



SIP 6 (England and Wales) CONSULTATION QUESTIONNAIRE

RESPONSE OF R3, ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS. R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession. Our Full Members are qualified, regulated and work across the spectrum of the profession, from the global legal and accountancy firms through to smaller, local practices.

The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession rescues businesses and jobs, creates the confidence to trade and lend by returning money fairly to creditors after insolvencies, investigates and disrupts fraud, and helps indebted individuals get back on their feet. The UK is an international centre for insolvency and restructuring work and our insolvency and restructuring framework is rated as one of the best in the world by the World Bank. R3 supports the profession in making sure that this remains the case.

Name of individual making the response:

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Firm name:

R3

1. Do you believe that the revised version of SIP 6 identifies all appropriate principles?

Yes.

The SIP correctly identifies the key principles for decision making procedures:

Creditors should be clear about what they are being asked to decide, why they are being asked, and what the implications of their decision are likely to be.

Creditors should be provided with proportionate, adequate information, presented as clearly as possible, to enable them to make an informed decision.

Those creditors that are affected by the decision should have an opportunity to be part of the decision making process.

It should be straightforward for interested creditors to take part in the decision making process.

- 2. If “no”, what additions do you believe should be made to the principles contained in the SIP?**

N/a

- 3. Do you believe that the revised version of SIP 6 identifies the key compliance standards?**

No.

- 4. If “no”, what additions do you believe should be made to the key compliance standards contained in the SIP?**

Additional compliance standards should be introduced to ensure:

- When making a recording of the decision procedure (either audio or visual), all attendees should be informed.
- SIP 8, at para 13, included a provision re ensuring that notices were dispatched as soon as possible.

- 5. Paragraph 12 of the Interim SIP identifies the information that will commonly be required to facilitate the making of an informed decision by creditors when appointing a liquidator in a CVL.**

- a) Do you consider any of this information to be unnecessary or superfluous, and if so, why?**

No.

The information listed in the SIP is broadly similar to that required to have been presented to the S98 meeting under SIP 8.

- b) Do you consider this list to be lacking any relevant or valuable information, and if so, why?**

No.

- c) If you are an insolvency practitioner, have you received any feedback from creditors as to the value of the information you have provided?**

Our members report an increased level of dissatisfaction amongst creditors regarding the increased volume of information required to be provided to creditors under the new Insolvency Rules. This has made it harder for creditors to identify simply the relevant information for them and discourages involvement with the insolvency process.

- 6. If you are an insolvency practitioner, have you encountered any practical difficulties in complying with the principles or key compliance standards identified in this SIP?**

Our members regularly report concerns with regards to the timing of the information to be provided to creditors. Under the s98 process the majority of the information was provided to creditors at the s98 meeting. Whilst we recognise the importance of providing creditors with sufficient information to enable them to make an informed decision some members are reporting that the information being provided is being used, not by creditors to inform the decision process, but by other IPs who seek to identify whether it would be possible (and financially viable) to obtain appointment of the case themselves. It is understood that information about creditors and assets held are being used in this way. Whilst competition is ordinarily to be encouraged we consider that there could be a detriment to the profession as a whole where those acting outside of the profession, as unregulated advisors to directors or those who work to provide leads to IPs by garnering creditor support, use this information to their advantage. Clarity on acceptable behaviour by IPs and their associates in this regard would be welcomed to maintain the reputation of the profession.

Many office holders report experiencing difficulties in obtaining sufficient information from the directors of the company in good time in order for it to be sent out prior to the decision date.

Our members are also reporting increased complaints from employees re their personal details (name, address, amount of debt) being released to all creditors via the statement of affairs being issued. Whilst such details are removed from the statement of affairs filed at Companies House, some employees are upset about their details being made available to other creditors and their representative bodies.

We understand that there is an inconsistency in approach as to what is considered to be a 'material transaction'. Clarity over the requirements of para 12d) iv) would be welcomed.

7. If "yes", what (if anything), were you able to do to surmount these difficulties?

n/a

8. Have you encountered any practices in decision making or deemed consent procedures in respect of which you believe the SIP fails to provide adequate direction?

Yes.

It is unclear what the expectation of an IP is where no-one 'turns up' to participate in a virtual decision procedure such as a conference call. For example, how long should the convenor who holds proxies wait before concluding the decision procedure?

There is a lack of guidance regarding whether/when to use the discretionary advertising rule as regards non-meeting decision processes, especially the s100 deemed consent procedure.

What are the expected duties of a members' nominated IP in the event that someone else has done the preparatory work assisting the directors in placing the company into liquidation?

There is no guidance to assist office holders dealing with creditor's/proxy holder's requests to inspect proofs at virtual meetings.

9. If "yes" please describe how you consider these ought to be catered for in a revised SIP.

These matters could be dealt with under a series of separate headings – provisions of general application – virtual meetings etc.

10. Are there any other amendments you would wish to suggest to the SIP? Please provide details below.

The SIP provides for the information listed in para 12 to be 'ordinarily available' not later than the business day prior to the decision date. It is not clear whether this means that the information should be provided or whether the office holder can use their discretion. The introduction to the SIP also refers to such information being 'requested' however no such provision appears in the SIP itself. If the SIP is to provide for the provision of information should it not be available in all cases, either via a website and creditors notified of its availability by post, or sent out by post itself?

Given that the new decision procedures represent a significant departure from the previous reliance on meetings and correspondence it may be more appropriate to have set out more fully the different decision making procedures available and provide assistance to office holders on how to make an appropriate choice between them.

The current SIP 6 is quite 'vague' because it focusses on principles rather than practice in an area where guidance on good practice would be helpful. Whilst the SIP follows the principles based approach and is consistent with other revised SIPs in this regard, this means that it actually provides little relevant and additional guidance to office holders on the new decision procedures. Would it be more appropriate to produce a 'SIPP' – Statement of Insolvency Principles and Practice?

This submission is made by Caroline Sumner, R3 Technical Director.

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