

The future of insolvency practitioner regulation

Insolvency Practitioner regulation is a complex and sometimes contentious area, and the regulatory regime's efficacy and potential reform represent a key challenge for policy-makers, regulators and members of the profession over the coming years. The Office of Fair Trading's recent study into the corporate insolvency market recommends certain changes to insolvency regulation, and it is likely that the Government - through the Business, Innovation and Skills department - will explore options for reform during the current Parliament. In view of these developments, R3's paper outlines how the current system operates, summarises Insolvency Practitioners' (IPs') views of current system and certain options for reform, and highlights R3's view on key regulatory issues, speaking as the leading trade association for Insolvency Practitioners.

How are Insolvency Practitioners regulated?

There are 1,735 Insolvency Practitioners (IPs) in the UK. To get a licence, an IP in England and Wales must pass the Joint Insolvency Examination Board (JIEB) exams. These exams consist of papers covering both personal and corporate insolvency, and are notoriously difficult - the average pass rate is less than 50% and the average age at which the exam is passed is 33 years old. IPs must also amass a certain number of hours of experience in insolvency work (the amount varies according to the body issuing the licence).

IPs must have a licence from one of seven regulatory bodies (RPBs) designated by the Insolvency act 1986, or directly from the Secretary of State for Business Innovation and Skills. The bodies are as follows:

- The Association of Chartered Certified Accountants (ACCA), which licenses 185 IPs.
- The Insolvency Practitioners Association (IPA), which licenses 455 IPs
- The Institute of Chartered Accountants in England & Wales (ICAEW), which licenses 689 IPs
- The Institute of Chartered Accountants in Ireland (ICAI) which licenses 39 IPs
- The Institute of Chartered Accountants of Scotland (ICAS) which licenses 113 IPs
- The Solicitors Regulation Authority which licenses 150 IPs
- The Law Society of Scotland, which licenses 15 IPs
- The Insolvency Service also plays an authorisation function, directly licensing 92 IPs on behalf of the Secretary of State for Business, Innovation and Skills.

The Insolvency Service is also the 'regulator of regulators'.

IPs are monitored by their individual RPB or by the Insolvency Service. Each RPB has specific committees dealing with insolvency licensing, complaints and disciplinary matters.

Insolvency is a very highly regulated profession. There are over 120 pieces of legislation, extending to some 2,000 pages, which govern insolvency practice. In addition, Insolvency Practitioners are required to comply with Statements of Insolvency Practice (SIPs) - a series of documents setting out standards of professional conduct with which IPs are required to comply. If an IPs departing from these standards they can face disciplinary action from their regulator.

The Joint Insolvency Committee (JIC), which comprises representatives from each of the regulatory bodies and the Insolvency Service, meets on a quarterly basis to discuss matters of mutual interest and concern.

The views of Insolvency Practitioners

As part of R3's quarterly membership survey in April 2010, 341 IPs answered a series of questions on regulation.

Highlights are as follows:

- **57% do not believe the regulatory system is cost effective in terms of both money and time and 63% do not think the costs and benefits of new regulation are properly measured and considered.**
- **More than half (52%) of IPs do not believe the regulatory system builds trust in IPs and the process of insolvency.**
- **50% do not believe the way their regulator deters and deals with misconduct is effective and the majority of IPs (62%) think IPs subject to formal sanctions should be named publicly.**

- **When thinking about consistency of approach between the regulators (from one to another), just 5% think there is a large amount of consistency and 24% think there is some consistency.**
- **75% of IPs believe that there are too many RPBs.**
- **39% think there should be one regulator and a further 38% think there should be more than one but less than four.**
- **The vast majority of IPs (72%) believe there should be a unified monitoring system and a single complaints system.**

R3's position on regulation

R3 supports a regulatory regime that is effective, fair and consistent.

We appreciate that there are concerns over consistency of approach from one regulator to the next; and that the regulatory structure can be confusing for anyone who is unfamiliar with it. We would welcome effective reform and rationalisation of the regulatory system, with the possibility of reducing the number of regulators and/or introducing a single regulatory framework, under which anyone advising on, and acting in, insolvency cases would operate.

There are practical and historical reasons why the current system of regulation has developed in the way it has – not least because there are three different jurisdictions (England and Wales, Scotland and Northern Ireland) with devolved responsibility for insolvency and different insolvency regimes. Additionally, some firms comprise a variety of professionals (such as those working on tax and audit, as well as Insolvency Practitioners) so they may want to ensure all their members are regulated by one body capable of covering the variety of disciplines (rather than an insolvency-specific body); while by contrast, certain IPs believe it is beneficial to be regulated by a regulator with a specific focus on insolvency.

If the regulatory system is to be simplified, it is important to ensure that regulators remain independent of Government; and that they are aware of the commercial and practical realities of insolvency work. We are concerned that the Insolvency Service's role as authorising body may impede their ability to perform the more important role of 'regulator of regulators'. We therefore support The Office of Fair Trading's proposal that the licensing function of the Insolvency Service should be removed to enable them to direct more time and resources to their supervisory role.

R3 fervently believes that the vast majority of Insolvency Practitioners carry out their statutory functions diligently and professionally; but, as with all industries, it is important that the regulatory regime is capable of strong enforcement to deal with misconduct in order to protect the integrity of the profession.

We believe the cost of regulation should be proportionate and that the administrative burden it imposes on Insolvency Practitioners should be kept to a minimum, to enable Insolvency Practitioners to concentrate on their primary function of maximising returns to creditors. As regulation inevitably creates costs through the bureaucratic burden of compliance, any new - as well as existing - regulations should be reviewed to ensure that they do not unnecessarily obstruct an IP's ability to secure returns to creditors.

The wrong advice can have a devastating personal effect on a debtor for many years to come. To secure the highest level of consumer protection, we want to ensure that all debt advisors are regulated to the same high standard - whether they deal with formal insolvency procedures, Debt Management Plans, or the provision of debt advice; whether they work in the public, private or third sector organisations.

R3 is firmly committed to an effective, transparent and respected regulatory approach that facilitates and guarantees the environment necessary to allow IPs to perform their vital and important functions to the very best of their ability.

About R3

R3, the trade body for Insolvency Professionals, represents over 97% of Insolvency Practitioners. R3 members are trained and regulated accountants and lawyers who have extensive experience of helping businesses and individuals in financial distress.