Regulation of Insolvency Practitioners – Review of the Current Regulatory Landscape
R3 response
October 2019

ABOUT R3

1. R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals.

2. Our members work across the spectrum of the profession, from global legal and accountancy practices through to sole practitioners. Our members have direct experience of insolvencies and their impact on individuals and businesses across the UK.

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

4. We have focused this response on those questions and themes in the consultation where we can provide answers based on our members' expertise. This response is based on feedback on the proposals received from across our membership over recent weeks.

5. R3 would be delighted to meet Insolvency Service officials to discuss the points raised below in greater detail. If you would like to meet us or if you have any other queries, please contact R3's Public Affairs Manager, James Jeffreys, at james.jeffreys@r3.org.uk or on 020 7566 4220.

Overview

6. The insolvency and restructuring profession occupies a position of significant importance and responsibility within the UK's economy. Great trust is placed in the profession to uphold the law, act ethically, and protect and restore economic value. The profession needs to repay this trust. A lack of trust and confidence in the profession will lead to a lack of trust and confidence in the insolvency and restructuring framework. And, a lack of trust and confidence in the insolvency and restructuring framework will weaken the UK's economy.

7. At the same time, the profession is able to carry out its duties effectively *because* it has the public's trust and confidence. Helping to foster this confidence should be an effective and trusted regulatory framework which polices and promotes high standards. High standards matter – and they matter to the insolvency and restructuring profession as much as they do for any other stakeholder. From the profession's perspective, it is vital that an effective regulatory regime underpins, and is seen to underpin, the profession's work. Good regulation is essential.

8. The profession operates in highly pressurised situations. Members of the profession are personally responsible for protecting creditors' interests in insolvencies. They are personally responsible for protecting the interests of employees, consumers, and individuals in debt. They are personally responsible for dealing with the aftermath of governance and financial wrongdoings. And, when appointed to a company, they can be personally responsible for the company's actions in ways that the directors they have replaced were not.

9. In carrying out their duties, members of the profession must balance competing interests and statutory requirements. Working in time-pressured environments, decisions must be made quickly to protect creditor returns and to rescue jobs. When taking appointments, the profession will often step into the unknown, and will have to deal with the poor governance, record-keeping and compliance problems often encountered at struggling companies.

10. An effective regulatory framework – from regulatory oversight through to ethical codes and best practice guidance – helps the profession navigate these difficult situations. It should promote confidence in the wider framework and profession. It should protect the public. And it should support a profession which works in circumstances almost unparalleled in their complexity and difficulty across the professional services.

11. Since the publication of the Government's call for evidence, R3 has been gathering our members' thoughts on the effectiveness of the regulatory framework. We have held workshops and open member forums, and have carried out an all-member survey. The good news is that the vast majority of members surveyed by R3 have confidence in their own regulator, and they have confidence in the wider regulatory framework. Where members are also regulated by a non-insolvency regulator as part of their work, 77% of respondents to our member survey said that their insolvency regulator is as, or more, effective at regulation as the other regulator[1]. Insolvency practitioners feel that they are held to account by the regulatory framework, while sanctions – either the publicity of sanctions or the ultimate threat of a career-ending licence withdrawal – focus minds.

12. However, there is always room for improvement, and our members have identified a number of opportunities for potential reforms. Speed, consistency in monitoring and enforcement, and the scope of regulation could all be improved.

13. In considering the way forward for insolvency regulation, there are a number of factors to consider. Firstly, the profession is split on a number of issues. Although the profession is relatively small (with just under 1,600 licensed insolvency practitioners at the start of 2019[2]), it is nonetheless diverse. Secondly, any framework for regulating the insolvency profession will have its own advantages and disadvantages – a 'Single Regulator' as provided for by the Government's reserve power, for example, would not be a silver bullet for the concerns outlined in this paper.

---

[1] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019. NB. Non-insolvency regulators which also regulate survey respondents included the accountancy regulators and the FCA, among others.

[2] [2018 Annual Review of Insolvency Practitioner Regulation, Insolvency Service, May 2019, Page 12]

14. Ultimately, *what* is delivered by a regulatory framework is more important than *how* regulation is delivered. From R3's perspective, it is important that the UK has a regulatory framework for insolvency which is:

    a. **Fair and proportionate** for those who have cause to make a complaint or have made a complaint, and for those subject to the regulatory process. Regulation should not be an excessive burden on the profession, debtors, or creditors, and it should not unreasonably restrict the growth and success of insolvency practices;

    b. **Transparent** in terms of how to complain or to raise a concern, and it must be clear what is involved in the regulatory process. It must also be clear what action is being undertaken (whether this is dealing with a complaint or standard monitoring), and what the outcomes of any regulatory actions have been;

    c. **Effective,** in that oversight provides as complete a picture of the insolvency profession's work as possible. Regulators should be given the necessary powers to do their work, and should also be given any government support necessary to develop innovative approaches to regulation;

    d. **Efficient** so that regulatory processes have clear timetables and any delays or extensions of a process should be transparent and justified. Complaints should be dealt with quickly, while extended gaps between monitoring visits should not be allowed to develop;

    e. **Flexible** enough that it can adapt to innovation within the insolvency and restructuring profession, and be able to keep up with the way the market operates; and

    f. **Consistent** in terms of the powers available to regulators, the regulatory requirements that the insolvency profession is expected to meet, the approach taken to complaints, and the consequences of breaching regulatory requirements.

2. In summary:

    a. Insolvency regulation can be improved, but it is by no means in need of an overhaul. A switch to a single regulator would not automatically solve current concerns, nor would it be the only route to improvements.

    b. R3 members generally see the regulatory framework as performing well: asked to rate the framework's performance in ten areas, respondents to R3's recent member survey on regulation were more likely to rate regulatory performance as positive than negative in six of these[3].

[3] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

c. There are particular areas of regulation where improvements can be made: service standards could help speed up disciplinary processes; further transparency around sanctions outcomes is possible; closer regulatory collaboration on monitoring and sanctions would aid consistency, although care should be taken that consistency does not push regulators towards a tick box approach; the profession needs to be given clearer routes to 'speak up' about unethical behaviour on an anonymous basis; and there is a need to expand the scope of regulators' powers so that they can monitor and sanction the work of practices alongside individual practitioners. The extent to which this latter change is made needs to be considered in more detail, and some specific parts of the insolvency framework ('volume' IVAs, for example) may be in more need of a practice *and* individual practitioner-based regulatory approach than others.

