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Dear Paul

## **REFORMS TO THE REGULATION OF INSOLVENCY PRACTITIONERS**

ICAEW is pleased to respond to your request for comments on *Reforms to the regulation of insolvency practitioners*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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## ICAEW REPRESENTATION

### REFORMS TO THE REGULATION OF INSOLVENCY PRACTITIONERS

**Memorandum of comment submitted in May 2011 by ICAEW, in response to The Insolvency Service consultation paper Reforms to the regulation of insolvency practitioners published in February 2011**

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## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Reforms to the regulation of insolvency practitioners* published by The Insolvency Service.

## WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. ICAEW's regulation of its members and affiliates in insolvency is overseen by the Insolvency Service, and ICAEW is the largest of the Recognised Professional Bodies under the Insolvency Act, currently licensing around 700 practitioners.

## MAJOR POINTS

5. We welcome the proposal to introduce regulatory objectives for the regulatory framework, although we have suggested amendments to the objectives proposed in the consultation document. We believe that regulatory objectives should provide the framework for delivery and a benchmark against which the regime may be assessed. We are also supportive of the proposal that the Insolvency Service cease to act as an authorising body, a role which could cause conflict with its role as an oversight body. There is also the issue of the limited powers available to the Insolvency Service to direct the behaviour of the insolvency practitioners it authorises.
6. ICAEW is alive to the issues surrounding perception of the IP profession, but much could be achieved by educating those participating in the insolvency process so that they understand what is happening and can participate effectively in the process. A major step forward would be for those government departments who are creditors in an insolvency to actively participate in the approval of fees. We should not forget that those involved in an insolvency proceeding will often be dissatisfied simply because of the nature of the process - they may have lost money, their livelihood or access to their property.
7. There must be a complete role for the profession in the setting of standards, but standard setting should be seen to have an independence from the profession so that the wider public interest can be seen to be protected.
8. The consultation proposals focus on the formulation of a new independent complaints body to remedy perceived shortcomings in the performance of IPs. No evidence is provided in the consultation document to substantiate the view that RPBs are failing in this respect. But, more significantly, if the Insolvency Service believes that IPs need to improve their service to creditors, focusing on the end process of a complaints system does not appear to be a productive course of action.
9. The Insolvency Service and DETINI conduct a programme of visits to the RPBs over a 3 year cycle and in recent years have made reference to the findings from those visits in the Annual Review of Insolvency Practitioner Regulation, which has been published by the Insolvency Service since 2009. Whilst reference has been made in these reports to the complaints

handling systems, nothing is identified as a fundamental flaw. In the annual report for 2009, ICAEW's complaints handling is referred to as 'accessible, effective, fair and transparent'.

10. There are issues outside the area of insolvency regulation and outwith the consultation scope which should also be considered in this context - the regulation of the wider advice community and the provision of non statutory debt solutions, and the role of debt purchasers.

## **RESPONSES TO SPECIFIC QUESTIONS/POINTS**

### **Q1: Do you have any comments or evidence on the costs and benefits set out in the attached Impact Assessment (Annex B)?**

11. Where relevant we have commented on the impact assessment in our response to specific questions within the consultation. There are some further specific comments we would wish to make.
12. We would question the quantifiable benefit of the changes being a £8 million increase in the supply of credit. There has already been much questioning of the OFT's findings on the supposed fee overpayment, so we do not intend to revisit the objections to that data, but would challenge the premise that unsecured creditors are being routinely overcharged to receive the services of an insolvency practitioners.
13. The calculation of the £8m as a function of the extension of additional credit seems overly simplistic. There has been extensive academic research on business' decisions to extend credit, including a 2007 study by Professor Nick Wilson of Leeds University for the then Department of Business, Enterprise and Regulatory Reform. Research shows that the decision to extend credit is affected by multiple factors only one of which is the risk associated with the financial failure of the debtor. It seems overly simplistic to assume such a direct relationship between the recoveries in an insolvency and the extension of credit. There are also other factors that influence the dividends received by an unsecured creditor which are not related to an insolvency practitioner's fees which could produce the equivalent increase in the supply of credit. Even if we were to accept the net benefit of these changes being £8m, this is a miniscule proportion of the total stock of unsecured credit in the economy.
14. We have noted in our response to question 3 that we think the set up costs of any independent complaints body to have been underestimated. Whilst the Legal Ombudsman is a much larger scale operation, its set up costs were £14.8m. A sum of less or around £75,000 seems insufficient to set up a framework that will deal with some 700 complaints a year, without even taking into account the enquiries which do not turn into complaints. We are also a little confused by the costing for the single tier complaints body as compared to the other models, including the do nothing option. Firstly we would question the 5% economies of scale as compared to the RPBs as for most RPBs their complaints function operates within a larger complaints function for all their members and so itself benefits from economies of scale within that organisation. Secondly, we are uncertain why no cost for investigation and discipline or decision making has been built into this costing. There will be no committee structure but under this model staff will carry out all those functions to which a cost has been ascribed under the other models. Thirdly, as the RPBs will need to impose the findings of this body upon the IPs they licence the cost of this function within the RPBs needs to be built into this model. Finally, no provision is made for the closure of the equivalent insolvency complaints functions within the RPBs, which could include redundancy costs.

### **Q2: Is the current structure of IP regulation the right one? How could it be improved?**

15. The current structure reflects the history of the insolvency profession and the diverse backgrounds of insolvency practitioners. What may have been a suitable model in 1986 may not necessarily be one that would be designed now but it is not immediately obvious that the current model is so flawed as to require fundamental change and the associated upheaval and costs associated with such a change.

16. It would be easy to assume, and to a certain extent the consultation document makes this assumption itself at paragraph 4.11 that a single regulator is somehow preferable. Outside of mainstream financial services, there are few professions where there is a single regulator. There are multiple regulators in audit, legal services and 'non mainstream' financial services. Multiple regulators should not necessarily lead to inconsistency - the key is effective oversight of those bodies. The structure for legal services regulation is a new model having become fully operational on 1 January 2010. The adoption of this structure was subject to extensive consultation and review. It is interesting to note that this consultation rejects such a model in the long term.
17. An obvious change which is suggested later in the consultation document is for the Insolvency Service to cease to be an authorising body for insolvency practitioners. As most of the RPBs will now issue insolvency licences to non members there seems to be no reason for a regulator of last resort. Given the commonality of entry requirements between the RPBs, which form part of the memorandum of understanding between the RPBs and the Insolvency Service, it seems reasonable to suggest that if no RPB is willing to offer an applicant an insolvency licence then they are probably not suitable to be licensed. In addition, most of the inconsistency referred to in the consultation document, arises from the significant differences between the powers available to the RPBs and the Secretary of State. In the survey of IPs conducted as part of the OFT's study, the Insolvency Service was considered to be the most lenient of the regulators.
18. One issue not addressed within the consultation document is the differing legislative frameworks for insolvency across the UK. An obvious way of achieving greater consistency would be to align the legislation across England and Wales, Northern Ireland and Scotland. The RPBs also pay levies to both the Insolvency Service and to DETINI for the oversight they provide. A merger of these oversight arrangements would have consequent savings in cost to the eventual benefit of users of an insolvency practitioner's services. The consultation document itself is not clear on how the proposals will be implemented across the 3 jurisdictions.

