Insolvency Practitioners Association

Consultation on changes to Statement of Insolvency Practice 14 – Questionnaire

	Question	Your comments
1.	*Is further guidance required regarding the level of assistance an IP should provide to preferential creditors, particularly employees, when they are submitting their claims?* Please explain the reasons for your answer.	Yes The draft seems confused. It is not clear if paras 20 and 21 apply to an office holder's dealings with *all* preferential creditors or if they apply only to non-employee claims. The heading at para 20 suggests they relate to all claims, but para 21 states that creditors should be provided with information "to enable them to calculate their claims" whereas para 22 indicates that the RPBs view it to be the office holder's duty to calculate employee claims for them. The draft states that an office holder should "calculate" an employee's preferential claim from "information from the insolvent entity's records or from the employee or other preferential creditor". So what exactly do the RPBs expect the office holder to do where, say, a company's records are deficient but an employee claims to be owed 30 days' holiday? Is the office holder expected to calculate the claim based solely on what the employee says? Or, as they would often do with other creditors, should not the office holder be able to tell the employee that, without evidence to support their claim, then it would be rejected for dividend purposes? Would this not also be the

	office holder's response if the employee's information conflicted with what the company's records indicated? What about where the employee is a director and the RPS has rejected their claims? Does the office holder rely on the "other preferential creditor's", i.e. the RPS', view or the claiming employee's or are they able to come to a different conclusion based on the company's records? I appreciate that what the office holder decides to do will depend entirely on the facts of the particular case, but with this in mind, the SIP simply stating in effect "use the company's records **or** the employee's information **or** the RPS'" is useless and gives the office holder no direction at all. The draft also seems to ignore the Rules' process for inviting and adjudicating on claims. Although it is not usually appropriate for SIPs to regurgitate statute, in this case it would be valuable because the SIP seems to set out a process: provide to employees what you calculate they are owed. Para 21 states that, "with the exception of employees", the office holder should invite preferential creditors to submit their claims. However, the Rules require notices of intended dividend to be sent to all (preferential) creditors who have not proved (and, in Administrations, to all preferential creditors whether or not they have proved) and this would include employees who have not proved (where they are considered to be potential preferential creditors). The Insolvency Service, in its 2022 review of the 2016 Rules, stated that it intended to consider

	whether the Rules should be changed to allow an employee to avoid the R14.3 requirement to submit a proof where the employee had submitted a claim processed by the RPS. However, unless and until such a statutory change is made, employees must submit a proof to be included in a dividend. I think SIP14 should make clear that this is still a requirement and perhaps explain how employees might be assisted in submitting a proof, e.g. by being invited to writing confirming their agreement (or otherwise) with the office holder's calculation. Without any such agreement or written statement of claim from the employee to the office holder, the office holder's calculation alone is insufficient to enable an employee to participate in the dividend. Presumably also the principles in this SIP as regards preferential claims apply equally where employees have *non-preferential* claims where the office holder is intending to declare a dividend to that class. This suggests that the SIP's focus only on preferential claims is flawed or at the very least it is a missed opportunity.
2. *The SIP is intended to be used by IPs and their staff although it is accepted that other stakeholders may refer to it. Should any additional content be added to the SIP for the benefit of other stakeholders? And, if so, what?* Please explain the reasons for your answer.	No SIP1 defines the purpose of SIPs as "setting out required practice", although I think it is accepted wisdom that a SIP should not regurgitate requirements adequately covered elsewhere, e.g. in statutory instruments. Unless the SIP were enhanced to include statutory and other regulatory requirements, as well as legal precedents, it is difficult to see how the SIP could be made useful for other stakeholders. If the RPBs consider there

	needs to be a resource where others, especially employees, might understand the relevant statutory requirements etc., then this should be provided elsewhere in the same way that guides to fees and the roles and responsibilities of committee members are provided. As statutory requirements and legal precedents are subject to changes over time, having such information elsewhere would also be valuable in future-proofing the SIP. A better example of content that appears to be written only for non-IPs is: "The office holder should then check those claims and accept or reject them as appropriate" (paragraph 21), which seems to me unnecessary for IP/staff readers, or footnote 3 that unnecessarily explains subrogation.
3. *Do you consider that including information for other stakeholders, such as paragraph 6 regarding types of charges and crystallisation, is worthwhile?* Please explain the reasons for your answer.	I do not view paragraph 6 as providing information only for other stakeholders. Rather, that paragraph sets the scene as regards the application of the SIP's principles such as how an office holder may maintain a proper balance while having regard for the interests for the various parties. While it might be argued that IPs and their staff should already know what is written in paragraph 6, the same argument could be applied to almost the entirety of the SIP given that it generally only explains how an IP should apply funds correctly in light of the Insolvency Code of Ethics
4. *We would welcome any feedback on the draft and revisions generally.*	I think the draft is trying to cover two quite distinct areas: (i) how to split receipts and payments between fixed and floating charge; and (ii) how to deal with preferential creditors. Given that preferential distributions occur in cases

	without any secured creditor, it seems insensible to have one SIP cover these two areas. I would prefer to see SIP14 address only item (i) above and for there to be a separate SIP setting out how insolvency office holders should deal with employees with claims, i.e. preferential and non-preferential (and, if you like, other creditors will subrogated employee claims, including the RPS and pension providers). If there were a separate SIP dealing with employee claims, then it could include the RPBs' expectations as regards completing forms RP14/A and RP15/A. This draft SIP14 does not touch on this area at all, but as the submission of these forms necessarily involves gathering information from the company's records, employees and potentially from others, there is a natural cross-over. The RPBs' expectations as regards forms RP14A and RP15A have been promulgated in quite a disorganised way and they seem to depend on which RPB the IP is licensed by and even which staff member within that RPB is consulted. Especially given the significant costs that could be incurred in approaching the task, it is essential that there is a level playing field between all IPs and thus there needs to be a centralised way of making clear the RPB/IS' expectations, which of course a SIP is perfect for.
5. *Should any other changes be made to SIP 14?* Please explain the reasons for your answer and set out the changes you wish to be made to the SIP.	Please see attached my marked-up version.