Part One – Views on the Current Framework

1. *Do you think Recognised Professional Bodies (RPBs) investigate complaints about insolvency practitioners in a way that is fair, and delivers consistent outcomes for all parties? Please share examples of good and bad practice*

Overview

15. As outlined above, it is vital that a regulatory framework delivers consistent outcomes. It would be both unfair and counter-productive for insolvency practitioners to be held to different standards – or be subject to different interpretations of the same standards – depending on their regulator.

16. This is not to discount automatically the efficacy of a framework featuring more than one regulator: different regulators may specialise in different areas of regulation, for example, and it may make sense for one insolvency practitioner to opt for a regulator with more experience in their particular area of expertise. And, there are routes to consistency within the current framework: the Insolvency Service is in position as the 'regulator of regulators', and should be able to ensure consistency, while the Common Sanctions Guidance and the Complaints Gateway also serve to bring different parts of the regulatory framework into line.

17. R3 members' views on the consistency of the regulatory framework are mixed. While consistency is valued (and desired), there is a feeling among some members that the approach to ensuring consistency in the current framework can undermine the wider effectiveness of regulation. Anecdotally, at least, there is also a perception that different regulators *do* take different approaches to the enforcement of the same rules.

18. There are also some clear areas for improvement, particularly with regards to how regulation keeps up with the development of insolvency practice.

19. As to fairness, the regulatory framework caters for the needs of those inside and outside of the profession, with both able to make a complaint or raise an issue. The regulators are

neutral arbiters, with membership functions separated from their regulatory roles[4]. Where there is potentially a question about fairness, it is due to the speed with which cases can be assessed: the slow progress of a complaint through the disciplinary process – while, in part, a by-product of a desire to handle allegations and investigations fairly – could also be seen to be unfair in that it can leave an insolvency practitioner under a cloud for an extended period of time, and a complainant without prompt resolution of their complaint.

Members' Views

20. R3's recent member survey[5] found respondents to be fairly favourable towards the current regulatory framework, both in terms of its fairness (to insolvency practitioners subject to disciplinary proceedings) and its consistency of process.

21. 33% of respondents to the survey felt that the current framework performs either 'well' or 'very well' in terms of its fairness to insolvency practitioners subject to disciplinary proceedings, while 20% felt that the framework performed 'poorly' or 'very poorly' in this regard. The survey asked for members' views on nine other factors (detailed later in this paper), and while the proportion of respondents who felt the framework performs 'well' for fairness is not particularly impressive in context (sixth highest out of ten factors), it was not particularly likely to prompt a 'poor' response either (fourth lowest out of 10 factors).

22. The consistency of the regulatory *process* was also seen in a fairly positive light: 38% of respondents said that the framework performs 'well' or 'very well' in this regard, while 25% said that it performs 'poorly' or 'very poorly' (both statistics are fairly average in the context of other rankings).

23. By contrast, respondents were more likely than not to describe the framework as performing 'poorly' or 'very poorly' when it comes to the consistency of sanctions imposed by the regulators: 28% of respondents felt the framework was performing poorly here, while 24% felt that the framework performed 'well' or 'very well' – the framework was more likely to be rated as performing well for all other performance areas but one ('speed').

24. The perceived inconsistency of regulatory sanctions is borne out by the sanctions statistics, and by supporting anecdotal evidence provided by R3 members. The Insolvency Service's 2018 Annual Review of Insolvency Practitioner Regulation details 34 regulatory and disciplinary sanctions issued that year[6], including 18 IPA sanctions, nine ACCA sanctions (of which three were issued by the IPA), and seven ICAEW sanctions. The preponderance of IPA sanctions comes despite the fact that the IPA regulated fewer insolvency practitioners at the start of 2019[7]. This pattern is broadly repeated in previous years. It is unlikely that the IPA's frequent appearance on the sanctions list is because IPA-regulated insolvency practitioners are in any way 'worse' than their ICAEW counterparts; the difference may be down to

[4] Review of the Regulation and Monitoring of Insolvency Practitioners, Insolvency Service, September 2018, Page 4
[5] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[6] 2018 Annual Review of Insolvency Practitioner Regulation, Insolvency Service, May 2019, Page 14
[7] 2018 Annual Review of Insolvency Practitioner Regulation, Insolvency Service, May 2019, Page 12

differing approaches to regulation (although it is difficult to make an assessment without knowing the full details of the cases involved).

25. This has been echoed by feedback received from members over the last few weeks: R3 members have said that they feel the IPA is likely to take a more 'black and white' approach to regulation, and to take action on (what members describe as) relatively small compliance failures. Members have commented that this difference has been particularly notable in relation to the approach taken to SIP16 compliance.

26. We would encourage the Government to review how sanctions are applied by regulators and whether more could be done to ensure consistency in this area.

Searching for Consistency

27. R3 members value consistency in the regulatory framework, but there is a perception among some members that the hunt for consistency has undermined the overall effectiveness of regulation: in order to measure regulators' performance against common objectives, there is a concern that the Insolvency Service, as the 'regulator of regulators', is pushing regulators towards a 'tick-box' or compliance-driven approach to regulation, and away from a 'qualitative' or 'risk-based' approach. The focus, some members feel, is on whether forms have been filed correctly and on time, rather than on systematic misbehaviour.

28. A not uncommon comment from members at R3 listening events has been that, as a result, an insolvency practitioner can be 100% compliant with regulation, but is still able to bring the profession into disrepute – and to get away with it.

29. Again, consistency matters, but there must also be room for a risk-based approach in monitoring, and monitors should be allowed and encouraged to focus on specific areas of risk for individual insolvency practitioners. The impression we have had from our members is that this does not always happen. It is worth adding that some members have spoken positively about the thoroughness of monitoring visits: one member, from a large firm, said that their regulator did take a 'deep dive', risk-based approach to monitoring visits.

30. The Insolvency Service has a key role to play as the 'regulator of regulators' and is as responsible as the regulators for ensuring the effectiveness and consistency of the regulatory framework.

Consistency of Powers

31. As per paragraph 14(e), a good regulatory framework should be flexible enough to cope with innovation and changes in practice. It can be a problem where different parts of the framework are more flexible than others, or where regulators head in different directions on the same issue.

32. A case in point is the regulation of practices which specialise in the supervision of Individual Voluntary Arrangements (IVAs) on a 'volume' basis. These practices provide a particularly high-profile challenge to the 'traditional' 'insolvency practitioner-centric' model of

insolvency regulation: an individual insolvency practitioner at a 'volume' practice is particularly reliant on their practice and colleagues to fulfil their statutory duties for potentially thousands of cases, while they are likely to exercise limited control over the practice's governance and structure. The regulatory challenges posed by 'volume' IVA practices have been outlined by both R3[8] and the Insolvency Service[9].

