RESPONSE TO THE CONSULTATION:

SECOND REVIEW OF THE INSOLVENCY (ENGLAND AND WALES) RULES 2016 AND THE INSOLVENCY (SCOTLAND) (COMPANY VOLUNTARY ARRANGEMENTS AND ADMINISTRATION) RULES 2018

BY MICHELLE BUTLER

Overview

This response reflects my own views as an individual. I am drawing on my experience in working as a consultant to insolvency practitioners ("IPs"), assisting them to comply with existing insolvency legislation, including (via my work with the Compliance Alliance) providing them with document templates to enable them to administer cases in compliance with statute and other regulatory requirements and assisting them with technical questions on insolvency statute and other regulations.

My responses relate only to the Insolvency (England and Wales) Rules 2016 ("the Rules").

While I am pleased to have this opportunity to feed into this next stage in improving the Rules, I do so with growing frustration in view of the lack of progress made on the matters arising from the first review of the Rules in 2021. At that time, I and many others responded to the Call for Evidence with a great number of requests for change. However, only a few changes were made by the Insolvency (England & Wales) (Amendment) Rules 2026 and these seem largely to address items raised by legal professionals and Official Receivers, rather than those raise by IPs.

The consultation document appears to suggest that only "matters raised in the first PIR [that] remain relevant and unresolved… are included in this consultation", but from my perspective this cannot be further from the truth. By focussing only on a few areas, the Insolvency Service is overlooking the vast number of Rules that, as I highlighted for the first review, generate a host of niggling frustrations and additional burdens on IPs. I am aware that several of those who responded to the first review's Call for Evidence are not responding to this second review Consultation because they feel that they have already wasted too much valuable time. That is my personal view too, but I am trying again in the hope that this time the Insolvency Service will listen.

Having said that, I am very pleased to see that the Insolvency Service has included suggestion to address the issue of creditors failing to vote on proposals to fix the basis of a CVL liquidator's fees (Question 19). This is a very live issue for many IPs who have for many years been struggling to get fee approval on cases with little funds, which has led to unnecessary costs and burdens on courts as they have had to resort to court applications to draw any fees. The whole process for small value CVLs is inefficient and I believe the solution lies in introducing a statutory flat fee to cover the basic costs of carrying out a straightforward CVL.

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Question 1. The first post-implementation review in 2022 found the Rules are necessary for the effective functioning of the insolvency framework, that the Rules met their objectives, and that the Rules as a whole work well. Is that view still true? Yes/No. If No, please explain your answer.

Yes.

Question 2. Are the objectives of the Rules the right ones for an effective insolvency regime? Yes/No. If No, please explain your answer.

No.

The objectives do not include the need to reduce unnecessary burdens and seek greater efficiencies without undermining the safeguards that are central to a fair and trusted system.

Question 3. Do the Rules place a disproportionate burden on businesses with less than 500 employees? Yes/No. If Yes, to what extent could the Rules be changed to address this? Please give details to explain your answer.

Yes.

The complexity of the Rules, e.g. around fee approval and adjustments, places a disproportionate burden on smaller IP businesses, because every IP firm regardless of size needs to invest a relatively similar amount of resources in gearing up to comply with the Rules, e.g. as regards creating template documents, forms and procedures and in understanding the Rules.

Many Rules could be amended to make it easier for smaller IP firms by providing simplified processes for small value appointments. For example, where asset realisations on any case are below a threshold, there could be simpler Rules governing the production of progress reports – perhaps even dispensing with progress reports where realisations are very low – and final accounts and the Rules around fee approvals could be simpler if the office holder only wishes to draw fees below a set threshold.

This last suggestion is explored further at Question 19.

Because smaller IP firms generally have cases with lower realisations and fees, simplifying the Rules in these ways would reduce the burden on smaller IP firms. These changes should also improve creditor dividends as less time would need to be spent on such administrative tasks as producing and delivering progress reports on cases that are of relatively little interest to creditors.

Question 4. Are there any court applications required by the Rules where court involvement does not add a necessary protection? Please give details to explain your answer.

Yes.

Requiring certain office holders to apply to court when creditors do not approve the basis of their fees (R18.23) or where the office holder considers the rate, amount or basis fixed to be insufficient or inappropriate (R18.24(b)) also appears unnecessary. It should be acceptable for office holders to make further attempts to seek creditors' approval to the basis or to seek creditors' approval to any

change as they consider appropriate, while providing that the office holder may apply to court as a last resort.

