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Clause 17: Authorisation of insolvency practitioners

Amendment 6

Moved by ***Baroness Hayter of Kentish Town***

6: Clause 17, page 12, leave out line 6

3 Feb 2015: Column 580

Baroness Hayter of Kentish Town (Lab): My Lords, the Government's new partial authorisation for insolvency practitioners would split the existing regulation of this quite tiny profession—some 1,350 who take appointments, according to the noble and learned Lord the Minister—into three. There would be company-only and individual-only insolvency practitioners, and some of course doing both. On the basis of no evidence, the Government have decided to dilute this very small but specialist profession. Amendment 6 would preclude the development of corporate-only licences.

The Government admitted to the insolvency practitioners' professional body, R3, that Clause 17 was not being introduced to "fix a problem". Indeed, the Government cited no evidence of undercapacity in the market, nor of complaints about the current system. Virtually all the insolvency practitioners consulted, and their major representatives, said that the proposal was a bad idea. The ICAEW's consultation evidenced no support for the partial qualification. Indeed, the only body cited as being in support, the IPA, found that 61% of its respondents were against—they did not think that the proposals were a good idea.

According to the Government, it was only some of the IPA's non-practitioner members who were in favour. More than that, having finally seen the IPA's survey last week, I discovered that its questionnaire did not distinguish between individual insolvency-only licences, which we support, and corporate-only licences, about which we have grave reservations. So the IPA has no idea whether any of its respondents support the idea of practitioners undertaking corporate insolvencies without also being qualified in individual insolvency. Furthermore, despite finding that a majority of its respondents did not think it was a good idea, the IPA dismissed these views as being those only "of current licence holders". Surely those are exactly the people who know what they are talking about.

Without Amendment 6, Clause 17 would allow insolvency practitioners to undertake corporate bankruptcies, which almost always also affect the financial status of individuals, with no qualification as to the latter's needs. Indeed, insolvency practitioners often do not know at the outset of a case, particularly with micro-businesses, whether they are dealing with a corporate or personal insolvency—or, indeed, with both, given the involvement of personal guarantees and the nature of creditors.

It is strange that this Deregulation Bill will create three types of licence—rather than the current one—with new exams, oversight and monitoring. The assertion has been made, but with no evidence, that it will attract new entrants; the assertion has been made by the Government that IP fees will be reduced, without any evidence; and the assertion has been made that training costs will be reduced. Again, no evidence was supplied. This whole shake-up is on the basis, by the Government's own estimates, that there will be only about 100 partial licences.

Furthermore, it is likely to be the large insolvency firms that train corporate-only practitioners at the expense of smaller insolvency firms, of which two-thirds do both corporate and personal insolvencies. More than 80% of smaller firms do not believe that they would get much benefit from lower training costs.

3 Feb 2015 : Column 581

Indeed, 90% said that they would not train a partial licence holder. Smaller firms are least likely to specialise and are therefore least likely to benefit from the change. So there is no help to smaller firms—just when the Small Business, Enterprise and Employment Bill is aimed at trying to help small firms.

Why have the Government dreamt up this clause? There is no evidence of a waiting group of would-be IPs dying to enter the market if only they could train simply in corporate insolvencies. Indeed, a number of firms have been reducing their workforce. The Insolvency Lawyers' Association questioned the logistics of operating a two-tier mixed system, while R3 has serious concerns about the change. It considers that partial licences will have a negative impact on businesses and individuals seeking financial advice, and on the quality and competitiveness of the UK's insolvency regime, which is currently rated one of the world's best by the World Bank. Meanwhile the Institute of Chartered Accountants of England and Wales, the largest authorised body regulating insolvency practitioners—regulating, I think, about half the profession—opposes this partial insolvency licence system. It set out its reasoning to the Government a year ago. The Government, however, ignored that, despite the reputation and expertise of the ICAEW. The institute sees no need for partial licensing; it is unaware of any demand for it; and it does not consider that regulatory costs would be lower.

The ICAEW is also concerned that an insolvency practitioner with partial authorisation would not acquire the broad range of knowledge and expertise necessary to provide appropriate advice in a corporate insolvency. We also fear that the proposal would lower standards, given that Jenny Willott MP, the Minister in the Commons, said that the partial licence would,

> "reduce a little the high bar on entry to the profession".

