Annual Report 2010

Insolvency Practices Council

Influencing the standards of the insolvency profession

ipc

The Insolvency Practices Council

The IPC is a public interest body that advises the insolvency profession and its regulators on the professional and ethical standards of insolvency practitioners.

The IPC has nine members – a chairman and five other lay members together with three members of the insolvency profession who provide technical advice – and a secretary.

What the IPC does

The IPC reviews whether the professional and ethical standards of insolvency practitioners are appropriate and whether they are satisfactorily enforced by the Recognised Professional Bodies that regulate them.

The main objectives which the IPC seeks to promote are that insolvency practitioners act professionally, fairly, courteously and transparently in all their dealings with members of the public and, wherever appropriate, give them "best advice" on the options open to them; and that they are fully accountable for the protection and use of the assets with which they are entrusted.

The IPC seeks to promote fair, consistent and transparent procedures for the investigation of any complaints made by members of the public against insolvency practitioners. However, the IPC is not itself an ombudsman and has no powers to investigate complaints.

The IPC has a duty to make recommendations to the government Insolvency Service or to the Recognised Professional Bodies about any matters relating to regulatory, professional or ethical standards. It works closely with the Joint Insolvency Committee, which is the voice of the Recognised Professional Bodies who are required to co-operate with the IPC.

The IPC publishes an annual report, which includes details of its work and recommendations made.

In all its work the IPC will take into account any relevant concerns brought to it by individuals or organisations on public interest matters as well as any concerns identified by the IPC itself.

The IPC welcomes information or concerns on insolvency from those affected by insolvency and, particularly, from debtors and creditors.

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The Insolvency Practices Council ..... Inside front cover

Executive Summary 2

Chairman's Report by Geoffrey Fitchew CMG 4

Incoming Chairman's Statement by David Tracy 9

Annual Report for 2010

- Managing borrowing and dealing with debt 10
- The OFT market study 11
- Other recommendations 15

Other Activities and meetings in 2010

- The IPC's responses to consultations 17
- Meetings/conferences attended by the IPC 17
- Other matters 18
- Contacts 18

Funding and Costs 19

Members of the Council during 2010 20

Glossary of terms used in the report ..... Inside back cover

This Annual Report gives the IPC's views on two main policy issues that came to the fore in 2010 and which are currently under consideration by the government:-

How to improve the solutions available to distressed personal debtors and to discourage mis-selling by debt advisers, including IPs; and

The proposals put forward by the Insolvency Service (IS) on the future regulation of the insolvency profession in response to a report by the Office of Fair Trading (OFT).

Personal Indebtedness

In October 2010 HM Treasury and BIS Ministers published a consultation document entitled "Managing Borrowing and Dealing with Debt" which invited evidence on the workings of the debt advice market and on how the quality of advice given to personal debtors could be improved. The IPC stated in its response to this consultation made in December last year that there is sufficient evidence available from the OFT's survey of the commercial debt advice sector published in September 2010 and other sources to prove the existence of a number of abuses, including inappropriate advice and probable mis-selling. We recommended three measures to help reduce the risks of poor advice and mis-selling:-

- Better information for debtors. All debt advisers, including IPs, to provide their customers with up to date information about the duration and completion/failure rates for IVAs and Debt Management Plans (DMPs) and a statement of their own fees and charges before the debtor commits to any arrangement;
- IPs and debt advice firms should use agreed income and expenditure categories and expenditure allowances to determine debtors' surplus income and agreed criteria for assessing the most appropriate debt solution. The debtor should be given a balanced statement of the pros and cons of the alternatives, when he/she might be eligible for more than one option; and
- Stricter and more frequent monitoring of the advice given to debtors and the subsequent monitoring of the management of their cases by IPs and other debt advisers.

We also suggested three legislative changes to improve the debt solutions available to debtors at all levels of income and indebtedness: raising the £15,000 ceiling on debts which can be written off through a Debt Relief Order to £30,000; limiting the duration of any debt solution (statutory or informal) involving continuing payments by the debtor to a maximum of 10 years and; if the evidence justifies it, a new statutory scheme providing relief from interest and other charges for debtors who can repay their debts in full. The Scottish Debt Arrangement Scheme (DAS) may provide a model for such a scheme in the rest of the UK .

Proposed Changes to the Regulation of the Insolvency Profession

In June 2010, the OFT published a report into the market for corporate Insolvency Practitioners. It recommended a number of specific measures to make it easier for unsecured creditors to challenge IPs' fees. In addition, the report recommended setting up a new complaints body either to take over entirely from the Recognised Professional Bodies' (RPBs) complaints systems or to provide an independent appeals body and also proposed significant changes to the system for regulating IPs. These included changes in the relationship between the IS and the RPBs, in the arrangements for setting professional and ethical standards for IPs and in the possible future role of the IPC. The IS published its response to these proposals in a consultation document on 12 February 2011 to which the IPC responded on 25 March as follows:-

- Enabling Unsecured Creditors to challenge IPs' fees:- We agree with several of the changes proposed by the OFT and IS, in particular on the need for greater transparency regarding fees. We propose mediation followed by a paper-based independent review or arbitration to settle fee disputes as an alternative to the courts or to the proposed complaints body;

- Reforming the RPBs' Complaints Systems:- Our view is that complainants against IPs should have access to a complaints system which covers poor service and can offer financial and other redress. It should be distinct from disciplinary proceedings and allow complainants to appeal to an independent reviewer. We believe that these changes can be achieved most economically and effectively through reform of the RPBs' arrangements and that the creation of a new public body is unnecessary. Personal debtors should be able to go direct to an independent reviewer without going through the RPBs' complaints system;
- The Role of the IS:- We agree that the IS should cease to license or regulate IPs except as a last resort. We also agree that the IS should be empowered to impose a wider range of sanctions on the RPBs for regulatory failures;
- Standards Setting:- We agree with the OFT's proposals for speeding up the work of the Joint Insolvency Committee (JIC) in setting binding professional and ethical standards. We also favour adding independent lay members into the JIC and requiring the JIC to consult all directly and indirectly affected parties on their proposals. We disagree with IS's proposals to create a new standards setting body in which the RPBs are in a minority and/or to take standards setting into its own hands;
- The Role of the IPC:- We agree with the OFT's proposal that the IPC (or an alternative "voice organisation") should continue in its present role but also be given a remit to review whether the RPBs and the IS are meeting their proposed statutory objectives and to champion the interests of personal debtors and unsecured creditors. We do not agree with the IS's proposal to exercise the IPC's role itself, given the conflicting objectives the IS has to manage.