Question 19 explores a mechanism by which many court applications in relation to fixing fees may be dispensed with, which I would urge the Insolvency Service to take forward.

Question 5. Are there any Gazette notices required by the Rules that do not add value, and if so what if any changes to the Rules could address this?

No, however the need for Gazette notices ought to be combined. For example, on the commencement of a CVL, one Gazette notice should be able to be lodged to cover: (1) the resolutions passed; (2) the appointment of liquidator(s); and (3) notice to creditors to submit claims. This would reduce costs to the estate in having to lodge three separate notices.

Question 6. If you are a creditor, what barriers do you face in how you use information from office-holders, and how might these be addressed?

N/A

Question 7. To what extent could the Rules be amended to ensure stakeholders receive the information they want and/or need during insolvency proceedings?

I agree with the suggestions in the consultation document: notices and information required by the Act/Rules ought to be able to be provided via a website prior to the commencement of the insolvency appointment; and postal delivery ought to be widened and future-proofed to enable delivery by post other than first or second class post.

As I requested in my first rules review response, it would also be helpful to provide in the Rules a provision to set out a timescale for deemed postal delivery to recipients based overseas.

Question 8. If you are a creditor, to what extent are IP fee estimates helpful in providing the information you need to understand, monitor and/or challenge IP fees?

N/A

Question 9. To what extent could the Rules be improved by the better use of guidance?

While I am in favour of the suggestion that .gov.uk might provide some guidance required by the Rules and thus remove the need for directors or office holders to provide it, I do not see much scope for this. Examples include:

- Opt out information (R1.39)
- Creditors' voting rights etc. (R15.8(3(j))
- Creditors' and members' rights under R18.9 and R18.34 (R18.4(1)(f))

Question 10. Are there any remaining differences within or between the Rules which are unnecessary, unclear, or create avoidable complexity in practice? Yes/No. If Yes, please explain your answer.

Yes.

The different England/Wales and Scotland Rules around the dividend processes (e.g. in Scotland, there is no real equivalent to the E/W Notice of Intended Dividend and dividends must be timed according to the accounting periods) and statutory interest appear unnecessarily inconsistent.

Question 11. To what extent could other changes be made, to achieve the objectives of the Rules with a system that imposes less regulation?

There are many! For example:

- Enabling liquidators to charge a statutory fixed fee for CVLs (see Question 19)
- Reducing the detail required or the need entirely for progress reports on cases with low asset realisations
- Prescribing that a dividend need not be paid to creditors who are set to receive a negligible amount
- Limiting the need to invite creditors to decide whether to form a committee to only the first decision process convened in any case
- Providing that, if creditors have been invited to nominate committee members but insufficient nominations have been made by the decision date/meetings' end, then a committee is not established and R17.5(4) does not apply
- Providing an equivalent to R6.25(1)(d) in R3.62 to allow a joint administrator to resign if the administrators consider it is no longer expedient for that number of joint administrators to be in office
- Providing that an office holder may decide to stop the process to close a liquidation or bankruptcy after issuing their draft/final account/report to members/creditors but before vacating office (e.g. to deal with an unexpected receipt)
- Providing that an office holder may decide to postpone or cancel a dividend in circumstances other than the limited circumstances of R14.43 (e.g. where an issue arises that makes it impractical to pay a dividend)
- Providing that the decision date for a correspondence or electronic voting decision procedure may be extended, say, by up to 14 days (as with meeting adjournments) in the event that no valid votes have been received
- Providing that a vote cast in a non-meeting decision procedure may be amended or that an objection to a decision proposed by deemed consent may be withdrawn prior to the end of the decision date
- Amending R18.29 so that this rule may be used where the office holder wishes to request, not only that the basis of fees be changed, but also where they wish the rate or amount of a fee (i.e. fixed as percentage(s) or a set amount) be changed

Question 12. To what extent could the Rules on deemed consent for the electronic delivery of documents be amended?

Personally, I am not excited by the suggestions made in the consultation and I would prefer time to be spent on considering and implementing the changes that were put forward in the first rules review.