33. As stated in the R3 report on 'volume' IVAs practices, there is a need for regulation to pay at least some attention to the practice as well as the insolvency practitioner. This can make it easier to track estate funds, and to establish governance structures. The problem for the regulators is that the ability to look at practices is not contained within their remit as set out by the Insolvency Act 1986 and associated legislation. Instead, regulators have had to improvise: ICAEW can rely on its role as an accountancy regulator, for example, while the IPA, as far as we are aware, has come to its own contractual arrangements with a number of 'volume' practices.

34. While the regulators' efforts in this area are welcome, the situation is far from ideal. The regulators should be given the same powers to act in all situations; insolvency practices should not be off-limits to some regulators and not others. Where there is a need to adapt regulation to changes in the marketplace, the Insolvency Service must be quicker to ensure that the regulators are working with the same toolkit.

2. *What level of confidence do you have that RPBs will deal with insolvency practitioner misconduct swiftly and impartially, using the full range of available sanctions set out in the Common Sanctions Guidance?*

Overview

35. The regulators' ability to deal with insolvency practitioner conduct 'swiftly' is one of R3 members' primary concerns with the effectiveness of the current regulatory framework. Both anecdotally and in R3's member survey, the framework is reported as taking too long to progress complaints and other disciplinary procedures.

36. Although, as above, the framework is generally felt to be fair, speed is a key component of situations where the framework is perceived to be *unfair*: disciplinary processes are seen to be slow to reach a conclusion, and complaints are described as 'hanging over' an insolvency practitioner. While due process is important, a complaint which takes years to reach a resolution is not necessarily fair to either the insolvency practitioner in question or to the complainant.

37. Importantly, the slow progression of complaints can undermine wider confidence in the framework, particularly where the complaint or investigation relates to a high-profile case. While sanctions may be eventually handed down, they do not necessarily make up for the impact of years of delays on the reputation of the profession in the eyes of interested parties (including journalists and politicians).

[8] Volume IVA Providers: Recommendations for Strengthening the Regulatory Framework, R3, September 2018
[9] Review of the Regulation and Monitoring of Insolvency Practitioners, Insolvency Service, September 2018

38. As above (paragraph 19), the regulatory framework can be described as impartial. Regulators' committees include – and can be dominated by – lay members, while, in R3's experience, those members of the profession who sit on disciplinary committees take seriously their roles as guardians of professional standards.

Members' Views

39. In R3's recent member survey, respondents expressed dissatisfaction with the speed of the regulatory framework. Out of ten performance areas, 'speed of the disciplinary process' ranked dead last in terms of the proportion of respondents who felt the framework performed 'very well' or 'well' in this regard (13%), and was the area where regulators were most likely to be judged to be performing 'poorly' or 'very poorly' (44%)[10].

40. A number of factors added to members' concerns with the speed of disciplinary processes. Members expressed frustration that, from their perspective, they are given short deadlines to respond to regulators' queries in disciplinary matters, but can then face long delays in receiving an update from the regulator. Several members who have reported a complaint to a regulator themselves felt that the progress of their complaint was slow and lacked transparency. Separately, 21% of R3 survey respondents said the framework performed 'poorly' or 'very poorly' on the transparency of the progress of a disciplinary procedure, while 29% said it performed 'well' or 'very well'[11].

41. Members concerned with the speed of regulatory processes do not, however, lay the blame entirely at regulators' feet: there is recognition that insolvency practitioners themselves may seek to drag out disciplinary procedures. This is not in the interests of the wider profession.

A Way Forward

42. In order to resolve concerns around the speed of the regulatory process, some members have suggested that a consistent, agreed and transparent timeframe or set of service standards should be introduced for disciplinary processes. This would make it easier for insolvency practitioners and the public to track cases, and should make it easier for the Insolvency Service to monitor regulatory performance. Regular reporting on case progress could also resolve some concerns with the speed of regulation.

3. *Do you believe the sanctions that the RPBs can currently apply are adequate and sufficient to provide fair and reasonable redress when a complaint is upheld? If not, what sanctions do you believe an RPB should be able to apply?*

43. R3 members are just as likely to consider the regulators' sanctions as effective at deterring 'bad' behaviour by insolvency practitioners as they are to consider them ineffective (36%

---

[10] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[11] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

said the framework performs 'well' or 'very well' in this regard, while 36% felt the framework performs 'poorly' or 'very poorly')[12].

44. It is also worth noting that, in the eyes of some R3 members, the publicity of a sanction is as effective a deterrent to bad behaviour as the sanction itself.

45. The establishment of the Common Sanctions Guidance saw a significant amount of work go into reviewing and revising insolvency sanctions, and a revisit does not seem to be necessary at this point. As flagged elsewhere in this paper, there is, however, scope for more consistent application of these sanctions. A more joined-up – or shared – approach to deciding regulatory sanctions could be considered.

46. As R3 has previously discussed with the Insolvency Service[13], we would be concerned by any shift in sanctions towards a focus on redress and remedial action. While, as far as we understand, the intention may be that remedial actions or redress be linked to poor advice ahead of an IVA, this could cause some problems if applied across a full range of insolvency procedures.

47. Our primary concern is that such remedial action would create a financial incentive to make a claim against an IVA supervisor (or other office holder), potentially leading to a large volume of claims being received by insolvency practitioners – both valid and invalid. Dealing with a high volume of claims would create a significant and disproportionate administrative and financial burden for both supervisors and the regulators. Given the costs likely to be involved in assessing or challenging a claim, supervisors may choose simply to accept any claim made – further incentivising claims regardless of the quality of advice given. On the other hand, faced with the prospect of remedial payments, insolvency practitioners may become more likely to challenge disciplinary proceedings.

48. Further, the prospect of being pursued for remedial action for the person in debt in the event of an IVA's failure could deter insolvency practitioners from supervising IVAs, thereby reducing the availability of appropriate debt solutions.

4. *What evidence is there to demonstrate that RPBs collaborate to ensure there is consistency in monitoring and enforcement outcomes?*

49. R3 is not best placed to comment on regulatory collaboration, although, as noted above, there can be inconsistency between regulators in their approach to regulation and enforcement. There are already tools within the regulatory framework to ensure collaboration on monitoring and enforcement outcomes: regulators, alongside other stakeholders, work together through the Joint Insolvency Committee, while we are aware that regulators' monitoring units do meet. The Insolvency Service, as the 'regulator of regulators', does have responsibility for ensuring that different regulators are aligned with each other.

