Review of Insolvency Practitioner Fees

Report to the Insolvency Service

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1 Introduction

Concerns continue to be raised regarding the charges, including both remuneration and expenses, made by insolvency practitioners (IPs) and the impact that this has on the position of unsecured creditors and personal debtors in insolvency situations. That such concerns exist is not generally disputed; nor would many claim that there have been no cases involving excessive fees. Beyond that, opinion about the extent of unreasonable, or even excessive, fees is divided. So, too, is opinion on the efficacy of the control and redress mechanisms that exist. But the evidence base is thin.

A recent market study conducted by the Office of Fair Trading (OFT), however, concluded that the relatively weak bargaining power of unsecured creditors in insolvency situations can lead to detriment[1], although the basis for this conclusion has been disputed by the insolvency profession[2] .

1.1 Scope and terms of reference

This review has built on the work conducted by the OFT and was commissioned to:

- assess whether controls within the fees regime work or whether different provisions (eg an ability to restrict the level of fees charged) would provide better incentives to ensure fees charged are fair and work done is in the interests of creditors.
- consider whether the regulation of IPs operates in a way that encourages fair charging and works in the interest of creditors
- examine the legislative framework for the fees charged by IPs, and make a comparative assessment against international models, of how well existing fee controls work in practice.
- assess whether further changes need to be made to provide confidence to creditors (particularly unsecured creditors) and personal debtors that the fees they are charged by IPs are fair and commensurate with work done for the benefit of creditors.
- assess whether further changes should be made to improve the speed and level of returns for unsecured creditors, without impairing the provision of credit to business or consumers.

The review covers both personal and corporate insolvency, recognising that different conclusions may be drawn for these two separate fields. Its primary focus is on the situation in England and Wales, although it has drawn lessons from Scotland and other jurisdictions and many of the proposals for change would apply equally to Scotland. Moreover, the main focus is on the procedures that have led to the greatest levels of concern about fees: Administration, Creditors' Voluntary

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[1] Office of Fair Trading (2010) *The market for corporate insolvency practitioners: a market study.*
[2] R3 (2010) *OFT market study into corporate insolvency: R3's response.* available at http://www.r3.org.uk/media/documents/policy/policy_papers/corporate_insolvency/R3_responds_to_OFT_recommendations.pdf

Liquidation and Compulsory Liquidation, in the corporate sector and bankruptcy in the personal sector. Again, it draws lessons from other procedures, notably Company Voluntary Arrangements (CVAs) and Individual Voluntary Arrangements (IVAs) where concerns about the level of fees charged appear to be more muted. Pre-packaged administrations were not covered as they are the subject of a separate, but related, review. Although the primary focus is on the level of remuneration received by insolvency practitioners, it also includes other professional fees and disbursements.

The review was undertaken in two stages. First, it has gathered evidence to ascertain whether there is a problem that needs to be addressed and, if so, whether it is merely a perceptual one or whether there is evidence that existing controls within the fees regime are not working as intended and, as a consequence, fees can in reality be higher than can be justified by the work undertaken.

The second stage of the review has assessed what further changes (if any) are required to address the problems (perceived and real) that have been identified. It has not confined itself to issues of legislation and regulation, but has also considered other possible changes such as the guidance and advice that is available to creditors and others who are affected by insolvencies.

1.2 Evidence gathering for the review

The starting point for the current review was the evidence gathered for the OFT market study of *The market for corporate insolvency practitioners* that was published in June 2010. This was supplemented by submissions made to the Insolvency Service *Consultation on reforms to the regulation of insolvency practitioners* during 2011. Existing case law was also examined as was the spreadsheet of data gathered by the OFT from Companies House relating to 500 administrations starting in the year 2006. In addition, academic researchers who have worked in this area were contacted to request details of any research that is directly relevant to the content of the review.

Following a review of that evidence, a targeted consultation was undertaken requesting evidence rather than views on whether or not the safeguards in the fees regime are working and the fees charged by insolvency practitioners commensurate with the level and nature of the work that they undertake. Evidence was collected through a mix of direct requests for written evidence and telephone and face-to-face interviews with key informants. Although they covered broadly the same ground, questions were tailored to specific groups of stakeholders including:

- insolvency practitioners themselves and R3 (the Association of Business Recovery Professionals);
- the recognised professional bodies that, together, provide the regulatory regime for insolvency practice;
- individual creditors (both unsecured and secured) and associations of creditors who, in the experience of the Insolvency Service, Office of Fair

Trading and R3, have considerable experience of insolvency, had submitted evidence to previous reviews or have informed views about the levels of fees charged by insolvency practitioners;

- advice organisations representing individual debtors in cases of personal bankruptcy, and
- individual judges with experience of cases involving challenges to insolvency practitioner fees.

Finally, a set of generic questions was posted on the website for the review, to which a number of members of the public responded, usually providing details of cases they had been involved in where they considered that the fees charged had been high. These responses came from personal debtors, unsecured creditors and directors of companies that had experienced corporate insolvency.

A total of 333 individuals and organisations contributed to the review, including 253 insolvency practitioners who completed an on-line survey. Much of the evidence was received in writing (sometimes with follow-up requests to clarify points or request further information), although a small number of key informants were invited to make oral contributions, usually by telephone except in two cases in each of which six people were involved, where they were held face-to-face. In addition, a small number of IPs volunteered to discuss individual cases with me. Full details of the responses received are given in Appendix 1.

A round table was held in June 2013 to discuss the synthesis of the evidence gathered and to explore changes that might address the issues identified. This was opened by the Minister for Employment Relations and Consumer Affairs and attended by an invited group of 29 people, representing a wide cross section of stakeholders.

I am aware that some of the requests for information were quite detailed and involved a good deal of work to compile. In addition, some respondents (including IPs, creditors and others) took it upon themselves to collate additional information that they thought would be helpful to the review. I am, therefore, very grateful to all those who contributed to the review for providing the detailed information that they did. Without it, this review would have lacked the solid evidence on which its conclusions are based.

1.3 This report

This report starts by describing the present system of control on fees (section2) and the fees charged by IPs (section 3), before presenting the evidence on whether or not the existing controls on IP fees are working as intended (section 4) and the evidence relating to the consequences of some controls being ineffective (section 5). Section 6 presents the conclusions drawn from the review and identifies areas where change is needed.

All the evidence cited in this report has been subject to rigorous scrutiny, including requesting additional written evidence to substantiate any key points that had been raised in oral or written evidence. Moreover, all of the conclusions in this report are based on evidence that was corroborated by at least two (and usually many more) authoritative contributors and could be substantiated.

2 The current system of controls in the fees regime in England and Wales

The basis for the current system of controls was established by the Enterprise Act 2002, which brought about a transformation of the governance of corporate bankruptcies, shifting power from secured to unsecured creditors. Secured creditors' rights to appoint a receiver were replaced by rights to appoint an administrator, with a fiduciary duty to all creditors. This was amended by the Insolvency (Amendment) Rules 2010 in England and Wales which introduced changes designed to increase the level of control that creditors can exert. These changes require IPs to engage with creditors to reach a collective agreement on remuneration; gave more flexibility on the basis for remuneration; increased transparency for creditors and gave them a right to request additional information and made it easier for them to challenge the level of remuneration. They also made provision for approving pre-appointment work by an IP where the company subsequently goes into administration

Statement of Insolvency Practice (SIP) 9 provides mandatory guidelines for IPs on seeking approval of remuneration and reporting.

2.1 Setting remuneration and expenses

Remuneration for administrations, liquidations and bankruptcies should be fixed within 18 months of the appointment of an IP and there are three methods for doing this:

- Hourly rate and time charged (time-cost)
- Fixed fee
- Percentage of realisations

These can be used in combination with a different fee basis for different work streams. In practice a large proportion of cases are on a time-cost basis.

While the IP will propose their preferred method(s), the choice is formally made by creditors. The mechanisms for this in a liquidation are, in the first instance, by a creditor committee (of between three and five creditors); if one is not set up, by a creditor meeting, and if that is not quorate[3] (including proxy votes) by the court. 2010 rule changes require an IP to demonstrate s/he has attempted to engage with creditors to reach an agreement on fees.

Mechanisms in administration are similar except that, if no distribution to unsecured creditors is expected, fees are fixed by all secured creditors and 50 per cent of preferential creditors (where there is a distribution to them). If the company moves to a Creditors' Voluntary Liquidation (CVL) with the same IP, they will retain the

[3] Just one creditor is required to vote

same basis for their remuneration as in administration. If a new IP is appointed as liquidator, the remuneration is fixed afresh.

An IP appointed as administrator may claim costs (including expenses as well as fees) incurred prior to, but for the purpose of the administration. These are approved in the same way as those post administration.

There are no statutory or commonly accepted limits or guides to the amount of remuneration it would be appropriate for an IP to charge and each case is judged individually. In considering what fee level is appropriate a creditor should have regard to:

- The complexity of the case;
- Any exceptional responsibility or duty falling on the IP;
- How effectively the IP carried out his or her duties, and
- The value and nature of any assets he has to deal with.

In addition to their remuneration, IPs are entitled to claim a range of disbursements. These are in two categories:

- Category 1 disbursements are specific expenses payable to a third party. No approval is required for these but they must be disclosed to creditors. Examples include, advertising costs, agents fees and legal costs.
- Category 2 disbursements are those that are case-related but are provided by the firm itself and may include a profit element. These require creditor approval. Examples would include hire of rooms within the firm for meetings; charges for document storage or marketing by a firm connected to the IPs firm. A key consideration for creditors would be which of these should be included within the overhead factored into hourly rates, where the IP is charging on a time-cost basis.

2.2 Reporting to creditors

IPs are required to provide creditors with annual reports in liquidation and bankruptcy (six monthly in the case of administrations). These must include:

- The activities of the office holder;
- Receipts and payments;
- The conduct of the case, and
- Details of remuneration

In other words, they must explain what the IP has done in the reporting period and the level of remuneration and expenses charged and drawn.

When a case is complete, the IP must issue a final report to creditors, which must include a summary of the history of the case as well as the information required in progress reports. For administrations, the final report represents the end of the case. In liquidation or bankruptcy, a final meeting has to be fixed eight weeks after the draft final report is issued. This 'meeting' may be held by audio- or video-link. In liquidation and bankruptcy cases, if nobody attends, the meeting is deemed to have been held.

Creditors have the right to request further information from the IP, within 21 days of the receipt of a progress/final report.

2.3 Challenging remuneration and expenses

An IP's remuneration and category 2 disbursements may be challenged by one or more creditors if, in total, they account for at least 10 per cent of the claims against the estate. However, a single creditor, whose debt is less than 10 per cent may challenge with the leave of the court. Members have the same right to challenge, as does the debtor in a personal bankruptcy if there is a surplus (or there would be before the remuneration or expenses in question are taken into account) and s/he, therefore, has a financial interest in the outcome of the case. Any challenge must be made within eight weeks of the progress or final report and can relate to any of the following grounds:

- The remuneration is, in all circumstances, excessive;
- The basis set for the remuneration is, in all circumstances, excessive, or
- The expenses are so excessive it would be unreasonable for them to be incurred.

In doing so, the creditor must have regard to the same issues as apply to the setting of fees, namely:

- The complexity of the case;
- Any exceptional responsibility or duty falling on the IP;
- How effectively the IP carried out his or her duties, and
- The value and nature of any assets he has to deal with.

The rules state that the costs of the challenge will be borne by the applicant unless the court orders otherwise.

The IP also has the right to ask that his or her remuneration be reviewed where substantial and material changes have occurred. This request has to be made to the body that originally approved the fees .

In determining whether fees are *'fair reasonable and commensurate with the work done*' the court will follow a set of guiding principles, drawing on case law, that were first laid down in a *Practice Statement* in 2004. These are now incorporated (with modifications) into Part Five of *the Practice Direction - Insolvency Proceedings* which came into force in February 2012. These are reprinted below:

> *Justification*: it is for the appointee who seeks to be remunerated… to justify his claim and, in order to do so, the appointee should be prepared to provide full particulars of the basis for, and nature of his claim for, remuneration**.**

Benefit of the doubt: … if there remains any element of doubt as to the appropriateness, fairness or reasonableness of the remuneration sought, such doubt should be resolved by the court against the appointee.

Professional integrity: the court should (where this is the case) give weight to the fact that the appointee is a member of a regulated profession and, as such, is subject to rules and guidance as to professional conduct and the fact that … the appointee is an officer of the court.

The value of the service rendered: The remuneration of an appointee should reflect the value of the service rendered by the appointee, not simply reimburse the appointee in respect of time expended and cost incurred.

Fair and reasonable: The amount of the appointee's remuneration should represent fair and reasonable remuneration for the work properly undertaken or to be undertaken.