For example, the suggestion that the need for a couple of lines of text in a notice could be removed by providing the information on .gov.uk would not reduce a regulatory burden, whereas resolving the extraordinary number of issues around the Rules relating to fees would be an enormous help.

Question 13. To what extent could the Rules about creditor and liquidation committees be improved?

As mentioned above, changes could involve:

- Limiting the need to invite creditors to decide whether to form a committee to only the first decision process convened in any case
- Providing that, if creditors have been invited to nominate committee members but insufficient nominations have been made by the decision date/meetings' end, then a committee is not established and R17.5(4) does not apply

Voting in relation to appointing committee members is also not made clear in the Rules. The decision in re Polly Peck International Plc (In Administration) (No. 1) [1991] was that, as the 1986 rules indicated the process was an "election", a poll was to be conducted and the top candidates in terms of value of the votes cast would be elected. However, the Rules now indicate that a "decision" is made (e.g. R17.5(4)), so it is not clear whether the principle in Polly Peck should still be applied. It is clearly impractical for a "decision" to be made in relation to each committee member as this would simply mean that the largest creditor(s) would have the deciding vote on each member, so the Rules should make the election process clear.

A complication arose in re Patisserie Holdings Plc & Ors [2021] where the court considered it necessary in compliance with the Rules to propose a second decision procedure where creditors had voted to form a committee and had nominated three members, but that it was technically incorrect for these to have been accepted by the convener as forming the committee. Although in that case the court decided there was no prejudice as the three nominations had been put forward by the majority creditors, the decision indicates that the Rules require a separate second decision procedure to decide on the members of the committee. This seems insensible where creditors nominate sufficient members at the decision procedure that decides on whether a committee should be formed. For the sake of efficient case administration, the Rules should be amended to provide a simple process of forming a committee and deciding on its members.

The Rules include how an office holder should invite creditors to fill a committee vacancy (R17.4) but they are silent on what should happen if no volunteer can be found, e.g. whether the committee terminates where there are less than 3 members. The Rules do not provide for termination of the committee in any circumstances (including technically when the office holder is proceeding to close the case).

Question 14. To what extent should the Rules on handling personal data in insolvency proceedings be amended?

While the consultation notes the concern to ensure creditor engagement, this does not support the view that creditors' postal addresses should be shared with other creditors via the Statement of Affairs. The Statement may be delivered to creditors as late as the business day before the decision date, which is far too late for creditors to contact other creditors by post if the intention is that they should be able to collaborate for the S100 decision process. The concern to ensure creditor engagement also does not support the Rules' requirement that Statements of Affairs schedule shareholders' addresses.

I believe that fundamentally personal data should not be shared with other creditors via a Statement of Affairs. It is impractical to provide only that office holders can withhold certain personal data by applying to the court on the basis that disclosure might lead to violence. Much mischief other than violence can be caused and, at the very least, office holders should be free to decide for themselves whether or not to share personal data otherwise required by the Rules. The fact that Dear IP already oversteps the Rules and provides that an office holder may decide this surely indicates that the Insolvency Service already accepts that the Rules are too onerous in this area.

Having said that, my preference would be for the Rules to permit creditors' and shareholders' addresses to be omitted entirely from Statements of Affairs where those addresses are personal.

I am not in favour of Statements of Affairs requiring email addresses for the reasons of privacy set out in the consultation document.

Question 15. To what extent should England and Wales rules 3.20 to 3.22 be amended to reflect modern ways of working?

I do not have the practical experience in this area to be able to answer.

Question 16. To what extent should England and Wales rules 3.23 to 3.26 be amended to provide clarity on the exact time at which notices filed via E-Filing are deemed to be effective?

I have no view on this question.

Question 17. To what extent should the Rules on small debts be amended?

They should not be amended. Again, I would prefer that the time contemplating the small debt Rules be spent on material matters including those raised in the first review.

I note that the "underlying policy of having small debt provisions and the restriction of those provisions to cover only the payment of dividends are out of scope". Thus the suggestions made in the consultation document are futile.

The small debt provisions are pointless as the result is often simply that creditors receive cheques for a very small sum, sometimes not even as much as the postage cost to send the dividend, when they did not even expect a dividend because they had written off the small debt long ago. This either costs the creditor time to bank the cheque, or more usually they do not bank the cheque, so the office holder has to keep the case open until the cheque is 6 months' old, then cancel it and pay over the unclaimed dividend – for a fee to the Insolvency Service, which is often greater than the unclaimed dividend – with a completed form to the Insolvency Service. The burden of paying tiny

dividends to creditors with small debts far outweighs the costs "to review, admit and store the proofs of debt" of such creditors.

