ABCUL
Association of British Credit Unions Limited

IP Regulation Consultation Team
Insolvency Service
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Dear IP Regulation Consultation Team,

The Future of Insolvency Regulation

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies who provide financial services – primarily savings and loans facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loans facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and / or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with 250 credit unions active in mainland Great Britain today and have 1.4 million members and £1.95 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Response to Consultation

ABCUL strongly welcomes the proposal to widely reform regulation of the insolvency sector. We are pleased to see the proposal for a new single regulator for the insolvency sector and for the introduction of regulation of insolvency firms. Though a new single regulator would need to ensure that a much higher standard of conduct is achieved in practice across the insolvency profession, we feel that the proposed reforms would provide a basis for much needed change.

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The negative impact of personal insolvency on credit unions has notably increased in recent years with the growth of volume IVA and PTD providers. The credit union sector continues to be harmed by these insolvency firms, with the cost of providing affordable credit increasing to the detriment of credit unions and their members. Individual debtors are often also severely impacted by the mis-selling of these insolvency solutions.

The current regulatory system has not been able to prevent the widespread harm caused by volume IVA and PTD providers to both debtors and creditors. It has therefore become increasingly important for there to be deep reform of insolvency regulation.

We would particularly support the introduction of a new public register for insolvency, a new compensation scheme to cover harm caused by the insolvency profession, and a new single regulator responsible for investigating complaints. We also support the wide set of proposals to change the bonding arrangements, that would work to improve protection for creditors in cases of Insolvency Practioners committing fraud, and the long-term intention to reform the bonding arrangements altogether.

Question 1. What are your views on the Government taking on the role of single regulator for the insolvency profession?

We strongly agree that there should be a single regulator for the insolvency sector. This will bring much needed uniformity to insolvency regulation and will hopefully achieve consistent outcomes for debtors and creditors impacted by insolvency solutions. We would also hope that the presence of a single regulator with a set of new supervisory measures would work to raise professional standards for insolvency.

We would also support the Government taking on the role as the new single regulator. We agree that the Insolvency Service is the best placed out of existing Government departments or regulatory bodies to regulate and supervise the insolvency sector specifically, as it has the expertise and resources to deliver a tailored and attentive regulatory regime for insolvency. We also understand the cost and time that would be involved with setting up an entirely new body to regulate the insolvency sector. As a result, we feel that the proposed option for the new single regulator to be set up within the Insolvency Service is the most viable option for the reformed regulatory regime.

However, if the Insolvency Service it to take on the responsibility of regulation, rather than the alternative option of the FCA, we feel it is crucial that insolvency firms and practioners are held to a high professional standard as with other firms offering financial services. Given the insolvency sector’s influence on vulnerable debtors, we would expect that the new single regulator creates a similar standard of conduct for the insolvency profession as is expected from FCA-regulated firms. The regulatory environment for financial services is evolving, with the FCA’s new Consumer Duty due to come in later this year, so regulatory standards for insolvency should keep pace with the higher level of consideration for consumers that will come to be expected in the near future.

Question 2. Do you think this would achieve the objective of strengthening the insolvency regime and give those impacted by insolvency proceedings confidence in the regulatory regime?

The introduction of a new single Government regulator would provide the opportunity to strengthen the insolvency regime and increase creditor confidence in insolvency regulation. The move to a single regulator would lay the groundwork for a much more effective and consistent regulatory regime to be established.

However, the new single regulator will only bring confidence to creditors impacted by insolvency once positive changes are seen on the ground. Credit unions' confidence in insolvency regulation will only increase if they see fairer outcomes from complaints handling, better standards of conduct from insolvency firms and greater transparency from the insolvency sector following reform.

Question 3. Do you consider the proposed objectives would provide a suitable overarching framework for the new government regulator or do you have any other suggestions? Please explain your answer.

We agree with the proposed overarching objectives for the new single regulator. The proposed statutory objectives comprehensively cover the aims we would like to see from insolvency regulation.

We believe it is important that the statutory objectives explicitly require to regulator to promote the maximisation and promptness of returns to creditors, as in recent years credit unions have been significantly impacted by a low level of returns by volume providers of debt solutions. We also think it is essential that the objectives include that the new single regulator acts impartially.

If the regulator successfully delivers on these objectives, we believe that confidence in insolvency regulation from credit unions will be greatly improved.

Question 4. Do you consider these to be the correct functions for the regulator in respect of Insolvency Practitioners and in respect of firms offering insolvency services? Please explain your answer.

We consider the stated list of functions to be appropriate and necessary for an insolvency regulator to be responsible for. The proposed list of functions covers all the responsibilities we feel are needed to sit with an authoritative single regulator. We are particularly supportive of the proposal for the single regulator to be responsible for handling and investigating complaints, as well as the maintenance of central register for the insolvency profession.