**Q3: Would the creation of an independent complaints body be the best way to improve confidence in the handling of complaints and/or appeals?**

19. We do not agree with the proposal to create an independent complaints body. But this question is somewhat disingenuous – what is meant by best? Ultimately, it will always be better for a process to work at the outset, rather than relying on a complaints procedure to address any perceived shortcomings.
20. The case has not been made out that there is a fatal lack of confidence in the existing complaints systems. Whilst the OFT collected survey data from creditors and insolvency practitioners, the consultation document does not refer to any evidenced failings within the RPBs complaints systems. Neither did the OFT examine the RPBs' complaints process during its market study. So the evidence base is anecdotal. The Insolvency Service and DETINI conduct a programme of visits to the RPBs over a 3 year cycle and in recent years have made reference to the findings from those visits in the Annual Review of Insolvency Practitioner Regulation which has been published by the Insolvency Service since 2009. Whilst reference has been made in these reports to the complaints handling systems nothing is identified as a fundamental flaw. In the annual report for 2009, ICAEW's complaints handling is referred to as 'accessible, effective, fair and transparent'.
21. There is also the cost associated with the creation of such a body. The set up costs identified in the consultation documents seem low when compared with the set up costs of other comparable bodies. The set up costs for the Legal Ombudsman were £14.8m and running costs of £19m. There is a fundamental question to be answered – are the perceived failings in the current system worthy of such expenditure? The impact assessment quantifies the benefits of the reforms as a whole as £8m with the costs of various models for the complaints body suggested, ranging from £2m to £3.4m. And looking at these costs, we do wonder whether the

set up costs for any of the three models have been significantly underestimated at £75,000 when considered against those for the Legal Ombudsman.

22. Reference should also be made to the Clementi Report of the Review of the Regulatory Framework for Legal Services in England and Wales. Although one of the reasons for the creation of an independent complaints body for legal services was to increase confidence in the independence of the system this was against a background of failures within the existing complaints systems. So perception was not the principal driver.
23. It is recognised that many existing complaints are about the legal framework or a creditor's financial loss rather than a failing in the IP's conduct. Many complainants are simply dissatisfied with an insolvency and the financial loss that has caused them. Personal debtors may be unhappy at the effect the process is having on their lives – loss of income or their home and other assets. There are other means for improving confidence which could be achieved at a significantly reduced cost. These could include greater publicity about the operation and efficacy of the current system, signposting of disciplinary outcomes and expectation management of potential complainants. These measures could achieve the OFT's aim of encouraging creditors to use the complaints systems. In these difficult economic times, it would be prudent to try and use these other means before committing to the creation of an independent complaints body.
24. It is also worth noting that the models proposed, in whatever form, for the complaints body and those currently in existence for other professions differ. Most other independent complaints bodies deal only with customer service type complaints – see our response to Q7. It is a significant leap from a body which deals with customer service type complaints (for example the Financial Ombudsman Service or the Legal Ombudsman) to a body which deals with both customer service and conduct type complaints. There has been no evidence produced at all that demonstrates that there are any failings with the means by which the RPBs discipline their licence holders. If there were, we would have expected to see that noted in the Insolvency Service's Annual Review of Insolvency Practitioner Regulation or otherwise communicated to the RPBs. It would seem to be an extreme response to perceived failings in the existing complaints systems to completely restructure the existing disciplinary arrangements of the RPBs.
25. There is another difference. Most existing complaints bodies are designed to deal with consumer or micro enterprise type complaints. Whilst the Insolvency Service obtains data from the RPBs on the number of complaints received, they do not collect data on the source of those complaints. There needs to be further analysis of the make up of the creditor body for all insolvency type complaints to identify how many creditors could be classified as consumer or micro enterprise type complainants. This could also help in estimating the number of complaints it is expected that any body may receive. Or otherwise, a clear case needs to be made as to why the proposed framework is so different from other models for independent complaints bodies. There is no explanation as to why insolvency is so different from other professions in that corporate complainants require greater protection.
26. A final point – we believe that if some form of complaints body is created, it should deal with complaints about all office holders including the official receiver when acting as trustee or liquidator. There is no distinction between public and private provision of the same service as in both cases the office holder operates under the same legal framework. The GMC accepts complaints against medical professionals in both public and private practice. It is the function that the professional performs rather than their employer that is the basis for the complaint.

**Q4: Should such a body have the power to review the fees and remuneration charged by IPs?**

27. This question is based on the premise that there should be an independent complaints body and that it should also deal with fee disputes. As noted in our response to question 3, we do

not support that proposal. We do not believe that any such complaints body should have the power to review the fees and remuneration charged by IPs.