Question 18. To what extent could the small debt provisions be amended to improve how employee debts are handled?

I agree with the consultation suggestion that the small debt provisions be extended to employee claims where these have been part-paid by the RPS. This would be a valuable and welcome change.

In practice, I suggest that an office holder should explain to each employee how they have calculated their claim when they send the R14.31 information. Personally, I would prefer that the Rules did not prescribe the delivery of this calculation, but this may be something to consider. If so, it would be helpful if the additional information prescribed could be limited to calculation of an employee's preferential claim where the office holder is only intending to pay a preferential distribution.

Question 19. What is the best way to set office-holder fees in a CVL when creditors do not vote to approve the fees?

The best way would be to introduce a statutory fee for CVL cases.

The consultation puts forward two reasons why this may not be preferable, both of which do not stand up to scrutiny:

- "This could impact on the consistency across different types of insolvency proceedings." There already is inconsistency across the different types of proceedings. For example, R18.22 provides for Schedule 11 fees in bankruptcies and compulsory liquidations, but this does not apply to other case types; CVA and IVA fees are entirely a matter for the Proposal (and modifications/variations); and the Rules on Administration fees are very different again. Arguably, the statutory fee could be introduced also for Administrations, but I doubt that it would be relied upon very often because Administrations are more complex and time-consuming than a straightforward CVL on which a liquidator would be content with the statutory fee.

- "This could… potentially reduce creditor returns in cases where the new statutory fee exceeds the amount an IP would currently seek approval for." The consultation's basis for this statement is that "the CVL research commissioned by the government… indicates that in approximately 50% of CVL cases, IP fees for CVL work are currently below £10,000". This is a gross misrepresentation of the research. The CVL research report showed that the data set that was used to come up with this 50% figure (the 1,162 "cases where post-appointment fees data was available") included cases with mixed fee bases approved: on those cases, only the time costs relating to the work charged on a time costs basis would have been available, so this does not accommodate the additional fees on those cases charged as a percentage of realisations or as a set amount. The CVL research also explored CVLs that had started in 2017, so consideration must be given to the effects of inflation which cumulatively are c.40% from that time. Finally also, the CVL research report states that no payments were made to creditors in 86% of the cases reviewed. I suggest that most, if not all, of the 50% of cases with fees of less than £10,000 were cases with no dividends paid to creditors (because

processing a dividend takes not an insignificant amount of time), so the introduction of a £10,000 statutory fee would have little or no effect on the dividends paid to creditors.

The consultation document suggests reintroducing the scale fees for CVLs, as they are in bankruptcies and compulsory liquidations. This is a flawed suggestion because a fee of a set percentage of realisations is not a good reflection of the work undertaken. It does not recognise the significant amount of work carried out entirely unconnected with asset realisations, e.g. (but not limited to) appointment notifications, progress and final reports, CDDA and SIP2 compliance, submitting forms RP14/A and RP15/A in relation to employees' and pensions' claims to the RPS. For example, an office holder may have received realisations of £5,000 entitling them to a Schedule 11 fee of £1,000: this is not an acceptable fee for an office holder to complete a full CVL.

The bankruptcy and compulsory liquidation regimes do not support a Schedule 11 fee as an appropriate fee. Official Receivers and the Secretary of State automatically receive under statute £9,975-£13,200 in relation to each case plus a further 15% of all realisations. While I appreciate that the rationale for these charges is different from those of an IP office holder, surely the Insolvency Service would agree that a flat fee per case is appropriate in order to cover the basic work done on every case.

The consultation document also suggests exploring possible changes to primary legislation. I am not in favour of this: it takes far too long for primary legislative changes to be made; this is a pressing issue that needs to be dealt with as soon as possible; and the proposal of a statutory flat fee can be achieved via secondary legislation, so this must be preferable.

