



Business, Innovation and Skills Committee

Oral evidence: [Insolvency](#), HC 936–i

Wednesday 4 March 2015

Ordered by the House of Commons to be published on 4 March 2015.

Witnesses and written evidence where submitted:

At 9.30pm

- Eve Salomon, Chair of the Regulatory Board, Royal Institution of Chartered Surveyors
- Graham Stockey, Principal Surveyor, RICS Regulation (Valuation), Royal Institution of Chartered Surveyors
- Julian Healey, Incoming Chief Executive Officer, NARA: The Association of Property and Fixed Charge Receivers
- Daniel Hardy, Chairman, NARA: The Association of Property and Fixed Charge Receivers

At 10.15am

- Irene Graham, Executive Director of Business Finance, British Bankers' Association
- Phillip Sykes, Vice-President, R3
- Bob Pinder, Regional Director, Institute of Chartered Accountants in England and Wales

At 10.45 am

- Sarah Albon, Chief Executive, Insolvency Service
- Graham Horne, Deputy Chief Executive and Director of Operations, Insolvency Service
- Anne Willcocks, Director of External Affairs, Insolvency Service

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Members present: Mr Adrian Bailey (Chair), Mr William Bain, Paul Blomfield, Caroline Dinenege, Rebecca Harris, Mr Robin Walker

Questions 1-130

Witnesses: **Eve Salomon**, Chair of the Regulatory Board, Royal Institution of Chartered Surveyors, **Graham Stockey**, Principal Surveyor, RICS Regulation (Valuation), Royal Institution of Chartered Surveyors, **Julian Healey**, Incoming Chief Executive Officer, NARA: The Association of Property and Fixed Charge Receivers, and **Daniel Hardy**, Chairman, NARA: The Association of Property and Fixed Charge Receivers, gave evidence.

Q1 [Chair: Good morning. Can I thank you for agreeing to assist us with our inquiry and apologise for the slight delay in starting? We had one or two members who were held up en route, but we are now okay and can get going. For voice-transcription purposes, may I ask you to introduce yourselves, starting on my left?

Graham Stockey: Graham Stockey, Principal Surveyor at RICS Regulation for valuation purposes.

Eve Salomon: Eve Salomon. I am the independent Chair of RICS Regulation.

Julian Healey: Julian Healey. I am the Chief Executive Officer of NARA, the trade association for fixed-charge receivers.

Daniel Hardy: I am Daniel Hardy. I am the Chairman of NARA.

Q2 Chair: Some of the questions will be person or organisation-specific. That does not mean that anybody else cannot chip in if they feel that there is something they would like to add or subtract. Equally, some will be general, but do not feel that you all have to answer if you have really nothing to add to what a previous speaker has said. We have got time constraints so I want to crack on. The first couple of questions are fairly general. In 2013, we—by “we” I mean the BIS Select Committee—published a report on insolvency. In that report, we stated: “It is not right that a regulated industry should seek to profit because a company is going insolvent”. How has the insolvency landscape developed since then, in particular that public perception of unfairness? Who would like to lead on that?

Julian Healey: Your report makes reference to insolvency generally, and I represent a trade association that deals principally with fixed-charge receivership, and thus that relates to property and the recovery of loans in respect of mortgaged property. The landscape during the period 2013 and before was such that the property cycle had boomed. We are all aware of the economic crisis that took place. During that period, there had been a considerable number of entrants into the property-investment market, some of whom may be described, perhaps, as relatively unsophisticated or inexperienced. The market, prior to 2013 and the crash, was being driven by competition amongst the lenders to some extent in order to enter that sector. What has happened since that time is that the market has improved and, in consequence, fixed-charge receivership is not now being utilised to the same extent as hitherto. Therefore, to consider that insolvency and fixed-charge receivership are one and the same is perhaps slightly incorrect because there is some dissimilarity between those two elements.

Q3 Chair: Could you, in simple layman’s language, just explain the difference?

Julian Healey: Certainly. Fixed-charge receivership is a means by which a lender can recover his loan when the borrower is in default. It is a process that is derived from the

Law of Property Act 1925 and also from the mortgage deed. In doing so, a fixed-charge receiver acts as agent of the borrower and is appointed by the bank. He has a hierarchical series of responsibilities, and those responsibilities are personal to that receiver; appointments are not taken in a company or corporate name but in that receiver's personal name, and he has full responsibility then for that property. Does that adequately explain that?

Q4 Chair: Yes. Just going back to your opening statement, from what I can gather you—I suspect rather euphemistically—described some of the entrants into the property market as “unsophisticated”.

Julian Healey: Yes.

Q5 Chair: The implication being that the banks were very happy to lend to “unsophisticated” property owners and that not appropriate levels of due diligence were carried out. Is that a reasonable observation?

Julian Healey: I cannot comment on a bank's process or the due diligence that they may take, but it is correct that I used the words “unsophisticated” and also “inexperienced” in terms of borrowers themselves. We saw many people entering the property market, all based upon the somewhat specious thought, “Property values always go up, don't they? They never go down,” and there was competition amongst banks to lend in that sector. I cannot derive anything more than that.

Q6 Chair: I think we can understand what you are saying. It has been argued that under the current system of insolvency in the UK, banks have disproportionate power in their relationships with their business customers. Do you agree with this observation? Does anybody else want to chip in?

Daniel Hardy: In relation to what the key relationships are, the balance of power and how it is perceived, and who a fixed-charge receiver acts for, I hope that my comments provide you with an insight as to the powers that are conferred on a receiver on appointment and the relationships and also who a fixed-charge receiver acts for. There is a perception rather than the actuality in terms of the role of the receiver. Firstly, I would like to point out that the receiver has no client. He is independent and acts impartially. Receivers have powers conferred on them so that they can deal with the assets of the borrower. A fixed-charge receiver has a primary duty to the lender but also other duties, such as a duty of care to the borrower and other parties with an interest. The powers conferred on the receiver must be exercised in good faith. A receiver has a duty to exercise proper skill and diligence and to conduct a case in a prudent and cost-effective manner. There is also a duty to obtain the best price obtainable in the circumstances. Fixed-charge receivership and wider property advice has been crucial to enable lenders to deal with their loan books. There is a growing awareness of the need for clarity on these duties, and NARA—

Q7 Chair: Can I just intervene at this point? I am pretty certain you incorporated most of that in your written evidence to the Committee, so there is no real need to go through

it all. Could you just respond to the question? Do banks have disproportionate power in their relationship with their business customers?

Julian Healey: Perhaps I can assist you here, sir. It is fair to say that anyone who has a loan feels to some extent disadvantaged in the face of a bank. However, the role of the fixed-charge receiver, whilst not commonly perceived as such, is perhaps that that fixed-charge receiver is almost the best friend that the borrower is going to have. It is the case that we are here considering a borrower in the face and headlights, so to speak, of a very large corporate entity, but it should not be forgotten that a lender who interferes with the realisation of that loan through fixed-charge receivership runs the danger of being termed technically a mortgagee in possession. That is something most banks are most reluctant to do, because of the risks that go with it.

Q8 Chair: We are going to explore that in a minute. I still would like an answer to my question. Do you agree that banks appear to have a disproportionate power in their relationship?

Julian Healey: If a bank seeks to act improperly and exploit all the powers at its disposal without due reference to the full extent of a legal interpretation ethically and morally, then inevitably it must be so that a bank could create a situation where they have the upper hand.

Q9 Chair: What sort of actions would you regard as improper?

Julian Healey: Deliberately misleading a borrower.

Q10 Chair: How could a bank deliberately mislead a borrower?

Julian Healey: By misrepresentation. I have no evidence of this, but by ways of misrepresentation or otherwise selling that borrower a product that was perhaps not appropriate. I note particularly from the Tomlinson Report that reference is made to banks having clients. I perceive banks as having customers. Banks themselves talk of selling product, and selling a product is to sell the maximum product to the maximum number of people.

