



## **INSOLVENCY CODE OF ETHICS 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: **Caroline Sumner, Technical Director**  
Firm name: **R3**

**1. Do you believe that the revised version of the Code provides a clear structure and uses clear language under which to operate?**

The Insolvency Code of Ethics contains the fundamental principles which underline the profession and support self-regulation. As such any steps to enhance and strengthen this Code is welcomed.

We consider the use of the word 'shall' to be appropriate.

**2. If "no", please explain why.**

N/A

**3. Do you believe that the Code would be supported by issuing guidance and will be an effective way of assisting stakeholders to understand the application of the framework to specific situations?**

Yes.

To be effective we consider that the Code should be concise, simple and contain clear principles and should be a stand-alone document. Preferably it should not be more than two pages in length. The Code should provide members with clear principles which the RPBs are able to enforce and should facilitate the RPBs taking effective action where Insolvency Practitioners act in a manner which is contrary to the Code.

In order to achieve this we consider that the Code should not go into specific details as to how it should be applied to specific situations but should be principles based. Clarification, where considered appropriate, could be provided by issuing additional guidance which can be tailored to reflect current industry concerns and this would also permit RPBs to tackle promptly new practices which are considered to be contrary to the Code, without necessitating a complete re-write of the Code itself.

**4. If “no”, please explain why.**

N/A

**5. Please provide information on areas where you consider guidance would be particularly helpful.**

We consider that additional guidance on the following areas would be of assistance:

- i. Evidencing the value of work done to support payments to third parties (Section C)
- ii. Maintaining and reviewing proper business relationships (Section C)
- iii. Complying with relevant codes of practice and guidance in relation to advertising (Section E)
- iv. The Insolvency Practitioner as an Employee (Section H)
- v. The application of the framework to specific situations (Section I) – this should be produced as a separate annexe rather than being part of the main body of the Code.

There appears to be a perception currently that the Ethics Code does not apply to certain elements of the personal insolvency sector. Additional guidance to remind IPs of their obligations in this regard would be beneficial. It would also be of benefit to remind non-appointment taking IPs that the Code applies to them also.

**6. Do you believe that the revised version of the Code identifies in Part 2 Section H the key matters of specific application where an IP is an employee?**

No.

**7. If “no”, what additions do you believe should be made to the matters contained in the Code?**

We consider that the key issue with regard to employees is the perceived or actual lack of control that an IP as an employee will have over their cases or the management of the firm for whom he/she works. In our view the Code should state that IPs as office holders must have control of their cases notwithstanding their position in the firm. This would assist where an IP is a company employee or a junior or salaried partner in a practice and does not have a decisive say in how the company or firm is operated.

In the revised Code the only option currently available to an IP as an employee is to resign from the employment (Para 99). We consider that this may not assist an IP who is facing a threat on a specific case and therefore the additional option of ‘withdrawing from the situation’, including resigning from the case, should be provided for. Resigning from employment may also lead to a situation where a portfolio of personal cases are ‘abandoned’.

This may be a suitable topic for additional guidance as to what is expected of an IP who finds they are unable to exert control over their cases.

**8. Do you believe that the provisions in the Code relating to an IP obtaining specialist advice or services (Part 2 Section C) remain appropriate?**

No.

**9. If “no”, please explain why and what amendments you believe should be made.**

IPs should not be prohibited from obtaining specialist advice or services where to do so would be of benefit to the insolvency estate. We consider that the first 'test' for an IP to apply when obtaining specialist advice and services is to ensure that the work is warranted in the first place. Payments to third parties should only be made where the work will be of benefit to the insolvency estate and this should be capable of being demonstrated to interested parties. This should effectively deal with the current concerns that such payments are actually payments for a ‘lead’ (which are currently prohibited) being disguised as ‘work done’.

In the case of personal insolvencies, where a third party is being relied upon to provide advice to the debtor, we consider that such a third party should be FCA authorised or be able to benefit from an exclusion to FCA authorisation by virtue of their being regulated and supervised by a Designated Professional Body. This should ensure that advice is provided from a ‘regulated’ source. IPs are already under an obligation to ensure that the debtor has received appropriate advice (SIP 3.1) and the RPBs have a duty to ensure that this is monitored appropriately. It is of concern that HMT have to date refused to consider regulating lead generators in this way. This would provide protection for IPs who are currently being blamed for the activities undertaken by unregulated lead generators and also provide comfort to organisations such as the Money Advice Trust who regularly express concern about the practices of such operators.

We consider that as 'reputation' is inherently difficult to measure this term should be removed.

Suggested wording of para 74: 'When an insolvency practitioner intends to rely on the advice or work of another, the IP shall evaluate whether such advice, work, and/or reliance is warranted. The IP shall ensure factors such as relevant expertise, resources available and applicable professional ethical standards are considered. Any payment to the third party shall reflect the value of the work necessarily undertaken. Where a third party is being relied upon to provide advice to a debtor, the IP should ensure the third party is regulated by the FCA or an RPB, unless falling under an exemption'.