Given the objective of the review includes to see where regulatory burdens may be removed and efficiencies improved, it is disappointing to note that the proposal is to keep the requirement for the liquidator to seek creditors' approval to the basis of fees in the first instance and only then to allow the statutory fee to be paid if creditors do not vote. This creates unnecessary burdens for liquidators, increases their costs and is inefficient. If the Insolvency Service is keen on improving the UK's position in relation to efficient liquidations, it would be far better to allow the statutory flat fee without delaying the process by seeking creditors' approval. If the Insolvency Service accepts that a statutory flat fee is a fair fee in the event that creditors do not vote, I do not see the logic in not allowing it to be taken in the first place without incurring the costs of asking creditors for approval of it.

In summary, I am strongly in favour of the statutory fee model and I believe that fixing it at £10,000 (at the present time) would be fair and would achieve the objectives set out without unfairly benefitting liquidators.

Question 20. To what extent should the removal and replacement of an office-holder provide grounds for revisiting the basis of remuneration?

It is not unusual that fees estimates are under-estimates and that time is properly incurred in administering a case that exceeds the fees estimate. There is no facility in the Rules to enable an office holder to seek additional fees in this circumstance, as R18.30 only entitles the office holder to propose an additional fees estimate for additional work done, but it may be difficult to identify what "additional" work has been done when rather it has just taken more time to deal with a matter, e.g. more effort has been required than originally expected to collect book debts or to respond to creditors' queries. Where fees have been fixed on a basis other than time costs, R18.29 requires "a

material and substantial change in the circumstances which were taken into account in fixing it". This Rule also does not provide sufficient flexibility to seek a change in fees in less material circumstances, such as those mentioned above.

I note that it is an "underlying policy objective that changes to remuneration should only be permitted where there has been a material and substantial change in circumstances". While this is disappointing and in my view unfair, I trust that the Insolvency Service agrees that it certainly is unfair where a removed office holder was the one who sought approval of the original, inadequate, fee basis and has drawn their fees on that basis with the consequence that there is little or no capacity remaining for the replacement office holder to draw their own fees. To require a replacement office holder to apply to court under R18.24(b) in order for the fee basis to be revised is an unnecessary and inefficient administrative burden and may discourage some IPs from consenting to act as a replacement office holder.

The consultation document states that the underlying policy objective requires "appropriate safeguards to protect creditor interests". If the Rules were changed such that all requests for a change in rate, amount or basis of fees – for whatever reason – may be made to the creditors (or a committee, if there is one), I cannot see how this would fail to protect creditor interests given that the creditors would be free to approve or reject such requests.

Question 21. To what extent should the timelines for decision-making processes in England and Wales rule 2.27 and Scotland rule 2.26 be amended?

The timelines work well when the originally-convened decision procedure concludes as intended, but difficulties can arise when that is adjourned or when creditors request a physical meeting. It would be of assistance if the wording of R2.27 were amended to make clear that only the initial decision date needs to meet that timescale (in the same way that Para 52(3) of Schedule B1 to the Act addresses this for decision procedures convened to consider an Administrator's Proposals). Other Rules govern the timescales for adjournments and physical meetings, which should ensure that the process is not unreasonably protracted.

Question 22. To what extent should the timelines for decision-making processes in England and Wales rule 8.22 be amended?

In the same way as set out above at Question 21, the timelines work well when the originally-convened decision procedure concludes as intended, but difficulties can arise when that is adjourned or when creditors request a physical meeting. It would be of assistance if the wording of R8.22 were amended to make clear that only the initial decision date needs to meet that timescale. Other Rules govern the timescales for adjournments and physical meetings, which should ensure that the process is not unreasonably protracted.

Question 23. To what extent should the timelines for decision-making processes in England and Wales rule 7.52 be amended?

The consultation document misquotes R7.52. R7.52 does not state that "creditors must be given 5 business days to nominate an IP", but rather it states that "a proposal must be received by the Official Receiver within five business days of the date of the notice". In practice, this can mean that

creditors are given far less time, as the Rules do not require the Official Receiver to send the notice on the day it is dated and the timescale does not factor in the time to deliver the notice to the creditor or for the creditor to deliver their proposal to the Official Receiver. At the very least, it would seem fair to amend the Rules so that the timeline counts from the date of *delivery* of the notice, as is the case for all notices sent by IP office holders.