Q11 Chair: If a bank sold somebody a mortgage product and then changed the terms of that lend, could that be interpreted as improper?

Julian Healey: That seems to me bordering almost upon a legal question on which I could not comment. It would strike me as being unfair.

Chair: We have probably explored that as far as we can.

Q12 Caroline Dinenage: Mr Hardy, you have displayed a frightening display of premonition there, because you have already anticipated my question, which was: "Who does the Law of Property Act and the fixed-charge receiver act for?" You just read that out, so I have got that one. If we could move on to Mr Healey, at the NARA conference in 2012 there were calls for receivers to have closer co-operation with the banking industry. Do you agree that the insolvency landscape would be improved if the receivers and the banks worked more closely together?

Julian Healey: Yes, I do. It would be improved in that sense because there does tend to be an approach whereby the fixed-charge receiver can be brought in almost too late in the process. Sometimes what is required is a change in the management style in which the charged asset is being administered, and there are opportunities where, if a fixed-charge receiver is brought in early, the position could perhaps be improved or at least ameliorated.

Q13 Caroline Dinenage: In your “Guide to Property Receivership”, it states that “once the lender has exercised its power and appointed the receiver, it will, in theory, have no control over the subsequent actions of the receiver”. How do you square that with the view of your members that the receivers should work more closely with the lenders?

Julian Healey: Because, in terms of giving initial advice in order to avoid the concept of the receivership in the first place, when I talk about bringing a fixed-charge receiver in early it is in terms of giving advice before, perhaps, the concept of the appointment proper—in other words, avoiding the appointment process.

Q14 Caroline Dinenage: We have heard that receivers often work within the bank that appoints them, giving the impression that there is no separation from the two—for example, using a bank’s email address, headed notepaper and that sort of thing. Is it common practice for surveyors to be seconded into banks? Are you concerned about the impression that this gives with regard to impartiality?

Julian Healey: It is not commonplace. It happens, and, yes, I am concerned about the impression that it gives, because there is a perception—which is, in my view, an incorrect perception. If we just look at secondment into banks, the reality is that in the boom times the banks had no process in place for dealing with distressed loans. By “distressed” loan I mean one where it is not being paid, the loan-to-value has been breached, or whatever. At that time, the banks had no internal process whatsoever. From my own experience, it was quite clear in speaking to banks that they were not even aware of the processes available to them. In consequence, the banks were desperately trying to build up their knowledge base, if you will—their intelligence—in that area, and necessarily they turned to principally the legal and surveying fields. They also turned to the accountancy fields, but where it was purely property based—as distinct from a business—they realised that it was surveying input that they needed. The commercial reality was that surveyors saw the opportunity of being able to raise their flags and say to the bank, “We are here” and they took that opportunity. That is how secondment arose—not excessively, but it did take place. There were a number of practices that did get people seconded in on a purely commercial and arm’s-length basis.

Q15 Chair: Do you think that is appropriate?

Julian Healey: It is appropriate when that surveying practice is approached on an arm’s-length basis by a corporate bank that says, “We have a distressed loan book; we have no internal expertise; we want to employ people and we want you on a contracted basis to come and advise us.” We have to be careful what we mean in terms of “secondment”. Effectively, what was happening was that the surveying practices were putting people into banks on a pure contractual, arm’s-length basis. “Send me three people who are expert in

this field to work out of our office for the next six months going through and advising us what we should do.”

Q16 Chair: Do you not think it is astonishing that somebody in a position, effectively, of trust to give independent advice is working—I say “on behalf of”—with the organisation that is party, if you like, to the unwinding of another company’s assets?

Julian Healey: No, because here we are mistaking the concept of a secondee giving advice to a bank, in the same way that they may be employed to give advice in any arena, and then moving on to fixed-charge receivership.

Q17 Chair: Yes, but if they are acting as part of the administration of that company, is that not a conflict of interest?

Julian Healey: It has a potential for a conflict of interest and it has to be managed quite well, but in an initial examination, if they are arm’s-length appointments, then there should not be any conflict.

Q18 Chair: With respect, how can an arm’s-length appointment be working in the premises next to others who are carrying out other functions—the lenders, if you like—in that process?

Julian Healey: I just wonder if we are talking at cross purposes here. I see surveyors going in as secondees to give advice on the discrete matter before them, not in terms of fixed-charge receivership. I am seeing these as two separate and distinct—

Q19 Chair: Yes, but if they are engaged in fixed-charge receivership—

Julian Healey: Yes, there is conflict between a fixed-charge receiver going into a bank and advising on matters and then saying, “I have identified this as a distressed property. What a good idea. I shall now go and act as fixed-charge receiver.” Clearly that is a conflict and we have regulation for that.

Q20 Chair: Could I ask RICS to make a contribution?

Julian Healey: Just one final point. Do not let us forget as well that there is a difference here between the corporate entity—the surveying practice being instructed—and subsequently the fixed-charge receiver, as a personal appointment. A legal nicety perhaps.

Eve Salomon: If I can add to that, I would just like to remind the Committee that the idea of professionals going into secondment into banks or any other institution is common across all professions—solicitors, accountants, chartered surveyors. It is very common and, as Mr Healey said, it is subject to an arm’s-length contractual agreement between the secondee and his or her firm and the employing organisation. The terms of that secondment agreement will be set out, where the professional is expected to go in and advise in their professional capacity and subject to all the professional obligations that apply to them in any event. In terms of the specific circumstance where somebody might be a secondee in a bank, advising the bank, and then subsequently—it would not be at the same time; it would be subsequently—is appointed as a fixed-charge receiver, that could potentially raise issues of conflicts of interest, but those matters are dealt with by

professional codes, and it is down to the individual to determine whether or not there are conflicts of interest and whether or not they can be managed. Perhaps Mr Stockey could explain a bit more, because he investigates cases where this could be a problem.

Graham Stockey: Where a secondee is in that position, you would hope that the contract of his secondment would clearly state what he can and cannot do in terms of his relationship with his own firm. At RICS Regulation, we visit firms; we will do file reviews and we will look at the steps the firm take to ensure their independence. We look quite closely at the relationships that they have. The secondee will sometimes be asked to provide advice to the bank on what steps need to be taken, and more often than not that will be a valuation review—strategic advice. At that stage, provided it is at arm's length and the contract that is set up clearly limits the involvement of the secondee, the conflict could be managed. We look very closely at what the terms of the contract would be and what the terms of the appointment are, and it is up to the firm to be able to show RICS Regulation that there is no conflict. This is something that we look at really closely.

Q21 Chair: I can quite understand that it is perfectly legitimate for a bank to employ a secondee—a consultant, if you like. But when that consultant then—you seem to say that it should not happen; I think that is a reasonable interpretation—becomes a fixed-charge receiver there is a potential conflict of interest, and RICS would not accept that as a legitimate process. Is that a reasonable summary?

Eve Salomon: No. Each case has to be looked at on its merits. We have looked at a couple of cases where a chartered surveyor has been seconded into a bank as an adviser, provided the advice and, subsequently, the bank has decided to call in a loan and appoint a fixed-charge receiver and asked the same firm to act as a fixed-charge receiver, and that relationship has been managed by the chartered surveyor concerned in a proper way. If we found evidence that, say, a secondee had given advice on the expectation that the matter would be leading into receivership and that that particular chartered surveyor would be appointed as a receiver, then we would see problems.

Graham Stockey: Yes.

Q22 Chair: If the borrower was not satisfied with the assessment that RICS made about the process in the event of this happening, what appeals process have they got?

Eve Salomon: That would be directly to the bank. Do you mean if they did not like the advice that the bank was given?

