EXECUTIVE SUMMARY

1. BIS/ the Insolvency Service is not benefiting from the £1b per annum income generated by those involved in the insolvency industry (OFT June 2010), despite the operations being state and court functions. The Insolvency Service/ Official Receiver is left with NINA cases (no income, no assets);

2. There has been no independent investigation on the close relationship between the banks (often secured creditors) and the IPs, the relationship revealed and described as strong by the OFT, and driver to the IPs being attracted to the business; in particular there is no empirical data on loss to the economy of businesses and people being "pulled down" in pre arranged transactions (including "pre packs"), with "victors" not held to account, and "losers" voiceless;

3. This lack of investigation is a spectacular omission given:

    a. the 2010 empirical evidence based work of the OFT;
    b. the work of the House of Lords on the responsibility of the auditors in the failures of the banks, due to the auditors reports which knowingly omitted to say that the banks depended on bail-outs to be able to be classified as "*going concerns*" (to Ian Powell, PwC Chairman, who purported this was a "liquidity" problem, "*we do not believe you*");
    c. the work of the Parliamentary Commission for Banking Standards concluding in December 2012 that "*the extent of corruption and collusion beggared belief",* a statement which incorporates the IP industry, which facilitates the capital shifts by techniques of leverage, in favour of financial capital and away from productive capital, at the expense of pension funds and employment;
    d. the work and evidence of Neil Mitchell re RBS endorsed by the Tomlinson work;
    e. the January 2012 evidence of PROSPECT, supported by PCS, that the heart of the service is investigation, in reliance on *evidence*, carried out by experienced people, working in the same office, a methodology that was reported to Parliament in evidence sessions as not being followed by senior management making decisions in BIS. Money spent on Atkins (a private sector consultant) over the next for months has not produced any productive outcome that is plain to the public.
    f. that an approach to the conduct of the discharge of the state's obligations to protect based on financial modeling on sample sizes which are too small to be a basis for extrapolation is ill conceived but has not been abandoned. The nature of the obligation is that each case is unique and neither capable of being "modeled" nor subject to "workflow" or any form of automation beyond internal time sheets for management information purposes.

g. that efficiency and effectiveness has seemingly been destroyed by separating an undocumented process into mechanical tasks, based on legacy IT ("ISCIS") which has not been written off, rather by-passed by the operations as being an encumbrance, and which excludes:
    i. record of thought processes,
    ii. rapidly accessible computer event logs and back ups,
    iii. record of responsibility and experience by way of first input,
    iv. mandatory retention of key records, including envelopes, emails, records of telephone calls,
    v. mandatory business acceptance and compliance protocols,
    vi. authorization by way of input of experienced sounding boards recording fulfillment of previously agreed tasks,
    vii. audit trails, including ***full investigation of the initiator of transactions***,
    viii. regular independent checking by internal inspectors,
    ix. line management escalation, suspicious activity reporting, issue resolution,
    x. rapid uncontested access to personal data; freedom from complaints departments and from referral to the information commissioner
    xi. the assumption of RIPA rights and data controller privileges which do not apply,
    xii. prolific use of transient employed and contract labour from agencies in particular in key spots such as:
        1. BIS Legal's discharge of BIS's statutory obligations to bring prosecutions of criminal activity and discharge of its obligations to the courts to report on what it has done, including filing for the compulsory winding up of criminal activity operating behind a front, including of an LLP business as those of the IPs. BIS has instead become a stepping stone in the build-up of a personal CV of transient labour and not investigator and prosecutor of first resort, protecting the public, their pensions, the public purse, and productive labour and capital;
        2. matching of IPs, backed by pre arranged financial muscle of the banks, with whom they have their primary relationships as revealed by the OFT, on special lists which the IS has failed to require to be made public (***why?)*** , with those targeted, unbeknown to them.
    xiii. Reliance on IPs to make reports after liquidation of irregularities, when it is all far too late and in any event they are not financially independent;
    xiv. by permitting forms to be manufactured for use in courts which are not court forms, created by private businesses supplying the legal industry, treated in a cavalier manner by court officials as they have no status. These are processed on the say so of the aggressor party using a network of private investigation firms. Often the form does not reflect the substance.

4. The enforcement and prosecution authorities, including BIS/ the Insolvency Service, have not caught up with complex relationships and arrangements, facilitating those without a licence, using those with a licence, to benefit from the outcome of transactions and arrangements, they themselves could not execute on their own. The justice system is similarly in arrears;

5. Seemingly unwittingly, the service has allowed itself, to become effectively, an exchange, where property and estates are traded, using high speed traders, the IPs, to the benefit of the big banks and those who support them.

   These IPs carry no indemnity (they perceive that do not need it, they are protected by the banks and underwriters) in regard the value of the estates traded, inclusive of intangible and contingent rights. They facilitate the ability to remove value and access, for a period, to enable encumbrances to be bifurcated and pushed onto the public market, whilst value is retained. The principle is as good in the case of Reichmann ($20b shed ie pushed on to the public), whilst he returned to go round again; as the reported manufactured fall of Lehmann Bros, paving the way for subsequent bail-outs, and returns to market, the public absorbing the loss in the meanwhile. It is seem in estates of married couples, where value is shifted before divorce. It is repeated in the willingness to serve time rather that allow proceeds of crime to be disgorged.

   Accordingly the service is exposed to allegations of "*rigging*", comparable to those reported to have been made by author Michael Lewis on CBS, "60 Minutes", that "*he believes the US stock market is "rigged" by exchanges, big banks and high-speed traders".* 1.4.14 fox business, Matt Egan, article FT: Goldman Sachs to exit NYSE floor in historic move.

   The service has no defence in the event of such allegation being made. This is because it is operating a web site with a bill board which is neither RIPA nor POCA compliant. This tells the world that X has been made bankrupt, and Y (IP) and his firm (other IPs), traders with no indemnity and a veneer of limited liability, have taken over. In one advertised case, Y and those with Y, are operating under licences at least from BIS, IPA, ICAS, ICAEW, SRA.

   The world is informed that this group (and those complicit) now control X's estate, and anyone wishing to participate in the public liquidation may do so, by observation or so long as they are prepared to call themselves a creditor and act collectively to X's exclusion. X is informed by Y that Y has a "duty", implicitly statutory, to "realize" X's assets, and has given notice in the crown dependencies. This is where the court is presided over by those with an honorary "QC", having served in Jersey government, as attorney general.

The Land Registry inform X that X's property is no longer unfettered (contravention of Land Registry Act, human rights etc), relying on a secret letter and instruction from Y, that is not provided, and hacking into the Land Charges register, which properly ought to be protected from hackers by air space. Land Registry cannot explain these events, although public records show the 2012 row between staff supported by PCS, and management over post opening. This is exacerbated by "policy" throughout BIS and its agencies to destroy criminal evidence (envelopes and email trails).

This is a problem most acute in the Land Registry, where a person merely has to call himself a "conveyancer" (any SRA licencee is apparently entitled), to gain pecuniary benefits. These are automatically entitled to plant tokens on another's property without proper application, notification, statements of truth, and the paperwork hidden by the Land Registry.

With paperwork dispatched from centres separate from where the transaction is processed, eg the surrounds of Plymouth; no matching of outgoing and incoming records and customer help lines elsewhere, as Durham ("*oh yes, we have heard of the Land Charges register but we do not know anything about it, it was foisted onto us*"); calls recorded unless they are crime and suspicious activity; a former banker, brought in apparently to prepare for privatization, as "Chief Land Registrar"; the Insolvency Service prosecution investigations (Plymouth), months in arrears in dealing with the underlying unlawful transactions, and in truculent and phone closing or putting to one side mode, creating a paper trail for an internal audience; the chaos creates the circumstances in which fraud is bound to flourish.

The final nail is that the RPB responsible for X's licence (ICAEW in this case), having hired a person licenced by another RPB (SRA), and put them in a decision making post (Z), has effectively neutralized the power of its own bye laws, rendering the licence wholly meaningless.

The RPB thereby is operating management and compliance systems which intercept the true position from reaching the board, turned the RPB into yet another litigation vehicle, and demonstrated to the world that the body that licences people to maintain proper records, has failed either to do it, or to support the Insolvency Service in maintaining theirs. Who issued the D Notices in such a case and is it left to a contractor from the staffing agency as the one who facilitated Y being matched to X in the first place?

Z informs X that X's licence is revoked as X is no longer a member (the Insolvency Service web site says so), and X can no longer draw on members services (ethics and technical etc). X is discredited including as witness to CIB and Companies House from September 2005 in this instance.

***The law places a high value on a person's reputation, especially where that person's work and life depend upon their honesty, integrity and judgment*: 20/3/14 Ritson v Burns (New South Wales)**

The point is a simple one. If Y, an individual licence holder, is operating as part of transactions, where property of another, as X, is at risk of moving, then the market clearing price and terms for that transaction must be that Y faces the same exposure personally, including damages and consequential.

A system under which Y can operate with NO INDEMNITY to X, and no tangible asset backing assurance that is readily realizable, is bound to fail, even if is artificially held up for a period of years by the Insolvency Service's matching services, gifting the estates of the unwitting public to operators with no indemnity, but effectively indemnified by the bullying of the banks.

No single RPB has pointed out to BIS the fatal flaws of the attempts to create or preserve RPB's and that remoteness of BIS/IS from the trader; through LLPs; RPB's; collusion and arrangements, does not compensate for the absence of full indemnity or a simple path for prosecution, and filing for compulsory winding up of the vehicles operating in the space, with commensurate restraint and confiscation orders on prosecution, the obligations of the state, albeit the entitlement of the victims as well. ***Why not?***

No single RPB has contributed to inputs to Ministerial briefings, that in processing terms, the estate of a solvent not bankrupt person/company/business; one which is not bankrupt but is insolvent; one with contingent and intangible assets, one without; one in which value has been removed according to the rules to facilitate legal shedding of encumbrances, whilst preserving "reputation" (financial clout); etc must all be treated identically, and that process must be factory tested before exposure to the public. An OR investigator was recently asked "*if the Queen is said to owe £760, which is said not to be resolved, would you expect her to be bankrupted, Sandringham Castle sold (having forced her out), and the change returned?"* The answer was "there would be other "creditors". Yes" and the phone closed. ***Why not?***

If the process does not work in cases of mistaken identity, identity theft, then it does not work at all and has no resilience. If the IP can be on a list without full realizable indemnity, the list cannot and should not exist. With these two unassailable objections, the "system" can be predicted to operate perversely and in prima facie contravention of court rules on notice and right to be heard (and the rest). ***Why has no RPB pointed this out? Why has no RPB pointed out that they are as exposed to criminal indictment and damages as the BBA, now sued with the banks it licenses on LIBOR Barclays, Lloyds, RBS, HSBC)? Why should members paying subscriptions be forced to pay for the heavy legal expense of keeping this £1b per annum business going, and the costs of belated and hopeless attempts to salvage the reputations of those controlling the RPB's? Is this not the same as Building Societies and their members being saddled with the compensation schemes in regard bankers defaults?***

6. Unprosecuted criminals are not pursued either for prosecution or for confiscation of the proceeds of crime (PAC 21 March 2014); prison terms are preferred. Fraud is running at £52b per annum, with criminals foregoing 26p in each £100 retained. How much is referrable to the activities of the banks shoring up their balance sheets before hidden losses are exposed, at the expense of the public, facilitated by the IPs?;

7. BIS has no explanation for the lack of complaints and criminal investigations referred to the Companies Investigation Branch (oddly re-branded "enforcement"), with no answer to the suggestion that potential referees/witnesses/victims are put off by lack of confidence of the process and certainty of outcome. In particular the decision making path between CIB/BIS Legal/ BIS prosecution investigations is obscure. The apparent involvment of "policy" in this path is not explained and may not be understood internally;

8. The overt reliance on private sector IPs to identify wrongdoing in liquidations/receiverships etc for investigations and D Notices, is also unexplained. It has led to daily BIS Notices of such notices, disqualifying small players for years, in circumstances in which one is wondering what impact it would have had on GNP if they had simply been left and resources better spent: spend of £100m to recover £133m is troublesome.

9. The excessive reliance on outsiders has been observed by the PAC, statement 1 April 2014, concluding that the Department had no clue what it was doing:

A statement from The Rt Hon Margaret Hodge MP, Chair of the Committee of Public Accounts:

"It is clear to me the Department for Business, Innovation and Skills undersold the taxpayer when it privatised Royal Mail. The share price closed up by 38% on its first day of trading which could have netted the taxpayer an additional £750 million.

I am frustrated the Department made a critical error by incentivising its private advisers to sell the shares on time at the expense of price - effectively setting itself up to fail. The private advisers recommended not increasing the selling price before the first day of trading. With the sale 24 times over-subscribed this proved to be bad advice, with investors not taxpayers benefiting.

The fact the share price has increased by 72% since the Department sold the taxpayers' share tells me the Department had no clue what it was doing. I look forward to discussing this second class performance further when the Department appears before us on 7 May."

10. This emphasis on speed of processing without regard to the transaction being processed, and whether what is being given away to the private sector, the banks and those profiting from them, including the IP industry, is properly available to be given away, has characterized the work of the Insolvency Service and the Official Receiver, although it is hard to say from when and there are on figures quantifying damage and consequential done.

The result is that the Insolvency Service and Official Receiver have built up an operating model, presuming the existence of an estate which is changing hands (as though being liquidated). In this model the only "exam question" is the way in which this estate is carved up amongst those benefiting. The right to life, liberty and other aspects of human rights are excluded from consideration. In other words, the positions of administrators and trustees in bankruptcy (the Official Receiver), have disappeared from the process, and "receivers" including management receivers, are treated as absolved from all responsibility for their own actions and omissions. The analogy becomes with the person charged with administering a lethal injection to a person facing a death penalty. That person gets paid for that task, but faces no sanction or consequences if the person killed is later pardoned.

The IPs and those benefiting and representing them, have sought to place themselves in the same category as the administrator of the lethal injection, by carrying no indemnity, being financially supported by undisclosed arrangements, that the targets know nothing about, and prepared to argue only about the declared income, including those whose hours they seek to bill and who carry no licence themselves or otherwise are inept (eg PwC having to re employ the Lehmanns derivatives team as they did not know how a bank operates, or accounts).

So far they have has the support of the court, (Brandon Barnes v Eastenders v CPS), where the courts could contemplate the estate being not liable, but could not stomach the thought that CPS (which had given no indemnity) would not pay the IP who had executed on orders that should not have been given, ie "as though" the administrator of a lethal injection, an not the IP he was from BDO, vendor of tax services, who could for himself assess the risk of investigators having relied on paperwork from abroad, without exercising their checking powers and going in to look themselves.

In these circumstances, even if the underlying case were unassailable, it was a high risk step to take, and the prosecutor could be predicted to back off, "*for reputational reasons"*. However this pre supposes, in terms of his payment, and potential requirement to account for damages and consequential, that the court treat him merely as the administrator of the lethal injection, and not a person required to take a position on a proper appointment. As holder of a licence performing a statutory function, he ought to properly be held to account on the fact of the appointment. The Supreme Court has heard the matter but yet to deliver a judgment.

Finally in a market where licensing arbitrage is prevalent, the RPB model does not work. The reliance on a Memorandum has been tried between police and Law Society (2004) and de-commissioned without replacement. Therefore no useful purpose could have been served in attempting resurrection of a failed/abandonned and withdrawn model, which had no bite, even on the drawing board.

Q1 Are the proposed regulatory objectives and the requirements for RPBs to reflect them appropriate for the insolvency regulatory regime?

1. No. The concept of "*regulation*" means "*self-regulation*", stated in shorthand. A person carrying a licence from a statutory body which includes "*self regulation*" in its bye-laws, requires that person to "*self-report*" on their own wrongdoing (including by omission, and passive acquiescence with the wrong-doing of others, including their business) and the wrongdoing of others, failing which they face sanction and loss of licence.

2. RPB's are often staffed by those who hold such licence. Where these individuals are on notice of wrongdoing, they must report (police, Trading Standards, CIB, SFO, Prudential Authority, FCA, NCA, courts, auditor, UK and overseas), as well as the designated person in their organization (eg for ICAEW, Head of Staff, Michael Izza).

3. By 2005, Companies Investigation Branch of the DTI, was informing that it was predictable and predicted, that "*self-reporting*" would not work, and that twenty five years earlier, the DTI on notice of wrongdoing merely had to inform the relevant organization, and the matter would be resolved.

4. Therefore for clarity and consistency, the regime should be referred to as "*self-reporting*" and not "*regulation*". A failure to do so causes acute widespread confusion. This is in particular amongst barristers who have metamorphosed to decision making jobs in the civil service, including budget holding posts. These frequently mistakenly believe that there is no obligation to prosecute and petition for compulsory winding up where the offender carries a licence ie an offender is let off according to the licence he carries not the offence he commits. This compounds the hurdle they already face in attempting to convert to being a civil servant bound by the code, and possibly managing public money without financial training and experience. This requires intellectual independent including in deciding to do work themselves (for which they may not have the correct accounting, budget, technical leadership experience) or ship it out to particular groups in which they are interested and on whom they may have come to depend, as a pseudo-platform of support.

5. Second, for each harm done (in the simplest case, tangible assets change hands when properly they ought not), there are losers. Those losers may not be an organized group. They may have a supply chain with competing vested commercial interests, such that suppliers are acting against them, including with the benefit of information and access to records. relationships and funds. They are therefore not free to "*punch their weight*" to protect themselves, their estate, dependents and indeed may continue liable, including criminally, for what they do not control and may not know about.

6. In law such losers must file in court to secure relief and the wrong doer must file an admission, otherwise the court may make a finding of contempt. If a wrong-doer has not self reported, he is unlikely to file an admission. This is the corollary of "*self-reporting";* the same person who must self

report must file an admission ("*dis-application of privilege from self incrimination",* Senior Courts Act). The symmetry must work regardless of the actions/omissions of prosecutors.

7. The prosecutors have turned the single Code Test for Prosecutors *("evidence plus suspect equals prosecute unless there are informants working/entrapment, colloquially 'the public interest'* "), one tool with one goal (curtailment, disgorgment), with no discretion to achieve the required protection of the public, into two separate tests, the second of which is that there is no prosecution unless a *"public interest*" case is made. The effect of the second is to neutralize the first. This properly requires a manifesto to regularize. The consequence is that the licensee is stuck with the reporting obligations under mandatory reporting rules; has no support from the prosecutors; and must secure his own civil relief in the courts.