Question 5. Are there any other functions for which you consider the regulator would require powers? Please explain your answer.

We consider the proposed list of functions to comprehensively cover the responsibilities we would expect to sit with the regulator.

Question 6. Do you agree that the single regulator should have responsibility for setting standards for the insolvency profession? Please explain your answer.

We do not think the single regulatory should have sole responsibility for setting standards for the insolvency profession. We believe that there should also be formal input when setting professional standards from an independent committee. This could be the Joint Insolvency Committee already established, to draw on its pre-existing knowledge of insolvency regulation.

We think it is important to have a level of direct and formal input on the professional standards from a range of stakeholders impacted by insolvency regulation. Formal input from an independent committee would provide creditors with the assurance that the professional standards set are fair and balanced.

Question 7. Do you agree that it would help to improve consistency and increase public confidence if the function of investigation of complaints was carried out directly by the single regulator? Please explain your answer.

We would expect the consistency of complaints handling to improve significantly from being carried out by a single regulator. The current system delivers inconsistent outcomes in this area, with the four RPBs having varied processes for handling complaints.

The current system also presents major conflicts of interest that impacts complaints investigation, with RPBs acting as both the trade body and regulator for their Insolvency Practioner members. As a result, there is a strong need for complaints to be handled impartially.

Creditor confidence in insolvency regulation can only be increased once an improvement is seen in the way complaints are investigated. If the new regulator would process complaints in a timely, transparent and impartial manner, credit unions' confidence in insolvency sector will improve significantly.

Question 8. What are your views of the proposed disciplinary and enforcement process and the scope to challenge the decision of the regulator? Please provide reasons to support your answer.

We agree that there should be a right to appeal and review any decision made to discipline an Insolvency Practioner or firm. However, we feel that further clarity on the full disciplinary process, including detail on who would act as the appeals officer, would be needed before we can make an informed assessment of the proposed enforcement process. We hope that there is further stakeholder consultation on this matter.

Question 10. In your view should the specified functions be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

We believe that handling authorisations and routine monitoring are both core regulatory functions that should sit with the regulator. We feel it is important for the single regulator to carry out these two key functions in order to cultivate an authoritative supervisory presence. These functions are carried out by the regulatory bodies for financial firms and we would expect the new insolvency sector regulator to take the same role.

In order for the regulatory regime to be strengthened, insolvency regulation needs to be applied cohesively and consistently. This is unlikely to be the case if core authorisation and monitoring functions can be delegated to different RPBs or other bodies. Direct handling of both authorisations and routine monitoring would also strengthen the regulator's supervision of the insolvency sector by allowing direct oversight on the standard of conduct and compliance taking place on the ground. We would agree that the education and training function could be delegated to other bodies if needed.

Question 11. Are there any other functions that you think should be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

We believe that all the listed functions should be carried out directly by the regulator, aside from regulation and training. This would be to ensure that there is an authoritative and cohesive approach to regulating the insolvency sector. If key regulatory functions can be delegated to the currently established RPBs, creditors will not have confidence that the regulatory regime has been amended or strengthened enough to achieve higher professional standards for the insolvency profession.

Question 12. In your opinion would the introduction of the statutory regulation of firms help to improve professional standards and stamp out abuses by making firms accountable, alongside insolvency practitioners? Please explain your answer.

We believe that introducing statutory regulation of insolvency firms is essential to improving professional standards in the insolvency sector. The absence of regulation for insolvency firms is a key driver of the rise of problematic conduct in the Insolvency Sector. In our experience, insolvency firms are often the cause of poor misconduct, rather than individual insolvency practioners. As the consultation notes, the current regulatory regime creates a tension between regulated Insolvency Practioners and the unregulated firms that employ them. Introducing regulatory requirements for firms would resolve a significant gap in the current regulatory regime and could widely improve professional conduct in the insolvency sector.

Question 13. The Government believes that all firms offering insolvency services should be authorised and meet certain minimum regulatory requirements, but that additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market. What is your view? Please explain your answer.

We would agree that larger firms with greater influence on the insolvency market should have additional regulatory requirements, to ensure that the new regulations are proportional to the nature of the insolvency firm. This is provided that the minimum regulatory requirements for smaller insolvency firms would still adequately prevent harmful behaviour.

Question 14. In your view should certain firms be subject to an additional requirements regime before they can offer insolvency services? If so, what sort of firms do you think should be subject to an additional requirements regime? Please explain your answer.