Other Recommendations:- We make some additional recommendations, which include the need for the RPBs to find a way to get IPs to communicate more promptly with third parties.

Introduction

This is my sixth and last Annual Report since being appointed as Chairman in 2005 I will be standing down from the IPC at the end of May. I am glad to say that David Tracy has agreed to lead the IPC's work from 1st June and has been appointed by the board of IPR Services Limited as Chairman. I wish him and my other colleagues all the best in the work that lies ahead of them. This will include working together with the Insolvency Service (IS), the Joint Insolvency Committee, the Recognised Professional Bodies (RPBs) and other stakeholders on possible changes to the future regulation of the insolvency profession (see my comments below on the follow up to the OFT Study Report). The IPC will also have plenty to do and say in its normal work of scrutinising the professional and ethical standards of the profession and in contributing to the ongoing policy debates on improving debt advice and SIPs.

The IPC has always worked as a closely-knit team. My heartfelt thanks go to all my past and present colleagues, both lay and professional, and to Mike Stancombe and his predecessor, David Harrison, the two IPC Secretaries with whom I have worked, for all their help and support, wise advice and dedication during the past six years. I have also greatly enjoyed my involvement with the insolvency profession, its regulators and the IS and wish them all the best for the future.

The Insolvency Market since 2005

My time as Chairman has coincided with a turbulent and rapidly changing period for the insolvency profession, particularly those dealing with personal insolvencies. From 2004 to 2008 the number of personal insolvencies tripled and in 2010 reached a historical high of 137,000 for England, Wales and Northern Ireland; a record level of over 23,000 was also reached in Scotland. Within the total level of personal insolvencies in England and Wales, Individual Voluntary Arrangements (IVAs) now represent over one-third of the total compared with around 22% in 2004 and Debt Relief Orders (DROs) have risen from zero in 2009 Q1 to over 7,000 (almost 20%) of the total in 2010 Q3. These represent the tip of the iceberg of individuals and families having difficulties dealing with their debts. The number of commercial debt advice firms, licensed by the OFT, has risen dramatically as has the number of informal Debt Management Plans (DMPs) of which Bristol University recently estimated there were 350,000 in existence. The OFT and other organisations, including the IPC, have voiced serious concerns about the quality of debt advice and debt management. The non-commercial "free-advice" organisations have expanded their resources, but are still struggling to cope with the numbers of clients seeking their advice. The recent decision of the government to find another year's funding for Citizens Advice is therefore welcome.

Table 1 – IVAs, Bankruptcies and Debt Relief Orders in England & Wales and Northern Ireland 2000-2010

Calendar Year	IVAs approved	Bankruptcy orders	Debt Relief Orders	Totals
2000	8245	21899		30144
2001	6474	23769		30243
2002	6502	24626		31128
2003	7901	28113		36178
2004	11201	36564		47765
2005	20925	48108		69033
2006	45125	63994		109119
2007	42606	65378		107984
2008	39674	68507		108181
2009	48363	75907	11831	136101
2010	**51718**	**60515**	**25179**	**137412**

Source: The Insolvency Service

Table 2 – Sequestrations and Protected Trust Deeds in Scotland (plus DAS programmes)

Calendar Year	PTDs approved	Sequestrations	DAS	Totals
2000	2801	2965		5766
2001	3779	3048		6827
2002	5174	3215		8389
2003	5452	3328		8780
2004	6024	3297		9321
2005	6881	4065		10946
2006	8208	5430	128	13638
2007	7595	6219	99	13814
2008	7542	12322*	442	19864
2009	9126	14356	908	23482
2010	**8438**	**11891**	**1417**	**20329**

*Source: The Insolvency Service (by calendar year) and the Accountant in Bankruptcy (for Debt Arrangement Scheme debt payment programmes not included in Totals). *Low Income Low Asset (LILA) bankruptcies were introduced in April 2008 (hence the steep rise).*

In the corporate sector, insolvencies rose sharply in 2009. In England and Wales they fell back markedly in 2010 (though the corresponding numbers rose in Scotland and Northern Ireland) and are at a low level in terms of the percentage of companies affected compared with earlier recessions, though the absolute numbers of insolvent UK incorporated companies is double that in the 1991 recession. The work of IPs in handling corporate insolvencies, however, is much more in the public spotlight than in previous economic downturns. This is primarily because of the controversy over the increasing use of "pre-pack" sales, particularly to previous owners or managers. The outlook for both the corporate and personal sectors for 2011 remains highly uncertain because of similar uncertainties over the performance of the UK and of the global economy.

Table 3 – Liquidations, Receiverships, Administrations and CVAs in the UK 2000-2010

Year	Liquidations*	Receiverships**	Administrations***	CVAs
2000	14317	1595	438	557
2001	14972	1914	698	597
2002	16306	1541	643	651
2003	14184	1261	744	726
2004	12192	864	1602	597
2005	12893	590	2261	604
2006	13137	588	3560	574
2007	12507	337	2512	418
2008	15535	867	4822	587
2009	19077	1468	4161	726
2010	**19468**	**1309**	**2835**	**969**

*Source: The Insolvency Service. * In England and Wales – 2010 figure provisional ** Includes Law of Property Act receivers. *** Incorporates the effects of the Enterprise Act 2002 from 15 September 2003.*

The IPC's priorities and achievements

The IPC's main priority since it was set up has been to try to improve the quality of advice given to distressed personal debtors. We have achieved or contributed to a number of successes. In 2000 R3 produced the pamphlet "Is an IVA right for me?" in response to an IPC recommendation. We helped to persuade the government to improve the treatment of the matrimonial home in bankruptcy through the Enterprise Act 2002. Since 2005 the IS has responded to our recommendations by producing and publishing regular statistics on the completion/failure rates of IVAs and supplying detailed breakdowns of these figures for each IP to the insolvency regulators as a basis for their monitoring. We have consistently pressed for a more "joined –up" and evidence-based approach to policy on and the regulation of advice to personal debtors. As observers on the IVA Standing Committee we strongly supported the production of the Debtors' Guide. We have pressed for an initiative, which the IS is now pursuing, to get the wider debt advice sector to produce meaningful statistics on the numbers, duration and completion/failure rates of DMPs. We successfully urged the IS and the RPBs to increase the frequency of their monitoring of the large "IVA factories."

Last, but not least, we campaigned for the RPBs' disciplinary and complaints systems to be reformed to provide a more independent consumer-friendly complaints procedure, which could award financial and other redress. Both the OFT and the IS have now put forward proposals which go in this direction (see below).

