptcy restrictions orders. Presumably the term has to be left flexible in these cases to allow necessary discretion on the part of the relevant officials. However, this is not really comparable to what is being proposed in this consultation.

8. In Paragraph 50, point 2, section (ii), the consultation says the regulatory system should "*reflect the regulatory principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principle considered to represent best regulatory practice*." This latter reference to 'any other principle' is concerning as it could have multiple interpretations. Unless the Insolvency Service can specify which other principles to which it would refer, the reference to 'any other principle' should be dropped.

9. In Paragraph 50, point 3, section (ii), the consultation document says the regulatory system should *"encourage an independent and competitive IP profession whose members consider the interests of all creditors in any particular case."* This objective is already a statutory duty[5] for IPs and further reference to it is unnecessary.

2. <u>Do you have any comments on the proposed procedure for revoking the recognition of an RPB?</u>

10. R3 supports the principle behind the Insolvency Service revoking an RPB's recognition, but believes further detail is required about how it would go about doing so.

11. In particular, the Insolvency Service's criteria upon which revocation decisions would be based need clarifying, as does the nature of evidence sought by the Insolvency Service and the time period over which an RPB's performance would be judged. It would be useful to have information from the Insolvency Service on the degree of compliance/non-compliance with the existing MOU by the RPBs over the last ten years, and the consequent actions that the Insolvency Service has taken.

[4] http://www.bis.gov.uk/insolvency/insolvency-profession/Professional%20conduct/memos-of-understanding/mou-consistency-in-authorisation-of-IPs

[5] Although only an express statutory duty in Administrations

12. RPBs will need to be given 'fair'[6] warning by the Insolvency Service ahead of the removal of recognition, together with the opportunity for RPBs to rectify alleged wrongdoing.

13. Were such a power to be given, it would be essential for the Insolvency Service to consider the nature by which the wider community is informed of shortcomings of the RPBs in advance of removing authorisation. For example, IPs could themselves apply upward pressure on their RPB to improve or move to a more compliant RPB. It is therefore important for the Insolvency Service to outline the nature of the publicity associated with the process of (and period up to) removing recognition.

14. Removal of recognition should be an option of last resort only. It should only be used once the Insolvency Service has worked closely with the RPB in question to identify areas of its performance where improvement is needed and the RPB has been given sufficient opportunity to improve.

3. Do you have any comments on the proposed scope and procedures for the Secretary of State to issue a direction to an RPB?

15. While R3 supports the power of the Insolvency Service to issue a direction to an RPB, such directions need to be limited to disciplinary 'processes' rather than specific outcomes or instructions to commence proceedings, and should be clearly defined in scope. R3 does not support the power for the Insolvency Service to provide a direction to RPBs to discipline one of their members: just 38% of R3 members believe the Insolvency Service should have the power to do this; 59% say the Insolvency Service should not have this power.

16. R3 believes that more detail needs to be provided to RPBs by the Insolvency Service that would specify the circumstances in which it would issue a direction.

17. The Insolvency Service also needs to detail the type of direction it would issue to an RPB. Using the Common Sanctions Guidelines as an example, the Insolvency Service have not given sufficient thought to the nature and sanctions that should be applied, particularly in regards to whether the sanctions should act as a deterrent, punishment or both.

18. The Insolvency Service should not adopt a 'heavy-handed' approach to issuing a direction to RPBs. The Insolvency Service has delegated responsibility for regulating the profession to the RPBs and should, in the vast majority of cases, leave RPBs to get on with the job. A parallel regulatory structure, based on directions given by the Insolvency Service, would be confusing for IPs, RPBs, and other stakeholders alike.

19. Were the Secretary of State to direct RPBs to issue further sanctions against an IP, beyond those already applied (or to take action in the first place), it would not address the underlying problem in such a situation: the failure of an RPB to regulate its members 'correctly'[7]. Issuing directions to RPBs on the regulatory processes and standards they use, on the other hand, would address this problem where it arises.

20. It is important that the decisions reached by the RPB are respected by the Secretary of State. Having been through an RPB's disciplinary process, an IP should not then be subject to

[6] 'Fair' to be defined in terms of timeliness and manner of warning
[7] There must be a clear definition of what constitutes 'correctly'

further discipline by the Secretary of State. As detailed below in Question 7, there are several proposals within the consultation that would see IPs potentially punished twice for the same transgression. It is both inequitable and a position that few other professionals could find themselves in.

21. R3 also has concerns about how the Secretary of State's decisions would be reached regarding further sanction. Whereas RPBs' disciplinary processes are relatively open – and those subject to disciplinary proceedings are allowed to attend and respond to allegations – it is not clear if the Secretary of State's decision-making regarding IP sanctions would be similarly transparent. Arbitrary additional sanctions must be avoided. The Insolvency Service also has no experience in such matters; or if it has, it has not provided transparency in its own limited use of powers it presently has. The only sanction available to the Insolvency Service is the removal of a licence[8]. We understand that the Insolvency Service puts in place an 'Action Plan' which is then monitored, when the IPs it monitors fall short. However, the outcomes from this process have not been published. This is unhelpful given that the IPs monitored by the Insolvency Service generally tend to perform less well as compared with IPs from other RPBs (compliance with SIP16 reporting as an example)[9].

22. There is already a degree of inconsistency in the fines and sanctions imposed by RPBs for similar transgressions (see member survey results in Appendix A). Ad hoc directions regarding sanctions given by the Secretary of State would add to this inconsistency.

4. Do you have any comments on the proposed scope and procedures for the Secretary of State to impose a financial penalty on an RPB?

23. While R3 supports the idea that the Insolvency Service should be clearer with RPBs when it is concerned with their performance, R3 is worried that financial penalties imposed on RPBs would most likely result in higher subscriptions for those 'compliant' IPs and will not be borne by the RPBs themselves.

24. The Insolvency Service should limit its reprimands or guidance to those options that would not have an untoward effect on compliant IPs or RPBs' other members; ordinary members should not be made to pay for the failures of their regulator.

25. A public reprimand (as proposed in Question 5) for an RPB by the Secretary of State would be a satisfactory alternative to a financial penalty.

26. A public reprimand would not see costs passed onto an RPBs' IPs and other members. The reputational impact of a public reprimand may though lead IPs and other members to reconsider their membership of the RPB, which would itself have a financial impact on that RPB.

5. Do you have any comments on the proposed scope and procedures for the Secretary of State to publicly reprimand an RPB?

27. As detailed in our answer to Question 4, R3 supports the proposal for the Secretary of State to publicly reprimand an RPB.

[8] Section 303, IA86

[9] http://www.bis.gov.uk/insolvency/insolvency-profession/Regulation/statements-of-insolvency-practice/SIP-16-Reports-pre-packs 'Report on the Operation of Statement of Insolvency Practice 16, 1 January to 31 December 2011', page 6

6. Do you agree with the proposed arrangements for RPBs making representations?

28. R3 has no comments on the arrangements.

7. Do you have any comments on the proposed procedure for the Secretary of State to be able to apply to Court to impose a sanction directly on an IP in exceptional circumstances?

29. Although 60% of R3 members support the idea behind this proposal (37% are against), R3 has several concerns about how this proposal would be implemented in practice.

30. As with other parts of the consultation, key terms require further definition for the proposal to be workable.

31. The 'public interest' in which the power would be used requires clarification, as do the exact 'exceptional circumstances' when this power would be used. Clarification would be required by both IPs and RPBs expected to operate under the proposed system.

32. R3 is very concerned that allowing the Secretary of State to sanction an IP directly would undermine the existing regulatory structure.

33. IPs would face the possibility that they could face multiple disciplinary proceedings regarding the same allegation (see concerns detailed in paragraph 20).