It is not clear to me why the timescales in R7.52(10) and (11) are that the decision date must be no later than 21 days after the deadline for receiving proposals and that creditors must be given at least 14 days' notice of the decision date whereas the equivalent R10.67(10) and (11) for bankruptcies sets these dates at 14 days and 7 days respectively. I wonder if the processes could be made consistent and I expect that the timescales of R7.52 are more practical.

Question 24. To what extent should the timelines for decision-making processes in England and Wales rule 10.67 be amended?

Similar to my answer to Question 23, R10.67 also specifies the timescale for creditors to nominate an IP as 5 business days of the date of the notice, which is impractical and does not accommodate the time taken to deliver the notice. Also as mentioned above, the timescales of R10.67(10) and (11) are different from those of R7.52(10) and (11) and it is not clear why. It seems to me that the timescales of R7.52 are more practical.

Question 25. How frequently do creditors choose to opt out of receiving correspondence?

In my experience of reviewing IPs' case files since the commencement of the Rules, I have seen less than 10 requests to opt out and I think it is not a coincidence that I believe these requests have only been received on cases where the IP has sent to creditors a simple form to register their request to opt out. On some of these cases, the IP has simultaneously notified creditors (per R1.50) that all future statutory deliveries will be by website upload, so it calls into question whether the creditor returning the opt-out form truly understood what they were opting out from.

Question 26. If you are a creditor, what value does opting out of correspondence bring?

N/A

Question 27. What improvements could be made to the Rules on opting out?

As the opt-out provisions are rarely used, it seems unnecessary to change the Rules on how they operate. However, as mentioned at Question 9, it would be slightly helpful if office holders could avoid sending to creditors information on opting out but rather they could signpost creditors to a .gov.uk website that provides the information. This would reduce mailout costs a little at least.

Question 28. Are there any areas of the Rules that have been adversely impacted by inflation? Yes/No. If Yes, please explain your answer.

Yes

The Schedule 11 fee thresholds, i.e. that the percentages would drop after the first £5,000, then after the second £5,000, and then after the next £90,000, have been unchanged since at least 1985. These thresholds are in desperate need of updating to account for inflation.

Question 29. To what extent have other legislative developments impacted on the effectiveness or utility of the Rules, or created unintended consequences?

The consequences of the need for employers to provide a prescribed length of notice to employees when the redundancy of a prescribed number of employees is proposed, as et out in the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") continues to trouble IPs when advising directors seeking to limit their companies' exposure to additional liabilities after insolvency has been recognised and when IPs take office over insolvent corporate entities that continue to employ staff. It seems contrary to the fundamental principles of the insolvency regime that an insolvent employer should incur additional liabilities once it becomes clear that redundancies are unavoidable and that other creditors should suffer a dilution of their recovery from the insolvent estate because of significantly increased employees' claims for a failure to give the statutory notice required under TULRCA. The direction of travel of the proposed TULRCA amendments will only exacerbate these unfair consequences.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Regulations") have introduced duties on some insolvency office holders that appear unnecessary and merely add costs to processes. For example, the Regulations impose duties for regulated entities to carry out "ongoing monitoring" on engagements and the RPBs have interpreted this to apply to office holders in relation to the entities over which they have been appointed. For example, it seems futile for a CVL liquidator to periodically assess the ML risks, scrutinise the insolvent's ongoing transactions (which of course are under the liquidator's immediate control), ensure that AML CDD remains up to date, and to take another copy of the company's PSC register at Companies House and revisit whether there are any PSC discrepancies. The Regulations are clearly intended to affect certain professionals' relationships with their clients, but this relationship makes little sense in insolvency procedures with the exception of CVAs, IVAs, bankruptcies, Moratoriums and some Receiverships. Again, the direction of travel of the Regulations appears to be to increase the extent of regulated entities' work in monitoring their clients, which do not fit well with an insolvency office holder who is in full control of the insolvent's affairs. The fact also that Official Receivers are not caught by the Regulations creates unnecessary and illogical inconsistencies between cases managed by Official Receivers and those administered by IPs.

Question 30. Are there any other areas of the Rules that present practical difficulties following the rollout of E-Filing? Yes/No. If Yes, please explain your answer.

No.

Question 31. How might the Rules need to adapt to accommodate technological changes?