[12] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[13] Letter from Duncan Swift (R3) to Angela Crossley (Insolvency Service), 6 June 2019

5. *Are RPBs doing enough to promote an independent and competitive insolvency practitioner profession that considers the interests of all creditors? Please share examples of good and bad practice.*

50. As part of R3's recent member survey, we asked how the framework performs in terms of acting in the interests of creditors: 49% of respondents said that the framework performs 'well' or 'very well' (the second highest score out of 10 performance areas), while 22% said it performs 'poorly' or 'very poorly'[14].

51. Without direct knowledge of the regulators' activities in this area, it is difficult to say exactly how regulators push the profession to consider the interests of all creditors. One proxy could be the regulation of pre-pack administrations, a scenario where, given the confidentiality and timeframes involved, it is particularly important that insolvency practitioners act as a safeguard for creditor interests. The statistics suggest that the profession does fulfil its duty of safeguarding creditor interests: the Insolvency Service's 2018 review of insolvency practitioner regulation found that just 1% of 2018's SIP16 reports required regulatory action[15].

52. It is worth noting that the profession does not necessarily seek to consider the interests of all creditors because of regulatory initiatives: the profession seeks to consider the interests of all creditors because it is its statutory duty to do so. The threat of litigation will weigh as heavily on an insolvency practitioner's mind as the possibility of regulatory action.

53. It is also worth noting that the regulators' ability to encourage the profession to consider the interests of all creditors is constrained by the legislation itself. Regulators are enforcing what is set out in statute. Some members have commented that this has led to compliance-focused regulation which is not in the best interests of creditors. As members have put it, a focus on statutory compliance alone is insufficient to ensure an insolvency practitioner delivers the best creditor and stakeholder outcomes. Reports may be filed on time, but, in the profession's experience, creditors can care more about the value of their returns, and that proceeds have been handled properly and can be accounted for.

6. *In what ways have the RPBs used the introduction of regulatory objectives to improve professional standards within the insolvency profession?*

54. It is somewhat difficult to find an objective measure of 'professional standards', and it should be remembered that increases or decreases in regulatory activity can either be a sign of changes in behaviour within the profession or changes in behaviour by the regulator. Again, without direct knowledge of the regulators' work, R3 is not well-placed to answer this question.

---

[14] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

[15] [2018 Annual Review of Insolvency Practitioner Regulation, Insolvency Service May 2019, Page 10]

7. *When dealing with insolvency practitioner conduct, how transparent are RPBs in their decision-making?*

55. R3 members have mixed views of the regulators' transparency when it comes to decision-making in disciplinary matters. As noted in paragraphs 35-41, transparency around ongoing disciplinary matters is seen to be limited. On the other hand, members have a positive view of the transparency of the start and end of disciplinary matters. 54% of respondents to R3's most recent member survey said the current framework performed 'well' or 'very well' in terms of the transparency around how to make an initial complaint about an insolvency practitioner (the highest score for all ten performance areas covered by the R3 survey), with just 10% of respondents saying that the framework performed 'poorly' or 'very poorly'. Similarly, 44% of respondents said that the framework performed 'well' or 'very well' on the transparency around the outcomes of complaints or disciplinary actions (the third highest rating for the ten areas covered by the survey), while 16% said that it performed 'poorly' or 'very poorly'[16].

56. As outlined paragraph 44, the prospect of publicity for a sanction can be as effective in its influence on insolvency practitioner behaviour as the sanction itself. Sanctions are public, and are published by both regulators and the Insolvency Service.

57. R3 agrees with a number of recommendations for the improvement of regulatory transparency, made by the Insolvency Service in its September 2018 review of the regulation and monitoring of insolvency practitioners. Details of insolvency practitioners' practices should be included in sanctions publicity, details of licence restrictions should be clear for the duration of a licence restriction, and it would be helpful to publish some detail on current warnings[17].

58. That said, any warnings would need to be published with some context provided. It should be clear that warnings are not equivalent to a 'full' regulatory sanction, and any 'expired' warnings (where, for example, shortcomings have been addressed) should be withdrawn. Warnings do fall short of misconduct and publicising them without context may have an impact on an insolvency practitioner's ability to obtain professional indemnity cover (thereby compromising their ability to practice).

8. *Does the current system of regulation provide for the effective scrutiny of insolvency practitioner fees? If not, what improvements would you suggest?*

59. As per paragraph 53, legislation is as important a driver of behaviour as regulation. This is particularly true with regards to fees. Regardless of the approach taken by regulators, feedback from R3 members is that the Insolvency Rules 2016 have undermined the effective scrutiny of insolvency practitioner fees.

[16] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[17] Review of the Regulation and Monitoring of Insolvency Practitioners, Insolvency Service, September 2018, Page 9

60. A key tenet of the insolvency framework is that insolvency practitioners and their fees are accountable to creditors. An engaged creditor body will exert control over insolvency practitioner fees, while the courts and regulators can act as a back-stop where this is not possible. While changes to decision-making procedures may have been well-intentioned, they have had the effect of making it harder for creditors to engage in the fees-setting process, and have increased the importance of the regulators' role. Theoretically, creditors have plenty of tools and levers with which they can exercise their own control over fees. In our members' experience, these tools are not always used. It would be preferable for the regulators to be restored to a back-stop, rather than a default check.

61. Feedback from R3 members has been that the new decision-making procedures have been cumbersome to use, hard for creditors to understand, and have decreased creditor engagement. Members have expressed concern that it has become increasingly hard to get creditors to approve fees – not because the fees are problematic, but because the process for approving fees is not fit for purpose. A full review of the 2016 Insolvency Rules is needed.

62. That said, R3 member feedback about the requirement to produce a fee estimate has often been positive: members have said that the early focus on fees has been helpful, while the inclusion of 'fees' as a regulatory objective has also been seen as welcome.

63. As covered in R3's 2018 report on the regulation of 'volume' IVA providers[18], there is also scope for the improvement of the regulation covering fees. In our report, we noted that:

    a. There is a risk that Category 1 expenses being charged could, in some instances, be excessive or may not be 'true' Category 1 expenses; and

    b. There is a risk that Category 1 expenses could be claimed for payments made to companies which are not actually 'independent' of an IVA practice. This risk may be more likely to occur in instances where an insolvency practitioner is an employee of a firm, and may be unaware of the complete group structure associated with their firm.