8. The sole question which then arises is whether the wrongdoer has the financial weight to meet damages claims, whether there are indemnities in place that can cover quantum, and who in fact will face the exposure including the firm and its members, including where the corporate veil is no protection where business was recklessly or knowingly entered. RPBs are either wholly or largely irrelevant in this process.

Q2 Do you have any comments on the proposed procedure for revoking the recognition of an RPB?

---

9. I have evidence borne out of experience plus observations on that experience. First an RPB must meet certain criterion in order that it can continue to licence. As matters stand, the key requirement for those who have passed certain exams and had training records signed off, is that they should (a) pay the annual subscription; (b) complete an annual CPD declaration recording training. This latter is not reviewed by a competent licensed person. There is no obligation to have learned anything and the declaration can be completed merely by attendance at events and paying the fees. This is not a solid basis for assessing what is happening or indeed whether the person has (self) reported, as required in the period. The RPB cannot be expected to deliver what it cannot control.

10. Second the recognition of the RPB must be an evaluation of the organisation as a whole including its capital base and capital adequacy for the risks which it assumes. Assurance work including audit is high risk since the introduction of limited liability partnerships. These operate in contravention of the Companies Act (lack of independence) and permit opportunistic arbitrage for those who operate in the regulated market (FSMA 2000) by virtue of themselves not being bound by the same rigour. They have not been held to account. One contingent fatality coming home to roost (eg tax including VAT on incorporation) and the business is at an end.

11. It is necessary to evaluate the whole, looking beneath the “audited” accounts, to get to the true position. Typically “for reputational reasons” contingencies are not accrued or reported; settlements are not revealed, nor are claims; and financing arrangements including members agreements; underwriting arrangements; banking agreements facilitating contract values being converted to appropriations and pensions payments are not fully set out. In such circumstances financial resilience cannot be established with any degree of certainty. Even where the RPB set out to carry out such an assessment and even where it persuaded the LLP to provide information beyond the historic and largely superceded companies house filing (pre supposing the RPB had those on its payroll capable of such evaluations), the result could only ever be uncertain.

12. Third, such oversight is meaningless unless it identifies who it sets out to protect (the public) from who (the licencees and their firms). If protective measures require revealing more information that is required by statute such that the public are warned, the RPB will not succeed as those they licence have no statutory obligation to respond.

13. Fourth those requiring the protection are all those with an interest in the “protected” estate, widely defined, be they owners, interested persons, contingent beneficiaries, creditors, debtors, HMRC, prosecutors, regardless of the specific task which the insolvency practitioner may offer to carry out. Unless the RPBs impose capital adequacy, compliance vetting and scrutiny of indemnity, it would be meaningless to impose sanctions, since this will afford no protection in the event of supplier collapse.

14. Fifth, the RPB's themselves are now at financial risk in regard the defaults of those they licence, including globally. The circumstances are the same as those of the BBA, sued by the US Federal Deposit Insurance Corporation, as reported this month in the Telegraph:

Telegraph 14 March 2014 (agencies)

"The US Federal Deposit Insurance Corporation sued HSBC, Barclays, Lloyds Banking Group, RBS and the British Bankers' Association over the manipulation of the Libor benchmark interest rate.

The regulator, which filed a lawsuit against 16 global banks, said the manipulation caused "substantial losses" to 38 US lenders that were shut down due to insolvency during and after the 2008 financial crisis.

The FDIC said the accused institutions cheated the closed banks in US dollar Libor-based swaps and other agreements through the manipulation of the rate between 2007 and 2011.

"The Panel Bank Defendants fraudulently and collusively suppressed USD Libor, and they did so to their advantage," the suit said.

"BBA participated in the alleged scheme to protect the revenue stream it generated from selling Libor licenses and to appease the Panel Bank Defendants that were members of the BBA." The FDIC said it was seeking full damages for losses incurred by the closed banks, punitive damages, and damages for violating US antitrust statutes.

15. It is inevitable that where BIS/the Insolvency Service ("the IS") relies on the RPBs, which are not under its direct management control, the repercussions of the uncovered risks they face becomes an exposure to BIS/ the IS. A further aspect of the financial and economic risk to the RPBs (and therefore BIS/ the IS) is:

a. the political risk (eg US suing and imposing sanctions on non US banks and businesses, as BP as well as US banks trading outside the US, as JP Morgan);
b. the implicit pressure on prosecutors for "tit for tat" retaliation and the lack of appetite for such, all with the associated reputational risks to the RPBs, and therefore BIS / the IS. There is pressure for LIBOR to effectively be set in the US; London has slipped from the global financial centre of the world, Edinburgh has slipped in the rankings;
    i. uncertainty re Europe, continuing unity with Scotland;
    ii. tensions between Parliament and the executive, as over the "opt out" provisions of certain European laws, and "done deals";

Extract: Joint Report from the European Scrutiny, Home Affairs and Justice Committees 26.3.14

> *" 5. We are taking the unusual step of agreeing a Joint Report because we are deeply disappointed by the Government's position. Put simply, the House should have an opportunity to have a debate – and vote – on which measures the UK should seek to rejoin before negotiations begin. Presentation of a 'done-deal', once the negotiation process has been completed, is a poor substitute. "*

---

    iii. pressure over giving away what belongs to the electorate and the tax-payers,

benefiting private agents, as the expense of the public;

iv. …..NAO
v. PAC
vi. OFT June 10
vii. PROSPECT Jan 12
viii. Excessive reliance on consultants rather than identifying the underlying issues and dealing with those (Atkins, retired academic)
ix. Failure to learn, or take advantage of work of others
x. Loss from fraud
xi. …….
xii. ……..

16. As matters stand, individuals (insolvency practitioners "IPs") are offering to take on appointments (or accepting offers), without indemnity in place on the value of the estate. Mismanagement, ineptitude, reckless or knowing defaults (in particular in appointment acceptance) will give risk to potential damages and consequential. By definition, this exposes the firms and its members, made worse by the lack of in-detail mandatory business acceptance by that firm.

17. In essence the business of the IPs firm is betting its continued existence on an uninsured (and uninsurable) risk not coming home to roost or alternatively, if that happens, switching the debate to the subject of fees and not liability for damages in the appointment which should not have been offered/accepted . *Brandon Barnes v Eastenders Cash & Carry PLC & Ors & CPS UKSC 2013-0006,* hearing 2/2014 decision to be handed down any time.

18. The anomaly between the fact that an individual is appointed, and the business carrying the exposure has not been resolved. No constructive suggestions have come from the RPBs, nor is there any evidence that they have actively canvassed those of their licencees with experience in addressing such manifest and predictable gaps. The omission in collecting coal face evidence includes those who are buyers of audit services and who may have something to say about such activities if they knew about them. How can an auditor be independent, if he is on a framework to provide restraint and confiscation services to the prosecutors as management or enforcement receiver or even expert witness/forensic accounting services?

19. The position of the auditors of these businesses has been excluded from consideration, and therefore the obligations of the FRC and its monitoring and sanctioning of these auditors. There is no rapid response team in BIS for organised vandalism, as the pulling down of RSM Tenon (201-5851/3 Companies Court) and its re-incarnation branded "*as though*" part of the Baker Tilly group.

Q3 Do you have any comments on the proposed scope and procedures for the Secretary of State to issue a direction to an RPB?

20. The Secretary of State (SoS) cannot efficiently intervene in the operations of the market in the manner suggested or at all, unless to correct a market failure. The market failure which currently exists is that the criminal justice system has imploded, having for years focussed on those who make money from it and not those it serves (the victims, witnesses, informants, defendants, those affected) including imploding as a result of the removal of prosecuting powers from HMRC (April 2005, RCPO); the police (given to CPS instead); cancelling the Asset Recovery Agency; diluting the OFT; turning Citizen Advice into a tendering exercise; burying CIB inside the Insolvency Service; abandoning personal data protection, in favour of the Information Commissioner; allowing a free for all in mergers and acquisitions, without the agreement of customers and suppliers of those taken over; disabling those with prosecution powers by the myth that non existent regulators hold wrongdoers to account; operating under the control of internal lawyers and those in policy with no visible accountability to the public; overt reliance on vested interests for intelligence; maintaining edifices of *"fines"* "*disqualification"* and other distractions that are merely a *"cost of business";* and splitting the single test Prosecutors Code into two, part two being discretionary, enabling an argument about overlapping competence and efficiency amongst prosecutors such that each points to the others and no-one moves. The approach has been blown out of the water by Judge Leonard (2.5.14) that the focus is now on the victims and the civil courts, requiring a total re think of the deployment of state resources.

21. The single most conspicuous visible current market failure in this regard relates to the restricted entry to supplying services to the crown where a dominant supplier is the "*Crown Prosecution Service*", supplier to the DPP (an individual with no separate establishment). This is a body which reports net deficit in excess of an average of £1/2b per annum over the last years, a fixed payroll of 7,000 and a contract supplier list of some 2,900 others. Entry is restricted to this body, limited to barristers and solicitors. These are wholly unsuited skills to be entrusted with managing public money.

22. Its main task is to deliver a fair trial for defendants, relief for victims and protection for informants /witnesses / others in a vulnerable position. However it does not publicly admit to this obligation. Fairness in financial wrongdoing means a properly cast net in the first instance; not focussing on scapegoats or treating people as though "*BANKRUPT*". This is a meaningless term after the abolition of "act of bankruptcy" in the 1914 Bankruptcy Act. It relies on asset stripping ***after*** kicking off an unlawful process using the OR and IP. An act of bankruptcy can never be retrospective. The CPS has not to date successfully delivered the prosecution of any IP or even tried. It focuses on ensuring that its suppliers get paid, including when they have no access to the estates of the defendants which they may have demolished without cause (*Eastenders*, Supreme Court, BDO IP). Those who commission unlawful acts ought to be held to account, whether IP or not. The courts have not as yet held an IP (receiver etc) to account both criminally and in terms of damages (*OBG v UK, ECHR*), with Strasbourg declining to get involved in domestic ineffective operations of the law, which as it stands on paper, is sufficient in principle to hold these people to account and protect and compensate the public.

CPS and Bar Council – essential part of any "RPB" controls

23. It would seem that a main activity of the 7,000 headcount of CPS is managing the procurement of the 2,900 and ensuring they are paid (called by CPS "delivery partners"): however barristers and solicitors are not trained or examined or experienced in contract procurement and project delivery per se or in managing public money (the first RCPO director told Parliament in 2008 that he had ½ day training by the Treasury on being a civil/crown servant and handling public money, when the first 2005 accounts did not materialize and turned out to comprise payments to barristers mainly).

24. Accordingly their job ads for senior post (restricted entry limited to barristers and solicitors) do not reflect the contents of the CPS accounts which prioritize ***future plans*** to take witnesses and victims into account, having to date wholly excluded them from account and omitting to sign up to the Victims Code. Job ads do not include the word "*victim"* the word "*budget"* or the word "*efficiency*" and *"delivery*" occurs repeatedly but only in the context of "*delivery partners",* a term that one can only speculate relates to the 2,900 on the preferred supplier list. These it would appear includes criminal law barristers (although the list is not published on the website) who are currently "*on strike"* (their term) and whose body, the Bar Council has it would seem, cancelled applying the *"cab rank rule".*

25. Holding the country to ransom in this manner in regard the criminal justice system demonstrates that the Insolvency Service cannot have RPBs UNLESS ALL the relevant ones are included. This includes the Bar Council and Bar Standards. Neither of these have any sway with their licencees, as demonstrated by their inability to keep the criminal justice show on the road with the benefit of the over £1/2b spend channelled through the CPS each year, with its restrictive practices. Indeed Bar Standards has unilaterally imposed on the Criminal Bar *"performance appraisals"* by presiding judges of the barristers in criminal trials, meaning the barrister must not only be concentrating on the truth, but also performing for his appraisal, as though in a theatre. Leveson P has said the system will stop the day a judge receives a claim form. Protesting barristers have been over ruled. The industry is blaming its woes on the fact the Lord Chancellor is not a lawyer, omitting to say the 7,000 in the CPS are all lawyers, who have failed to deliver cost effective trials for defendants in which they choose their own counsel regardless of means, not a public reputation demolition exercise of "*winners and losers*".

26. The payroll of the CPS continues to be met. There appears to be no mechanism for clawing back pay to those who took money to "prepare" for complex financial trials knowing they would never happen. The commercial bar continues to attract opportunists as demonstrated by the turn out of twelve counsel on three consecutive days in the Commercial Court (2012 Folio 336) on 15, 16 November 2012, some months after uncontested default judgment had been entered, to be followed by another six, the Official Solicitor, Official Receiver, Treasury Solicitor, as well as the CPS (Policy) in the name of the DPP, Westminster and City of London Police, two private investigation /process server businesses, a plethora of notaries and Jersey Bailiff, police and judge sporting a courtesy QC, having been Attorney General/Solicitor General in the crown dependencies, seeking to achieve in Jersey the undoing of what had already been admitted and decided with sole UK jurisdiction.

Q4 Do you have any comments on the proposed scope and procedures for the Secretary of State to impose a financial penalty on an RPB?

27. I have evidence on the approach to formulating the appropriate question and the response. First if RPBs are to face penalties, the question is "who pays?". A snapshot of what has happened over the last decade, taking ICAEW as an example, records:

- soaring subscriptions and active promotion and sale of faculty membership, conferences and activities priced beyond the reach of ordinary members;
- the introduction of "associated membership" eg to lawyers, who do not face ICAEW
- a conversion of the RPBs, as ICAEW, to commercial enterprises pursuing the vested interests of those who control them including in the devising and selling of tax avoidance product. A recent example is the lobbying (advertised by Michael Izza on his CEO blog) of the foray into the Supreme Court in the name of and on behalf of ICAEW as intervenor for ICAEW licencees (who require no licence to give tax advice) to be able to benefit from legal professional privilege, as solicitors do (who also require no licence to give tax advice). The applicant was nominally Prudential whose counsel was instructed by PricewaterhouseCoopers LLP.

Q5 Do you have any comments on the proposed scope and procedures for the Secretary of State to publicly reprimand an RPB?

28. Yes. I have evidence on the approach to formulating the appropriate question and the response. The first step is to establish whether the existing RPBs are fit for purpose, and to ensure that they are compelled to bid for re-listing, essentially as supplier permanently required to re-tender to the SoS. This is a simple process and well known to central government and the local authorities. Senior civil servants with an impeccable pedigree in investment, procurement and policy have been required to obtain a certificate or not qualify in re-tendering for their current post; and in local authorities local citizens advice bureaus have been compelled to go through the same with their staff, closing them down, including the relationships, records, staff as a pre cursor to being seen to re-tender, bringing in a new supplier. The burden is on the RPB's to prove "independence" to secure continued the status. The presumption is that they are not, as evidenced recently in Europe, when a joint bid for advisory work was rejected for lack of financial independence.

29. The first test is therefore that the RPB's must be intellectually, financially independent from the licencees, ie commercial and intellectual independent, and not a lobbying vehicle for vested interests. These are attributes of the individuals making the decisions whose names, licencing body, track-record and experience must always appear. If the work is outsourced to, or done on a joint basis with, those licensed by them, individually and/or corporately, the independence test will not be met. Put simply you cannot one day be acting together to make money and the next filing for compulsory winding up on the grounds of fraudulent trading, tax evasion, false accounting and reporting, manufacture and retail sale of unlicensed tax evasion product etc. If the RPB cannot deliver to the

SoS the evidence to facilitate such filings, it has no ultimate reason d'etre in the protection of the public from its licencees, individuals and corporates.

30. Complexity is inherent and self evident where there is no independence. If an individual IP in licensed firm (1) does a deal which benefits himself in which others lose, carries no indemnity to cover damages and moves to licensed firm (2), which does not know, using other IPs, with different RPB's to his own, but including those licensed by the SRA, another RPB, which RPB will deliver those complicit, including their auditors, to BIS prosecution, and what is left of HMRC prosecution, after decision making and prosecution teams were hived off (2005), and later merged with CPS?

31. The general law does not have this complexity; given evidence and suspect, there must properly be a prosecution under the Criminal Law Act 1977 (conspiracy) at the least, with the right of direct cause of action, damages by the losers, and now, after the example involving the BBA, including the RPBs themselves.

32. The position has become more acute now that litigation product has been devised, that enables indictment in the crown courts to be averted, by the expedient of pre-emptive civil action on a spurious topic in the civil courts. The product is enforced by massive damages claims in particular for damages to reputation caused by the purported errors of prosecutors.

33. The (arbitrage) product manufacturers and vendors rely on gaps in UK statute, for example absolute privilege, as exists in Ireland (Defamation Act 2009, s17). This protects witnesses, counsel, prosecutors, particularly for mistakes, including if privileged reporting, which is accurate reporting, repeats the mistake.

34. The position has been made dire by the approach of serial prosecutors, who have characterised the prosecution backlog in existence on assuming office as "*legacy*", actively closed it down, and incorrectly reserved the decision making capability of their office to themselves personally, "*as though"* it were an elected or inherited position.

35. Over the years, the accumulated backlog of unprosecuted offences turns from a tidal wave to a tsunami as unresolved wrongdoing compounds itself. The only outcome is that either the wrongdoer or the victim (often a key witness or their successor) is "*eliminated*". The criminal justice system, which lags behind events, cannot cope, not least because it was created on a presumption that an "*adversarial system*" works best and has withstood the test of time (Peter Murphy, Blackfriars Crown Court, Rebekah Dawson re wearing the niqhab in giving evidence).

36. This was without regard to modern litigation financial instruments and derivatives, that turn the adversarial system into a litigation weapon used perversely, such that a target is wiped out using their own resources and standing in the judicial system (marketed and sold as the "novel use of CPR" – website Reynolds Porter Chamberlain LLP, properly subject to compulsory winding up from 4 July

2012, real estate litigation, whose members include ICAEW associates, allowed to advertise on the ICAEW web-site). The techniques/tools, which would needs to be licensed by the appropriate body, and their VAT status defined, rely on exclusion, and false publicity of an image, on publicly accessible websites as the London Gazette (TSO, Deutsche Poste, auditor PwC), under a contract with The National Archives, MoJ. This does not impose POCA and RIPA compliance, sanctions, query resolution response times, which are an otherwise implicit contract term, in particular by a private sector supplier to a government department.

