

christians
against
poverty

CAP

The future of insolvency regulation

CAP's official response to the Government's consultation

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always hope.

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Summary

Christians Against Poverty (CAP) is pleased to respond to the Government's consultation on the future of insolvency regulation. Through the provision of CAP's Debt Help we routinely witness the detriment caused to consumers in financial hardship due to poor advice and bad practice in the insolvency sector. CAP welcomes the Government's proposals to strengthen the regulatory framework, increasing protection and improving outcomes for those in financial difficulty.

Key points:

- CAP supports the Government's preferred option of taking on the role of single regulator for the insolvency profession.
- CAP supports extending the scope of regulation beyond individual Insolvency Practitioners to also include firms providing insolvency services.
- CAP would like the new single regulator to consider some of the Financial Conduct Authority (FCA) principles on consumer duty being adopted by the insolvency sector.
- CAP agrees that a single regulator investigating all complaints would increase consistency in outcomes.
- The single regulator should retain and not delegate the function of routine monitoring of Insolvency Practitioners and firms to ensure compliance with statutory and regulatory requirements.
- The single regulator should require Insolvency Practitioners and firms that give debt advice to meet the same standards expected by the FCA to carry out debt counselling or gain authorisation from the FCA.
- CAP agrees that having a single public register owned by the single regulator will help those who need insolvency services to identify legitimate Insolvency Practitioners and firms.
- CAP is of the opinion that the maximum amount of compensation (i.e. £250) that the regulator can direct the Insolvency Practitioner or firm to pay consumers is set at a low level. The single regulator should have the power to award compensation on upheld claims at much higher levels where that is the correct outcome.

Questions

Answers in this section are for a select number of questions most relevant to CAP's experience.

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

CAP supports the Government's preferred option of taking on the role of single regulator for the insolvency profession and extending the scope of regulation beyond individual Insolvency Practitioners to also include firms.

Having a single regulator overseeing the whole profession and a strengthened regulatory framework is a step in the right direction to deliver better outcomes and reduce harm experienced by financially distressed consumers. There has been considerable concern that inappropriate advice, increased failure of IVAs, poor standards of service by some Insolvency Practitioners and volume providers of IVAs have caused detriment to consumers.

Like the financial services and debt advice sectors, the insolvency sector should have robust regulation to ensure good customer outcomes, consistency in the quality of advice provided and fair handling of complaints.

CAP also believes that for regulation to be effective it should be underpinned by statute and be enforced by a regulator with the will and appropriate power to regulate effectively.

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?

CAP is of the view that having a single regulator will increase confidence in the insolvency regime by bringing transparency, consistency and impartiality when compared to the current regime.

It is also easier for consumers using the services of an Insolvency Practitioner and firms providing insolvency services to have one regulator to whom they can escalate issues, and on whom they can rely to set direction and provide an overall framework of regulation.

If the single regulator is able to improve professional, ethical and educational standards, and to improve consumer protection, especially in regard to promotion, lead generation and advice, there will be increased confidence in the insolvency regulatory regime for those in financial difficulty who need the services of an Insolvency Practitioner or firm.

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.

CAP broadly agrees that the proposed objectives are an improvement but feels that they are still too creditor-centric. Promoting the maximisation and promptness of returns to creditors should not come at the cost of consumer detriment, around which there are risks that are still of concern.

CAP would like the pendulum to swing towards consumers to secure fair treatment for them as individuals impacted by insolvency proceedings, seeking relief from financial difficulty. The FCA package of proposals for a new Consumer Duty is an example of where a regulator has expectations of firms it oversees to focus consistently on consumer outcomes. CAP would like the new single regulator to consider some of the FCA principles on consumer duty being adopted by the insolvency sector.

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.

CAP agrees this is a robust list of functions and particularly welcomes the important functions of setting standards, monitoring activities, investigating complaints, and disciplining and imposing sanctions on Insolvency Practitioners and firms where appropriate.

In respect of firms offering insolvency services, attention should be given to the regulator's functions to reduce consumer harm in the event of failure of a regulated firm offering insolvency services. CAP would like the new regulator to liaise with regulators of other sectors to make sure that they are aligned in aspects relating to consumer protection.

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

CAP would like to ensure the regulator has sufficient general powers that it can exercise to intervene quickly and safeguard consumers, if any of the powers to perform its specifically listed functions are insufficient. This would enable the single regulator to ensure that it is able to fully prevent harm to consumers in financial difficulty, with their best interests taking precedence over the most profitable route for the Insolvency Practitioner or firm.

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

CAP agrees with the Government that the single regulator should be responsible for setting standards for the insolvency profession.

Like the FCA, the regulator can adopt a principle-based approach to provide firms the flexibility to fulfil its regulatory objectives. However, the regulator should define what the right consumer outcomes are and ensure it is embedded in the culture and practice of the firms under its remit. Monitoring the outcomes will allow the regulator to identify and intervene early to prevent harm to consumers and maintain the integrity of the insolvency profession, driving up standards.

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.

CAP would agree that a single regulator investigating all complaints would increase consistency in outcomes. It would no longer be dependent on each Recognised Professional Body's (RPB) individual approach and internal processes. With the single regulator being considered impartial, it would remove the perception of conflict of interest between the RPBs and their members.

Simplifying the process and ensuring consumers are kept updated on the progress of their case will also make it easier for consumers to complain. It would further encourage complainants who would have otherwise been put off by any complexity or ineffectiveness in the complaints process.