34. RPBs would face having their decisions second-guessed by the Secretary of State. This may see the length of time taken by RPBs to complete a case increase as RPBs seek to make sure their procedures and decisions are watertight. This would not improve the speed of the regulatory process.

35. The consultation document makes reference to the power being used where an RPB's 'procedures have been slow'. The 'correct' length of time that a disciplinary case should take is a matter that is open to debate. While R3 sympathises with the Insolvency Service's position, the Insolvency Service should provide more information about the speed of the regulatory process it believes are acceptable, suitably explaining its rationale.

36. One of the reasons that RPBs have taken a cautious approach to prosecuting disciplinary cases (in terms of the length of time it takes to process a case) is because of concerns over the potential for judicial review of proceedings; errors in past cases have led to judicial reviews. Pressure – in the form of a threat to use direct sanctions – from the Secretary of State to hurry cases could risk further judicial reviews of RPBs' procedures.

37. The power for the Secretary of State to sanction an IP directly calls into question the point of the regulation of the profession being delegated to RPBs in the first place. As with Question 4, the aim of this proposal would be better met by other parts of the consultation (specifically, improving the quality of the RPBs' own procedures in the first place).

38. The consultation makes reference to the fact that Secretary of State action could be taken against an IP if an RPB "felt they were unable to bring disciplinary proceedings against an IP that they authorise." R3 can see only two situations where this might be the case: the RPB may not have the resources (in terms of budget or staff) to conduct the disciplinary case; or the RPB's rules and regulations may not cover the alleged 'offence'. In the first case, the question is not whether the Secretary of State should be allowed to step in, but whether or

not an under-resourced RPB should be allowed to act as an RPB at all. In the second case, it would be unfair to discipline an IP if they had not breached the rules of their RPB (and it is not clear by what other standards they should be judged); the main issue in this case would be to improve the rules and regulations of the RPB in question. It may be necessary for RPBs to undergo a 'health check' to establish whether they currently meet minimum criteria and financial standing expected by the Insolvency Service.

39. The proposal suggests the Insolvency Service takes on the responsibility for the investigations that would lead to direct sanctions. R3 would like clarification of the extra resources, in terms of budget and staff with relevant experience, would be made available to the Insolvency Service to enable it to fulfil this additional role.

8. ***Do you have any comments about the proposed procedure for the Secretary of State to require information and the people from whom information may be required?***

40. R3 understands that the Insolvency Service already has the power to request information from RPBs and IPs. If this is the case, we do not feel the existing regime needs further additional legislation on this matter. It is far more appropriate instead for the Insolvency Service to implement and enforce the existing regulatory framework properly.

41. Despite this, R3 is generally supportive of the thinking behind this proposal. This support is contingent on a number of our concerns outlined below being sufficiently addressed and more information being provided from the Insolvency Service.

42. Just over half (55%) of R3 members agree with the proposal that the Insolvency Service should be able to require RPBs, IPs, IPs' employers, or IPs' employees to provide information on request relating to disciplinary procedures, monitoring or IPs' work.

43. As with many other parts of the consultation, key terms need to be properly defined.

44. The 'reasonable time' in which the information required must be given needs to be properly defined as this is a subjective term. What may be considered reasonable time for a small practice, with fewer resources, may not be the same definition for a larger practice which has a greater number of staff. In order to mitigate against any negative, disproportionate impact on smaller practices, the definition of 'reasonable time' should take into account small practices' constraints.

45. Similarly, the requirement that information will need to be 'verified in a specified manner' needs much greater clarity on what that would look like before we can ascertain the time/cost impact this will have an all parties who are requested to give information.

46. To avoid undermining the role of the RPBs, were the above proposal to be adopted, it would be appropriate to empower RPBs to require more information also. One example is on the issue of monitoring office accounts; currently, we understand that RPBs do not generally monitor office accounts where questionable payments could (most likely) be hidden. Rather than giving the Insolvency Service the power to request information on these accounts, which could increase costs and decrease transparency for all parties, it would be more beneficial and cost effective to empower RPBs to request this information and ensure they have the resources to do so.

47. More information is required from the Insolvency Service on what situations would require more information and how it would become aware of issues that were in need of further information. For example, RPBs currently provide a report to the Insolvency Service on cases which are under review; it is not clear whether evidence would come from these reports, or whether the Insolvency Service would require more systematic, detailed information from RPBs.

48. Consequently, R3 is concerned that any additional costs as a result of this proposal will be passed on to IPs, and will disproportionally impact smaller insolvency practices.

9. ***Do you agree with the proposal to provide a reserve power for the Secretary of State to designate a single insolvency regulator?***

49. R3 agrees that further homogenisation of regulation in the insolvency profession is desirable, but doubts whether switching to a single regulatory body would be the best way to achieve this goal.

50. Just 39% of R3 members agree that the Insolvency Service should have the power to designate a single insolvency regulator; 56% disagree.

51. R3 agrees with the concerns outlined by paragraph 85 of the Insolvency Service's consultation, specifically: "moving to [a single regulator] would involve significant change, time and cost." R3 also believes that in the event that the Insolvency Service decided to create a single regulatory body, it would take some time before this body would reach an acceptable level of performance. This would result in a 'regulation gap' from the time the existing RPBs ceased to regulate the profession until the new regulator was able to get up to speed. Recent history, using the FSA (as was) as an example, demonstrates that bringing regulators together doesn't necessarily 'solve' as many problems as it creates.

52. R3 believes that the Insolvency Service's focus should be on promoting a 'Single Regulatory Process'. This, in addition to other proposals outlined within the consultation, would remove the need for a single regulatory body. 50% of R3 members believe a single regulatory process would work best for the profession; only 21% back a single regulator, 14% back the current multi-regulator framework; and 14% think that fewer regulators would work best for the profession.

53. A single regulatory process would reduce significantly the inconsistencies that currently exist in the insolvency profession's regulation. The creation of a single regulatory process would also be a chance to take a fresh look at the profession's regulatory processes and standards.

54. Pursuing a single regulatory process rather than a single regulatory body would avoid any potential 'regulation gap'. Existing RPBs would be able to introduce a new regulatory process much more quickly than it would an entirely new organisation to do so.

55. R3 would be happy to work with the Insolvency Service and RPBs to explore how a single regulatory process could function (and whether it would involve the pooling of resources etc.)

56. The basic principles behind a single regulatory process are already enshrined in the existing Memorandum of Understanding between the Insolvency Service and the RPBs:

a. From the foreword: "To underpin the insolvency regime, the Secretary of State has agreed a set of principles with those Bodies for the purposes of achieving consistency in the authorisation and regulation of insolvency practitioners.

b. Section introductions: "The purpose of this section… is to ensure that the Bodies work to common standards".

57. In conclusion, we are not in favour of a reserve power to enable the Insolvency Service to designate a single regulator.

4. Insolvency Practitioner fee regime

a. Questioning the proposal to introduce a new basis for remuneration

58. R3 is very concerned about the proposal to enforce a new basis for remuneration that would restrict choice for an IP or creditor other than to calculate fees on an upfront fixed-fee basis or as a percentage of realisations where there is no secured creditor or creditors' committee (which will henceforth be referred to in this response as 'the proposal'). 76% of R3 members believe that the most appropriate policy option for IPs' fees, which would secure the best return to unsecured creditors, would be to keep the current fee-setting mechanisms – only 6% believe the government's proposals of a combination of fixed-fee and percentage of realisations are the most appropriate way to achieve that goal.

a. There is no evidence base for the fixed-fee/percentage of realisations proposal

59. The Insolvency Service commissioned an independent review to examine IPs' fees, which reported in July 2013: the 'Kempson' review. Kempson outlines thirteen recommendations/proposals (many of which R3 supports) which might improve creditor engagement and the fees regime.

