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Dear Sir / Madam,

Financial Services Consumer Panel response to The Future of Insolvency Regulation

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The Panel welcomes the opportunity to respond to the Insolvency Service's (IS) consultation on the Future of Insolvency Regulation. As highlighted in our response to the IS's call for evidence on the regulation of insolvency practitioners (IPs)¹, the reputation of the IP profession has been damaged by reports of poor conduct by individuals and firms, including aggressive lead generation, rising fees and poor advice. We therefore support the proposal to create a single statutory regulator for the insolvency profession, which we believe will strengthen and improve confidence in the regulatory regime. However, we do not believe certain supervisory oversight responsibilities should be delegated to other organisations (namely Recognised Professional Bodies), with such responsibilities transferring fully to the new insolvency profession regulator.

Our response to the consultation is focussed on the proposals for the reform of insolvency regulation although we note the IS has also sought comments on its proposals regarding bonding arrangements. The Panel supports the IS's decision to update its requirements in this area but we do not have a view on specific proposals. We are nonetheless concerned that bonding arrangements have proved inadequate in recent years, leaving creditors and debtors worse off². Prudential soundness is critical to protecting consumers and in supporting trust in the insolvency profession more generally. Therefore, monitoring the efficacy of reforms to bonding arrangements should be a core role for the new regulator.

Our responses to the specific questions are included in Annex A below.

Yours sincerely,

Wanda Goldwag

¹ See the Panel response [here](#).

² See responses to the Insolvency Service's [call for evidence](#) on bonding arrangements for insolvency practitioners.

Chair, Financial Services Consumer Panel

ANNEX A – Responses to questions

Proposals for reform of insolvency regulation

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

The Panel supports the creation of a single regulator for the insolvency profession based on the common principle that regulation should be expert, independent of political influence and conducted within a clear scope and a set of powers, duties and accountabilities set by Parliament.

The financial services regime could provide a model as it includes the regulation of firms as well as specific individuals and functions. It allows for the scope of regulation to be changed to reflect experience and market evolution. It allows Government to direct regulators when there is a compelling case to do so. It spells out the sanctions and powers at the regulator's disposal. It puts the public interest foremost among regulatory objectives.

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

Yes. We believe the creation of a single regulator and reducing the reliance on Recognised Professional Bodies (RPBs) will strengthen and improve confidence in the insolvency regime.

Unfortunately, the reputation of the insolvency practitioner (IP) profession continues to be damaged by reports of poor conduct by individuals and firms, including aggressive lead generation, rising fees and poor advice. While we feel the changes contemplated in this consultation will improve confidence, the Panel renews its call for a thorough review of the IP exemption from FCA authorisation and regulation, with a view to providing a simpler, more consistent set of rules to protect people in problem debt.

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

We believe the proposed objectives to be suitable, however we would like to see the new regulator set up as an outcomes-based regulator.

We do not agree with the assertion that the objectives should apply equally to RPBs. The Panel would like to see any regulatory or oversight responsibilities removed from the RPBs with the responsibilities transferring fully to the new regulator.

We do not believe it is right that following many years of conduct and oversight issues within the IP profession that these bodies should remain as part of the regulatory regime. Where the RPBs have specialist or expert knowledge that can support the IP profession in delivering good outcomes for consumers then they may be relied upon for the training and development of IP professionals and firms.

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

We believe the functions, as laid out in the consultation, to be correct with limitations placed on the delegation function. As noted in question 3, we do not believe certain

oversight responsibilities should be delegated. This includes all aspects related to authorisation, supervision, and enforcement.

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

No.

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

Yes. We agree that the new single regulator would be solely responsible for setting standards for the insolvency profession. We would expect this to be done collaboratively and in consultation with RPBs, consumer bodies, and other interested stakeholders.

We also encourage the new regulator to establish an advisory committee and/or panel to ensure stakeholder views, especially consumer views, are taken into consideration when policy and/or standards are developed.

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

The Panel agrees that it is necessary to make the single regulator responsible for the investigation of complaints. The historical complaints performance and outcomes as referenced in the consultation are not the outcomes we would expect to see, especially in a profession that has had numerous conduct issues in recent years.

While the Government appears to have discounted the option to utilise existing capabilities within the Financial Ombudsmen Service (FOS), the Panel would encourage the Government to reconsider this. Establishing another body to manage this specific type of complaint will be confusing for consumers. The number of regulators and ombudsmen within the UK regulatory framework creates complexity for both consumers and firms. It also leads to siloed and disjointed working increasing the risk of poor outcomes for consumers and firms as well as increased costs and complexity.