37. Other websites carrying false data now include the MoJ website, BAILII and barristers websites, as Maitland Chambers. This sports judgments never delivered by leading senior judges, which could never properly be given, after the true position has been established, based on made up facts, but attributed to the target. The "defence" is that such chambers are a series of sole traders and the website belongs to "no-one". Payments from IP firms licenced as IPs auditors and so forth by RPBs, laundered through lawyers, licenced by RPB's, permit this activity, helped by prosecutors', responsible for prosecutions under the Bribery Act 2010 (from 1 July 11), refusal to prosecute on grounds of the committal of an offence, rather who the offender is.

38. The judiciary are unimpressed. In a speech to *Justice*, 3 March 2014, Lord Chief Justice Sir John Thomas, reflected on the fraud that he had seen as counsel in the commercial bar thirty years ago that had not been prosecuted, regretting the lack of current path to remedy the situation, which by definition, includes resolving the consequence of thirty years of accumulated backlog:

"*Fraud investigations and trials*

1. *May I take fraud trials first. Thirty years ago, I was a member of a Justice Committee chaired by Beryl Cooper QC. The Committee considered fraud trials at the time the Government had announced the establishment of the Committee chaired by Lord Roskill to look at the way in which fraud was prosecuted. Although a practitioner at the commercial bar, I saw as much if not more fraud than would a person practising at the criminal bar; I had also been heavily engaged in the legal issues arising out of a series of scandals then involving the insurance market. Many of those scandals involved conduct where the allegations were of serious criminality. Prosecutions were few and those that were brought failed.*

2. *Forty-five recommendations were made by us – many of them practical, such as those directed at improving the quality of investigations and the trial process. We strongly urged the continuation of trial by jury. However, when Lord Roskill reported in 1986, amongst the many recommendations was a recommendation that consideration be given to trial by judge alone or by judge and assessors.*

3. *In the Lord Merlyn Rees lecture I gave at the University of South Wales in 2009, my conclusion was that despite all that had been done since the Roskill Report in 1986, we still had very serious problems. Indeed Lord MacDonald QC had a month or two before my lecture, observed that "our system for regulating markets and for prosecuting market crime is completely broken". I touched on some of the issues, including the real difficulties with disclosure and the question of the mode of trial – jury, judge alone, a tribunal of a judge and two or more laymen, judge and assessors. Since then there have been further changes, including the recent introduction of Deferred Prosecution Agreements and the many attempts at improving the process of disclosure, but there are still major problems in disclosure that seem to indicate that the issues are getting worse rather than improving.*

9 Is it not time that Justice looked at these issues again? Thirty years is a very long time since the committee of which I was a member. Circumstances have changed and so may have views. Fraud investigations and trials are still far too slow

and immensely expensive; not enough prosecutions are brought despite the reenergised Serious Fraud Office under David Green QC. It is vital for the health of our economy and the pre-eminence of London that those who commit financial fraud or engage in bribery and corruption are tried in a criminal courts and severely punished. Should we not look radically again at disclosure and the mode of trial?
I will not express my own views on either subject. It would not be right to do so until there is a carefully considered report which can form the basis of a considered view. I would simply say that reforming at least one of these would make a significant difference and ensure that on the resources available, there would be rigorous pursuit of more prosecutions for fraud, particularly fraud in the financial markets, and for bribery and corruption. "

39. The Insolvency Service, BIS, is radically attempting, including belatedly and with retrospective effect, to seek to impose on RPBs, what in essence are its own statutory obligations, as an organ of the state, which self-evidently and, by definition, can never become the problem of an outside body.

40. In particular, its approach does not take into account the impact of Limited Liability Partnership Act 2000, which has created the current toxic litigation vehicles trading as "*LLPs"* none of which are trading on a stand alone basis, with independently audited accounts. The exception is a start up, with accounts compliant with the Companies Act and an auditor who is not an LLP.

41. These LLPs came into existence as a result of lobbying by vested interests, claiming they sought parity with those they audited (or supplied other services) but without the constraints and controls binding the latter group. The sole commercial purpose was to create business opportunities through arbitrage, such that a company quoted on an exchange *("regulated"),* could have a certificate or report on the financial resilience of its balance-sheet by a vehicle, or vehicles, which were not subjected to the same controls as they were (prospectus, trading track record, reporting).

42. The predictable, and predicted consequence, was that it was no longer possible to view a company on a standalone basis. This was because it came bundled with its lawyer, auditor, financier, and the supply chain referable to these. It was a short step to an auditor reporting solely on matters of which he was on notice, neutralizing the status quo, whereby the reporter was ***implicitly*** bound to ***look*** in order to put himself in the position where he could make an adverse report (eg as to whether there were sufficient records in order to ascertain the financial trading position of the enterprise) and disclaim an opinion, if necessary. It was a shorter step to bury evidence of default with a bank or insurer ("*big boys, they can look after themselves*" Tim Pope, Head of Audit Risk, PwC, July 2005), and tip off a player, with lower standing in the rankings, to secure the evidence as held by CIB, FSA, FRC, ("*independent expert in assurance"),* and use it, bundled with the witnesses, those with a valid claim, to discredit them, and obtain purported court orders to be used effectively as

Q6 Do you agree with the proposed arrangements for RPBs making representations?

43. No. The potential RPBs, if there were to be any prospectively and assuming public applications and an opportunity to be heard in court with objections, can never be the voice of their members, unless they have written to ask them for evidence and passed on that evidence intact. The Institute of Credit Managers does that without being an RPB.

44. The experience

45. 2….

Q7 Do you have any comments on the proposed procedure for the Secretary of State to be able to apply to Court to impose a sanction directly on an IP in exceptional circumstances?

46. 3….

47. 4…..

Q8 Do you have any comments about the proposed procedure for the Secretary of State to require information and the people from whom information may be required?

48. 5….

49. 6…

Q9 Do you agree with the proposal to provide a reserve power for the Secretary of State to designate a single insolvency regulator?

50. No. Thus far the SoS has omitted either to prosecute, file for compulsory winding up, disgorge tainted profits of financial offenders; secure restraint orders; confiscation orders; etc, or recover anything worth reporting.

51. BIS has presided over what the NAO has estimated as £52b annual fraud with under 26p recovered in each £100 retained (17.12.13); £1b taken out by IPs per annum (OFT June 2010) without quantifying the loss to the economy of what has been closed down, or the secondary damage from the excessive return to financial capital as opposed to capital invested in productive activity. This is in terms of increasing the concentration of global wealth amongst a shrinking number of individuals, at the expenses of whole generations being excluded from the opportunity to develop gainfully. This malaise is one way with no "natural" mechanism for adjustment, as economic cycles, and is set to continue, unless and until political will determines otherwise.

OFT: June 2010

" 1.5 Each year IPs earn approximately £1bn in fees from corporate insolvency processes, in doing so realising about £5bn worth of assets, and distributing some £4bn to creditors. IPs can also advise on business restructuring and continuity prior to insolvency and are part of the widerbusiness restructuring market.

Market failure and harm

1.6 We find that most IPs compete by building and maintaining strong relationships with secured creditors, such as banks."

52. At the very least

a. the £1b "*earned*" (or taken out) per annum (possibly more since 2010), is money which properly ought to accrue to the SoS, since the function it represents is a statutory function;

b. there ought properly to be:

   i. a distinction between "*artificial*" transactions (manufactured bankruptcies /administrations) and "*real ones*";

   ii. a seperation between acts of aggression (eg local authorities, who cannot be challenged, unless they blatantly exceed their powers or act procedurally

dishonestly and are caught out) including manufactured debt as solicitors "bills", acts of exclusion, surrogacy, other tools of leverage, and circumstances compelling the protection of the state (eg trustee services) and the rest;

iii. a regular report on the quantification of the loss to the economy of pulling down people and businesses, including loss of opportunity as well as the ongoing economic damage of permitting self generated "bankruptcies" in circumstances in which there would be no entitlement in law to invoke the protection of the Insolvency Act 1986. This requires a properly evaluated balance sheet including intangible and contingent assets and those controlled or accessible, which technically have fallen out of account;

iv. an individually licenced pool of labour, much the same as a licence to carry out MOT inspections, an electrician, an IT contractor or the former DTI inspectors (accountants, counsel etc), on which the IS/BIS can draw, to work under its supervision and direction without the baggage of:

1. a "firm";
2. business models in which one licenced person can cover for a labour pool which is not (whose proper market price is therefore zero or negative if those involved receive free training and exposure to interesting work which others cannot access);
3. circumstances which are not subject to financial indemnity and which will result in change of ownership at the least, and more likely, abandoned rights and loss of intangible and contingent assets as well as loss of opportunity;
4. having to face a decade or more climbing the ladder to get to the ECHR, only to be told that UK domestic law exists on paper, Strasbourg's preferred construction of "*effective",* and that the ECHR will not "*interfere"* in the domestic operations of the system ("*bottling out").*

53. In other words, an effective operational model based on a competitive labour market, supplying into the SoS for mandatory state regulated activity (entitlement to protection, and obligation on the state to deliver it) is the only mechanism for delivery of human rights. This is important because where human rights are breached, the IP will not be paid from the victims assets, and he and his firm will face the full consequences of damages and consequential. In such circumstances, he may have indemnity from private operators. It is doubtful he could secure such from prosecutors (management receivers etc) or expect the court to require the CPS to pay, when on reasoned diligence he ought not to have accepted the appointment.

54. The SoS must now address (belatedly) these matters, including as set out in the press release by the PAC on 21 March 2014 (attached below). Importantly BIS is not explicitly mentioned, despite having experienced prosecutors, the Companies Investigation Branch, and being instrumental in paralysing or blocking police, SFO, FSA (as was) and Trading Standards prosecutions, as being the front line prosecutor (Martyn Hopper, former head of enforcement, FSA,

March 2005, as partner in Herbert Smith).

55. The press release answers the question of one body, the **Criminal Finances Board**, although it is not the one envisaged by the IS. BIS/IS ought properly to worry that:

a. they are not mentioned (*why not?);*

b. they have given away £1b of business a year, retaining for themselves loss making activity; and

c. instead, hounding and harassing the public (including by threats of securing warrants for their arrest by police) to secure unencumbered assets which the IPs can work to their benefit as they see fit, to the exclusion of its rightful owners.

This harassment is apparently a malicious attack in response to not signing blank documents "*TO WHOM IT MAY CONCERN"* entitling them to take control over bank accounts, tax files, other privileged/personal/financial data, in order to remove the entirety of unencumbered valuable estates from their rightful owners, for the sole purpose of giving such as a present to an IP. Such IP (and his firm and members of it) carries no indemnity for his activity stated by him as "*my duties are to realize your assets*", as the IP lays claim to valuable properties registered at the Land Registry, willingly colludes with serious cross border wrongdoing, thereby inter alia exacerbating trauma and permanent disablement resulting from such malicious attack.

56. BIS/IS is "the state" and "officer of the court" for all purposes and its staff recognise that fact. Evidence to Parliament on 24 January 2012 is appended in full in this return as it cannot reasonably be paraphrased without diluting the impact, sincerity and inside knowledge of those in the service for periods measured in decades (Tony Butcher, President PROSPECT, Insolvency Service Branch to Parliament January 2012). There is no readily accessible evidence showing that what was provided to Parliament in January 2012 (or came from the OFT in June 2010) has been translated into a work plan, complete with management information, sustainable funding including the proceeds from crime prosecutions and associated confiscations and securing that the £1b per annum currently accruing to IPs is earned by BIS/ the IS and not those outside the service, whilst "NINA" (no income, no assets) is left inside.

57. It must also be right that, if this consultation is to make meaningful contribution to the evidence gathering process started in 2010 by the OFT and enhanced by the PROSPECT (and PCS) evidence, that the points already raised explicitly or implicitly are addressed. Briefly, these are:

a. the dearth of criminal prosecutions, in particular of LLPs, with the consequent lack of recovery of proceeds of crime;

24 January 2014

Q66 Nadhim Zahawi: *So, could it be that the levels of complaints have also decreased because of a perceived lack of confidence in the process?*

Tony Butcher: *I do not know why there is a lower number of complaints. The Insolvency Service, within the relevant directorates, is making inquiries and has put people on to specific reporting to find that out. They have not reported yet as far as I know.*
Specifically in regard to the number of criminal referrals, I know that that has been noted and is being investigated. It is ongoing, so I do not know what the answer to that is.

b. the shipping out to IPs of lucrative activity, whilst retaining in-house activity that results in notional "*bad debts*" (NB this is false accounting, because the receivable should not be set-up in the first place if the prospect of recovering is not good/likely). Such practice is financially irrational;

c. evidence based decision making: the employment of a retired academic in March 2013

58.

59. …….ABCD

Q10 Do you have any comments on the proposed functions and powers of a single regulator?

60. …….ABCD

Q11 Do you agree with the assessment of the costs associated with fee complaints being reviewed by RPBs?

61. …….ABCD

Q12 Do you agree that by adding IP fees representing value for money to the regulatory framework, greater compliance monitoring, oversight and complaint handling of fees can be delivered by the regulators?

62. ……ABCD

…….ABCD

Q13 Do you believe that publishing information on approving fees, how to appoint an IP, obtain quotes and negotiate fees and comparative fee data by asset size, will assist unsecured creditors to negotiate competitive fee rates?

63. No. The benchmark rates are those which would apply were the work to be carried out by the Official Receiver ("OR") by full time employees, with remuneration levels publicly available, scales

which apply also to HMCTS collections and compliance (Minister trying to outsource) and the Official Solicitor, Office of the Public Guardian etc.

Q14 Do you think that any further exceptions should apply? For example, if one or two unconnected unsecured creditors make up a simple majority by value?

---

64. There can be no exceptions. Either a licenced private contractor sells himself to the Insolvency Service at a price which

Q15 Do you have any comments on the proposal set out in Annex A to restrict time and rate as a basis of remuneration to cases where there is a creditors committee or where secured creditors will not be paid in full?

65. There cab never be time based billing in licensed work. This is the equivalent of hiring a machine for a period or a job, where depreciation and maintainance must be covered (eg renting a photocopier) or a person working on a production line or a ticketing office for a shift.

66. Any "professional" would always have a contract or written record of what he is doing, eg an anaesthetist working in an operation and his pay will always be known, as salary, or fees. A person carrying out a licensed activity, such as an MOT garage inspection or a driving examiner would also have written tasks, certification of his competence (renewable) and known pay. Professionals working in the civil service are exactly the same. IT contractors (systems engineers) working on time based contracts, provide "consultancy" meaning implicit standards. These are made explicit in project budgets and deliverables. This gives certainty of who the customer is and the whole of the transaction in which the IP is taking part.

67. This means that there is substantial investigative work and independence verification in advance of an IP offering to undertake a job. It must always be that way round, the IP offers, since ***only the IP knows the true position*** as to whether he:

- is competent ie has worked successfully in the relevant industry as executive director;
- is qualified as a Chartered Accountant (ICAEW/ICAS) or equivalent involving supervised training contracts;
- holds a practicing certificate as auditor and tax practitioner and
- provides his full CV setting out all the transactions in which he has been involved.

In addition he must provide his VAT number, so that the public can be assured that he is complying with the law in supplying as a singleton and that the transactions in which he has been involved are properly taxable supplies, not, for example, pre packs which could not happen as an ordinary administration, or the outcome of bullying by a purported principal creditor/shadow director who had previously found it convenient to permit protracted periods of fraudulent trading. Importantly he must establish in advance whether he is being asked to participate in a repackaging of the result of reckless/knowingly dishonest lending by a bank, bringing down the intermediate vehicles until liquidated burying the evidence in the secrecy of "administration" or manufactured bankruptcy.
In addition if he is a member or partner in a business, independence verification must be at the corporate level on a system that does not rely on individuals replying if they feel like it only, the system operated by the Baker Tilly partners at least until 24 August 2006, when they omitted to respond properly to independence checking v PwC, on whom they were offering to provide an independent assurance report (HQ12XO3512, 24 August 2012, default judgment 27.2.13).

If this checking is not properly done, there is a risk of a dual structure, with the firm supplying to the IP such that a poor quality lawyer would say the duty of the firm is to the IP and so long as the IP does not sue the firm, the firm is "protected", and moreover can supply unqualified unsupervised labour to perform such tasks as being "chairman of a creditor's meeting". This dishonest construct has been created to circumvent the rule requiring the IP to operate singly with purported impunity. It does not work not least because trading in personal data is an offence as it holding such data when you are not the "data controller". The IP has no proper basis for either accepting this or handing it over UNLESS he has properly offered and been accepted by those with interests (including intangible and contingent) BEFORE he offered.

Further a key criteria is that he should not have been found guilty of the commission of an offence: the true criteria is that he should not have committed a crime, not that he might have done but managed to "*get away with it".* This is hopeless to police. It means unequivocally that the Official Receiver must do their own work, cannot merely "*hand it over"* and cannot do so, when they do not even know the true history of the person to whom they are handing over.

The outcome is predictable; they will behave in the same self interested manner as the three Deloitte administrators did in unlawfully pulling down RSM Tenon Group Plc, 22 August 2013, thereby facilitating the directors of the trading subsidiaries entering new owners into their share register, which is not a public document and will not be known until the next annual return is filed at Companies House, months later, potentially with different directors to those exiting earlier. The creditors are totally excluded; warnings to the IPs on the day are acknowledged but ignored; and the IPs proceed to a London Gazette Notice (28.8.13) now privatized and outside the control of the government. In other words the IPs are there purely to facilitate what cannot be properly achieved and which a court would not countenance, at least as being pre ordained and a sham, with the complexity of FSMA 2000 contraventions where public companies are involved.

The three Deloitte IPs involved appear from the brief descriptions of their past that can be ascertained, not to have served as public company directors and therefore were not qualified either to be administrators of such or to comply with the Companies Act obligations to act in the interests of the employees at all times. In addition they appear not to have signed auditors reports on a quoted company.They have abandoned to date RSM Tenon's good claim v PwC in regard the hole that had been discovered in the balance sheet which lead to shareholders sacking PwC.

"Appointment" – self-evidently a misnomer

68. It follows automatically therefore that a person, whoever they are, cannot "*appoint"* an IP since they cannot make an offer capable of acceptance because they do not have the knowledge of the IP nor can they do his independence verification or ensure that they have 100% financial indemnity on the value of the estate or indeed have done those investigations required pre making an offer.

