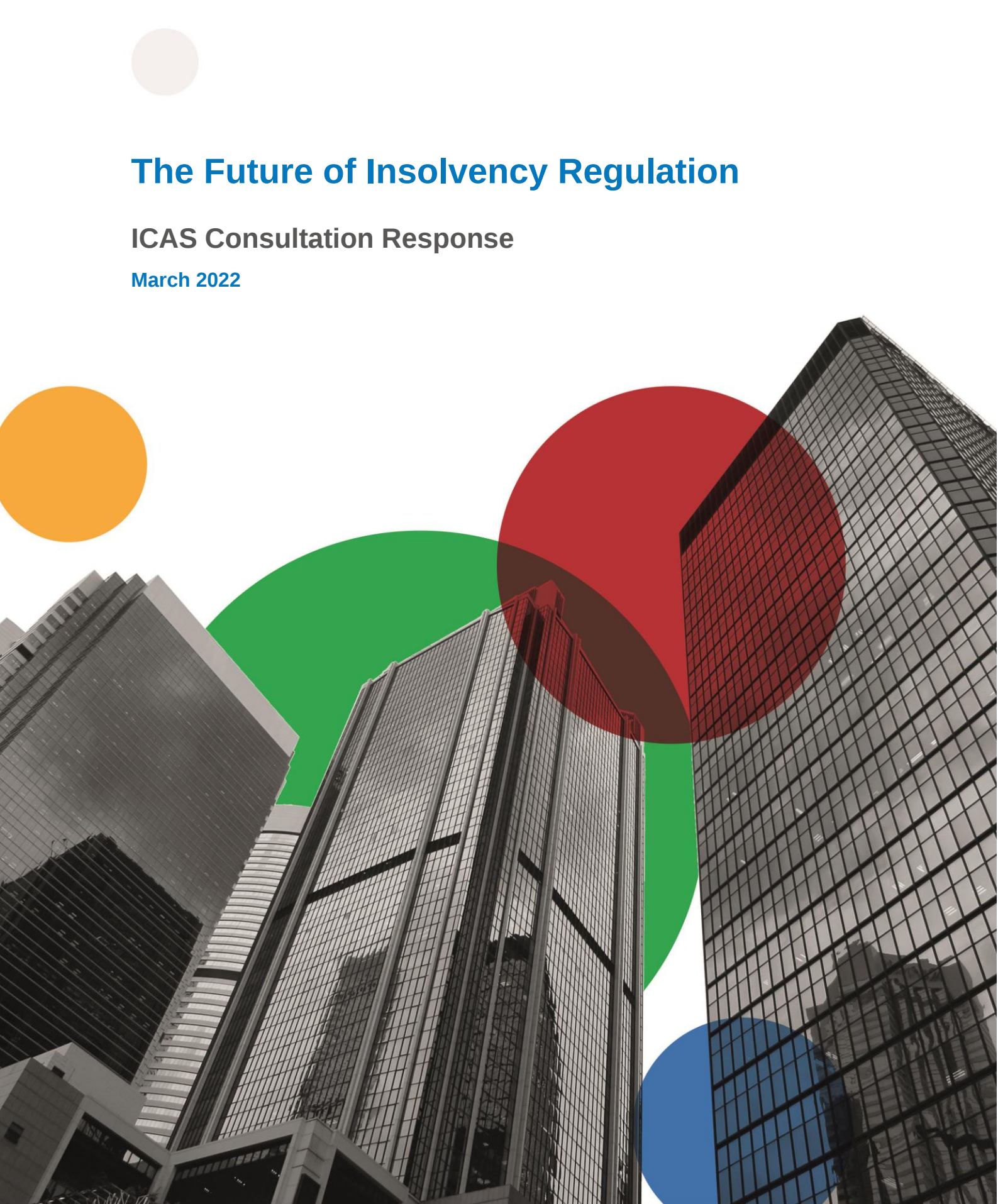




The Future of Insolvency Regulation

ICAS Consultation Response

March 2022

Introduction

The Institute of Chartered Accountants of Scotland (ICAS) is the world's oldest professional body of accountants and represents over 23,000 members who advise and lead businesses across the UK and in almost 100 countries across the world. ICAS is one of the four Recognised Professional Bodies (RPB) regulating insolvency practitioners (IPs) who can take appointments in the UK. We have an in-depth knowledge and expertise of insolvency law and procedure. We also have experience in other areas of regulation, as an RSB for statutory audit, and a PBS for anti-money laundering.

ICAS' Charter requires it to primarily act in the public interest. Our responses to consultations are therefore intended to place the public interest first. Our Charter also requires ICAS to represent its members' views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.

ICAS, like its members and the public, is interested in ensuring that any changes to legislation and procedure are made based on a comprehensive review of all options, supported by evidence, with reasonable confidence that the changes will bring benefits to all stakeholders.

ICAS is pleased to have the opportunity to submit its views in response to the Government's consultation on the future of insolvency regulation. We would be happy to discuss any of the matters raised in this response in further detail with the Government or the Insolvency Service, and in conjunction with the other RPBs.

Our approach to the consultation

We have adopted the following approach in drafting our response, in the hope of producing a more accessible submission for all readers:

- We have not responded to the individual consultation questions specifically but have instead grouped our comments to focus on the key areas of the consultation.
- We have also included an executive summary below to highlight our key comments.

Executive summary

ICAS fully supports the need for the UK to have an insolvency regulatory framework which is robust, effective, and engenders trust. It is widely acknowledged that: "The UK is rightly regarded as having a first- class insolvency regime, which is respected and admired internationally"¹, "with the vast majority of practitioners performing to a high standard"².

The Insolvency Service, and the RPBs have worked collaboratively for many years to deliver this highly respected insolvency regime and the high standards of service which IPs provide. Monitoring of RPB systems, processes, and delivery of regulatory functions, have resulted in broadly positive reports being issued, and where matters for improvement have been identified these have been addressed.

While we acknowledge and support the need to continually review, develop, and amend the regulatory framework over time, we believe that this should be a process of evolution, rather than revolution.

Single Regulator proposals

We have two overarching concerns regarding the proposals to change the UK's regulatory framework for insolvency. Firstly, there is a lack of evidence to support the consultation's conclusions regarding the current system. Secondly, the case for installing the Insolvency Service as a single regulator is not well made out. We set out our concerns in detail in the section [Reform of the regulatory framework](#).

¹ Foreword

² Executive Summary

We therefore do not believe that the preferred option of a single government regulator offers either a suitable framework, or sufficient certainty of achieving the desired outcome. Such a course of action comes with significant risk.

The key concerns are:

- There is no empirical evidence that the current system is fundamentally broken
- The suggestion that the current system is hindered by undue delay ignores that a robust regulatory structure benefits from careful consideration of changes, as well as the input of a range of stakeholders.
- There is an underlying failure in the consultation to demonstrate why – with any certainty – the proposal to install the Insolvency Service as a single regulator would be likely to result in substantially better outcomes for all stakeholders.
- There is a failure to recognise the significant risk that the current regulatory framework may fail to function effectively during any transitional period between the decision to proceed with a single regulator, preparations, and the final establishment and transfer of responsibilities.
- Far from reducing perceived conflicts of interest, the creation of a single regulator under the Insolvency Service would significantly expand the number and scale of conflicts and would not result in the “impartial framework” necessary to promote public confidence in the insolvency process.