28. Adequate mechanisms already exist within insolvency legislation for creditors to approve and review IPs' fees. It is entirely appropriate that those with the greater economic interest in the outcome of the insolvency should have the most influence over the fees charged. The approval mechanism for an IP's fees allowed for by law provides for this control by creditors. It would be inappropriate for a creditor who had not participated in this approval process to be enabled to challenge fees properly approved under the statutory mechanisms.
29. The amendments to the Insolvency Rules which came into force in April 2010 have the stated aim to benefit creditors by providing greater transparency in respect of insolvency practitioners' fees. Creditors now have the right to request further information and more detailed explanations of anything contained in the office-holder's report, and greater rights to challenge fees and expenses. There has been little opportunity to assess the impact of these changes and it is unclear whether there will be any evaluation of these changes by the Insolvency Service. If these changes have proved ineffective in increasing creditor engagement then that should be evidenced. The new arrangements were not considered by the OFT, but the effectiveness of these changes needs to be assessed before any further change is made.
30. Also, further research should be undertaken to assess the level of creditor participation in the initial fee setting process by voting at creditor meetings and becoming members of creditors' committees. A second stage should be to ascertain why creditors choose not to participate in the current process for agreeing fees. .
31. Rather than give a body the power to review fees we believe that even more should be done to encourage creditor engagement in the fee approval process. For creditors who only have limited experience of insolvency procedures this may be difficult to achieve initially, but repeat creditors should be encouraged to participate. A major step would be for those government departments who are creditors in an insolvency to actively participate in the approval of fees. It would be interesting to see in how many cases currently HMRC or the Redundancy Payments Service exercise their voting power. As noted in our response to question 3, it will always be better for a process to work at the outset, rather than relying on a complaints procedure to address any perceived shortcomings. Any changes should be directed to this end, before any 'after the event' solutions are considered.
32. An extreme example of where creditor participation is at its most effective is the creditor agent voting system in the consumer IVA market, an aspect of insolvency not considered by the OFT. Whilst voting behaviour in IVAs has been criticised in some quarters and may have had unforeseen outcomes, they exert significant downward pressure on nominee and supervisor fees in consumer IVAs using the means available to them under the Act and Rules. These creditors, some of whom will have purchased the debt from the original creditor at much less than its face value, have obviously taken a commercial decision to participate in the process which would appear to suggest that the existing mechanisms for creditor control of fees are effective. This is also an example of a market place where many IPs have taken the decision that it is uneconomic for them to provide IVAs, leading to a contraction in the market which may be inhibiting the access of some debtors (particularly in cases where surplus income is low) to the most appropriate debt solution.
33. Creditor education (as noted in our response to question 3) is also important so that they understand how an IP's fee is calculated and the work involved in a particular insolvency. There are many actions taken by the IP that are prescribed by law and follow a detailed administrative process which is again prescribed in the rules. IPs are also required by law to fulfil functions in the wider public interest such as CDDA and money laundering reporting which may have no direct benefit for the creditors in a particular insolvency. For compulsory liquidations and bankruptcies there is also the impact of the Secretary of State fee to be taken in account, something which many creditors will be unaware of.

34. As we also note in our response to question 3 above, we believe that if any body was created it should deal with complaints against the official receiver when acting as trustee or liquidator. We believe that this should also apply in relation to any structure created to deal with fee related complaints and that complaints should be capable of being made against fees charged by the official receiver. To do otherwise would just increase confusion.
35. Another possible cause of confusion would be the different approach for personal insolvency fee related complaints in Scotland. We think it odd that geography should determine how a complaint is handled when one of the principal drivers for the proposed changes is consistency of approach. Similarly, the consultation is silent as to how the proposed changes would affect Northern Ireland.

**Q5: Should all fee complaints be reviewed in this manner, or should some (such as more complex cases) be reserved to the court? Who would decide the criteria in individual cases?**

36. We do not agree that any body should have the ability to review fees given the statutory provisions for creditors to approve and review IPs' fees – see our response to question 4 above. However, if such a procedure were to be adopted there will be cases that are too complex or time consuming to be dealt with as a fee complaint. It is difficult though to set boundaries. A case involving large sums in fees could be relatively straightforward to resolve, whereas a case where the fees are lower could be difficult to resolve. We would suggest that the body itself should make that assessment at the outset – it would be best placed to know whether it had the resources or expertise to deal with a particular complaint.
37. What has not been considered is the stage at which the court would become involved and the impact on the courts. The consultation document does not make it clear whether complex fee complaints received by the complaints body would be passed on to the court or simply rejected by the complaints body. If the complaints body were to act as a filter for complex cases then it is likely that there will be more than the four additional complaints per year (referred to in the justice impact test form), referred to the courts. Your own estimate suggests 300 fee related complaints a year, but does detail how many of these complaints would have been made to the court under the existing system. It seems unlikely that this level of fee complaints would only lead to four additional cases being considered by the courts, so the impact of the courts and their resources may have been underestimated. There is no information in the consultation about whether the courts have the resources to deal with increased case numbers.
38. As noted in our response to question 4, we believe that there should be a consistent approach to any role for the court going forward, which should include the treatment of personal insolvency fee related complaints in Scotland.

**Q6: How should the costs of a fee related complaint be paid where i) the IP is found to have overcharged and ii) where they are found not to have overcharged?**

39. We do not agree that any body should have the ability to review fees – see our response to question 4 above.
40. As we also state in our responses to questions 3 and 4 creditor education has an important role to play. The question refers to 'overcharging' but there is no detail of what is meant by overcharging. An uninformed creditor's view of overcharging may be significantly different from that of a creditor who fully understands the process. Creditor expectations need to be managed and creditors should understand the IP's role and the functions they carry out as required by law (CDDA, AML etc), some of which may appear to have no direct benefit to a particular insolvent estate.
41. At paragraph 3.21 it is stated that complaints made should be without charge to the applicant. Whilst it is a common feature of most complaints processes that a complainant should be able



to access the process without charge, complaints about fees are more akin to a commercial or contractual dispute than true complaints. So in the first instance, in relation to fee complaints there should at least be acceptance criteria for complaints to prevent speculative, malicious or vexatious complainants. We consider this further in our response to question 14.

42. It seems inequitable however that the general body of creditors, via the estate, should fund the costs of an unsuccessful challenge by a minority grouping. Most forms of arbitration work on a loser pays basis so this could be considered as a means of apportioning costs in fee complaints. Under ICAEW's own fee arbitration scheme, the cost is always fixed in proportion to the amount in dispute and is borne by the 'loser'. If the member's fees are upheld or kept within 5%, the client pays the cost of the arbitration. If the member's fees are reduced by 15% or more, the member pays the cost of the arbitration.

**Q7: What are your views on the single first tier independent complaints body model? Do you agree with the benefits and disadvantages that we have set out? What are your thoughts on the relative importance of the positives and negatives?**