60. However, the recommendation to restrict the use of time-costs as a basis for setting fees, where there is no secured creditor or creditor committee, was not proposed by that review; R3 questions why such a significant proposal has subsequently been proposed without any evidence-based research. The Insolvency Service has disclosed the rationale behind this decision is solely 'because two methods of remuneration are simpler than three'; there has been no further reference to undertaking research and analysis to ascertain the costs and benefits of the proposal before it was put out to consultation.

61. R3 has commissioned Professor Peter Walton and Chris Umfreville, both of the University of Wolverhampton, to examine the basis for IP remuneration in the World Bank's 20 most effective insolvency regimes (and additionally to consider the regimes in Spain, Italy, France and South Africa). Given the 6 week consultation period, it has not been possible to undertake a complete analysis of all these jurisdictions, but the analysis outlined in Appendix B demonstrates that from the 12 insolvency regimes examined, not one uses the method of fixing the basis of IP remuneration as proposed by the Insolvency Service. Indeed, R3 is not aware of anywhere else in the world where fee restrictions as outlined in the consultation are in operation. In effect, the Insolvency Service proposes to introduce an untested system of IP remuneration in the UK.

b. The proposal to introduce a new method of remuneration is disproportionate to the 'problem' and based on perception rather than evidence

62. The concept of IP 'over-charging' was identified in the OFT report and confirmed by Kempson as approximately £15m per year[10]. This figure was arrived at by extrapolation and should be considered in the context of the £1bn per year charged in administering insolvent estates: it represents **1.5% of those costs (which includes fees charged by IPs) – and just 0.4% of the £4bn returned to creditors each year**. R3 firmly believes that changes that improve the insolvency process should be made (see (4b) and (4f) in this response for further detail in this regard) but such changes should be proportionate and not cause more harm than they aim to remedy.

[10] As outlined in 4d) from Page 19, R3 strongly challenges this figure.

63. Given that individuals and companies lose money at the same time as an IP is paid for dealing with the insolvent estate, it is inevitable that there will be complaints about IPs' fees. R3 accepts there will be complaints about IPs' fees – as there are complaints about the fees charged by other professions – and has been informed on a number of occasions by the Insolvency Service that the government has evidence from 'the ministerial post-bag' that insolvency fees are seen as too high by stakeholders.

64. However, according to a recent ministerial response to a parliamentary question, it has been shown that the number of complaints about IPs fees' is low and falling, and therefore we are concerned that complaints about IPs' fees are more of a perception than reality. In response to a parliamentary question, the Minister stated that complaints about **IPs' fees comprised just 2%** of all complaints about IPs in in 2013 (down from 7% in 2010)[11]. To put this in perspective, in 2013, there were approximately 120,000 new insolvency cases, and there were just 13 complaints to the government about insolvency fees (0.01%). Even accounting for the fact that many of these 120,000 cases would have been handled by the Official Receivers – about whose fees there have also been complaints[12] – the proportion of cases that are attracting formal complaints about fees is negligible.

65. R3's members' survey provides further evidence about the *low* number of complaints that fees attract. The March 2014[13] members' survey found that the majority of R3 members said they received no complaints about their fee levels in a typical 12 month period. Interestingly, those working for the firms that would feel the most severe negative impact from the proposals – the smaller firms – receive the least complaints about their fees. On the other hand, those working for the firms who would be least affected by the proposals – the larger firms - receive the most complaints about their fees. 90% of members working for a firm which employs four or fewer employees say they receive no complaints regarding fees in a typical 12 month period, whereas only firms employing more than 49 people say they receive more than three complaints in a typical 12 month period.

66. The nature of the complaints is worthy of further investigation. Kempson acknowledges[14] that a large proportion of complaints that reach MPs and Ministers relate to issues from 'debtors' – those individuals who have lost their family home where the original debt was for a small sum; and directors of companies who have given a guarantee to a secured creditor – both issues are about the inability to 'control' IPs fees from a debtor's, rather than a creditor's perspective, but still may be considered as a complaint about IPs fees. Such conflation is unhelpful and misleading.

67. The UK has a world-leading insolvency regime. The World Bank's *Doing Business* project provides objective measures of business regulations and their enforcement across 189 economies. As part of this study, *Doing Business* assesses the time, cost and outcome of insolvency proceedings involving domestic entities. The ranking on the ease of resolving insolvency is based, in part, on the recovery rate for creditors. The cost of the proceedings is recorded as a percentage of the estate's value.

[11] In response to a Parliamentary Question by Toby Perkins MP: To ask the Secretary of State for Business, Innovation and Skills how many complaints about the Insolvency Service were received in each year from 2010 to 2014. [190803] response 11 March 2014

[12] In response to a Parliamentary Question asked by Toby Perkins MP: To ask the Secretary of State for Business, Innovation and Skills how many complaints about official receiver fees were received in each year between 2010 and 2014. [190893] response 13 March 2014

[13] ComRes interviewed 444 R3 members online between 7th and 12th March 2014

[14] Review of Insolvency Practitioner Fees, Report to the Insolvency Service, Elaine Kempson July 2013, Page 41 http://bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees

68. The following table replicates the World Bank's top 20 world economies in terms of insolvency resolution (and additionally shows the respective rankings of Spain, Italy, France and South Africa).

Economy Name	Rank	Time (years)	Cost (% of estate)	Outcome (0 as piecemeal sale and 1 as going concern)	Recovery rate (cents on the dollar)
Japan	1	0.6	4	1	92.8
Norway	2	0.9	1	1	91.3
Finland	3	0.9	4	1	90.2
Singapore	4	0.8	3	1	89.4
Netherlands	5	1.1	4	1	89.2
Belgium	6	0.9	4	1	89
United Kingdom	7	1	6	1	88.6
Ireland	8	0.4	9	1	87.6
Canada	9	0.8	7	1	87.3
Denmark	10	1	4	1	87
Iceland	11	1	4	1	84.5
New Zealand	12	1.3	4	1	83.3
Germany	13	1.2	8	1	82.9
Austria	14	1.1	10	1	82.4
Korea, Rep.	15	1.5	4	1	82.3
Taiwan, China	16	1.9	4	1	81.8
United States	17	1.5	7	1	81.5
Australia	18	1	8	1	81.3
Hong Kong SAR, China	19	1.1	9	1	81.2
Sweden	20	2	9	1	75.5
Spain	22	1.5	11	1	72.3
Italy	33	1.8	22	1	62.7
France	46	1.9	9	0	48.3
South Africa	82	2	18	0	35.5

69. As is clearly outlined in the table, **the UK's insolvency regime ranks 7th best in the world**. The cost of insolvency is 6% of the estate; with the recovery rate at 88.6 cents in the dollar. Japan is the only G8 or G20 economy that ranks above the UK in terms of 'resolving insolvency'. The UK's insolvency regime ranks far above those of the USA, Germany and France. This does not suggest a 'broken' system, which requires wholesale reform. Far from it, the UK's regime is world class. R3 believes that should the proposal to introduce a new system of IP remuneration be implemented, our current world ranking would be undermined, as the amount and speed of returns to creditors would be compromised significantly (to be outlined in further detail in the remainder of this response).

c. The proposal would not address the problem of a lack of engagement by unsecured creditors

70. R3 believes that the position of unsecured creditors in the priority order (as set down by statute) is the main reason behind complaints about fees the insolvency process. Unsecured

creditors' claims are placed low down the priority order when an insolvent business's assets are distributed – government itself has set this priority order, not the insolvency profession. In the majority of cases, there is simply not enough money to provide unsecured creditors with a return at all (because in an insolvency, there is inevitably rarely enough money to go around) and certainly not enough to provide them with the level of returns that creditors higher up in the priority order would receive. No amount of regulatory change or a change of the basis of IPs' remuneration is capable of remedying this: it would require a change to the law, which might have an enormously detrimental effect on lending in the UK were banks and other secured lenders to find themselves falling down the priority order.