Also, the current regulatory framework broadly matches the different UK legal jurisdictions and has significant strength when it comes to devolution issues. In broad terms, ICAEW and IPA mostly regulate IPs in England and Wales. ICAS regulates IPs largely in Scotland. Chartered Accountants Ireland regulate IPs predominately in Northern Ireland (and the Republic of Ireland). This means that there is significant and dedicated expertise within the RPBs to deal with insolvency regulation issues which arise because of the differences between insolvency legislation across the jurisdictions. The RPBs work collaboratively and effectively to ensure that the insolvency regulatory framework can be applied consistently across the UK.

We have significant concerns that the proposed regulator would be unable to effectively resource and would have insufficient knowledge of devolved matters, resulting in a weakening of the UK regulatory framework.

An alternative approach

We do not agree that the current framework is overly complex. Some of criticism ignores the close working relationships of the four RPBs and the fact that insolvency is not a profession in its own right, but rather a specialist regulated function carried out predominantly by those working the accountancy and legal professions.

Many of the functions carried out by the RPBs are sub-functions of a wider regulatory framework, with the cost, skill, knowledge, and experience shared across multiple regulatory functions which are similar in nature. We have significant concerns that that a single government regulator would not be able to take advantage of the scale of functions in the same way as the RPBs.

We consider that the most pragmatic and beneficial way forward – given the substantial risks identified in pursuing the preferred approach – would be through a mixture of non-legislative interventions which would retain the strengths of the current system while addressing perceived weaknesses, backed up by legislative provisions where appropriate.

For example, the previous concept of a Joint Insolvency Monitoring Unit (JIMU), whereby monitoring of IPs was undertaken by a single, independent body, could be re-established, with the possibility of expanding this to a Joint Insolvency Investigations and Monitoring Unit (JIIMU). In addition, a Joint Disciplinary Scheme (JDS) could be established providing a central pool of individuals to consider disciplinary reports, conduct disciplinary hearings, and issue sanctions. We would support that the establishment and oversight of these bodies being supported by legislative provisions.

We would be willing to discuss and co-operate with the Government, the Insolvency Service, and the other RPBs, to consider all alternative solutions.

Other changes to the regulatory regime

Firm regulation

The introduction of a hybrid model which allows for the statutory regulation of firms and individuals is supported by ICAS. We consider that this could be introduced irrespective of whether a single regulator is ultimately pursued or not.

We support the view that additional regulatory requirements and monitoring should be targeted at the firms which have the potential to cause the most damage to the insolvency market; particularly those operating in the volume consumer debt solution market. As with many of the proposals, the devil will be in the detail, but it is imperative that regulation is proportionate and avoids unnecessary burdens on low-risk businesses, which will inevitably already be facing additional costs which will be passed on to them to fund the setting up of the new regulator and the costs of operating the new regime.

We would be concerned that the introduction of a compensation scheme (discussed further below), alongside firm regulation, may result in firms having to restructure their operational entities in such a way as to minimise financial and other risks. This would result in additional costs to firms both one-off and recurring. For many smaller firms and IPs the costs in doing so or the timing of this may be a deciding factor in them deciding whether to continue in the profession or not.

Public insolvency register

ICAS is generally supportive of a public register of IPs and firms. There is, however, a need to consider in detail aspects relating to the timing of sanctions being made public and what sanctions are publicised to help ensure that the impact of sanction publicity is proportionate. Further discussion of the details of this point is therefore required.

Compensation scheme

ICAS is fully supportive of the principle that IPs should deliver appropriate standards of service. This is enshrined in the Code of Ethics, specifically under the fundamental principles of professional competence and due care, confidentiality, and professional behaviour.

IPs are required to operate a complaints process already. This operates prior to the regulatory complaints system and complaints being submitted to the single complaints gateway operated by the Insolvency Service. Our members have informed us that where instances of poor standards of service are legitimate and have been identified then appropriate action is taken such that the complainant is satisfied. This is supported by the very small number of complaints currently submitted to the gateway.

We highlight the significant complexities of a compensation scheme which operates in a manner as to satisfy those impacted and not be overly burdensome and expensive to run. In addition, there is an inherent potential issue in terms of intrusion on, or complication of, the civil remedies available.

We note that compensation arrangements operated by other professions, or in relation to other services, are typically focused on consumers and seek to provide access to 'justice' in an appropriate and efficient manner. We would suggest that if a scheme of compensation were to be pursued that this should concentrate primarily on consumers (the volume personal insolvency market) and that the existing avenues to seek loss redress should be otherwise maintained.

We would also highlight that there is a close correlation between the area of redress and complaints, investigations, and disciplinary and enforcement proceedings. It would seem entirely sensible to link the remit for any compensation into whatever structure is ultimately pursued in this area.

We are open to further engagement with the Insolvency Service around this matter but believe there are some significant conceptual matters which require further detailed discussion before some of the finer detail such as compensation amounts, limits, etc can be appropriately considered.

Funding the regulatory model

We have some concerns that the proposals in the consultation paper may result in significant increases in direct regulatory fees. This is based on experience and evidence surrounding governmental bodies and agency fees, not only in respect of insolvency (IS levy, complaints gateway levy, etc) but in other areas such as audit and AML. Costs of services run by such bodies often lack transparency and invariably seem to end up being much higher than first anticipated, and higher than they would be under non-governmental bodies.

Regulatory fees should be proportionate and must not limit access or act as a barrier to an effective market. They must also be efficient to collect and avoid creating an administrative burden for the payer and the collector. We agree that micro and small-sized firms require particular consideration in the design of regulatory fees.

We consider that there is a case for innovative thinking in relation to funding of insolvency regulation. Ultimately the need for insolvency procedures is not because of the insolvency profession's actions. They arise often due to poor lending practices or because of poor business management. There may be a case for considering whether those areas should contribute to funding the regulatory framework. This could be done through incorporating into financial services levies or through the new Companies House fee structure which is being considered. We appreciate that there will be challenges to be overcome with this alternative approach but believe that this should be given further consideration as part of the funding solution.

Bonding

ICAS is supportive of the need to have in place protections for creditors. However, what that protection looks like, and how it should be formulated, is a matter which requires careful consideration, especially when placed alongside what could be potentially significant changes to the regulatory landscape in wider terms.

ICAS considers that there is a strong case for the removal of statutory bonding arrangements altogether, which would undoubtedly result in significant efficiencies and cost savings in insolvency procedures. If there is a desire to retain some form of bonding provision, this should be moved away from a bond per case to an overarching policy taken out to cover all cases. We consider that this could readily be linked to firm authorisation requirements bringing efficiency to administration and clarity over cover. This would work in a similar manner to PII requirements for firms currently operated by the RPBs.

We do not consider that a levy funded scheme should replace the bonding regime. There are significant concerns about the financial viability of such schemes as has been shown with for instance the Guarantee Fund within the legal profession. If the Government's contention is that the insolvency profession is small, then the burden of this fund would fall on a small number of individuals or firms adding to the significant additional financial burden which can be anticipated from a single government regulator as proposed. We consider that there would be a serious cumulative risk of the profession becoming unsustainable.

Conclusion

In December 2010, HM Government issued a publication "Reducing Regulation Made Simple". It offered a view of regulation which is relevant in the current context. The report suggested as follows:

"It [regulation] can be ineffective in achieving its intended outcomes if its effects on the system as a whole have not been properly considered. If the details of its proposed implementation have not been thought through at the outset, including the costs on the economy and the potential impact of enforcement, the burden of regulation can be much higher than necessary. In fact, hastily conceived regulation may prove to be unenforceable and could, in some cases, be more harmful than doing nothing."