Proportionality
(a) Proportionality of information
In considering the nature and extent of the information which should be provided by an appointee in respect of a remuneration application the court, the appointee and any other parties to the application shall have regard to what is proportionate by reference to the amount of remuneration to be fixed, the nature, complexity and extent of the work to be completed (where the application relates to future remuneration) or that has been completed by the appointee and the value and nature of the assets and liabilities with which the appointee will have to deal or has had to deal.
(b) Proportionality of remuneration
The amount of remuneration to be fixed by the court should be proportionate to the nature, complexity and extent of the work to be completed (where the application relates to future remuneration) or that has been completed by the appointee and the value and nature of the assets and/or potential assets and the liabilities and/or potential liabilities with which the appointee will have to deal or has had to deal, the nature and degree of the responsibility to which the appointee has been subject in any given case, the nature and extent of the risk (if any) assumed by the appointee and the efficiency (in respect of both time and cost) with which the appointee has completed the work undertaken.

Professional guidance: In respect of an application for the fixing and approval of the remuneration of an appointee, the appointee may have regard to the relevant and current statements of practice promulgated by any relevant regulatory and professional bodies in relation to the fixing of the remuneration of an appointee. In considering a remuneration application, the court may also have regard to such statements of practice and the extent of compliance with such statements of practice by the appointee.

Timing of application
The court will take into account whether any application should have been made earlier and if so the reasons for any delay in making it.

3 Fees charged by insolvency practitioners

By far the most common way for IPs to set their fees is on a 'time-cost basis' where hourly rates for different grades of staff are set at the outset, and staff subsequently record the time they have spent working on the case. The two other methods by which fees can be set - fixed fees and as a percentage of realisations - are much less common.

That said, 29 per cent of IPs reported that they had been paid a fixed fee that had been set at the outset for at least one corporate insolvency case they had undertaken in 2012; just five per cent had been paid this way for one or more personal bankruptcy cases. Over the same time period, payments based on a percentage of realisations were less common than fixed fees for corporate insolvency work (14 per cent of IPs had at least one case paid in this way) but more common for personal bankruptcy cases (11 per cent of IPs).

3.1 Headline rates

Disquiet about the fees of IPs therefore often focuses on the headline hourly rates their firm charges. IPs who completed the survey were asked for the headline rates charged by their firm for different grades of staff. This showed a very wide variation across firms as the summary below shows:

Partner/Director:	average £366; range £212-£800
Manager :	average £253; range £100-460
Other senior staff:	average £182; range £75-445
Assistants/support	average £103; range £25-260

As a rule, fees tended to be highest in the large firms (with 25 or more partners or directors) and lowest in the small ones (five or fewer partners or directors).

In general, much of the disquiet about the remuneration of IPs focuses on these headline rates and those of partners and directors in particular. Their levels are not, however, unusual in the accountancy and legal professions to which most IPs belong. As a consequence, headline hourly rates are a much wider issue that it is beyond the scope of this review to investigate.

Moreover, it would be wrong, to dwell too long on these headline rates as it is clear that in many cases they are not recovered. This may come about as a result of an IP being appointed by a bank from their panel of individuals with whom they have negotiated a reduction in fees. But it is also clear that headline rates are not always achieved even when the appointment was not made from a panel. This is discussed more fully in sections 3.2 and 3.3 below.

In any case, the concerns about remuneration of IPs among informed commentators go wider than hourly rates and include issues such as time spent on a case, and how cost effective it is - topics that are covered in sections 4 and 5.

3.2 Fee recovery rates

All the banks maintain one of more panels of IPs (as we discuss below) and 37 per cent of firms completing the survey said that they were a member of one or more of these. Despite this, across cases as a whole, appointments from panels seemed to be fairly rare. They were most common for administrations, but even here only two per cent of appointments had been made in this way.

Setting these panel cases to one side, most (91 per cent) of IPs said that they had cases in 2012 where they were the lead or sole appointees and they had recovered less than their headline rate. Of these IPs:

- 73 per cent had experienced a shortfall on an average of 18.2 creditor voluntary liquidation cases each
- 51 per cent had experienced a shortfall on an average of 8.7 compulsory liquidation cases each
- 48 per cent had experienced a shortfall on an average of 8.0 administration cases each, and
- 60 per cent had experienced a shortfall on an average of 12.8 personal bankruptcy cases

It was not possible to calculate exact percentages of all cases where there was not full fee recovery because we only have figures for the number of ***appointments*** in 2012 not for ***cases concluded*** during the year (where the appointments would almost certainly have been earlier than 2012). It is however, possible to use these figures to give a broad indication of the proportion of cases where fees were below headline rates. This would appear to occur in about a half of cases, including: the great majority of compulsory liquidations, about two thirds of administrations; half of creditors' voluntary liquidations and a third of personal bankruptcy cases.

Data on 500 administrations in 2006 that was collected by the OFT for their market study show that the average shortfall was a little over a quarter of the total fee due (£52,315 compared with £71,210).

3.3 Explanations of shortfalls

The IPs who said that they had experienced a shortfall in their fees during 2012, were asked why this had come about. By far the most common reason - both for corporate insolvency and personal bankruptcy cases - was that the realisations had been insufficient to cover their fees in full (see Table 1 below)

Table 1 Explanations of shortfalls (base all IPs that had experienced a shortfall)

	Corporate insolvency	Personal bankruptcy
Realisations insufficient to cover full fee	83%	63%
As a result of negotiations with a secured creditor	26%	5%
Fixed fee agreed at the outset was insufficient	18%	4%
At request of an unsecured creditor	~	9%
At request of an unsecured creditor during the insolvency process	8%	~
At request of an unsecured creditor after case was completed	2%	~
Percentage of realisations agreed at outset was insufficient	8%	6%
At the request of the debtor	~	6%
As a result of a complaint about fees	2%	1%

~ codes were customised for the questions relating to corporate insolvency and personal bankruptcy

The influence of creditors was more apparent for the corporate insolvency cases than it was for personal bankruptcy. And in these cases secured creditors clearly held more sway than unsecured ones.

3.4 What determines the final cost of an insolvency?

The final level of charges incurred in a case is not fully within the control of an IP. In addition to the overall complexity of a case, there are a range of factors over which the IP may have little control.

For example, there are aspects of the work that must be undertaken to meet the legal requirements placed on an IP. For example, one of the IP duties is to investigate the conduct of the directors of an insolvent company and report on this to the Insolvency Service. The requirements for accountability to creditors also come at a cost.

In addition to the IPs own fees and internal expenses, an IP is entitled to claim expenses s/he has paid to a third party such as agents fees, lawyers fees and costs and advertising costs that are incurred in the course of an administration, liquidation or bankruptcy. These can often form a significant proportion of the overall charges

And the relationship that the IP has with creditors and the debtor or directors of a company can be of considerable importance. If any of these parties is uncooperative or disruptive fees will soon mount.

Criticism of the level of IP fees in individual cases often fails to take these factors into account.

4 Creditor control over appointments and fees

The surveys and interviews with IPs and creditors clearly show that secured creditors and some other larger creditors exercise close control over fees when they are involved in an insolvency (and larger corporate insolvencies in particular). In contrast, unsecured creditors seem to exercise (and to be able to exercise) very little control at all, particularly in corporate insolvencies. The reasons for this are complex and go wider than the 'apathy' that is often cited. Creditors' lack of knowledge and understanding of the insolvency process and of their rights; opportunity cost and a feeling of disenfranchisement all play a role. But so, too, do lack of transparency and an inability to exert influence, despite changes that were introduced in 2010 to address the problem of creditor engagement.

In general control is greatest when a single creditor is in a position to drive the process. It is where unsecured creditors have to act in co-operation that the controls become less satisfactory . There is also evidence that company directors who have guaranteed a loan and debtors in cases of personal bankruptcy where there is a surplus of assets also have very little control over the costs that they will, in all likelihood, have to meet.

4.1 Appointing the IP and setting of fees

4.1.1 Role played by secured creditors

Without doubt the secured creditors. and banks in particular, have the greatest control. All major banks operate a panel of some kind from which they appoint to corporate insolvency cases, although they vary in their formality. Some banks have more than one panel - with separate ones for insolvencies of different sizes. These tended to be banks that operated a panel for smaller insolvencies - down to £50,000 in one case. Some also operate a panel for personal bankruptcy cases too, although more commonly they have a small number of preferred firms to undertake this work for them. IPs confirmed that the pressure to reduce fees was far greater in corporate insolvencies than in personal bankruptcy cases.

Those with formal panels will, invariably, negotiate lower headline rates at the panel appointment stage, with discounts varying from 10 to 40 per cent depending on the grade of staff and the bank concerned. These are typically renegotiated every two to three years when firms are invited to submit the rates that they propose to charge for panel work, and to justify these by demonstrating the skills they have and how they add value to a case (by maximising realisations). There is then a process of negotiation. Separate rates are set for London and elsewhere. Most banks agree different rates for different grades of staff, but at least one agrees a 'blended' rate for all grades of staff. Some also include disbursements to lawyers in these negotiations.

Some banks, in addition, operate a tender process for specific jobs. All require an estimate of likely fees at the outset of cases and set a cap at this amount. Even those who have already negotiated a discount at the panel appointment stage would expect to achieve further discounts when making an appointment to a specific case. One bank cited a further 10 per cent discount at this stage. In agreeing a price for a case, they drew on their considerable experience and knowledge to produce their own estimates of costs against which those being proposed by the IP were judged. All claimed to achieve substantial discounts compared with 'normal' headline rates and felt that they had tight control on both fees and disbursements from the outset of a case. One bank cited an example of a large multi-bank case where the IP had offered a discount of 10% on their fees based on their headline rate. After negotiations a 45% discount was achieved. The implicit sanction underpinning all negotiations was to remove a firm from the panel. None of the banks interviewed could remember a firm choosing to leave their panel because the appointments they received were un-remunerative. From this they surmised that (individual cases aside) work was being done on a lower profit margin rather than a loss.

The influence that banks can exert is illustrated by the service, *IP Protect*, that is marketed to IPs, offering to buy out the debts of secured creditors, thereby ensuring that an IP retains an appointment and giving them greater control over the fees that they can charge. The following is an extract from its website.

> *We know there can be tremendous pressure on an Insolvency Practitioner during the early stages of your engagement. Prior to your formal engagement, there is the risk of losing your pre-administration fees but more importantly your entire appointment, with the incumbent lender choosing to appoint their preferred and alternative IP.*
> *This service has been designed to protect your fee income and overall engagement by providing finance to repay the incumbent lender, allowing time for your work with the business and provide an appropriate and planned course of action. We do this through the use of a factoring facility, supported by an all assets debenture amongst other things. When the time is right and if appropriate, we can then appoint under our debenture security.*
>
> ***A recent case study***
> *We were recently approached by an Insolvency Practitioner, at risk of losing their pre-insolvency fees and their appointment by the incumbent lenders. A cash advance of £1.2 million was required urgently in order to secure their own position, as the current lenders were keen to appoint their own preferred IP.*
> *We were able to review and agree a deal to repay the incumbent lenders within 24 hours, with documentation and payout following within just 5 days. In conjunction with the 'Introducing IP', we replaced the existing funders by conducting a swift review of the required security, essentially the sales ledger, and agreeing a deal within 24 hours.*
>
> www.pulsefs.co.uk/insolvency-practitioner-solutions/ip-protect/

It should, however, be noted that in smaller insolvencies, and appointments not made from their panel, the picture was somewhat different, with banks saying that they generally have much less control over the fees and, consequently, encounter problems not unlike those that they, and others, face as an unsecured creditor.

4.1.2 Role played by unsecured creditors

When there are either no secured creditors or all secured creditors have been paid in full, oversight of the IP falls to unsecured creditors. The formal mechanisms for achieving this are creditor meetings (among other things to approve the IP appointment and agree the basis of the fees) and creditor committees (who among other things monitor the work done and fees charged).

The IP must hold a creditor meeting within 14 days of a resolution to wind up a company or within ten weeks of the start of an administration. The only exception is administration cases where there is no expectation of a return to creditors - although creditors can still request one and do so in about one in five such cases.

At this meeting, it is common practice for the IP to seek approval of his/her appointment and the basis for his/her remuneration. As noted earlier, remuneration can be set on a time-cost basis, as a percentage of realisations or (since 2010) a fixed fee. Unsecured creditors vote on both this basis for the fees and on the level of fees that the IP proposes to charge. They also have the right to negotiate a cap on fees at this stage, requiring the IP to seek further authorisation of fees if the cap is likely to be exceeded. Where no creditors vote, fees are set by a court registrar. If a creditors' committee is set up at all, it generally happens at this stage in the insolvency process.