Graham Stockey: No. Is the question if the client is not convinced of the receiver's independence?

Chair: Yes.

Eve Salomon: Okay. Sorry.

Graham Stockey: On that basis, there is a complaints and appeals process within RICS where it would be investigated. If the Regulation team turned round and said that they did not feel that there was an inappropriate action and a breach of professional standards and the complainant disagreed, there is an escalated process within RICS.

Q23 Chair: Is there another body that would make this assessment? It does seem to me that RICS is acting as judge and jury here.

Julian Healey: Yes, sir.

Q24 Chair: What is it?

Julian Healey: The Joint Regulation Committee, which is an organisation originally set up by NARA and which is now jointly run by the Insolvency Practitioners Association and the Royal Institution of Chartered Surveyors.

Q25 Chair: So, the Royal Institution of Chartered Surveyors run the procedures to handle appeals—

Julian Healey: No. The Joint Regulation Committee operates independently. It was set up jointly by the RICS and the IPA.

Q26 Chair: Who comprises it?

Julian Healey: There are representative members of NARA, representative members of RICS, representative members of the Insolvency Practitioners Association, an independent chair, and two/three lay members. There is a code of practice. We will come on to regulation, I am sure, in due course.

Q27 Mr Walker: There is a widespread perception that receivers have little independent regulation. From what you have just been saying, effectively the regulators in this industry are also the trade bodies for the practitioners. Do you not see a problem with that?

Julian Healey: With respect, that statement is incorrect. Please let me explain why. NARA was formed in the mid-1990s by a group of professionals who realised that there was a complete absence of any regulation whatsoever in terms of fixed-charge receivers. The scheme that they put in place is voluntary. The current situation is that—even today—a bank may appoint whomsoever it likes as a fixed-charge receiver; they require no professional qualification and no expertise.

Q28 Mr Walker: So, not all the fixed-charged receivers will be members of the RICS or the IPA or any of these bodies.

Julian Healey: Any recognised professional body. That is correct.

Q29 Mr Walker: How are those who are not members regulated?

Julian Healey: They are not, sir.

Q30 Mr Walker: So there is a lack of independent regulation in this sector, particularly for those people who fall outside of the—

Julian Healey: For those who, however, take their roles properly, believe in transparency, support the concept of independence, are very mindful of the concept of conflict of interest and otherwise wish to conduct themselves in a professional manner, NARA was set up.

Q31 Mr Walker: What proportion of the market does NARA represent, therefore?

Julian Healey: That is an exceedingly good question and one that we can only guess at, because we simply do not know who else is out there doing fixed-charge receivership in an unregulated capacity. Getting this information from the banks is impossible. As an association, we attempted, for example, to obtain statistics in terms of the number of fixed-charge receivership cases in any given year. As a trade body we would find this fascinating data, as, indeed, I am sure would you. We were completely unable to obtain this, and the research project that we were funding independently through De Montfort University had to be stopped because we could not get the raw data.

Eve Salomon: Indeed, those fixed-charge receivers who are not subject to a regulated profession would not be subject to any regulation; complaints would not be dealt with; there would be no recourse for dissatisfied borrowers. May I say that I must take a bit of issue with the allegation, or the suggestion, that RICS members are not subject to independent regulation? I am the independent Chair of RICS Regulation. I am not a chartered surveyor, the majority of my board members are not chartered surveyors, and we act at arm's length, independently from the rest of RICS.

Q32 Mr Walker: But it is the issue that receivers in general are not necessarily subject to independent regulation.

Eve Salomon: Absolutely.

Julian Healey: That is correct.

Mr Walker: There is a real concern there if your respective bodies only represent a proportion of the market and you do not know how big a proportion it is.

Julian Healey: It is a concern that we share, because our Joint Regulation Committee, in the same way as has just been explained here, has a majority of laypeople.

Q33 Mr Walker: Just coming back to the group that you represent within the industry, however big that happens to be, the Tomlinson Review called into question the impartiality of the whole process. How do you feel that the professionals that you represent—the proportion of the market that they might represent—operate in an independent manner and can ensure that there is not a conflict there?

Julian Healey: They take it very seriously indeed. To give you an indication as to numbers, we have a membership north of 400 or 450, of which 250 are registered property receivers. We have a number of members who have an interest in this arena; they act in support capacities or whatever and they do not take appointments. We have 250 members who are registered property receivers who take fixed-charge appointments. They abide by our code of practice; they abide by the guidance notes; they abide by our practice notes. They take independence very seriously indeed. I am aware of a number of occasions when fixed-charge receivers have entered into vociferous arguments with banks on the

basis of what is the correct way forward. They take their independence seriously. They know full well that they are personally appointed and that they have a duty to get best value. The case law on it is exceedingly clear—very clear indeed—the most recent decision being in the High Court, and there is a priority that that fixed-charge receiver will follow. That priority is discharging the debt, and his duties then follow in terms of his duty to the borrower, to the borrower’s guarantors and to second-mortgagees. There are quite a lot of responsibilities that they accept.

Q34 Mr Walker: You are talking about the duty to get best value. We all know anecdotally that properties in receivership tend to go for a lot less than properties on the market in general; there are very substantial discounts involved. That is because of the time factor—the time pressure to achieve value for them. How do you determine how to strike the right balance between the time and value in that process?

Julian Healey: There is always this balance of value and time. One then has to strike that balance by looking at the holding costs. Our members are very much aware of the need to get best value. The phrase that I have somewhat used in training individuals is to “get best value but not at any price”. By that I mean best value in the property as it is represented. If there is an opportunity to enhance that value within a reasonable timeframe and at a reasonable cost, then it should be taken. If, however, the enhancement in value is with long holding periods or with large injections of further capital, you would then reach a stage whereby one is playing speculator—one is playing developer—and neither the bank nor the receiver are in a position to take that type of risk. There is a balance to be struck here. There are instances, both in my personal experience and that I have observed in others, where properties have been held, improved and sold, but, yes, as you rightly point out, there is a difference in value. This must necessarily be so when one has bought at the top of a market and sold in a distressed market. It is all a question of timing, I am afraid.

Q35 Mr Walker: You mentioned the Joint Regulatory Committee, and NARA has members on that. Beyond that, how far is NARA involved with the RICS and the IPA in the regulatory process?

Julian Healey: NARA is a trade body and per se we do not have any powers, other than simple expulsion from membership, in terms of our membership. We cannot censure, chastise or fine; all we can do is say, “You are no longer a member”, and take that registration away from them.

Q36 Mr Walker: Does that happen?

Julian Healey: We have had one situation where that has happened.

Q37 Mr Walker: It is interesting. You have had one situation where that has happened; I think the evidence that we have had from the RICS says that they have investigated 73 cases and found 35 incidents of breaches of their code. What sort of number of events is that taken out of? Is it tens of thousands? Is it hundreds of thousands? That is over a two-year time period, I think, that 73 cases have been investigated.

Graham Stockey: Quite a significant number of those were in respect of valuation issues, not in terms of receiverships or that aspect of the market. That falls into my sphere of

operations, if you like. From the RICS members' point of view, we have a very active programme of regulation. There are two tiers of that. There is the tier of regulation that is incumbent on all members, regardless of what sector of the industry they practise in; for valuation activity, there is a separate regulatory function called Valuer Registration, which has a proactive inspection and investigation regime behind it. It is extremely thorough. It looks at competence; it looks at independence; it looks at compliance with our statutory and mandatory rules—red book. Each firm that we assess has to hit key markers and if they do not there are a range of disciplinary outcomes that can result.

Q38 Mr Walker: How many members does the RICS have?

Eve Salomon: There are about 100,000 in the UK.