We are concerned that the proposals in the consultation paper lack detail around implementation and demonstrate insufficient thought at the outset. Pursuing the proposals – particularly the establishment

of a single government regulator – could be more harmful than doing nothing, with a risk that experienced IPs may decide to exit the profession.

We would hope to engage further with Government and the Insolvency Service to consider and take forward alternative proposals which would be more likely to strengthen the insolvency framework, maintaining and enhancing the worldwide reputation that the UK already has as an effective insolvency regulator.

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Reform of the regulatory framework

It is important at the outset to state that ICAS fully supports the need for the UK to have an insolvency regulatory framework which is robust, effective, and engenders trust. The statutory objectives introduced by the Small Business, Enterprise and Employment Act 2015 set out in more detail what a regulatory framework should achieve in this context, and we believe that we consistently act in accordance with those principles when discharging our regulatory functions.

The consultation paper acknowledges that: “The UK is rightly regarded as having a first- class insolvency regime, which is respected and admired internationally”³ and that “the vast majority of practitioners performing to a high standard”⁴. The conclusions here follow the current regulatory framework and how it is operated by the four Recognised Professional Bodies (RPBs) and the Insolvency Service as oversight regulator.

We have two overarching concerns regarding the proposals to change the UK’s regulatory framework for insolvency. Firstly, there is a lack of evidence to support the consultation’s conclusions regarding the current system. Secondly, the case for installing the Insolvency Service as a single regulator is not well made out. We will deal with each of these concerns in turn.

Conclusions on the current system

1. There is little or no empirical evidence that the current system is fundamentally broken.
2. In the consultation, there is a prevalence of statements such as “there are likely to be inconsistencies” [with a multi regulator system] and “a perception of a lack of impartiality”. While acknowledging that perception can be important in maintaining public confidence, it should not be the driving factor behind change on the scale proposed without being able to demonstrate a failing system and evidence that the new regime would be likely to offer significant improvements.
3. The consultation paper raises theoretical risks for example:

“There is also potential for wider damage to employment and the economy if financial institutions are unwilling to lend money for investment because of a lack of confidence in the insolvency regime. This is particularly relevant in today’s current economic climate as we build back from the impact of the pandemic. Effective and proportionate regulation is needed to minimise the risk of potential abuse and provide reassurance and trust in the profession”⁵.

While acknowledging that we are living in unusual times, with widespread economic challenges, we have no knowledge of financial institutions altering – or even considering altering – their lending practices due to a lack of confidence in the current insolvency regime. We are concerned at the number of theoretical risks set out in the consultation, with little or no exploration of the likelihood of their crystallising. The Government should be wary of a knee-jerk reaction to unique circumstances.
4. Concerns are raised about a lack of “consistency, independence and transparency”⁶ in the current regime. The RPBs have co-operated effectively with the Insolvency Service (as oversight regulator) on regulatory issues and have responded positively to recommendations for improvement, which has helped in driving some change and positive outcomes (for example the implementation of the single Complaints Gateway). The RPBs meet frequently with the Insolvency Service, with a collaborative relationship established.
5. The references within the consultation paper to “self-regulation” fundamentally misrepresent the position. In discharging its role as an RPB, ICAS is committed to best practice in regulation. ICAS’ duty to act in the public interest is enshrined in our Royal Charter and is the touchstone which

³ Foreword

⁴ Executive Summary

⁵ Introductory background

⁶ Foreword

informs everything we do from a regulatory perspective. The criticisms of self-regulation ignore all the checks and balances on self-regulation (e.g. lay members, government oversight etc) and the positives that collaboration between the RPBs and the Insolvency Service has brought.

6. We have some concerns over the reliance on the report by the APPG on Fair Business Banking, given the level of disagreement with its approach and conclusions. R3⁷ described it as “show[ing] a lack of understanding of the [regulatory] framework” and the portrayal of the framework by the APPG as being “a partial one”. ICAEW commented⁸ that “The authors of the APPG’s report appear only to have interviewed those who agreed with what they believed and it was noticeable that no professional bodies were called upon to give any evidence about the current regulatory arrangements and how they operate.”
7. There are suggestions that the current framework gives rise to undue delay and that changes take a long time. We find this surprising as the Insolvency Service – which is integral to the current framework – has not been vocal in expressing concerns over timescales for change (for example with the Code of Ethics project referenced in the consultation document and other standard setting arrangements). A robust regulatory structure benefits from careful consideration of changes, as well as a range of stakeholder input. It is relevant to note that it has taken six years for bonding proposals to be brought forward by the Insolvency Service following the Call for Evidence in 2016.
8. The “inherent weaknesses”⁹ in the current system are not explained. Across various inspection visits, the Insolvency Service has never expressed any significant concerns over ICAS’ regulatory approach. Given that it has never felt the need to exercise its statutory power of sanction, we assume that the Insolvency Service is similarly satisfied with the performance of the other RPBs.
9. Many of the behavioural concerns raised appear to be focused on the ‘volume IVA/PTD’ market. We agree that the existing framework limits the ability of RPBs to regulate this area perhaps as effectively as they would wish, however this does not justify or support such wholesale reform as envisaged within the proposals. Effective, targeted and proportionate changes would be much more appropriate.

The Insolvency Service as single regulator

1. There is an underlying failure to demonstrate why – with any certainty – the proposal to install the Insolvency Service as a single regulator would result in substantially better outcomes for all stakeholders.
2. The reality in most insolvencies is that those impacted by insolvency are likely to be unhappy with the outcomes. That unhappiness does not necessarily stem from the actions of the RPBs or the IPs, but from the inevitability that, in most cases, parties suffer financially. There is no evidence to suggest that the experience of debtors, creditors etc would be any better were the Insolvency Service to be a single regulator (indeed, most parties impacted by insolvency would likely have little or no interest in a change of the regulatory framework, with no rise or fall in their confidence).
3. Crucially, the consultation fails to recognise the significant risk that the current regulatory framework may fail to function effectively during any transitional period between the decision to proceed, preparations, and the final establishment and transfer of responsibilities. As an RPB, ICAS has already felt the effects of uncertainty around changes to the regulatory framework. It has been necessary to make changes to resourcing our monitoring activities in recent years directly because of this uncertainty. Further periods of uncertainty – either in terms of direction of travel, or timing – are likely to impact on resources of the RPBs. There is a significant risk that highly experienced, knowledgeable, and skilled people working in insolvency regulation will leave their roles with the RPBs with no prospect of the RPB being able to replace resource on a like for like basis. Without

⁷ <https://www.r3.org.uk/press-policy-and-research/news/more/30010/r3-responds-to-the-appg-on-fair-business-banking-s-insolvency-report/>

⁸ <https://www.icaew.com/insights/viewpoints-on-the-news/2021/sep-2021/mps-insolvency-sector-report-a-missed-opportunity>

⁹ Executive Summary

adequate resource to fulfil regulatory requirements then the inevitable position is that we may reach a point where it is necessary to cease RPB status.