43. We do not believe that there is sufficient evidence of a lack of confidence in the existing complaints system to merit the creation of an independent complaints body – see our response to question 3.
44. The OFT did not as part of their market study undertake any in depth analysis of the RPBs' complaints systems, but instead relied on survey responses. It does not appear from the consultation document that any further evidence gathering has been undertaken by the Insolvency Service except by way of its existing oversight of the RPBs.
45. Whilst the consultation document outlines the concept, the detail of any proposed system is lacking. The consultation document refers to the Scottish Legal Complaints Commission as an example of first tier complaints body. Although the Scottish Legal Complaints Commission acts as a gateway for conduct complaints about legal professionals in Scotland, they pass those complaints to the relevant professional body, so are simply acting as a gateway for those kinds of complaint. There is a broadly similar split in what the Financial Ombudsman Service does – which makes it clear that they do not take action if a firm breaks the FSA's rules, rather that this is a matter for the regulator. Neither is therefore an example of a single tier complaints body of the type envisaged in the consultation paper. There would appear to be no existing equivalent to the model proposed that would deal with both conduct and service complaints, and as noted in our response to question 2, we would question why such a body should deal with conduct complaints.
46. There is also the issue of the role of complaints within the RPBs. Details of complaints form part of risk assessment in deciding whether to bring forward a visit and also for licence renewal. Complaints data will also be considered as part of a planned monitoring visit. There is no detail on how this information would be passed to the RPBs. To deal first with the "positives":
- We see no need for a single route for complainants – please see our response to question 11.
  - There are other less costly means of achieving consistency via effective oversight, and we have seen no concrete evidence of widespread inconsistency.
  - We would question whether there would be economies of scale in reality. Existing complaints systems for most RPBs already benefit from economies of scale across the entirety of their existing systems. It has not been established that the economies of scale under this model would be any greater.
47. The final bullet deals with increased confidence in the regulatory system, but the initial question referred to confidence in the complaints system. As is a common theme throughout our response, we would question whether an after the event system is really best placed to increase confidence. The best way to increase confidence in the regulatory framework is to

ensure that framework itself is effective. There are other less costly means of increasing that confidence. This would include effective oversight but also positive publicity when the system is working well and an increased understanding by the users of the insolvency process of how that process actually works.

48. Now the negatives. As noted above we do not see the need for such a body in any event. There is the cost, which appears disproportionate for a relatively small profession of some 1700 IPs. Those costs would be passed on to the profession itself, which could lead to some IPs choosing to exit the market. Alternatively, the costs will effectively be passed on to the users of an IP's services. This could restrict access to appropriate insolvency procedures for some smaller companies and personal debtors.

**Q8: What are your views on the independent appeals body model? Do you agree with the benefits and disadvantages that we have set out? What are your thoughts on the relative importance of the positives and negatives?**

49. We do not believe that there is sufficient evidence of a lack of confidence in the existing complaints system to merit the creation of an independent complaints body – see our response to question 3.

50. This is the least worst option of those listed in the consultation document, though to a certain extent something similar to this option already exists in the existing complaints procedures. In most of the RPBs' complaints procedures, the RPB cannot refuse to investigate a complaint so there is an inbuilt right of appeal throughout the process. In addition, most RPBs have a reviewer of complaints who will revisit decisions made at an earlier stage. It would be relatively easy to create an appeal body as an extra stage to the existing processes. To deal with the positives:

- Consistency could be achieved in any event by effective oversight and by the sharing of feedback by the oversight regulator. This also addresses the issue of inconsistency highlighted as a negative.
- There are obvious cost savings associated with this option compared to the other models. However, as stated previously in our response to question 7, we think the costs of creating an entirely new body are excessive in relation to the population of IPs.

51. As regards the independence of the process, which is referred to as a negative of this model, this fails to recognise the levels of independent input already built into the existing processes. We have already commented on means of dealing with perception issues in our response to question 3.

**Q9: What are your views on the decision making body model? Do you agree with the benefits and disadvantages that we have set out? What are your thoughts on the relative importance of the positives and negatives?**

52. We do not believe that there is sufficient evidence of a lack of confidence in the existing complaints system to merit the creation of an independent complaints body in whatever form – see our response to question 3.
53. This model is a hybrid which appears to have none of the suggested advantages of model one. If the RPBs are considered competent to conduct the initial investigation then they should be considered competent to deal with the entire complaint.
54. As noted previously, no model suggested recognises the independence already built into the existing complaints procedures, nor recognises the impact of effective oversight.

**Q10: What are your views on the decision making body overlaid with an investigative appeals function model? Do you agree with the benefits and disadvantages that we have set out? What are your thoughts on the relative importance of the positives and negatives?**

55. We do not believe that there is sufficient evidence of a lack of confidence in the existing complaints system to merit the creation of an independent complaints body – see our response to question 3.

56. We do not see the benefit of this option. A two tier system would be more costly than a single appeals body, and as noted in our response to question 9 we do not see the merits of a decision making body. In addition, if there is to be no appeal mechanism built into model 1, we fail to see why such a mechanism should be required for model 4. The decision of the decision making body should be final in the same way as for model 1.

**Q11: Should the appeals or decision making body also act as the single point of entry for all complaints?**

57. There is no need for a single entry point. It is not difficult to establish how to complain about an insolvency practitioner. All insolvency practitioners are required via their authorising body's regulations or otherwise to display details of their authorising body at the earliest possible opportunity.

58. The Insolvency Service's own database of IPs also lists an IP's authorising body along with other contact details. It would be straightforward to add a form of words to the database to indicate also that complaints about a particular IP should be directed to their authorising body. It is our understanding that the IP database is not a statutory database and that IPs may therefore ask that their details are not included on the database. It would be relatively simple for the database to be placed on a statutory footing so that searchers would have a complete picture of all licensed insolvency practitioners.

59. The Insolvency Service produces a leaflet explaining how to complain about an IP which is available on its website. An internet search using the words 'complaint insolvency practitioner' brings up that leaflet as the first non sponsored result. ICAEW publishes a leaflet 'The role of the IP' which is available on our website and in hard copy.

60. Those who responded to the OFT's survey to say that they did not know how to complain about an insolvency practitioner may not have had the need to make a complaint or appear not to have taken the most basic steps to discover how to make a complaint, which they would have to do to find even a single point of entry.

61. In addition, the Clementi review rejected the concept of a complainant gateway with no power to deal with the substance of complaints, as adding an additional layer to the process and delivering little added value.

**Q12: Do you think that settling fee complaints through arbitration would bring advantages over the other suggested complaint models? Do you think any other alternative dispute resolution regimes may work better, i.e. conciliation?**

62. We do not agree that it is necessary to create a mechanism to deal with fee complaints. We believe that the law already enables creditors to participate in the setting of fees – see our response to question to question 5.

63. As noted in our response to question 6, we believe that complaints about fees are more akin to commercial or contractual disputes so would be better suited to some form of alternative dispute resolution than being treated like other complaints.

**Q13: How many complaints (fee and non-fee related) do you expect to be made annually?**

64. It is difficult to assess how many complaints such a body would receive. As a starting point, we should expect that the body would receive at least the same number of complaints as are currently received by the RPBs each year, so in the region of 600.