Graham Stockey: About 100,000, of which about 14,500 are registered for Valuer Registration. That reflects the wide range of disciplines that RICS cover—from quantity surveying and building surveying through to arts and antiques. It is a wide-ranging profession.

Q39 Mr Walker: I understand that, but if there are 14,500 people registered under that scheme, you have found 35 incidents of breaches across those different areas, and each of those 14,500 are likely to be involved in multiple transactions, there is a query—and I guess also with the point of one NARA member being suspended—whether the regulation is really working in terms of the degree of concern in the sector and the extent of actions taken. Also, the fact that we are only touching within that a proportion—we do not know how big or how small—of the sector would seem to be a concern.

Eve Salomon: To put that into some context, in terms of our overall members, the figures that we submitted in our written evidence are that over the last two years we have sanctioned 668 members, expelling 18 of them. Those figures you quoted have to do just with registered valuers. In the case of chartered surveyors acting as receivers, we have only received three complaints, all three of which have been thoroughly investigated. We have no evidence that there is some groundswell of dissatisfaction that somehow is not being dealt with by RICS, because those are the only complaints that we have received. Bear in mind, as Julian said, we have no idea of the number of people doing this work who are not subject to any sort of regulation whatsoever.

Mr Walker: That is certainly something the Committee will want to come back to.

Q40 Chair: Yes. Can I just intervene at that point? There are all sorts of reasons why bodies do not get complaints. One of those reasons is that sometimes people think it is a futile process so they do not want to go to it. Can you say that if somebody has a complaint about RICS you will guarantee to give them a hearing?

Eve Salomon: We will certainly investigate the complaint to see whether there are grounds for us to deal with it. Sometimes we refer complainants more appropriately to ombudsman services, but, yes, we look at every single complaint that we get.

Q41 Chair: Ombudsman services. Which particular ombudsman would deal with this?

Eve Salomon: The Property Ombudsman.

Q42 Chair: And who has the right to refer? Just yourselves?

Eve Salomon: No; I think the individual can go directly.

Q43 Mr Walker: Coming back to NARA, your guide outlines how receivers normally receive their powers through terms in the mortgage deed rather than through the 1925 Act. What additional powers does that give them?

Julian Healey: The 1925 Act as originally drafted provides for an individual to be appointed by the bank to take charge of the property to act in the concept of receiver in its literal sense, to receive income and to administer the property; it conveys no power of sale. The 1925 Act further goes on to say that the concept and the restrictions imposed can be extended by virtue of the mortgage deed. The mortgage deed will normally, therefore, provide for a power of sale. Without the mortgage deed there is no power of sale. That is the fundamental difference.

Mr Walker: That is the key difference.

Julian Healey: That is the key difference. There are other differences; there will be other additional powers put in, but they are minor. The key difference is the power of sale.

Q44 Mr Walker: Presumably the power of sale is usually what is wanted, so that people can maximise the return and generate a capital receipt.

Julian Healey: Yes.

Q45 Mr Walker: So, is the 1925 Act effectively defunct?

Julian Healey: No. Receivers regard it as the foundation stone from which everything else flows, because it introduces the concept of fixed-charge receivership in terms of appointing someone to take charge of a property and receive the income and administer that property.

Q46 Mr Walker: It introduces that concept but it is not really being used. It is interesting. There are not that many 1925 Acts still around, and they are likely to be there for two reasons: either because they are working so well and they are such a key concept that they have been left well alone over a long period of time, or because they are not really relevant anymore. It sounds from what you are saying—that most people are taking action through the terms of the mortgage deed so that they can generate a sale—that it is more likely the latter than the former. Is that a reasonable deduction?

Julian Healey: It is a deduction, but I come back to the point that the foundation is that 1925 Act. The 1925 Act has stood in good stead, rather like the Landlord and Tenant Act 1954. The 1925 Act changed the whole landscape of property ownership in the UK generally; prior to that, we were looking at copyhold and all sorts of beautiful antiquities. I would be reluctant to see the 1925 Act amended because it is very simple. It is capable of being read and understood at first sight.

Mr Walker: There are certainly advantages to legislation that is simple.

Julian Healey: You may be in a position to say that.

Q47 Rebecca Harris: Are you able to tell me what the average fee for LPA or fixed-charge receivers is as a proportion of the gross sum realised?

Daniel Hardy: Historically these were on a time-spent basis, but now, unlike the pure legal and accountancy practices, that is not the case. It is now most common for them to be dealt with either on a percentage of the realisation subject to a minimum or minimums, or as a fixed fee. It is rare for fees to be dictated by the 1925 Law of Property Act because a fixed charge provides diverse powers, including the provision of the receiver to agree fees with the appointor.

Q48 Rebecca Harris: That is back to the 1925 Act, because, as I understand it, the 1925 Act enshrines in law that the receiver should receive no more than 5% of the gross sum received. Would you say that that figure is being adhered to?

Daniel Hardy: That relates to rents, whereas what we are looking at is an overall situation of dealing with realisations. That was historical and that just relates to rents.

Julian Healey: If I can assist you here, in terms of your reference to 5%, whilst, as has been said, fees are a matter that it is difficult to get fixed-charge receivers to discuss because they are always loth to say, “I charge X” because they know that they will be undercut, it is very simple: the banks put fixed-charged receivers into a competitive bidding situation when they bid for work. They will be told, “This is the case; quote your fee.” It is often the case that a bank may ask two fixed-charge receivers to quote separately so they know it is competitive. To answer your question, 5% in terms of receiving income, yes; 5% in terms of a fixed-charge receiver’s total costs on a sale and exit is seldom exceeded. It is seldom at that level. It is normally far less.

Q49 Rebecca Harris: Less than 5%.

Julian Healey: Less.

Daniel Hardy: Dramatically less.

Q50 Chair: Could you give us an average percentage?

Julian Healey: I cannot give you an average percentage, sir, because the fees are so wide, but I thought the Committee may push on this and I sat down and looked at the level of fees that I may have charged when I was acting as a fixed-charge receiver. The Committee will not be aware that I was a founder member of NARA and a fixed-charge receiver for 20 years. If I were to look at a £1 million commercial property, I would probably charge fixed fees and I would probably have charged something in the order of £2,000 to £2,500 to set it up—to get the case in place—a retainer on a monthly or quarterly basis depending upon how complex the case was going to be, and then an exit fee. If I look at a £1 million commercial property and a set-up of £2,000, I would probably be looking at a monthly retainer of £500 and an exit fee something in the order of £5,000. That would be on a percentage of the exit price.

Q51 Chair: I just want to check what information is available and what could be made available. Presumably there is a record of fees paid somewhere at the conclusion of one of these transactions.

Julian Healey: Yes. Where it is a corporate appointment—by which I mean to say the asset that is charged is in the name of a body corporate—then a final return will be put in to Companies House. Those returns will be made on an ongoing basis during the term of the appointment, the first after six months and then every 12 months thereafter. Again, it would be a question of going on to the Companies House website for each one of those cases and looking at all the returns that had been made and then totalling up the fees.

Q52 Chair: But you do not keep a record of those.

Julian Healey: No.

Q53 Chair: Do you not think it would be a good idea for you to do that?

Julian Healey: It would be a very good idea if that information could be obtained, but the concept of achieving it, by having someone going to Companies House and checking every company record to see whether or not a fixed-charge receiver had been appointed and then to track that record for every one of those appointments and extract therefrom the fees—

Q54 Chair: Could you not have as a condition of the membership of your association that they submit that evidence to you rather than you having to go to Companies House?

Julian Healey: It would be entirely possible. Whether or not there are any other issues I need to consider from a legal viewpoint—

Eve Salomon: The issue that you mentioned initially about commercial confidentiality. This is a competitive market where receivers are potentially competing against each other on price to get appointments. It would be difficult to extract the information.