4. As well as the short to medium-term regulation skills gap, the newly created regulator would need significant numbers of experienced people to assist with its set up and operation. It is far from clear that it would be able to attract such individuals in the required number – particularly if there is significant time between resignations from the RPBs and recruitment by the Insolvency Service.
5. On several occasions the consultation paper references issues around conflicts of interest and how this is a weakness of the current regulatory framework. However, one of the most significant issues which the consultation proposal fails to address is that the proposal would result in several new conflicts of interest within the new regulatory framework. The consultation paper does not address how such conflicts of interest would be effectively managed or why conflicts could be managed more effectively within an alternative framework. The prospective new Government regulator would be responsible for:
 - Authorising IPs and firms offering insolvency services.
 - Regulating and monitoring IPs and firms offering insolvency services.
 - Investigating complaints and imposing sanctions against IPs and firms offering insolvency services.
 - Setting technical, educational, professional and ethical standards for IPs and firms offering insolvency services.
6. The UK and Scottish Governments are responsible for setting insolvency legislation (as is the Northern Ireland Executive in Northern Ireland). They are also providers of insolvency services to varying degrees through the Official Receiver and the Accountant in Bankruptcy. It is highly doubtful that these all-encompassing powers of government, when added to the additional conflicts of interest, would provide the “impartial framework”¹⁰ necessary to promote public confidence in the insolvency process.
7. The impact of the proposals on related or connected regulatory regimes has not been given appropriate consideration. For example, the RPBs play an important role in supporting the UK’s economic crime framework as PSBs under the Anti Money Laundering regime. To simply state at this stage of the proposals that “we will discuss with OPBAS and the RPBs how this function might best be carried out under the new regulatory framework”¹¹ suggests that the proposals are underdeveloped, underestimating some of the significant other challenges that exist. Other areas which will be impacted by the proposals and which have not been given consideration include consequences relating to the operation of Part XX of the Financial Services and Markets Act 2002 (Designated Professional Body scheme) and FCA regulated activity and registrations.

Considering all the above factors, our view is that while there may be a case for some change in insolvency regulation, the proposal to install the Insolvency Service as a single regulator is neither made out, nor supported by strong evidence. There can be no strong confidence that the proposed changes would significantly improve the regulatory framework (indeed, they could easily lead to less effective regulation).

Given the significant impact of the changes, together with the level of resource required for implementation, we do not believe that the proposals should be pursued unless there is strong confidence in materially better outcomes.

In December 2010, HM Government issued a publication “Reducing Regulation Made Simple”. It offered a view of regulation which is relevant in the current context. The report suggested as follows:

“It [regulation] can be ineffective in achieving its intended outcomes if its effects on the system as a whole have not been properly considered. If the details of its proposed implementation have not been

¹⁰ Part A, Chapter 4, Designation of an existing body

¹¹ Part A, Chapter 5, Delegation of functions to specified bodies

thought through at the outset, including the costs on the economy and the potential impact of enforcement, the burden of regulation can be much higher than necessary. In fact, hastily conceived regulation may prove to be unenforceable and could, in some cases, be more harmful than doing nothing.”

We would strongly suggest that the proposals set out in the consultation paper lack detail around implementation and demonstrate insufficient thought at the outset. Pursuing the proposals – particularly the establishment of a single government regulator – could be more harmful than doing nothing.

A UK regulatory framework

The consultation paper acknowledges that the proposals have an impact on the devolved administrations. However, it is clear from what is simply a passing reference that there has been little or no detailed consideration given to the potential implications.

If further consideration is to be given to such material changes in insolvency regulation, careful account must be taken of the differences in insolvency legislation between the different legal jurisdictions of the UK (England and Wales, Scotland, and Northern Ireland).

The current regulatory framework has significant strength when it comes to devolution issues. In broad terms, ICAEW and IPA regulate IPs predominantly in England and Wales. ICAS regulates IPs mostly in Scotland. Chartered Accountants Ireland regulate IPs generally in Northern Ireland (and the Republic of Ireland). This means that there is significant and dedicated expertise within the RPBs to deal with insolvency regulation issues which arise because of the differences between insolvency legislation across the jurisdictions. The RPBs work collaboratively and effectively to ensure that the insolvency regulatory framework can be applied consistently across the UK.

We have significant concerns that the proposed regulator would be unable to effectively resource and would have insufficient knowledge of devolved matters, resulting in a weakening of the UK regulatory framework. Strong reliance is placed on ICAS, our members, and other IPs and legal professionals based in Scotland to respond and input into the detailed drafting of legislative and professional standard amendments at a UK level, demonstrating the significant requirement to have resource with knowledge and understanding of the different jurisdictional requirements.

The adopted position of the current Scottish Government regarding devolution and independence is well-known. It seems unlikely that the Scottish Government would be supportive of change which would in effect hand back direct oversight and regulatory control of IPs in Scotland to a centralised UK Government agency.

Is the proposed framework suitable or is there an alternative?

The consultation sets out a number of possible courses of action to deal with the perceived shortfall of the current regulatory framework. These have been set out as:

- Do nothing
- A non-legislative option
- The creation of a single government regulator

For the reasons set out in detail above, we do not believe that the preferred option of a single government regulator offers either a suitable framework, or sufficient certainty of achieving the desired outcome. Such a course of action comes with significant risk.

We do, however, agree that doing nothing is not an ideal option either. We believe that there is a need and desire for advancement in the regulation framework, but it is better suited to evolution rather than revolution.

An alternative approach

One criticism of the current framework is that it is overly complex, with four RPBs regulating less than 1,600 IPs. However, this ignores the fact that insolvency is not a profession in its own right, but rather a specialist regulated function carried out predominantly by those working the accountancy and legal professions.

IPs operate and have specialist knowledge in insolvency in the same way that auditors do with audit, tax specialists do with tax matters, etc. Many of the functions carried out by the RPBs are sub-functions of a wider regulatory framework, with the cost, skill, knowledge, and experience shared across multiple regulatory functions which are similar in nature. We have significant concerns that a single government regulator would not be able to take advantage of the scale of functions in the same way as the RPBs.

As set out above, concerns that there is inconsistency in approach between the RPBs are in our view largely unfounded and unsubstantiated. The RPBs co-operate effectively to ensure consistency in approach. Examples of this include meetings of monitors, Common Sanctions Guidance, the Single Complaints Gateway, Joint Insolvency Committee, and the Joint Insolvency Exam Board. The Insolvency Service as Oversight Regulator have visibility across the RPBs and have historically raised sharing of best practice issues with RPBs where this has been thought appropriate. We are not aware of any significant concerns being raised by the Insolvency Service that there are serious discrepancies in approach or outcomes.

In recent years, further steps have been taken to aid consistency. ICAS has sub-contracted its monitoring function to ICAEW, meaning that all IPs in Great Britain are monitored either by ICAEW or IPA.

The preferred approach of Government set out in the proposals can be simplified and summarised as transferring powers to the Insolvency Service only for the Insolvency Service to sub-contract back most functions, retaining standard setting and investigations and disciplinary. We have strong reservations about standard setting being delivered by the new single regulator in the way envisaged which we discuss further below. This leaves complaints and investigation as the single most prevalent function of the new single regulator.

We consider that the most pragmatic and beneficial way forward, given the substantial risks identified in pursuing the preferred approach, would be through a mixture of non-legislative interventions which would retain the strengths of the current system while addressing perceived weaknesses, backed up by legislative provisions where appropriate.