Academic research[4] has shown that attendance at creditors' meetings was poor and that 'creditors routinely abstain from exercising their rights in insolvency procedures'. Subsequent qualitative research with unsecured creditors, undertaken for the OFT review, showed that most of them had not been involved in the appointment of the IP. Indeed many of them did not even know who had been responsible for the appointment[5]. That said, nor was there much appetite among them for any involvement. There were a number of reasons for this. Most felt that they lacked the knowledge to make an informed choice, even if they had been involved in past insolvencies. Some thought that there was, in any case, not much to choose between IPs. Creditors owed relatively small sums of money assumed that they would have little say in the matter. And some trusted whoever was appointed as the IP to do a good job, particularly if it was either a well-known organisation or a smaller local one.

[4] Frisby, S (2006) *Report on insolvency outcomes: presented to the Insolvency Service.*
[5] Office of Fair Trading (2010) *Corporate insolvency: in-depth interviews with creditors: a report for the OFT prepared by Marketing Sciences.*

Interviews with creditors for this review largely confirmed these views and also the low level of attendance at creditor's meetings. Only one of the larger unsecured creditors ever played an active role in IP appointments beyond, the routine approval of the IP being suggested.

In addition, the majority of unsecured creditors in the OFT research did not know who was responsible for deciding how the IP's fees had been determined nor were they aware, when the IP was appointed, of the basis on which their fees would be calculated or that there were potentially different ways of doing this.

Little seems to have changed since the OFT work, only two of the unsecured creditors, both with considerable experience of insolvency work, reported that they ever play an active role determining the basis for and level of remuneration of the IP. Other unsecured creditors contributing to this review unanimously commented on the lack of transparency with regard to the appointment of the IP and particularly the setting of their fees. This is summed up succinctly by someone who was responsible for debt recovery in a local authority:

> *The way fees are charged is a mystery to most of us.*

They felt that they were, in any case, in no position to assess whether an IP's fee proposals were reasonable, particularly where they had no prior experience of insolvency on which to draw. With the two exceptions above, unsecured creditors were either unaware that they could set a cap or lacked the information that would allow them to do so.

IPs identified the low level of engagement of unsecured creditors in IP appointments and fee setting as one of the consequences of the reforms introduced by the Enterprise Act in 2002.

> *When the Enterprise Act came along and the administration process, effectively… you got the director and bank choosing which administrator was appointed and the creditors, generally the unsecured creditors, didn't have much say in the process and lost interest.*
>
> *… where a company does go into administration, and then into voluntary liquidation, there is still a creditor's meeting … but creditors aren't engaging at that point either. So whatever can be done to change that, to improve engagement, that's the holy grail, I think.*

Creditor meetings

The survey of IPs, showed that creditor meetings are held in the great majority of corporate insolvencies. In 2012, they were 'held' in 84 per cent of Creditors' Voluntary Liquidations (CVLs)[6]; 83 per cent of administrations[7] and 42 per cent of Compulsory Liquidations (CLs)[8].

[6] As a creditor meeting should be held in all instance it seems likely that at least some IPs were reporting those where one or more creditors participated

Where they were held the most (92 per cent) were face-to-face; four per cent were correspondence-based; one per cent telephone-based, with almost none held by video-conferencing or email. In 2010, changes were introduced allowing meetings to be held in this wider range of formats to try and increase the level of engagement by unsecured creditors. These figures suggest that there is still a heavy reliance on face-to-face meetings.

Although it is usual to hold one, attendance at creditors meetings is generally poor. IPs estimated that around four per cent[9] of creditors typically attended these meetings - and the comments made in the survey and interviews with IPs and creditors indicated that it is fairly common to have no creditors at all come in person to the meeting - especially in smaller insolvencies. In such cases both the appointment of the IP and the setting of their fees is normally done through the exercise of proxy votes. IPs estimated that, on average, around 29 per cent of unsecured creditors take up the option of voting using the chairman's proxy and around five per cent appoint someone else to cast a proxy vote for them. However, some of the creditor correspondence examined for this review did not include the resolutions that the proxy vote would be used on. These were put to the meeting when it was held. This effectively meant that creditors voting in this way were doing so blind. The interviews with two major unsecured creditors confirmed that this occurred in a significant minority of cases.

IPs were asked for their assessment of how often different types of creditor either attend a creditor meeting in person or cast a proxy vote. Their assessments accord with what the creditors themselves told us and confirm that participation is poor. The consensus seems to be that unsecured creditors 'sometimes' do so (see Table 2 below). HMRC is frequently a creditor in corporate insolvencies and is often the unsecured creditor owed the largest sums of money . Yet, compared with other unsecured creditors it attends and votes much less frequently. Lack of resources and lack of transparency inhibit more active participation, except in cases where director dishonesty or fraud is suspected. In contrast, the Pension Protection Fund plays a much more active role, exercising its influence by voting on resolutions, and amending ones they do not agree with, by chairman's proxy rather than attending in person.

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[7] This is higher that the figure of 61 per cent that the OFT found in their data base of information from Companies House on 500 administrations in 2006.

[8] Percentages are based on reports relating to 685 administrations; 3,439 CVLs; 524 CLs and 3,373 personal bankruptcies

[9] Additionally, two firms, one large and one small, calculated an accurate figure from their records . The large firm found that one per cent of creditors attended in person; for the small one it was 3.5 per cent.

Table 2 How often creditors attend or vote by proxy at initial creditor meetings

	Very/quite often	Sometimes	Rarely /never
Secured creditors	2%	2%	96%
Preferential creditors	2%	23%	74%
HMRC	10%	37%	53%
Other unsecured creditors	14%	72%	14%

Moreover, other than a very small number of organisations with considerable experience of insolvencies, very few unsecured creditors seem to be aware that they are not being asked to rubber stamp the appointment and level of remuneration of the IP.

Secured creditors such as banks seldom attend or use a proxy vote and banks confirmed that they would only do so if they were an unsecured creditor; nor, on the whole do preferential creditors.

Both IPs and creditors commented that attendance had fallen substantially over the last ten years. This was attributed to two factors both of which have reduced the level of assets in the average liquidations. The first of these was the introduction, in 2003, of the administration process following the Enterprise Act 2002. The other was the onset of the economic downturn in 2007/8.

> *I used to do a lot of creditors' meetings. You used to go and there would be a group of creditors and there'd be an IP there and they'd be questioning the director to get to the bottom of various things. A liquidator would be appointed, a committee would be appointed and the committee would then determine what the IP did as regards to the work he undertook and they'd determine his fees. And the general body of creditors who would also be there, your audience basically for some people, trusted the committee to make sure a proper job was being done. And as [colleague] rightly says, when the Enterprise Act came along and the administration process effectively bypassed it, then you got the director or bank choosing which administrator was appointed and the creditors, generally the unsecured creditors, didn't have much say in the process and lost interest.*

Regulatory changes were introduced in 2010 to try and reverse this trend, allowing creditor meetings to be held in a wider range of formats. IPs were asked if these had increased the participation of unsecured creditors. Only two per cent said that they had.

Reasons for non-engagement with creditor meetings

The OFT market study attributed the low level of engagement by unsecured creditors to apathy. Indeed this is often the first response of many IPs and other commentators too. The reasons are, however, more complex than this, as both the

OFT qualitative research with unsecured creditors[10] and information gathered from unsecured creditors for this review showed.

The backdrop to their decision is a perceived lack of transparency and, consequently, of understanding of the process or of the purpose of the meeting. With this in mind, the main reasons for given for non-attendance are the opportunity cost and a belief that they would not have any influence even if they did attend, particularly when the sum of money they were owed was a small proportion of the overall debts. Indeed, when seen against evidence collected by the OFT that very few proposals at creditors' meetings get modified and that fees were modified in only two out of the 500 administrations they investigated, perhaps unsecured creditors' views are realistic and not apathetic at all.

IPs were asked to rank the importance of various factors in incentivising the participation of unsecured creditors in creditor meetings. It is clear from their replies that involvement with appointing the IP and approving their fees is not uppermost in their minds (see Table 3 below).

Table 3 factors that incentivise participation of unsecured creditors in creditor meetings

	Very important	Important	Not very important	Not at all important
If they suspect fraud/dishonest director behaviour	46%	50%	3%	1%
The amount of money they are owed	11%	67%	19%	3%
The likelihood of them receiving a dividend	6%	32%	45%	17%
The desire to be involved in appointing the IP	2%	13%	54%	31%
The desire to be involved in approving the IPs fees	2%	9%	52%	37%

According to IPs the biggest motivator is where they suspect that the director(s) may have acted dishonestly or fraudulently.

> *The key reason for attendance is likely to be to let off steam at directors, after which they have little interest.*
>
> *In my experience only those creditors feeling deeply, personally, aggrieved at losing money are interested in attending meetings.*

Next in importance is the amount of money they are owed, followed by the dividend that they expect to receive. The importance of this last point is underlined by unsecured creditors' much more active involvement in voluntary arrangements (both company and individual).

The submissions and interviews with creditors confirmed the IP perceptions that the biggest motivator by far was a suspicion of fraudulent or dishonest director

[10] Office of Fair Trading (2010) *Corporate insolvency: in-depth interviews with creditors: a report for the OFT prepared by Marketing Sciences.*

behaviour. For those creditors with repeat experience of insolvency work, this was also the main driver for them to become involved in a creditor committee.
One particularly frank creditor said that, in his experience, creditors' meetings are *'rarely attended other than by people who have little else to do'* and that, as a consequence, the average unsecured creditor is effectively *'on his own'.*

4.2 Creditor control over fees

4.2.1 Control by secured creditors

Secured creditors continue to play an active role throughout the insolvency process. They almost invariably sit on creditors' committees, where they are set up, and it is appropriate for them to do so. Moreover, the banks interviewed said that they monitor the work done and the time charged to it, requiring regular reporting to their own bespoke templates and active engagement. They rarely use the standard creditor reports and said that they did not find them useful.

Secured creditor challenges to fees are very common, although they are less concerned with the rate per hour that is being charged than with the quality, efficiency and effectiveness of the work done. Banks scrutinise the number of hours being charged and the accuracy of time recording, check that the appropriate grade of staff is being allocated to specific tasks, that the work is being undertaken efficiently and that the work done is effective in increasing realisations. In the words of one banker interviewed they *'drive the process*'. In most cases they reach an agreement with the IP over the appropriate level of fees to be charged.

4.2.3 Control by unsecured creditors

It is hard to escape the conclusion that the generality of unsecured creditors have very little control over the fees charged by IPs in corporate insolvency cases, other than company voluntary arrangements (CVAs). In theory they would do this through a creditors' committee; but these are very rarely set up as we discuss below.

Submissions and interviews with unsecured creditors showed very clearly that they felt they had no influence at all. This was summed up by one of those who were interviewed, who had himself been an IP previously.

> *Unsecured creditors have no idea whether the initial remuneration 'ask' is reasonable, what that might translate into as an overall bill, what impact that might have on their dividend or, at the end of the job, whether the insolvency practitioner had done the job both efficiently and cost effectively or not.*

And this view was confirmed, spontaneously, by representatives of three of the four secured creditors interviewed.

The recurrent theme among the unsecured creditors who contributed to the review was lack of transparency. The great majority of cases they had been involved in were on a time-cost basis; but they had no yardsticks for assessing whether the hourly rates were reasonable or the time charged to a case was justified. They rarely received an estimate of costs up front and where they did it was given orally and often related only to the early stage(s) of the work whereas creditors with limited prior experience of insolvency often assumed it was for the entire process from beginning to end. They found the progress and final reports they received confusing and lacking the information they needed and, as a consequence, they found it impossible to assess whether the fees charged were reasonable other than in very simple low value insolvencies or bankruptcies. This fuelled a lack of confidence in the fees charged.

A minority of creditors pinpointed problems when administrations fail and a liquidation ensues.

Changes made in 2010, were designed to make it easier for unsecured creditors to challenge the charges being made by IPs. If they want to mount a challenge to an IPs fees, they need to make contact with other creditors unless the amount they are owed is at least 10 per cent of the total owed to unsecured creditors (previously it was 25 per cent). Frequently this is hampered by lack of contact details of other creditors (and a failure to realise that it could be requested) and by the short time periods they have in order to contact and gain the support of others. As a consequence such challenges are rare - except by the larger unsecured creditors who, on their own, account for far in excess of 10 per cent of the total amount owed and so can act unilaterally.

The reported influence of unsecured creditors in personal bankruptcies is somewhat greater, largely because most of them are financial services firms, utility companies or local authorities. Consequently they have more experience of insolvency than the trade creditors that are common in corporate insolvencies. They have more influence still in cases involving individual voluntary arrangements (IVAs), where proposals have to be agreed by at least 75 per cent of creditors by value to be implemented. Indeed, IPs were of the view that fees for IVAs had been reduced substantially and that they frequently found this work unremunerative.