Blind eye knowledge

69. The above is not in fact how IPs operate. The IP purports to come in blind (or with blind eye knowledge) without the knowledge of the past. There is no audited balance sheet with full valuation ascribed to contingent and intangible assets before he starts, including audited value extracted two years prior to the purported transaction which brought the IP in. His purpose is to execute a transaction that could not take place without reliance on this purported blindness the benefit of which is outside the jurisdiction of the normal routes to relief.

70. An IP is not a learned professional (ICAEW has no IP "Faculty" as for assurance; tax etc); does not have to have competence in anything, is not required to sign any statement of truth and hides behind the words of the Act, "*when acting as an IP*". This is unlike the case of a director, who ***is*** *a director*; an auditor or company secretary, who ***are*** *office holders*; the DPP; the Director of the SFO; a trustee who ***is*** *a trustee*; a witness who ***is*** *a witness*; a policeman who ***is*** *a detective*; a dentist who ***is*** *a dentist;* the Official Receiver in whom an estate vests after those interested and potentially prejudiced have been identified, notified, heard and there is no appeal, he *is the OR*; a person holding a power of attorney for a purpose *is the authorised person.*

71. How the IP is paid, by whom he is paid, for doing or facilitating what all depends on the transaction. If the entirety of the transaction is not fully documented and those benefiting as "winners" are as accountable as those "losing" there is something amiss. Therefore the IP is no more than any other man in the street and judged accordingly.

Example of how blind eye knowledge is used

72. A key point is whether the transaction or series of transactions in which the IP (those with him, his firm and other firms to which he moves) is instrumental create an "administration" "receivership" "trusteeship" which would not have occurred without and/or create a set of circumstances in which the voice of those interested /potentially prejudiced is silenced for a protracted period and a further step executed, which makes the position irreversible. Billing by the clock and/or by doing a "deal" with a purported majority creditor is often the mechanism that effectively wipes out the true interests, including by an IP abandoning them.

73. Each of HMRC, the FCA, local authorities trigger processes by which the "system" carries out financial ruin. Those damaged are unprotected by the courts. Winding up orders on companies, freezing orders on assets, are secured ensuring that there is no chance that those affected could ever have a fair hearing. Worse, after a series of out of court events, those attacked are "*investigated"* by IPs and "*struck off*" as directors, as well as being asset stripped and saddled with the "*bills"* of the process of wiping them out, punishment for the initiatives of others without hearing.

74. Minister Willmott appeared on Newsnight, 23 April 2014, to explain the SoS's part in how two property owners lost their homes, Alan Town, his home forcibly sold, and living with his 92 year old

father, and Peter Williams, inventor who committed suicide the day the bailiffs turned up to evict him. Minister Willott omitted to provide assurances that the operations of the SoS would be suspended pending full investigation; to commit to action against the IPs involved and blacklisting of their firms as state supplier (Grant Thornton and a business within Baker Tilly group); to warn the public not to communicate with IPs or to act to legitimize their activity; and to commit to a programme of protection for those under siege from local authorities; defaulting solicitors; "push-selling" by banks, promoting business borrowing, equity release schemes, equity swaps and other transactions which give rise to certain debt but recovery outside the control of the "investor" or tax evasion products as those which manufacture losses or other reliefs.

75. In particular there was no commitment to stop the SoS "handing over" the protective obligations of the state to vested interests to exploit to their own benefits (IPs); or freezing assets; manufacturing winding-ups and bankruptcies such that purported defendants have **lost the opportunity of a fair hearing, even before it starts:** Guardian 10 May 2014 Nick Cohen re Judge Leonard:

> *"Nearly all defendants in serious fraud cases need legal aid,* ***because the state freezes their assets, leaving them without the means to meet legal bills."***

> *"the authority [FCA} had* ***already secured a winding-up order*** *against companies associated with the defendants"*

> *"the Bar Council, which regulates barristers, said …..that QCs were* ***no longer obliged*** *under the "cab-rank rule" to take complex fraud cases."*

> *"The government created the Financial Conduct Authority in 2012 after widespread criticism that not one banker was prosecuted after the crash. Its officers are exasperated that a dispute over a relatively small cut of £13m is threatening fraud investigations worth hundreds of millions. They have come to see Operation Tabernula as a defining test of whether London could revive its reputation after the crash and offer a credible criminal deterrent against white-collar crime. The investigation has included dawn raids involving 143 officers and thousands of hours of case work."*

76. The Minister did not explain that if someone is struggling with council tax forms, local authorities or any other struggle of that nature it does not follow that *""professionals" are brought in to handle their assets"* nor that it is proper for the SoS to "*appoint an IP to sell their assets to pay their debts".* She gave no assurance that debts must be "*proved"* nor that "*majority creditors*" were to be determined and could not be assumed. In particular she gave no assurance that an IP would not be allowed to come in on one basis (administrator or trustee or management receiver), swap to another (liquidator) and in the meanwhile give away contingent and intangible property and rights in the name of those interested without their knowledge or authority.

77. The Minister did not explain the opportunities for an IP to be pre selected by one party (eg on the back of "*investigating")* and once they are in, the person choosing them proceeding to undertake transactions which are outside the control of those interested and potentially prejudiced, the effect of which is that assets are released at undervalues; contingent and intangible assets disappear; those interested in an estate and wishing to see creditors and others right are excluded from the process and a belated impentrable report comes from the IP, without the backing papers, when it is all to late.

No change since lack of independence and scrutiny of IP identified as a problem (2010)

78. By March 2010, the Secretary of State had openly recognised and admitted that the Official Receiver was not inspecting the IPs properly in particular for lack of independence, if at all, whilst they were active. Four years later it has taken no steps to stop IPs and companies and personal estates continue to be pulled down, with no empirical evidence on the decimation to the SME market; loss of confidence in the market that offenders are prosecuted; and loss of employment and loss to the economy.

Crackdown on 'phoenix' insolvency deals • Directors allegedly exploit 'pre-pack' administration • Creditors and suppliers often left empty-handed theguardian.com,Friday 19 March 2010 19.57

The government has vowed to crack down on the exploitation of so-called "pre-pack" administrations by closing loopholes used by owners of insolvent businesses. The pre-pack system allows the healthy part of a business that has gone into administration to be sold on quickly, often to its own directors, so it can keep on trading and paying its staff. But experts say some directors take advantage by selling the business to themselves at a knock-down price to free themselves of debts, leaving creditors – usually local businesses – in the lurch. …. taking advantage of the pre-pack scheme – which is perfectly legal…….

A government body, the Insolvency Service wants…….. to appoint ***an official receiver to provide independent scrutiny*** *of directors' and* ***administrators' actions.*** *The new rules, backed by the government,* ***would try to prevent conflicts of interests*** *by making it impossible for a person* ***advising on a pre-pack to be the administrator****. Creditors would also have to sanction pre-pack deals involving connected parties such as company directors."*

79. The position has been considerably worsened by a trade association which calls itself R3, which stands for "Rescue, Recovery, Renewal". Its members licence details are not displayed on its website and those on its "council" who hold themselves out as an "accountant" omit to say which body supervised their training contract and where they are current members. R3 has taken no steps to faciliate the control on the activities of its members that gave rise to the reports above in March 2010 and in June 2010, when the OFT reported that IPs were reporting £1b per annum taken out of the system for themselves.

80. In replying to the current consultation, R3 has made the following highly inaccurate and misleading statements, which nonetheless reveal that in essence it is a lobbying federation of vested interests. Its propaganda reads:

- *"The UK has a world leading insolvency regime, which is certainly not 'broken' nor in need of wholesale reform, as suggested in much of the consultation:*

- *The UK's insolvency regime is the 7th best in the world (according to World Bank data1, which measure the speed of the insolvency process, the likelihood of business rescue, and the returns and costs to creditors).*

- *The cost of insolvency in the UK is 6% of the estate, with a recovery rate at 88.6 cents in the dollar, according to the World Bank. Japan is the only G8 or G20 economy that ranks above the UK in terms of 'resolving insolvency' – the UK outperforms the United States, Germany and France.*

- *Furthermore, in 2012 the UK insolvency industry saved more than 750,000 jobs and 6,100 businesses and the total financial contribution of the insolvency industry to the UK economy in 2010 was £739m2.*

- *There are approximately 1,700 IPs in the UK, most are accountants or solicitors – all are qualified and highly regulated. They are officers of the court and have a statutory objective to maximise returns to all creditors."*

81. It would seem however that R3 is on the defensive and has no reply to the activities of at least its council members (or at least chooses not to give any when asked):

http://www.independent.co.uk/news/uk/politics/exclusive-the-cameron-crony-the-private-jet-company-and-a-crash-landing-that-cost-taxpayers-100m-9350090.html

82. The UK "*insolvency regime*" is not one which is regulated at all. It is used to facilitate transactions with the IP as catalyst rather than resolve properly "*acts of bankruptcy"* with full security or caution and joint and several liability as clearly and comprehensibly set out in the Bankruptcy Act 1914. It can only be rescued by reverting to the position pre

by Rachael Singh
More from this author
28 Feb 2013
0 Comments **PKF ADMINISTRATORS** have racked up £2.2m in fees for their work on the collapsed football club Portsmouth FC, according to the latest creditor report.
The administrators have incurred the £2.2m of fees in time costs for the period 17 February 2012 to 2 January 2013. This is for 7,295 hours of work which is an average of about £297 an hour.
However, the administrators have managed to draw £775,000 so far following approval from a creditor committee. At the end of the administration the administrators will decide on the percentage of their fees to be repaid with that figure needing creditor committee approval before it can be drawn.
The club entered administration for the second time in two years on 17 February, with PKFpartners Trevor Birch, Ian Gould and Bryan Jackson appointed. Fees for the six months ending 2 January 2013 amounted to £851,671 for 2,905 hours of work at an average hourly rate of £293 per hour. The administrators are currently awaiting a court hearing which will determine whether a rescue deal will be viable through a sale to the Portsmouth Supporters Trust (PST).
The administrators said in the latest creditor report that "if a sale can't be achieved a liquidationis the most viable option." PST has funded some of the trading costs amounting

to £244,061. However, preferential claims so far come in at about £52,000 and unsecured creditor claims are about £35m, which £11.4m as football creditors. In a football insolvency, football creditors such as players, managers and other clubs, are paid first and in full. Other costs highlighted include solicitor fees for Pinsent Masons which for the year come in at about £1.24m and £79,000 for George Davies, who acted for the Professional Footballers' Association, on negotiation of playerwage deferrals and agent fees.
© Incisive Media Investments Limited 2014 , Published by Incisive Financial Publishing Limited, Haymarket House,
28-29 Haymarket, London SW1Y 4RX, are companies registered in England and Wales with company registration
numbers 04252091 & 04252093

Portsmouth administrators rack up £2.2m in fees

Q16 What impact do you think the proposed changes to the fee structure will have on IP fees and returns to unsecured creditors?

83. …….ABCD

Q17 Do you agree that the proposed changes to basis for remuneration should not apply to company voluntary arrangements, members' voluntary liquidation or individual voluntary arrangements?

Q18 Where the basis is set as a percentage of realisations, do you favour setting a prescribed scale for the amount available to be taken as fees, as the default position with the option of seeking approval from creditors for a variation of that amount?

84. …….ABCD

Q19-Is the current statutory scale commercially viable? If not what might a commercial scale, appropriate for the majority of cases, look like and how do you suggest such a scale should be set?

85. …….ABCD

Q20 Do you think there are further circumstances in which time and rate should be able to be charged?

86. …….ABCD

Impact Assessment questions:
Q21 Do you agree with this estimation for familiarisation costs for the changes to the fee structure?

87. No, correct figure is zero. IP should not accept appointment unless competent, informed and independent (ref (1) , three Deloitte IPs involved in illegally pulling down RSM Tenon group in August 2013, and those from FRP Advisory LLP trying to cover up on them by parallel action started in the bankruptcy court and abandoned; ref (2) PwC as Lehmann Bros administrators has to re employ Lehmanns derivatives team as could not understand or account for banking transactions; ref (3) BDO re Brandon Barnes, accepting appointment as a result of incorrect court order, when investigators had not gone in and checked the books as they were entitled in law to do). Authority: OBG v UK ECHR
They carry no indemnity, therefore those harmed cannot easily recover damages, consequential and loss of opportunity.

Q22 As a secured creditor, how much time/cost do you anticipate these changes will require in order to familiarise yourself with the new fee structure?

88. De minimus time. I would not employ an IP unless I had taken out separate insurance on the contract, and he was engaged through my own accountants and auditors and supervised. It has taken a ridiculous amount of time for my auditors/accountants to communicate with their broker and specify what it required in order to get a quote. The IP would not come with the baggage of his LLP, with their own relationships and favours to be traded. The ephemoral industry only has to smell a pot of gold, when a whole industry gets going to workout how it can be changed from belonging to you to becoming theirs.

89. I would not be having to go through this labyrinth were I not compelled by law to use such a person. With their lack of experience in transparent business acceptance protocols and POCA compliance, they exponentially add to risk, which I would not face were my own accountants and auditors to do the work. Those due to pay are licenced by the RPBs. in this particular case and face compulsory winding up on grounds of dishonesty.

Q23 To what extent do you expect the new fee structure to reduce the current level of overpayment?

90. It is ill conceived and is unworkable. It presumes an *office holder*. However the key point is whether the IP properly ought to be accepting the appointment; or offering to take it on. There are some businesses which operate business acceptance by a separate group to the IP. However there is no assurance that they see all the input records, as opposed to a summary from the IP. In other words, the IP is making the decisions, and the rest are going through a process required by the insurer to “prove” they are not acting recklessly in business acceptance. This is hopeless from a customer point of view. The absence of a standard letter of engagement available on web sites and full details of financing contracts, arrangements, insurance (not merely the brokers) is not acceptable, in regard each of the firm and its auditors.

91. The proper return to a person who carries a licence, operates proper business acceptance, has the requisite experience of managing trusts or businesses or estates, and is independent, is the amount that would be earned by those in the insolvency service since they are performing the identical functions. The price for someone who does not meet these criteria is nil.

92. The civil service pay rates are on the web in accordance with the transparency rules (although the "app" does not appear to always be working).

93. The return to the individual must be the same regardless of transaction type, and leave him indifferent financially as to whether he is working for the insolvency service or is a private contractor (even if operating in groups as LLPs). Superior opportunities for quality experience naturally come with being a civil servant, so there could be some slight premium for not having this inherent advantage.

94. For example, if a case involves mistaken identity, or identity theft, or even devices and ploys to bifurcate assets and liabilities, and rejoin, after the latter have been dumped in pre ordained steps, in honest business acceptance, the IP must first be able to assure cover to those who could lose, and second agree with them an appropriate letter of engagement.

95. An IP whose house is worth £200k net of mortgage, is exposed in regard an estate worth £201k including intangibles and contingent assets and must "prove" his indemnity before he starts. An IP who shifts his exposure to those interested in the estate he potentially comes to control, risks his own, that of his firm, his members, and potentially the relevant licensing bodies, and the auditors concerned.

. Mr Micawber's, recipe for happiness:
"Annual income twenty pounds, annual expenditure nineteen [pounds] nineteen [shillings] and six [pence], result happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery." **Charles Dickens, David Copperfield**

96. The speed with which funds have rushed to provide financing for the tax of the LLP members, without second mortgages, shows clearly that there is easy money for those who are protected, and known to be, by the banks, who finance them, and absorb their exposures in exchange for benefits including auditors and consultants reports. IP exposures may in fact make IPs a poor credit risk. The funds are therefore speculating, thereby adding to risk and liquidity constraints with consequences.

97. The courts have little role to play in such matters, save as bemused observers, occasionally reminding the world that the key distinction is between what is proper and what is not. In the Prudential (with PwC), ICAEW & Ors v HMRC, in the Supreme Court (2013-UKSC1), the ruling confirmed legal professional privilege applied only in regard to legal advise coming from a proper source ie in business and licensed by a proper body:
"the privilege extends to advice given by members of a profession which has as an ordinary part of its function the giving of skilled legal advice. I would expect that criterion to be satisfied only where, and to the extent, that they are members of a properly regulated professional body. "

98. Therefore the fact alone that an IP may have passed an exam, paid his subscription, secured his bond, filled in his cover sheets, kept his address details up to date, been licensed by an RPB, will never be sufficient per se to protect him or those with him where acceptance of the appointment is not proper. The status of the RPB itself is questionable, if it permits IPs to take on an estate without 100% indemnity on the value of the estate: PII does not do it, as it will not cover acceptance of work that properly ought not to have been accepted ("*reckless/ knowing*").

Q24 Do you agree with the assessment that the requirement to seek approval of creditors for the percentage of assets against which remuneration will be taken, will not add any additional costs?

99. No. If one person ("A") wishes to make gift to another person ("B"), they are free to do so, so long as the ownership of the item to be gifted by A is with A. A gift is a willing transfer out of love or other similar motive or expression, characterized as being freely given. It may be recorded for clarity on such matters as inheritance tax. A and B colluding in regard what belongs to C, and may or may not be an amount due from C to A is not right, because the debt, if it exists and is not otherwise resolvable, is between C and A without B's involvment.

100. This is an example of highly muddled thinking. The IP's appointment, terms etc must be capable of defining regardless of the transactions and exactly who has an interest, who is benefiting and who losing. Exclusion of a party from the contract must be after an exhaustive court process on notice, with disclosure, the right to be heard and to cross examine.

101. Where the OR is involved, the IP can be a supplier to the OR, although it would be quite ridiculous for the OR to give away this work and income to the private sector. There is no basis in law for the OR, compelled to provide trustee services, to be able to "*hand-over*" to an IP, or anyone else, since trustee relationships stick to the trustee by definition. It appears no IP or RPB has assisted the Insolvency Service/the OR on this point. ***Why not?***

Q25 Do you agree with these assumptions? Do you have any data to support how the changes to the fee structure will impact on the fees currently charged?

102. No I do not agree. "Those interested" is the starting place irrespective of whether a creditor or not and the overall terms of engagement, documentation in a letter of engagement, and insurance/underwriting/indemnity.

103. Whether the IP gets paid at all is now before the Supreme Court, decision to be delivered. In the Court of Appeal there was a presumption of payment, as a matter of argument (below). The alternative is that an expert in the field of court orders and judgments is not the same as the person who administers a lethal injection in the course of his duties, who is deemed absolved of responsibility for why it is happening and the full consequences. - *2012 EW Misc6 C CrimC, Underhill J Brandon Barnes (BDO) v Eastenders V CPS:*

(1) IS THE RECEIVER DISENTITLED FROM RECOVERING ALTOGETHER ?