For example, the previous concept of a Joint Insolvency Monitoring Unit (JIMU), whereby monitoring of IPs is undertaken by a single, independent body, could be re-established, with the possibility of expanding this to a Joint Insolvency Investigations and Monitoring Unit (JIIMU). In addition, a Joint Disciplinary Scheme (JDS) could be established providing a central pool of individuals to consider disciplinary reports, conduct disciplinary hearings, and issue sanctions. If the establishment and oversight of these were backed up by legislative provisions, then this may address any trust concerns driven by perceived concerns over multiple regulators.

Such an approach would also solve the issues associated with the multi-jurisdictional and legal systems across the UK and avoid significant challenges redefining the UK's Anti Money Laundering regulatory framework.

We understand that detailed alternative proposals may be submitted to the Insolvency Service separately by other RPBs. Whilst we cannot comment on such proposals on account of a lack of detailed information, we can say that we would be willing to discuss and co-operate with the Government, the Insolvency Service, and the other RPBs, to consider all alternatives solutions. We believe that all the RPBs would have a similarly collaborative position.

Single government regulator functions

While we have set out elsewhere our objections to and reasons why we believe the proposed single government regulator would not be the correct course of action, we do wish to comment on the proposed functions of a single government regulator should the government continue to pursue this route.

Skilled and knowledgeable resource

If there is to be a single government regulator then the high-level functions appear to comprehensively describe the functions it would be required to undertake. The sheer number and range of functions however does emphasise again the level of skilled resource that would be required by the single regulator. We have highlighted elsewhere the risk that a single government regulator would not be able to attract sufficiently knowledgeable and skilled staff to cover certain functions when competing with the private sector in what is a relatively small pool of experienced individuals.

Standard setting

Currently standard setting is carried out through the Joint Insolvency Committee (JIC). JIC is a voluntary group whose membership comprises the RPBs, the Insolvency Service and several lay member representatives. These lay member representatives include HMRC, the British property Federation, Association of British Insurers, Chartered Insurers of Credit Management and Max Recovery. The consultation paper suggests that the different interests represented on JIC and the consultation process that is undertaken in formulating standards is a negative as it means that progress on making changes can be slow or that undue compromise is made resulting in weak standards. This is not a position which we would agree with.

The alternative to this therefore seems to be the single regulator adopting a streamlined approach to standard setting with minimal engagement with the profession or consultation on proposed changes. The suggestion that one party has all the answers to an issue is deeply concerning. ICAS consider there are considerable dangers to this approach.

The current process operates in the manner that it does to ensure the standards address the areas of concern in a way which is effective but also workable and practical. There is also a need to consider where the insolvency standards overlap with other professional standards. For example the Insolvency Code of Ethics needs to align with ethical codes in the accountancy profession as a whole and internationally and there would be unintended consequences if this was tackled in isolation.

The current standards, Statements of Insolvency Practice (SIPs) and Insolvency Guidance Notes, are drafted with clarity and unambiguity as well as with applicability and enforceability in mind. Because they are principles based, in the sense of relying on ethical and professional principles rather than the statutory/non-statutory distinction referred to in the consultation, they cannot be prescriptive and hence there will always be room for differences in interpretation. ICAS consider that it would be appropriate for any new regulatory framework to retain this principles-based approach, both in the sense that they are non-statutory and that they are non-prescriptive.

The suggestion that the current standard setting is ineffective as a result of its speed of operation is untrue. JIC has been able to revise and issue SIPs in short order where necessary and appropriate following changes in legislation. For example, SIPs 13 and 16 which followed from the introduction of the Administration (Restriction on disposals etc. to Connected Persons) Regulations 2021 came into force on 30 April 2021 even though the Regulations themselves had only been laid in draft before Parliament on 24 February 2021.

We have also experienced issues where the requirements of standards have been dictated by factors forced onto the process. Our experience is that where political influence through ministerial mailbag policy and a failure to listen to the profession in relation to practical implications takes place then the standards are ineffective. This is not a failure of the standard setting framework or process.

We would strongly encourage that, irrespective of where the power to set standards sits, the process needs to retain the involvement of professionals with practical knowledge and experience to identify a workable standard without unintended consequences. In addition, the collaborative approach involving

a variety of stakeholders ensures that there is confidence in the process and that there is an adequate vehicle for all voices to be heard and should be maintained. Furthermore, standards must be set with appropriate consultation with a wider stakeholder group beyond the standard-setters themselves.

Overall, ICAS consider that the current standard setting process operates in an effective manner through JIC and such a body or group would require to be retained under any amended framework. We can foresee significant issues if the new framework were to adopt a unilateral and speeded-up approach to standard setting.

Complaints and disciplinary

The consultation paper indicates a public perception of an unwillingness on the part of the RPBs to deal robustly with poor behaviour because of the potential impact on membership, as well as delays in dealing with complaints, and a lack of consistency in outcomes between RPBs.

In respect of the current system, if the RPBs were not investigating complaints and dealing with disciplinary matters in an appropriate manner, there are three main outcomes which would be expected:

- The Insolvency Services would have expressed concern in its public reports.
- The Insolvency Service would have used its statutory powers to address poor performance.
- There would be significant numbers of complaints made against the RPBs to the Insolvency Service.

So far as first two points are concerned, the Insolvency Service has engaged closely with the RPBs in recent years, with a strong focus on investigation processes. We are not aware that the Insolvency Service has any material concerns over the way in which complaints are being investigated. Indeed, the complaints-related reports published by the Insolvency Service in recent years present a relatively positive view. This lack of concern is further evidenced by the Insolvency Service never having to use its statutory powers under Part 10 of the Small Business, Enterprise and Employment Act 2015.

An analysis of the third point strengthens the case further:

- In 2020, the Insolvency Service's complaints gateway referred 371 complaints to RPBs. During the same period only 10 complaints were received about RPBs.
- Using these figures as representative, this suggests that only a tiny proportion of complainers' harbour significant concerns over the way in which their complaints are being handled by the RPBs.
- In the same year no complaints were upheld against the RPBs, either fully or partially.

Against this background, ICAS would suggest that there are strong indications of good practice in complaints handling across the RPBs and it is difficult to see how a significant increase in public confidence is achievable through a single regulator undertaking this function.

We consider that a balanced and proportionate approach is required and would highlight the following characteristics of ICAS' approach:

- Transparency – our investigation process is fully documented and published for the benefit of all parties involved (through rules, regulations and a suite of help-sheets and guidance documents). We publish detailed [notices of decisions](#) (which are further published by the Insolvency Service), and also an [annual report](#) which provides statistical data on the process in general.
- Consistency – ICAS publishes a detailed [Sanctions Guidance document](#), which includes indicative penalties for various offences, with lists of factors which are likely to lead to higher or lower penalties.
- Oversight – decisions in respect of complaints are not made by an individual acting in isolation. Each stage of our complaints process involves oversight of decisions and/or the ability for the insolvency practitioner or complainer to challenge the outcome.
- Public interest – our Investigation Committee comprises equal numbers of Chartered Accountants and Lay Members (individuals who are not accountants). Our Discipline and Appeal Tribunals contain a majority of Lay Members.

The consultation paper states “despite the availability of the Common Sanctions Guidance there is a lack of consistency in the application of sanctions by the disciplinary committees of the different RPBs. In imposing sanctions, there also seems to be no consideration of whether someone is a habitual

offender and should therefore be dealt with in a more holistic way. There are concerns that the level of sanction can be downgraded for “mitigating” factors, which do not always seem to be relevant or appropriate to consider. This adds to the perception that RPBs can be reluctant to sanction their own members”¹².