We agree that insolvency firms that pose the most risk to creditors and debtors should be subject to an additional requirements regime. However, there will be a challenge in establishing the criteria for an additional requirements regime at a non-arbitrary threshold. For this reason, we think there is potential to use more than one criterion to assess the application of an additional requirements regime for firms. For example, firms could qualify for an additional requirements regime if they employ above a certain number of Insolvency Practioners or are above a certain asset size.

Question 15. Do you think that regulation of firms should require a firm subject to an additional requirements regime to nominate a senior responsible person for ensuring that the firm meets the required standards for firm regulation? Please explain your answer.

We strongly feel that firms subject to an additional requirements regime should be required to nominate a senior responsible person. We think this would be a key regulatory measure to ensuring accountability at the firm level. We believe there should be measures put in place to replicate the SM&CR model to the greatest extent possible within the insolvency sector, with the appointment of a responsible individual at each firm being a key aspect of this model.

Question 16. If so, would you envisage that the senior responsible person would be an Insolvency Practitioner? If not, please specify what requirements there should be for that role?

We would not see there to be a need for the senior responsible person to be a practicing Insolvency Practioner. We would see the requirements to be similar to the fitness and proprietary requirements used in the SM&CR, to ensure the individual has the relevant skills, experiences and traits to act as a key responsible person.

Question 17. Do you think that a single public register for Insolvency Practitioners and firms that offer insolvency services will provide greater transparency and confidence in the regulatory regime? Please explain your answer.

The introduction of a single public register for Insolvency Practioners and firms would significantly improve transparency of the insolvency sector for creditors.

A public register would be greatly valued by credit unions, which regularly need to cooperate with insolvency professionals. A register would increase credit unions' confidence in insolvency regulation by making the regulatory regime appear more cohesive and improving the availability of key information to creditors.

Question 18. What is your view on the regulator having a statutory power to direct an Insolvency Practitioner or firm, to pay compensation or otherwise make good loss or damage due to their acts or omissions? Please explain your answer.

We strongly believe that the regulator should have statutory power to direct Insolvency Practioners and firms to pay compensation where appropriate.

We believe that the introduction of a compensation scheme by the regulator would be necessary in delivering its proposed overarching objective of securing fair treatment for those impacted by insolvency. A formal compensation scheme would improve fairness by mitigating financial harm to both creditors and vulnerable debtors.
In recent years, credit unions have regularly suffered financial losses at the fault of Insolvency Practioners and firms offering IVAs and PTDs. These financial losses are particularly harmful to credit unions compared to other creditors, as credit unions operate on a not-for-profit basis. A mandatory compensation scheme would help restore confidence that creditors and debtors will not continue to suffer financial harm due to errors made by insolvency professionals.

A new statutory compensation measure could also create a new level of accountability for insolvency professionals, that may work to incentivise good behaviour and improve outcomes for both creditors and debtors affected by insolvency.

Question 19. What is your view on the amount of compensation that the regulator could direct an Insolvency Practitioner or firm to pay for financial loss? Please explain your answer.

We strongly support that those impacted by an error of an insolvency profession should be returned to a financial position where they have not made a loss at the fault of the Insolvency Practioner or firm. We also strongly agree that the regulator should have the power to direct an Insolvency Practioner or firm to refund or waive fees for an individual debtor. However, we feel that the £250 cap on compensation for undue stress or inconvenience caused to an individual debtor could be higher, to truly reflect the level of disruption and distress that an Insolvency Practioner's error could potentially cause an individual.

Question 20. Which option or options do you consider would be most suitable to fund a compensation scheme for the insolvency profession? Alternatively, do you have a suggestion on how a compensation scheme for the insolvency profession might be funded? Please explain your answer.

We believe that insolvency firms must be responsible for funding the compensation scheme. A levy fund raised by all insolvency firms would be an appropriate method of funding a compensation scheme. A levy would distribute the cost burden of the scheme fairly and ensure that firms are jointly accountable to those affected by insolvency.

A levy collected at firm level could be modelled on other levies applied to financial services firms, with the most relevant example being the levy paid by firms for the Financial Ombudsman Service. All firms are required to contribute to this levy, including credit unions, even though many do not create any casework for the FOS. Such a model would see levy funds charged at a rate proportionate to each firm.

It would be appropriate for firms that create a high rate of compensation claims to be subject to further fees, similar to how the FOS charges a case fee above a certain number of cases, to create accountability and incentivise firms to take action in minimising the amount of errors they make.

Question 21. Are there any further impacts (including social impacts) that you think need inclusion or further consideration in the Impact Assessment?

Whilst we agree with how the Impact Assessment covers the issues caused by recent practices of volume providers of IVAs and PTDs, we think there should be further detail added on the wider effect this has on affordable credit providers.

