

Regulation of insolvency practitioners, review of current regulatory landscape

BSA response

Restricted

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Introduction

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 6 credit unions. Building societies have total assets of £415 billion and, together with their subsidiaries, hold residential mortgages almost £330 billion, 23% of the total outstanding in the UK. They hold over £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

Although most of our members do not offer unsecured lending, some of our members including the below Credit Unions do offer unsecured lending and have significant dealings with insolvency practitioners:

Capital Credit Union
Glasgow Credit Union
London Mutual Credit Union
No1 Copper Pot Credit Union
Scotwest Credit Union
Leeds Credit Union

This response has been written in consultation with relevant members, we also fully endorse individual responses sent by our members. We have been aware of poor practices by some insolvency practitioners for some time and are grateful for this opportunity to respond to this consultation.

General Comments

We are of the firm belief that the current regulatory framework is not fit for purpose, our members have no confidence in the current system of Recognised Professional Bodies (RPBs) to effectively investigate complaints about insolvency practitioners (IPs). Our members have numerous examples of poor practice. They have been disappointed by the lack of action to stamp out this poor practice. Some members now have taken the view that complaining is a pointless action.

We urge government to exercise its power to create a single regulatory body in place of the current disjointed system. The Financial Conduct Authority (FCA) has shown itself to be a strong and effective regulator of the debt advice sector, helping to greatly improve standards, we feel the FCA would be the logical choice to take this function.

Stronger regulation of the insolvency sector would be very welcome, the remit of RPB's, while recognising the diversity of the sector and professional nature of the key individuals providing these services, actually erodes consumer and creditor trust in the system and would appear to be ineffective as demonstrated by recent high profile failures of Varden Nuttall and Aperture.

Questions

- 1. Do you think Recognised Professional Bodies (RPBs) investigate complaints about insolvency practitioners in a way that is fair, and delivers consistent outcomes for all parties?**

No, often creditors and debtors are left disappointed in the outcomes. Our members believe that RPBs are ineffective without similar powers to the Financial Ombudsman Service (FOS). RPBs should be able to intervene directly to overturn poor decisions and ensure fair outcomes for all customers.

- 2. What level of confidence do you have that RPBs will deal with insolvency practitioner misconduct swiftly and impartially, using the full range of available sanctions set out in the Common Sanctions Guidance?**

Unfortunately, based on member feedback our confidence levels are very low, as mentioned early some members have little confidence in the RPBs.

It is difficult to say with any certainty about having confidence in the impartiality of RPBs in resolving complaints, however, it should be noted that RPBs are regulating their own members who, we assume, pay a membership fee. We would therefore question the ability of RPBs to be fully impartial.

- Do you believe the sanctions that the RPBs can currently apply are adequate and sufficient to provide fair and reasonable redress when a complaint is upheld? If not, what sanctions do you believe an RPB should be able to apply?**

We do believe the sanctions in place are sufficient in terms of the firm. However, we have seen little appetite from RPBs to use them to deter poor practice. Consideration needs to be given on further action to support the consumer, we again suggest similar powers to the FOS.

- 3. What evidence is there to demonstrate that RPBs collaborate to ensure there is consistency in monitoring and enforcement outcomes?**

We are not aware of any evidence to support this, the call for evidence uses the wording “encourages to share information” which suggests there is no formal mechanism to ensure consistency. I am sure the multiple RPBs do collaborate, but without formal guidelines and transparency inconsistency is inevitable. We would suggest something along the lines of the complaints information FOS provides.

- 4. Are RPBs doing enough to promote an independent and competitive insolvency practitioner profession that considers the interests of all creditors? Please share examples of good and bad practice.**

No, some IPs consistently disregard the interests of creditors without sanction, often no payment is made to the creditors until fees have been paid to the firm.

5. In what ways have the RPBs used the introduction of regulatory objectives to improve professional standards within the insolvency profession?

Unable to comment.

6. When dealing with insolvency practitioner conduct, how transparent are RPBs in their decision making?

Unable to comment.

7. Does the current system of regulation provide for the effective scrutiny of insolvency practitioner fees? If not, what improvements would you suggest?

No, it is our belief there should be fee limits which IPs must abide by rather than a “fair and reasonable cost”. This definition is left open to interpretation and variations could be extreme which is unfair to the consumer and indeed other firms.

Given that both the 2010 OFT report and the subsequent 2013 Elaine Kempson review of fees raised concerns on the part of those affected by the work of IPs about fees charged for their work, we feel that the government’s response of creating statutory regulatory objectives did not go far enough to protect consumers and creditors in regard to fees.

8. What are RPBs doing to promote the maximisation and promptness of returns to creditors? Please share examples of good and bad practice.

It is disappointing to report that our members are not aware of any activity to promote this.

9. Is there confidence that people who are in financial difficulty and wish to enter a statutory solution are routinely offered the best option for their circumstances?

Unfortunately, it is difficult to have confidence that those in financial difficulties are being presented with the best options for their circumstances. Our members are increasingly seeing poor behaviours and sharp practice by a small number of IPs. Our members can provide numerous examples of poor unsuitable advice, where the goal seems to be maximising fees rather than helping the debtor.

This view is borne out by the AiBs data in Scotland and the disproportionate increase in Protected Trust Deeds that has been seen there recently, compared to the other debt solutions available.

10. Are RPBs doing enough to promote the public interest and protect the public from harm? Please share examples of good and bad practice.

No, as they are unable to intervene directly in an insolvency case or overturn the decision of an insolvency practitioner. This does not improve the position of consumers when they have been advised incorrectly. Practitioners and the firm’s they work for must be held to account, not just through sanctions, but also by having their decisions overturned if they are proven not to be providing the best consumer outcome.

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

“The regulatory objectives are fit for purpose”

4, whilst we believe they are we also feel these could be embedded and scrutinized further in order to tighten poor behaviours and protect consumers. .

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

5, we are of the belief that RPBs are not adequately monitoring the behaviours of their members and therefore unable to effectively deliver regulatory objectives. It is very unfortunate that our members have lost confidence in the current system.

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

1, as discussed earlier there needs to be specific guidance on fees, intervention allowed in specific cases and enforced sharing of information. Supervision including sampling of cases must be significantly extended to ensure consistency and encourage better practice.

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

4, there is a need to have additional regulatory focus on practitioners particularly with the increase in demand for debt management plans and IVA's. This needs to be regulated with the same guidance and oversight as financial institutions due to the impact on consumers.

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

We believe it does and should fit within the regulatory authority of the FCA.

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

Firms should be authorised with specific individuals who hold significant influence held to account (akin to the Senior Managers and Certification Regime in Financial Services) it is not reasonable to expect someone managing a large caseload to be responsible for the decisions of those in authority.

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

Yes, current personal debt volumes are increasing and having a detrimental effect on the economy therefore, there needs to be consideration given on how to reduce the level of indebtedness as a whole and how to educate the younger generation in particular.

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

We would suggest replicating the financial services model, where creditors pay a levy to fund free debt advice, in respect of complaints we would advocate a similar approach to the funding of FOS. A model that encourages high standards in the sector and acts as a deterrent to those consistently engaged in poor practice.

Conclusion

We welcome this consultation and hope that action can be taken, RPBs should ensure consistency and act firmly when miss-practice is identified. We do not believe the current disjointed system allows for this. In view of this we call for a single regulator, who we believe would be much better placed to ensure those most vulnerable in society are treated fairly.

If you wish to discuss the contents of this response please contact Harinder.chohan@bsa.org.uk.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £400 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.