We would suggest that what is perceived to be a lack of consistency in the application of the Common Sanctions Guidance is precipitated by a lack of understanding or acknowledgement that each case will have its own unique set of circumstances against which the sanction is considered. A change in the regulatory framework will not change this basic underlying fact nor that all disciplinary systems must operate in accordance with the principal of judicial fairness.

We agree that where what is referred to as ‘habitual offenders’ exist that the disciplinary framework could be strengthened. This however does not require a single government regulator to exist to do so. Our suggested alternative approach of establishing a JIMU and JDS with legislative backing could address this. We would be open to further engagement on this point.

We appreciate that complainants wish to see their concerns addressed quickly. Concerns raised that the current disciplinary process takes too long perhaps belies the complexity and appropriate checks and balances that are necessarily built into the system to protect its integrity. The risk of decreasing the time taken for a complaint to make its way through investigation and the disciplinary process where appropriate is that action taken is not as robust or does not have sufficient oversight which ultimately will achieve the opposite of the aim and will end up with a deteriorating trust in the framework.

The Insolvency Service as part of their oversight regulator role regularly receive information on the progress of complaints and receive explanations where cases are subject to timescales beyond the norm. Again, we are not aware of any significant concerns having been raised by the Insolvency Service in this regard. All RPBs are conscious of the timescales involved in investigations and are taking positive steps to reduce these wherever possible.

As regards to the proposed process, the questions arise less in respect of structure, and more in terms of the expertise of the individuals investigating and assessing complaints and proposing sanctions. A significant number of people would be required, and we have highlighted the staffing issues a new regulator faces earlier in the paper.

In recent years, the RPBs have worked with the Insolvency Service to introduce a single complaints gateway. This was in part to address a perceived lack of confidence in the initial assessment of complaints. The initial evaluation of complaints is carried out by the Insolvency Service but despite this the consultation paper seems to suggest that there remains a lack of confidence in the system. Against this it is difficult to understand how bringing matters further under the Insolvency Service would significantly improve the position when existing changes have not moved the dial.

We are also concerned with the suggestion from the consultation paper that there would be fewer people involved than collaborate in the current RPB processes – i.e. individuals rather than committees. While the process may be streamlined, it is far from certain that it is a process that would ultimately lead to better decisions.

¹² Part A, Chapter 5, Disciplinary and enforcement proceedings

Other changes to the regulatory regime

Firm regulation

The introduction of a hybrid model which allows for the statutory regulation of firms and individuals is supported by ICAS (indeed, this was promoted in our response to the previous Call for Evidence).

While it will not be a silver bullet, it would be likely to go some way towards addressing some of the compliance/conduct issues in some firms, particularly where there is a disconnect between the regulatory risk and commercial reward of the business's operations. It would also bring insolvency more in line with other regulatory frameworks (e.g. statutory audit).

What is entirely unclear is why the consultation paper implies that firm regulation would only be possible through the introduction of a single government regulator. There are no reasons to suggest why this should be the case. As noted above, ICAS fully agrees that firm regulation is appropriate. We believe this view may be shared by the other RPBs. As such, it is not correct to imply that firm regulation requires a single regulator.

The current legal framework provides that insolvency appointments are personal to the IP. Historically, those who were IPs were also the 'owners' of the firms in which they operated (for example as a partner in a firm) and therefore in a position to control and influence behaviours in the firm in which the insolvency appointments were undertaken. Over time, the connection between appointment responsibility and an ability to control and influence behaviours within the wider firm has been eroded, influenced by commercial and wider societal matters. Consolidation in the accountancy sector, the emergence of consumer-focused practices, and changes in legal entity preferences mean that many IPs now work for larger organisations and are required to follow the practices, procedures, and cultures of their employers. In some instances, this means that taking regulatory action against the IP does not address the root of the problems. In an extreme example, if an IP has their licence withdrawn for engaging in inappropriate practices required by the employer, the employer could simply hire a new IP as a replacement, with the inappropriate practices continuing unabated.

ICAS agrees that additional regulatory requirements and monitoring should be targeted at the firms which have the potential to cause the most damage to the insolvency market, particularly those operating in the volume consumer debt solution market. As with many of the proposals, the devil will be in the detail, but it is imperative that regulation is proportionate and avoids unnecessary burdens on low-risk businesses, which will inevitably already be facing additional costs which will be passed on to them to fund the setting up the new regulator and the costs of operating the new regime.

We would be concerned that the introduction of a compensation scheme (discussed further below) alongside firm regulation may result in firms having to restructure their operational entities in such a way as to minimise financial and other risks. This would result in additional costs to firms both one-off and recurring. For many smaller firms and IPs the costs in doing so or the timing of this may be a deciding factor in them deciding whether to continue in the profession or not.

Public insolvency register

ICAS is generally supportive of a public register of insolvency practitioners and firms. The Insolvency Service already operate a non-statutory register of IPs and similar public registers operate for other regulated activities and professions.

Disciplinary sanctions are already published by RPBs and the Insolvency Service. Bringing the two elements into a more accessible arena is generally supported. We would, however, highlight that a proportionate approach to the scope of sanctions to be made public is required. In addition there is a need to consider in detail aspects relating to timing of sanctions being made public. Information should be factual and publicised at the completion of the process unless there is a risk of significant public harm. This will help ensure that the impact of sanction publicity is proportionate. Further discussion of the details of this point is therefore required.

Compensation scheme

ICAS is fully supportive of the principal that IPs should deliver appropriate standards of service. This is enshrined in the Code of Ethics, specifically under the fundamental principles of professional competence and due care, confidentiality, and professional behaviour.

We welcome that the consultation paper recognises that “The insolvency profession is highly specialised. Complaints can often be complex, technical and hinge on fine judgements.”¹³ and concludes that insolvency would not be suitable for an existing ombudsman scheme. We agree with this conclusion.

In relation to complaints, these can often be split into two distinct elements – conduct (normally expressed as relating to behaviour) and competence/service (normally expressed as relating to the standard of work undertaken). We do, however, recognise that there is sometimes an element of overlap between the areas in relation to complaints.

In introducing this section, the consultation document refers to the compensation being in relation to ‘poor standards of service’¹⁴. However, in our view, the consultation then conflates conduct and service complaints. This perhaps underlies a significant matter which is that there requires to be a clear understanding and differentiation between the types of complaints. It is therefore unclear whether the government considers whether a compensation scheme should cover only standards of service complaints or indeed conduct and standards of service complaints. In our view, any compensation scheme, if it were to be introduced, should focus only on service.

IPs are required to operate a complaints process already. This operates prior to the regulatory complaints system and complaints being submitted to the single complaints gateway operated by the Insolvency Service. Our members have informed us that where instances of poor standards of service are legitimate and have been identified then appropriate action is taken such that the complainant is satisfied.

This is borne out by the relatively small number of complaints which are subsequently raised through the single complaints gateway and referred to the RPBs. Over the past eight years (2014-2021) this has averaged at 424 complaints per year. A significant number of these complaints do not result in disciplinary action being proceeded with. It is difficult to assess however whether the threshold for compensation may be different from the threshold for disciplinary action and if so, how this may result in possible compensation directions.