Creditors' committees

The primary task of a creditors' committee is to co-operate with the IP to support and monitor the administration or liquidation - including fees and other costs incurred, as well and the extent and nature of the work done. A committee must comprise a minimum of three and a maximum of five people, who are appointed by the generality of creditors.

Given the low engagement of unsecured creditors with creditors' meetings it is unsurprising that the OFT found that they had been set up in only three per cent of all administrations in 2006. It would seem unlikely that unsecured creditors would form a committee in cases where the assets were insufficient for any distribution to them. But even where there *was* likely to be a distribution, creditors' committees were only set up in 15 per cent of cases. Contributions from both IPs and creditors confirmed the OFT report. In the words of one IP:

> *I have absolutely no committees on any cases. [I have] probably 100 open and no cases whatsoever [with a committee], because there is no interest.*

Two unsecured creditors with regular involvement with insolvencies took rather different approaches to participation. One said that, in his experience committees were set up 'once in a blue moon' but where they are he, or a member of his team, would sit on it. The other said that they would generally do so only if they were approached by the IP because there were suspicions of dishonest or fraudulent behaviour by the directors of a company.

The general consensus of IPs and creditors was that most unsecured creditors have neither the time nor the financial incentive to sit on a committee. In many instances the cost of participating in terms of lost earnings and out of pocket travel expenses would greatly outweigh their share of any increased dividend they might receive.

There were also doubts among creditors about the effectiveness of committees even where they are set up. Those with experience said that, although committees can be effective in reducing fees *'suggesting that there is room for manoeuvre'*, more commonly they did not challenge fees, largely because they lacked the knowledge and expertise to assess them. There was also a fairly prevalent view that, over time, committee members can become closer to the IP and more distanced from other creditors.

Moreover, interviews with IPs and creditors showed that involvement of unsecured creditors falls away over time and IPs often struggle to keep committees quorate.

Comparative research has concluded that engagement with creditors' committees in Germany is higher than that found in England and Wales for two main reasons: committee member are paid (typically between €35 and €95 an hour) and have a greater range of powers. Although IPs have the right to ignore controls set up by a creditors' committee, this rarely happens in practice[11].

Creditor reports

None of the unsecured creditors who contributed to the review felt that the reports they received were valuable. The most common complaint was that they frequently contain insufficient information to allow an assessment of what work has actually been done and what has been charged for it. Typical of their comments are the following quotations from two submissions:

> *Time supposedly spent by various grades of staff is simply listed against vague charge headings and multiplied by hourly charge rates. It is*

[11] Bork, R (2012) 'Creditor's committees: an Anglo-German comparative study' *International Insolvency Review* 21 pp 127-141

difficult to determine that time is 'properly' spent, making cost scrutiny and control virtually impossible and giving IPs virtually an open cheque. Staff allocation is never clearly justified and there is a preponderance of charges at the highest rates.

Our view is that the IP should be capable of producing a cogent, reasoned and persuasive argument to creditors about what he has done, why he did it, how this benefited the creditors and to what extent. This should naturally lead to a justification of why his fees represent reasonable value for money. Unfortunately the nature of the fee-approval regime can lead to compliance-driven reports, generated from templates by junior-level staff, which primarily focus on ensuring that all of the requirements of the statute and regulation are addressed in a somewhat tick-box-like manner. This very often means that the key argument is omitted or lost in the volume, which in turn make it difficult for us to make the objective assessment that is required of us.

During the course of the review a large number of creditor reports was gathered - from IPs themselves and from creditors. This showed them to be highly variable but few conveyed the level of detail that an unsecured creditor needed to assess whether the fees charged were appropriate given the work done.

The best of these contained a great deal of information, but, as the larger creditors with considerable experience of insolvency work and with ex IPs on their staff commented, even these failed to provide them with the information they needed to judge whether the fees and disbursements were commensurate with the work done and whether the work undertaken was appropriate and carried out efficiently.

At the other extreme, there were reports that clearly followed the requirements of the regulations and practice notes (including SIP9 relating to fees) slavishly and often had large amounts of text copied verbatim from previous reports. Consequently, they seemed formulaic and not a genuine attempt to communicate to creditors what they might want to know, including how the case was progressing and what work had been done, with what result and at what cost.

A typical time analysis of costs contained in such reports is given below and was taken from a final report on a creditors' voluntary liquidation.

Classification Of Work Function	Other Director	Insol. Practit.	Senior manager	Manager	Admin	Junior admin	Cashier	Hours	Average hourly rate	Total cost £
Administration/ planning	0.4	4.9	78.2	0.0	69.7	0.0	0.0	153.2	£160.49	£24,578.80
Investigations	13.1	0.0	6.8	1.8	3.4	0.0	0.0	25.1	£207.25	£5,202.10
Realisations/ contributions	8.5	3.7	17.7	0.0	31.7	0.0	0.7	62.3	£161.87	£10,084.80
Statutory	4.8	4.1	17.6	4.8	0.0	24.5	0.0	55.8	£153.32	£8,555.50
Creditors	1.4	0.0	5.4	0.7	14.1	0.0	0.0	21.6	£141.50	£3,056.4
Total	28.2	12.7	125.7	7.3	118.9	24.5	0.7	318.0	£161.91	£51,486.60

The only explanation associated with this table was a note setting out that time is charged in six minute units and setting out the hourly charge out rates for different grades of staff and a note explaining disbursements. There was no description anywhere in the report of the work to which this table refers. Moreover, the annex setting out the 'Time analysis of costs' in this particular report contained two other tables, in addition to the one above, all three with identical column and row headings but the time charged and costs in the remaining cells were fundamentally different. One totalled £43,612.60, the other £28,251.00 with no explanation at all of why they were different from the £51,486.60 in the table above.

The content of creditor reports does not, therefore, seem to be enabling even the most experienced and best-informed of unsecured creditors to assess effectiveness of the work done and the fees and disbursements charged for it, in the way that the secured creditors are able to do.

To be fair, IPs themselves also expressed considerable misgivings about both the length and content of creditor reports, saying that they had become less useful over time.

> *I had to pick up an old report of mine, going back many years… and it was something like six pages long which included a notice of proxy and a receipts and payments account and then just three pages of narrative. But then I compared it to the report I'd written not that long ago on a more recent job, which is more like 25 to 30 pages long. The longer report really told the creditors no more than the other report did.*

Changes introduced in 2010, require a large proportion of information to be included in every progress report. This makes it difficult for the creditor to find the information that is new. And the information IPs are required to include with regard to remuneration has become more detailed with successive revisions to the statement of practice SIP9. IPs, however, criticised SIP9 as being too prescriptive, and often requiring redundant information to be communicated, leaving them with a quandary about deviating too far and finding that they were censured by the RPB that regulated them.

> *I think sometimes creditors lose the will to live when they have to read these reports, because they are complex reports. They are written to a formula which complies with regulation and that quite frankly, in my personal view, is one of the problems.*

Much of the responsibility was put at the door of compliance teams in larger firms and those offering compliance assessment for smaller ones, who were often thought to be too risk averse.

> *I think its probably a uniform message that comes from them, that actually we need to be giving full information and, to a certain extent… can actually be giving out negative information. For example saying that the prescribed part doesn't apply. Well, if it doesn't apply, what's the point in confusing everybody in mentioning it?*

The content and usefulness of existing creditor reports is, therefore, one area in which there seems to be general agreement that change would be beneficial.

4.3 Debtor control over fees

In cases of personal bankruptcy, the debtor (rather than the creditor) may bear the costs of the insolvency. And there was one set of circumstances where debtors were identified in the evidence to the review as being especially likely to incur high costs. This was in applications for annulment - and particularly when the original debt was for a relatively small sum of money (often for council tax arrears) and where property was being sold with sufficient equity to more than clear outstanding debts, so the potential assets were large. In such cases, creditors no longer have an interest, and a range of different commentators remarked that fees are often five figure sums even when the debt being repaid is only a four figure sum. Such cases, are the ones that most commonly find their way into court. Unpicking this situation further, the following points emerge. First, there is the size of the debt that gave rise to the bankruptcy, which will almost inevitably be dwarfed by the IP's fees. The lower limit is currently £750 and has been at this level since the 1986 Insolvency Act. This equates to only two to three hours of an IP's time. The second point relates to the relationship between the debtor and IP. Frequently, personal debtors fail to understand that the IP will have to take into account all other money they may owe (including credit commitments on which they may not be in default); believing that they have only to pay off the debt for which they were made bankrupt. Equally frequently they may have been angry at having been made bankrupt for such a small sum of money and may be angrier still at being told that (after 12 months have elapsed) that their home will be sold to settle the debt. This can lead to lack of co-operation without any realisation that this is costing them money in the form of IP fees. In some cases, mental health problems can exacerbate the relationship further. And finally debtors do not understand that the IP is permitted to charge fees for arranging the sale of their home. On the other hand, evidence was provided to this review to show that, in a minority of cases, the debtor's lack of understanding appeared to lead to higher IP fees than could be justified by the work done

The other area that came to light from the evidence submitted to the review relates to smaller corporate insolvencies where the director(s) of the insolvent company have given a personal guarantee to a secured creditor. Five people who had been in this position submitted details of their case, several of them at the suggestion of their MP. From their submissions it is clear that their frustrations and anger derived from a lack of understanding of their position. All thought that, as a director of the company, and particularly one with a direct financial interest as a guarantor, they should have influence over the fees being charged by the IP and the work that they were doing. None of them was aware that, until the bank formally called on the guarantee, they had no such rights. Until that point, they had to sit by and watch as fees mounted knowing that they would, eventually, be called on to contribute to the fees (if not to meet them in full). They believed (rightly or wrongly) that the bank was making little effort to contain fees because they knew that they could call in the guarantee. In practice, however, it is likely that the insolvency was too small for the bank to play much of an active role.   It is also apparent in most of the cases that the IP had tried to explain the situation but this was frequently perceived as the IP being obstructive, telling them it was *'none of their business*'. This seems only to have served to increase their distrust and anger.   While lack of understanding underpins these cases, it is equally clear that insolvency legislation fails to give them the right to challenge IP remuneration until the guarantee is formally called on and not (as the directors thought) that the IP was being obstructive.

4.4 Challenges to fees and complaints

Some form of challenge to an IP's fees is relatively uncommon but, when it occurs, there is about a 50-50 chance that a reduction in fees would result from it.

In total, nine per cent of the IPs responding to the survey said that, in 2012, they had received at least one complaint or challenge relating to their fees or had been involved in court proceedings regarding fees for cases involving administration, CL, CVL or personal bankruptcy.

The reported level of challenge was higher among those who had taken appointments relating to corporate insolvency (seven per cent) than it was for those who had taken personal bankruptcy appointments (three per cent). It should be noted that there was no overlap between those receiving a complaint or challenge in relation to corporate insolvency and those receiving one in relation to personal bankruptcy. There was no significant variation by the size of the IP firm.

On the one hand, this low level of challenge can be interpreted as an indication of low levels of dissatisfaction with the remuneration of IPs. However, there is evidence that even large and well-informed unsecured creditors found it difficult to mount a challenge in cases and, consequently, did not do so even though they were dissatisfied with the level of IP remuneration.

4.4.1 Challenges to fees

Whereas the banks all said that they frequently and routinely made challenges to the remuneration of IPs (although they almost never used the courts), as a result of their close supervision of the IP's work. In contrast, only one unsecured creditor said that they did so. Indeed, the major unsecured creditors reported how difficult they found it to challenge fees. Even for these major creditors, negotiation at fees resolution was problematic because they found it difficult to assess whether the insolvency had been handled efficiently and in the right way. Often they had insufficient information on which to base a challenge (even with the 2010 changes giving them the right to request further information).

A further barrier for those owed smaller sums of money is the need work collectively with other creditors to mount a challenge and the difficulty of making contact with other creditors whom they did not know. To avoid vexatious challenges, creditors can only issue a challenge if the amount they are owed is greater than 10 per cent of the total debts of a company. Creditors owed small amounts of money can only reach this threshold if they do so as a group who, together, are owed more than 10 per cent of the total debts. In 2010, this threshold was reduced from 25 per cent, but it is clear that the reduced level is still causing problems. Moreover, a time limit of 8 weeks was also introduced at that time which creates an additional hurdle for creditors who need to operate as a group to make a challenge.

Larger unsecured creditors reported that, in their experience, IPs were unwilling to negotiate a reduction in fees, saying that they were charging market rates and all their competitors charged the same or even more. Views on taking cases to court centred on the cost of doing so, and the concern that they would have to meet their own costs while those of the IP would be charged to the estate (and thus to creditors). Moreover, any benefit would be shared among all creditors, so diluting any benefit to them personally.