Q55 Chair: With respect, I do not think that is relevant. We are not talking about making the individual transaction or the fees of an individual act of receivership public; what we are talking about is getting collective figures for the level of fees that are charged so that that information can be made available publicly if necessary in a way that would not enable anybody to identify a specific company. That would be possible, would it not?

Julian Healey: It is possible. Let us not lose sight of the fact that every borrower will have the detail of the fees made available to them, by virtue of those returns if nothing else.

Q56 Chair: Yes, but you are representing the receivers, not the borrowers.

Julian Healey: Yes. I am just trying to make clear that there is nothing secret about the fee for the borrower.

Q57 Chair: It could be quite a legitimate part of, if you like, the membership conditions for your organisation that they provide that information so that if outsiders—laypeople—want to make a judgment about the overall level of fees then it is quite possible to do so.

Julian Healey: It would be possible to do it, but may I just respectfully draw your attention again, sir, to the fact that that would be information produced by 250 regulated receivers, not the unregulated ones?

Chair: Yes, I understand that.

Daniel Hardy: It is important to appreciate that there is a big difference between the types of property situations we deal with. It ranges from a small residential house, to an industrial complex where it may be a dilapidated, multi-occupied or contaminated site, to a property such as Canary Wharf.

Q58 Chair: We understand that, but in the context of this particular inquiry, certainly if the banks were appointing receivers, they would not go to an unregulated receiver—I assume. Perhaps you have evidence that they do.

Julian Healey: I think that some banks do use unregulated receivers.

Q59 Chair: That is interesting. Why?

Julian Healey: I cannot comment on that.

Q60 Rebecca Harris: Just to clarify, it is your belief that the total payment of all fees would not be likely to be often exceeding, or would not exceed, 5%.

Julian Healey: In terms of pure fixed-charge receivership, yes.

Q61 Rebecca Harris: The total remuneration.

Julian Healey: We need to be clear here between the total and fixed-charge receivers' fees themselves. As Mr Hardy has just pointed out, there may be some complexity on a site. If one is dealing with a contaminated site and contamination has to be dealt with, then that would be an expense that the receiver may well have to incur. Equally, if, for example, there was a rent review that was outstanding and needed to be settled, he would employ a landlord-and-tenant surveyor to settle that rent review to improve the capital value and sell the property.

Q62 Rebecca Harris: That is an expense that has to be covered rather than a fee for the service.

Julian Healey: Correct. I just want to be clear that we are talking about fixed-charge receivership fees. The total cost of exiting may be more than the pure fixed-charge receivership fees, but that will be driven wholly by the disbursements and expenses incurred in the genuine nature of improving or disposing of a property.

Rebecca Harris: I am talking about fees, not costs.

Julian Healey: Fine.

Q63 Rebecca Harris: I understand there was a Government announcement yesterday on the issue of transparency. I wonder if you can explain to me what effect that will have on insolvency practitioners and the way they charge for their services. Are you aware of that?

Julian Healey: Not in particular detail. We support the concept of transparency. We have no issue in borrowers knowing what it is that the fees are going to be or, indeed, knowing what the strategy for the property is going to be. Indeed, all NARA members have access to and should issue—and I believe they do issue—a guidance note to borrowers when they are appointed so there is no question as to what is the role of the fixed-charge receiver and what it is that he is supposed to be doing.

Q64 Rebecca Harris: So you welcome the Government's announcement yesterday.

Julian Healey: Yes. We have no problem with transparency.

Eve Salomon: Yes. We think that this is something that would improve the overall landscape in this area—to have greater transparency in terms of the role of the fixed-charge receiver, the relationship between the borrower and the fixed-charge receiver and between the lender and the fixed-charge receiver. A lot more could be done to make for better relationships all round. Transparency is a key way of doing it.

Q65 Rebecca Harris: Do you think there is a role for regulation here?

Eve Salomon: I would say this, wouldn't I? Yes, I would like to see a situation where lenders only used registered property receivers in receiverships and where that was par for the course, as, indeed, banks will now only use registered valuers—in other words, RICS-registered valuers—to do valuations, which has been a change in the market over the last few years as we introduced the registered valuation scheme into the UK. I would like to see the same thing happen with receivers.

Q66 Mr Walker: The written statement from the Government said that the measures that were introduced and announced yesterday would increase transparency for creditors. Will they increase the transparency for you as, effectively, a regulator in this sector? Would you be able to see these fee agreements, or is that not yet clear?

Eve Salomon: I do not know any of the details of that yet, so I do not know.

Q67 Rebecca Harris: NARA has said that “the lender and the receiver are free to agree suitable fees”. Given that any money left over after the lender has received their loan back belongs to the borrower—if there is any remainder—does the receiver's fee come out of the lender's recouped money or from the monies left over?

Daniel Hardy: Effectively, any surplus after paying all the fees and disbursements goes to the borrower or third parties—or back to the bank. Invariably in these cases there is a shortfall, so effectively the bank ends up by paying.

Julian Healey: Just to expand on that, “invariably” in the current cycle. The property market is cyclical. I have personal experience in the previous property cycle—that goes

with the grey hair, I am afraid—of sending cheques back to borrowers with a surplus. That was the previous property cycle.

Q68 Rebecca Harris: If there is a surplus, who, effectively, is paying for the services? Is it the creditor or the borrower?

Julian Healey: It is effectively the borrower. If the property is sold for £1 million and the debt to be redeemed is £800,000 and fees are £12,000, or whatever they are, then that £812,000 will be paid and the surplus issued by the receiver back to the borrower.

Q69 Rebecca Harris: So the borrower has paid the fees, but the terms were agreed with the lender.

Julian Healey: That is correct.

Q70 Rebecca Harris: That is an odd situation. Should it not be the borrower who appoints the receiver?

Julian Healey: There are a few facetious remarks that spring to mind for that. No borrower is going to appoint his own receiver.

Rebecca Harris: But you can understand why—

Julian Healey: I do understand, yes, which is presumably why the 1925 Act said 5%. I can assure you that most receivers would be only too delighted if there was a concept of a scale fee of 5% for a realisation, because it is far in excess of what a fixed-charge receiver's fee today would be.

Q71 Chair: Is there no mechanism where the borrower can have some sort of input into the fees agreed? It seems a very one-sided transaction.

Julian Healey: At the moment, no. However, there is a very practical safeguard—and I quite understand the point that you are making here—and you have heard me refer already to the competitive nature of fee-bidding by fixed-charge receivers. Where we are in a market, as we are at the moment, where there is likely to be a shortfall and the loss, therefore, is going to be carried by the bank, the banks are very keen to ensure that receivers' fees are kept as low as possible, and practices are very keen to ensure that their fixed-charge receivers win work and pitch their fees accordingly. That is the economic and practical commercial safeguard that currently exists. Were it a situation where there was a shortage of people capable of doing the work and where unilateral decisions were being made without competitive tendering, then yes, but the market at the moment serves to regulate its own fees by that competitive element.

Q72 Chair: My concern is that a cosy relationship could arise between a bank and a given receiver. You have talked about a competitive market as if this was a safeguard. What percentage of the appointments of a receiver are carried out as a result of a competitive bidding market? Have you any idea?

Julian Healey: I can only speak here from my personal experience. 100%.

Q73 Chair: What about your experience as a trade association? Have you any idea?
Julian Healey: You are currently in practice.

Daniel Hardy: I am currently in practice, and 100% of my instructions are as a result of a competitive tendering.

Q74 Paul Blomfield: I wonder if I can follow up on a point that Robin was making particularly in relation to the legislative framework and the power of sale. There have been, as you will be aware, attempts in recent years to curtail the power of receivers, including removing the power of sale quite explicitly and limiting their powers so they would only have the opportunity to receive income from assets. What view do you take on those proposals?