65. The consultation document refers to IPs changing their behaviour in relation to both fees and more generally leading to an eventual reduction in the number of complaints. But there is no evidence that there is widespread misconduct amongst the IP population which is not currently addressed by the existing regulatory system. If there is such evidence we would have expected that this would have been shared with the RPBs already.
66. Also, the consultation document gives little detail on the powers that any complaint body would have to penalise inappropriate behaviour except that reference is made to its ability to reduce fees. It is difficult to estimate how many speculative complaints would be made by complainants hoping to derive some kind of financial benefit from making a complaint.
67. We have referred previously to the need to educate complainants about the nature and impact of insolvency processes. It should be recognised that whatever process is in place there will always be complainants who are simply dissatisfied with the nature of the insolvency and unhappy about the impact of that process on them and will make a complaint on that basis. No complaints process will ever address the fact that many of those involved in an insolvency will just be unhappy irrespective of any action by the IP.
68. The Legal Services Ombudsman estimates in their 2011 business plan that they will receive some 165,000 enquiries which will develop into 14,000 complaints cases. This level is generated by a profession including some 140,000 authorised persons. This translates as a little over one enquiry for each authorised person. Applying the same logic to insolvency, any new body could receive around 2000 enquiries which may or may not develop into complaints.

**Q14: What safeguards would be appropriate to protect against frivolous or vexatious complaints? Would requiring the support of 10% of creditors (by value) be appropriate?**

69. We do not agree that any body should have the ability to review fees – see our response to question 4 above.
70. In theory, there may be benefits in setting a monetary limit for complaints against fees – see our response to question 6. An equivalent percentage in value to that which is provided for by law would seem appropriate. Such a process may not necessarily be appropriate for non fee related complaints.
71. Any hurdle or barrier is by its nature arbitrary. It is entirely possible that a complaint made by a creditor or creditors owed 10% or more by value, could be frivolous or vexatious. The quantum of a creditor's claim does not necessarily mean that their complaint has any more merit than a creditor owed a lesser amount. It is the nature of the complaint that is the key to whether it could be considered frivolous or vexatious. In addition, there is currently no value criteria involved for a creditor to make a complaint to the RPBs, so setting such a level could place the creditor complainant in a worse position as regards access to the complaints process than they are currently.
72. This question also assumes that all complainants would be creditors, but not all are and would not be able to ascribe a monetary value to their interest in the outcome of the insolvency. An obvious example is the complaints made about SIP 16 compliance by the Insolvency Service. But the RPBs also receive complaints from debtors, directors of the failed company and even members of the public with no direct interest in the outcome of the insolvency. RPBs also refer complaints internally, for example in ICAEW's case, if an IP will not accept a regulatory penalty offered by our Insolvency Licensing Committee. A monetary value as a safeguard against frivolous or vexatious complaints would either not prevent frivolous or vexatious complaints from non creditor complainants or entirely restrict the ability of all non creditor complainants to complain.
73. We assume that it is not the intention to prevent non creditor complainants from accessing a complaints process. But to introduce barriers for creditor complainants but not for non creditor complainants seems unfair. The fairest means to deal with frivolous or vexatious complaints is

to empower the recipient of the complaint to categorise the complainant as frivolous or vexatious, and so cease to deal with that complaint. It is worth noting that in ICAEW's complaint system there is no concept of a vexatious complainant. If a complainant wishes a complaint to be progressed, irrespective of its merit, we have to report that complaint to be considered by a disciplinary committee. Again, to restrict access in any way could be seen as a diminution of a complainant's rights even if those complainants are frivolous or vexatious.

**Q15: What are your views on the location of the body tasked with carrying out the complaints function? Is the Insolvency Service or the Adjudicator's Office suitable to undertake the role of the appeals body? If you have chosen the creation of a new body please explain your reasons for rejecting the alternative options.**

- 74.** As you will have noted from our previous responses we do not support the creation of an independent complaints body.
- 75.** Neither of the bodies suggested seem appropriate to assume that role.
- 76.** Throughout the consultation document reference is made to an independent complaints body. It is difficult to see how a body sited within the oversight body (most likely to be the Insolvency Service) could be truly independent. None of the existing models referred to in the consultation places the oversight regulator as the complaints body – these bodies (Financial Ombudsman etc) are independent of the oversight body.
- 77.** We do not support the proposal that the Insolvency Service act as an appeal/decision body as a means of exercising oversight. At question 21 the need for greater powers for the oversight regulator is considered. Although we see no need for greater powers, we would see this as the means of exerting influence over the RPBs' disciplinary processes. And if as we suggest in our response to question 3 the body should deal with complaints against the official receiver when acting as trustee or liquidator, in those circumstances they would be investigating complaints against themselves. We would also question whether the Insolvency Service has the experience or resource to deal with such complaints. The consultation document refers to the Insolvency Service having the experience of assessment of fees in bankruptcy cases but the models proposed would deal with much more than fee complaints and even the fee complaints would be for the entire range of insolvency proceedings.
- 78.** From the remit of the Adjudicator's Office it would appear that they too lack the experience to deal with complaints of the nature that this body would receive. Dealing with complaints about a government body is significantly different from dealing with complaints in a commercial environment. The Adjudicator's Office is apparently rejected as a first tier complaints body as it only currently deals with complaints when all other avenues have been exhausted. It is our understanding of most independent complaints bodies that they expect the complainant to have first sought to deal with their complaint by addressing it to the party complained of.
- 79.** If cost were not an issue, we would suggest the creation of a properly resourced new body staffed by individuals experienced in dealing with complaints about both conduct and service issues and with detailed knowledge of insolvency processes.
- 80.** If as appears so, the cost of setting up a new body would be prohibitive we would suggest that one of the existing complaints bodies be asked to take on insolvency complaints – the Legal Ombudsman or the Financial Services Ombudsman seem obvious candidates although we expect both would be costly. It is worth noting that the structure and approach of these bodies to complaints makes neither a perfect fit for the model proposed. In this regard we would refer to our response to question 3. Most existing complaints bodies deal only with customer service type complaints not a mix of conduct and customer service complaints. Generally, they also only accept complaints from individuals and micro enterprises and not from corporate complainants.

**Q16: Which of the funding models (A – D) would be most appropriate for the complaint body? Can you suggest any alternative funding model? Do you agree with the suggestion to fund the establishment of the body by a levy on each RPB according to its number of IP members?**

81. As you will have noted from our previous responses we do not support the creation of an independent complaints body.
82. We would suggest a mixed approach to the funding of such a body based on models A and B. There will be a cost associated with the operation and creation of such a body which should be borne by each RPB as under the proposals the complaints body would be a necessary part of being an RPB. Every RPB would also benefit from the increased confidence in the system which is referred to as being the benefit of such a system. The remainder of the cost should be recovered based on the number of complaints received about IPs licensed by each RPB.
83. The consultation paper refers to a levy on each RPB. The reality is that the RPBs are likely to seek to recover these costs from their IPs as is done with the existing levies, so we should recognise that this levy will be to all intents and purposes a levy on IPs. If these costs are perceived to be too high, it could lead to some IPs choosing to exit the market. Alternatively, the costs will effectively be passed on to the users of an IP's services. Any contraction in the market or an increase in the costs of purchasing an IP's services could restrict access to appropriate insolvency procedures for some smaller companies and personal debtors.