We highlight the significant complexities of a compensation scheme which operates in a manner as to satisfy those impacted and not be overly burdensome and expensive to run. In addition, there is an inherent potential issue in terms of intrusion on, or complication of, civil remedies available.

It is also important to note that the landscape within which IPs operate is complex and not well understood by the public at large. By the very nature of insolvency, those impacted are almost always adversely impacted and are likely to be aggrieved to a greater or lesser extent. The injustice of insolvency, together with a low understanding, leads to a significant expectation gap which is often the underlying cause of complaint. We have significant concerns that a compensation scheme could have significant unintended consequences, particularly for large employer or consumer related insolvencies such as the recent energy firm failures, where significant costs may be incurred ultimately by creditors, for IPs dealing with complaints relating to matters wholly out with their control.

As an example, compensation claims could be lodged for consumer inconvenience relating to the transfer to an alternative supplier, issues with bill generation etc, which will be largely impacted by legislation, sector factors, or issues with the insolvent entities systems, none of which are within the gift of the IPs.

¹³ Part B – Chapter 8, The Financial Ombudsman Scheme

¹⁴ Part B – Chapter 8, A compensation scheme for the insolvency profession

Ultimately the prospect of high risk, low return work with the added threat of significant compensation scheme issues could contribute significantly to a market failure rather than strengthening a competitive market as set out in the insolvency objectives.

We are open to further engagement with the Insolvency Service around this matter but believe the focus should not be on the detail of a compensation scheme per se but should instead on the development of a scheme which seeks to address complaints based on their nature, for example distinguishing between service issues and conduct issues.

We note that compensation arrangements operated by other professions, or in relation to other services, are typically focused on consumers and seek to provide a balanced access to 'justice' in an appropriate and efficient manner. We would suggest that if a scheme of compensation were to be pursued that this should concentrate primarily on consumers (the volume personal insolvency market) and that the existing avenues to seek to loss redress should be otherwise maintained.

We would also highlight that there is a close correlation between the area of redress and complaints, investigations, and disciplinary and enforcement proceedings. It would seem entirely sensible to link the remit for any compensation into whatever structure is ultimately pursued in this area.

We believe there are some significant conceptual matters which require further detailed discussion and which limits value in commenting on the specific suggestions made within the consultation paper, however for completeness we would make the following observations:

- It may be useful to have further detail of the Insolvency Service's mechanism to pay compensation where there has been a service failure on the part of an official receiver or other staff i.e. how does this operate in practice, what are the running costs and how frequently is this used? Care should however be taken in making direct comparisons or extrapolating assumptions from this as the Insolvency Service's own compensation arrangements are not well publicised.
- There are difficulties in considering what level to cap compensation payments at. If it is capped at a relatively low level, such as £250 as has been suggested, then it is unlikely that complainants will be satisfied. More important, however, is that at such a level there is a risk, in the commercial environment within which IPs and their firms operate, that it is unlikely to be worth the time costs of a practitioner disputing the claim, which may lead to complaints without substance being habitually made in the knowledge that a pay-out is all but guaranteed; and complaints that are valid, and that in some instances should be investigated more thoroughly, being swept up in the compensation scheme which might then lead to misconduct, bad practice and incompetence not coming to light as early as it should.
- Alternatively, if the maximum pay-out is set at higher rate, the scheme clearly becomes more complicated to operate with higher staffing costs, appeals processes etc. The award of significant sums of compensation would seem to be a matter better left to the judiciary.
- Similarly, restoring a party or parties to the position they would have been in had a wrongdoing not occurred, appears a straightforward concept but would require a great deal of skilled and experienced staff to assess, with that assessment ultimately being largely subjective and contingent on myriad issues. Again, such a matter seems better placed with the Courts.
- In terms of funding, there is an inherent unfairness in operating a scheme whereby all IPs would be required to pay, with compliant IPs effectively being levied for the errors of others. It is also difficult to see how such a scheme would disincentivise bad practice if the amount being paid is not linked in some way to behaviour.
- The practicalities of setting up, maintaining and managing such a scheme may mean that the size of fund required to allow adequate provision of claims is prohibitive based on the small number of insolvency practitioners authorised within the UK. This would most likely have a significant impact particularly on sole or smaller practitioners.
- The regulator directing an insolvency practitioner or firm to make the payment on their own account therefore makes more practical sense. The consultation paper alludes to insurance cover and the potential for increased payments. However, that only becomes an issue if the levels of compensation that are being awarded are significant. If a scheme with a cap of £250 is put in place, it is highly

unlikely that an insolvency practitioner would handle such a claim via their insurance (or would indeed have a policy with an excess of less than that amount).

Funding of a regulatory model

Funding of any regulatory model requires detailed consideration. We have some concerns that the proposals in the consultation paper may result in significant increases in direct regulatory fees. We say this based on experience and evidence surrounding governmental bodies and agency fees, not only in respect of insolvency (IS levy, complaints gateway levy, etc) but in other areas such as audit and AML. Costs of services run by such bodies often lack transparency and invariably seem to end up being much higher than first anticipated, and higher than they would be under non-governmental bodies.

Regulatory fees should be proportionate and must not limit access or act as a barrier to an effective market. They must also be efficient to collect and avoid creating an administrative burden for the payer and the collector. We agree that micro and small-sized firms require particular consideration in the design of regulatory fees.

While it is helpful to understand the components of regulatory fees such as authorisation, monitoring, complaints, etc this is unlikely to be efficient to administer and collect. There are numerous examples of regulatory funding models which have been implemented in the UK and in other jurisdictions in recent years, and further assessment of the advantages and disadvantages of these should be considered.

We also consider that there is a case for innovative thinking in relation to funding of insolvency regulation. Ultimately the need for insolvency procedures is not as a result of the insolvency profession's actions. They arise often due to poor lending practices or as a result of poor business management. There may be a case for considering whether those areas should contribute to funding the regulatory framework. This could be done through incorporating into financial services levies or through the new Companies House fee structure which is being considered. We appreciate that there will be challenges to be overcome with this alternative approach but believe that this should be given further consideration as part of the funding solution.

Bonding regime

ICAS supports the need to protections for creditors in place. However, what that protection looks like and how it should be formulated is a matter which requires careful consideration, especially when placed alongside what could be potentially significant changes to the regulatory landscape in wider terms.

It is not clear that fundamental reform should be – or indeed needs to be – contingent on the introduction of a single regulator.

As highlighted in our [response](#)¹⁵ to the Call for Evidence on bonding carried out in 2016, ICAS considers that there is a strong case for the removal of statutory bonding arrangements altogether, which would undoubtedly result in significant efficiencies and cost savings in insolvency procedures. In addition to the cost savings in premiums paid (which ultimately are borne by creditors), creditors may benefit from time no longer being incurred by insolvency practitioners calculating and documenting initial bonding levels, administering the initial bond notification to insurers and RPBs, period reviews of bond levels, and time involved in the release of the bond at the end of each case.

If there is a desire to retain some form of bonding provision, this should be moved away from a bond per case to an overarching policy taken out to cover all cases. We consider that this could readily be linked to firm authorisation requirements bringing efficiency to administration and clarity over cover. This would work in a similar manner to PII requirements for firms currently operated by the RPBs.