35. Mr Jones's overarching submission was that since it would be a breach of the companies' article 1 rights to have to pay the Receiver's remuneration and expenses I was obliged by section 6 (1) not to make any order having that effect. But that is only an argument for adopting one of the three alternatives identified above. It is not a reason for adopting this one. It is in fact plain that, irrespective of whether this course would be open to me having regard to the terms of POCA, to deny the Receiver his remuneration altogether is an unacceptable way of vindicating the companies' rights and would involve remedying one injustice only by creating another. The Receiver took charge of the companies' assets as an officer of the court, and incurred expenditure and liabilities accordingly, on the faith of a court order which was valid and effective until discharged by the Court of Appeal, and which afforded him a secure source of remuneration, subject only to the risk that the value of the receivership assets might prove insufficient – which is a wholly different kind of risk from the risk that the property might not be realisable property at all. He had no responsibility for the fact that the order was wrongly made. It would be intolerable that he should not be entitled to be paid, from one source or another, his proper fees and for his proper expenditure. As Lord Walker observed in Capewell, albeit in a slightly different context, a receiver is entitled to know that the terms of his appointment will not be changed subsequently (see paragraph 21 above).

104. Implicit in the above is regarding the IP the same as the prison guard or the administrator of a lethal injection. This is wholly incompatible with being a licence holder, operating business acceptance, and evaluating the circumstances giving rise to the order, knowing that if it was not properly made it and anything reliant on it, will be ineffective and will topple on a puff. Orders are generally intermediate steps and therefore must be approached with greater caution than reasoned decisions with appeal protocols set out.

Q26 Do you agree or disagree in adding a weight in the relative costs and benefits to IPs and unsecured creditors? If you agree, what would the weight be?

105. The IP is not and should not have an interest in the transaction. This is a weak attempted re-run of the time about 2000, when auditors took equity stakes on IPO's on which they reported.

Q27 Do consultees believe these measures will improve the market confidence?

106. No the state has a positive obligation to curtail and disgorge tainted profits so that criminals do not benefit from the proceeds of their crime.

Q28 Do consultees believe these measures will improve the reputation of the insolvency profession?

---

107. No, trust is like innocence. Once gone it is irrecoverable. The dis-application from the privilege from self incrimination in the courts, and under the Land Registry Act, Thefts Act and Fraud Act is more useful, as would be a rapid path to contempt proceedings and damages where the IP did not carry full indemnity with reference to estate value including contingent and intangible claims. Bankers have been re-named "*banksters*". IPs work for the banks.

OTHER: accredition must start afresh each period focused on financial exposure and protection of the public including by speedy provision of their personal data, and dealing with live cases

We are not proposing to require the existing seven RPBs to reapply for recognition under this new regime. We consider that this would be unnecessary and burdensome given that the existing RPBs will be required in any event to act in a way which is compatible with the regulatory objectives or face sanctions.

This is not acceptable. There ought properly to be a presumption that an RPB is not on the list, and that it comes off (or is suspended), on the earlier of an event or one year (ie no concept of automatic "renewal". A triggering event for automatic exclusion or suspension would need defining, but must include either capital depth or funding/indemnity arrangements to withstand events as indictment as has happened to the BBA, when joined with those it licences, and the full consequences of loss of independence.

It is almost impossible to imagine any meaningful function for an RPB. This is in particular since "*the extent of corruption and collusion beggars belief*" Andrew Tyrie, Parliamentary Commission on Banking Standards, December 2012

APPENDICES & EXHIBITS

Memorandum of Understanding SoS & RPBs

21 December 2011: press: excessive charging by IP industry

21 March 2014: Criminals choosing jail rather than pay confiscation orders (PAC)

24 January 2012: Coal face evidence to Parliament, Tony Butcher, President PROSPECT, Insolvency Service branch

1 April 2014: D Notice advertised by the Insolvency Service

22 March 2013: ICM letter in reply to Insolvency Service consultation recording the limited time to reply meaningfully and the hopeless position of those with an interest who are not the drivers to the process

March 2014: Feedback on points of Ministerial mis-briefing in forward to current consultation.

INSOLVENCY REGIME - MEMORANDUM OF UNDERSTANDING
BETWEEN THE SECRETARY OF STATE
FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM AND
THE RECOGNISED PROFESSIONAL BODIES
MEMORANDUM OF UNDERSTANDING
- Foreword -

Pursuant to the Insolvency Act 1986 the Secretary of State is empowered to recognise certain professional bodies (known as the Recognised Professional Bodies) for the purpose of authorising suitable individuals to act as insolvency practitioners.

To underpin the insolvency regime the Secretary of State has agreed a set of principles with those Bodies for the purposes of achieving consistency in the authorisation and regulation of insolvency practitioners. The Secretary of State when exercising authorisation functions as the Competent Authority will abide by these principles.

Each Body is monitored by the Secretary of State for adherence to these principles.

Where reference in this document is made to a Body's members, the reference is only to those members authorised to act as insolvency practitioners.

MEMORANDUM OF UNDERSTANDING - Agreed Principles -

1 GRANTING OF AUTHORISATIONS

Each Body recognised by the Secretary of State will grant authorisations only to suitable applicants and will work to common standards in considering those applications.

2 MAINTENANCE OF AUTHORISATIONS

Each Body will ensure, through monitoring and other activities, that the authorisations it has granted remain valid.

3 ETHICS AND PROFESSIONAL STANDARDS

Each Body will apply an ethical code or guide to its members, and will seek to ensure that those members work to common professional standards that are reviewed and, where possible enhanced, to enable creditors and others to receive an efficient service at fair cost.

HANDLING OF COMPLAINTS

Each Body will have in place an accessible, effective, fair, and transparent procedure for dealing with complaints against members.

SECURITY AND CAUTION

Each Body will have in place appropriate mechanisms to ensure that its members comply with legislative requirements for security (in England and Wales) or caution (in Scotland), and to ensure that potential claims arising from the fraud or dishonesty of an insolvency practitioner are identified and made.

DISCLOSURES AND EXCHANGE OF INFORMATION

Each Body will freely share information with the Secretary of State and the other Bodies to assist in the proper performance of their regulatory duties.

RETENTION OF RECORDS

Each Body will retain members' monitoring reports and records relating to complaints for sufficient time to allow the Secretary of State to be satisfied that the Principles set out in this Memorandum are being met.

REPORTING TO THE SECRETARY OF STATE

Each Body will furnish the Secretary of State with sufficient information to enable the Secretary of State to be satisfied that the Body is meeting its legislative and otherwise agreed obligations. Such information will also enable the Secretary of State to maintain a comprehensive database of currently authorised insolvency practitioners.

MEMORANDUM OF UNDERSTANDING - Detail -

1 GRANTING OF AUTHORISATIONS

The purpose of this section is to ensure that the Bodies work to common standards in considering applications for authorisation from those individuals eligible under section 391(3) of the Insolvency Act 1986.

(A) The Body will only grant authorisations to applicants who demonstrate:

(i) That they are fit and proper persons to act as insolvency practitioners. In this respect, the Body will have regard to, amongst other things, Regulation 6 of the Insolvency Practitioners Regulations 2005;

And in the case of applicants who have not previously held an authorisation:

(ii) That they will have acquired the necessary and relevant insolvency experience required to satisfy the Body's bye-laws and rules, and regulations (experience includes regulatory and advisory work experience as defined in the Insolvency Practitioner Regulations 2005), and

(iii) That they hold a pass in the Joint Insolvency Examination set by the Joint Insolvency Examination Board or, in the case of eligible applicants from other member states of the European Economic Area that, up to and including 30 September 2007, they have passed an aptitude test demonstrating a level of knowledge equivalent to that attested by a pass in the Joint Insolvency Examination. From 1 October 2007 eligible applicants from member states of the European Economic Area will need to comply with the requirements of The European Communities (Recognition of Professional Qualifications) Regulations 2007.

(B) When considering an application from an applicant who is the holder of or has held an authorisation, the Body will in addition to the matters in 1(A) have regard to the following in relation to the applicant:

(i) The contents of monitoring reports in its possession,

(ii) The applicant's regulatory and disciplinary record,

(iii) Evidence of appropriate continuing professional development,

(iv) Evidence of continuing knowledge of and experience in insolvency practice (which expression includes regulatory and advisory work experience as defined in the Insolvency Practitioner Regulations 2005), and

(v) Any other information in its possession including, but not limited to, that relating to complaints, statutory compliance, compliance with bye-laws and, rules and regulations of the Body.

(C) The Body will ensure that there is an adequate system in place to substantiate information provided by applicants in relation to their applications for authorisation.

(D) If it is known that an applicant is a member of another Body, enquiries should be made of that Body before a licence is granted; the communication after the event should be to confirm (to the Body that previously granted a licence, if any) that one has been issued.

2 MAINTENANCE OF AUTHORISATIONS

The purpose of this section, in conjunction with the details contained in the 'Principles for Monitoring', is to ensure that the Bodies work to common standards in carrying out monitoring and other activities to certify that the authorisations granted remain valid.

(A) To secure the integrity of insolvency practitioner authorisation, the Body will neither:

(i) Permit an authorisation to continue in force for a period of more than three years from the date on which it is granted, or

(ii) Knowingly grant to an individual an authorisation contemporaneously with one from another Recognised Professional Body or Competent Authority.

(B) Where a practitioner undertakes appointments as nominee or supervisor of Individual Voluntary Arrangements and the practitioner passed the Personal Insolvency Paper of the Joint Insolvency Examination before December 2007, the Body will ensure that the practitioner has demonstrated knowledge of non-statutory debt solutions to the extent of that covered by the current syllabus of the Joint Insolvency Examination Board.

(C) Where a person is no longer authorised for whatever reason, the Body will:

(i) Notify the Secretary of State as detailed in 8(D)(i) or 8(D)(ii) and, with such assistance from the Secretary of State as may be appropriate, take all necessary steps in relation to all appointments held by the former practitioner to secure the expeditious appointment of a replacement practitioner unless, either by insolvency type or individual case, it is agreed otherwise by the Secretary of State,

(ii) Consider seeking to transfer recently closed cases, and

(iii) Seek, by its membership rules or otherwise, to obtain the agreement of the outgoing IP to transfer cases, deliver up all relevant paperwork and attend upon the successor if required.

(D) The Body will ensure that its authorised practitioners are subject to monitoring so as to enable the Body to make an objective assessment of the conduct and performance of the practitioner and to ascertain whether the practitioner is and continues to be fit and proper.

(E) The Body will:

(i) Ensure that all monitoring activities, including visits to practitioners comply with the Principles for Monitoring as agreed between the Secretary of State and the Recognised Professional Bodies,

(ii) Ensure that adequate resources are available to undertake the monitoring function and that it is carried out by individuals with appropriate training and skills,

(iii) Have an appropriate system for considering, reviewing, and evaluating monitoring reports. It will ensure that those engaged in these functions are both independent of and seen to be independent of, the subjects of the monitoring reports, and

(iv) Ensure that prompt and appropriate action is taken when it becomes aware of serious concerns in relation to a practitioner's fitness.

3 ETHICS AND PROFESSIONAL STANDARDS

The purpose of this section is to ensure that the Bodies ensure their members work to common professional standards that are reviewed and, where possible enhanced, to enable creditors and others to receive an efficient service at a fair cost.

(A) The Body will apply its professional and ethical code or guide in relation to the activities of its authorised practitioners, ensuring practitioners follow the appropriate codes of integrity, objectivity, professional competence and due care, confidentiality, professional behaviour, due skill and courtesy.

(B) The Body will with the Secretary of State and the other Recognised Professional Bodies participate in the development of professional and ethical standards, and best practice guidance, for insolvency practitioners through the Joint Insolvency Committee.

(C) The Body will issue to the practitioners it authorises the Statements of Insolvency Practice, approved by the Joint Insolvency Committee (once adopted by the Body), as required practice and the Body will also arrange for appropriate best practice, ethical, and technical guidance to be made available to its practitioners.

4 HANDLING OF COMPLAINTS

The purpose of this section is to ensure that the Bodies work to common standards, by having in place an accessible, effective, fair, and transparent procedure for dealing with complaints against members; that complaints are progressed expeditiously; that complainants are made aware of the findings of their complaints in a timely manner, and that the Bodies employ practices that will assist the Secretary of State function of monitoring the Recognised Professional Bodies.

(A) The Body will ensure that:

(i) Guidance explaining its complaints process is published and easily accessible for any person wishing to make a complaint against one or more of its members in relation to both formal appointments and other engagements that may result from the member's authorisation,

(ii) All complaints are progressed expeditiously and impartially, and that appropriate review procedures are in place to facilitate this, and

(iii) Those investigating and considering complaints are independent of and seen to be independent of the subjects of the complaints, and that all complaints are investigated by individuals with appropriate training and skills.

(B) The Body will send a written acknowledgement to the complainant within ten working days of receipt of a complaint.

(C) Within fifteen working days of the conclusion of the complaint the Body will send a letter to the complainant setting out:

(i) its findings in respect of the complaint
(ii) an indication of proposed further action, if any.

And will include details of available options should the complainant be dissatisfied with the Body's findings.

(D) Where an insolvency practitioner ceases to be authorised by a Recognised Professional Body during the course of a complaint investigation, and becomes authorised by a second Body, the first will, where it retains its jurisdiction to consider the practitioners conduct, complete its investigation (including any disciplinary and appeal hearings) and upon request, notify the

second of the heads of complaint that were being investigated, its conclusions and any regulatory or disciplinary sanction imposed.

5 SECURITY AND CAUTION

The purpose of this section is to ensure both that insolvency practitioners comply with the legislative requirements as regards security (in England and Wales) or caution (in Scotland) (the bonding requirements); and that mechanisms are in place to ensure that potential claims under bonds are identified and made.

(A) The Body will monitor the performance of its practitioners in relation to the bonding requirements of the Insolvency Act 1986, detailed criteria in respect of which are prescribed in the Insolvency Practitioners Regulations 2005.

(B) The Body will have a system to record the receipt of enabling bonds and renewals of such bonds. It will also take all reasonable steps to identify instances of non-compliance by practitioners in relation to cover schedule returns and take appropriate action where there is evidence of non-compliance with the prescribed requirements.

(C) Where the Body has reasonable grounds to believe that a claim may be made against the bond of one of its authorised practitioners the Body will take such steps as are necessary to ensure that an investigation is carried out and where appropriate will process or arrange for an authorised practitioner (or by agreement with the Secretary of State, another suitably qualified person) by assignment, to process any claim arising under a bond or bonds.

6 DISCLOSURES AND EXCHANGE OF INFORMATION

The purpose of this section is to ensure that information is shared freely between the Recognised Professional Bodies and the Secretary of State, to assist them in carrying out their regulatory duties, including those outlined in this document.

(A) The Body will not enter into any agreement, contractual or otherwise, with one or more of its practitioners that would prevent or hinder compliance with this section.

(B) Subject to the terms and conditions set out in the remainder of this section, the Body will disclose relevant information in its possession to the Secretary of State and other Recognised Professional Bodies where:

(i) It is requested to do so by the Secretary of State, or

(ii) Where it appears to the Body that information should be so disclosed to enable the Secretary of State or other Body to carry out their regulatory duties.

(C) Where the Body receives a request of the type described and it believes such information to be subject to a statutory or other legal restriction the Body will use its best endeavours to secure a waiver of the restriction from any person entitled to grant such a waiver, otherwise it shall consult the Secretary of State on the nature of the restriction.

(D) The Secretary of State will:

(i) Disclose to the Body such information as appears necessary for the purpose of the exercise of the Body's functions under Part XIII of the Insolvency Act 1986,

(ii) Disclose relevant information to the Body where it appears that information should be so disclosed to enable the Body to carry out its regulatory duties, and

(iii) Record authorisation information as detailed in 8(D)(i) to 8(D)(iii), as the case requires, the individual and the Body by name, together with the date of notification and make the list available to the Recognised Professional Bodies on request.

(E) Where documents are supplied in any form to the Body by the Secretary of State in the course of any disclosure pursuant to paragraphs 6(D)(i) and 6(D)(ii), the documents are to be returned by the Body to the Secretary of State on an agreed date (as may be extended by the Secretary of State) in the form in which they were supplied. Copies of such documents are only to be made with the consent of the Secretary of State.

(F) Any relevant information received by the Body from the Secretary of State or another Recognised Professional Body will be used only for the purposes of the exercise of the Body's functions in relation to Part XIII of the Insolvency Act 1986. No disclosure of that information to any Body or person other than in pursuance of such purposes is to be made by the Body without the consent of the Secretary of State or, as the case may be, the other Recognised Professional Body.

7 RETENTION OF RECORDS

The purpose of this section is to ensure that monitoring reports, and records relating to complaints are retained for a sufficient period to enable the Secretary of State satisfy himself that a Body is complying with the terms of the Memorandum of Understanding.

(A) The Body will retain monitoring reports, and records relating to complaints (against both members and the exercise of the Body's regulatory functions) until the conclusion of the next regulatory inspection carried out by the Secretary of State or for a period of five years from the receipt of such reports and/or complaints, whichever period is the shorter. Such records are to be kept in original form or other accessible storage medium.

8 REPORTING DUTIES TO THE SECRETARY OF STATE

The purpose of this section is to furnish the Secretary of State with sufficient information to enable a contemporaneous database of authorised insolvency practitioners to be maintained, and to provide information about complaints that may be useful in evaluating and formulating policy objectives.

(A) Changes in Byelaws

The Body will notify the Secretary of State of changes in its byelaws and rules and regulations in relation to insolvency practitioners. Where changes solely affect insolvency practitioners, the Body will consult the Secretary of State in advance of any changes being made.

(B) List of Authorised Insolvency Practitioners

The Body will supply to the Secretary of State a list of the practitioners it authorises as at 1st January and the date of the expiry of their current authorisation and enabling bond, by 31st January of each year.