71. As the Kempson report – and the government's own consultation – states, fee-setting works well when creditors are engaged. As such, the key variable with insolvency fees appears to be the engagement of creditors, not the basic fee-setting mechanisms.

72. It is also the case that when creditors are engaged with or interested in the process, it is not the IP's fees that they are concerned with. This is supported by results from the R3 members' survey. When asked what they think an unsecured creditor's top three concerns are:

    - 93% of R3 members believe one of these is the amount of money returned to creditors;
    - 86% state that one of these concerns is that action is taken against directors responsible for misconduct or fraudulent transactions;
    - 55% of members state that transparency in terms of IPs work to justify fee levels) as a top-three concern.

73. Other concerns, such as the fee structure used, are generally not areas of concern. Business organisations have also told R3 that IPs' fees are not an important issue for their members who are dealing with insolvencies. This suggests that the government's proposed reform to the fee structures does not address the issues that are most important to unsecured creditors.

74. There are a number of ideas suggested in the Kempson report to address unsecured creditor engagement, which R3 encourages the government to look at again. R3 is firmly of the view that all of the ideas and proposals should be properly explored. In particular, creditor apathy is the crux of the 'problem' with IPs' fees, and unless this addressed, the same debate will continue for many years to come – the remuneration proposals within this consultation will do nothing to address that debate.

d. Challenging the issue and calculation of £15m 'over-charging' and 'harm

75. R3 questions the basis on which the terms 'harm' and 'over-charge' are made and consider the use of these terms within the consultation document to be both inaccurate and misleading. We note that the term 'over-payment' was not used within the OFT report.

76. We understand that £15m estimated figure on the total cost of insolvency, which includes IPs' fees, has been calculated on IPs' 'charge out'/'headline' rates rather than 'actual' rates. There is a huge difference between the headline rate as stated by IPs' firms and the fees that are charged, which has been recognised and appreciated by Kempson. Therefore, R3 questions the calculation for the estimated figure.

77. In addition, R3 is concerned that the OFT used a relatively old dataset (2006) for the basis of its 2010 research, which although re-examined by Kempson and found to be 'robust', gives us considerable concern that using such an old dataset will lead the government in 2014 to reach out-dated conclusions.

78. As a result of the 'Prescribed Part' reform introduced in 2003 by the Enterprise Act 2002, a portion of realisations that would previously have been paid to the floating charge holder is now paid to the unsecured creditors. The reform effectively boosts returns to unsecured creditors. However, the sample used by the OFT is not up-to-date enough to take its effects into account because a change like this takes time to have an impact. In fact, only 23 of the 500 cases looked at by the OFT involved the 'Prescribed Part'. The carve-out of funds for creditors created by the 'Prescribed Part' only applies where floating charges were created after the 15th September 2003, and it therefore takes time for cases affected by the Prescribed Part to 'trickle through' the system. This means that the OFT report is likely to have found that unsecured creditors received smaller returns than they actually receive today.

79. The older sample used by the OFT albeit 'verified' by Kempson is therefore likely to result in the analysis not being reflective of the up to date position - and the resultant conclusions are likely to suggest that there is greater 'harm' than there actually is.

80. The economy has gone through a significant change since 2006 which has impacted on the number of insolvencies and level of assets in cases. The insolvency sector (which includes the Insolvency Service itself) has experienced a great deal of contraction over the last few years, with redundancies commonplace. For example, insolvency firm Begbies Traynor cut 11% of its workforce between the summer of 2012 and the summer of 2013 in response to fewer insolvency cases.

81. In R3's response to the fees consultation in 2011, we also pointed out that changes introduced in April 2010 whereby IPs are required to give creditors eight weeks to challenge fees before they close a case, should be given time to take effect. The reduction in complaints to the government about IPs' fees from 7% in 2010 to 2% in 2013[15] suggest that the 2010 reforms may be making a substantial difference and we therefore question the need to radically overhaul the basis for remuneration in cases without an engaged secured creditor or creditors' committee.

82. The concept of 'over-charging' is predicated on the notion that there is a 'correct' fee level. It could equally be claimed that secured creditors are 'under-charged' (or simply charged less), rather than unsecured creditors being 'over-charged'. In fact, this might be a more accurate view, given that secured creditors are often able - because of repeat work - to negotiate discounts from IPs. Such discounting is clearly standard practice in many business sectors. The government itself has a procurement policy that, like most enterprises, seeks to obtain discounts from 'market price' because of its perceived 'buying power'; that doesn't mean other buyers of the goods and services are automatically being 'over-charged'.

83. It may also be the case that land and buildings (which are often subject to charges i.e. a secured creditor is involved) are generally far cheaper to realise per pound of realisation than other assets such as book debts or claims in respect of antecedent transactions. Cases

[15] In response to a Parliamentary Question by Toby Perkins MP: To ask the Secretary of State for Business, Innovation and Skills how many complaints about the Insolvency Service were received in each year from 2010 to 2014. [190803] response 11 March 2014

involving real estate are therefore likely to incur proportionately less cost than cases where there is no real estate and, since real estate is often subject to a charge, it would be easy to reach the erroneous conclusion that cases involving secured creditors are relatively cheaper. There is no indication that the OFT considered this point in its 2010 report but it might be worthy of further consideration.

84. The government suggests that an IP has a duty to treat all creditors equally and that charging different rates for secured and unsecured creditors would constitute 'harm'. However, an IP's duty is to work in the interests of the *body of creditors as a whole*; their duty is not to treat creditors equally. In fact, in certain instances - and in full accordance with their over-arching duty - an IP may pursue a course of action that is in the interests of all the creditors, but that harms an individual creditor. In addition, the statutory 'order of priority' also dictates that creditors are not treated equally - the law gives priority to certain creditor classes over others. Treating all creditors equally is not part of an IPs' role and function so this should not be used as part of an argument that claims that different treatment of various creditor classes is wrong – it may just be 'different'.

85. Far from over-charging, it is worth noting that in many cases - where realisations are relatively low - IPs do not receive enough money to cover the costs of the work they carry out. In certain instances - where realisations are very low - they remain entirely unpaid. The Companies House data used by the OFT shows that in around 80% of cases, IPs were not paid in full; and in 7% of cases, IPs did not receive any fee at all. The March 2014 R3 members' survey found that, on average, R3 members received less in fee income than would have been warranted for the hours they worked in 41% of cases in the last 12 months, whilst receiving no fee for their work on 12% of cases in the last year.

86. The results from the R3 members' survey demonstrate that the firms who would be impacted by the new fee proposals are consistently unpaid for their work (compared with the charge out rates) more often than their counterparts in large firms. For example, while 26% of members stated that they did not receive a fee in 1-5% of cases that they worked on in the last year, this impacted 30% of R3's SPG members. Likewise, while 51% of members received less in fee income than would have been warranted for the hours worked in more than half of cases that they worked on in the last year, this figure increases to 57% of SPG members.