As the ICAEW retorted:

"Reducing the breadth of knowledge required of IPs could be regarded as ... a lowering of standards".

We are talking about people's futures: whether jobs are to be saved or a company liquidated; whether individuals will be made bankrupt; whether creditors will get their money back; whether a company will be sold to someone who can retain at least some of the business.

The Institute of Chartered Accountants of England and Wales, which operates under a royal charter, works in the public interest. Given the potential impact on standards of practice that partial authorisation might have, it does not believe that the proposed reform would be beneficial to the public. The proposal to allow corporate bankruptcies to be handled by people who are unqualified in personal insolvency is misguided, unnecessary, criticised by the profession and other stakeholders and based on unsubstantiated claims. Apart from that, it seems a very good idea.

I urge the Government—even at this late stage—to think again, to listen to R3, the ICAEW and other specialists, and to accept Amendment 6. I beg to move.

The Advocate-General for Scotland (Lord Wallace of Tankerness) (LD): My Lords, I am grateful to the noble Baroness for tabling this amendment. We have debated this matter in Committee and I met her and

representatives of R3 a few weeks ago to discuss it. The amendment seeks to limit partial authorisation to personal insolvency. This debate allows the Government to set out why we believe that allowing specialised authorisation for insolvency practitioners for both personal and corporate insolvency is the right thing to do.

I recognise that this is a matter of considerable interest to those in the insolvency profession. However, there is a wider impact. The purpose of generally requiring insolvency practitioners to have certain qualifications and experience is that they are given significant powers by statute and it is important that there is confidence that they will use such powers appropriately. It is not to protect insolvency practitioners as a profession as such. It is important, therefore, that the barriers this places on entry—there is quite properly a barrier because of the statutory responsibilities and powers—are no higher than needed for the purpose. I think this was the context in which my right honourable friend Jenny Willott was speaking. The noble Baroness has not provided any evidence whatever that having separate authorisations for personal and corporate insolvency would in any way lower the standards in each of these disciplines.

Most insolvency practitioners are already qualified, usually as accountants, sometimes as lawyers. What we are discussing is what specific training and qualifications they need in order to act as insolvency practitioners. The amendment would allow specialised authorisation in personal insolvency but not corporate, so I will focus on why we believe that it would be helpful to allow specialised authorisation for corporate insolvency.

Opponents have said—as the noble Baroness herself did in moving her amendment—that there is no evidence of the need for change. However, there have been reports on the insolvency profession that have raised concerns about the level of competition in

this profession. Two independent reports have noted failings in the current regime that result in fees being higher than they should be. We believe that partial authorisation will increase competition and place downward pressure on fees, which in turn could benefit creditors in the form of higher dividends.

5.45 pm

The noble Baroness also referred to the member survey from the Insolvency Practitioners Association. She indicated that 61% responded that they did not think the proposals were a good idea. However it is important to put that response in its proper context. Opinions were broadly divided depending on the stage of the respondent's career and the nature of the practice where they worked. A majority of more junior professionals considered the proposals to be a good idea—between 65% and 68%. A similar majority of those working in specialist practices thought the proposals a good idea. It may well be that if you are there—already in the tent—you might not see the need to change. However those who wish to enter the profession may well see a need for change. It is interesting that the more junior professionals thought that it was a good idea.

3 Feb 2015 : Column 583

The argument has been put forward that large corporate firms will benefit from reduced training costs, giving them a competitive advantage over small firms, which will need to train fully authorised practitioners. To argue that such firms as the Big Four accountancy companies compete in the same market as small local practices is not really credible as regards corporate insolvency. Yes, businesses of all sizes may require insolvency advice, but your small family business does not ordinarily go to the big four firms when it finds itself in financial difficulties. Large corporate firms will benefit from reduced training costs if they wish to train specialists, and this is a good thing. It will make our UK-based global players that little bit more competitive when they go to compete for work in the international marketplace. Those who wish to specialise in corporate insolvency will be able to spend precious training time perhaps learning about more specialised disciplines, such as cross-border insolvency issues or wider restructuring complexities, rather than the intricacies of personal bankruptcy law which they may never need.