**Q17: Do you agree that it would be helpful to set objectives for the regulatory regime? What objectives would you favour?**

84. Yes, we agree that it would be helpful to set objectives for the regulatory regime. The objectives should apply to the oversight regulator and to the RPBs. The Legal Services Board 'shares' its regulatory objectives with the approved regulators for legal services. The objectives should provide the framework for delivery and a benchmark against which the regime may be assessed. The oversight regulator should be able to justify all requirements it imposes on both the RPBs and the profession generally by reference to the regulatory objectives. In the first instance this should involve a review of both the memorandum of understanding and the principles of monitoring to ensure that they reflect the focus and content of the regulatory objectives.
85. All policy initiatives as regards the regulatory regime should display clear links to the regulatory objectives and support those objectives. This will benefit the RPBs who will have a clear understanding of the purpose of any change. This will also assist the standard setting body and any 'independent voice' organisation – we consider this further in our response to questions 23 and 25.
86. The regulatory objectives listed in the consultation document seem to be mixed in their focus – some appear to apply to the oversight regulator, some to the oversight regulator and the RPBs and others seem to be aimed at the profession. The two latter bullets, which seem to be aimed at IPs, are unachievable under this legislative framework or from a commercial perspective and would create a barrier to insolvency proceedings achieving their stated outcome. We would suggest that these latter two objectives need to be reconsidered in their entirety.
87. The language of the objectives may also need adjusting. The current objectives are worded in such a way that they offer no flexibility – they are either delivered or not. In comparison, the regulatory objectives applied to the Legal Services Board, use less insistent language, such as protecting, promoting, supporting and encouraging and enable a more pragmatic approach to delivery and the achievement of outcomes. To deal with each objective in turn:

***A fair transparent and proportionate regulatory system that delivers consistent outcomes***

88. This objective reflects 3 of the 5 principles of better regulation:

- transparent
- accountable
- proportionate
- consistent
- targeted

89. We would suggest restricting this objective to the principles of better regulation and the adoption of the language used in the regulatory objectives of the Legal Services Act as follows:

***Promoting a transparent, accountable and proportionate regulatory system that delivers consistent outcomes***

90. To deal with the second objective:

**An independent, competitive and skilled IP profession that delivers a quality service with integrity**

91. This objective appears to mix some of the ethical standards that should be applied to the profession (Integrity, Objectivity, Professional competence and due care, Confidentiality, Professional behaviour) with the need for competition within the market. There appears to be an obvious tension between the wording within this objective. We are supported in this view by the design of the regulatory objectives for the Legal Services Board where competitiveness is a standalone objective, so in the first instance we would also suggest a separation of these objectives, as follows:

***Promoting competition in the provision of services and encouraging an independent and competent IP profession***

92. You may however wish to consider whether paraphrasing the ethical principles as are applied to the insolvency profession, dilutes the impact of those principles. The equivalent objective as applied to the Legal Services Board, 'promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality' is directly mirrored by rule 1 of the Solicitors' Code of Conduct.

93. We do not consider that the third and fourth objectives listed in the consultation document to be appropriate for the regulatory regime. Rather as noted above, these objectives seem to be capable of being delivered only via the legislative framework and influenced by change to that framework. The change to the prescribed part proposed in chapter 5 is an obvious example of such an amendment.

94. Given what we have said previously about the role of both the state and the RPBs in explaining to creditors and others how the regulatory system works we would add a further objective:

***Increasing understanding of the regulatory framework and the rights of creditors***

**Q18: Do you agree that the IS should no longer act as direct regulator, except as regulator of last resort if no RPB existed? Should any other changes be made to the number of regulatory bodies?**

95. Yes, we agree.

96. As noted in our response to question 3, most of the inconsistency referred to in the consultation document, arises from the significant differences between the powers available to the RPBs and the Secretary of State. The Secretary of State has no power short of

authorisation removal with which to amend the behaviour of those authorised and it appears to be unable to publicise details of those IPs with whom it has agreed action plans. In the survey of IPs conducted as part of the OFT's study, The Insolvency Service was considered to be the most lenient of the regulators.

97. Also, the Insolvency Service's Annual Review of Insolvency Practitioner Regulation shows that those IPs authorised by the Secretary of State generate significantly more complaints than those licensed by the RPBs.
98. There should be no need for a regulator of last resort. The RPBs operate common standards for the granting of authorisation which are agreed with the Insolvency Service and contained within the Memorandum of Understanding. It seems reasonable to suggest that if an applicant failed to meet the standard for authorisation when applying to an RPB for a licence, then they are unsuitable to be a licence holder. It would seem inequitable if a lesser standard was applied by any regulator of last resort.
99. It could be argued that the number of RPBs should be reduced, but with effective oversight the number of RPBs is not significant in itself. .

**Q19: Do you agree the oversight regulator should be given increased powers to monitor and sanction? If so do you agree these should include the power to fine RPBs, the power to issue a formal reprimand and the power to publicise enforcement action?**

100. No, we do not agree. It is difficult to understand why the Insolvency Service believes that the oversight regulator needs additional powers. Looking at the current system, there is no evidence that an RPB has failed to act on an instruction given by the Insolvency Service. If there has been such an occurrence, it has not been shared with all the RPBs. The findings of the Insolvency Service's visits to the RPBs are now publicised via the Annual Review of Insolvency Practitioner Regulation within the framework of the Insolvency Service's current powers of oversight.
101. Although we have no fear that these powers would be used against ICAEW, we feel they are both unnecessary and excessive. For most systems of delegated self regulation, the powers of the oversight regulator mirror the current powers of the Insolvency Service and there is no evidence to suggest that these powers are insufficient in this regime or any other.
102. The oversight body already has unlimited power to monitor the activities of the RPBs in relation to insolvency and thus there is no scope for extending its remit as regards monitoring. To suggest that RPBs should be subject to fines and reprimands is to misunderstand the role that RPBs perform. In short, RPBs are not part of a regulated community but are independent regulators acting in the public interest. If they are perceived as failing in the discharge of this role the legislation already sets out means by which they might be deprived of it. Further, the suggestion that regulators should themselves be subject to fines and reprimands gives rise to the risk that the oversight body is perceived as either seeking to substitute its views for those of the regulator or as imposing a pressure on the regulator to act in a particular way. Either course would result in an undermining of what should be, and indeed is required to be by the European Convention on Human Rights, an independent process.