On the corporate side we expressed concerns about pre-packs in our Annual Report on 2006. In addition to the need for greater transparency through the SIP 16 Reports, we recommended that the RPBs should give more specific guidance to IPs who have negotiated a pre-pack sale to recognise that they should refuse the appointment as administrator to execute the pre-pack, because they would be conflicted.

New Policy developments in 2010

Debt advice: the OFT survey and our response to the HM Treasury/BIS call for evidence

In the second half of 2010 and in the last few weeks there were three major developments relating to our work, the third of which puts the question of our future in discussion.

In September, the Office of Fair Trading (OFT) published the results of its major survey into the compliance of the debt-advice firms, which it licenses, with the guidance it requires them to follow in advising personal debtors and managing their affairs. Its report disclosed that significant numbers of licensed firms were failing to comply with OFT guidance on advertising, on upfront disclosures of their fees and charges and on providing their clients with appropriate and unbiased advice on the options open to them. A number of debt advice firms were said to guide debtors to the debt solution which was most profitable to the firm to the point where this might constitute mis-selling. To its credit the OFT is instituting a programme of action to root out these malpractices. Its criticisms, some of which extend to some of the IPs covered in its survey, are generally very much in line with concerns we expressed about the possible mis-selling of debt solutions in our Tenth Annual Report (on 2009).

Second, HM Treasury and BIS published in October a call for evidence covering all aspects of consumer credit and personal insolvency entitled Managing Borrowing and Dealing with Debt. The IPC welcomed this initiative and responded in December to the questions in the document which ask for views on how personal debtors could be helped to find the most appropriate solution to their problems. Our response can be accessed on our web-site. Our answers reflect issues we have raised in recent Annual Reports. We share the government's view that it is debtors who should make the final decision on which debt solution is most appropriate for them and should remain free to enter into negotiated informal debt arrangements with their creditors. We also believe that there should be a seamless suite of statutory debt solutions covering all distressed personal debtors, whatever their levels of debts or their income, which should encourage debtors to repay as much as they reasonably can to their creditors, while providing appropriate debt relief and protection from harassment. Our reply suggests ways of improving the statutory solutions currently on offer. We say we are persuaded by the OFT's survey and by other evidence of possible mis-selling that the quality of information and advice given to debtors by IPs and other debt advisers needs to be significantly improved to enable them to make better informed decisions. We suggest a series of measures to promote this objective. Our Report below spells these out in more detail.

The OFT Study into the market for corporate insolvency practitioners

Finally, the OFT published last June a study of the market in corporate insolvency, which found that in over a third of corporate insolvencies unsecured creditors lose out on potential recoveries because of the higher fee levels authorised by secured creditors when the latter were likely to make a full recovery of the debts owed to them. The OFT recommended ways to help unsecured creditors to exercise more influence in corporate insolvencies and to challenge IPs' fees, including the setting up of a new independent body to deal with complaints against IPs. The OFT also recommended an overhaul of the system of regulation applying to insolvency practitioners under the Insolvency Act 1986.

The IS published its response to the OFT document on 11th February 2011 in the form of a consultation document to which we replied on 26th March. Our Report below sets out our position in detail and our full reply is available on our web-site (www.insolvencypractices.org.uk).

We agree with many of the proposals made by the IS in its consultation document on the reform of the regulatory system, in particular, that the IS should be given stronger powers to carry out its role as the "oversight regulator", authorising and monitoring the seven RPBs which regulate IPs, and should itself cease to license and regulate IPs directly. We agree that the IS and the RPBs should be given statutory objectives against which their performance should be judged and that these should include an obligation to promote the protection of the rights and interests of unsecured creditors and personal debtors. Finally, we agree that it is timely to explore the pros and cons of moving to a single regulator of IPs.

Primary legislation will be needed, eg, to strengthen the IS's powers. We suggest that the opportunity should be taken to consider whether the regulatory system should be extended to cover not just individual licensed IPs, but the partnerships and firms which employ them. We also suggest that in reviewing the primary legislation BIS should look at the case for a more unified approach to the regulation and monitoring of all providers of debt advice and debt management (including IPs) .

There are, however, three points on which we diverge from the IS's proposals. We agree with the OFT and the IS that the current disciplinary and complaints systems run by the RPBs need to be reformed to provide a genuine complaints process, which should be distinct from the disciplinary process and be able to provide redress (both financial and otherwise) for successful complainants. Both the complaints and disciplinary processes need to be made more independent of the profession, particularly at the appeals level. We have ourselves recommended changes in this direction for the last two years. But we do not agree that setting up an entirely new complaints body is necessary to achieve these aims. Our response to the IS consultation document sets out an alternative approach of reforming the RPBs' existing complaints systems, which we believe would be just as effective and more economical, including a low-cost independent review or arbitration system for resolving disagreements between creditors and IPs over fees in corporate insolvencies. This would avoid the need to create a new public body.

Second, we do not agree with the IS proposals to replace the Joint Insolvency Committee (JIC), in which the RPBs initiate Statements of Insolvency Practices (SIPs) and other guidance to IPs, by a new standards setting body in which the RPBs would be in a minority. We believe that both the options for the new body put forward in the consultation document would lead to the IS becoming the standard-setter. We think this would be wrong, first, because setting professional and ethical standards should be the job of the RPBs as the front-line regulators which have to monitor and enforce them and, second, because the IS should not be empowered to legislate without Parliamentary scrutiny. We support the OFT's proposals to streamline the work of the JIC and to give the IS limited powers to veto JIC proposals with which they disagree and to mandate the JIC to produce new standards, where necessary. We also propose that the JIC should be strengthened by the inclusion of lay members and that there should be full consultation of any outside parties likely to be affected by any new standards being considered by the JIC.

Finally, we disagree with the IS's view that the IPC would no longer be needed under the new regulatory regime because the IS could take over our role of reviewing IPs' professional and ethical standards and the work of the RPBs. On the contrary, we believe that the proposals to strengthen the IS's role as "oversight regulator" reinforce the case for a "voice organisation" such as the IPC, similar to the Financial Services Consumer Panel, to provide an independent view of the regulatory system as a whole. The IS should clearly not act as judge and jury in assessing its own performance.

We therefore agree with the OFT's proposals that the IPC's remit could be extended to enable us to review how the IS exercises its role as the oversight regulator and how both the IS and the RPBs comply with their new statutory objectives and that we could also be given a clear responsibility to represent the interests of unsecured creditors and personal debtors, since this is only one of several potentially conflicting objectives the IS will have to meet. We believe that the IPC has carried out much of this role successfully for the last ten years at modest cost. We explain our case on this and our response on other aspects of the OFT Report in more detail below.