The concept of partial authorisation is essentially about choice. No one will be required to specialise but they may choose to if it makes sense for them. If a small firm's business model and client base means that it operates as a boutique corporate specialist, it should be allowed to train corporate specialists. It should not be held back and subjected to unnecessary costs by the firm down the street which chooses to train only fully authorised practitioners.

We must also not forget those who pay the price if there are unnecessary costs to being an insolvency practitioner—it will be the creditors, themselves often small businesses. The noble Baroness, Lady Hayter, said that the changes would do nothing to help small firms. However, they will reduce the cost of training for applicants who wish to specialise, and savings on training and examination fees are likely to be of proportionately greater benefit to smaller firms of insolvency practitioners.

Concerns have been raised about corporate specialists who provide advice to directors of small businesses and do not have the requisite knowledge to advise both the company and the directors in their personal capacity. In order to be able to offer advice that does not give rise to unacceptable conflicts of interest, corporate specialists will need to possess a basic understanding of the wider insolvency landscape, including personal insolvency. We have, furthermore, already indicated—in Committee and when I met the noble Baroness and the representatives of R3—that officials will work closely with the Joint Insolvency Examination Board to ensure that specialists, both corporate and personal, will have a sufficient overview of insolvency and issues such as ethical issues to be able to act appropriately.

Insolvency practitioners are required to act in accordance with a professional code of ethics. The code is clear that practitioners should take reasonable steps to identify situations that may arise in the course of their work which could pose a conflict of interest, and then put arrangements in place to manage them. Giving advice to both the company and its directors in

their personal capacity is one of the situations that could well pose a conflict of interest in many insolvencies. Granted, a practitioner acting for the company may offer some general advice on the personal affairs of the directors, but this should be basic information. We believe that this can be achieved without the need for a corporate specialist to spend many hours at considerable cost studying the finer details of personal bankruptcy.

We recognise that the numbers may be small—we are not running away from that and we are not overselling this proposition—but they must be seen in the context of the relatively small number of practitioners anyway. A more important point is that we should not insist on wider requirements than are actually necessary as this will increase costs which ultimately small businesses and others have to pay. In 2013, Professor Elaine Kempson carried out a review of the fees and found that the headline rates for insolvency practitioners could be as much as £800 an hour. These fees are paid for by creditors who receive dividends only after such costs have been paid. The then Office of Fair Trading also carried out a study of the corporate insolvency market and found that competition was not fully effective. As I said earlier, additional competition will place downward pressures on these rates and creditors will benefit in the form of increased dividends.

Let us not forget that many of those paying thousands of pounds for tuition are funding that from their own pockets, investing their time in necessary study. Removing the need to study and sit the exam for one of the current three exam papers would save close to £4,000 in tuition and exams fees, and this is what we will work with the exam body to try to achieve. Allowing specialised authorisation for both personal and corporate insolvency will provide choice for those who wish to enter the profession, reducing the time and cost to qualify without reducing necessary standards. This is an important industry which has a vital role to play in promoting rescue and helping to resolve intractable debt problems. I believe that our proposals are measured and proportionate and I therefore hope that the noble Baroness will not press her amendment.

Baroness Hayter of Kentish Town: I thank the noble and learned Lord for that response and for the meeting with representatives of R3. I do not mind the Government not listening to me, but they do not listen to R3, to the Institute of Chartered Accountants in England and Wales, or to all those who are practising in this area. I will say only two things.

The first is a point on fees and the idea that this is simply a matter of bringing more people in. I hae ma doots about that; it is about the big ones charging high fees. Indeed, in the Small Business, Enterprise and Employment Bill, the Government are going to abolish creditors' meetings, which is the one point at which creditors can negotiate over those. Perhaps that might have been a better way of helping creditors achieve a better fee rate.

The only other point to make is this. I refer to the noble and learned Lord's own profession of the law. As with doctors and accountants, everyone does general training before moving on to specialise. This is an important and fundamental way of understanding the

environment, and it is strange to separate one profession away from it. I do not think that the barrier to entry should be lowered, which is what I fear this will be. As I say, the Government have failed to listen to those who know this industry, and they are clearly not going to change their mind tonight. On that basis, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.