64. To resolve these potential risks, R3 made the following recommendations:

    a. A standardised fee estimate template for IVAs should be developed to ensure that information about expenses is clear and transparent, with easily identifiable information about payments to connected parties. The template should not include any suggestions of 'appropriate' fee or expense amounts to prevent any unintended perception of fee caps that may restrict an insolvency practitioner from reclaiming necessary expenses from the estate;

    b. The wording in SIP9 should be revised, including the introduction of a definition for 'independent' which clarifies when group companies or related parties will be

[18] Volume IVA Providers: Recommendations for Strengthening the Regulatory Framework, R3, September 2018, Pages 5-6

regarded as connected for the purposes of the SIP. The meaning should be relatively broad and could build upon the meanings of ’connected’ and ’associated’ in the Insolvency Act 1986;

c. Category 1 expenses should be redefined to differentiate between those expenses which are unavoidable, and those which could be considered ‘discretionary’. Where an expense is considered to be ‘discretionary’, this should require creditor approval in a similar manner as for Category 2 expenses;

d. There should be a requirement for greater transparency and disclosure of all fees and income that are coming into the corporate group; and

e. There should be a requirement for insolvency practitioners to provide regulators and creditors with a comprehensive structure of the wider business group in which their firm sits. As it would be preferable for this obligation to rest with the firm’s management, this should only involve an obligation for insolvency practitioners to undertake reasonable enquiries to determine the firm’s wider corporate structure and a proportionate approach should be taken to any regulation of this requirement.

9. *What are RPBs doing to promote the maximisation and promptness of returns to creditors? Please share examples of good and bad practice.*

65. We are aware that regulators do use monitoring visits to check on performance in this area, although the regulators themselves are better placed to comment in detail here. It is, however, worth noting that it is not only the regulators which push insolvency practitioners to maximise creditor returns and to repay money promptly: legislation, creditors themselves, and bodies like R3 all promote and encourage best practice.

10. *Is there confidence that people who are in financial difficulty and wish to enter a statutory solution are routinely offered the best option for their circumstances?*

66. R3 is aware of stakeholder concerns regarding the provision of debt advice to individuals, particularly ahead of IVAs. Feedback from R3 members is that concerns relating to advice are often linked to cases where individuals receive advice from a third party before being referred to an insolvency practitioner. It is incumbent on insolvency practitioners to ensure that any individual referred for an IVA has received proper advice regarding their options. It is right that an insolvency practitioner should face regulatory action should they fail to do this. We are aware of, and support, Insolvency Service and regulator work to improve the scrutiny of advice received by individuals ahead of an insolvency procedure.

67. Alongside the insolvency regulators, the Financial Conduct Authority has a key role to play in ensuring people in financial difficulty receive the right advice. At times, the overlapping regulatory framework can be problematic, and insolvency practitioners face a choice between (expensive) dual-regulation and ceasing to offer advice on matters upon which they are well-qualified to comment. While an insolvency practitioner may have a licence to

oversee a bankruptcy, they may not offer advice to someone about bankruptcy unless they are FCA authorised, or if an appointment as a trustee is likely (which can be a tricky criterion to meet on the basis that a) bankruptcy appointments will be taken in the first instance by the Official Receiver, and b) it is not always clear, at the outset, what help an individual might need). A government review of the full scope of the regulatory framework for debt advice might help.

11. *Are RPBs doing enough to promote the public interest and protect the public from harm? Please share examples of good and bad practice.*

Overview

68. While R3 members are generally confident in the regulatory framework, there are some mixed views on the regulatory framework's ability to protect the public from harm.

69. The majority of respondents to R3's survey said they have confidence in their regulator's ability to regulate insolvency practitioners (83% have a 'great deal of' or 'some' confidence in their regulator) and that they have confidence in the overall framework (71% have a 'great deal of' or 'some' confidence)[19].

70. However, as noted earlier in this response, R3 members do have concerns with the trend towards compliance-focused regulation. There is a sense that sometimes regulators do not always see the wood for the trees, and that bad behaviour can take some time to be dealt with (see paragraphs 35-41). That said, this is not necessarily a criticism of the existing regulators, but a criticism of the powers and remit they currently have.

71. The regulators are not the only part of the insolvency world with a role to play in promoting the public interest: R3, practices themselves, and the Insolvency Service all contribute in this regard.

'Everyone Knows Who They Are'

72. Ultimately, removing poor performing insolvency practitioners from the profession (or using sanctions and monitoring visits to improve behaviour) is an important part of the regulators' work to protect the public from harm.

73. The most vocal critics of insolvency practitioner conduct are often insolvency practitioners themselves. Insolvency practitioners are aware that poor behaviour by one insolvency practitioner will reflect poorly on the whole profession and that a consequent loss of public confidence affects the profession's ability to do its job. The profession is self-policing: 21% of respondents to R3's member survey on regulation said that they had themselves reported an insolvency practitioner to a regulator[20].

---

[19] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[20] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

74. Further, during R3's recent consultations with members, it has not been uncommon to hear the phrase, "everyone knows who they are" in relation to the insolvency practitioners perceived to be bringing the profession into disrepute. These practitioners are either seen as being fully compliant with regulation but still guilty of sharp practice, or working 'outside' the profession in collaboration with licensed insolvency practitioners. As noted above (paragraph 40), feedback from those insolvency practitioners who have reported another practitioner to a regulator is not positive: 61% of respondents to R3's recent member survey who had reported another practitioner to a regulator were 'somewhat' or 'very' dissatisfied with the outcome of their complaint, with several respondents expressing concern about the length of time taken to resolve the matter (it should also be noted that some respondents were very pleased with how their complaint had been handled)[21].

75. Another recent R3 member survey[22] found that 57% of respondents had witnessed another member of the profession acting unethically within the previous three years, but only 23% of respondents had reported this to a regulator. There are a number of potential factors behind this reporting gap: a concern that speaking up could backfire on the individual making the complaint; uncertainty about how to make a complaint; or a lack of conviction that a complaint would make any difference.

76. Finally, while 36% of respondents to R3's survey on regulation said that the regulatory framework performs 'well' or 'very well' in terms of the effectiveness of sanctions in deterring future 'bad' behaviour, only 30% of respondents said that the framework performs 'well' or 'very well' when it comes to preventing 'bad' insolvency practitioners from operating – a smaller percentage than the 45% of respondents who said that the framework performs 'poorly' or 'very poorly'[23].

Wider Powers Needed

77. While the above few paragraphs do not necessarily paint a positive picture of regulation, it is important to point out that complaints may relate to a small handful of insolvency practitioners. It is also important to point out that the regulators are in a difficult position, constrained by statute in terms of what they are required to look for, and how far they are allowed to look. If an individual *is* compliant with legislation and regulation, then *any* regulator in any sector or profession would be limited in what they can do. Indeed, this is not necessarily a problem which could be resolved by introducing a 'single regulator', regardless of the identity of that regulator.

