Subject:	Call for evidence: Review of the personal insolvency framework
Published by:	The Insolvency Service
Publication Date:	5th July 2022
Closing Date:	24th October 2022
Response Date:	21st October 2022
Response to:	PIR.CFE@insolvency.gov.uk
CCUA Contacts:	Rob Thompson, Chair Email: robertt@ccua.org.uk Claire Stokes, Association Administrator Email: claires@ccua.org.uk
Representation:	The CCUA has drawn upon the views of the CCUA membership including those of it's Policy and Reform Committee.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service which is fair and proportionate for all court users.

Our members issue around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Overview

The current remedies available for personal insolvency have developed and evolved over time, following relatively regular reviews to ensure that they remain relevant and fit for purpose. Accordingly, whilst improvement could no doubt be made, they currently provide a proportionate, effective and balanced approach.

Responses

1. <u>What should be the fundamental purpose of the personal insolvency framework? Does the current framework meet that purpose?</u>

   Debt relief to those who are insolvent, with a return to creditors where possible.

   Yes.

2. <u>If “fresh start” and “can pay, will pay” are the right objectives for the personal insolvency regime, does the current framework get the balance right?</u>

   Yes.

3. <u>Please provide any evidence to show how well the objectives of “fresh start” and “can pay, will pay” are being met.</u>

   We have no additional evidence to provide. We would suggest that the circumstances of all those who benefit under the various mechanisms provide such evidence.

4. <u>Please explain whether there should be different objectives for different personal insolvency procedures.</u>

   There should be different objectives for different scenarios, e.g. whether any payments to creditors are possible.

   The current mechanisms and procedures work well.

5. <u>Please consider whether there should be different options for trading and consumer debtors. If so, how would the features differ?</u>

   Probably not. Insolvency is insolvency, regardless of whether the individual is a trader or a consumer.

   We can see the attraction of allowing a trading individual to attempt to trade out of their difficulties, to the benefit of all concerned. However, that is perfectly possible currently, under an IVA for example.

6. How effective are the current safeguards (public records, public registers, restrictions and sanctions on debtors) at protecting the integrity of the personal insolvency framework?

   Good when used. See our answer to question 7.

7. To what extent does the current enforcement regime (BROs/DRROs and criminal sanctions) adequately achieve the aims of deterring future misconduct (both individual and general) and protecting the public?

   Poorly.

   The consultation paper suggests "misconduct in insolvency is rare". In support, it cites that only 3% of bankruptcies involve a BRO, whereas this was previously expected to be in the region of 10%. However, we would say that is not a relevant measure, given that creditors frequently refer to their frustration that situations which are clear to see are not adequately investigated or dealt with.

   The mechanisms seem to be there, the problem seems to be a lack of resource or other limitations, which mean that situations are not adequately investigated and dealt with.

   In such a climate, the extent of misconduct remains unclear and the aims are not being met.

8. How, if at all, should the personal insolvency framework distinguish between honest/ unfortunate and dishonest/ reckless debtors?

   We would suggest that in cases where there has clearly been dishonesty or recklessness, this should be made as transparent as possible.

   This would provide benefits from all angles, including helping to encourage the avoidance of such behaviour in the first place.

9. Are there any features of other regimes that would be beneficial to consider for England and Wales and how effective are these features? For example, debt counselling and rehabilitation programmes.

   Stigma or otherwise probably says more about the debtor's own perception than anything else.

   It is doubtful that compulsory counselling and rehabilitation programmes would serve much purpose. Many people will already have learned lessons from their experiences. Others probably never will, whether further help is forced upon them or not.

   Such programmes are no doubt useful, but probably only for those who are choosing to participate and benefit.

10. Who should bear the costs of entering and administering personal insolvency procedures??

    Costs should be taken where possible from the debtor's income and assets.

    Beyond that, it should come from taxpayers. Nobody chooses to be in these situations, particularly creditors, some of whom may well have found themselves as a creditor without choosing to put themselves in that situation.

    These mechanisms are an essential part of a functioning society, so there is no reason why it should not be predominantly taxpayer funded.

    We accept that charging a fee to a creditor to place a debtor into an insolvency situation is acceptable. As implied in the paper, this is a worthwhile safeguard to ensure that the step is not taken lightly. However, this should retain some priority to be reimbursed from the assets.

11. How should the costs of entering and administering personal insolvency procedures be paid and structured between the different parties?

    The current balance works well.

12. What options are available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or DRO?

    Very few, but that's not necessarily a problem.

    If a debtor truly has nothing, then they have little to fear from legal action against them. Similarly, a creditor has little or nothing to gain by taking such action.

    Even if a court Judgment is obtained which cannot be enforced then that's also not really a problem, it simply reflects the true position.