Julian Healey: There are circumstances when that would perhaps be an entirely appropriate approach, but one also has to have regard to the fact that effectively, by putting in a receiver under those circumstances, one is changing the current management team and therefore running that little property element with a new focus and a new element of individuals. If it is the case whereby the bank feel that the portfolio or particular charged asset is not being run to best advantage and appoint a receiver to act as that new management team without a power of sale to improve the income flow and to improve the capital value, then that would be entirely appropriate. However, what happens in reality is that the banks see their loan so far underwater that they wish to effectively foreclose it or withdraw from that loan and wish for the property to be sold, at which point that power becomes entirely relevant.

Q75 Paul Blomfield: Legislative change would have not provided the level of discretion that you are talking about; it would have been a significant change.

Julian Healey: Yes, sir. There are half a dozen words in the 1925 Act that, if they were expunged, would mean that the mortgage deed was not relevant in any of this, yes.

Q76 Paul Blomfield: The argument of those who were seeking that reform was that they were trying to recalibrate the relationship and encourage banks to work with borrowers in difficulty rather than contracting out the work to receivers. How else could we create a more responsible banking industry and go some way to restoring public trust in both banks and the insolvency industry?

Julian Healey: The issue is that the banks tend to view sectors as either in favour or out of favour, and when their loan book is wholly exposed into one sector, then perhaps that loan book comes under scrutiny. The bank, therefore, begin to take commercial decisions as to for how long they may wish to run with particular loans, and that has got to be a commercial decision for them. There are many examples recently where banks have indeed not gone down the path of appointing fixed-charge receivers but instead have sold their loan book in entirety, or certainly sections of that loan book, to other investors, thus crystallising their loss, and then those purchasers of the loan book do indeed tend to work with the borrowers as they are not showing a loss on the loan that they have purchased. That has been the case with a number of banks at the moment and is resulting in consensual sales and some fixed-charge appointments where consensus cannot be reached.

Chair: That concludes our questions, unless any members have any further questions. Can I thank you for your co-operation? If in retrospect you feel that you may wish to give us any additional information, please feel free to submit it as supplementary evidence. Similarly, on reading the transcript it is possible that we will feel that there are potentially further questions, and if we give them to you in written form, we would be grateful if you could respond to them in the same way. Thanks very much.

Examination of Witnesses

Witnesses: **Irene Graham**, Executive Director of Business Finance, British Bankers' Association, **Phillip Sykes**, Vice-President, R3: Association of Business Recovery Professionals, and **Bob Pinder**, Regional Director, Institute of Chartered Accountants in England and Wales, gave evidence.

Q77 Chair: Good morning and thank you for agreeing to help us with our inquiry. We need to crack on, but could I just ask you to introduce yourselves for voice-transcription purposes, starting with you, Irene?

Irene Graham: Irene Graham, British Bankers' Association.

Phillip Sykes: Good morning. I am Phillip Sykes, the Vice-President of R3, which is the insolvency practitioners' trade body.

Bob Pinder: Good morning. Bob Pinder, Director of the Institute of Chartered Accountants in England and Wales. We represent about 145,000 members around the world and we are the largest insolvency regulator, with about 750 IPs out of a population of about 1,750.

Q78 Paul Blomfield: I wonder if I can continue with the same theme I was asking the previous panel, on the relationship between banks and their customers and how you view that as having changed in terms of insolvency and access to finance over the last couple of years

Irene Graham: Firstly, it is very important to stress that banks have, and for a long time have had, business support units. Those business support units are designed to help businesses in difficulty by working with them to trade out of that difficulty. That is very important for the industry: to work with the business in a consensual relationship to help them work through the difficulties. In that regard, the banks have worked very closely with the Institute for Turnaround to make sure that businesses that are facing those situations are very clear of what they can expect from the bank and the relationship with the bank in that situation. Many thousands of businesses have been helped through difficulty through those business support units, and it is very important for the banking industry that those specialist units work with the customer and help them through the difficulty and help them trade out of that difficulty as far as possible.

Q79 Paul Blomfield: Can I turn to the Tomlinson Report, which highlighted that several banks had engineered either defaults on mortgage loans or breaches of covenants between lenders and borrowers? How has the banking sector as a whole responded to those accusations? What has been done to restore public confidence?

Irene Graham: The Tomlinson Report, as Mr Tomlinson himself acknowledges, is very much focused on one institution. It is not appropriate for me to talk about that institution's relationships with its customers, so it would not be appropriate for me to discuss in detail Mr Tomlinson's report. From a banking industry perspective, as I have said, we have worked very closely with the Institute for Turnaround, which is very active in helping businesses in difficulty, in creating public principles so that businesses are clear what to expect from their banks in relation to any instance where the business is going through a distressed situation and how the bank will help that.

Q80 Paul Blomfield: As Tomlinson highlighted, the issues that I have referred to may have been limited in terms of the institutions but did create a lack of public confidence in the banking sector as a whole. Do you not think there is a responsibility to respond to that?

Irene Graham: Overall, as an industry, we take the restoring of trust and confidence very importantly. A series of actions have been taken in relation to that in relation to a range of programmes to support businesses, through mentoring, access to finance and a range of new finance options for businesses, working with partners. There is a range of focus on that for the banking industry, alongside the governance of various aspects of the industry. In relation to specifically businesses going through distress, as I say, it is very important from the banking industry's perspective that businesses understand how a business will be treated through that process, and that is something that is a matter of public principles that have been agreed with the Institute for Turnaround.

Q81 Paul Blomfield: Mr Sykes, in August last year you wrote to the Chairman from R3 stating that the Government had proposed a number of reforms in key areas since our report. What are those changes that were made on the back of the Tomlinson Report and, indeed, our report?

Phillip Sykes: You have got some written evidence from us that picks up on your last report and identifies where these changes have happened, but just to run through them very briefly for you, the first and perhaps one of the most important ones was the new Complaints Gateway. That is now in place. That is working well. There has been a first year's report on that—"Report on the first year of the Complaints Gateway"—which you have probably got; if not, we can certainly let you have a copy of that. That is worth a read and it shows that that process is working really well.

There have been quite a number of other changes. We have had just recently the announcement—which I think was alluded to previously—in relation to insolvency practitioners' fees and a new regime for that, which is going to have an up-front estimate. That has come from a really good working relationship with the Insolvency Service. They started off by saying, "We think we should scrap hourly rates and just go for a percentage fee", and we pointed out that historically just percentage fees had been very unpopular with creditor bodies going back quite a long way. We have had a really sensible discussion with them and now come forward with what looks as though it is going to be quite a sensible working process going forward. Other changes have been in relation to

the continuation of supply for businesses that go into an insolvency process. In the past there was the continuation of the utility supply, but things have moved on so much that IT has become a critical supply, and that is now being dealt with in the new legislation. Also, there were all sorts of other suppliers of utilities who were not necessary in the original body, so that has been dealt with. We have also had the question of creditor engagement, which has been very much on our radar as a profession. We want as much creditor engagement as possible and the new regime on the fees will help that, because you will get an up-front estimate and then you can engage on that. HMRC in particular have been very positive about that. Looking back at where we were two years ago, there has been some really good movement, based largely on the Committee's recommendations. There are one or two areas where nothing has happened, but in terms of bankruptcy the level at which you can petition for it has gone up to £5,000. That is going to make life better for quite a lot of people struggling at that level. All in all, quite good progress.

Q82 Paul Blomfield: You did say in your letter that you had concerns that some “policies could have a negative impact on both creditors and the UK’s insolvency regime”. What areas of policy did you have in mind? What posed the greatest risk, in your view?