Geoffrey Fitchew CMG

On behalf of all my colleagues in the IPC, I would like to start by thanking our retiring Chairman, Geoffrey Fitchew, for his leadership over the last six years and his dedication to ensuring that ethical and professional standards of the Insolvency profession have been maintained and improved. He can rightly be proud of the recommendations listed elsewhere in this report that have been implemented during his tenure.

I have been asked and am delighted to have accepted chairmanship of the IPC at a time of great change in the profession and its governance regime. My involvement with Insolvency Practitioners stems from 30 years in Corporate Banking, the last 20 at senior executive/director level. Since retiring in 2003 I have held a number of non-executive appointments at chairman and director level and I became a lay member of the IPC in 2006. I have, since then, regularly attended IPC Board Meetings, and also met with other interested parties such as the OFT, CAB, R3, MALG etc. to discuss developments in insolvency practices.

It is my firm intention to continue to fulfil the IPC's mandate throughout this period of regulatory change.

David Tracy

Managing borrowing and dealing with debt: consumer credit and personal insolvency

HM Treasury/BIS call for evidence

The HM Treasury/BIS consultation document invited evidence and recommendations on a range of questions covering both the provision of consumer credit and the provision of debt advice and debt solutions to consumers, faced with difficulties in managing their debts. The IPC submitted its response shortly before the 10 December 2010 deadline. In accordance with our remit we only answered the questions in dealing with debt advice and personal insolvency issues. Our response to the consultation can be accessed on our web-site.

We welcome the BIS/Treasury decision to launch this timely consultation. We agree with the emphasis in the consultation document on the need for respondents to provide evidence. The IPC has campaigned for several years on the need for policy on personal debt issues to be evidence-based and on the need for better published information and statistics about both IVAs and DMPs, the most widely advertised and used debt solutions. We repeat this recommendation in our response to the consultation document. We also welcome the recognition in the consultation document that a "joined-up" approach is required in making policy on personal indebtedness, covering both the statutory debt solutions provided by IPs and informal debt solutions offered by debt advisers licensed by the OFT.

Improving Debt Advice and Preventing Mis-selling of Debt Solutions

Our response concentrated on what the government could do to promote better advice being given to personal debtors and to combat the risk of mis-selling by commercial debt advice firms of debt solutions such as DMPs and IVAs, in order to maximise the firm's profits. We drew on evidence of such mis-selling and other abuses from the OFT's September 2010 survey of compliance with the OFT's guidance by debt counselling and debt adjustment firms, they had licensed, from surveys undertaken for the IVA Standing Committee, and from anecdotal evidence from the IPC's own contacts with individual IPs, the RPBs and with the non-profit making advice sector.

We recommended that the government considers three sets of measures to improve the quality of advice given to debtors and to reduce the risk of mis-selling:-

- Better information for debtors. All debt advice firms and IPs to be required to provide their customers with up to date information about the average duration and completion/failure rates for DMPs and IVAs for the last three years and a statement of their own fees and charges before the customer commits to any arrangement. In this context government should seek further to encourage the use of the IS's excellent Debtors' Guide by both the commercial and voluntary debt advice sectors;
- Debt advice firms and IPs to be required or encouraged to use the same income and expenditure categories and expenditure allowances to determine debtors' surplus income and, if possible, to use the same criteria to assess debtors' eligibility for different debt solutions. Where the same debtor is eligible for more than one debt solution, e.g DMP, IVA or bankruptcy, the debt adviser must provide the debtor with a balanced statement of the pros and cons of each option; and
- Stricter and more frequent monitoring of the advice given to debtors and of the subsequent management of their cases by the RPBs in the case of IPs and by the OFT in the case of other debt advice firms. Joint visits by the OFT and the RPBs to firms offering both IVAs and informal debt solutions could be considered.

Changes to existing Debt Solutions

We suggested three possible legislative changes to help ensure that there is a suite of statutory debt solutions available for debtors at all levels of indebtedness and all levels of income and to improve the consistency of the solutions available-

- The £15,000 ceiling on debts which can be written off through a Debt Relief Order (DRO) should be raised to maximum of £30,000 to allow access for more debtors who cannot afford bankruptcy;

- The duration of any debt solution involving continuing payments by the debtor (statutory or informal) should not exceed 10 years. Also some debtors in bankruptcy may be able to make repayments for more than 3 years; and
- If the evidence justifies a case for a new statutory scheme providing relief from interest and other charges for debtors who can repay their debts in full, the Scottish Debt Arrangement Scheme should be considered to see if it may provide a model for the rest of the UK.

Other Issues raised in the Consultation

The role of the courts

We noted that creditors must continue to be able to go to the courts as a "default option" for protecting their interests. This apart, we were in favour of minimizing the role of the courts as a forum for dealing with personal debt problems in the interest of reducing costs and delays.

A moratorium

The consultation document invited comments on the idea of requiring creditors to give debtors a moratorium of 28 days in which to seek independent advice before taking any action to recover their debts. We question this idea, given that debtors are already given a 28 days moratorium before any court hearing takes place and the risk that with another 28 days some debtors might use an additional grace period to dispose of assets. However, creditors might be required to advise debtors to seek independent advice when they first notify debtors of their statutory demands.

A "gatekeeper"

The consultation document suggested that a single "gatekeeper" might direct or guide all personal debtors to the appropriate debt solution. Such a gatekeeper would need to have the necessary experience and knowledge of personal debt problems and freedom from commercial pressure to provide independent advice. We did not consider this idea to be feasible, since the non-commercial "free advice" sector does not have the capacity that would be required to cope with the level of demand implied and is indeed already struggling to cope with their existing case load. The commercial debt advice sector also lacks the capacity to provide a single gateway and on the basis of the OFT's survey may be too influenced by what is in their financial interests to provide the wholly independent advice required.

This is why we suggest that the most practical approach to improve the quality and consistency of advice and information given by all debt advice firms, commercial or otherwise, is through the regulatory measures set out above.

The OFT study into the market for corporate insolvency practitioners

The OFT published its study report in June last year. The report put forward a series of proposals to make it easier for unsecured creditors to challenge IPs' fees in corporate insolvencies and also advocated the creation of a new independent complaints body. The Study Report also recommended sweeping changes to the system for regulating IPs.

The IS published its response to the OFT on 11 February 2011 in a consultation document which included a number of proposals which diverge from the OFT's recommendations. The IPC's response to the consultation has been sent in and can be accessed on our web-site. The following paragraphs summarise the main points in our response.