78. As covered in more detail in paragraphs 105-112 below, the fact that regulators do not have a statutory remit to be able to look at a *practice* can be a significant drawback. While the focus on individual insolvency practitioners has its advantages – including the creation of an ethos of personal responsibility – it does create a regulatory blind spot. Practice accounts can make – and, in some high profile cases, have made – it difficult to trace estate funds, debtor contributions, or creditor repayments. Giving regulators a more effective toolkit and

[21] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[22] R3 Member Survey, Ethics, Jul-Aug 2019
[23] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

enabling them to regulate the activities of insolvency *practices* alongside insolvency practitioners would make it easier to address the 'bad' behaviour which concerns the profession. More generally, the concerns about a 'tick box' approach have already been highlighted. Regulators should be encouraged to check both regulatory compliance *and* bigger picture performance and standards issues.

79. Additionally, in order to plug the 'reporting gap' between practitioners witnessing and reporting unethical behaviour, clearer 'speak-up' or whistleblowing routes should be identified to allow the profession to tip off regulators – or the Insolvency Service – to behaviour in need of urgent investigation.

80. Combined with the timetables for disciplinary action recommended in paragraph 42, the above recommendations could make a positive impact on the regulatory framework's ability to protect the public from harm.

Part Two – Ranking Statements

On a scale of 1 to 5, to what extent do you agree with the following statements? (1 being strongly agree, 5 being strongly disagree.) Please provide an explanation for your score and supporting evidence if possible.

12. "The regulatory objectives are fit for purpose"

81. **3/5 (neither agree nor disagree)** – The regulatory objectives are not unreasonable: it would be hard to argue that regulators should *not* be required to achieve the goals set, and the regulators would likely work in support of the objectives whether they were in statute or not. Further, the wording of the objectives is somewhat vague in some areas, and phrases such as 'public interest' and 'fair and reasonable cost' are open to a wide variety of interpretations. That said, the introduction of the objectives may have had a positive impact on regulation: 48% of respondents to R3's member survey said that the standard of insolvency practitioner regulation had 'somewhat' or 'greatly' improved in the last few years (35% said it had stayed the same, while 10% said it had 'somewhat' or 'greatly' deteriorated). 73% of respondents to the R3 survey said that they are aware of the fact that the regulators had been set new objectives[24].

13. "The RPBs function in a way that delivers the regulatory objectives and this has increased confidence in the system"

82. **2/5 (somewhat agree)** – As stated above, R3 members have confidence in the regulatory framework and a majority has noticed an improvement in regulatory standards in recent years. Whether or not the wider public is aware of the objectives is another question.

14. "There are matters of significant concern, which are currently affecting confidence in the regime, which are not addressed adequately by the regulatory objectives"

[24] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

83. **4/5 (somewhat disagree)** – While there are matters of concern, as noted above, the phrasing of the objectives is broad enough to ensure that these concerns can be addressed within their current scope.

15. *"There is confidence that government oversight sufficiently holds the RPBs to account to deliver the regulatory objectives"*

84. **3/5 (neither agree nor disagree)** – Notwithstanding concerns regarding the practical impact of a push towards 'redress' and the appropriateness of 'fair and reasonable' as a standard for insolvency fees and expenses (which have already been flagged with the Insolvency Service), R3 welcomed the conclusions of the Insolvency Service's September 2018 review of insolvency practitioner regulation. The areas of concern identified by the Insolvency Service match concerns previously raised by R3, particularly with regards to the regulation of 'volume' IVA providers.

85. As part of its September 2018 report, the Government noted that in some regulatory cases "it was evident that there was a focus on asking for improvements by the insolvency practitioner, and testing those through follow-up monitoring visits, rather than also making a referral for disciplinary action on individual case findings."[25] R3 would caution against a shift too far in one direction: proactively improving standards is a key part of effective regulation – and helps build a competitive marketplace – and should not be abandoned.

86. Looking more broadly at the Government's performance as a 'regulator of regulators', it is worth reiterating that a drive for consistency among regulators is perhaps contributing to the compliance-driven approach which has concerned some R3 members. While consistency is a crucial component of insolvency regulation, it is important to make sure that it does not lead to a superficial, 'tick-box' approach.

87. Recent developments suggest government prompts can and do lead to improvements in regulatory standards: the August 2019 monitoring report of the IPA noted a number of improvements made in response to earlier recommendations by the Insolvency Service[26].

Part Three – The Future

16. *Does the reserve power provide sufficient flexibility in the options for a single regulator? If so, which option would most effectively deliver the regulatory objectives?*

Overview

88. The question of whether or not there should be a 'single regulator' for the insolvency profession is one which splits R3 members. A number of R3 member surveys, conducted over the last few years, have consistently found a roughly even divide between those in favour of some form of 'single regulator' and those opposed. The opposition to a single

---

[25] Review of the Regulation and Monitoring of Insolvency Practitioners, Insolvency Service, September 2018, Page 7

[26] The Insolvency Practitioners Association Monitoring Report, the Insolvency Service, August 2019

regulator is not self-interested: a single regulator is not a panacea and there are disadvantages to introducing one. Ultimately, as we stated in the introduction to this paper, what matters is *what* regulation delivers, not *how* it is delivered.

89. With regards to the power in the legislation, the Government does have the right level of flexibility as to the identity of a potential single regulator: a single regulator should either be a new, independent body, or an existing regulator. Given the conflicts involved, and its prior performance (see paragraphs 100-103), the Government should not play a role in the direct regulation of insolvency practitioners.

90. We note that the Government's call for evidence paper states that the existing legislation does not allow for certain changes to the existing regulatory system, including the establishment of collective monitoring or independent disciplinary tribunals. Based on the feedback of some members, it would be helpful to update the legislation to allow for changes like these (on the proviso, of course, that any proposals for change are subject to full consultation).

91. As noted throughout this consultation response, there is a wider question about insolvency legislation (beyond the Government's reserve power), and whether or not it supports effective regulation. In recent years, it has taken far too long for issues in legislation to be resolved, or for new legislation to be introduced where needed. Reform of insolvency practitioner bonding and reform of the corporate insolvency framework, for example, have been long-delayed. In the meantime, channels like 'Dear IP' have been used as a means of introducing quasi-legislation. While we understand the Government's room for legislative manoeuvre has been limited for a number of years, it is important to note that this has had practical consequences for a profession and framework fundamental to the effective functioning of the economy. The Government has a duty to ensure the legislative framework is up-to-date.

The Future of the Regulatory Framework

92. As we have found with previous member surveys, the most recent R3 member survey[27] shows members to be split on their 'ideal' regulatory system.