Phillip Sykes: There are a couple of areas that we were and, to some extent, still are concerned about. One was the complete abolition of physical creditor meetings. We have now reached a compromise with the Insolvency Service on that whereby it will be possible to have creditor meetings where a relatively small number—10% by number or value, or an absolute number of 10—require it. That element has been brought back. The other area where we do have concerns is that in the Small Business, Enterprise and Employment Bill there is a proposal that alongside directors’ disqualification proceedings there will be the ability to ask for a compensation order. 80% of disqualifications are made by undertakings, not through the court process, and our concern is that if you are sitting there as a director likely to be disqualified, and you may also at the same time be facing a compensation order, you are much more likely to resist giving that undertaking, because you then get clobbered with a compensation order. Our concern is that, given that there is only a limited amount of resource available to the Insolvency Service to prosecute delinquent directors, the more barriers that are put in the way of people putting their hands up and agreeing, yes, okay, they will give that undertaking, the more we will see the numbers drop off. We have enough concern as it is given the statistics: we report, say, 4,500 or 5,000 directors a year, and that leads to disqualification of around about 1,200. We do flag that as a concern.

Q83 Paul Blomfield: Is there any way you would seek to mitigate that risk, short of not making that change?

Phillip Sykes: Some of the things that have been proposed will help that. One is the fact that we are introducing electronic reporting on directors’ disqualification. The reports from the IP will have to be in within three months rather than six months, so that is shortening that process, and the Insolvency Service are taking powers that mean they can bring a prosecution for up to three years rather than two. Those are, if you like, mitigating steps, yes.

Q84 Mr Bain: One of the key issues that the Tomlinson Report highlighted is in relation to the nature of support that businesses receive once they have been referred to a bank's recovery unit. Are you satisfied that these units now genuinely work to get businesses back on track, or is it still the case—as was highlighted by Tomlinson—that businesses are subject to extremely unfair and penal rates of interest and charges and are often asked to pay for reports and valuations on the basis of recommendations from the banks that are almost never in the businesses' own interests?

Phillip Sykes: I am coming at it from the perspective of the insolvency practitioner brought in to advise either the company or the bank, and there are a couple of points to make. Business support units are there certainly, where appropriate, to support a company to come back to proper financial health and return to the good bank. The other role they have is to manage that debt on, and certainly they will be making it very clear to management that, "If you cannot get your act together to work with us in the way we want, you should look to refinance elsewhere", and there has been a lot of that. In today's market, I am finding that there are many more opportunities to refinance in a way there probably were not a year or two back. Those are the two aspects of it. From where I sit, yes, it is undoubtedly true that the business support units of banks are focused on a timescale. They have targets; they do not want these companies to be sitting in their business support units indefinitely; maybe two to three years is the sort of timescale that they want to either nurse them back to health, move them on or, in the worst case, some form of insolvency process. Equally, as has been mentioned in the previous session, banks have been selling off loan books. That is another exit route from business support units.

Q85 Mr Bain: We have heard that in some cases insolvency practitioners are seconded to the bank or even work for the bank itself, and in some instances have presented themselves to customers as bank employees. Does this not represent an unacceptable conflict of interest where this occurs?

Phillip Sykes: It would do if that individual was then to go on and take the insolvency appointment. The purpose of a secondment is transfer of knowledge in both directions; the secondee learns how the bank works, what the bank's views are and the bank's systems, and the bank gets the benefit of the expertise of the insolvency practitioner. In my experience, certainly, the banks take enormous care to ensure that if a secondee is working on a particular case then their firm will have no part in any enforcement proceedings.

Bob Pinder: I would just echo that as well, as a regulator. It was a question I put to one of the partners in one of the big four firms last year. It used to be quite prevalent that there were secondments, but he was saying that that is becoming less so these days because of the perception of conflict. When there is a perception of conflict, it can be deemed to be a conflict. There is a stepping away from secondments generally. They still happen, but it is not as prevalent as it used to be.

Q86 Mr Bain: Ms Graham, the charge, in a sense, against the banking industry is that it is keen at times to accentuate short-term profit from insolvency situations at the expense of looking at the long-term interest of business survival and hopefully growth again. How would you respond to that problem? That is what Tomlinson got to the heart of.

Irene Graham: Again, I repeat that Mr Tomlinson was very much focused on one institution. From the broader industry perspective, picking up your earlier question, the statistics that I have available would say that seven out of 10 businesses that go into business support units are nursed back to health and nursed back into businesses that are surviving. That shows the measure of focus the banks do put on helping a business through that.

Q87 Chair: What period of time does that cover?

Irene Graham: That covers a number of years—an average figure.

Q88 Chair: Could you give further details to the Committee year by year, going back, maybe, 10 years?

Irene Graham: I will see how far back that can go. I will certainly follow it up with the Committee separately, if I may.

Chair: Thank you.

Irene Graham: I spoke a number of times about principles. It is very important for the bank that there is no conflict of interest, and it is very important that there is an independent valuation and an independent practitioner. It is important also that businesses understand what they can expect. The principles relate to fees, complaints and how a business will be addressed. As my colleagues here have said, there is no interest for the bank to have anyone working on an insolvency who has a conflict of interest.

Q89 Mr Bain: Where companies are forced to refinance and the bank concerned gets a higher margin on the new loans, do you have information from across the sector of what sort of margins the banks make on such loans? What is the average margin?

Irene Graham: I am afraid I do not have that information. As an association, we have to be careful about taking anything that is related to pricing information. I do not have that with me today.

Q90 Mr Bain: Would you be able to provide that to the Committee?

Irene Graham: I will seek to see what we can do in relation to the association rules, which say we are not allowed to get involved in pricing.

Q91 Mr Bain: It is a very important point, because the key thing that comes from Tomlinson is the sense about the lack of impartiality of the whole insolvency process. Something that he was driving at and we want to get to the bottom of in our investigation is what safeguards are there to ensure that all the professionals who are involved in insolvency operate and are seen to operate, from the point of view of business and the public, in an independent manner. What recommendations would you make as to how the situation could be improved?

Irene Graham: There is a very important point to make: any insolvency practitioner is acting on behalf of the court, and the first and foremost priority that the practitioner has is to all creditors. That is their requirement under the law. It is also very important that they

are members and part of regulated institutions that my colleagues here and others that you have heard from earlier oversee and regulate. It is very important from the banking industry's point of view that that regulation and oversight is robust. That is very important. On the valuation side, it is also important for us. Banks have panels of valuers that are regulated by RICS. That is an important part of the process. We will continue to work with RICS and others on making sure that that is a robust process and conflicts of interest are addressed.

Q92 Mr Bain: The FCA is undertaking an investigation and review, which is due to report this summer. Do you think that there is a case for reviewing the Insolvency Act 1986 itself?

Irene Graham: My colleagues would be better to answer that point. The FCA review is into one institution and I do not know yet what that will say.

Bob Pinder: Are you saying reviewing the Insolvency Act in relation to Tomlinson?

Mr Bain: Yes.

Bob Pinder: What I would suggest is that we await the outcome of the FCA report, and if that suggests that there is an issue with the Insolvency Act 1986, the Insolvency Service will look to take that on board. Do not forget that there is a whole raft of consolidation of rules and legislation in the new-rules project that is ongoing now and being run by the service, so we will see a raft of new rules next year. If there is an opportunity to reflect on the FCA report following Tomlinson, then that is what will happen.

Q93 Mr Bain: You would advocate a change in culture rather than a change in the law.

Bob Pinder: If that is what the FCA report suggests, yes.

Phillip Sykes: Just to amplify that, there have been, since your last report, a number of changes. One I did not flag up was the report relating to pre-packs. As from this year, there will be an independent oversight of pre-pack transactions. Some of the changes that have been made, like the new gateway for complaints and so on, are changing the culture and are making step-by-step accretion, improving the existing Act. My own view and that of our members is that the Insolvency Act works pretty well. You get the US Chapter 11 viewpoint, which some people like, and then you get the European harmonisation viewpoint, which says it should all be much more court-driven. We have in many ways the best of both those worlds, and we have an Insolvency Service that is very aware of what is happening in the market and seeks to respond to it by amending rather than completely revamping existing regulation.

