



## Resolving Insolvency: Restoring confidence in the system - Report Launch Webinar Summary

5 - 6pm 14th September 2021

### Speakers:

- **Chair:** Kevin Hollinrake MP, Co-Chair of the APPG on Fair Business Banking
- Paul Bannister, Head of Policy at the Insolvency Service
- Toby Starr, Partner at Humphries Kerstetter
- Alan Tilley, President of the European Association of Certified Turnaround Professionals
- Caroline Sumner, CEO of R3

### Key Themes:

- Government is considering introducing a single regulator for the insolvency profession in its upcoming review.
- Caroline Sumner believes the Code of Ethics is followed by the vast majority of IPs, the APPG is proposing this is placed on a statutory footing.

Please find the full report [here](#)

### A full summary of the webinar is below

Please note that the Insolvency Service is due to publish their own consultation on the insolvency profession later this year, therefore were unable to comment on the specifics of the report. However, it was noted that the findings and recommendations of the APPG's report would be considered very carefully in their consultation.

### **Conflicts of interests for Individual Practitioners (IPs)**

- Toby Starr (TS) began the webinar by discussing the long history of complaints the APPG on Fair Business Banking has received - contributing to a wealth of evidence pointing to a pattern of conflicts of interest in the structure of the insolvency profession. This is evidenced in pre-appointment discussions between IPs and creditors creating agreements on the aims and objectives of individual insolvencies, as well as the potential involvement in future insolvencies. TS drew attention to an IPs opinion that the system expects too much of individual practitioners who have to withstand pressure from all parties while retaining the freedom to decide the outcomes of each case.
- Paul Bannister (PB) recognised the vast number of cases of conflicts of interests within the report and noted that it is an area the Government does not take lightly. PB said the issue is the difficulty in striking a balance between avoiding conflicts of interest and the ability of IPs to effectively operate on a case as often a new appointment takes an IP time to understand, affecting cost, which has further impacts on creditors.
- Kevin Hollinrake MP (KH) added that a lot of complaints refer to IPs abusing their power to the detriment of the less powerful and sometimes powerless. While that doesn't mean there aren't decent people doing a decent job, these complaints paint a stark picture that some IPs actually prioritise the interests of the bank at the expense of others, despite their duty of care and court appointed powers.
- Alan Tilley (AT) agreed with the report that there are serious conflicts of issues within the UK insolvency profession, explaining that creditor and debtor have an uneven balance in UK insolvencies, favouring creditors. While the UK insolvency system is effective and ruthless, this balance needs to be urgently addressed.
- Caroline Sumner (CS) argued that a lot of IPs say they would resign if faced with a conflict of interest and while what happened with HBOS Reading was awful, CS believes steps have been taken to ensure it would not happen again. Regarding the report's comments on IPs not taking action against their banks, CS said there are many reasons why IPs might not take action, including the case not being strong enough or a lack of funds.

### **Code of Ethics**

- PB recognised the importance of the Code of Ethics as it creates a duty for IPs to not just consider the Code in their work, but to use it to learn more about the insolvency and do what is best in that situation.
- CS felt that the vast majority of IPs in the profession work within the spirit of the Code of Ethics and due to the complexity of the world that IPs are engaged in, it can sometimes be difficult but the examples in the report are not reflective of the profession as a whole.

### **Single regulator and ombudsman**

- PB found the recommendation of a single regulator interesting and said it is definitely an idea that the Government is considering in their review. Experience from different regulatory

regimes suggests that the IP regime is one of the most heavily regulated regimes already because of the trust held in them and their ability to make decisions on behalf of a company, something that the Insolvency Service is very mindful of.