87. Just 14% of R3 members say that they have always received a full fee for the cases that they worked on in the last 12 months. This situation is highly anomalous - in almost no other industry or profession is it accepted practice for professionals not to be paid for work they have completed. Therefore, the government's recommendations are inequitable: the consultation focuses on 'fairness' but does not appreciate that firms already suffer from non-payment and underpayment and their proposals do not refer to cases where IPs do not get paid and make any proposals for reform in this respect.

b. Changes since the Government's 2011 consultation on fees

88. The consultation document and Impact Assessment state a number of times that 'despite discussions with the profession and the regulators, little has changed to address this market failure'. This is misleading as changes have been made. The Complaints Gateway[16] was established June 2013 and there is on-going work to see how fees can be better regulated are as a result of the 2011 consultation. This work reflects the government response to the consultation[17], which called for these measures. It is worth noting that the government did not propose that any other measures contained within the 2011 consultation on IP fees should be taken forward. This includes proposals to modify court processes on challenges to fees and allowing unsecured creditors to exercise greater influence over insolvency – it was appreciated that both these measures would increase costs.

89. Whilst R3 raised concerns on a number of proposals in the 2011 consultation[18], we supported the proposal for IPs to be required to provide an estimate of the duration and cost of the insolvency process at the outset and publish the amount to which these estimates were exceeded, in order to increase transparency and provide creditors with as much information as possible. In our response we stated that we thought it reasonable for IPs to provide the best indication possible of the duration of the insolvency at the outset. We went on to say that it is important that IPs are not inflexibly tied to these indicative cost estimates because of the flexible and unpredictable nature of insolvency. R3 is unaware of any objections made to this proposal and we are unaware of any subsequent invitation from Government to take this proposal forward.

90. R3 made a significant proposal which has been adopted by Government as part of the 'Red Tape Challenge' consultation on the issue of **'uneconomic dividends'**/setting a minimum dividend level. R3 undertook research in August 2012 and itself proposed that the expense involved in paying very small dividends is disproportionate to any benefit for the creditor; more than three in five of all R3 members (63%) agreed that a minimum payment level should be introduced, in order to reduce the administrative burden on IPs and therefore **reduce the IPs fees charged in these cases**. This proposal generated solely by the insolvency profession is clear evidence that the profession is 'alive' to the issue of fees and is pro-active in proposing sensible changes.

91. However, we are concerned that there are a number of proposals within the **Red Tape Challenge** suggested by government, namely the proposal to remove the requirement to hold a Section 98 meeting and the proposal to remove the requirement to maintain time records when remuneration is taken on a basis other than time and rate. These proposals are contradictory to and inconsistent with the findings and recommendations of the Kempson report and the government's own consultation on fees, which aims to increase transparency and unsecured creditor engagement. We are aware that, like R3, other business representative groups are concerned by these proposals.

92. It would be helpful if the Insolvency Service were more transparent about the fees and levies it exacts on insolvency cases. We are aware that creditors and debtors are unaware of these charges and who receives the benefit of them, wrongfully assuming that fees and levies charged by the Insolvency Service are IPs' fees.

[16] http://www.bis.gov.uk/insolvency/contact-us/IP-complaints-gateway
[17] http://www.bis.gov.uk/insolvency/Consultations/IPConsultation?cat=closedwithresponse - see Ed DAVEY MP Ministerial response issued on 20 December 2011
[18] http://www.bis.gov.uk/assets/insolvency/docs/insolvency%20profession/consultations/ipregulation/responses/44%20%20r3.pdf

c. Changing the basis for remuneration – summary of objections with case study

- R3 supports a number of the fee proposals set out in previous government reports. However, this latest proposal to simplify the fee structure through prohibiting the use of charging by the hour ('time-costs') was not recommended in previous reviews. R3 is unaware of the proposed restricted method of remuneration being used anywhere else in the world. Therefore it is not 'tried and tested'.
- Either businesses or the IP will lose out in future insolvencies under the proposals: although IPs can provide a rough up-front 'guesstimate' of the cost of work up-front, this guesstimate would be an inappropriate basis for a final level of remuneration – IPs do not know until later in the case exactly what is involved and how long it will take to resolve. Fees may end up either significantly higher or lower than the 'guesstimate'. Relying on a fixed-fee or percentage of realisations as a method of remuneration without an option to review with creditors, would thus see either creditors or IPs short-changed. In either case, at least 40% of R3 members believe returns to creditors would decrease and at least 60% believe company rescues would decrease.
- IPs may err on the side of caution and provide a higher quotation than might be warranted to ensure that costs are recovered. Should the case be straight-forward without any 'surprises' it may mean that an IP's fee is higher than it would be if charged on a time-cost basis – resulting in less money returned to creditors.
- Many cases would not be taken on by IPs at all because the fixed/percentage of realisations fee would be too small to be economical. As a result, the number of cases that the Insolvency Service will be required to take on will rise, increasing cost to the tax-payer.
- The proposals will impact the small asset cases (where there is often no secured creditor or committee) and could lead to smaller insolvency practices leaving the market – and therefore leaving creditors in those cases without an IP to turn to when trying to recover debts.
- Because IPs cannot resign from a case, once they have reached their fixed-fee level, they will almost certainly not optimise additional recoveries as there is no incentive to do so. This would lead to lower returns for creditors.
- If IPs are unpaid, they would be disincentivised to take action against delinquent or fraudulent directors who can then go on (due to lack of evidence) to 'rip off' creditors and members of the public.
- A fixed-fee could lead to outsourcing of specific insolvency procedures to unregulated individuals. This would shift the cost rather than reduce it and bring less transparency to the fee setting process. It is not appropriate in a free market for fees to be driven by legislation rather than market forces.
- On face value, it is attractive to 'simplify' the fee setting mechanism as a way to deal with the so-called 'problem' but it is simplistic to think that changes introduced in the personal insolvency market can be imported into the corporate sector; this view demonstrates a complete lack of understanding of corporate insolvency[19]. This market cannot be 'commoditised' in the same way. The following case studies provided by a small firm (the IP is the same in both case study scenarios) is illustrative of a significant number of case studies provided by R3's Smaller Practices Group (SPG) community:

[19] As illustrated by comments made by the Insolvency Service in the attached article ehttp://www.accountancyage.com/aa/analysis/2330043/fee-regulatory-reform-insolvency-service-takes-inspiration-from-frc

Both cases are small asset cases and on first examination seemed very similar. The case studies below illustrate the difficultly of setting an up-front, fixed-fee. The IP concerned stated that on first examination (and assuming that the new system of remuneration was in place), he would quote a fixed-fee price of £15,000 for both cases. The fixed-fee sum of £15,000 given the size of the case would be a 'reasonable' fee to undertake the work required. Setting fee levels using a percentage of realisations basis is recognised as a problem for small asset cases.

Case 1:

- The Director owed £38,000.
- The Director agreed to repay what she could from the sale of her home.
- £34,000 was repaid and the balance written off.
- There were other assets of £23,000.
- IP total fees, based on time costs, were £11,000.
- Costs and disbursements were £5,000.
- Creditors received £41,000 in dividends.
- **IP fees under the proposed system:**
    - **Fixed-fee £15,000; Creditors overpay by £4,000**
    - **Percentage of realisations at 20%: £10,200; IP underpaid by £800**

Case 2:

- The Directors owed £54,000.
- In the face of compelling evidence the directors disputed the claim and eventually it was necessary to go to court. The IP won the case roughly 2.5 years after being appointed.
- IP costs were £40,000 most of which was due to pursuing the claim.
- The IP's firm will not recover all costs, but still paid a dividend to creditors.
- **IP fees under the proposed system:**
    - **Fixed-fee £15,000; IP underpaid by £25,000**
    - **Percentage of realisations at 20%: £11,000; IP underpaid by £29,000.**

Summary and explanation of both cases:

The IP had no idea at the start of the case 1 that the director would be so unusually compliant (which is very rare). Assuming the proposed restricted method of remuneration is in place, the IP would have proposed a fixed-fee and over-charged in this case by £4,000, impacting on returns to creditors.

