

Regulation of insolvency practitioners

Review of current regulatory landscape

A call for evidence issued by The Insolvency Service (IS)

Comments from ACCA
4 October 2019
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ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our **219,000** members and **527,000** students in **179** countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of **110** offices and centres and more than **7,571** Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting, and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

Further information about ACCA's comments on the matters discussed here can be requested from:

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RESPONSE FORM

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I want my response to be treated as confidential

Please select which best describes you or your organisation:

Respondent type (please tick)

<input type="checkbox"/>	Insolvency practitioner
<input checked="" type="checkbox"/>	Recognised Professional Body
<input type="checkbox"/>	Trade body
<input type="checkbox"/>	Creditor organisation
<input type="checkbox"/>	Creditor affected by financial failure
<input type="checkbox"/>	Individual subject to insolvency proceedings
<input type="checkbox"/>	Company subject to insolvency proceedings
<input type="checkbox"/>	Government department (please specify)
<input type="checkbox"/>	Other organisation (please specify)
<input type="checkbox"/>	Other individual (please specify)



Questions 1 to 11

ACCA welcomes the opportunity to contribute to the government's review of the current regulatory framework for insolvency practitioners (IPs) in the UK in order to inform any future changes to the framework.

ACCA is a Recognised Professional Body (RPB) for insolvency. We strive towards achieving the highest professional and ethical standards through a robust regulatory framework, and continually work to advance the public interest with regard to our regulatory activities. With many ACCA members working in positions of strategic or functional leadership for businesses and governments worldwide, we have a central role in protecting the public interest and delivering public value.

ACCA endeavours to ensure its regulatory obligations are met consistently and carried out to a high standard on a timely basis, with due regard to the principles of proportionality, accountability, consistency, transparency and targeting which are enshrined within the Legislative and Regulatory Reform Act 2006. ACCA staff use their judgement, within a framework of policy and procedural guidelines, to determine how best to apply the principles of better regulation in connection with the discharge of ACCA's regulatory responsibilities. Robust regulation is therefore integral to ACCA's brand promise of global quality, building trust and confidence in the profession and enhancing the value of membership.

In October 2016, ACCA entered into a collaboration arrangement with the Insolvency Practitioners Association (IPA) for the regulation of ACCA IPs. Under the collaboration agreement, the IPA has undertaken ACCA's monitoring and complaints-handling arrangements for insolvency since 1 January 2017, and licensing arrangements since 1 October 2018.

As an RPB, we do not believe it is appropriate for ACCA to comment on the effectiveness of RPB regulation and provide evidence and experiences of specific aspects of the regulation of IPs due to an inherent conflict of interest. For that reason, we have no further comments to make in respect of questions 1 to 11. We have also declined to score questions 12 to 15.

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For questions 12-15 only

**On a scale of 1 to 5, to what extent do you agree with the following statements?
(1 being strongly agree, 5 being strongly disagree.)
Please provide an explanation for your score and supporting evidence if possible.**

12. “The regulatory objectives are fit for purpose”

1 2 3 4 5

Comments:

We welcome the regulatory objectives introduced in 2015 to improve professional standards within the insolvency profession as they provide insolvency regulators with a clear framework in which to carry out their regulatory functions.

13. “The RPBs function in a way that delivers the regulatory objectives and this has increased confidence in the system”

1 2 3 4 5

Comments:

RPBs strive to function in a way that delivers on the regulatory objectives, promotes the public interest and protects the public from harm. However, there is no recent empirical evidence to measure the impact that the regulatory objectives and other changes have made. We would therefore welcome further research in this area to determine if the regulatory outcomes are being met. Confidence is a difficult concept to measure and, in the absence of empirical evidence, we would caution against reliance on media and political comments or complaints data to indicate levels of confidence in the insolvency industry and the regulatory framework, as these may not present a true reflection of public concern.

Nonetheless, we are concerned that there appears to be a perceived lack of confidence in the regulation of insolvency amongst RPBs, IPs and the parties involved in an insolvency. While RPBs play an important role in maintaining confidence in the system through robust regulatory procedures for licensing, monitoring and enforcement outcomes, the Insolvency Service, as the oversight regulator, has a key role to play in this regard as the oversight regulator. However, responsibility for promoting confidence in insolvency regulation extends beyond the RPBs and all stakeholders (including government, the Insolvency Service, RPBs, IPs, companies and individuals, directors and shareholders) need to do more to address the issues contributing to falling levels of confidence in insolvency regulation.



14. “There are matters of significant concern, which are currently affecting confidence in the regime, which are not addressed adequately by the regulatory objectives”

1 2 3 4 5

Comments:

In our opinion there are matters of concern that are affecting confidence in the insolvency regime which are not addressed by the regulatory objectives. IPs must demonstrate high standards of professionalism and competence and are required to follow insolvency legislation and the standards set out in the Code of Ethics and Statements of Insolvency Practice (SIPs). ACCA supports its members to comply with these requirements, providing training and guidance as appropriate. However, compliance may be hindered by legislative conflicts (for example in regard to the redundancy process in an insolvency) and the professional conduct and practice of some IPs is poor. IPs deal with the consequences of company failures but they are not the cause of concerns about the insolvency industry and company failures generally. We believe that any solutions to improve confidence in the regime should address the role of directors in company failures.

15. “There is confidence that government oversight sufficiently holds the RPBs to account to deliver the regulatory objectives”

1 2 3 4 5

Comments:

In light of our experiences as an RPB, we believe government oversight does sufficiently hold the RPBs to account to deliver the regulatory objectives through periodic monitoring visits, themed reviews, reports into the monitoring and complaints handling activities, and powers of sanction to address poor performance. However, we remain concerned about the overall approach to oversight, which we perceive to be highly critical and prescriptive. We would welcome more practical and proportionate oversight which adds value to regulatory processes.