    The only time that this can become a problem is when debtors fail to engage to explain that they have nothing. That can result in unnecessary and pointless legal action being taken. Whilst that will do little harm to the debtor, it is a waste of time and money for the creditor and also uses the court's time unnecessarily.

13. What are the main consequential costs of the different insolvency procedures?

    Lack of access to finance, although that is understandable and a feature of responsible lending.

    It may also limit access to some employment opportunities (e.g. working in financial services), although again the reasons for that are obvious and well-founded.

14. How can we reduce the stigma of insolvency to both encourage early action by those in financial difficulty and to support a "Fresh start" from debt relief?

    We would suggest that perhaps this question should commence, "Should we reduce the stigma…."?

    As stated in the paper, there has been a decline in the amount of people who associate a stigma with insolvency. For those that still see a stigma, we would suggest that is more to do with their perception and their beliefs.

    We would also question the assumption that reducing the stigma would encourage early action and support a fresh start. Turning that on its head, if there was no stigma, we would suggest that may reduce early action, on the basis that the individual is more likely to be content for the process to continue.

    Also, stigma or otherwise has no bearing on the fact that a fresh start is actually provided.

    The whole basis of this question raises concerns.

15. Please provide any evidence to show whether consequential costs serve a useful purpose or whether they produce unintended consequences for different stakeholder groups.

    There have to be consequences and often they have very good reason, as per the examples in our answer to question 13.

16. Do you believe the current insolvency proedures are working as intended? Please provide any evidence that you have?

    Generally, yes.

    We do have some concern that a small number of Insolvency Practitioners may be proposing a small number of IVAs which are unnecessary and unsuitable. This is particularly where the debts are owed to financial services providers who will often now exercise forbearance if the debtor simply engages with them, so the protections of the IVA may not actually be required.

17. How well do those in financial distress navigate the current regime and could this be improved? Please provide evidence to support your answer.

    This is heavily dependent upon the quality of the advice they receive.

18. Are the current personal insolvency procedures the right products to service the needs of both debtors and creditors today or are new procedure(s) needed to serve debtors and creditors better?

    They generally work very well and provide a good range of options.

19. <u>How well do the existing insolvency procedures work for sole traders and partnerships? Please provide any evidence you may have.</u>

    They generally work very well and provide a good range of options.

20. <u>How could the personal insolvency framework be improved for sole trasers and partnerships?</u>

    The framework offers a good range of solutions and works quite well.

21. <u>What evidence do you have of the number of IVAs/ Partnership Voluntary Arrangements which relate to sole traders and partnerships?</u>

    The Association holds no statistics on this.

22. <u>What are the main factors which influence an individual's decision to enter a particular procedure?</u>

    There are 2 aspects to this.

    The first is what motivates them to seek an insolvency remedy of any kind. This is when they appreciate that they are insolvent but it does also often require some further motivating factor, such as a creditor pressing for payment, especially by way of legal action.

    However, the need for a further motivating factor may not always be true for some of the less burdensome remedies, such as a DRO. They may simply reach the point where they want a fresh start, perhaps due to a forthcoming lifestyle change, such as wanting to start a family.

    Whatever remedy is chosen, we would suggest that the main factors are to weigh the benefits of the cost of taking the action, the length of time it will take and what the debtor will lose.

    Some examples –

    A DRO will often be first choice as it is relatively inexpensive, short and painless, but the criteria have to be met.

    A homeowner may well be prepared to accept the cost and length of time in an IVA, if they can avoid losing their home.

    Whereas somebody with little or no assets but who doesn't qualify for a DRO, may well prefer the shorter experience of bankruptcy.

23. <u>How could an individual's decision to enter a particular procedure be better informed?</u>

    There is a risk of an individual latching onto the first solution they find, particularly on the internet.

This is an area where carefully considered advice is essential.

24. What evidence do you have of the impact that a public register has on an individual's decision to choose a particular insolvency route.

    No evidence as such. However, it is vitally important that the information is in the public domain.

25. What impact does professional debt advice have on debtors when choosing a personal insolvency solution? Please provide evidence to support your answer.

    A large impact, and so it should do.

26. Please explain any other barriers to entry to personal insolvency which are not included in this call for evidence, highlighting any particular groups that are affected.

    None that occur.

27. How could the personal insolvency framework be improved, for example, to make access easier or movement between procedures easier? Please provide evidence to support your answer.

    As stated above, the processes currently work relatively well.

    The suggestion of a single gateway is an interesting one. The idea of collecting all methods together so that they can all be considered and the best solution selected for the individual could work well. But on the other hand, all current solutions already exist, so simply ensuring good advice would probably be an easier way of achieving the same outcome.

28. Which elements of other national regimes could improve the personal insolvency framework in England and Wales?

    We have nothing to add by way of suggestion here.

Rob Thompson

Chair, Civil Court Users Association

21st October 2022