93. Respondents to the survey were most likely to favour a 'single regulatory process', where the existing regulators share a single monitoring, complaints and disciplinary process (28% were in favour of this, compared to 29% in 2018[28] and 33% in 2016[29]). The next most popular option was a 'single, independent regulator', with 25% in favour of this (23% in 2018; 29% in 2016). The third most popular option was for the existing framework to stay the same: 17% were in favour of this (11% in 2018; 10% in 2016). One of the existing regulators becoming a 'single regulator' (14%) or maintaining the existing framework but with fewer regulators (13%) received broadly the same level of support (in the 2018 survey,

[27] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019
[28] R3 Member Survey, Regulation & Other Matters, Jun-Jul 2018
[29] R3 Member Survey, Regulation & Other Matters, Jun 2016

21% of respondents favoured one of the existing regulators becoming a 'single regulator'; support for the existing framework with fewer regulators was in line with previous surveys).

94. Overall then, in the most recent survey, 39% of members were in favour of some sort of 'single regulator' (either a new regulator, or an existing regulator), while 57% were in favour of retaining a multi-regulator structure (either with a shared regulatory process, the status quo, or with fewer regulators).

95. The attractions of a single regulator are clear: it would make it easier to enforce consistent regulation, and, with an independent regulator, it would be harder to level accusations of self-interest at the profession.

96. The attractions of a single regulator are not, however, exclusive to this type of regulation. Consistent regulation is not impossible in a multi-regulator framework, particularly a framework with a shrinking number of regulators. When the Government's reserve power was established, there were eight regulators; by the end of this year, there will, depending on definition, be three or four: ICAEW; ICAS (some of whose duties will soon be carried out by ICAEW); IPA; and CAI. Only two (ICAEW, IPA) are effectively UK-wide. Meanwhile, the insolvency profession would hardly describe its own experience of regulation as lenient. While the profession has its concerns regarding the treatment of a small number of practitioners (who, as noted above, are not necessarily incompliant with regulation), monitoring visits are frequently described as daunting and challenging experiences. Further, as the Insolvency Service noted in its September 2018 review of insolvency practitioner regulation, all regulators "have procedures in place to separate membership functions from regulatory activities"[30]. Self-regulation is not automatically bad regulation.

97. Moreover, a switch to a single regulator is no guarantee that disciplinary procedures will be processed more rapidly, and, without changes to the regulator's remit and powers, there is no guarantee a single regulator will be able to pick up and deal with issues not addressed by the current regulators. A single regulator could also be prohibitively expensive to set up and run, and would involve a significant degree of disruption.

98. A switch to a single regulator would also jeopardise positive aspects of the existing regulatory framework. Several members have commented that it is important that regulators be 'close' to the profession in that insolvency practitioners can contribute to regulators' committee and policy work, ensuring that the regulator has a good understanding of issues faced in practice by the profession. Again, this is not a feature unique to one type of regulation, but it is important that this feature be retained regardless of the future structure of the regulatory framework. It is worth noting that, in line with other professions, many disciplinary committee members are 'lay' members – the profession's voice within the regulators is one voice, but it is not the only voice.

[30] Review of the Regulation and Monitoring of Insolvency Practitioners, Insolvency Service, September 2018, Page 4

99. As noted in paragraph 93, a shared regulatory process is an option popular with members. This could combine the positive features of the current framework with improvements in consistency. The profession has had previous experience with a shared regulatory process in the form of the mid-90s Joint Insolvency Monitoring Unit (JIMU), but it would be fair to say that member feedback on this experience has not been positive. R3 members have commented that JIMU took an overly 'adversarial' approach to regulation, and the project did not last long. R3 would encourage the Government to explore with regulators how shared regulation might work in the 21st century, and, in particular, how the regulators could collaborate more on monitoring and sanctions.

The Role of the Government in Regulation

100. As per paragraph 89, the government should not play a role in the direct regulation of insolvency practitioners. 57% of respondents to R3's most recent member survey said that they 'somewhat' or 'strongly' disagreed that the government should play a direct role in the regulation of insolvency practitioners (including 39% who 'strongly disagreed'); 26% agreed that government should play a direct role[31].

101. On one level, opposition to a direct role in regulation for government is because its track record in this regard is poor: the government ceased to act as a regulator of insolvency practitioners in 2016 with good reason, and member feedback on the reputation of pre-2016 'Secretary of State' regulation has been uniformly negative. Pre-2016 government regulation has been described by some members as "regulation of last resort".

102. Direct government regulation of insolvency practitioners would also create some very serious conflict of interest issues: government would set insolvency legislation, regulate insolvency practitioners, and then, effectively, compete with those same insolvency practitioners for work – while not being subject to the same regulation itself. This would not be an even, or fair, playing field.

103. Given the above, it would be fundamentally inappropriate and unnecessary for the Government to amend the legislation to allow itself to act as the direct regulator of insolvency practitioners.

17. Should government look to create a different type of regulatory framework that better suits the current insolvency system (for example firm regulation in certain sectors)? If so, what type of framework would best deliver improvements to public confidence?

104. As above, R3 would encourage the Government to consider how a shared approach to regulation might operate within the current framework.

105. And, as already outlined in this paper, there are good reasons to support the introduction of practice regulation alongside individual licensing across the profession. This would enable regulators to catch up with the reality of the modern insolvency and restructuring profession, and, importantly, it would ensure all regulators have the same

[31] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

powers available to them. The simple fact is that, while it may not have been the case in 1986, large, multi-practitioner or 'volume' practices are key actors in the handling of insolvency cases. Individual insolvency practitioners may have limited control over their wider practice, while the structure of practices and partnerships will have important implications for conflicts of interest questions and case accountability. Introducing practice licensing would enable a regulator to examine the full scope of the insolvency landscape: it would ensure practice accounts – as well as case accounts – could be put under a microscope, and it would help regulators examine the relationship between an individual insolvency practitioner and their practice (including whether or not the practitioner is ever put under pressure to act in a way contrary to their statutory duties).

106. This is not to say that individual practitioner licensing should be dropped: feedback from members is that individual licensing instils a sense of personal responsibility and helps maintain high standards. It would also be difficult to assess insolvency practitioners' ability to perform their duties without some form of individual licence. There is room in the framework for both individual and practice licensing.

107. To a degree, the existing framework has already adapted to the importance of a practice as a vehicle for insolvency practitioner work: 54% of respondents to R3's recent member survey said that they worked at a practice where all the licence holders are regulated by the same regulator; another 21% of respondents were sole licence holders[32]. Many of those respondents who had switched regulator said that they had done so because a new employer required all licence holders to be regulated by the same regulator. Practices are already pre-disposed to working with a regulator to ensure the efficient monitoring of their insolvency practitioners; it would not be a leap to extend regulation to look at the practice as well as the individuals.