END OF SCORED QUESTIONS



16. Does the reserve power provide sufficient flexibility in the options for a single regulator? If so, which option would most effectively deliver the regulatory objectives?

Comments:

The option of a single regulator reflected the Government's long-term aim is to move towards establishing a single regulator for IPs. At the time the option was being consulted on, ACCA did not object to this policy aim and believed the Insolvency Service should have taken the opportunity to achieve the model of a single regulator. ACCA's position remains unchanged.

We are of the view that the reserve power, as it currently stands, does provide sufficient flexibility in the options for a single regulator. We believe the option that would most effectively deliver the regulatory objectives is a single, independent regulator for insolvency. This should be a new body established by regulations, and not a body that is already in existence (such as an existing RPB or an existing regulator outside the insolvency profession). Furthermore, we would suggest that the regulatory model should include an independent complaints body, and an independent tribunal to consider appeals in relation to disciplinary and regulatory decisions. Our rationale for recommending this option is explained below.

Insolvency is a highly regulated industry and, over the last few years, IS has sought to bring about a high degree of standardisation across RPBs. Recent inspections undertaken by IS indicate that it is seeking further standardisation in the licensing, monitoring and complaints-handling processes across the RPBs. Where the regulatory arrangements of an RPB extend beyond insolvency, the standardisation of regulatory processes that is expected by IS may require the RPB to develop bespoke arrangements for the regulation and discipline of IPs. Unfortunately, a change which may be suitable for the regulation of IPs may not necessarily be suitable for the wider regulated member population, and this would mean running two separate regulatory and disciplinary systems, which adds significant complexity to the regulatory arrangements of a professional body.

The regulatory framework introduced in 2015 recognises that RPBs can exercise their functions in different ways in order to meet the regulatory objectives and this does not mean they must have an identical approach to insolvency regulation. We welcome such a principles-based and outcomes-focussed approach to regulation. However, it contrasts with the oversight activity carried out by IS which appears to be increasingly prescriptive and rules-based.

Since the implementation of the new regulatory framework in 2015, there has been a reduction in the number of RPBs. Given the current approach to regulatory oversight, a number of insolvency regulators each applying different regulatory systems, is not sustainable. A single, independent regulator for insolvency would offer a more efficient and effective framework in which to build public trust and confidence in the insolvency profession. It would also allow the standardisation of regulatory arrangements for the regulation and discipline of IPs and counter the risk of regulatory arbitrage.



In summary, the single regulator model is the only model which would both address the alleged perception of conflict of interest and at the same time be consistent with the single regulatory arrangements goal and in turn help address the perceptions around the lack of independence and inconsistency of regulation of IPs.

17. Should government look to create a different type of regulatory framework that better suits the current insolvency system (for example firm regulation in certain sectors)? If so, what type of framework would best deliver improvements to public confidence?

Comments:

We would support the creation of a different type of regulatory framework that not only better suits the current insolvency system, but also provides a degree of flexibility to accommodate future changes.

The work of IPs is highly specialised and the insolvency industry is changing, as evidenced by the significant increases in individual voluntary arrangements (IVAs) and protected trust deeds (PTDs), and the emergence of ‘volume’ providers in the personal insolvency market. It is important that the regulatory framework for insolvency evolves to reflect these developments and meet the needs of insolvency businesses, thereby helping to deliver improvements to public confidence. An opportunity exists to introduce an alternative approach to insolvency authorisation which better aligns to the current insolvency industry and the structure of insolvency firms. The government should not shy away from introducing additional legislation and implementing regulatory requirements in order to effect these changes.

Our preference would be for firm level authorisation alongside individual authorisation. We are also supportive of regulation changes which reflect new working practices in certain sectors, in particular with respect to authorisation to undertake IVA/PTA cases which we feel should no longer be required to be undertaken by an authorised IP.

18. Should government have a role within any new or improved regulatory framework?

Comments:

In our opinion, government should continue to have a role within any new or improved regulatory framework and support the development of effective statutory legislation to regulate the insolvency profession. However, we would expect a future single regulator to operate independently of government and be accountable to an independent Board whose members may be appointed by the Secretary of State.

A single regulator should also be accountable to Parliament for the authorisation and regulation of IPs through obligations set out in the Insolvency Act (the Act). The Act should determine the



scope of activities that should be regulated and the regulator should have the freedom to decide the shape of the regulatory regime for insolvency.

19. How might any future single regulator, or alternative framework, be funded?

Comments:

In principle, we believe a new regulatory body should be funded by the insolvency industry that it regulates through statutory fee raising powers, for example fees, levies and fines. The costs of insolvency regulation should, as far as possible, be borne (directly or indirectly) by those who use insolvency services and benefit from insolvency regulation. If costs are recovered on the basis of supervised individuals, the fees for insolvency supervision should be set at a level that treats all supervised IPs equally and fairly. The fee level should not give rise to unacceptable volatility in fees, nor be perceived as a barrier to entry to the insolvency profession.

However, we recognise that the funding of a single regulator would need careful consideration in order to ensure the funding structure is both fair and transparent and accurately reflects the cost of insolvency regulatory oversight. Given the relatively small number of IPs, a self-funding model may be difficult to implement without additional external funds to cover any shortfall.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this call for evidence would also be welcomed.

Comments:

We have no further comments.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