The OFT's recommendations on IP's fees

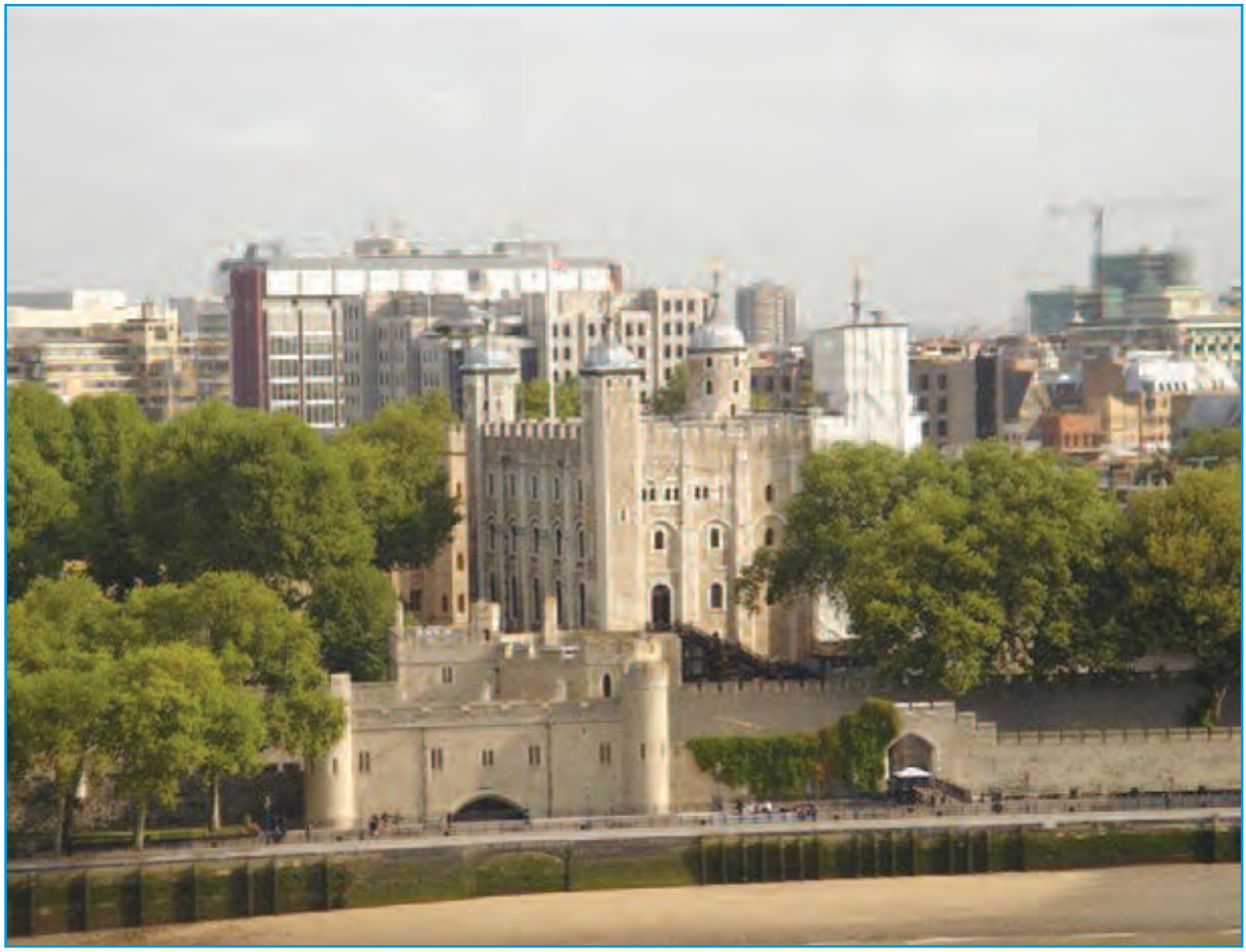
We accept the OFT's conclusion that in around 37% of corporate insolvencies where secured creditors are able to recover all the moneys owing to them, the IPs' fees are set at a higher level by the secured creditors than in other cases and that the unsecured creditors lose out since the higher fees reduce their recoveries from the

insolvent estates. While the OFT's analysis does not necessarily imply any criticism of IPs, or that they are making excessive profits, we agree that it should be made easier for unsecured creditors to challenge IPs' fees without going to court. We support a number of the OFT's recommendations for detailed changes to make it easier for unsecured creditors to challenge IPs' fees, in particular greater transparency about IPs' remuneration to the insolvency rules, greater transparency vis-a-vis creditors about IPs' remuneration, creditors having the power to agree hourly rates at the outset of an insolvency, confirmation that creditors can vote on the administrator's remuneration.

A New Complaints Body

The OFT and the IS recommend that a new independent complaints body should be created, either to replace the entire complaints and disciplinary systems of the RPBs, or to provide an independent appeals tribunal. It is envisaged that the new complaints body would be able to award financial redress to successful complaints, including unsecured creditors whose challenges to IPs' fees have been upheld. The IS offers a choice of four different models for the new body in its consultation document.

The IPC strongly supports the objectives underlying the OFT/IS proposals. We have recommended for the last two years that the RPBs should reform their disciplinary systems as the legal profession and others have done to provide a proper complaints procedure. We also agree that there should be an alternative cheaper procedure available for unsecured creditors to challenge IPs fees than going through the courts. However, the government's response to the OFT report should be proportionate to the mischief identified and as economical as possible. The question of whether a new complaints body is needed is a second-order issue. The first step is to decide what changes to the current complaints arrangements are required. We recommend the following reforms:-



- There should be a separate procedure within the RPBs' existing systems for dealing with complaints from clients or other market participants that their interests have been damaged, including in cases where the complaint may not necessarily warrant disciplinary action, eg, poor service, one-off errors or bad advice or maladministration;
- This procedure must provide for appropriate redress for outside complainants whose complaints are upheld and who have suffered financial loss, distress or inconvenience as the result of the actions or omissions of the IP concerned;
- The complainant must have the right to appeal against decisions taken by the RPB's first tier to an independent reviewer who can rehear the case afresh and grant redress to successful complainants. Most of the RPBs have an independent reviewer, but with a much more limited role; and
- The RPBs should be required to have a majority of independent members in the first tier panels hearing complaints. We think that this will provide a sufficient degree of independence at the first tier stage. We think also that it is reasonable and helpful to allow IPs to sit in the first tier panels, particularly for the contribution they can make in disciplinary cases, as do members of other professions in their complaints systems.