**Q20: Should the cost of oversight be recovered by a combination of fixed and variable charges to the RPBs?**

103. We would support this recommendation. There is obviously a base cost involved in being an RPB which may exceed the sum currently collected by way of levy from those RPBs with fewer licence holders. The impact assessment suggests this is the case but does not quantify these costs. This is a variation of the model we have suggested for the funding of any complaints body.



- 104.** It is worth repeating however, that these costs will effectively be borne by the profession itself. All RPBs currently collect the entirety of the levies they are charged from their licence holders and we see no reason why this will not continue. If these costs are perceived to be excessive, this could lead to some IPs choosing to exit the market. Alternatively, the costs will effectively be passed on to the users of an IP's services. Again, this could restrict access to appropriate insolvency procedures for some smaller companies and personal debtors.

**Q21: Do you agree that the oversight regulator should be given greater powers to influence the setting of standards? If so are the suggested powers of veto and a positive power to direct standards, appropriate powers to give? If not what powers would be appropriate?**

- 105.** This question does not appear to recognise the reality of the current system of standard setting. The Joint Insolvency Committee currently operates in such a way that all members of the committee agree before a standard is issued. This gives the Insolvency Service a veto already. The Insolvency Service has also exercised that veto recently during the process to revise SIP9. Whilst it could be argued that under the current system the Insolvency Service no greater power than the RPB members of the JIC, it is inconceivable that a standard would be issued of which the Insolvency Service did not approve. The Insolvency Service has been closely involved in all recent developments in standard setting including the code of ethics and SIP 16, and is represented on all the working parties involved in reviewing the SIPs. There has been no need up to now for greater powers.
- 106.** If regulatory objectives are introduced these will set out a framework for what should be achieved via standard setting and a benchmark against which all standards may be judged. If the regulatory objectives are appropriate and suitable the oversight regulator should need no greater powers to influence standard setting.

**Q22: Is the oversight regulator best placed to ensure the regulatory objectives are being met?**

- 107.** Yes - primary responsibility for delivering the regulatory objectives should rest with the oversight regulator.
- 108.** There is the question of the consideration of the public interest and the representation of an 'independent voice'. Although it will depend on the tone and scope of the regulatory objectives, it appears that there will be a role for an independent voice to challenge the oversight regulator on whether the objectives are being met. We consider this aspect further in our response to question 25.

**Q23: Do you support the proposal to establish a new standard setting board to replace the JIC? What membership should it comprise?**

- 109.** There must be a complete role for the profession in the setting of standards. The profession itself is well placed to assess whether a standard will be workable in practice. That having been said, standard setting should be seen to be operating independently of the profession. This is a challenging balance to achieve.
- 110.** We would suggest that a new body is established with members drawn from the profession and others outside of the profession (lay members) but having an interest in or knowledge of the insolvency process. We would however counsel against these lay members being representatives of narrow sectoral interests. There is also a debate to be had about the interaction between the standard setting body and the oversight regulator. But we do feel that intervention by the oversight regulator to impose standards seems an inappropriate use of the oversight regulator's powers. The oversight regulator has other means by which to impose its regulatory objectives and policies on the profession most notably via legislative change. There would obviously be a cost associated with the creation of any new body but the alternative model suggested in the consultation document would also incur a cost.

111. In the short term and to facilitate transition to a new structure, there are changes that could be made to existing JIC format that may allow it to become a body similar to that envisaged in the consultation document. The rules of the JIC could be changed to enable lay members and to the governance arrangements within the RPBs to enable faster approval of standards. Changes could be made to the JIC without the need for any legislation as the rules of JIC may be changed by agreement between the RPBs and the Insolvency Service. It is likely that if a new standard setting body is created then there will remain a role for something similar to the JIC to act as a forum for discussion for the RPBs. Similar structures exist in other regulated areas.

**Q24: Do you support the proposal to establish a new standard setting board to act as an advisory board to the oversight regulator? What membership should it comprise?**

112. We acknowledge that there should be a change to the structure of standard setting and have made suggestions for an alternative model in our response to question 23. In our view, standard setting should be delivered by a body independent of the legislative process and as the oversight regulator, (if the Insolvency Service), would have the power to make legislative change to implement its own policies in support of the regulatory objectives it should not also set the standards. The purpose of standards is to augment and enhance the legislative framework not to deliver legislative change by alternate means.

**Q25: Do you agree with the recommendation to fold the Insolvency Practices Council?**

113. Yes, we see some merit in this recommendation. In recent years IPC seems to have been struggling to find a focus for their recommendations. This could be a function of the current committee membership but could also reflect that there is less need for significant change to the regulatory framework. There is also now much more public consultation built into the development of new standards, so the views of those outside the profession are being actively sought.
114. The IPC has also interpreted its remit in an expansive way, leading to recommendations being made which either have no direct effect on the insolvency profession or are aimed directly at government. For example in its 2010 report there were three recommendations aimed at both IPs and debt advisers more generally. Whilst this wide remit could be considered to be laudable, we should not forget that the IPC is currently funded by a levy only on IPs.
115. Depending on the design of the regulatory objectives, there may be a role for an independent voice to challenge the oversight regulator on how those objectives are being achieved and to represent the wider public interest. If the IPC is to be replaced by another body or refreshed in some way, consideration should be given to ensuring that body operates within its remit or if a broader remit is considered beneficial that the body is funded by all parties within its scope, so the wider advice community and government itself.

**Q26: Do you think that increasing the level of the prescribed part would help to constrain IP fees for unsecured creditors? If so how do you propose this should be achieved?**

116. The focus of this proposal may be incorrect in seeking to constrain fees. An alternative approach could be that increasing the level of the prescribed part may give unsecured creditors a greater economic interest in the outcome of the insolvency and so encourage their participation in the process.
117. Balanced against this is the impact on secured creditors. Secured (and unsecured) creditors price their risk on the basis of the possible outcome of their lending. A possible reduction in their returns may increase the price of the lending or affect the initial decision to lend.
118. It is worth considering whether there are any means to reduce the costs of an insolvency process by reducing or removing any functions carried out by the IP which add little value to

the process. It may be that the insolvency rules project already identified all such savings but this may be an opportunity to revisit this subject.