- CS is not opposed to a single regulator in principle but doesn't believe it is the silver bullet to solve all insolvency concerns. CS questioned who the regulator would and should be due to the sensitive role insolvency plays in the economy, it would need to be effective and carry confidence. CS added that the implementation of a single regulator would be complex but would need to be executed effectively.
- TS argued that a single regulator would be able to emphasise the primary statutory objective of rescue, something that is not really even paid lip service anymore. This is because of commercial realities and external factors faced by the insolvency system.
- AT added that the current commercial situation in the insolvency service, put in place by the power of legislation, makes it a difficult playing field for IPs to always act independently.
- CS supported the idea of an ombudsman providing easier access to dispute resolution but added that the current gateway for disputes, namely the Insolvency Service, is good and independent, despite common perception that it isn't. However, an ombudsman would be suitable for minor complaints such as IPs not answering quickly as a body should be tasked with dealing with larger disputes.
- TS argued an ombudsman as a system, in general, has benefits that the court system does not. While the court is set up to resolve party to party disputes, there is no general reporting, making it difficult to provide systemic trends and reports to policymakers.
- AT agreed that in the situation where a company is on the fault line of where it can be turned around or put into insolvency, the imbalance between creditors and debtors, more often than not, pushes the company towards insolvency rather than rescue.

### **The number and nature of complaints**

- PB argued a lot of evidence in the report took place fairly long ago and added that the Insolvency Service has since moved on. Additionally, there are roughly 20,000 insolvencies per year with around 8,000 complaints about IPs of which 450 passed through to regulators, representing 1% of insolvencies. Not all complaints will be about conflicts of interests, rather about minor matters. While PB said this does not undermine the complaints, how serious they are or how seriously they should be dealt with, the Insolvency Service works closely with regulators to make sure they are dealt with appropriately and is always happy to look at potential improvements.
- Responding, TS explained that the cases used in the report included a range of dates with some current prime examples of conflicts of interest. TS was not surprised that individuals currently going through insolvency are not coming forward to give evidence as you would not do so until the end of the case for confidential reasons as well as the sensitivity of the topic for those involved. Despite the idea that not all the cases are recent, TS urged the need to recognise long-

standing trends in the profession.

- CS agreed with the report that there needs to be improvements regarding consistency, speed and scope of regulation. CS said that the report made an important contribution to the discussion of the insolvency framework.

### **Final reflections**

- PB reflected that the report is very timely and welcome and that it will be carefully considered as part of the Insolvency Service's own review. The interesting discussions within this webinar highlighted the complexity of the regime and the many different parties involved. PB emphasised that all the evidence has been heard and will be taken forward to be considered in their own review.
- TS said the recommendations fit together well and are timely given the uncertain future with the effects of the pandemic. These recommendations would restore confidence and 'resolve' the insolvency regime.
- AT emphasised the impacts of the imbalance between creditors and debtors, saying that this report can lead to a more balanced insolvency process and restructuring programme where turnaround can play an equal part as insolvency, benefitting the general interest of the public.
- CS recognised the need for structure to support the work carried out by IPs and the trust of the wider community. There are always improvements to be made and R3 are keen to work with other organisations to make sure that happens.
- KH reiterated that a vast majority of IPs do a good job, inevitably, some people do things wrong and it is always the few, not the many, that manage to bring these issues to light.

### **Keynote speech summary: Lord Sikka, Emeritus Professor of Accounting at the University of Essex and University of Sheffield**

- Still talking about the same problems as 20 years ago - Lord Sikka described being an IP as "like a license to print money" who are regulated by trade associations interested in advancing the interests of their members
- IPs have become "immune to many pressures" and cannot afford to upset banks, often the secured creditors and instigators of insolvency, as they would be unlikely to get business again in the future
- The Code of Ethics need statutory footing
- IPs are exempt from Freedom of Information laws and so we cannot find out about what they do and agree
- Panels do not include the likes of Lord Sikka and Kevin Hollinrake MP who are critical of the system - instead they pool from the industry itself, need more transparency about IP appointments with a central database recording outcomes of administrations
- Need a single regulator because the "whims of professional bodies are not good enough"
- Many insolvencies last for years and years and very few IPs get dealt with severely



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