The IP in case 2 had no idea at the start of the case that the directors would have caused such a problem. Given that the case went on for 2.5 years, and working to a fixed-fee or percentage of realisations method of payment, the IP would have been significantly under-paid and would have been unlikely to pursue additional assets, impacting on returns to creditors.

d. ***Charging remuneration on a fixed-fee basis: evidence against the proposal***

93. R3 does not believe that IPs should be restricted to charging their fees on a fixed-fee basis in cases where there is no engaged secured creditor or creditors' committee, given the negative impact that this will have on the small business community, returns to creditors and small insolvency practices.

94. As the government recognises, insolvency is a unique sector, involving a unique set of circumstances in each individual case. Therefore, it is simply not possible to set a fixed-fee and thus 'commoditise' a service which is so unpredictable. Using a car servicing analogy: before a car is serviced a fixed price menu is often quoted but once the 'bonnet is opened' and the problems are identified, a revised price is often discussed and agreed – cars are rarely serviced 'unseen' for a fixed price. The same is true in the building industry. Similarly in an insolvent situation, it will be almost impossible for an experienced IP to accurately predict what might eventually be involved in resolving a case as there are so many variables including co-operation and engagement from debtors and creditors, which can vary widely. Relying on an up-front fixed-fee, without an option to review the fee later, would see IPs and creditors routinely (but inadvertently) short-changed.

95. There are many potential problems with setting remuneration on a fixed-fee basis. R3 believes that the most detrimental impact will be on returns to creditors. According to the R3 members' survey in March 2014:

- 40% of respondents believe that returns to creditors would decrease;
- 64% believe that company rescues would decrease;
- 48% believe that competition in the market would decrease.

96. Should IPs' fees be limited to a fixed-fee, R3 believes that IPs may err on the side of caution and provide a higher quotation than might be warranted to ensure that costs are covered and not put their own finances in peril. Should the case be straight-forward without any 'surprises' it may mean that an IP's fee is higher than it should be if charging on a time-cost basis, resulting in fewer returns to creditors.

97. R3 believes that a more common scenario would be cases where the IP has reached the limit of the 'fixed-fee' in terms of hours spent on a case, but due to their inability to resign from a case they are compelled to continue. IPs may, in those circumstances, not optimise recoveries by pursuing more speculative or complex potential assets as there is no incentive to do so: they would be dis-incentivised to do anything other than the bare minimum if they have reached the end of the fixed-fee amount set, as they would be effectively working for free. The non-realisation of potential assets would lead to lower returns to creditors.

98. In the two scenarios outlined above, this may put the IP in a precarious situation with their regulator (in terms of claims of over-charging or failure to perform their statutory duty and return the most monies to creditors as possible). This would be not as a result of 'fault' with the IP, but the imposition of an artificial and inflexible fee structure, which negatively changes behaviour. Furthermore, IPs who are accountants specifically are left with an ethical problem: the IFAC code of ethics makes clear that a threat to an accountant's compliance with the code is created where the fees being received are so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards.

99. Crucially, the most common scenario as identified by R3 members is that many cases would not be taken on by IPs at all because the fixed-fee would be too small to be economical. According to the R3 members' survey in March 2014, 77% of respondents believe that if rates were to be fixed, the number of cases taken on by IPs would decrease. This would leave directors in the difficult position of having to wait for a creditor petition to wind up the company therefore greatly extending the time for employees to get redundancy payments and this in turn will have a negative impact on returns to creditors. If IPs do not take on a case, they will fall to the Official Receivers, with their more limited resources and relative lack of experience in dealing with realisation of assets. 70% of R3 members believe fixed-fees will result in more work being taken by the Official Receiver.

100. R3 is also concerned that introducing a fixed-fee could lead to outsourcing of specific insolvency procedures to unregulated individuals. For example, debt collection work, rather than being undertaken by the IP would be outsourced to solicitors. Therefore, costs would be shifted rather than being reduced and would lead to less transparency in the fee setting process.

101. Most R3 members are of the opinion that requiring IPs to work for a pre-arranged fixed-fee would not work in any case since every insolvency case is different and it is impossible to accurately set a fee for the work up-front.

- Only 1% of R3 members think that in the absence of an engaged secured creditor or creditors committee in insolvency, this would be an appropriate way of agreeing fee levels in every such case;
- Furthermore, one in five (20%) are of the opinion that this would only work if IPs were able to go back to creditors and obtain approval for a higher fee;
- A similar proportion (19%) are of the opinion that pre-arranged fixed-fees would work if statutory work was charged on a fixed-fee basis but all other work paid on a time-cost basis. The latter two findings are discussed in further detail in the remainder of the consultation response.

102. Despite large firms and big cases dominating the headlines, small firms comprise a significant proportion of insolvency firms, and it is the smaller firms who would be affected by the proposed new basis of remuneration, as the smaller asset cases tend not to have involvement from a secured creditor or a creditors' committee. R3 believes that the 'proposal' risks disproportionately squeezing small firms; in some cases, pushing them out of the insolvency market altogether. This will impact on the small business community sector they serve, which would inevitably lead to reduced returns to creditors

103. As outlined, many IPs would question the economic wisdom of taking on smaller asset cases; this would have serious ramifications for creditors and how errant directors are pursued and brought to justice. The impact on the ability of an IP to undertake investigative work into the behaviour of errant directors comes at the same time as the Insolvency Service are proposing to make improvements to the reporting system, to achieve higher disqualification rates.

104. It is important to note that the proposed new system of remuneration on a fixed-fee basis would be unlikely to impact on creditor engagement/reduce the number of complaints about IPs' fees. Both the consultation document and the Impact Assessment argue that creditors are unable to exercise control when IPs take remuneration on a time

and rate basis because it “requires considerable knowledge and understanding of the process in order to question the amount of time spent”. We are firmly of the opinion that the introduction of a fixed-fee basis for remuneration would require the same, if not greater, levels of knowledge and understanding for the creditors to determine whether the fee is offering ‘value for money’. Indeed, creditor stress and emotion would make it very difficult to set and agree a fixed-fee at the beginning of a case. In the survey of R3 members, 56% predict that a new system based on a fixed-fee basis would have no effect on the number of complaints regarding IPs’ fees charged.

e. ***Charging remuneration on a percentage of realisations basis: evidence against the proposal***

105. To quote Kempson: *"In some jurisdictions the main or only method of setting an IP's remuneration is as a percentage of realisations (and this was also much more common in the UK in the past). Moving to this as the presumed method for setting remuneration in the UK would, however, be problematic as creditors currently have a responsibility for setting the percentage and they lack the knowledge and skills to determine the rate that would be appropriate in a particular case. Change in this area would almost certainly require a more nuanced approach, with a statutory scale that links the percentage to the level of assets realised to ensure that IPs would be prepared to take on cases where realisations are likely to be low. And, as in Austria, there would need to be separate scales for the secured and unsecured assets."*

106. So, whilst suggesting that percentage of realisations could be an area worthy of further investigation, Kempson has identified the major challenges and drawbacks of the proposal.