(C) The Annual Report

The Body will supply to the Secretary of State an annual report in an agreed format, providing details of licensing activities undertaken in the previous year, by 31st March. The Annual Report submitted by each Body to the Secretary of State will include the following details: -

(i) The number of applications for authorisation received, how many were granted, and how many refused,

(ii) The number of authorisations
(a) Revoked
(b) Lapsed,

(iii) The number of matters considered on appeal subdivided to show whether the original decision was confirmed or reversed,

(iv) The number of complaints in hand at the beginning of the year; the number received during the year; the number dealt with and the balance in hand at the end of the year,

(v) An analysis of the nature of complaints received during the year,

(vi) An account of how the complaints dealt with during the year were disposed of including the numbers considered by the Investigation and Disciplinary Committees and providing details of revocations and lesser penalties imposed, and

(vii) The number of monitoring visits carried out subdivided to show the results of those visits.

(D) Reporting duties throughout the Year
The Body will supply to the Secretary of State, at the time set out, the following:

(i) Details of individuals whose authorisation has lapsed (if not immediately renewed) within one week of the Body becoming aware of the lapse,

(ii) Details of individuals whose authorisation has been revoked, within one week of loss of authorisation being effected. Where a practitioner is not authorised and the practitioner appeals this decision, the Body should report this under 8(D)(ix),

(iii) A list of all individuals to whom it has granted a first authorisation to act as an insolvency practitioner, no later than the end of the week following the week in which it granted the authorisation,

(iv) A list of all individuals whose applications for authorisation to act as an insolvency practitioner it has rejected, no later than the end of the month following the month in which it rejected the authorisation, and

(v) Where any Head of Complaint remains under investigation twelve months after the date of issue of the acknowledgement, the Body will bring that matter to the attention of the Secretary of State no later than the end of following quarter after the expiry of the twelve month period.

(vi) The Body will provide such further information as the Secretary of State may from time-to-time require, relating to its activities as a Recognised Professional Body, having previously been given reasonable notice of any such requirement.

The Body will promptly notify the Secretary of State when:

(vii) It proposes to withdraw a practitioner's authorisation on the grounds that he/she is no longer 'fit and proper' to retain their authorisation, no later than the end of the month following the month in which action is commenced.

(viii) Disciplinary or regulatory action has been taken against a practitioner, no later than the end of the month following the month in which action is effective.

(ix) A practitioner has lodged an appeal against disciplinary or regulatory action that would fall into 8D(vii) or 8D(x), no later than the end of the week following the week in which the appeal is lodged. Other appeals can be notified to the Secretary of State at conclusion.

(x) It becomes aware of any significant change in a practitioner's circumstances, including matters that might impact on the creditors of an insolvency procedure where the practitioner is office-holder, or affect the ability of the practitioner to accept new appointments (including restrictions imposed or lifted), no later than the end of the week following the week in which the Body becomes aware of the change.

(E) The Body shall promptly notify the Secretary of State when it comes into possession of information that might affect the register of insolvency practitioners maintained by the Secretary of State no later than the end of the week following the week in which the Body is advised or otherwise learns of the change. Such matters include but are not limited to:
A change of the practitioner's name, A change of address, and A change in the practice name.

Telegraph 21 December 2011: **Insolvency profession told to tackle excessive fees**

A Government review has concluded the profession should be given a chance to improve before it loses its ability to self regulate

Ed Davey, the BIS minister, said creditors expected more from insolvency professionals

By Richard Tyler

5:58PM GMT 21 Dec 2011

The insolvency profession must tackle practitioners charging excessive fees and poor complaint handling or lose its system of self regulation, the Government has said.

A year long review has found the insolvency regime working "reasonably well" but that "a great deal more could be done to improve [its] effectiveness", Ed Davey, the Business Department minister, has said.

The department intervened after receiving evidence from the Office of Fair Trading that suggests that unsecured creditors "do not always get the returns they might expect".

"I believe that confidence in the insolvency regulatory regime plays a vital role in ensuring that markets operate fairly and efficiently, by ensuring that in the event of insolvency as much is fairly returned to those extending credit as is possible," said Mr Davey.

He favours a single regulator to replace the nine professional bodies that regulate and license practitioners, but has given the profession time to get its own act in order to avoid "such significant change".

But the Government will focus on improving "handling complaints, including on excessive fee charging, and achieving consistent and transparent sanctions".

Vernon Soare, a director at the Institute of Accountants in England and Wales, said: "The rise in insolvencies during the recession put insolvency practitioners under the spotlight so it is little wonder the profession has come under closer scrutiny.

"However, the results of the Government consultation reveals a system that works, which reflects a profession that does a good job often in difficult circumstances. In the current climate, we don't believe the time and cost associated with establishing a new single regulator is feasible."

The Insolvency Services regulates the professional bodies.

© Copyright of Telegraph Media Group Limited 2014

Criminals choosing jail rather than pay confiscation orders

21 March 2014

The Public Accounts Committee publishes its report on confiscation orders which finds that criminals are choosing jail instead of paying up to £490 million in confiscation orders.

Report: Confiscation orders
Report: Confiscation orders (PDF)
Public Accounts Committee

The Rt Hon Margaret Hodge MP, Chair of the Committee of Public Accounts, said:

"Crime should not pay, but we found too many criminals who are subject to an order to confiscate the proceeds of crime choosing to spend extra time in prison rather than paying up. £490 million is owed by criminals who have served or are serving more time in prison for non-payment. This suggests these sentences provide little deterrence and that the sanctions are not working and need toughening up. The idea behind confiscation orders is to hit criminals where it hurts – in their pockets – so that serious and organised criminals do not profit from the misery of others. However, poor implementation has meant not enough confiscation orders are being made and not enough is being done to enforce them once they have been made.

We found that:

- In 2012-13 the authorities, through confiscation orders, collected only 26 pence in every £100 of criminal proceeds generated in that year;

- Very few confiscation orders are sought and made. In 2012-13, nearly 680,000 offenders were convicted of a crime, many of which had a financial element, yet only 6,392 confiscation orders were set; and

- Departments spent £100 million administering confiscation orders, yet confiscated a meagre £133 million.

- Assets held by the big time criminals were frozen too late. This allowed criminals to salt away valuable assets, putting them in the hands of spouses, using complex financial instruments, buying houses and expensive cars and hiding them overseas.

Too often the small time criminal is pursued whilst the big time criminals get away. Ninety per cent of orders of less than £1,000 are enforced whereas only 18% of orders for over £1 million are enforced.

All this shows what a shambles exists and how poor the performance of all the agencies involved is. It is unclear who is responsible and accountable for what.

There is no sense of urgency and little understanding of what works. Information is not shared across agencies, and out-of-date systems make it difficult to communicate across Government.

We are talking about big sums here, with the National Fraud Authority estimating that £52 billion was lost to society through fraud in 2012-13.

The departments need to get a grip urgently and step up their performance so that criminals stop benefitting unchallenged from the proceeds of their crimes."

Margaret Hodge was speaking as the Committee published its 49th Report of this Session which, on the basis of evidence from the Home Office, National Crime Agency, Director of Public Prosecutions and HM Courts & Tribunals Service, examined their performance in investigating, imposing and enforcing confiscation orders.

Confiscation orders are the main way through which the Government carries out its policy to deprive criminals of the proceeds of their crimes. The intention is to deny criminals the use of their assets and to disrupt and deter further criminality, as well as recovering criminals' proceeds.

The Home Office leads on confiscation policy, but many other bodies are involved including the police, the Crown Prosecution Service and HM Courts and Tribunal Service.

The overall system for confiscation orders is governed by the multi-agency Criminal Finances Board. The annual cost of administering confiscation orders is some £100 million. In 2012-13 the amount confiscated was £133 million.

Poor implementation of the confiscation order scheme has severely hampered its effectiveness. Confiscation orders can be a powerful mechanism for recovering criminal proceeds and combating and deterring criminal activity. The Proceeds of Crime Act 2002 provided powers for enforcement agencies to use confiscation orders, but over 10 years later the Government only collects 26 pence out of every £100 generated by criminal activity.

Many bodies are involved with confiscation and there is a lack of clarity over who is responsible, with no clear direction, failure to act promptly, weak accountability and no understanding of what makes good performance and delivers value for money. For example, there is limited understanding of the extent to which confiscation orders have disrupted crime.

The Criminal Finances Board has failed to address these issues since its creation in 2011, but we welcome the fact that it is now chaired by a Minister and is drawing up a new improvement plan.

Recommendations

Recommendation: The Criminal Finances Board should develop and implement its improvement plan urgently. This plan should include well-defined objectives and success measures so that practitioners can prioritise criminal cases and orders and be able to understand and measure success beyond amounts collected. The plan should also include project milestones that the Board can use to assess progress. Not enough confiscation orders are imposed.

Law enforcement and prosecution agencies are missing opportunities to impose confiscation orders with only 6,392 imposed in 2012-13 when 673,000 offenders were convicted of a crime, many of which had a financial element. Each agency uses different criteria to determine when to use confiscation orders and there is a widespread lack of awareness among staff within these agencies of the relevant legislation, and seeking orders is too often given a low profile.

To increase the numbers of confiscation orders and provide better guidance, the Crown Prosecution Service is developing common criteria to assess whether pursuing a confiscation order is appropriate and cost-effective.

Recommendation: Law enforcement and prosecution agencies need to agree and apply a common set of criteria to ensure that they consider consistently and properly all crimes with a financial gain for confiscation orders.

Not enough is being done to enforce confiscation orders once they have been made, especially in higher value cases. Enforcement bodies are much more successful in collecting proceeds from low-value orders than high-value ones, with an enforcement rate of nearly 90% for orders under £1,000 compared to 18% for orders over £1 million.

In high-value cases, the specialist financial investigators required are often brought in too late; bodies do not collaborate or share information effectively and quick action to 'restrain' (freeze) assets is often not undertaken.

Only 1,368 restraint orders to freeze assets were imposed in 2012-13, down 27% from 2010-11. Only recently have the National Crime Agency, Crown Prosecution Service, Serious Fraud Office and HM Courts & Tribunals Service jointly identified 124 high priority cases for additional enforcement activity.

Recommendation: Law enforcement agencies should work together to ensure that financial investigators are brought in early in high value cases and use restraint orders quickly to prevent criminals hiding their illegal assets. The Crown Prosecution Service and National Crime Agency should also report to the Criminal Finances Board on the enforcement progress of its priority cases.

The incentive scheme to encourage the many bodies involved to confiscate proceeds of crime is opaque and ineffective. The existing scheme simply rewards bodies for the amount of money they collect, ignoring the other key policy objectives of asset denial and crime disruption.

The scheme also fails to reflect the relative contribution and effort each body makes, with the Home Office receiving 50% of confiscated assets despite its having no operational role. It is not clear how monies received under the incentive scheme are used with only 62% of the organisations involved producing returns in 2012-13. We therefore welcome the Home Office's decision to review the scheme.

Recommendation: The current incentive scheme for bodies involved in confiscation orders should be revised to ensure it is aligned with the success measures and objectives set out in the new Criminal Finances improvement plan and to link effort and reward. The Home Office should also ensure that there is proper reporting on the use made of scheme funds.

The bodies involved with confiscation orders do not have the information they need to manage the system effectively. The focus of the management information available to enforcement and collection agencies on confiscation orders is on how much has been imposed and how much has been collected.

They lack detailed information on how much different enforcement activities cost, how successful different activities are and how much is realistically collectable in different cases. Without such information enforcement agencies cannot tell which orders they should prioritise for most impact on criminal activity and which approach to enforcing them will be most successful or cost-effective.

Enforcement teams also have to rely on dated ICT systems that are not interoperable, leading to errors and time wasted re-keying information between systems. For example, an estimated 45 hours a week is wasted on HM Courts and Tribunals Service's Confiscation Order Tracking System (COTS) alone.

Data quality is further compromised as financial investigators and Crown Court staff provide incomplete and inaccurate data to enforcement units.

Recommendation: All the bodies involved in confiscation need to develop a better range of cost and performance information to enable them to prioritise effort and resources to best effect. They also need to improve their existing ICT systems and their interoperability, as well as cleanse the data they hold.

The sanctions imposed on offenders for failing to pay confiscation orders do not work. Offenders who do not pay their confiscation orders face a default prison sentence of up to ten years, which follows their imprisonment for the original offence.

They must also pay more as the amount outstanding accrues 8% interest. But many criminals, particularly those with high-value orders, are willing to serve a prison sentence rather than pay up and around £490 million is outstanding for offenders who have served or are currently serving default sentences. The Government plans to strengthen the prison sentences for non-payment, but it is not yet clear how this will be implemented in practice.

Recommendation: The Home Office, in conjunction with the Ministry of Justice, must set out how, and by when, it will strengthen the confiscation order sanctions regime. The Joint Committee on the draft Modern Slavery Bill might include this in their deliberations.

---

24 January 2012 Extracts BIS Evidence plus

Examination of witness, Tony Butcher, President, Prospect (Insolvency Branch)

Q66 Nadhim Zahawi: So, could it be that the levels of complaints have also decreased because of a perceived lack of confidence in the process?

Tony Butcher: I do not know why there is a lower number of complaints. The Insolvency Service, within the relevant directorates, is making inquiries and has put people on to specific reporting to find that out. They have not reported yet as far as I know.
Specifically in regard to the number of criminal referrals, I know that that has been noted and is being investigated. It is ongoing, so I do not know what the answer to that is.

Q67 Nadhim Zahawi: Do you think the service could do more to explain how it prioritises the cases which are targeted for enforcement action?

Tony Butcher: If the insolvency practitioners who input on company disqualifications—if we are talking about that—are not aware of what our prioritization is,

17. In October and November 2010, it became clear that the reduction in case numbers handled by the Insolvency Service was both significant and likely to continue. As a consequence, the Service introduced a range of cost reduction measures, including a reduction in staffing levels.15
18. When we took evidence from Tony Butcher, President of Prospect (Insolvency Branch) in early 2012, he told us:
As you can tell from the figures that the Insolvency Service has provided, we will be losing a third of our workforce in just over a year. By the very nature of exits, they are likely to be of experienced staff in quite senior positions—the sort of people who are relied upon to pass their wisdom on to the generations of new entrants, which has meant that this year there has been a very big impact.16
13 Q
He added:
The business planning they have done for the next year is predicated on a certain level of cases coming in. If those cases do not come in, they have to deal with it and go through the same thing again, probably.17

Reorganisation of office locations

22. When the Insolvency Service first began its consultations on a new Delivery Strategy in 2010, it raised the issue of the inflexibility its structure and its geographical organisation.
The Service recommended concentrating its back-office work in fewer locations while maintaining a network of local offices across the country for necessary face-to-face customer work. The consultation proposed reducing the number of offices from 35 to 25.
23. The Service told us that the business case for this reduction was based on “reducing the amount of management you need, because you would have larger groups of people in fewer locations, and making better use of accommodation so you are not paying for accommodation you are not using”.23

24. Tony Butcher, representing Prospect (Insolvency Branch), questioned this approach in terms of both cost and efficiency:

We do not feel that taking away—I am not going to say work—functions from a locale will have any long-term benefit. You lose the local knowledge, and you lose flexibility.24

He went on to argue that:

The Insolvency Service has put forward a costing for the delivery strategy, essentially for closing and rationalising offices and moving individuals, of £33.5 million. That is what is known as a big-bang cost, that is, if everything happened on the same day and went smoothly. The Insolvency Service management has conceded that the reality is that it will not be a big bang, because there cannot be a big bang. There will be double-running. Therefore the £33.5 million costing must be incorrect. We cannot see any long- or short-term benefit.25

The funding model of the Official Receivers' Office

34. The Official Receiver deals with 3 types of cases:

• **Debtor petition bankruptcy cases** (in which the debtor petitions for their own bankruptcy). To do so they pay a court fee of £175 and a deposit of £525. The deposit fee was raised in June 2011 from £450 to £525, having been £345 in April 2008.

• **Creditor petition bankruptcy cases** (in which a creditor petitions in respect of monies owing to them). The deposit paid is currently £700.

• **Compulsory liquidations**. The deposit paid, currently £1,165, is used to fund the administrative cost of the case and the investigation into the company's affairs and the directors' conduct up to the point of the Secretary of State authorising the issuing of proceedings.

35. A notional fee of £1,625 is charged to each bankruptcy estate to cover the costs of administration but where, as in the majority of cases, no assets are realised there are insufficient funds to recoup this fee from the petition deposit alone.

36. The funding model allows for cross-subsidisation between cases where there are asset realisations. That said, given the falling bankruptcy case numbers and the lack of assets available for realisation, means that there is now a significant gap between fees and income.

37. In evidence to us, the then R3 President, Frances Coulson said of the funding model for the Official Receiver:

Its funding model is predicated on being funded by the fees that are paid in terms of bankruptcy and winding up. Strangely, that works when there is a lot of formal

insolvency, but when there is not, self-funding does not work. 32

29 The Insolvency Service Annual Report and Accounts 2011–12, p.15

30 Q

38. Tony Butcher, President of Prospect (Insolvency Branch), supported Ms Coulson's assertions, stating that in a large number of cases "there are no assets or only minimal assets, which will not contribute to paying the administration fee that we are supposed to charge and recover".33

He added: Effectively, we have to recognise that the very nature of the Insolvency Service is that it is going to be unable to recover its costs, because it is dealing with insolvent businesses. […] In the present economic cycle, if case numbers go up and asset values do not, then the notional loss

increases even though there is a need to have more resources to process and investigate more cases. That is built in to that funding model. It is thoroughly illogical.34

39. In its written evidence to us, Prospect argued that the Service should be paid for from the public purse "with realisations and fees providing a contribution to mitigate the costs of carrying out the statutory functions". It went on to state that The creditor and debtor should not bear the entire cost, much like a burglar and their victim are not expected to pay for the police investigation.35

40. **Funding for the Official Receiver Service relies on a fee-generated income model. It is clear from the evidence we received that this model is unreliable in the current economic climate. We recommend that the Insolvency Service work together with the Department for Business, Innovation and Skills to look at alternative funding models that are sustainable and not wholly reliant on unpredictable levels of casework and asset values.**

54. The trade union, Prospect (Insolvency Branch), submitted evidence to us that challenged the Insolvency Service's claim. It argued that the 11 per cent budget cut in June 2010, together with the voluntary exit scheme had resulted in the Insolvency Service being "unable to meet its internal target for the progression of disqualification investigations".51 It

48 The Insolvency Service Annual Report and Accounts 2011–12, p.38

49 The Insolvency Service Annual Report and Accounts 2010–11, HC 1388, published on 18 July 2011. See also Insolvency News ,*Cuts see Insolvency Service probes plummet by 40%*,12 October 2011

50 Ev 65–66

51 Ev 77

also asserted that there had been a significant decrease in live company investigations, with some cases abandoned for lack of resource.52

55. The following table was provided by Prospect to demonstrate its case:

Disqualification timeliness of investigation		**Expected 2011–12**	**Actual YTD**
OR Cases -	% within 15 months of order	80%	50%
OR Cases -	% within 19 months of order	100%	83%
IP Cases -	% within 10 months of allocation	90%	unavailable
IP Cases -	% within 19 months of insolvency	100%	40%

Data source: November 2011 IED internal performance report

56. In evidence to us, Tony Butcher, the President of Prospect Insolvency Branch, reiterated the Union's view that budgetary and staffing cuts had severely affected the Service's investigatory and enforcement work:

The important thing to look at is how fast we are able to do our work. What we submitted was that

there has been a significant impact on the ability of The Insolvency Service to progress work that was in progress. The reality of the way that staff—the disqualification investigation teams especially—had to deal with this loss of staff was that, with staff who were lost, their cases got transferred to the people who were already there or who had come in. Those cases were done or were work in progress. The cases in progress have progressed, but the cases behind lagged, and have not been done. This means that this year and next year will be when the overall impact will be noticed.53

Witness: **Tony Butcher, President, Prospect (Insolvency Branch), gave evidence.**

Q54 Chair: Good morning, Tony and thank you very much coming to speak to us today. For voice transcription purposes, could you just introduce yourself?