We believe that all these changes can be made more economically and rapidly by making the necessary changes to the RPBs' complaints systems (at least in so far they apply to IPs). Several of the RPBs already have independent reviewers in their complaints systems, though with a much narrower role than we propose. If our reform approach is adopted, it would be open to the RPBs jointly to agree to make their existing independent reviewers into members of a joint panel which would supply a single reviewer to carry out the fresh reviews when a complainant or IP appeals against a first-tier decision. This would be a way of creating an independent appeal body without the disadvantage of creating a new public body, which we understand the government would prefer to avoid.

We suggest a number of other ways of reducing the cost of these reforms compared with the models proposed by the IS. First, we believe that the appeal reviews can be carried out by a single reviewer, not a panel. Second, we recommend that all appeals coming from the complaints procedure should, as is the case with the Financial Ombudsman Service, be settled through a papers-only hearing although the possibility of oral hearings for disciplinary cases would have to be kept open.

Third and fourth, we recommend special fast-track arrangements for handling complaints from unsecured creditors about IPs' fees and from personal debtors against IPs for bad advice or maladministration of debt adjustment schemes such as IVAs. We suggest that most fee disputes, which are generally nearer in character to a commercial dispute rather than a complaint, should go directly (after a short attempt at mediation) to a binding review again conducted by a single reviewer through a papers-only hearing.

Similarly, we propose that personal debtors who want to complain about poor service in the handling of their affairs, should be able to appeal direct to either the RPB's independent reviewer or to the Financial Ombudsman Service if they are dissatisfied by the way in which their complaint has been handled by the IP's in-house complaints system. This approach already applies to debtors who are advised by IPs who hold a standard (individual) credit licence from the OFT, but not yet to debtors advised by IPs covered by the group licences held by the accountancy RPBs. This anomaly needs to be resolved.

Proposed Changes to the Regulatory System

The changes proposed by the OFT in its report and by the IS in its response have only a distant connection with the market failure regarding IPs fees diagnosed by the OFT and therefore should be considered on their own merits.

The Role, Powers and Objectives of the Insolvency Service

We agree that the IS should be entirely focused on its role as the "oversight regulator", ie, defining the role and setting the terms and conditions for the RPBs as regulators and monitoring and, where necessary, correcting their performance. We agree accordingly that the IS should cease itself to license and regulate IPs except as a last resort and also that the IS should be given the powers to impose sanctions on the RPBs for inadequate performance of their functions. We understand that primary legislation will be needed to effect these changes.

We agree that the legislation should be amended to prescribe statutory objectives for both the IS and the RPBs to follow. These will need to be carefully drafted to avoid creating unnecessary conflicts of interest or a playground for lawyers. We agree that there should be three main objectives – promoting the recovery of the maximum returns to creditors in insolvency, procedures protecting the rights and interests of unsecured creditors and personal debtors and promoting an independent and skilled IP profession that acts with integrity.

Given the need for primary legislation, we suggest that the government should also consider whether the Insolvency Act should extend the regulatory regime to cover not just individual licensed IPs, but the firms and partnerships in which they work as well as is the case in other regulated sectors. If this were done, it would be necessary to take account of any overlap with debt advice firms licensed by the OFT, which in some cases employ IPs.

The Future of the RPBs

The IS consultation document indicates that it will wish to initiate discussions with the RPBs on the idea of a single regulator as a possible future objective. We agree that it would be reasonable for the IS to initiate such discussions. However, in the interim or if a move to a single regulator is ruled out, we believe it is important that the IS take steps to promote greater consistency in the ways IPs are regulated. This could be achieved by cooperation among the RPBs, eg, by getting them to set up a joint monitoring team using the same methods and benchmarks for checking IPs' conduct and by agreeing on common standards for judging when IPs are compliant and when regulatory or disciplinary action is appropriate.

Standard Setting

In addition to the requirements imposed on them by primary and secondary legislation IPs have to comply with Statements of Insolvency Practice (SIPs) and a Code of Ethics issued by the Joint Insolvency Committee (JIC) , which bring together the seven RPBs and the IS (in its current role as a direct regulator). The OFT recommends that the standard-setting process should be streamlined by enabling decisions to be taken by a weighted majority of the RPBs rather than by consensus as at present. The IS consultation document argues that, as oversight regulator, it should have a stronger role in setting these standards. With this in mind, the IS proposes to replace the JIC by a wider body in which the RPBs would not be in the majority and outside stakeholders such as creditors and debtors would be represented. The IS would be able to intervene to impose its own standards in the event of deadlock. In a more radical version, the new body would not set the standards but would act only as an advisory body to the IS.

The IPC does not agree with bringing outside stakeholders into the new standard setting body as the IS proposes, or turning the RPBs into a minority. We believe that this would make it even more difficult to reach a consensus on new standards and would therefore run counter to the objective of speeding up the standard setting process to enable the RPBs to respond more quickly to market developments (such as pre-packs).

Nor do we agree with the IS's proposal that it should become the standard setter. Our view is that the setting of professional and ethical standards is more properly a task for the RPBs as the primary regulators, since SIPs and other guidance issued by the JIC are the instruments which the RPBs use to explain to IPs what is expected of them and what the RPBs' monitors will be looking for in their inspections. Since breaches of SIPs or of the ethical code can provide grounds for a regulatory action, a complaint or disciplinary action, the RPBs need to be able to satisfy themselves that any new standards can be properly monitored and enforced. We also believe it would be wrong for the IS to take over the role of standard setter, since this would allow it to impose new legal obligations on IPs without any Parliamentary scrutiny.

We therefore support the OFT's proposals for streamlining the JIC's working practices by enabling the RPBs to reach decisions by qualified majority decisions. We favour bringing independent lay members onto the JIC (though the voting rules would have to be carefully worked out). The JIC must be required to consult all outside affected parties on all its proposals for new standards. We also agree to the OFT's proposal that the IS should have limited powers of intervention to prevent the standards-setters from acting in breach of the proposed new statutory objectives and to require the body to introduce a new standard where it judges that is needed to meet the statutory objectives.

The Future of the IPC

The OFT proposes that the IPC (or an alternative "voice organisation") could continue in existence with two main functions, first to report on whether both the RPBs and the IS are meeting their new statutory objectives, second, specifically, to represent the interests of "vulnerable market participants" such as unsecured creditors and personal debtors. It cites in support of this similar "voice organisations" active in relation to financial and legal services. In its consultation document, however, the IS proposes that the IPC should be abolished and its role as a "public interest" organisation carried out by the IS itself.