As the Impact assessment notes, the number of IVAs and PTDs entered have increased significantly in recent years, often being sold inappropriately to debtors. These debtors are most often charged extortionate fees by the insolvency firm, with very little being returned to creditors. When these debt solutions fail – an increasingly common occurrence – the debtor is left in a much worse position where they have paid a large amount in fees to the insolvency firm but barely paid down their debts to creditors, which are still left as outstanding.

The cost imposed by these debts solutions has caused great harm to both individual debtors and creditors. The financial losses that IVAs and PTDs have started to present to credit unions in particular over recent years has applied undue financial pressure.

As the these debts solutions have become more frequent and costly to creditors, credit unions must face the hard decision of either tightening their lending policies to mitigate risk that these debt solutions will be entered, or increasing the price of loans to reflect the greater lending risk. This either excludes specific individuals from affordable credit, or increases the cost of credit for all credit union members. If left to continue, the practices of volume IVA and PTD providers stand to significantly harm credit unions, the provision of affordable credit and financial inclusion.

Question 22. What are you views on the above proposals for funding of insolvency regulation? Do you have any other suggestions for self-funding of regulation?

We strongly agree that the single regulatory should be entirely self-funded. We agree and support the proposed funding options.

Proposals for Reform of the Current Bonding Arrangements

Question 23. Should the current minimum statutory requirements of a bond be extended as proposed to include the following (if you disagree, please explain your answer including any alternative proposal or any additional factors to be included):

1. **An allowance for reasonable associated costs of a bond claim:**
2. **A period of run off cover that allows for claims to be submitted for a period after the Insolvency Practitioner has left office;**
3. **Interest to be claimable against a bond to be calculated on the amount of the loss from the date it was incurred (if so, which interest rate benchmark should the rate be tied to?);**
4. **GPS cover to be available for all of an office-holder's appointments, including those where no SPS cover has been obtained.**

We agree with the proposed extension of the minimum statutory requirements of a bond, in order to formalise the required protections for creditors and help improve transparency on the standard protections of a bond.

Question 25. Should a minimum period of run-off cover be provided for in statute and should the period be 2 years? If not 2 years, what should it be? Do you see any disadvantages to applying a minimum period for run-off cover?

We agree that a minimum period of run-off cover should be provided for in statute to formalise this protection for creditors in all bond covers.

Question 34. Would adding a requirement for Insolvency Practitioners to declare the level of cover specific to that estate as part of the initial report to creditors be helpful information for creditors? If so, should any changes to the level of cover also be reported?

We would strongly support a requirement for declaration of cover to creditors, including for changes to the level of cover. This would be effective in raising awareness of protections available for credit unions in cases of fraud and help improve transparency of the bonding arrangements.

Question 35. Where a regulator takes action which may foreseeably result in revocation of an Insolvency Practitioner's authorisation, should the regulator have a duty to ensure that the Insolvency Practitioner's bond cover is maintained at a sufficient level, until such point as the action has concluded and either the practitioner is deemed fit to continue practising, their authorisation revoked and/or a successor practitioner appointed to their cases?

We would support a duty for the regulator to ensure that bond cover is maintained in such cases, to ensure that creditors are not put at risk of significant financial loss due to fault or misconduct of an Insolvency Practioner.

Question 38. Do you agree that the proposed changes to the current requirements for bonding should be made now pending more significant changes to the regulatory regime?

We strongly agree that the proposed changes to the bonding requirements should be made as soon as reasonably possible, to ensure that current requirements are appropriate during the time period it will take to reform the requirements altogether. We broadly support the proposed changes to the bonding requirements that will work to improve the protection offered to creditors.

Question 39. Considering the changes proposed to the bonding regime above, would the introduction of a single regulator present opportunities for more fundamental reform of the bonding regime? If so, please give reasons for your answers including any suggestions you may have on a proposed reform.

The introduction of a single regulator would provide the opportunity to fundamentally reform, and potentially replace the current bonding regime. We would support an arrangement for creditor protection that is less complex, more transparent, and more cohesive. We think that the potential for a single broad compensation scheme, that covering both cases of fraud and unintentional mistakes, should be explored.

Question 41. Do you think that a levy funded scheme should replace the existing bonding regime, and cover not only acts of fraud or dishonesty by an Insolvency Practitioner but also a broader compensation regime? Please explain your answer.

We would support the implementation of a levy funded scheme that compensates for both unintentional errors and acts of fraud carried out by Insolvency Practioners. A single compensation scheme would bring a cohesive system of responding to any harm caused by insolvency practioners, that would be much more straightforward for credit unions to engage with and use when necessary. Such a scheme would increase transparency and awareness of the compensation available to creditors.

Please let me know if you wish to further discuss ABCUL's consultation response.

Yours sincerely,

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