Notwithstanding our overarching views noted above, for completeness we would make the following comments in respect of the various proposals within the consultation paper:

- We broadly support the proposals under the heading of bond wording. We consider that each bond provider should continue to have their bond wording approved by the Secretary of State.
- We do not understand the rationale for a period of run-off cover while also accepting that there could be a maximum indemnity period. It is not clear how this would operate, for instance, where a maximum period of indemnity was reached but where a case remained open and how this would interact with the run-off period, especially if this was tied to the cessation of appointment. We consider that there is no requirement for a maximum indemnity period if there is a run-off period. The basic requirement is that the case is covered for the duration of the case (irrespective of that period) plus the run-off period.
- We agree that cancellation of cover due to non-payment of premium should only be permitted where application for payment has been made and reasonable notice has been given to the Insolvency Practitioner and their regulator. We consider two months to be a reasonable period of notice prior to cancellation of cover taking effect.
- We agree that it would be appropriate for the GPS to cover interest, investigation, parallel and bond claim costs of the successor IP. This better protects the outcome for creditors. However, alongside this there needs to be safeguards to ensure that investigations work is undertaken beyond establishing the basic positions only where there would have been a return to creditors. We do not consider that it would be appropriate to increase the value of the SPS cover above assets value to achieve the aim of protecting creditors from the successor IP costs. The majority of cases do not have significant values of assets such that a reasonable percentage above assets value (for example the 25% uplift suggested in the proposals) would be sufficient to cover the successor IP costs. We believe that there is a significant risk that such an approach would still result in creditors bearing the costs of the successor IP investigations.
- We agree that global bonds would be a positive proposition. It is unclear the benefit of adding this as an additional option rather than introducing as a replacement system. This option is already operating in a way in the current bond market where some firms are able to bond all cases at the maximum value irrespective of the asset value in the case with minimal or no effect on the premium which would have been payable otherwise.

¹⁵ Response to Q6

- While we have no strong objection to the suggestion that bond cover levels be disclosed in reports to creditors, we question whether this would be effective in any substantive manner. It is widely acknowledged that creditors largely do not engage in the insolvency process and even fewer will read the statutory reports. Information such as bonding would simply add to disclosure without any real perceived value.
- While we understand the rationale behind the proposal that a regulator should have a duty to ensure cover is maintained where it is reasonably foreseeable that an IP's authorisation may be withdrawn, we do not agree that the proposal is appropriate in the manner stated. We consider that the risk perceived by this scenario would be better tackled through other routes. For example, our suggestion of an overarching policy at firm level would largely remove this risk. We would highlight that while ICAS has never had to face this situation to date, we consider that taking into account all measures and actions that would be taken by a regulator in this situation there are already sufficient safeguards in place to negate the risks. We consider there is much more value in developing technology within a regulator to monitor positions much more efficiently and effectively through, for instance, the use of real time APIs with IPs and bond providers to monitor case appointments, cessations, and bond premium payments.

Finally, we do not consider that a levy funded scheme should replace the bonding regime. There are significant concerns about the financial viability of such schemes as has been shown with for instance the Guarantee Fund within the legal profession. If the Government's contention is that the insolvency profession is small, then the burden of this fund would fall on a small number of individuals or firms adding to the significant additional financial burden which can be anticipated from a single government regulator as proposed. We consider that there would be a serious cumulative risk of the profession becoming unsustainable.

We would be pleased to engage in further discussions with the Insolvency Service on reform of bonding.

Impact assessment

We wish to comment on several aspects of the Impact Assessment¹⁶ which accompanies the consultation.

Rationale for intervention

We strongly disagree with the suggestion that the current system of regulation creates a principle-agent problem. The suggestion that RPBs will act in the manner suggested is simply not substantiated in the current regulatory setup. The Insolvency Service, as oversight regulator, regularly inspect and consider the work of RPBs with a continual focus on disciplinary matters. At no time has the Insolvency Service raised this even in the most diluted way possible as a concern. As set out elsewhere, ICAS' governance framework has several checks and balances in place to ensure that such a course of action is not possible, significantly involving the use of lay members or public interest members in the decision-making process. The value in the CA qualification and IP regulatory status associated with ICAS is founded on maintaining a strong reputation. Allowing members who do not act in an appropriate manner to go unpunished or subject to measures which are inappropriate will simply tarnish the reputation and diminish the value of the profession. Rather than there being an incentive not to discipline members the exact opposite is true.

Costs and benefits

We expect that the costs of the new model are likely to be higher than anticipated but, as the impact assessment document states, "the scale and nature of costs and benefits cannot be precisely determined in advance, being dependent on the final demarcation of responsibilities which will only be known at conclusion of the consultation".

Clearly any increase in the cost of regulation would be most unwelcome and has the potential to lead to IPs leaving the market, further reducing competition in what is already a small pool and increasing the cost to consumers.

In terms of the specifics in the impact assessment, the estimated familiarisation costs for IPs and firms seem to be vastly understated, particularly in the context of potentially significant changes to the operation of regulatory functions. We would make the following indicative observations:

- Assumptions around familiarisation costs seem only to assume that familiarisation will be required at authorised IP level. Familiarisation will be required at all grades of staff working within insolvency and in other areas of a business which undertakes insolvency work.
- No account is taken of familiarisation within the supply chain of IPs. This would include legal advisors, compliance services, insurance brokers amongst others.
- Firm regulation is likely to result in significantly more time required than has been allowed for in the costs model. 15 minutes for small firms is not unrealistic, nor is the assumption that this would only be required by one IP at a firm. As indicated elsewhere, we anticipate that taking all proposals together (which is the basis of the assumption for the impact assessment) the introduction of firm regulation together with a compensation scheme and other elements will require firms of all sizes to reassess their business model and operating structure. We anticipate that this will result in multiple hours of senior management and owner time being incurred at firms.
- There is similar underestimation of time and numbers for individuals employed in medium and large firms.
- We consider that the time required to deal with firm monitoring visits to be underestimated. In particular, no allowance appears to have been made in respect of requirements that will inevitably be undertaken post visit. Again the assumption that only a single person would be involved in the visit requirements is unrealistic, particular in larger firms where undoubtedly more involvement of a wider compliance or risk team would be undertaken.

¹⁶ [Gov.uk – Impact Assessment](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614442/Impact_Assessment.pdf)

- No cost appears to have been attributed to the new single regulator to take account of the significant number of hours that are given voluntarily by the profession and others in running the current regulatory regime, for example those sitting on RPB committees, JIC, JIEB, etc. It is unrealistic to expect that such individuals will continue to give their time without reimbursement to a government body.

Risks and assumptions

The Impact Assessment identifies a risk through the loss of expertise available to the proposed single regulator. We consider that the Impact Assessment seems to marginalise this risk which we consider to be significant, and which would seriously undermine the possibility of the reform objectives being achieved. The assumption within the Impact Assessment that the new single regulator could achieve costs below that of the RPBs because of public sector pay being below similar occupations in the non-public sector illustrates that the risks have been understated. It is our experience that RPBs in general already have difficulty in attracting and retaining suitable qualified and experienced staff when competing against firms in practice who can offer higher salaries and benefits. Staff displaced from RPBs are more naturally likely to migrate to firms in practice for this reason, leaving a new single regulator facing an uphill task to successfully recruit appropriate staff.

We note that the Impact Assessment treats the one-off setup cost of the proposed single regulator as unknown and therefore non-monetised, these costs are likely to be significant and should not be underestimated. We reiterate that the incurring of these costs without a clear and unequivocal indication that there would be a significant prospect of the changes making significant difference is a significant risk which should not be undertaken lightly.

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