The Rules on rights of inspection of documents appear anachronistic. For example, R6.14(8)(c) requires S100 notices to state "a place in the relevant locality where, on the two business days falling next before the decision date, a list of the names and addresses of the company's creditors will be

available for inspection free of charge". Identifying "the relevant locality" is troublesome when considering the fact that many companies now have no "local" presence and, if they do, this may be irrelevant to most of their creditors. It also seems inappropriate to expect a creditor to travel to the relevant locality in order to inspect a list of creditors.

Other Rules on inspection rights, particularly in the context of virtual meetings (e.g. R16.6), are also impractical.

Question 32. To what extent do you currently use AI in insolvency proceedings? Please give details to explain your answer.

I only use AI to assist in understanding the Rules and the impact of relevant case law. Unsurprisingly, I have had mixed results, with some answers (even from reputable sources) being flawed.

Question 33. If you are an office-holder, do you currently inform recipients whether AI has been used to undertake office-holder functions prescribed within the Rules? Please give details to explain your answer.

N/A

Question 34. How might AI impact on the future useability of the Rules?

As the use of AI in insolvency case administration grows, it seems to me that this may impact on the extent to which office holders will seek to have their fees fixed on the time cost basis. If an office holder has invested significant sums in developing AI tools to replace the time spent by their staff, then they will likely be less inclined to see fees on a time cost basis (unless they increase their charge-out rates significantly to enable them to recoup the AI development and maintenance costs). While R18.16(9)(c) hints that office holders who administer cases in an effective manner should be given credit for this when fixing the fee basis, R18.16(9) in its entirety does not appear well designed to encourage IPs to invest in AI to improve efficiencies in case administration. The subjectivity with which some in the RPBs appear to be measuring the fairness and reasonableness of fees fixed on bases other than time costs also seems counter-productive to encouraging efficiencies in IP firms, as they sometimes refer to a case's time costs as an apparent measure of an acceptable quantum of the fee.

Question 35. To what extent do the Rules provide an appropriate framework for dealing with digital assets?

I do not have the practical experience in this area to be able to answer.

Question 36. To what extent would the Rules, as currently written, be appropriate should cryptocurrencies be considered currency rather than assets?

I do not have the practical experience in this area to be able to answer.

Question 37. To what extent could the Rules be amended to better support office-holders when recovering digital assets?

I do not have the practical experience in this area to be able to answer.

Question 38. To what extent could the Rules be amended to better support office-holders when dealing with insolvent digital traders?

I do not have the practical experience in this area to be able to answer.

Question 39. To what extent could further changes to the Rules bring real-world benefits to stakeholders?

As mentioned elsewhere, I would urge the Insolvency Service to consider the Rules around progress reports, which, in combination with the SIPs, have resulted in unnecessarily long documents, which take hours to produce and check but which have very little benefit for stakeholders. At the very least, it should be possible to reduce the reporting requirements where little or no realisations have been achieved.

Also as mentioned elsewhere, I and others described a great deal of Rules that present real-world issues for IPs because of their ambiguity and inconsistencies. Some of these the Insolvency Service itself has overlain with their own interpretation as set out in Dear IP articles. However, those Dear IP clarifications cannot be relied upon when a matter comes to the court (for example, in the case of Minmar (929) Ltd v Khalastchi and another [2011] the court came to a decision that was contrary to a published Dear IP, although this matter has since been addressed in the Rules). At the very least, I would expect the Insolvency Service to be keen to amend the Rules to remove any such ambiguities so that their interpretation is clear and I am very surprised that the Insolvency Service did not take the opportunity to make those amendments in the 2026 amendment rules.

It is accepted that many of the issues previously raised are minor. However, fixing them would bring real-world benefits, as it would save on the costs of IPs seeking legal advice on the ambiguities or inconsistencies and on their taking risk-averse approaches which often hinder efficient and effective administration. The amount of time and effort that goes into ensuring documents and processes comply with the very detailed and sometimes confusing Rules and into training staff and including complex safeguards to avoid a non-compliance is utterly miserable and filters into higher fees and reduced returns to creditors. I do not understand why the Insolvency Service seems reluctant to address the changes that I and others have requested over the years.

In addition to the matters raised in the first review and elsewhere in this consultation response, I have detailed below a few of the additional issues with the Rules that I have encountered in recent years:

- The court in re Lehman Brothers (International) (Europe) (in Administration) [2017] noted that there is no statutory requirement for estates to pay interest on unsecured claims for the period after the commencement of the Administration up to the date that the Administration moves to CVL. This would appear to be a lacuna in the Rules and should be addressed.