Tony Butcher: My name is Tony Butcher. I am the president of the insolvency branch of Prospect. We represent what might be called the professional examining staff and directors—up to director level— in the Insolvency Service.

Q55 Chair: I shall start with a fairly general question—well, perhaps it is not that general. Has Prospect been consulted on the service's delivery strategy?

Tony Butcher: In some respects, there are two answers to this, a quantitative and a qualitative answer. In quantity terms, yes, definitely. We have no objection or complaints as a trade union, and the staff cannot have any either, to the engagement, as it was put in the submission by the Insolvency Service, which started at about this time last year and was rolled through until November, which was post the date upon which the service made a decision on what it called the delivery strategy. It started in meetings with both trade unions, including PCS, before the directing board had come to any conclusions, when it was constructing its report and doing its analysis. It showed us the results of it and told us what it intended doing. It did it. It then took on board the recommendations from the trade unions that the service personally take ownership of it and not hide on the fifth floor of our headquarters, but go to each office to explain it and themselves, not only while the consultation period was going on, but also after the decision had been made. On those terms, the service has engaged and consulted with not only the trade unions but also all members of staff.

In qualitative terms, that is where there may be a difference of opinion between the trade unions and our senior management. One of the things that is drummed into you when you enter the Insolvency Service is "never assume", and always to test assertions that are made. When the delivery strategy was in its consultation stage and all the options were laid before trade unions and staff, in a roadshow of office visits, the staff then put on their professional heads and asked the directors the same sort of questions that they would ask directors of failed companies, that is, testing the assertions made on the basis of the options. What rather sticks in the throats of members of staff and members of the trade unions is that we do not feel that, to coin a phrase from 10 minutes ago, change has been based on evidence.

When questioned, a lot of the basis of the options, and then the decisions, was founded on assumptions. We challenged those assumptions and we still do not feel that we have got satisfactory answers.

In the original terms of reference, there is no reference at all to delivery strategy so we did not concentrate on that in our submissions. There is quite a lot of literature and analysis that has been done. Can I suggest that, if the Committee wishes to see this, we can provide it to you very quickly, by email? It goes into the detail that I have just been referring to.

Q56 Chair: That would be helpful. My next question was: how do you think that the Insolvency Service has managed this period of change, but I think that, to a certain extent, you have pre-answered that.

Could you summarise what you think have been the flaws in the consulting?

Tony Butcher: For the delivery strategy? Essentially, it is not evidence-based. A lot of assumptions were made on individual office requirements. The most obvious one that people noticed was that a blanket assumption was made on the number of face-to-face interviews that each office would be required to do. It did not take into account local variances. It also did not take account of the reality of the number of face to- face interviews that had occurred over the preceding decade, or certainly in the last two or three years. It was based on a coefficient, based on expected inputs of bankruptcies and company liquidations.

Q57 Julie Elliott: In your view, what will be the impact of reducing local offices and focusing on a more regional call centre type of operation? In particular, representing, as I do, a northern constituency, there only one seems to be one office in the north of England and none in the north-east and Cumbria.

Tony Butcher: The Insolvency Service's decision to reduce its estate, which is effectively what it is, and effectively centralise certain functions, is something that we fundamentally disagree with. The Insolvency Service has, over the past 20 years—I have been in it for over 20 years—changed vastly from the monolithic entity of 20 years ago. It has reacted to all the pressures that have come on all Government services to reduce cost, such that it has streamlined its operations within the local offices. We do not feel that taking away—I am not going to say work—functions from a locale will have any long-term benefit. You lose the local knowledge, and you lose flexibility. The one reason why the Insolvency Service has put forward the delivery strategy as it has is that it is saying that it needs flexibility to deal with the fluctuations in case numbers. We have done that locally in the past. In the individual local offices, it allows the office manager—effectively the Official Receiver—to use their resources in the way that they see fit at that office.

The Insolvency Service has rather undermined itself in the delivery strategy, because in moving towards the end product—how it will be in four or five years' time, which is something we cannot see because we do not know where things will be, we just know what they believe the organisational structure should look like—it has stated that it will not be moving people.

It has stated that the work can be done where people are now. Our view is that, if it can be done where people are now, why do you need to move them? That has a very large cost and a very large impact on the efficiency of the service and its ability to perform its functions. The Insolvency Service has put forward a costing for the delivery strategy, essentially for closing and rationalising offices and moving individuals, of £33.5 million. That is what is known as a big-bang cost, that is, if everything happened on the same day and went smoothly. The Insolvency Service management has conceded that the reality is that it will not be a big bang, because there cannot be a big bang. There will be double-running. Therefore the £33.5 million costing must be incorrect. We cannot see any long- or short-term benefit.

Q58 Julie Elliott: How will it work, moving into these regional hubs? What practical problems do you think will arise?

Tony Butcher: There will be an internal problem in the sense that the staff who will be moved and corralled into certain functions in a centralized location will be expected to form the core of the examining staff who do the investigation, because of the career structure. They will be corralled into at

most eight places, whereas the investigations will be in another 17 places in addition to those eight. The insolvency-examiner role is a very complex one. It takes a long time to learn it because, if you think about it, you are dealing with everything. We deal with the whole social and economic interaction. The Insolvency Service has broken down the examining role into three levels, which we think is a false dichotomy—well, it is a trichotomy—in that, if you are investigating a failure or bankruptcy or a big company, you cannot know one third or two thirds of an offence, allegation or technical matter. You have to know everything. So you learn from your colleagues around you and from doing cases. There is a benefit for the whole, which includes what is classed as the administration of a case, to be in the same locale as the investigation of the case. Almost by osmosis, you will find things and note things. It is also an informal audit check.

Q59 Julie Elliott: There have been some significant redundancies in the past few years. What has been the impact of those redundancies and voluntary exits on the staff working for the service?

Tony Butcher: We have not had redundancies, we have had voluntary exits. We lost 474 posts in April last year. There are another 108 offers at this point, so we are likely to lose another 100. As you can tell from the figures that the Insolvency Service has provided, we will be losing a third of our workforce in just over a year. By the very nature of exits, they are likely to be of experienced staff in quite senior positions—the sort of people who are relied upon to pass their wisdom on to the generations of new entrants, which has meant that this year there has been a very big impact. In our submission, we pointed out that the Insolvency Service may look as though it has produced the same amount of work as it had done in the past, in terms of the output being measured by disqualifications or bankruptcy restrictions, but that is a lagging indicator, because when an investigation occurs for a bankruptcy, it takes a year, and for a company it can take two years, or maybe even longer, before you get the outcome—the order or the undertaking, or the hearing of the case.

The important thing to look at is how fast we are able to do our work. What we submitted was that there has been a significant impact on the ability of the Insolvency Service to progress work that was in progress. The reality of the way that staff—the disqualification investigation teams especially—had to deal with this loss of staff was that, with staff who were lost, their cases got transferred to the people who were already there or who had come in. Those cases were done or were work in progress. The cases in progress have progressed, but the cases behind lagged, and have not been done. This means that this year and next year will be when the overall impact will be noticed.

***Q60 Julie Elliott*:** What impact has it had on staff morale? How is staff morale at the moment?

Tony Butcher: I think it is fair to say that they are all uncomfortably numb. They have been buffeted by many events. We touched on the delivery strategy that comes from a problem with the funding model for the Insolvency Service. We can go back and back, and there have been a lot of pressures on the Insolvency Service generally in the past two or three years, which have resulted in short-term decisions having to be made very quickly by the management. This has of course impacted on the

staff morale, if morale is a word that we can use. The innate professionalism of the staff has resulted in the work still being carried out to a high level. But it cannot carry on that way. We can all pass on anecdotes of individuals. I do note from my contacts around, and especially at relatively senior levels on the investigation side, that the pressure is telling. They have had to assimilate not only one set of new investigators but a second set, with possibly a third set coming along, in various places where they did not have people before. Rather than managing people in one place, they are now managing new people in three, four or five places. It has put a lot of pressure on a lot of senior people. Individually, they are just about coping.

Q61 Julie Elliott: Finally, you mentioned 100 people waiting to exit the service. Are you expecting any more redundancies after that, or do you think that that is the end of this restructure?

Tony Butcher: What happens next is for management to answer. The business planning they have done for the next year is predicated on a certain level of cases coming in. If those cases do not come in, they have to deal with it and go through the same thing again, probably.

Q62 Margot James: The 11% cash cut in the investigations budget—how has that affected services?

Tony Butcher: What happened was that we immediately lost 40 short-term appointees. I was about to say, traditionally—in effect, it is traditionally—but since 1992, when the Public Accounts Committee criticised the Insolvency Service for a lack of investigatory effort, 20 years ago, we were given resources by the previous Government to investigate properly. The Insolvency Service brought in some contractors, mainly Antipodean and South African solicitors. So we brought in that talent. They have an innate knowledge and capability, but they do not have the technical knowledge so we relied on our internal managers, of whom I ended up being one, as an example, to produce work. Since then, which is 20 years ago, the investigatory effort was mainly staffed in the disqualification unit by short-term contractors.

There has always been a long-term plan to reduce that and have our own staff do it, which is a good thing. We are now at that point, and it has been forced and rather rushed by events, of which that was the major catalyst or starting gun. The impact of this was that some very experienced staff, who were dealing with some quite difficult cases, had to go.

Q63 Margot James: When was that?

Tony Butcher: That was in June 2010. It was quickly followed by the VES or exit scheme. That was predicated, not on the budget cuts in 2010, but on the problems in the Official Receivers, with their income streams. It had an impact on the investigatory effort, as we submitted in our written submission.

Q64 Margot James: The investigations unit has been accused of targeting the easy-win cases. How true is that?

Tony Butcher: The investigatory effort of the Insolvency Service starts with its case-targeting, in that the parameters determine what cases are looked at. If there would be any change of the scoping of what the Insolvency Service regards as worthy cases for investigation, it would be at that point. What

happened with case-targeting was that a change in directorates and management coincided with many other events. The director, I understand, drew up what is called a public interest grid, so that they could target cases that were appropriate. I do not have specific knowledge myself of that, but I am sure that if the Committee wishes to know more details of it they can ask the Insolvency Service for it. It is a public interest grid and it scores cases. If there were to be any changing of the parameters it would be there.

Do we perceive it? In my job, I am at the other end, where the cases have been investigated and it is about to be decided whether we should disqualify someone.
I see the end point and the fruits of it. The case mix is no different from what I have seen before, so I cannot honestly say that we have seen a different case mix.
That is not quite the answer to your question, but if there were to be a change in the scoping, it would be at the case-targeting stage—once it has passed for investigation, it is investigated thoroughly, or as thoroughly as it can be.

Q65 Nadhim Zahawi: We have received evidence that the staff making the decision to refer complaints for further investigation are of junior grades. Is this true, and if so, do these staff have adequate training?

Tony Butcher: As a branch and as members of the Insolvency Service, we would hold to the Carltona and Philips principles of differentiating between investigators and prosecutors, and also of the right people making the decisions at the right grades. When the change in that case-targeting occurred, we did make inquiries about the appropriate people making the decisions. I cannot tell you that I have got a definitive answer to give you. I cannot give you that because we did not get a definitive answer. We do know that the change in case-targeting resulted in a change of processing, which I understand included the idea that now when “D” returns or complaints come in, they are measured against the grid to which I referred. So the actual mechanics of that is something that I would suggest that you can ask in detail from the Insolvency Service management team themselves.
The perception of staff is that, because there was such a large set of changes, especially in that area, that gave rise to suspicion. There was a perception that there was an introduction of people at a lower grade to do some part of the work. As to whether that was simply to do with bureaucracy and not a qualitative decision—I am sure that that is something that you would wish to ask the Insolvency Service itself.
I think that you might be referring to Mr Clough’s submission. He used to work for what was called the Companies Investigation Branch. I have made some specific inquiries about that, in terms of how that section has been rearranged. In effect, it is different labelling of what already existed. The critical point for us in relation to how the Insolvency Service has been able to perform is that it coincided with the budget cuts I referred to, plus the VES scheme that resulted from the Official Receivers having to cut the number of staff. It is to do with people leaving and new people coming in and needing to be trained. It is part of the lagging indicator that I referred to and the lagging problems. It is because we have had to move so many people around to do so many new things, all at the same time.

Q66 Nadhim Zahawi: So, could it be that the levels of complaints have also decreased because of a perceived lack of confidence in the process?

Tony Butcher: I do not know why there is a lower number of complaints. The Insolvency Service, within the relevant directorates, is making inquiries and has put people on to specific reporting to find that out.

They have not reported yet as far as I know.

Specifically in regard to the number of criminal referrals, I know that that has been noted and is being investigated. It is ongoing, so I do not know what the answer to that is.

Q67 Nadhim Zahawi: Do you think the service could do more to explain how it prioritises the cases which are targeted for enforcement action?

Tony Butcher: If the insolvency practitioners who input on company disqualifications—if we are talking about that—are not aware of what our prioritization is, that would suggest that there is a need for it.

Q68 Ann McKechin: Tony, your union has expressed concern about the current funding model for the Official Receiver Services. Could you quickly outline what your main concerns are?

Tony Butcher: Seven or eight years ago—within the last decade—the way in which the Official Receivers were funded changed. Before then, in essence, the Insolvency Service went to its parent department and said, “This is how much money we need to do what we need to do”, and it got it, or thereabouts. But then it was changed. Now, Official Receivers have to effectively break even and get in as much as they spend, which is why there is a so-called notional loss.

We think that that is fundamentally flawed. It is completely irrational. The clue is there in what we are called: we are called the Insolvency Service. We aredealing businesses and individuals who have not got any money or assets. We are going to deal with a lot of cases where there are no assets or only minimal assets, which will not contribute to paying the administration fee that we are supposed to charge and recover. The reality is that, in the simplest terms, in the present funding model the Insolvency Service is given an amount of money for the Official Receivers, and then has to give it back. It gets it back by charging fees, which means that over a three-year cycle we are supposed to break even. We think it is thoroughly irrational. We also think that it is unfair on creditors.

We do not think the creditors should be funding absolutely everything. The Insolvency Service and Official Receivers exist for a reason. We are dealing with failure and performing a court function and a function of the state.

Q69 Ann McKechin: Your proposal is that there should be further Government funding of the service.

If I could put the contrary argument: given that this involves, in effect, people who enter into private commercial contracts and take a risk that the person that they supply the service to may not have enough money to pay the bill at the end of the day, why do you think that the taxpayer should be taking an increased share of the cost, given that there are, frankly speaking, likely to be more of these types of cases?

Tony Butcher: I would not like to sidestep this, but Iwas thinking about this on the way down, and I remembered that the Insolvency Service, with all that it does—and it does a lot of things—had running costs of £203 million. They were reduced to £143 million.

Now, that figure is going to reduce even more. I have a simple proposition: why don’t we give the

Insolvency Service £143 million and ask Mr Speed, who is the chief executive, "What can you do with that?", because we will not be spending any more money then, will we?

Q70 Chair: I think by the silence—you say, "We will not be spending any more money", but surely they are supposed to get it back. How would they get it back? We have heard one half there. We would like the other half.

Tony Butcher: Our contention is that the Official Receivers section should not be expected to break even. It should be expected to make recoveries that contribute to reducing or mitigating the cost of running that side of the business. The consequence of the suggestion I made, which brought silence in the room, is that, if we follow that logic towards the investigation side—and I am sure we are going to come on to how to fund that—there is a block on utilising the resources of the Insolvency Service, which is people. You cannot send investigation cases to the Official Receiver to do. You cannot send the people in the Official Receivers to do the investigation, because if that happens, it comes out of the cost of IES, the £32 million that is given to investigate.

So, if the Insolvency Service was told, "Here is the money, here is £143 million—do it", it could use that money, that is effectively in the Official Receivers' offices at the moment as an untapped resource, to do that extra work. It is not extra money in terms of the Government giving us extra money. It is producers being allowed to produce more with the money that we are being given.

Effectively, we have to recognise that the very nature of the Insolvency Service is that it is going to be unable to recover its costs, because it is dealing with insolvent businesses. The present funding model is thoroughly illogical. Not only does it produce the effects that I heard you describe earlier, in the present economic cycle, if case numbers go up and asset values do not, then the notional loss increases even though there is a need to have more resources to process and investigate more cases. That is built in to that funding model. It is thoroughly illogical.

Q71 Simon Kirby: I want to ask a hypothetical question. What would you say to a small business in my constituency that might welcome the savings of £60 million, say that you are being very selfish, and would welcome the money to cut corporation tax, VAT and red tape and try to remain solvent? That is, at the end of the day, what we want—jobs and employment. As a hypothetical supplementary question, that same business might ask how and who pays for the 500 union members that are employed by your union?

Tony Butcher: I will leave that matter aside, about who pays for the 500 members.

Simon Kirby: I was just wondering.

Chair: I do think that that is part of rather a different issue and we need to focus on the purpose of the inquiry.