Para 75: We consider that threats to the fundamental principles can arise from utilising a regular source of services irrespective of whether that source is independent or not. References to 'independent of the practice' should therefore be removed. Such relationships should however be subject to regular review.

On removing the word 'independent' paras 76 and 77 can then be combined as follows:

'Threats to the fundamental principles can also arise where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship which may give rise to a conflict. An IP shall take care in such circumstances to ensure that the best value and service is being provided'.

**10. Do you consider the provisions in Part 2 Section C are adequate where the specialist advice or services provider is an entity or person where there is a personal or business relationship?**

No.

**11. If "no", please explain why and what amendments you believe should be made.**

Given the current concerns in relation to the volume IVA market, we consider that it should be made clear that the Ethics Code applies to IVAs. Additional guidance, specific to the volume IVA market would also be of assistance.

Noting that threats can arise from personal relationships we consider that there should be a requirement to disclose full details of such a relationship where this is considered to be materially relevant to the insolvency case, in order to allay the perception of conflicts of interest. This should generally form part of the normal regular case risk assessment and disclosure should be at the discretion of the IP.

Disclosure of any financial arrangements in connection with the case should be mandatory.

Definitions of 'personal relationships' and 'business relationships' are required.

**12. Do you believe that the provisions in the Code relating to referral fees or commission in respect of an engagement which may lead to an *insolvency appointment* or during an *insolvency appointment* (Part 2 Section D) remain appropriate?**

No.

**13. If “no”, please explain why and what amendments you believe should be made.**

The provisions of Section D should apply to a network, in addition to the IP or his practice.

We further consider that, after appointment, disclosure of referral fees and commissions should be mandatory. Given that the disclosure of pre-appointment fees are mandatory we cannot see why post appointment disclosure requirements should not be the same.

Para 82 should be expanded so that it reads as follows: ‘If such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the IP or the practice or the network’.

Para 83 should be amended as follows: ‘Further, where such fees or commissions are accepted an IP should make full disclosure to creditors’.

Paras 82 and 83 should be combined so that they are read together, this will avoid any IP reading this as saying it is acceptable to accept such fees or commissions so long as they have been disclosed.

**14. The Code sets out in Part 2 Section E that due to the ‘special nature’ of insolvency appointments, the payment or offer of any commission for or furnishing of any valuable consideration towards the introduction of insolvency appointments is inappropriate.**

**Please explain why you consider insolvency appointments to be of a ‘special nature’ and what the ‘special nature’ is.**

References to the 'special nature' of insolvency appointments is too vague, and unless accompanied by a definition explaining what 'special' means, this should be removed.

Understanding what is 'special' is a difficult concept and one on which there seems to be little agreement within the profession.

**15. Do you believe that the provisions in the Code relating to obtaining insolvency appointments (Part 2 Section E) remain appropriate?**

No.

Section E should also be applied to a 'network' in addition to the current IP or his practice.

**16. If “no”, please explain why and what amendments you believe should be made.**

This is an area which we consider would be enhanced by the provision of additional guidance. Para 86 refers to relevant codes of practice, the source of these codes could be included in the additional guidance. The guidance could also include examples of what is and what is not acceptable in terms of advertising, forms of words used/to be avoided, methods of contacting individuals/marketing.

There is a perception that the current prohibition of any payment for the introduction of insolvency appointments has resulted in a position whereby such payments are disguised as being for 'work done' or 'information given'. Making changes to the Code to ensure that such payments are only permissible for work necessarily done would go some way towards addressing this concern.

Given the current perception from some that the Ethics Code does not apply to volume IVA referrals, we consider that the Code should be amended to clearly state that a payment for 'referrals' is also considered to be inappropriate. This should address the concerns which arise out of the current practice of volume IVA firms paying for leads.

Para 84 should be amended as follows: 'The nature of insolvency appointments makes the payment or offer of any commission for, or the furnishing of any valuable consideration towards, the introduction or referral of insolvency appointments inappropriate.'

Any payments made by an IP, his practice or network should only be in respect of work done, which should be capable of being demonstrated and must have been to the benefit of the estate and fully disclosed to creditors.

Para 89: Amend the term 'acquires work' to read 'obtains work'.

In addition to strengthening the Ethics Code, the RPBs should ensure that they take effective regulatory action against IPs and their firms who contravene the Code in this regard.

**17. Do you consider that the approach taken within the Code to matters under Part 2 Section C, Section D and Section E should differentiate between personal and corporate appointments?**

No.

**18. If “yes”, please explain why and how the approach should differ.**

The principles to be applied should be the same regardless of the type of insolvency appointment. Any differences in approach required by, for example, those working within the volume IVA market, should be dealt with by the issuing of additional guidance.

We consider that it is important not to differentiate further between those IPs who work within the corporate and personal areas of the profession as this could lead to a two tier inconsistent approach. There is no need to differentiate since the principles are the same.

**19. Are there any other amendments you would wish to suggest to the Code? Please provide details below.**

Please see the attached Code with suggested amendments shown as tracked changes.

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

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