The IPC does not agree that it would be appropriate for the IS to take on the IPC's functions itself. We accept, of course, that, like any regulator, the IS will seek to act in the public interest and that it will also have the responsibility, as oversight regulator, to monitor whether the RPBs are complying with any new statutory objectives. We consider, however, that a "voice organisation" such as the IPC is nevertheless appropriate for the following reasons:-

- First, the IS should not be left as its own judge as to whether it too is meeting its statutory objectives. This is why the OFT proposes that a "voice organisation" should be given the remit to make this assessment in relation to the IS as well as the RPBs;
- Second, the OFT proposes that the IPC or an alternative "voice organisation" should particularly represent the interests of unsecured creditors and personal debtors. This is particularly relevant in markets in which there are large asymmetries of knowledge and understanding between consumers and the professional providers of the services, as is certainly the case in the insolvency market. The statutory objectives proposed for the IS contain, as the OFT recognises, inherent conflicts between the objective of maximising the returns to creditors and the interests of both personal debtors and the interests of IPs. It is therefore faced with a difficult balancing act and cannot properly act as a representative of particular market participants; and
- An independent "voice organisation" helps to ensure that the debate on how to balance the conflicting regulatory objectives takes place in public rather than behind closed doors. This is particularly desirable when there is a risk that regulators can be subject to pressures from elsewhere in government etc to alter the balance of interest one way or another or to shifts of governmental fashion in how regulation should be conducted, eg, the recent emphasis on "light-touch" regulation in financial services.

We believe that the IPC has carried out its public interest role successfully on a very modest budget (commensurate with the size of the sector) over the last ten years and in particular has played a useful role in representing the interests of distressed personal debtors. We also believe that we would be well equipped to carry out the slightly expanded role proposed for us in the OFT Report.

Other Recommendations

Complaints about poor communications

Recent IPC annual reports have suggested that a standard for timely response to communications by IPs should be set. This has not so far found favour with the profession or the RPBs. We understand that complaints received against IPs by the RPBs include a significant number about poor communication. At least one RPB (ICAS) has said that it will be urging its members to reply to correspondence more promptly to cut these complaints out. This can only be in everyone's interest. We think it is high time for RPBs to consider what regulatory action they can

take to induce IPs to reply to correspondence quickly. We would be happy to discuss with the RPBs and the JIC how best this (hitherto) intractable problem can be tackled.

A report template for IPs' CDDA reports

The IPC continues to urge that adequate resources are made available to enable investigation of reports from insolvency office holders about possible illegal actions by company directors in accordance with the Company Directors Disqualification Act 1986 (CDDA). It supports the proposal made by R3 that following criticism by the Insolvency Service of IPs for late reporting and for providing insufficient detailed evidence to enable cases to be investigated, a standard electronic report template should be developed by the IS and R3 to encourage timely reporting with the necessary level of detail.

Utility supplier contracts with insolvent companies

The IPC notes concerns expressed by IPs about utility companies drastically raising prices for continuing provision of services to companies in administration with potential negative effects for selling the company or the business concerned. We understand that these price rises are an option available to utility companies when they are acting as "provider of last resort" to companies they may not want as customers, because of their doubtful creditworthiness. This is therefore an area where there may be conflicts of different aspects of the public interest in this case for example, between the interests of the other creditors of the company in administration and the interests of the utility companies and of their other customers. We suggest that the IS should explore with BIS and the utilities' regulators concerned whether there is any scope for devising a compromise which would help IP administrators in this situation, eg, delaying any price increases for a few weeks to enable the administrator to explore the prospects for a sale of the business.

Pre-packaged administrations

The IPC stands by the recommendations we made in our Tenth Annual Report (for 2009, in which we said that the RPBs should give specific guidance that IPs who had already negotiated a "pre-pack" sale should refuse to accept appointment as the administrator to execute it as they would no longer be seen as having the necessary objectivity to do so. We also recommended that the IS should commission continuing research on the performance of "pre-pack" sales to previous directors and, if there is evidence of abuse, consider how best to deal with it.

The IPC supports the suggestion by R3 that the Insolvency Service and R3 should work together to provide a standard electronic format for SIP 16 reports which would remind IPs at the appropriate points about the issues that they are expected to cover in answering each question. This should help reduce the numbers of unsatisfactory SIP 16 reports.

The IPC's response to consultations

The IS consultation on reforming debtor petition bankruptcy and early discharge from bankruptcy

The IPC's response on 8 February 2010 was in favour of the abolition of early discharge and, in principle, the proposals to remove the requirement for debtors' petitions to be approved by the courts and to allow such petitions to be made online subject to certain conditions about the Decision Maker.

The JIC's consultation on the first revision of SIP 2

The IPC broadly agreed with the revised SIP, although it considered that more regard should be paid to the public interest.

The JIC's consultation on its draft revisions of SIPs 7 and 9

The IPC responded to both these consultations. It basically approved of SIP 7 although had some suggestions on improving its Appendix A. On SIP 9, the IPC again strongly considered that revised SIPs needed to be drafted also with a view to outside stakeholders and the general public. The IPC recommended a new section be added explaining to what kind of insolvency the SIP applies and making it clear that it includes voluntary arrangements. The table in Appendix A was also not particularly helpful to creditors and may also not do justice to the IPs.

The IS consultation/call for evidence on improving the transparency of, and confidence in, pre-packaged sales in administration

The IPC responded in June to the questionnaire and favoured the following:

- that IPs should consider more carefully their degree of independence and objectivity to execute a pre-pack and that SIP 16 should be amended accordingly;
- that RPBs should monitor compliance with SIP 16 and the Code of Ethics;
- SIP 16 should not be given legislative force;
- exit routes from administration should not be restricted;
- there should not be a blanket requirement for different IPs to undertake pre-and post-appointment work; and
- that court or creditor approval for pre-packs to connected persons should not be required on the grounds of both cost and practicality.

The IS proposals for a restructuring moratorium

The IPC was in favour of the proposed moratorium.

The IS consultation on insolvency statistics

The IPC Chairman was invited to participate as the IPC had long called for better statistics (see its previous Annual Report recommendations).

Meetings/conferences attended by the IPC

6 meetings of the IPC itself

Two meetings with the Insolvency Service

A meeting with the JIC Chairman

Three meetings of the IVA Standing Committee

Meeting at Northampton University

Two meetings with the OFT

A meeting with the BBA

Two meetings of the Insolvency Rules User Group

International insolvency conference

The IPA annual conference

The IPA pre-pack forum

The R3 Smaller Practitioner Group Forum

The MALG annual conference

The ICAS annual IP conference

The conference included a section on complaints handling. It was noted that the main cause/subject matter of complaints was consistently poor communication. ICAS would shortly be issuing a circular to all its members to encourage them to improve their performance.