This was reflected in the low level of challenges reported by the IPs themselves, only six per cent of whom said that they had received one in 2012. All of these IPs reported having had only one such challenge; and these were split evenly between cases of corporate insolvency and of personal bankruptcy. It seems likely that this does not include challenges made by banks, which would be seen as part of a process of on-going negotiation. This represents around 6 complaints per 100 IPs in 2012.

A similar number (five per cent) of IPs reported that they had been involved in a court case regarding remuneration in 2012 and in all instances this was a single case. Again they were split evenly between cases of corporate insolvency and personal bankruptcy. Grossed up this would mean approximately 50 court cases in England and Wales in 2012 - a figure that tallies with estimates provided by court registrars. This represents around 5 cases per 100 IPs in 2012.

In contrast to the evidence submitted by unsecured creditors, half of the challenges and court cases reported by IPs were said to have resulted in a reduction of the level of remuneration.

4.4.2 Complaints

A minority of IPs (eight per cent) said that they had received a complaint in 2012 that related to remuneration. Most of these had received one complaint only; one IP had received two (both in relation to corporate insolvency) and one had received 10 complaints about personal bankruptcy cases (but s/he had received 104 new cases in 2012 which is high compared to other IPs). Taking this into account, there were 11 complaints per 100 IPs in 2012. The level of remuneration was reduced as a result of four in ten complaints.

Complaints to the regulatory bodies were less frequent. Between them the five main recognised professional bodies (RPBs) covering England and Wales[12] reported having received 2.0 complaints relating to fees per 100 IPs in 2012[13]. This included 1.3 complaints about the level of fees per 100 IPs , and 0.7 per 100 IPs relating to fee authorisation. Half of the complaints about the level of fees were judged to be outside the remit of the RPB. And none of the complaints led to a reduction in the level of remuneration charged by the IP. In addition, they reported 3.7 cases per 100 IPs that related to a failure to engage with creditors- principally relating to inadequate reporting and correspondence.

The banks said that they seldom made a complaint about fees and, instead, preferred to control levels of remuneration and work done. Unsecured creditors said that, as with challenges, they found it difficult to gather the evidence in cases where they were unhappy with the level of remuneration. Those with considerable experience of insolvency, said they found it particularly difficult to complain to an RPB and felt the system was '*stacked against them'*. In particular they found the need to set out a case on paper problematic and would have welcomed a dialogue to present their case.

Reports to the Insolvency Service[14] show that, for the generality of complaints in 2011, the most common outcome was a warning or caution (39), followed by an 'undertaking, consent and fine' (17). There were seven reprimands and a fine (two of them relating to fees) and one exclusion and fine. This suggests that the complaints related to relatively minor misdemeanours. However, evidence was submitted to the review suggesting that this is not invariably the case and that some cases go to court where there has been only minor action taken by an RPB. And even a 'fundamental breach of Code ethics' can result in a small fine.

Academic research undertaken in 2007 investigated complaints handling and disciplinary procedures in the insolvency profession[15]. Among its findings include the following that are relevant to this review:

- In-house complaints handling procedures in IP firms were concerned principally with internal risk management and were not generally seen as redress mechanisms for complaints.

[12] Association Chartered Certified Accountants (ACCA); Institute of Chartered Accountants in England and Wales (ICAEW); Insolvency Practitioners Association (IPA) the Solicitors Regulation Authority (SRA) and the Insolvency Practitioner Unit of the Insolvency Service.

[13] This is the same as the level of complaints on remuneration in 2011 that were reported to the Insolvency Service and recorded in the 2011 Annual Review of Insolvency Practitioner Regulation, Insolvency Service May 2012.

[14] 2011 Annual Review of Insolvency Practitioner Regulation, Insolvency Service May 2012.

[15] Walters, A and Seneviratne, M (2008) *Complaints handling in the Insolvency Practices Council.* (Research report for the IPC) available at http://ssrn.com/abstract=1094757; Walters, A and Seneviratne, M (2009), *Complaints handling by the regulators of insolvency practitioners: a comparative study. A report prepared for the Insolvency Practices Council.* available at http://ssrn.com/abstract=1310791

- Complaints handling by the RPBs was strongly linked to regulation and discipline.
- Complaints procedures in the RPBs were regulatory mechanisms rather than redress mechanisms for complainants.
- The RPBs complaints and disciplinary procedures were highly formal, and provided scope for a range of disciplinary sanctions to be imposed on IPs.
- The IS had relatively informal mechanisms for dealing with directly licensed IPs, and no power to impose disciplinary sanctions, apart from withdrawal of authorisation.

The Insolvency Service 2011 consultation on reforms to the regulation of insolvency practitioners specifically looked at complaints and complaints handling and submissions showed that would-be complainants found it difficult to complain and felt that that the system was not independent. The Service has recently announced that a single complaints gateway will be established and publicised and, although individual RPBs will retain responsibility for handling complaints, together they will be issuing common sanctions guidance to provide consistency in outcomes across the RPBs. There will also be a common panel for appeals and reviews. Critics, however, believe that this will be insufficient to address the deficiencies in the current system and that only a complaints mechanism that is independent of the profession would achieve this.

4.5 Compliance monitoring by regulators

All the RPBs are required to monitor IP compliance with regulations and statements of practice and to take steps with those in default to ensure compliance in future. Serious breaches can lead to disciplinary action and loss of an IP's right to practise. Taken together, the evidence collected for this review suggests that RPBs vary in their approach to assessing compliance and that some do so more rigorously than others.

All but one of the five main RPBs covering England and Wales[16] require IPs to complete an annual monitoring form and to send them information on areas of non-compliance. In 2012, 1,064 such forms were completed by members of these RPBs. Failure to obtain proper authorisation for fees was reported by 15 IPs (1.4 for every 100 IPs completing a monitoring form). Details were requested for the number of instances of inadequate creditor engagement but none of the RPBs routinely collected this.

In addition, RPBs undertake a program of compliance visits to IPs. The Memorandum of Agreement between the RPBs and the Service requires these visits to take place every six years but they can be more frequent if areas of concern have been identified in a previous visit to an IP. In 2012, 390 of the 1205 appointment

[16] Association Chartered Certified Accountants (ACCA); Institute of Chartered Accountants in England and Wales (ICAEW); Insolvency Practitioners Association (IPA), the Solicitors Regulation Authority (SRA) and the Insolvency Practitioner Unit of the Insolvency Service.

takers in England and Wales received a compliance visit. This averages at 32 per cent of cases, although there was some variation across RPBs - from 23 per cent to 42 per cent of cases, suggesting that there is a variation between RPBs in the frequency of visits they make to firms.

During 2012, visits made by RPBs identified 12.0 compliance issues relating to fees per 100 IPs. But there was a very wide variation between RPBs indeed; ranging from 0 to 44 instances per 100 IPs . Allowing for the differences in the numbers of IPs regulated by different RPBs, this suggests that there is a big variation in the rigour with which RPBs assess compliance, since it is implausible that there is that level of variation in the actual compliance of the firms they regulate.

In nine in ten of the cases where compliance issues relating to fees were identified it was considered that the problem identified was an isolated case and that proper controls to ensure compliance were in place. Only one in ten were considered to be systemic, and all of them by the RPB with the most rigorous compliance checks. This means that in 2012, there were 11.0 cases per 100 IPs that were considered isolated instances and just 1.0 cases per 100 IPs that were considered systemic.

Of these instances of non compliance about half related to a failure to obtain the correct authorisation of fees (6.4 per 100 IPs) and half (5.9 per 100 IPs) to the level of fees drawn - mainly going beyond an agreed fee cap without the agreement of the appropriate creditors.

In addition to these there were 7.1 instances per 100 IPs of inadequate creditor engagement - although one of the five RPBs covering England and Wales did not record this information. Again a high proportion of these instances were reported by a single RPB, illustrating the variation in the rigour of the checks made. By far the most common issue noted was inadequate reporting to creditors, followed by inadequate notice having been given for a creditor meeting. In most cases the problem identified was considered to be an isolated breach. Only 1.8 cases per 100 IPs were considered systemic - all of them by the same RPB with the most rigorous compliance checks that had identified systemic problems relating to fees.

The RPB that appeared to have the most rigorous approach provided the following details of the approach that it takes.

> *…an IP is expected to rectify the breaches during a monitoring visit such that they will not recur at the next visit. If the breaches are regarded as serious, [we] will accelerate the follow up visit. If serious, but different, breaches are identified at a second visit then [we] will consider regulatory action, such as requesting the Admissions and Licensing Committee to impose conditions on the licence, such as requiring an external review of cases and a report on improvements made. In addition, if less serious breaches recur at a second visit, [we] will consider the need for regulatory action.*

If an IP has more than two visits where there are some serious deficiencies, or there are repeat breaches, then [we] will consider the need to ask the Committee to suspend or remove the licence.

Reports to the Insolvency Service[17] show that the most common outcome for breaches of compliance by RPBs covering England and Wales in 2011 were 'plans for improvement' (29 instances), followed by 'undertakings and confirmations' (19 instances). There were no licence restrictions and only 2 licences were revoked as a result of a compliance breach identified in a compliance visit. In addition, ICAEW issued one regulatory penalty - a sanction that they alone use.

This suggests that most breaches are, in fact, relatively minor. Although once again, evidence submitted to the review suggests that some cases reach the courts that have previously been judged by an RPB to be a minor breach of compliance.

[17] 2011 Annual Review of Insolvency Practitioner Regulation, Insolvency Service May 2012.

5 The consequences of controls not working

In the previous chapter we have seen that the existing controls work well for secured creditors involved in larger corporate insolvencies. But they do not work as intended for unsecured creditors involved in corporate insolvencies, and this is particularly the case for small unsecured creditors with limited or no prior experience of insolvency. The exception to this is successful company voluntary arrangements (CVAs)[18].

On the whole controls also work reasonably well for both secured and unsecured creditors in cases of personal bankruptcy, largely because there are fewer creditors with limited experience of insolvency. And in the area of individual voluntary arrangements (IVAs) creditors have acted aggressively to reduce fees[19]. Here, though, problems are experienced by the debtors who have to meet the costs, especially in cases involving the annulment of a bankruptcy from the sale of the family home.

The key question that needs, therefore, to be asked is does any detriment occur when the controls do not work as intended? IPs have a legitimate expectation that they will be paid for their work and that their out of pocket expenses will be met. And, without doubt, the great majority of IPs are completely honest and generally do a good job, sometimes under very difficult circumstances.

There is a large body of independent evidence showing that where controls work as intended, IPs' fees and other costs are frequently reduced. This final chapter brings together the substantiated evidence that underpins this assertion. It also shows that the problems that have been identified where controls do not work as intended are largely related to inefficiencies that result in costs being higher than might otherwise have been the case rather than a deliberate attempt to inflate fees.

5.1 Remuneration is lower where the controls *are* working as intended

Interviews with staff from banks have shown that, where they are in charge of the process, they are able to negotiate substantial reductions in fees. Hourly rates negotiated for bank panel membership are between 10 and 40 per cent lower than a firm's headline rates. Moreover, they said that further fee reductions (of around 10 per cent) are often negotiated at appointment to a particular case. Banks also exert strict control through the life of a case, checking the amount of time spent recorded for work on different tasks, the grade of staff undertaking the work and the general

[18] Walters, A and Frisby, S (2011) *Preliminary report to the Insolvency Service into outcomes in company voluntary arrangements.*

[19] See for example Milman, D (2008) 'Personal insolvency law and the challenges of a dynamic, enterprise-driven economy' *Singapore Academy of Law Journal* 20 pp 438-463; Walters, A (2009) 'Individual Voluntary Arrangements: a 'fresh start' for salaried consumer debtors in England and Wales' *International Insolvency Review* 18 pp 5-36s)

efficiency and effectiveness of their work. In doing so, they are able to challenge fees and other costs as they accrue and frequently do so.

This last point was picked up in the analysis undertaken by the OFT market study[20]. This was based on modelling, using regression analysis, of data obtained from Companies House on 500 administrations in 2006 and showed that, all other things being equal, IP fees are nine per cent higher when secured creditors are not affected (either because they have been paid in full or have no secured interest in a case). This, they estimated, is the case in 37 per cent of cases.

In a robust response to the OFT report[21], R3 , the association representing insolvency practitioners, has claimed that the analysis shows a correlation rather than demonstrating causality. In other words, there is a statistically significant link between higher fees and secured creditors not being affected by their level. But the research does not show that the higher fees have occurred *because* secured creditors are unaffected. Moreover, it has been claimed by the IP profession that more work is involved when control is in the hands of unsecured creditors. To these comments one might reasonably add that the main reason why IPs are unable to recover their costs is the level of assets available not to the pressure of secured creditors (see section 2.3).