The single regulator should also be transparent with the information it has on decisions around sanctions and disciplinary action and publish data to hold the sector to account on the wider systemic issues it might identify.

Publishing decisions, with additional narrative for upheld complaints, will also help firms learn from them and improve consistency across the sector.

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.

No comments provided.

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

CAP believes this is a robust list of functions for the single regulator to carry out. While there may be no further functions to suggest at this stage, the single regulator should keep it under review to enable any other functions to be added when appropriate.

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.

CAP is of the view that it is satisfactory to delegate the consideration of applications, authorisation of Insolvency Practitioners and firms, and the provision of education and training to other competent bodies that have suitable expertise.

However, it is crucial that the single regulator retains and carries out the function of routine monitoring of Insolvency Practitioners and firms, to ensure compliance with statutory and regulatory requirements. This function should not be delegated to recognised professional bodies who have an inherent conflict of interest as organisations funded through member contributions.

The single regulator should also publish the outcomes of monitoring of the activities of both Insolvency Practitioners and firms.

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.

CAP has no strong opinion about this but would like the single regulator to be cautious about delegating too many of its functions to external bodies.

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.

CAP agrees that introducing the statutory regulation of firms is a positive step and clear acknowledgement of the change in the insolvency landscape. Consumers are impacted by the conduct and processes of insolvency firms as much as they are by the conduct of the insolvency practitioners within these firms. For example, when other debt solutions have become more appropriate for the consumer's circumstances after seeking debt advice, it has often proved difficult to get IVAs terminated and certificates of termination issued with current volume provider firms.

Insolvency Practitioners and firms that advise consumers to enter into an IVA should be offering impartial advice on whether another solution (e.g. a bankruptcy, Debt Relief Order or debt management plan) would be more appropriate for the consumer than an IVA. CAP would want the single regulator to require Insolvency Practitioners and firms that give debt advice to meet the same standards expected by the FCA to carry out debt counselling, or gain authorisation from the FCA.

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.

CAP agrees with this approach as it is consistent with the approach adopted by other regulators. The frequency and depth of monitoring required and enforcement should be prioritised proportionate to consumer risk.

If the additional regulatory requirements being considered by the Government relate to the giving of advice, CAP believes it should apply to all firms and individuals. This would avoid one or more rogue firms not being picked up in the monitoring process, resulting in avoidable consumer harm.

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.

No comments provided.

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.

CAP is of the view that it would be reasonable to expect certain firms to have a senior responsible person to ensure compliance with required standards. This will ensure that firms that can cause significant harm to consumers are prioritising compliance to standards by having someone senior in the organisation who is responsible and accountable for it.

CAP has no strong views on the definition of which firms should be subject to it or the criteria of qualifying firms.

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 role of the senior responsible person is more about auditing and compliance than operational procedures, hence it would not be necessary for this person to be an Insolvency Practitioner, subject to them having sufficient expertise to discharge their duties.

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. The FCA provides a public register for financial services and having one for the insolvency sector owned by the single regulator will help those who need insolvency services to identify legitimate Insolvency Practitioners and firms.

There should also be a requirement to direct people to the public register in all marketing and advertising done by insolvency practitioners and firms, with the information prominently displayed. The consumer needing an Insolvency Practitioner can then make an informed decision based on the public information available in the register.

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.

CAP is of the view that this will lead to better consumer protection and outcomes and drive appropriate behaviour in both Insolvency Practitioners and firms.

When compensation is paid swiftly where consumers have suffered anxiety, distress or detriment due to acts of omission from the Insolvency Practitioner or firm they have been dealing with, it will improve confidence in the sector.

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.

CAP is of the opinion that the amount of compensation that the regulator can direct the Insolvency Practitioner or firm to pay should be set at a higher level. When compared to financial services, the Financial Ombudsman Service is able to award compensation on upheld claims at much higher levels.

It is unreasonable to expect a consumer who has suffered detriment, and where being awarded compensation greater than £250 is the correct outcome, to have to go to court to achieve that.

Capping the compensation at an arbitrary amount also gives the appearance of a one-size-fits-all approach and creates the perception that the regulator is only willing to take on low-end cases, leaving the high-end cases for the Insolvency Practitioner to deal with, or for the person suffering the wrongdoing to go to court to get it resolved. It could also exclude genuine complainants who do not have the means to begin court action while they are already feeling the impacts of financial difficulty.

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.

CAP thinks that directing the firm to pay compensation of their own account would be a reasonable approach. However CAP would like the regulator to consider how this would affect parties awarded compensation where the firm becomes insolvent or has ceased trading.

The single regulator could also consider requiring the worst-performing firms or Insolvency Practitioners to pay a fee, every time a complaint against them is upheld, that would contribute to a fund. This is similar to the model employed by the Financial Ombudsman Service, and could provide a slush fund to pay complaints where firms are no longer operating. Alternatively, the regulator should also ensure that firms hold sufficient insurance to cover all upheld complaints and compensation that would have to be paid out.

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

No comment provided.

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?

No comment provided.

About Christians Against Poverty (CAP)

Christians Against Poverty (CAP) is a Christian charity tackling poverty in communities across the UK through free debt help and local community groups. CAP provides its award-winning debt help service through local churches. Each church's CAP Debt Centre offers emotional and practical support, while our head office team in Bradford provides bespoke debt advice and a plan to help people get out of debt.

CAP also offers community groups dedicated to tackling poverty at the root. These are also run through local churches and cover topics such as interview skills, applying for a job and writing a CV, how to budget, making money go further and key life skills.

Requests for further information

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