108. As outlined in R3's 2018 report on the regulation of 'volume' IVA providers, there are multiple aspects of insolvency regulation complicated by the fact that, in some situations, an individual insolvency practitioner is unable to exert influence over their employer, and by the fact that an insolvency regulator will not have access to pertinent information[33]:

a. There is a risk that Category 1 expenses could be claimed for payments made to companies which are not actually 'independent' of an IVA practice. This risk may be more likely to occur in instances where an insolvency practitioner is an employee of a firm, and may be unaware of the complete group structure associated with their firm; and

b. Where an insolvency practitioner does not have adequate oversight and access to information about their cases, it is also unlikely that their regulator will be able to access this information, which may hamper a regulator's monitoring visits.

---

[32] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

[33] Volume IVA Providers: Recommendations for Strengthening the Regulatory Framework, R3, September 2018, Page 5-6

109. To help manage these risks, R3 recommended that:

a. The wording in SIP9 should be revised, including the introduction of a definition for 'independent' which clarifies when group companies or related parties will be regarded as connected for the purposes of the SIP. The meaning should be relatively broad and could build upon the meanings of 'connected' and 'associated' in the Insolvency Act 1986;

b. There should be a requirement for greater transparency and disclosure of all fees and income that are coming into the corporate group;

c. There should be a requirement for insolvency practitioners to provide regulators and creditors with a comprehensive structure of the wider business group in which their firm sits. As it would be preferable for this obligation to rest with the firm's management, this should only involve an obligation for insolvency practitioners to undertake reasonable enquiries to determine the firm's wider corporate structure, and a proportionate approach should be taken to any regulation of this requirement;

d. Corporate governance in these firms should recognise the duties of insolvency practitioners and facilitate their compliance with professional standards. There should be a strong emphasis in the regulatory framework on reviewing the systems and processes in place at a firm as a whole to ensure that an insolvency practitioner has adequate oversight of their cases. Any changes to the framework should be transparent and apply consistently across the regulators;

e. There should be a change in the powers of the regulators as well as changes to the regulatory framework, including introducing minimum standards for process controls for volume IVA providers and clear expectations for insolvency practitioners on their roles and responsibilities with regards to their cases, and the processes which support them. This should include clear guidance on the minimum steps that it is expected a provider should undertake upon buying a portfolio of IVA cases; and

f. There should be increased communication between the regulators about the volume IVA providers where the insolvency practitioners which they monitor work, with due respect to confidentiality. This could be monitored by the Insolvency Service, in its role as the overarching regulator of the regulators.

110. The introduction of practice licensing could also help manage the risks outlined above and would bring the insolvency and restructuring profession in line with other professions.

111. The idea of practice licensing is a popular one among R3's members. Our recent member survey found that 66% of respondents 'somewhat' or 'strongly' agreed that there should be an element of practice licensing in the profession; 48% said that practice licensing

should *accompany* individual licensing across the *whole* profession; and 24% said that practice and individual licensing should be combined in *parts* of the profession. Just 6% of respondents thought that practice licensing should *replace* individual licensing in parts or across the profession[34].

112. Introducing a form of practice licensing would, however, be a significant change to the insolvency framework and would potentially be disruptive and costly for practices to implement. It is also worth considering how far the scope of practice licensing might extend: there is, perhaps, a greater argument for it in some areas of the profession (such as the 'volume' IVA sector) than others. A full consultation on how practice licensing could be introduced would be welcome.

18. Should government have a role within any new or improved regulatory framework?

113. As outlined in paragraphs 100-103, government should not play a role in the direct regulation of insolvency practitioners. It is appropriate, however, that government set objectives for the regulation of insolvency practitioners, and that, in any framework with multiple regulators, government acts to ensure consistent regulation. Again, however, we would urge the Government to ensure that consistent regulation does not come at the expense of effective regulation.

19. How might any future single regulator, or alternative framework, be funded?

114. It is very important for any regulator of the insolvency profession to be financially resilient: it needs resources to monitor insolvency practitioners effectively; resources to ensure the swift and efficient conduct of disciplinary proceedings; and resources to withstand any challenge to its decisions.

115. With just under 1,600 licence holders, funding available from the profession itself is always likely to be limited, regardless of however many regulators there are. Existing regulators subsidise the cost of insolvency regulation in a number of ways, including income from a wider membership or through events, training or conferences. A single, independent regulator would not – or at least, should not – have these alternative income streams available.

116. It is worth considering whether it is fair to pass the costs of regulation onto the profession itself: Licence fees constitute a fixed cost and therefore impose a disproportionate burden on smaller practices. We have already seen, with insolvency practitioner bonding, that any increases in fixed costs can force smaller practitioners out of the market, reducing competition and diversity. Further, given that the work of the insolvency profession is a public good, and that the regulation of this work is also in the public interest, there is a strong argument that the regulation of insolvency practitioners be, at least in part, publicly funded.

[34] R3 Member Survey, Future of Insolvency Regulation, Aug-Sep 2019

Part Four – Other

Official Receiver Regulation

117. Of all insolvency cases in any given year, a significant proportion will be handled by the Official Receiver. On several occasions in the last few years, this has included cases which have attracted significant public interest. Given the aforementioned changes to decision-making procedures introduced by the 2016 Insolvency Rules, it has also become less likely that a case will be passed from the Official Receiver to an insolvency practitioner.

118. It is of significant concern, therefore, that the Official Receiver is still not regulated to the same level as the insolvency profession – if at all. This does a disservice to both debtors and creditors, and to the office of the Official Receiver itself.

119. The Official Receiver is not required to produce the same information for creditors, there is no transparency around Official Receiver performance, and there is no transparency around disciplinary proceedings involving Official Receiver staff. Every argument that insolvency practitioners be required to report to creditors, have their performance examined, and have their sanctions publicised applies to the Official Receiver, too. The difference in standards required of the profession and its government counterpart is unfair, indefensible, and unsustainable.

Regional Variations

120. A key element of the existing regulatory framework is that it recognises significant jurisdictional variations in the UK's statutory insolvency framework: alongside the two largest (England & Wales-focused) regulators, there are regulators specialising in supporting insolvency practitioners working in Scotland and Northern Ireland.

121. While consistency between regulators is to be welcomed, it is important for the regulatory framework, regardless of its structure, to take jurisdictional differences in legislation and experience into account.