107. First, Kempson outlines that percentage of realisations was the main method for setting fees in the UK 'in the past'. This method was largely dropped in the 1980s as it was viewed as unfair and inequitable to creditors. In fact, there has been a significant amount of work by Sir Kenneth Cork and others to challenge the setting of IPs' fees on a percentage of realisations:

108. Cork (author of the 1982 Cork Report on insolvency law) stated, inter alia, *"The various rules* [for having different bases of fees in different circumstances] *are unnecessarily complicated and seldom have any connection with the actual work done in a specific administration. There are occasions where the rules provide poor recompense for the liquidator or trustee in relation to the amount of work involved in a complex case; there are also occasions when the rules are over-generous as, for example, where the estate comprises little more than a bank account." (para 889).*

"We are firmly of the view that there should be uniformity in this matter and that there should be one set of rules or guidelines to be used in computing the remuneration of trustees, liquidators and administrators." (Para 890)

"The Consultative Committee of Accountancy Bodies informed us that the ethical rules of their constituent members expressly forbid the charging of fees for audit, taxation, and virtually all other work on a percentage-related basis. They said that it would be desirable if liquidators' fees took account of the time occupied, the difficulties or ease of the case, the specialist knowledge and experience of the liquidator, the effectiveness of his actions, and lastly the amount of cash passing through his hands." (para 892).

109. It is not just the Cork Report which considered scale rates to be inappropriate:

Rimer J in Upton v Taylor & Colley 1999 BPIR 168 at page 183A*."As to the mechanics of fixing the remuneration, Mr Taylor asks that the remuneration be fixed in accordance with the scale fees charged by the Official Receiver. I do not think that that scale is an appropriate one ….. "*

Using the example as identified by Kempson, Austria sets IPs' remuneration on a percentage of realisations basis. According to the World Bank[20], Austria ranks behind the UK in terms of the amount returned to creditors and the speed of the process (14th in Austria compared to 7th in the UK), with the cost of insolvency being 10% of the estate compared with 6% in the UK. It is therefore curious to propose a method remuneration, which is proven in this case to be less effective at returning money to creditors than the existing system. We are aware that Singapore (which ranks 4th ahead of the UK) does use a percentage of realisations to calculate fees but this is not at the exclusion of time costs, which are also used.

110. Percentage fees are currently very much 'out of favour' in Germany, given that the German liquidator of Lehman Brothers has now claimed some €800m as a result of an ad valorem fee basis, to general outrage and subsequent discussions that the law should be changed[21].

111. The fundamental problem of percentage of realisations as the sole method of remuneration is that either the IP or the creditor would 'lose out'. Large returns might not reflect the amount of time that an IP is required to dedicate to a case (as outlined above); smaller cases with smaller returns often involve greater investment in terms of hours and resources than would be reflected in the final settlement. Given that the so-called 'problem' with fees is not the large cases, but the small cases, it is likely that IPs will be required to dedicate more hours than the fee represents. As a consequence, 75% of R3 members feel that the number of cases taken by IPs would decrease, with 60% predicting a decrease in the number of business and company rescues, which would have a significant impact on the UK's rescue culture and returns to creditors. Importantly, half (47%) believe it would reduce competition in the market. Two thirds (65%) of R3 members believe that in this eventuality, the number of cases which will fall to the state will increase, leading to increased costs for the taxpayer; lower returns to creditors, and an inevitable fall in the UK's world ranking for insolvency.

112. As per the points made regarding fees restricted to a fixed-fee basis, it is important to note that a proposed new system of remuneration on a percentage of realisations fee basis would be unlikely to impact on creditor engagement/reduce the number of complaints about IPs' fees. We are firmly of the opinion, which we share with Kempson, that a fee on a percentage of realisations basis would require the same, if not greater, levels of knowledge and understanding for the creditors to determine whether the fee is offering 'value for money'. In the survey of R3 members, 52% predict that a new system based on percentage of realisations would have no effect on the number of complaints regarding fees charged.

[20] http://www.doingbusiness.org/data/exploretopics/resolving-insolvency
[21] http://www.spiegel.de/wirtschaft/unternehmen/lehman-zoff-um-das-mega-honorar-fuer-insolvenzverwalter-frege-a-868939.

f. Alternative recommendations to reform IPs' fees and improve unsecured creditor engagement

113. Whilst R3 does not believe that IPs should be restricted to charging their fees on a fixed-fee or percentage of realisations basis (in cases where there is no engaged secured creditor or creditors committee), we do believe that changes should be introduced to bring a greater amount of transparency and accountability to the process.

114. R3 has examined the ideas suggested by Kempson and believe that the key changes that should be introduced are:

- Creditors be given an estimate of IPs' costs at the outset
- Introduce elements of a Code of Practice for IPs based on the Australian model
- Greater exposure of the 2010 Insolvency Rules.

These changes would generally be supported by:

- Better and more information for unsecured creditors
- Increasing unsecured creditor engagement, with a focus on HMRC involvement.

a. Recommendation: Creditors given an estimate of IPs cost at the outset/ a Code of Practice/ making more of the 2010 Insolvency Rules

115. R3 supports the recommendation in the Kempson report that IPs should give creditors an **estimate of costs at the outset of the case**, as in Australia. We believe that a time-cost resolution could act as an initial 'cap' on fees. The IP would then work to this figure, keeping full(er) records on time costs and work done. The 'cap' would act as an interim 'quote' or 'budget' and the IP could then seek additional fees if the case demanded further work, at a later date.

116. As provided for in the **2010 Insolvency Rules**, R3 believes that there is scope for some statutory work to be quoted on a fixed-fee basis, and this should be encouraged. Reporting/ statutory work could be usefully charged on a fixed-fee basis, with other more 'variable' activities on a time cost basis. Statutory work includes placing statutory notices in the Gazette, sending progress reports to creditors and filing of statutory notices.

117. R3 believes that IPs should be required to report the work done on a case with much more transparency and accountability. As an example, IPs may currently state nine hours of their work as 'creditors meetings' but it would be much more useful to break this time down into the constituent parts such as 'communicating with X number of creditors to establish a meeting', 'attending the meeting'; and record in a sentence or two the benefit/any outcomes of this work.

118. In addition, introducing elements of **a Code of Practice for IPs** (based on the model in Australia) plus changes to SIP9 could be introduced to ensure that IPs' records of time spent (and corresponding fees on a case) are transparent and accountable. R3 has spoken to colleagues in Australia and understand that the system in Australia works well and this

can be evidenced by a report in the Australian part of the MF Global case report[22], which could be used as a basis for reporting in the UK. However, it is important to note that there are certain aspects of the system in Australia that are still wanting[23] and so aspects should be *adapted* into the UK, rather than wholesale *adoption*. Once again, quoting World Bank figures, Australia falls some way behind the UK in terms of the amount returned to creditors and the speed of the process (Australia ranks 18th in the world as compared with the UK which ranks 7th best in the world), so changes made to the UK system should be sensitive.

119. The benefits of R3's proposals if implemented would be:

- 'Time-cost' system can be used, which would be fair for both the creditors and IPs alike;
- Greater communication between the IP and creditors as a result of the IP explaining the work done in more detail, and explaining what more work may be required if the 'estimate' is reached. This should, in turn, lead to greater understanding and engagement;
- Reporting would be clearer and should result in more unsecured creditors able to engage in the insolvency process;
- The changes could be introduced quickly and easily into the UK system without changes to the Rules;
- The Courts assess IPs' fees using a time-cost system and so this method of remuneration and reporting would be easily adopted, rather than drafting new defined rules for the courts to assess IPs' fees.

120. R3 members overwhelmingly felt that the most appropriate policy option for IPs' fees in securing the best return to unsecured creditors would be to keep the current structure (76% of members). One in eight chose a requirement to use a combination of time-cost, fixed rate and percentage of realisations (13%), while only small proportions chose a combination of fixed rate and percentage of realisations (6%) or a percentage of realisations only (1%). Just two of the 444 respondents (0.5%) surveyed said that the best option would be fixed-fee only, reflecting strong negative opinion expressed towards this option as outlined in (4d) of this response.

b. Recommendation: Better and more information for unsecured creditors to engage

121. R3 firmly believes that more and better information should be made available for unsecured creditors, which would encourage increased engagement in the insolvency process (noting that there will always be creditor apathy). The Insolvency Service has a responsibility to provide information to address the acknowledged 'shortfall' in understanding by individuals and businesses in insolvency. However, the Insolvency Service acknowledges that the information they provide to creditors in not easily accessible or engaging.