To assess the validity of these criticisms, the methodology was investigated in some detail. In fact the modelling was of hourly discount rates, so the criticism that more work is involved in dealing with unsecured creditors does not apply. Moreover, the analysis controlled for the level of assets available. The methods used were robust and, like the OFT, I would conclude that the results are not only statistically significant but are almost certainly an under-estimate since they take no account of discounts negotiated on appointment to a bank panel or when the bank appoints an IP to a case. As for the criticism that the results do not demonstrate causality, that is certainly the case and the OFT do not claim otherwise. However, it is difficult to identify a more plausible explanation, given the wealth of evidence that banks exert downward pressure on fees throughout a case, while unsecured creditors generally do not do so. Moreover, representatives of two banks commented that they were aware that remuneration tends to be higher where they are unsecured creditors.

There is other evidence that close control by a single body creates a downward pressure. A small minority of unsecured creditors are repeatedly involved in insolvency cases and do try to negotiate caps on fees and mount challenges to remuneration. Where they do so, they are frequently successful. One such creditor said that they estimated that they challenged the level of remuneration in about half of the cases that they are involved in, and in the great majority of these resulted in a reduction, averaging 15 to 20 per cent of the charges billed.

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[20] Office of Fair Trading (2010) *The market for corporate insolvency practitioners: a market study.*
[21] R3 (2010) *OFT market study into corporate insolvency: R3's response.* available at http://www.r3.org.uk/media/documents/policy/policy_papers/corporate_insolvency/R3_responds_to_OFT_recommendations.pdf

Academic research[22] on administrations also reached the conclusion that banks and a small number of major unsecured creditors '*do a good job at controlling costs*' but *'once secured creditors lose their incentive to monitor the IP because there is enough in the estate to pay the secured creditor in full, further realisations tend to be swallowed up by increased fees because unsecured creditors are weak monitors'.*

In England and Wales, if insufficient votes are cast at the creditor meeting, fees are set by a court registrar. It was estimated that they reduce fees in between ten and fifteen per cent of the cases that come to them.

The situation in Scotland, is somewhat different from that in England and Wales. In corporate insolvency cases where no creditors' committee is set up, IP fees are approved by IPs acting as court accountant reporters. In the Glasgow Sheriff Court and the Court of Sessions a panel of IPs is maintained that carries out this work. Elsewhere, it is the IP who will nominate a local IP to be appointed as court reporter. The OFT market study included interviews with six court reporters in Glasgow, three of whom were able to provide full information about the cases they had examined. This found that, across the 95 cases they had examined (that is not just those where a reduction was recommended) , the average percentage reduction in fees was 23 per cent. It should be noted, however, that the percentage varied considerably between these three court reporters and also that a fourth court reporter estimated that he reduced fees in about 10 per cent of the cases he examined.

This exercise was repeated for the current review and, in the time available, three court reporters in different parts of Scotland were able to provide some information on their court reporter work. All three are members of the Court of Sessions panel; one is also a member of the Glasgow Sheriff Court panel and the other two receive appointments from other IPs. They varied greatly in the numbers of audits they were involved in: one received a 'handful' a year; another had one a month, and the third had received 37 cases for audit during 2012. The reporter with the largest caseload gives all cases broadly the same level of scrutiny; the other two handle cases differently according to the size of the fee. Cases where fees are under £5,000 they generally find need little scrutiny while the very large cases (with fees in excess of £50,000) they scrutinise very stringently, checking the quality of the work done, its timeliness and assessing whether or not it represents value for money. The person with very few cases was unable to generalise about the outcomes of her audits other than to say that she reduced fees in one case in 2012. The reporter who receives about one case a month said that the fees were reduced in about one in six (17 per cent) of these - but pointed out that these tended to be the ones with the highest fees so the percentage by volume could be higher. The third court reporter was able to provide details, in the form of a spreadsheet, of the 143 cases he had received in the six years since 2007. This showed that fees were reduced in 35 per

[22] Armour, J, Hsu, A and Walters, A (2007) 'The costs and benefits of secured creditor control in bankruptcy: evidence from the UK' *American Law and Economics Association Annual Meetings* 2007 Paper 76 http://law.bepress.com/alea/17th/art76; Armour, J, Hsu, A and Walters, A (2006) *The impact of the Enterprise Act 2002 on realisations and costs in corporate rescue proceedings. A report prepared for the Insolvency Service.*

cent of cases - by an average of 23 per cent (equivalent to an average of £11,570). The range of reductions was from 1.3 per cent to 100 per cent, and in cash terms from £4 to £137,556, although in the great majority of cases (33 of the 35 per cent) it was over £1,000 and in seven of the 35 per cent it was in excess of £10,000. In addition:

- disbursements were reduced or disallowed in five per cent of cases audited;
- audit deficiencies were found in 11 per cent of cases;
- compliance matters in 10 per cent
- and 'other deficiencies' ranging from administration and VAT errors to professional negligence, in seven per cent.

Just under half (48 per cent) of the 143 cases got a clean bill of health.

In Scottish personal bankruptcy (sequestration) cases, the Accountant in Bankruptcy has the power to determine and audit fees where an IP is appointed as trustee. In 2011/12 this accounted for 24 per cent of all sequestrations (it ranges from 20 to 30 per cent across different years). All cases are determined but the level of audit undertaken varies according to the level of the fees and a risk assessment. A comprehensive analysis is undertaken for all cases where the fees are greater than £10,000 in the accounting period. Below this amount cases are checked for the work done and the grade of staff who did it. Most fees are found to be '*reasonable*' but it is estimated that they are reduced in 10 to 15 per cent of cases. The most stringent checks are reserved for the one per cent or so of cases where fees exceed £15,000 and for these cases more detailed statistics are maintained on the outcomes. In the year 2011/12 37 per cent of the cases subject to this full audit resulted in a fee reduction. In these cases the average fee claimed was £13,600 and the average fee reduction following the audit £3,250 - a 23.9 per cent reduction. During the previous year, 2010/11, the figures were somewhat lower - 25 per cent of cases had fees reduced by an average of 7.8 per cent.

It is, of course, possible that the very existence of the court reporters and Accountant in Bankruptcy audits exert a moderating influence on all fees. It was not possible within the resources of this review to measure this. But staff in a major unsecured creditor said that, in their experience, fees in Scotland are generally in the region of 15 to 20 per cent lower than in England and Wales.

Taken together this represents a considerable body of information indicating that, where controls work as intended, IP fees can be considerable lower than where such controls are absent. This should not, however, be (mis)interpreted as IPs deliberately overcharging unsecured creditors[23]. But nor can it reasonably be interpreted as the free market working.

[23] R3 (2010) *OFT market study into corporate insolvency: R3's response.* available at http://www.r3.org.uk/media/documents/policy/policy_papers/corporate_insolvency/R3_responds_to_OFT_recommendations.pdf

5.2 The grounds on which successful challenges to remuneration levels are made

Possible explanations for higher fees where controls are not working can be gleaned from the grounds on which successfully challenges to remuneration levels are made. A flavour of some of these can be gleaned from reported court cases[24]. The key areas they identify can be summarised as:

- Lack of control/effective management by the IP;
- Significant departures from costs estimates;
- Lack of transparency about charging;
- Charging a rate that the case cannot stand;
- Over-managing and to much time allocated to 'reviewing' ;
- Not giving 'value' in terms of realisations;
- Use of targets - staff having to record x hours per day or week;
- Over-charging for sub-contractors (solicitors, agents etc);
- Inappropriate choice of subcontractors, and
- Loss of confidence in the IP - often through poor or lack of communication.

It is, however, important not to generalise from reported cases since, by definition, something went wrong which resulted in them going to court. And, as discussed earlier, very few cases find their way into the courts.

However, both the written submissions and the interviews for this review also identified similar key areas where successful challenges to levels of remuneration are made. These all come from authoritative sources and are based on first hand experiences of working in the insolvency profession and/or challenging fees in a range of different settings. In all instances, evidence was obtained to substantiate the points that were raised and each of the issues reported below were raised (unsolicited) by at least five, and often more, sources that are independent of one another.

Four main areas were identified; hourly rates and what they include; inefficient working and staff management, time recording and cost-ineffective working.

[24] *Freeburn v Hunt* [2010] BPIR 325
Hunt v Yearwood-Grazette [2009] BPIR 810
Simion v Brown [2007] EWHC 511
Re UIC Insurance Co Ltd (No 1) [2006] EWHC 217
Re UIC Insurance Co Ltd (No 2) [2007] BPIR 589
Re Cabletel Installations Ltd [2005] BPIR 28
Re Independent Insurance Co Ltd [2002] EWHC 1577
Re Independent Insurance Co Ltd (No 2) [2003] EWHC 51

5.2.1 Hourly rates and what they include

This point was raised by both secured and major unsecured creditors; IPs themselves and also by registrars. Typically this focussed on high hourly rates being justified as being all inclusive, but separate charges being made for made for items contributors to the review considered ought to be included in the overhead. Charges that attracted a good deal of comment included:

- charging for the time of work experience and trainee staff and for their training by more senior staff;
- charging for the time of secretaries and support staff carrying out routine tasks (eg for a cashier to raise a cheque and put it in the post);
- hire of the IP firm's own rooms;
- stationery and photocopying (examples provided included: an IP repeatedly charging £1.08 for files to a case where £50,000 owed to creditors would be written off; charges of £1 a page for photocopying and £2.08 for car parking on a case with fees totalling £39,000 and an average hourly charge out rate of £263.75; mobile phone charges of £5.01 on a case with total IP costs of almost £268,000 and an average hourly rate of £345.96 and finally fees of £1,079 postage, £709 for telephone calls and £538 for stationery on a case where IP remuneration of in excess of £9 million was being claimed.)

Such charges are permitted and are not challenged by the RPBs. As a compliance adviser commented, some IPs are *'not afraid of charging a fee, but they work within the rules and their own moral compass'*. Even so, they are routinely disallowed by registrars in the courts. And while some of them do not amount to a substantial amount of money, they clearly create, in the minds of creditors generally, an unfortunate image of IPs seeking to make every penny out of the cases they handle.

Further, several authoritative contributors said that, when challenged either by creditors or in the courts, IPs seldom provide an explanation of their hourly rates by reference to objective criteria, such details of the overheads included and the amount they account for, and the proportion of time worked by an IP that is chargeable to cases. Instead they generally justify their fees by claiming that they are the 'market rate' for IPs and other professionals. Reference is invariably made to the fact that the case concerned was complex, involved a high level of risk and that the level of claims against the estate was high. More than one of the people commenting on this said that the complexity of cases was over-stated and they were rarely told that a case was a fairly standard one, but that there were things that could have been done better or more efficiently or the realisations ought to have been higher so perhaps a reduction in fees was appropriate. They believed that, by adopting this approach, IPs undermined the confidence others have in them.

5.2.2 Inefficient working and staff management

Inefficient working and staff management was also frequently mentioned and the banks, in particular, regularly mounted successful challenges in these areas. Common challenges included:

- too many people being assigned to a case, leading to extra time being spent on meetings, case management and case reviews;
- more hours being charged for a task than could be justified by the amount of work done;
- two people being used for a task when one would have been sufficient.

Information provided by Scottish court reporters included cases being transferred between IPs, offices or even firms that were at the instigation of the IP firm itself, not the creditors, and time being charged for case familiarisation. This was subsequently disallowed by the court.

5.2.3 Time recording

Several contributors were also in a position to comment on time recording practices, including IPs themselves and also others who mount or consider challenges to remuneration levels. They were unanimous in saying that practices were variable. Here there were two issues, how time is actually recorded and being unable to tie time to the tasks done.

Some IPs record the time each time they move to a new task; some estimate the time at the end of the day - or even week!. Those estimating tend, therefore, to charge time in half hour or full hour blocks (five or ten, six minute accounting units). Examples of such time sheets were provided to this review. At its worst, examples were quoted of '*time dumping'* - allocating time to the case with the highest level of assets - by a small minority of IPs.

A difficulty that those mounting or assessing challenges frequently face, is being unable to use time records to tie the time spent to the tasks done or even the person (as opposed to just the grade of the person) who did them.

5.2.4 Cost ineffective working

The final area that was mentioned by many authoritative contributors related to work not being cost-effective. Indeed one bank said that the quality of the work done was, in their experience, more of an issue than the level of fees. The main area of concern was, as might be expected, that the level of realisations did not justify the time charged for this activity. A further concern was time being spent on trying to recover contractual debts that were clearly never going to be recoverable.

This was also a common concern among 'lay' contributors including trade creditors, company directors and personal debtors.