- R3.60(6)(a) is unhelpfully limited in setting out who should be appointed liquidator when an Administration moves to CVL. It states that this shall be the person stated in the Administrator's proposals or revised proposals. There are many occasions when, because IPs have moved firms or retired, it is not desirable for the proposed liquidator stated in the Administrator's proposals to be appointed, but a proposals simply to switch out the proposed liquidator for someone else in the same firm would seem to fall short of the criteria required to issue revised proposals. It would be very helpful if the Rules enabled the proposed liquidator to be changed by a decision procedure or deemed consent process prior to the move to CVL.

- It would be useful if R1.50 could be amended to provide that the delivery of a R1.50 notice does not need to be repeated where an insolvency proceeding is followed by a subsequent proceeding (e.g. Administration to CVL) where the website access information has not changed, because as it is currently worded it appears that a new (but precisely the same) R1.50 notice must be delivered to all creditors once the subsequent proceeding has begun.

- It would be useful if R1.50 accommodated changes to the website/login details previously notified to creditors on a R1.50 notice. For example, IP firms may change their website upload providers or a case may move from one IP firm to another. While IPs are taking a pragmatic approach and issuing a new R1.50 notice in those circumstances, the Rules do not strictly provide a route for delivering documents to a website other than that noted on the first R.150 notice and it is not clear how office holders should deal with documents already uploaded to old websites.

- R18.18(4) sets out which creditors must approve fees where an Administrator "has made" a Para 52(1)(b) statement in their proposals. This does not accommodate a case where an Administrator made a Para 52(1)(b) statement but thereafter assesses that in fact the statement no longer applies e.g. due to a change in anticipated realisations. It would be helpful if R18.18(4) could be amended to acknowledge that a Para 52(1)(b) statement could in effect be retracted e.g. by issuing revised proposals with the effect that R18.18(4) would not apply to fee-approval but rather R18.18(3) would apply.

- It is not clear why a bankrupt should receive notice of a meeting of creditors (R15.14(2)) but not notice of any other decision procedure. It would seem more appropriate for notices to bankrupts to read similar to notices to company officers per R15.14(1), i.e. that the convener may require the bankrupt to attend a meeting, but otherwise they need not be given notice of a meeting.

- R1.6 states that identification details of the bankrupt include their "residential address". The Rules require these details to be included in all statutory notices, including that issued at the end of the administration of the bankruptcy. The Rules do not make clear whether the disclosure should be the bankrupt's current residential address or that as at the date of the bankruptcy order. The latter appears to be more relevant to creditors, as presumably the requirement is to assist creditors in identifying their claim and it would seem contrary to principles of privacy to disclose to creditors a bankrupt's new residential address. It would

be helpful if the Rules made clear which residential address – past or present – needs to be disclosed.

- It is not clear why the Rules require a formal proof of debt to be submitted in order to vote in a bankruptcy or compulsory liquidation decision procedure, whereas R1.2 enables a simple notification in writing to the chair or convener of the debt to be sufficient for voting in other case types. It seems inappropriate to reject a creditor from voting if they have not submitted a full proof of debt in a bankruptcy or compulsory liquidation decision procedure.

- I understand that it is the Insolvency Service's view that Schedule 11 fees may not be drawn unless the office holder has first sought creditors' approval. This view is not supported by R18.22(1)(b), which states that "in any event" Schedule 11 fees may be drawn if creditors have not fixed the fee basis within 18 months. If the Insolvency Service's understood view is correct, the Rules should be amended to have this effect.

- The combination of S231(2) and R6.20(6) (and other Rules relevant to other liquidation types) make unclear what is required in relation to determining how joint liquidators should act. The Rules could be read such that the convener merely needs to note on the certificate of appointment how the joint liquidators should act for it to have effect, but some believe that a specific resolution/decision must be passed by the appointers (although in a CVL it is not clear whether this should be the creditors, members or both) in order to determine this matter. It would be helpful if the Rules clarified whether a resolution/decision needs to be passed and if so by whom and what would be the outcome if a decision was not made. To reflect current practice, perhaps the Rules could provide for a default position that acts may be done by any one liquidator so that this does not become an issue in the event that creditors do not pass a resolution/decision either way.