Tony Butcher: Why does the Insolvency Service exist? That is my starting point. Why does the Official Receiver exist? The Official Receiver came along as a statutory officer of the court in the 1880s because of scandals in the private sector in Victorian times, which was not administering insolvent estates in an appropriate way. The Insolvency Service and the Official Receivers have a basis in fact and reality about what can happen when a market goes wrong.

That is what we do. The present Minister of State has often been quoted as describing us as the plumbers of the economy. If you do not get the plumbing right, the whole house falls down. It is a value judgment that Government will have to make, and the Committee can make a recommendation

in terms of what is it right to do in terms of policing the market and ensuring that rogue and incompetent business entities are removed.

Q72 Simon Kirby: I accept all of that but my question is, in a climate of limited funds, how do you justify arguing for increased spending? Every other part of Government is having to make these difficult savings.

Tony Butcher: We have already had £60 million of savings in a year, which is a huge amount to lose. It is just under a third of a relatively large organisation.

To reduce it further may render the organization incapable of performing its statutory functions. It will come to a point where it has to make a decision as to what its priorities are within its statutory obligations, and some of those may not get done. If they are not being done, that will impact ultimately on small businesses—small businesses are the ones that get hit most, we can see that—and the taxpayer, ultimately through HMRC. If people are allowed to remain hiding behind limited liability, they cause an imbalance in the local market. The worst thing that can happen to a local business is another local business taking them for a ride. You can say, "Something must be done about it"—well, we are the something-must-be-done people. The Insolvency Service is the backstop. If we do not do it, no one will. If you want something done, we are the people to do it.

Q73 Ann McKechin: On this element about the fee level, I take your point about how we have debtor petition bankruptcy cases, and if people do not have any money, then how much can we reasonably ask them to pay as a fee? If it is too high then presumably your argument is that people will not present themselves for bankruptcy.

Tony Butcher: Sorry, I misunderstood. That is a slightly separate issue. That is about the bankruptcy fee, to make yourself bankrupt or be made bankrupt.

That is different from the administrative fee that feeds into the funding model. There is a school of thought within the Insolvency Service that we are effectively pricing ourselves out of a market. We do not like to refer to it as a market, because we do not think it is a market, but if we think of it in those terms, we are making it too expensive to go bankrupt. If you look at the alternatives, they are cheaper, in the sense that there is no immediate cost to individuals. The consequence of that is that people in dire financial straits are more likely to go down another route.

Whether that is the right route or not is a moot point.

It is certainly noticeable, and has been reported back by members in each Official Receiver's office, that the reason why we are getting a lot of cases where people have no assets is that we are getting a sizeable number of cases where the assets have gone because they have gone down another route.

Q74 Ann McKechin: The more profitable ones are going to the debt management companies?

Tony Butcher: Yes, you can say that. There is nothing left. We are just left with an eviscerated husk, which is another reason why we have financial problems. It is also another reason why we are there—we are performing a function of public good.

Q75 Katy Clark: The figure of a cut in the budget of a third in a year is absolutely massive. Could you outline very briefly how that has affected the service in terms of the amount of work that has been carried out and the quality of the service?

Tony Butcher: Briefly? The impact, as I have alluded to and described earlier, is internal change on a huge scale. The consequence of that is that things get delayed, essentially. I shall concentrate on the

enforcement side, because that is what the terms of reference were—unless you want to talk about something else, like the Official Receivers. On the enforcement side, because of the internal chaos—I would use the word “chaos”, but I am sure that senior managers would not be happy with that; I am sure she is smiling behind me—things are not done quickly. If things are not done quickly, then insolvency practitioners are effectively saying, “What are you doing about something? I sent this six, eight, nine or 10 months ago, and have heard nothing about it”.

They have heard nothing about it because we have no one to give it to at that point.

Q76 Katy Clark: So you are saying that there are bigger backlogs?

Tony Butcher: There is a backlog.

Chair: I will move on to the bad debts write off. In the context of this, I believe something like £81 million was written off in 2010–11. Can I just bring in Katy on the last annual report?

Q77 Katy Clark: The last annual report from the Insolvency Service stated that £15.7 million, I think, of bad debt had been written off to the cost of the taxpayer. What do you think are the reasons for that and in your opinion is that acceptable?

Tony Butcher: This really flows from the flawed funding model and the nature of insolvency. What it refers to is the funding model being that we charge a fee and try to get the money back. If we do not get the money back, it goes down as a bad debt. That is all that it is. In previous times, that was regarded as just being the cost of dealing with insolvency—that there are cases where there are no assets, and there is insufficient income, so you write them off as a bad debt, because they are and that is just the way it is.

The question within the accounts—if is just an accounting matter and whether the Insolvency Service was correct in deciding that a figure of 12% was right for bad debt write-offs or if it should have been higher—is, to be fair to management, in a sense looking at things in hindsight. The economic cycle is an unusual one. We have had a big recession. Whether they would have the ability to guess that it would be greater than 12% is something that I would not like to criticise them on. I think that is was unforeseeable. I would not say this area is a red herring, but I think that it is a recognition of the impact of the funding model. It creates a notional loss. You are basically creating a balance sheet on which the Insolvency Service looks insolvent.

Q78 Chair: I can see the basic problem with the model insofar as if you have a statutory obligation and, in order to fulfil that obligation, it costs so much money, and you are supposed to compensate by fees from the organisations you are dealing with, if they cannot contribute those fees, then obviously you are caught between a rock and a hard place. It comes back to the prioritisation issue. Is there an argument, given your limited resources and the funding issue, for prioritising those cases on which you can actually get a return?

Tony Butcher: Can I ask you to be more specific? The Insolvency Service is a very big organisation and it works in very different ways. Are you talking about the Official Receivers here?

Chair: Yes.

Tony Butcher: We have a statutory obligation. We have to do what we have to do under the Act.

Q79 Chair: So is it simpler, with a company where there is absolutely nothing there, and there are no assets—

Tony Butcher: If there are no assets, there are no assets. There is nothing to retrieve, so therefore

there is a notional loss. It is the same with bankruptcies.

Q80 Chair: What I am trying to say is could you have, if you like, one model of service delivery for such a company, where there are no assets, and another for a company where there were assets?

Tony Butcher: That appears to have intellectual coherence, but the reality is you do not know what the asset position is until you investigate it. You rely to a large degree, at the very first instant, on the director or the bankrupt providing you with information.

Accuracy of that information depends on many factors, which could include the honesty of that individual. It could also be that they are not recognising what they are being asked to provide. It is only after you have done an initial investigation or perusal—whichever phrase you wish to use—that you can assess whether there may be further assets.

Especially in bankruptcy, there are a lot of referrals to the Official Receiver for matters which they could not possibly know at the time. So, it is post-event that they get told that somebody has got something or had something at the time.

So if you decided to separate out cases at an early stage, saying, "This is a NINA— no income, no assets—and this one is something else", another acronym that I cannot think of at the moment, then you have to have the mechanism to move it from one place to another. You are creating essentially unnecessary bureaucracy within the system. If you treat every case the same, you will find things or not find things. With the ones where you do not find things, you just have a notional loss

Q81 Chair: Have you just created a new word for the Insolvency Service or did it exist before?

Tony Butcher: What one is that?

Chair: NINA?

Tony Butcher: I have stolen it from the Insolvency Service. I will not claim that.

Q82 Chair: I think that you have explained that last point very lucidly. Thank you for your evidence. I will repeat what I said to the previous panel: if you think

that there is anything else that should be added, please feel free to submit it.

Tony Butcher: I will submit to you by email the thing that I referred to earlier.

Chair: Thanks very much.

D Notices

From: "Department for Business" <bis@service.govdelivery.com>
Date: 2 April 2014 13:04:28 BST
Subject: Insolvency Service press release - West Lothian director banned for poor record keeping and tax breaches
Reply-To: bis@service.govdelivery.com

The Insolvency Service

XXXXXXX director banned for poor record keeping and tax breaches

XXXX XXXX, XX, director of XXXXXX (Scotland) Ltd, a company specialising in the storage, delivery and installation of computer components and peripherals, was disqualified for eight years from XXXXXXX 2014 for failing to keep adequate records, pay tax and rates debts or register for VAT.

22 March 2013

Professor Elaine Kempson CBE
The Insolvency Service
Development Team
Policy Unit
PO Box 15393
Birmingham
B16 6HS
Email IPfeesreview@insolvency.gsi.gov.uk

Dear Professor Kempson

RESPONSE OF THE INSTITUTE OF CREDIT MANAGEMENT TO:
THE INSOLVENCY SERVICE IP FEES REVIEW

Thank you for your letter of 4 March 2013, and for giving the Institute the opportunity to contribute to your review of Insolvency Practitioner Fees. I have to observe that a period of 20 days between the date of your letter and the deadline for information submission makes it very difficult for us to provide a meaningful response to your questions and I would be grateful if you would note that fact within your findings.

As a professional membership body with 7,000 members it is difficult to make sufficient contact and elicit adequate responses, particularly when we are asking for supporting evidence, in the time made available.

As a result, I am unable to respond in detail to the questions on the document attached to your letter and can only provide the following summary response.

Anecdotally, but supported by outcomes, it seems not uncommon for the recoveries in an insolvency to match the fees of the IP. We know that the regulatory bodies monitor remuneration carefully but we are also aware that creditors rarely raise formal complaints, and believe this to be because of what they see as perceived "barriers".

A response from one of our members is insightful and I quote it almost completely here:

"I don't believe that fee structure or pricing has any bearing on the actual work carried out by IP's, nor does it offer an easy opportunity to query or disagree.

I have had an example whereby if we wanted to query the fees we could only do so if the single or combined creditors debt were 10% of the total (we knew this) but also that we would have to convene a meeting to do so and there would be a charge in the organisation of this. Not only are we out of pocket because a client has gone into liquidation we are being asked to pay to convene a meeting to query the fees – obviously being out of pocket already we are not going to pay a charge to convene a meeting that ultimately will probably have no effect on the overall outcome.
I have dealt with several client liquidation / administration/ receiverships over the years and I do not feel the fees reflect the work undertaken.
☐ *Paperwork is standard and more recently is on-line (surely charges should be lower)*
☐ *Hourly rates are extortionate*

Examples
Work Experience £30ph – surely this is a high charge for work experience
Support - £35 - £115ph
Administrators - anything between £60 - £250ph
Managers – anything between £250 - £500ph
Partners / Directors - £500 + per hour

Legislation stipulates that - ***the payments to an officeholder should be appropriate, reasonable and commensurate reflections of the work necessarily and properly undertaken.***

All we see on some breakdowns is hourly rate, hours and timecost – and this is following legislation to make IP fees more transparent

An example I have is for 204 hours work in a given period the time cost for one IP company was £44k averaging at £214ph. When the end result is either £0.00 or at most £0.03 in £ for unsecured creditors seeing a breakdown that charges nearly £3k for statutory reports, over £7k for General correspondence etc., seems rather excessive.

Most of the breakdowns are for hours worked by administrators between £60 and £250ph, this does not reflect the pay structure of these individuals – I work for a recruitment agency and know only too well the pay and charge rates of different professions and different levels of seniority – these charge rates greatly exceed the average hourly rate earned by individuals in the accounting profession.

Whilst I understand the essential role played by IPs, I think we are all too willing to allow these costs. I know unsecured creditors can challenge through the court but only if the debt is 10% or more of total debt –this would mean convening a meeting with unsecured creditors, taking the time to challenge and when money has already been lost it is not a cost effective use of my time to take this action – it would be easier if there were a system whereby individual creditors could lodge an intent to challenge with a challenge being put forward if enough creditors showing same intent. Either this or I would be interested in supporting legislation that capped IP hourly rates".

The Institute believes there is a need for greater transparency on fees charged and their calculation, and a heightened awareness about how creditors can, and should be, engaged in establishing the remuneration structure at the start of an insolvency procedure, monitoring progress throughout, and the opportunity to complain in the event that they believe the fees charged to have been excessive.

Given the current lack of creditor engagement, more needs to be done to encourage communication between IPs and creditors, perhaps by embracing online tools through which creditors can consider proposals and vote on their acceptance or otherwise. Additionally, we believe IPs should be required to give an estimate of their expected fees at the outset of all procedures.

I am sorry that we cannot be more helpful by providing more detailed information and evidence but I hope the above will be of some use in your review. If you wish to discuss further, I would be happy to do so.

Yours sincerely

Philip King FICM
Chief Executive

APPENDIX: WHO WILL CHOOSE TO RESPOND TO A CONSULTATION BASED ON APPARENT MINISTERIAL MISBRIEFINGS? – feedback on the briefing to, and statement by Minister Willott.

Strengthening the regulatory regime and fee structure for insolvency practitioners



[1] Financial crisis was from 2008

[2] the profile which has been raised is that of the banks (Parliamentary Commission on Banking Standards) and their auditors (House of Lords Select Committee). The OFT has reported (June 2010) of those opportunistically securing £1b per year for themselves from the prolonged devastation.

[3] There is effective regime as these IPs are not required to carry full indemnity for the estate which falls under their control by one mechanism or another. They may even not be formally on notice of transactions they facilitate

[4] there is no empirical evidence of correlation between debt and employment

[5] the process of bringing down businesses and people is destructive not constructive

Foreword The recent economic downturn[1] raised the profile of insolvency professionals [2]and the regulatory regime [3]under which they operate.

An effective insolvency regime is essential to the workings of a modern economy; it helps recover money for creditors, directs resources to productive businesses through recovery procedures and provides a mechanism by which individuals can unburden themselves of unsustainable levels of debt.

Fair and effective insolvency mechanisms thus help drive economic growth[4] through encouraging lending and preserving economic value [5].

At the heart of our insolvency regime [6] is the insolvency practitioner (IP)[7] who, in addition to advising on business recovery and restructuring[8], will lead [9]companies and individuals through the insolvency process. [10]IPs carry out an important role often in very difficult circumstances [11] [12]. They are in a considerable position of trust over the affairs of insolvent companies and individuals, and their decisions and actions can have a significant financial impact on those affected.

The very nature of insolvency means that some people will not recover all that they are owed. What is important is that creditors have confidence that they will recover the maximum amount possible under the circumstances. [13] It is understandable therefore that both the general conduct of IPs and the fees they charge should come under close scrutiny. [14]

Recent independent reports[15] have concluded that there is clear evidence of the difficulty unsecured creditors face in controlling IP fees, [16] and that there is a need to strengthen the regulatory framework in this area.

---

[6] there is the 1986 Insolvency Act and Rules. These have the purpose of protection (trusteeship, administration, requirement to account publicly, need for court authority, so that right to notice, to be heard, to cross examine and to evidence is preserved) and ensuring no unfair preference

[7] an IP who does not carry 100% indemnity for the estate he controls including contingent and intangible assets may not be in a position to meet damages and consequential damages claims, nor his firm and its members collectively. He is personally liable to losers on his default on acceptance of appointment (reckless/knowing etc)

[8] unlimited exposure as shadow director and exposure to own ineptitude in not understanding the business he takes on (eg PwC re Lemann Bros, rehiring the derivatives team to teach them about bsnking and do the administrator's job). IPs typically operate with leveage, 1 IP to several without licence, rendering the efficacy of the licence negligible.

[9] It is not appropriate for a Minister of State to act as a marketeer for the IPs. They must have full indemnity, and if they do not, those whose estates are being taken are exposed to not being able to recover. This is wholly unacceptable

[10] Untrue. They write to the victim to inform them they have a statutory duty to "realise their assets", the victim can attend a kangaroo court with unknown persons but will not have a right to be heard and to the Land Registry to say they now control any properties owned. The Land Reg is content to take their instructions from such persons without checking whether they have indemnity or informing the owner that a letter without application has been received.

[11] The IP has the option not to accept. That is more than his victim has.

[12] There is a distinction between difficulties which pre exist and those created by the IPs.

[13] No. What is important is that those not carrying full indemnity must not be allowed to operate effectively in the name of the state.

[14] The take home pay of an IP should equate to his opposite number in terms of experience who is employed by the Official Receiver. If not licensed and not carrying full indemnity, the remuneration is nil, or he pays if benefiting by training opportunity.

[15] The OFT report was June 2010. The March 2013 exercise on fees did not elicit sufficient data to add meaningfully to the 2010 report (a £1b per annum industry) – 12 individual cases and 21 written pieces of evidence, combining unsecured and preferential creditors (an unhelpful combination). Picture was that secured creditors and the IP took whatever comprised the estate.

[16] Complaint was that they were not being heard. Reason was set out in the OFT report that the IPs are on lists maintained by the banks, that was where the relationship was, and beyond helping the bank exit on its own terms (or improve its position in some way) they could do as they pleased.

This consultation document sets out measures to strengthen the regulatory regime[17] by introducing clear regulatory objectives for the regime and a range of proportionate sanctions[18] and powers to deal with a failure to comply with the regulatory objectives.

It also includes proposals to amend the way in which an insolvency practitioner can charge fees for his or her services, which should ensure that there will be funds available to make a payment to creditors[19].
We want to ensure that our insolvency processes work fairly and effectively.
I look forward to hearing your views.



Jenny Willott MP Minister for Employment Relations and Consumer Affairs

1 The Office of Fair Trading's 2010 report into the market for corporate insolvency practitioners (http://www.oft.gov.uk/shared_oft/reports/Insolvency/oft1245) and Professor Elaine Kempson's 2013 report reviewing insolvency practitioner fees (http://www.bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees).

[17] There is effectively no current "regulatory regime". There is a weak "memorandum of understanding" to which the IPs are not party. This is focussed on the maintenance of a register but excludes any financial recompense arrangements for those interested in an estate who have lost due to the dishonesty of the IP/his firm/those acting with him. This is akin to the 2004 agreement between police (ACPO) and the solicitor's body for crime detection and conduct sanctions, that was de-commissioned some while back, the predictable fate of the RPB Memo, as it does nothing to protect the public financially (full indemnity on estate value); in terms of their data use; treatment to which they are subjected; or set out a clear path where an IP accepts "appointment" when he ought not.

[18] This falls on the first hurdle as the relationship can only work if direct between the statte and the IP: sanctions on the RPB are irrelevant and it could disappear if joined in defence of a prosecution, as the BBA in the US.

[19] The only basis of charge that works is unit labour cost according to a regulated price list set with reference to civil service pay levels. This works well in a number of industries. There is no prima facie reason why the Insolvency Service does not retain this work in house.