122. According to the R3 survey of members in March 2014, R3 members believe that more and better information would be useful in assisting unsecured creditors negotiate competitive fee rates. IPs felt that the most useful types of information for unsecured

[22] http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Services/CRG/Bus%20under%20admin/MF%20Global/Deloitte_MF_Global_Group_Circular_to_Creditors_3_Nov_11.pdf

[23] https://mail.r3.org.uk/owa/redir.aspx?C=251a7b953bb74068b6535b4fac9ccf71&URL=http%3a%2f%2fwhoswholegal.com%2fnews%2ffeatures%2farticle%2f29821%2fcurrent-trends-insolvency-australia

creditors are those that would help them deal with their fees (81%); information on approving fees and information on how to challenge fees (73%).

c. **Recommendation: Increasing unsecured creditor engagement**

123. As stated in R3's response to the 2011 consultation, R3 firmly believes that government departments should take the lead as unsecured creditors in insolvent cases. The issue was picked up and raised as a recommendation by Kempson but no proposals to see greater government involvement are outlined within the consultation document.

124. Unsecured creditors often claim that there is no point in getting involved in the insolvency process because the level of debt they are owed is relatively small and they are often not 'repeat' creditors so they are unfamiliar with the process. However, HMRC debt accounts for 24% of total unsecured debt and the department is often the main unsecured creditor in an insolvency case. Another significant unsecured creditor is the Redundancy Payments Office (RPO) – again part of a government department, the Insolvency Service itself. While we understand that certain unsecured creditors may find it difficult to engage in insolvency - due to lack of experience, size of debt or lack of familiarity with the process – the same arguments cannot be used by government departments. Government is in a position to influence fees and R3 calls for their involvement on a routine basis, which should in turn, encourage other unsecured creditors to be involved.

g. Insolvency Practitioner fee regime: response to the fee consultation questions

11. Do you agree with the assessment of the costs associated with fee complaints being reviewed by RPBs?

125. It is not for R3 to give a comprehensive answer to this question, but the RPBs themselves.

126. RPBs may have existing panels but will clearly need a lot more resource to carry out this new measure. The existing RPB complaint panels are unlikely to have the required skills to assess whether a complaint about fees is made with or without merit.

127. In terms of enhanced monitoring by the RPBs, in principle R3 supports the proposal. However, the proposal needs further examination. Clear guidelines regarding what the RPBs are expected to monitor should be outlined. Monitoring should not include a review of IPs' fees (as the level of fees set is a commercial decision); however, it would be reasonable to include a requirement to monitor the clarity and transparency of reports to creditors.

128. It should be recognised that the RPBs do have a responsibility to monitor 'ethical' aspects of IPs' work which does capture issues of 'over-charging': namely cases where an IP may duplicate work or charge time for senior staff to do more junior work.

12. Do you agree that by adding IP fees representing value for money (VFM) to the regulatory framework, greater compliance monitoring, oversight and complaint handling of fees can be delivered by the regulators?

129. 'Value for money' is subjective. Clear criteria must be compiled, which address the specific challenges in insolvency i.e. the fact that creditors are not guaranteed to retrieve all debts owed, regardless of the IP's fee. The Insolvency Service itself must be seen to 'play by the same rules' and be transparent on their costs, fees and their 'value for money'. In order for this to work the term 'value for money' needs to be clearly defined.

13. Do you believe that publishing information on approving fees, how to appoint an IP, obtain quotes and negotiate fees and comparative fee data by asset size, will assist unsecured creditors to negotiate competitive fee rates?

130. See comments in (4f) of this response 'better and more information for unsecured creditors'.

14. Do you think that any further exceptions should apply? For example, if one of two unsecured creditors make up a simple majority by value?

131. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case.

15. Do you have any comments on the proposal as set out in Annex A to restrict time and rate as a basis of remuneration to cases where there is a creditors' committee or where secured creditors will not be paid in full?

132. See comments in (4c), (4d) and (4e) of this response.

16. What impact do you think the proposed changes to the fee structure will have on IPs' fees and returns to unsecured creditors?

133. See comments in (4c), (4d) and (4e) of this response.

17. Do you agree that the proposed changes to basis for remuneration should not apply to CVLs, MVLs or IVAs?

134. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case.

18. Where the basis is set as a percentage of realisations, do you favour setting a prescribed scale for the amount available to be taken as fees, as the default position with the option of seeking approval from creditors for a variation of that amount?

135. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case.

19. Is the current statutory scale commercially viable? If not, what might a commercial scale, appropriate for the majority of cases, look like and how do you suggest such a scale should be set?

136. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case.

137. R3 would like to see more information on the Official Receiver scale and total fees the Insolvency Service collects in this regard on an annual basis.

20. Do you think there are further circumstances in which time and rate should be able to be charged?

138. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case. R3 believes that time and rate should be able to be charged in all circumstances, but estimated at the outset with the ability to revise the estimated cost, subject to communication with creditors.

h. Impact Assessment: response to the consultation questions

21. Do you agree with this estimation for familiarisation costs for the changes to the fee structure?

139. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case.

140. However, it is worth highlighting that the familiarisation costs on page 10 of the Impact Assessment are far too low and that this figure does not take into account staff who work in IPs' offices (just IPs themselves).

22. As a secured creditor, how much time/cost do you anticipate these changes will require in order to familiarise yourself with the new fee structure?

141. Not applicable.

23. To what extent do you expect the new fee structure to reduce the current level of over-payment?

142. As outlined, R3 does not believe that the proposal to introduce a fixed-fee/percentage of realisations on which to charge fees would work in any insolvency case.

143. R3 does not accept the term 'over-payment' as outlined in detail in (4a) of this response.

24. Do you agree with the assessment that the requirement to seek approval of creditors for the percentage of assets against which remuneration will be taken, will not add any additional costs?

144. As outlined, R3 does not believe that the proposal to introduce a fixed fee/percentage of realisations on which to charge fees would work in any insolvency case.

25. Do you agree with these assumptions? Do you have any data to support how the changes to the fee structure will impact on the fees currently charged?

145. As outlined, R3 does not agree with the assumptions made in the consultation document or Impact Assessment. Please see (4c), (4d) and (4e) in this response for the negative impact of the proposals on returns to creditors.

26. Do you agree or disagree in adding a weight in the relative costs and benefits to IPs and unsecured creditors? If you agree, what would the weight be?

146. R3 consider that the analysis of the benefits is misconceived for the reasons stated above and adding a weight would therefore be irrelevant.

27. Do consultees believe these measures will improve the market confidence?

147. No. As outlined, R3 believes that there will be a detrimental impact should the proposals be introduced, which are outlined in full in section (4c). These proposals, if implemented, would decrease market confidence as:

- unsecured creditors would lose out as there would be less returns to creditors;

- many cases would not be taken on by the IP and would fall to the Insolvency Service increasing cost to the taxpayer;
- more fraudulent and delinquent directors would operate unchallenged, which would have a negative impact on the business community and the public in general;
- the proposed changes will result in more work being outsourced which will decrease transparency and not decrease costs.

28. Do consultees believe these measures will improve the reputation of the insolvency profession?

148. No, as outlined above. These measures would lower the reputation of the insolvency profession and the UK's World Bank 'resolving insolvency' ranking.