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

We agree with the proposed disciplinary and enforcement responsibilities as outlined in the consultation as well as the appointment of an "Appeals Officer" where necessary.

Question 9: Are there any other functions which you think should be carried out directly by the single regulator? Please explain your answer.

No.

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

As already noted in previous responses, we do not feel that the RPBs are fit to carry out authorisations or routine monitoring and oversight responsibilities. These activities should be managed directly by the new single regulator. We do believe that RPBs have a

role to play in the provision of education and training and are supportive of delegating this activity so long as the standards are owned by the new single regulator.

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

No.

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

Yes. The need for regulation of firms has been noted in previous consultations and previous failures have led to and continue to create consumer harm. As within financial services, firms must be held accountable alongside individual IPs.

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

While the Panel appreciates the regulatory burden can be disproportionate for firms where insolvency services are not a significant part of their overall business, we do not feel it is appropriate to have different requirements based on firm size. Many firms within the insolvency sector are smaller and much of the historical harm has come from smaller firms. We therefore believe a size-based regime could lead to continued harm by smaller firms or provide an opportunity for poor practices to find a new home where they have been eliminated from regulated firms.

We do not consider it a bad outcome if some firms determine that increased regulation and the cost of compliance no longer make their insolvency services sustainable. This will lead to consolidation in the market which should help to improve standards and not impact overall competition given the small size of the overall market as noted in the consultation.

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

See response to question 13.

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

Yes. In the event the Government elects to create a two tiered regulatory regime, which the Panel does not feel is appropriate as noted in response to question 13, then at a minimum all firms should be required to nominate a senior responsible person for ensuring the firm meets the required standards.

In theory the SM&CR regime, or a variation thereof, should be implemented within insolvency firms. The Panel notes that the SM&CR regime has not yet had the desired

impact within FCA regulated firms, however the Panel does not feel this is due to fundamental issues with the regime.

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

The Panel does not see the need for the senior responsible person to be an IP. In fact, in firms that have multiple lines of business, it would be more appropriate for a more senior person to hold the responsibility which should support the delivery of fair and consistent outcomes and help to set the correct tone when it comes to compliance with regulatory expectations.

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

Yes. We believe a single public register to be extremely important in providing transparency and confidence. It is important that the register be built utilising modern technology standards and allows for integration with third parties through the use of APIs or other technology. Consumers and other stakeholders will want to establish confidence through checking the status of a specific IP or firm, however they will not be aware of the Insolvency Service or the register. Much like the experience observed with the Financial Services Register, consumers are often not aware of it or find it difficult to navigate, despite recent improvements. Third parties are often more successful in helping consumers to utilise register information and performing checks such as checking the authorisation status of an individual or firm.

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

The Panel supports this power and believes this is a key component to a regime that is taken seriously by the industry and delivers fair outcomes for consumers.

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

The amount of compensation paid should be aligned to the distress, inconvenience, or harm suffered by the complainant. The new single regulator will need to establish guidelines similar to what has been set out by the FCA and the FOS but not establish upper limits.

Poor outcomes delivered by IPs or firms can often have a long-term effect on the financial lives of consumers and other stakeholders e.g. poor advice leading to a failed IVA. These outcomes can cost an individual for years in terms of the inability to access financial products, higher costs when accessing products, or issues obtaining employment. The new regulator will need to look beyond the point in time inconvenience to determine the right level of compensation.

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

The Panel supports the common public policy principle that firms and individuals should fund the regulation they are judged to require. This principle has operated successfully in financial services, where firms ranging from sole traders to large multinationals pay a fee according to the risks in their business. This allows appropriate recognition of a firm's size and the type(s) of business they conduct. We acknowledge that a more robust regulatory system for the insolvency sector is likely to increase costs, but believe such costs would be outweighed by the benefits in confidence, better consumer outcomes and better business conditions for high quality firms. A regime that regulates firms as well as IPs creates an opportunity to spread regulatory costs more widely and more proportionately and protect small firms and individuals from unsustainable cost increases.

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

No.

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

One option to help fund regulation would be to assess the levy, in part, based on the volume of IVAs an IP or firm manages. This will help deliver a fairer fee for IPs and firms while also providing another point of consideration when considering whether an IVA is an appropriate outcome for the consumer.

Proposals for reform of bonding arrangements

Please refer to our comments in the cover note to this consultation response.