5.2.5 Other areas of concern

In addition there were several other areas of concern - each raised by more than one authoritative contributor, IPs among them. These included:

- levels of proposed remuneration for simple cases being at the same as those for complex ones;
- larger firms (with higher hourly rates) taking cases that could be done as well (if not better than) a small local one;
- the level of fees charged for the provision of simple advice and assistance with form filling in cases of personal bankruptcy;
- and, more seriously, time being charged for work that would not have been done - for example, time charged to the sale of a business after it had been sold.

6. Conclusions and proposals for change

The evidence provided to the review suggests that the current system of controls on IP remuneration works as intended where a secured creditor plays an active part in an insolvency. For the most part this applies to larger corporate insolvency cases. Here there is a degree of competition both for IPs wanting to join and remain on the banks' panels and, in some cases, a limited tendering process for individual jobs as well. Banks effectively act as a 'client' to whom the IP works. And there is effective ongoing oversight that the work is done efficiently and is effective and that the time charged is for work that is necessary and properly performed.

On the other hand, there is clear evidence that in a sizeable minority of cases, where control of the IP's remuneration and disbursements lies in the hands of unsecured creditors collectively, the current provisions through which they should exert that control are not working as intended. This occurs more commonly in corporate insolvencies than in personal bankruptcies in part because the creditors are much less likely to have experience of more than one insolvency[25].

In such circumstances there is very little real competition for jobs. There is also usually no identifiable 'client', and the IP will be working to the generality of unsecured creditors most of whom they will have very limited, if any, contact with beyond confirming their claim. Moreover, other than the small number of large unsecured creditors who account for more than 10 per cent of the estate, most have to work in conjunction with others they don't know and would find it difficult to contact.

In addition, there is usually no effective oversight by unsecured creditors of the work being undertaken by the IP or of the time being charged for it. A number of reasons have been identified for this, including: lack of engagement by creditors; the way fees are charged; shortcomings in existing Practice Notes and current limitations in compliance monitoring by regulatory bodies.

On the whole there is very limited engagement by unsecured creditors, few vote at creditors' meetings, even fewer attend these meetings in person and creditor committees are seldom set up. There are two main explanations for this low level of engagement: limited creditor knowledge and understanding which is compounded by the inadequacy of the information to creditors, and opportunity cost considerations. While this applies across all types of corporate insolvency, there are two circumstances where the legislation inhibits engagement by unsecured creditors. This includes administrations, where there is no requirement to hold a creditor meeting at the outset. It also applies to cases where it only becomes clear some time into a case that there is likely to be a distribution to unsecured creditors and the secured creditor, having been paid in full, ceases to exercise oversight. Even

[25] In corporate insolvency cases many creditors are trades-people; whereas in personal bankruptcy ones financial services firms and local authorities predominate.

though oversight then passes to the unsecured creditors there is no requirement to hold a creditor meeting at that point.

The fact that the majority of cases are charged on time-cost basis means that a creditor needs considerable knowledge and skill to exercise oversight. Many of the unsecured creditors involved in corporate insolvencies lack both. And, because fees tend to be approved and drawn in stages as the case progresses, any knowledge and expertise an unsecured creditor may build up over the duration of a case could come too late to influence more than a small residue of fees. Moreover the lack of fee estimates or fee caps at the outset of a case means that unsecured creditors cannot engage in any meaningful oversight until the time has been spent and they are consequently in the position of having to mount a challenge if they are not content. Other than the small number of large unsecured creditors who account for more than 10 per cent of the estate, most have to work in conjunction with others to do this. Moreover, there is only a eight week window in which to do this.

The existing codes of practice and the associated regime for compliance monitoring is inadequate when it comes to remuneration. This means that independent oversight to ensure that time charged is for work that is necessarily and properly performed is largely absent. This leaves an unsecured creditor only with recourse to the courts. The costs and skill required act as a deterrent to them taking fee challenges to court.

There are also two sets of circumstances where safeguards for debtors and company directors seem inadequate. These include annulments of personal bankruptcies through the sale of the family home, where the original debt was for a very small sum, and company directors who have given a guarantee to a secured creditor who have no rights as contingent creditor until that guarantee is called in. Together these account for a large proportion of the complaints that reach MPs and Ministers.

The review has received clear evidence that in circumstances where the controls *do* work, fees can be considerably lower. It shows that the OFT estimate of the size of this reduction (nine per cent) is probably conservative. In contrast, the OFT calculation that this applies to 37 per cent of cases may be an over-estimate. Some very authoritive contributors to the review have been able to identify specific areas where successful challenges to fees are made. These include what overheads are covered by headline hourly rates, the way time is recorded, and failure to demonstrate that work undertaken was necessary, efficiently carried out or properly performed. It is important to note that these should not be (mis)interpreted as a deliberate intention to overcharge where controls are minimal or absent. But nor can it be interpreted as a free market working.

6.1 Proposals for change

Because, in general, secured creditors have systems of control that provide some degree of competition and strong oversight any changes should be limited to the (sizeable) minority of cases where control is intended to be exerted by unsecured creditors, particularly where no creditor committee has been set up. And although the focus is on corporate insolvency for the reasons outlined above, many of the suggestions made below would equally be of benefit in personal bankruptcy cases too. There is also a short section covering the situations where a personal debtor or company director will effectively be responsible for meeting the IP's remuneration and other disbursements and costs and where controls are either absent or not working as intended.

It is unlikely that a single change would deal with all the key issues that have been identified by this review. That will require changes in a number of areas in combination as outlined below.

6.1.1 Increasing competition

As the starting point is that there is evidence of market failure, the usual response would be to identify ways of stimulating greater competition. But, given the nature of the work undertaken by Insolvency Practitioners this is not an easy thing to achieve. Indeed, the Office of Fair Trading market review similarly concluded that there was market failure yet proposed only regulatory remedies.

In contrast, an enquiry by the Economic References Committee of the Australian Senate did explore market solutions in their report *'The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework'* [26]that was published in September 2010. In this they considered the potential for competitive tendering when IPs are appointed to a case and concluded that although it would be *'appealing in principle'* it would be '*unreasonable given that the complexity of an insolvency job is often not apparent prior to an appointment*'.

In a subsequent judgement, Judge Finkelstein took *'a different view from that taken by the Senators*'. He identified a number of benefits of a competitive tendering process in the Australian context, including:

- It would secure the independence of the IP.
- Fees would be lower.
- More information would be made available to allow an assessment of whether or not fees are reasonable.
- The creation of opportunities for new IPs to enter the market.
- The prevention of cosy relationships being developed between IPs and creditors such as banks and finance companies and also between IPs and lawyers who refer work to each other.

[26] In a great many respects the situation in Australia has much in common with that in the UK. Insolvency legislation is very similar, cases are normally charged on a time-cost basis and attendance by unsecured creditors meetings is low. And the Senate enquiry was prompted, in part, by concerns about the levels of remuneration of IPs.

At the same time he also identified some 'downsides', although he did not feel that these outweighed the advantages above:

- Price competition could lead to lower quality work, with corners being cut to preserve profits.
- The difficulty of comparing bids on criteria other than price.
- The lack of an institution with the necessary skills to manage a tender process; the options he considered were the courts, the regulator (ASIC) and creditor committees.
- The shortage of IPs willing to bid against those known to deliver low-cost work but with low-quality .
- A tender process could be too slow for cases where an IP needs to be appointed swiftly.

These are very real concerns that may well rule out competition in the UK. Never-the-less the potential for limited competitive tendering in the UK is worthy of further consideration.

6.1.2 Information disclosure and transparency for creditors

The next option is to look at whether greater information disclosure and transparency could increase either competition or the ability of unsecured creditors to oversee and influence fees as the secured creditors are able to do. Here there are two main areas that need to be addressed:

- Information provided by the IP to creditors about the time spent on a case and fees charged.
- Information to help unsecured to assess whether those fees are reasonable.

Beginning with the information provided by the IP to creditors, it is common ground both inside and outside the insolvency profession that, over time, reports to creditors have become longer, more formulaic and less useful to creditors. Both submissions to the review and discussions at the subsequent round table identified this as an area where change is needed, with SIP9 needing radical revision or replacement. Moreover, creditors only receive any real information about the fees charged after those charges have been incurred and at the round table it was agreed that, where the IP is proposing that remuneration should be on a time-cost basis, creditors could and should be given an estimate of the costs at the outset of the case, alongside the headline rates. Here there is much that we can learn from Australia and from the Insolvency Practitioners Association of Australia (IPAA) Code of Professional Practice in particular[27]. This detailed document has three primary purposes:

- To set standards of conduct for insolvency professionals;
- To inform and educate IPA members as to the standards of conduct required of them in the discharge of their professional responsibilities; and

[27] http://www.ipaa.com.au/docs/about-us-documents/copp-2nd-ed-18-1-11.pdf?sfvrsn=2

- To provide a reference for stakeholders against which they can gauge the conduct of IPA members.

It requires IPs to give creditors, at the time the method of remuneration is being agreed, information about the work that it is anticipated will need to be done and to agree a cap on fees (see section 6.1.4 below). This cap can only be increased by the IP returning to creditors with a detailed explanation of why it has been exceeded and full justification for the revised costing. The Code also contains detailed coverage of remuneration reporting, requiring IPs not only to account for the work done but also to show that it was undertaken efficiently and that the time spent was both necessary and work properly performed. It includes detailed examples illustrating where each of these criteria could not be considered to have been met and where work should not be charged to a case. These examples echo the grounds on which successful challenges are mounted to IPs fees in the UK. The Code is reinforced by a Remuneration Request Approval Report template sheet[28] that sets out the format for the detailed reporting of both IP remuneration and disbursements and is more detailed than SIP9. This is in a format that would provide creditors with the information they need to exercise oversight, and would be easy to populate from records collated from timesheets completed by individual members of staff. A detailed Code of this kind would be very difficult to compile by committee and would require a single body, almost certainly the Insolvency Service in consultation with the insolvency profession, to do it. Once written, though, it could be used as part of a self-regulatory regime.

Such disclosure is only part of the information needed by creditors who, for the most part, will need some contextual information from an independent body to help them assess the reasonableness of the remuneration and disbursements being proposed . The Australian regulator (ASIC) has produced a helpful information sheet for unsecured creditors setting out how they should approach this task[29]. They also publish detailed information on the fees charged each year for insolvencies of different types, by industrial sector, and by State[30]. More detailed sets of tables are provided for each of the four industrial sectors accounting for the largest number of insolvencies plus one for all other insolvencies, which set out the levels of remuneration by type of insolvency within State[31]. So, for example, a creditor can identify the range of fees charged in 2011/12 for the 109 liquidations involving construction firms in Western Australia.

Improved information in both of these areas (reporting by IPs and contextual information) would be especially helpful to the organisations who are regularly unsecured creditors in insolvency, for example local authorities, HMRC and the

[28] http://www.ipaa.com.au/about-us/ipa-publications/code-of-professional-practice

[29] http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Approving_fees_guide_for_creditors.pdf/$file/Approving_fees_guide_for_creditors.pdf

[30] http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/2011-2012%20ASIC-Insolvency-statistics-series3.1.pdf/$file/2011-2012%20ASIC-Insolvency-statistics-series3.1.pdf

[31] http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/2011-2012%20ASIC-Insolvency-statistics-series3.2.pdf/$file/2011-2012%20ASIC-Insolvency-statistics-series3.2.pdf

Institute of Credit Management. And both would be important even if there were more competition. For this reason, the Insolvency Service should explore the possibilities of following the Australian examples described above. Although the need is perhaps greatest for unsecured creditors in corporate insolvencies, it could be equally helpful for creditors in personal bankruptcies too.

6.1.3 Increasing unsecured creditor engagement

Even together greater information disclosure in these two areas would almost certainly not be sufficient to encourage many unsecured creditors in corporate insolvencies to become more engaged in the process. Limited creditor engagement in cases of corporate insolvency is not a problem that is peculiar to Britain. And even with the additional information disclosure described above, creditor engagement remains a problem in Australia.

In many jurisdictions, the Crown plays a much more active role in insolvencies where it is a creditor than is the case in the UK. The OFT market review concluded that HMRC should be more active as it is frequently a creditor in corporate insolvencies and often the unsecured creditor owed the largest sum of money. This was discussed at some length in the review round table where there was a widespread desire among all stakeholders for HMRC to play a greater role. However, given the current restrictions of departmental spending, HMRC is having to prioritise cases where there is evidence of potential dishonesty or fraud by company directors. In contrast, the Pension Protection Fund already plays an active oversight role and it might be expected that improved information disclosure would allow them to be more active still. But, unlike HMRC, they are a creditor in only a minority of insolvencies. By working together the two Crown creditors (HMRC and the Redundancy Payments Service) and the Pension Protection Fund could provide effective oversight of cases where the IP fees are above a minimum threshold. While their involvement would not solve the problem of creditor engagement generally it would ensure that oversight was exercised that would be in the interest of unsecured creditors as a whole. For this reason, the Insolvency Service should convene a meeting of the representative of HMRC, the Redundancy Payments Service and the Pension Protection Fund to discuss how, between them, they could exercise greater oversight. In time, the cost of oversight could be covered, in part if not in full, by the increased dividends received. But if resources would be required for the Crown to play a more active role, the potential should be investigated for allocating unclaimed, indivisible account and reserve fund monies from insolvencies, that are currently returned to HM Treasury. Lessons might be learnt from the Big Society Trust, which is financed by money that is released for social spending through the Dormant Accounts Scheme.