**Q27: Would you welcome greater transparency in the remuneration of IPs? Should the provision of further details be mandatory or upon request?**

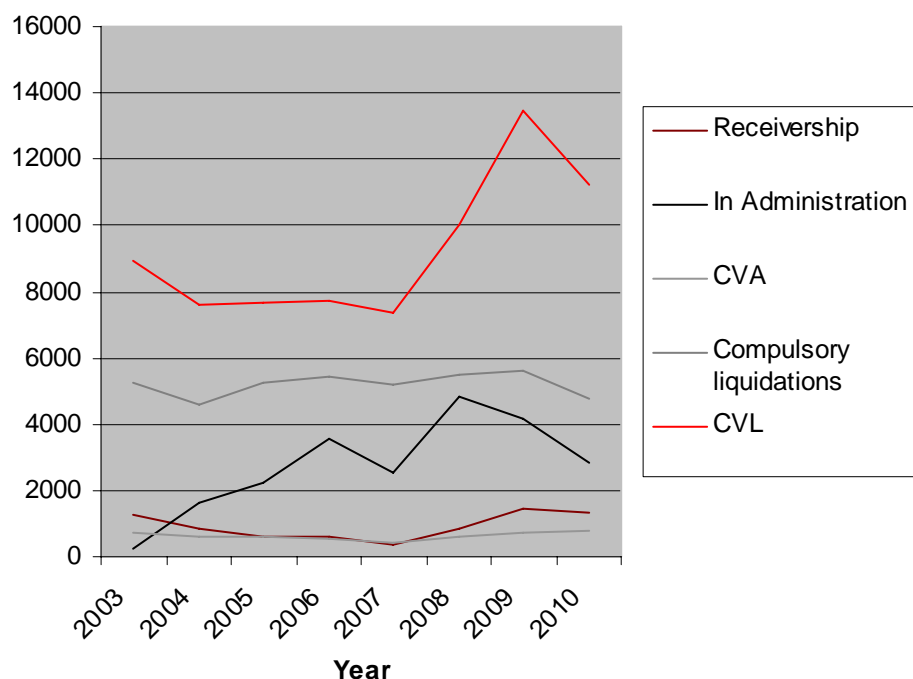
- 119.** We welcome proposals to increase transparency as long as this does not duplicate existing output and so incur greater costs. This could be a matter which could be considered as part of the ongoing review of SIP9.
- 120.** However, the 2010 rules introduced provisions which had the stated aim of greater transparency in respect of insolvency practitioners' fees. These new rules have been in force for little over a year and we would suggest that the impact of these changes be evaluated before any further change is made.

**Q28: Do you favour hourly rates being agreed by creditors at the time of the resolution either specifically or subject to a maximum amount?**

- 121.** We see no issue with the current disclosure of indicative hourly rates. Is there any evidence of hourly rates being increased excessively beyond the sums you would expect to see for wage inflation etc? Without evidence of any mischief in the current system it is difficult to see the benefit of such a change.

**Q29: Do you have any evidence that the administration process is being used where a CVL would be more appropriate?**

- 122.** No, this is not an area where we have received complaints and is an issue seldom encountered by our insolvency reviewers.
- 123.** Although the Insolvency Service's own published statistics show an increase in the use of administration, post Enterprise Act, this does not seem to be at the expense of CVL as the case numbers show similar trends:



- 124.** The Insolvency Service's own evaluation of the corporate provisions of the Enterprise Act found that there was no systemic abuse of the administration procedure. If there is

perception of such abuse, perhaps the first step would be for the Insolvency Service to re-evaluate this aspect of the administration process before making any changes to the legislation. This review could also consider whether there are an increasing number of no asset CVL cases.

**Q30: Do you agree with the proposed approach of restricting paragraph 22 appointments and paragraph 14 appointments? If not do you have any alternative suggestions?**

**125.** The consultation itself states that the practice of using administration when CVL is more appropriate is not believed to be widespread. It seems therefore that a change to the legislation is unnecessary. Also if an administrator has to realise property (the third objective) he must already explain why he cannot achieve the second and/or first objective, once he is acting as the administrator.

**Q31: Should creditors be given an opportunity to review the choice of an IP to act as liquidator, prior to the company converting from administration to CVL?**

**126.** We are unclear why such a change is necessary. The Enterprise Act changes were introduced to enable a streamlined exit into CVL but mechanisms exist for creditors to review the choice of liquidator in any event albeit at an earlier stage. There could be significant cost implications if a new liquidator was to acquire knowledge of the case before progressing the liquidation which seems counterproductive.

**Q32: Does Rule 2.106 need further clarification?**

**127.** We assume that rule 2.106 was reviewed as part of the new rules project and no amendment was considered necessary. We would suggest that any possible need for clarification be considered as part of the second phase of the rules project.

**Q33: Should IPs be required to provide an estimate of the duration and cost of the insolvency process at the outset? If Yes, should they publish the amount to which these estimates were exceeded?**

**128.** The new rules already provide for an IP to provide progress reports which include details of remuneration. Estimates whilst indicative will not provide the full picture as the nature of the case may change and therefore costs. Rather than provide an additional layer of detail, perhaps we should be looking at the information already provided to creditors so that they fully understand the existing mechanisms for fee approval.

**Q34: Should any discounted hourly rates negotiated in an administration be applied to a subsequent CVL? If so, should this be mandated, and if so, how?**

**129.** No. The key to this question is the use of word 'discounted'. It is not that unsecured creditors are paying more than they should, but that the secured creditor is using their 'buying power' to negotiate a lesser amount. The nature of the appointment changes once security has been realised. A secured creditor will generally take security over those assets which are the easiest to secure and manage. Once those assets have been realised the IP will now be dealing with assets that require greater diligence to realise or may involve litigation and the associated risks involved to do so.

**130.** It is worth considering whether there are any means to reduce the costs of an insolvency process by reducing or removing any functions carried out by the IP at the CVL stage which add little or no value to the process. It may be that the new insolvency rules project already identified all such savings but this may be an opportunity to revisit this subject.

**Q35: If an IP is unsuccessful in defending a challenge to his fees, should the costs be borne by the IP?**

**131.** We believe this should remain at the discretion of the court as currently. There is no evidence that the court's current discretion encourages overcharging so we see no merit in such a change.

**Q36: Is there a need for clearer and more consistent information to be a) provided to creditors and b) filed at Companies House? How could this be achieved?**

**132.** There is a balance to be achieved between transparency and clarity on a case by case basis. The information needs to explain to creditors what the IP has done and a reduction in the information may lead to insufficient information being provided to explain the IP's actions. We would suggest that the consultation has in part answered its own question and that the answer lies in ensuring, through training or standard setting, that information provided to creditors is consistent, transparent and in appropriate form for the particular creditor grouping. It is difficult however, without real life examples or more detailed creditor feedback to consider the scope of such a project.

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