More generally, ICAS believed its complaints system was a good and fair one. ICAS was not persuaded by the OFT case for a new complaints system, but, if a consensus developed in favour of using the Financial Ombudsman Service as an independent reviewer of all complaints, ICAS would go along with this.

The new regime for Protected Trust Deeds is still under discussion in a working group by the Accountant in Bankruptcy (AiB). It is recommending use of a Common Financial Statement, greater discretion for the Trustee in admitting creditor claims and a new fee structure including a first distribution to the creditors in month 18 of the arrangement. A Best Practice Guide is being developed. Returns to creditors from PTDs are pretty low and costs quite high.

The AiB believed that the DAS was still underutilised. New regulations would be introduced in 2011 to widen the group of potential money advisers. The AiB was taking on much of the administration of DAS schemes including distributions to creditors.

Although the Home Owner and Debtor Protection (Act) Scotland 2010 has been enacted there are still extensive consultations going on how to protect tenants and owners from being evicted. There was a good deal of disagreement on whether the approach proposed in the Act would help or make matters worse.

A meeting with the IPR Services Limited board

A meeting with ACCA

Other matters

R3 panel at the House of Commons

The IPA annual lecture

Visited the National Debtline in Birmingham

CCCS Yearbook launch

Contact with the OFT about renewal of Group Consumer Credit Licences

The OFT Study Report launch

Contacts

During the year 19 members of the general public contacted the IPC via its website or telephone. Complaints about IPs were all passed to the relevant licensing body.

The members of the insolvency profession fund the IPC - the annual levy being equivalent to just under £55 per insolvency licence holder. The IPC is run on a tight budget and benefits from the support and hospitality of some of its members and R3. It is also supported by the Trustees of the Barbican Settlement of Farringdon Insurance Company Limited who made grants for research and the attendance by IPC lay members on training courses, mainly those run by R3.

The IPC's costs during 2010 are shown in the following table:

Chairman's honorarium	15000
Chairman's travel expenses	1509
Lay Council Members' honoraria	23750
Council Members' travel expenses	5416
Secretary's salary including tax and NICs	34935
Secretary's travel expenses	1311
Meeting expenses	508
Secretariat running costs	3189
Annual Report, website maintenance and publications	2749
Training for IPC Lay Members (£5,000 grant from Barbican Trust)	5000
Total	**93367**

Chairman

Geoffrey Fitchew CMG	Chairman of the Building Societies Commission 1994-2002, having worked in the Treasury, the Cabinet Office and as a Director General in the European Commission in Brussels. A member of the Determination Panel of the Pensions Regulator and of the Actuaries' Disciplinary Board.

Lay Members

John Hanlon	Independent Case Examiner for the Department of Work and Pensions (DWP). Independent Investigator, the Financial Services Compensation Scheme
Dr Dianne Hayter (until June*)	Chair, Property Standards Board and Legal Services Consumer Panel. Member, Board for Actuarial Standards, NEST Board and Determination Panel of the Pensions Regulator. Formerly Vice Chair of the Financial Services Consumer Panel and Chair of the Labour Party's National Executive
Philip McNeill	A chartered accountant, chartered tax adviser, author and lecturer, currently involved in providing training for debt advisers. He has been involved with the not-for-profit sector for many years and specialises in tax debt
David Tracy	A senior executive with Barclays Bank (1988 – 2003). Non-executive director, University Hospitals of Leicester NHS Trust
Malcolm Watkins	Director of Finance & Governance of the MND Association

Practitioner Members

Hamish Anderson	Partner with Norton Rose LLP and Chairman, City of the London Law Society Insolvency Committee
Ron Robinson	Former partner of Begbies Traynor in Manchester and a Past President of R3
Peter Souster	Consultant to Baker Tilly Restructuring and Recovery LLP. A former Council Member of R3 and Deputy Chairman of the ICAEW's Insolvency Committee

Secretary

Mike Stancombe	Retired army officer, civil engineer and former Chief Operating Officer of R3

** retired in June upon entering the House of Lords.*

Glossary of Terms used in the Report

AiB **Accountant in Bankruptcy –** *an executive agency of the Scottish Executive administering personal insolvencies in Scotland.*

CARB **Chartered Accountants Regulatory Board –** *regulates ICAI licensed IPs*

CCCS **Consumer Credit Counselling Service –** *delivers debt counselling*

CVAs **Corporate Voluntary Arrangements –** *formal arrangements made by companies for payments to be made to their creditors over a period of time under the supervision of an insolvency practitioner.*

DAS **Debt Arrangement Scheme –** *for over-indebted individuals, applying in Scotland only.*

DMP **Debt Management Plan -** *a non-statutory arrangement between a debtor and creditors, currently not the subject of any formal regulatory process.*

DRO **Debt Relief Order –** *introduced in England and Wales for over-indebted individuals whose income and no assets are so low as to make it unrealistic to make any repayment of their debts.*

DRF **Debt Resolution Forum –** *an industry body for debt resolution companies formed in 2006 with administrative support from the IPA.*

IPC **Insolvency Practices Council –** *represents the public interest in insolvency.*

IP **Insolvency Practitioner –** *an individual licensed and regulated by the Secretary of State or one of the RPBs to practise insolvency and take cases.*

IS **The Insolvency Service –** *the agency of the Department for Business, Enterprise and Regulatory Reform (BERR) that acts as the regulator of the RPBs.*

IVA **Individual Voluntary Arrangement –** *a formal (statutory) arrangement made by debtors for payments to be made to their creditors over a period of time under the supervision of an insolvency practitioner.*

JIC **Joint Insolvency Committee –** *the co-ordinating committee made up of representatives from the RPBs and the IS to bring together a process for implementing changes and improvements to insolvency practice and standards, and to respond to the recommendations made by the IPC.*

PTD **Protected Trust Deed –** *in Scotland only (similar to IVA)*

R3 **Association of Business Recovery Professionals –** *the trade organisation for the insolvency profession and responsible for training. Acts as a voice for the profession and drafts SIPs and co-ordinates changes to them for the profession's regulators.*

RPB **Recognised Professional Body –** *a professional institution, authorised by the Secretary of State for Trade & Industry for the purpose of setting the ethical and professional standards for its members being responsible for their regulation, encouragement of proficiency, monitoring performance, discipline and complaints.*

SIP **Statement of Insolvency Practice –** *detailed standards relating to the day-to-day work of insolvency practitioners.*

SIVA **Simple Individual Voluntary Arrangement –** *proposed simplified IVA for consumer debtors.*

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