In Austria, lack of individual creditor engagement has been overcome through the creation of commercial bodies that represent creditors collectively. There are four[32]

[32] Three of these represent creditors the fourth employees.

creditor protection associations that are privileged under Austrian bankruptcy law. They may request information and file appeals during pre-bankruptcy proceedings and can become members of the creditors' committee, which supervises and supports the trustee in bankruptcy in complex insolvency cases. These associations have been in existence for between 20 and 25 years, and evolved out of organisations providing debt recovery services for creditors . They are now an important part of the insolvency world, representing the interests of small unsecured creditors who would, in other jurisdictions, almost certainly play no role in the insolvency proceedings. When an insolvency case goes to the court the associations have access to the list of the creditors involved so that they can write to them to offer their services. Creditors accepting the offer will pay a small fee (usually €100 to 300, depending on the amount of money they are owed) for which the association will establish their claim against the estate and represent the creditor (along with others also becoming their clients) throughout the insolvency proceedings. This includes sitting on any creditor committee that is set up. As a member of a committee, the associations will, collectively, also a receive a fee that is a percentage of the fee that is paid to the Insolvency Practitioner at the end of the case; 10 per cent for an insolvency , but 15 per cent for a 're-organisation' (roughly equivalent to an IVA or CVA) . This is divided among the associations involved in an insolvency *pro rata* to the creditors they represent. It should, however, be noted that, in Austria, Insolvency Practitioners' remuneration is a set percentage of realisations, with two sliding scales, one for the secured debts and one for unsecured, and linked to the level of assets realised. So the role of the creditor protection associations is somewhat simplified. Never-the-less, the role they play is broadly similar to the role played in IVAs by organisations such as TDX. The key differences being that their role is recognised by legislation and the courts and the formula by which they are paid, which makes it possible for them to represent small trade creditors. This is a model that is worthy of closer scrutiny to see how transferable it would be to the UK context and what changes to the UK regime, if any, would be required to make it more transferable. In doing so, lessons might usefully be learnt from the experiences in Germany where similar organisations have recently been set up.

Germany has, in fact, taken several steps to encourage greater creditor involvement. Creditors who sit on committees are paid a modest fee for their input, which would address the opportunity cost disincentive identified in this review. Even so creditors' committees are estimated to be established in just 15-20 per cent of cases[33]. The 2012 Reform Act on insolvency in Germany directly addresses the issue of creditor engagement and obliges the court to set up a preliminary creditors committee if requested to do so by either a creditor or the debtor. This excludes insolvencies of small firms and to qualify the insolvent company should have reached at least two of the following three thresholds in the preceding business year:

- A balance sheet of €4.84 million (after the deduction of negative equity)
- A revenue of €9.68 million, and
- 50 employees.

[33] Bork, R (2012) 'Creditors committees: and Anglo-German comparative study' *International Insolvency Review* 21 pp127-141 http://onlinelibrary.wiley.com/doi/10.1002/iir.1200/full

The court may, however, refuse to appoint a preliminary committee if the business has stopped trading; the appointment would lead to significant delays that would have an adverse effect on the financial situation of the insolvent company, or the appointment would be too costly relative to the expected insolvency estate.
The new regime anticipates that the following creditor groups will be represented on the committee: secured creditors; creditors with the highest claims; creditors with smaller claims and employee representatives. Participation is not, however, obligatory. The primary purpose of the committee is to appoint the insolvency practitioner, and not the oversight of work done or levels of remuneration.

So far the focus has been on ensuring that creditors engage where they have a right to do so. But there are two sets of circumstances where unsecured creditors have limited opportunities for engagement. These are in administrations, where there is no requirement for an IP to hold a meeting at the outset, and cases where it becomes clear that the secured creditor(s) will be paid in full and oversight responsibility passes to the unsecured creditors although there is no requirement to call a creditor meeting. These are both areas that merit reconsideration to see if more control can be given to unsecured creditors.

6.1.4 Simplifying the process of oversight by unsecured creditors

Where remuneration is based on a time-cost basis, with only the hourly rate known in advance, a creditor needs considerable expertise to oversee cases and engage in a meaningful discussion of the work done and the level of fees and disbursements charged for it. In fact the organisations that do provide this oversight generally have staff who are trained IPs to undertake it. This is an expensive resource and one that only the creditors who are regularly involved in insolvencies and are owed large sums of money could justify.

The other option would be to simplify the oversight needed by looking again at the way that fees are determined. Section 6.1.2 above raised the issue of providing estimates of likely costs at the outset of a case, along with a detailed explanation of what can be done for this money. This would be a considerable advantage for the larger unsecured creditors, especially if it were married with a fee cap and a need to return to creditors to justify and seek approval of additional fees (as in Australia).

A more radical change in the basis for remuneration could make oversight easier still. In some jurisdictions the main or only method of setting an IP's remuneration is as a percentage of realisations (and this was also much more common in UK in the past). Moving to this as the presumed method for setting remuneration in the UK would, however, be problematic as creditors currently have responsibility for setting the percentage and they lack the knowledge and skills to determine the rate that would be appropriate in a particular case. Change in this area would almost certainly require a more nuanced approach, with a statutory scale that links the percentage to the level of assets realised to ensure that IPs would be prepared to take on cases where realisations are likely to be low. And, as in Austria, there would need to be separate scales for the secured and unsecured assets.

A more promising approach may lie in the 2010 Insolvency (Amendment) Rules, which allow for different methods of charging for different aspects of a case. These appear to have been little used by IPs. This is an area that should be explored further, for example fixed fees for statutory duties; a percentage of realisations for asset realisations (with a statutory sliding scale as described above); perhaps retaining time cost for investigations. This could greatly limit the amounts of remuneration over which unsecured creditors would need to exercise oversight. And in doing so it could also limit the number of complaints relating to fees and increase levels of confidence in the profession.

6.1.5 Safeguards for personal debtors and company directors

Before 2010 people made bankrupt had no explicit right to challenge fees. Since that date a bankrupt can apply to court for permission to challenge their trustee's fees, provided they can demonstrate that there is or is likely to be a surplus of assets available to the bankrupt – or there would be a surplus but for the fees charged by the IP. As discussed in section 4.3, improved safeguards may be required for personal debtors seeking an annulment through the sale of the family home (or where the home has to be sold to realise assets to clear the debts). It is clear from the evidence received in this review that the IP's remuneration and associated disbursements can be considerably larger than the debt that gave rise to the bankruptcy. There are a number of reasons for this each of which needs to be addressed.

First, there is the lower limit (currently £750) of the size of the debt for which someone can be made bankrupt. It has been at this level since the Insolvency Act 1986 and is now far less than either the petitioning creditor fees (of around £3,000) or the Official Receiver fee (£1,715) and equates to only two to three hours of an IP's time. There is a very strong case for increasing the threshold to a figure that at the very least covers the creditor and court fees. In addition, consideration could be given to amending section 273 of the Insolvency Act to cover creditor petitions for bankruptcy as well as debtor petitions. This allows the court to refer a debtor with a low level of debt to an IP for a review of their circumstances to assess whether another course of action would be more appropriate than personal bankruptcy.

Secondly, personal debtors have a very poor understanding of the costs they will incur as a consequence of being made bankrupt. Nor do they understand the work that an IP will, properly, need to do or that their failure to co-operate with the IP will inevitably lead to higher fees. Where they are in contact with one of the not-for-profit debt advice agencies this will be explained, but debtors who are not will have a very poor understanding indeed. There is, therefore, a case for the Insolvency Service producing an information sheet that spells these points out and for creditors to be required to make debtors fully aware of the facts before they initiate bankruptcy proceedings.

Finally, cases do reach the courts where the level of the IP’s remuneration cannot be justified to the court's satisfaction. Where creditors no longer have any incentive to scrutinise the fees charged, because the assets being realised greatly exceed the money they are owed, it is unlikely that the debtor will have the knowledge required to do so in a productive way. Independent oversight seems the most likely alternative in such cases and this is discussed below. The Official Receiver taking responsibility for these cases is, however, another possibility

Turning now to company directors in smaller corporate insolvencies who have given a personal guarantee to a secured creditor, here the issue also focuses on the IP's fees but is in reality more complex. As with the personal debtors, better information would undoubtedly help and the Insolvency Service should consider producing information materials explaining to directors in this position that they will not have rights as a 'creditor' until such times as they are responsible for the debt when the bank calls in the guarantee. This should also spell out the importance of co-operating with the IP to avoid needless work and fees. In addition, there is no reason currently why directors in this position should not receive all the information that is given to the company’s creditors to keep them fully informed and IPs should be required to do so, along with an explanation of the directors’ rights.

At the same time, there is a need for banks and others taking security in the form of a personal guarantee to recognise that there is a moral, if not a legal, requirement for them to keep the director involved and to listen to any concerns they may have about the appropriateness and effectiveness of any work that is being done by the IP. Cases were provided in evidence to this review showing that this does not always happen.

6.1.6 Enhanced monitoring by regulator(s)

As discussed above (section 6.1.2), there is a need for a more extensive Code of Practice, similar to the one in Australia. This would, in turn open up the possibility of a greater degree of compliance monitoring of fees in both corporate insolvencies and in personal bankruptcies than is currently the case. In the absence of a competitive market or effective oversight by unsecured creditors, this is particularly important both for the reputation of the profession and to ensure that work is properly undertaken and levels of remuneration are appropriate.

The information provided to this review does, however, show a considerable variation in the level of compliance monitoring currently undertaken by the RPBs. This is, perhaps the inevitable consequence of having so many bodies acting as regulators. There is certainly a case to be made for reducing the number of RPBs by setting a minimum threshold for the number of IPs that they regulate. Ultimately there is a case for a single regulator - and perhaps even for bringing the profession under the Financial Conduct Authority, just as Australian IPs are regulated by the equivalent body, the Australian Securities and Investments Commission (ASIC).

For as long as there continues to be a number of (self) regulatory bodies, the Insolvency Service needs to play an active role in ensuring that they operate to common standards of compliance monitoring and enforcement.

6.1.7 Simple, low-cost mediation and adjudication service for fee disputes

The starting point for any changes and reforms should be on providing greater oversight and, therefore, reducing the numbers of complaints and challenges relating to fees.

Even so, there will always be unresolved issues relating to fees, often in cases where the fees are low and the costs of a full court hearing would be disproportionate. This suggests the need for a simple, low-cost mediation and adjudication service for disputes about low-level fees, leaving the courts free to deal with the cases involving larger sums of money. This is not a new suggestion. The OFT made a similar recommendation in their market review report as did a report of research undertaken for the Insolvency Practices Council[34]. It was also suggested and discussed by participants in the review round table. The simplest way of achieving this would be to extend the jurisdiction of the Financial Ombudsman Service, which already covers debt management companies and debt advice agencies. The feasibility of achieving this should be explored.

6.1.8 Independent oversight of fees

If it is not possible to achieve reforms in each of the areas in sections 6.1.1 to 6.1.6 above then consideration will need to be given to some form of independent oversight. This would apply to cases where oversight currently falls to unsecured creditors and no creditors' committee has been set up and also for cases where the assets realised in a personal bankruptcy are greatly in excess of the amounts owed to creditors such that they have no incentive to oversee the IP fees being charged.

Such oversight already exists in Scotland in the form of court reporters for corporate insolvency (IPs who scrutinise the work undertaken and fees charged by their peers on behalf of the court) and the Accountant in Bankruptcy for personal bankruptcies.

[34] Seneviratne, M and Walters A. (2009) *Complaints handling by the regulators of insolvency practitioners: a comparative study.* Insolvency Practitioners Council. http://ssrn.co/abstract=1310791

Appendix Overview of responses to this review

Insolvency practitioners (265)
IPs survey (253)
Interviews with 11 IPs
Additional written evidence from 6 IPs
Meeting at R3

RPBs (7)

Creditors (28)
Secured creditors (all interviews) 4
Unsecured/preferential creditors - written submissions 21
Unsecured/preferential creditors - interviews 3

Debt advice organisations and individual debtors (16)
Debt advice organisations 4
Individual debtors 12
- personal 7
- company directors 5

Academics (11)

Others (6)
Registrar
AIB
IP compliance agency
Court reporters in Scotland 3

333 in total