



The Future of Insolvency Consultation

<https://www.gov.uk/government/consultations/the-future-of-insolvency-regulation/the-future-of-insolvency-regulation>

Response by the Transparency Task Force

March 25th 2022

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Our response to you has been produced by a highly collaborative group of TTF volunteers, our “Response Squad,” working together to build consensus, whilst always remaining true to our “North Star” question: “What is best for the consumer?” For further information about the Transparency Task Force see: <http://www.transparencypartnership.org>

This response is all non-confidential. Please note that all comments in this response are part of the response, and should be considered.

Response to Questions

In addition to the questions we have answered, we wish to express our full support and agreement with the thought leadership contained within the report by the APPG on Fair Business Banking produced with the support of City law firm Humphries Kerstetter in September 2021, entitled Resolving Insolvency.

It can be accessed here:

<https://www.appgbanking.org.uk/wp-content/uploads/2021/10/Resolving-Insolvency-141021-1.pdf>

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

We believe that this is essential because the existing regulation of the sector is not fit for purpose. We also believe there is a major flaw in the way insolvency is carried out when involving liquidation and administration of Financial Conduct Authority (FCA) regulated companies. It enables bad financial operatives and insolvency practitioners to conspire to both benefit from unlawful operations that should result in misfeasance action and to obtain funds via dishonest means without a chance of being held accountable. It means that Insolvency Practitioners (IPs) operate in bubbles so that their actions are only reviewed if complaints are made. It is an appalling state of affairs badly affecting thousands of creditors.

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?

It would be a significant improvement but more needs to be done than what is proposed. In particular, understanding and applying regulations other than the Companies and Insolvency Acts. We are aware of a firm of solicitors specialising in FCA regulated insolvencies where directors provide a subjective and biased story of what caused insolvency without the truth which both allows misfeasance not to be considered and in many cases, IPs defend directors based on ignorance and empathy towards bad actors, contrary to FCA compliance and the interests of retail clients who suffered criminally through fraud and dishonest assistance.

We have approached many IPs to address this matter, only to be rejected or ignored in favour of insolvency solicitors, who are equally ignorant and disinterested.

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

The proposed objectives would not provide a suitable overarching framework in relation to the administration and liquidation of FCA regulated companies and unregulated investment providers.

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.

No. It does not look at the requirement to understand and apply legislation and compliance required in the financial services sector.

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

Yes. The requirement to report on legislative and regulatory requirements of financial services and the FCA. As said above, the Companies and Insolvency acts fall far too short when it comes to fraud against retail clients that is hidden when the company who perpetrated the acts become unregulated and no technical understanding of misfeasance that caused insolvency is applied.

It is rarely understood that under FCA regulations, only the company is held accountable for acting against the interests of clients, not the directors or regulated people who work there. This means that only in liquidation can individual directors be scrutinised and acted against.

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

Yes, and it should do so robustly.

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.

Yes. Certainly, something needs to be done to help victims of fraud by directors of companies that understand how insolvency will hide their bad behaviour because of ignorance and failure to apply financial services regulations and criminal law.

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.

Too little too late, but better than never.

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

A much greater understanding and application of expertise not currently applied by one regulator that can then be used as best practice across the insolvency industry.

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.

Matters relating to financial services misbehaviour need to be raised and referred to both the FCA and Prudential Regulatory Authority. And those known to be insolvency solicitors should not be left out. They must be required to seek expert help and assistance in understanding non-compliance with regulations be investigated and considered. As said above, whereas insolvency practitioners, doctors, accountants and solicitors can be held personally responsible for acting against clients' interests, this is not the case in financial services. Only by understanding and applying the specialist requirements of company directors in financial services when their companies become insolvent will more bad actors be held accountable.

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.

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.

Only if what we have suggested about the uniqueness of financial services non-compliance by directors be taken note of.

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.