Q94 Mr Walker: In terms of support for SMEs, it is quite striking, Phillip, that you were saying earlier that there are many more opportunities to refinance than two or three years ago; there are some of the lowest interest rates we have ever seen on an underlying basis and over quite a long period of time; and yet the SME Finance Monitor finds that only a third of small and medium-sized businesses are currently using external finance. That is the lowest level that we have seen to date. Does the banking sector see that as a problem, or do

you think it is because of the rise of alternative finance and alternatives to mainstream banking?

Irene Graham: That particular question is much more on not using any type of external finance and using internal resources. In terms of the question that the monitor asked about ability to gain finance when seeking it, around seven out of 10 businesses themselves say that they are successful in getting finance. The monitor reflects that, of those seeking it, seven out of 10 did get the finance they wished to. Many businesses do also—and it has been the case historically—use their own cash reserves and their own dividends, etc, in terms of investing into business. The other thing that is important from the monitor is that there is a perception of businesses that they will not be successful in getting finance. They are much more likely to get finance than they realise. That is something we are very focused on—trying to encourage businesses to come forward and ask for finance and know they have the opportunity to get it.

Q95 Mr Walker: We have heard quite a lot of evidence during our Support for Business inquiry about the increased availability of alternative sources of finance, and that is competition for the banks.

Irene Graham: We are very supportive of that.

Mr Walker: What can be done to help match small businesses that are seeking finance with the alternative credit providers who are looking to offer it? Do you feel the banks have a role in that, or is that too much working with the enemy?

Irene Graham: Not at all. We are very supportive of working with alternative finance. There are a number of direct partnerships between banks and community finance institutions or peer-to-peer institutions. Many banks already signpost thousands of businesses to alternative finance providers and also to accountants and brokers where the institution itself cannot help. That is very much fundamentally something that happens already. We are also working very closely and very much support the Small Business, Enterprise and Employment Bill, which is seeking to implement a referrals process more systematically. So, the banks already do have signposting and referral partnerships; this will bring an added layer to that and we are very supportive of that and working very closely with the Government in relation to that. Most importantly, it is for the business to get the right finance at the right time. We very much do a lot of access-to-finance sessions with angel investors and community finance institutions and also equity providers like the Business Growth Fund and the asset financiers, really focusing on the fact it is most important businesses get the right type of finance and the right mix, and sometimes that will not be from the bank. How we can help in passing them on to others is an important factor in our access-to-finance agenda.

Q96 Mr Walker: We focused in a lot of this on the relationship between the creditors and the insolvency providers. To what extent can insolvency providers be signposting the borrowers rather than just the creditors to some of the solutions? Do you feel there is a role for the sector in that?

Phillip Sykes: Yes. They do so on a fairly regular basis. There is a big broking community out there, and one of the brokers' routes to market is marketing to insolvency practitioners—saying, "Look, bring us your problem children that you get involved in and

we will see if we cannot find an answer for you”. That already exists. Certainly within my own firm, we have a specialist team that looks at providing finance for people who are referred to us who have difficulty. Most firms of accountants you will find will have people within them, on the corporate-finance-type side, who are looking at how to access finance for whatever size of business the practice deals with.

Q97 Mr Walker: When they are coming to you as an insolvency practitioner, presumably it has reached a stage where insolvency is considered the most likely outcome, but we hear the banks saying that they can turn around seven out of 10 businesses in some of these situations. Is there a proportion that you are seeing that are coming to the insolvency practitioners and are then getting turned around and not having to go through the full insolvency process?

Phillip Sykes: Yes, absolutely.

Q98 Mr Walker: Could you give an idea of the scale of that?

Phillip Sykes: The scale is a difficult one, because when Irene talks about seven out of 10 being turned around and going back, they will not have ever come near an insolvency practitioner. Certainly, if it is referred to an insolvency practitioner or to a restructuring group to look at, it is usually looking at other alternatives: “What is the way forward?” “Is there a real issue?” As to what the proportion of those would be that fail or do not fail, it varies enormously from sector to sector and year to year, to be honest.

Mr Walker: If there is any detail that you might be able to write to us with, that would be quite interesting.

Phillip Sykes: I will look within R3; we will see what sort of information we have on that as to numbers that come in.

Bob Pinder: Anecdotally, if you talk to some of the peer-to-peer lenders, they would tell you they have no bad debts.

Q99 Mr Walker: Yes. That is the interesting point. The Chairman and I attended an event talking about alternative finance. There is great excitement around this area and there is great interest, but there was a feeling amongst some of the people there that it could be storing up some problems for the future.

Bob Pinder: We run an annual conference, and certainly one of the sessions we are running this year is getting IPs and those alternative finance providers together to talk through some of the issues. It is very topical.

Q100 Mr Walker: From an R3 and, indeed, ICAEW perspective, what would be the insolvency procedure if, let us say theoretically, a business was funded outside of a traditional banking intermediary—say from crowdfunding—and it went into insolvency? How would you advise in that type of situation?

Phillip Sykes: There are so many different structures within crowdfunding that it is quite difficult to give you a precise answer to that. The main point, really, is that the Insolvency Act as it currently stands is perfectly capable of dealing with pretty much any structure

that you throw at it. Crowdfunding could literally just be a bunch of people tossing some money in, in which case they will just be unsecured creditors like any other creditor. It may be that they are doing it through a single conduit, in which case there will be an IP who will deal with that conduit—that company—which is no different, really, from a banking syndicate, where you have a lead member of that syndicate and you deal with them. There is nothing that new under the sun when it comes to it; the difference is the way people are being accessed to put their money in. The structures when you get to the engagement with the company are not so very different.

Q101 Mr Walker: One of the arguments that has been put to me is that the real risk in terms of crowdfunding things is not the downside but the upside. If you have a business that had substantial assets and effectively went out of business, how do you determine who is the real owner in a situation where it has been crowdfunded and the structure in terms of equity and debt is not as clear as it might be otherwise?

Phillip Sykes: If you have got a problem with the documentation, you have got a problem with the documentation, and you may end up having to go to court to get something to deal with that. Because it is such an unregulated area, there are no norms and so, yes—it is a perfectly valid point—you could end up with some very unclear documentation as to whether you are a shareholder, some sort of bondholder or purely an unsecured creditor, levels of priority, and so on. I do not disagree.

Q102 Mr Walker: You mentioned earlier the point about security of supply. It was the R3 campaign “Holding Rescue to Ransom” that was addressing that issue. How well do you feel that has been addressed now? Do you think that issue is fully dealt with, or do you think it is something that needs further action?

Phillip Sykes: It needs to be kept under review. Certainly the proposals that have been made we welcome hugely, but it needs to be kept under review. It did not go as far as we would have liked, as you know, but then perhaps ours was a counsel of perfection. I do think that the culture has changed in the sense that creditors will try to work with an insolvency practitioner. It is not unreasonable in certain circumstances that they should have some form of lien security, and you would be going against well-established English law if you were trying to get rid of some of those—and they are referred to as being ransom creditors. We really welcome the steps that have been taken, particularly on the IT front. We are still looking at the whole merchant-acquirer area and how that works. To take it further, yes, quite possibly; you just have to be aware as to how the market is changing and where those key suppliers are. Again, that is something the Insolvency Service has regularly on their radar and, if they do not, we will be reminding them about it.

Q103 Caroline Dinenage: *The Daily Telegraph* reported in October last year that over half of UK start-ups fail within five years. We would be very interested in hearing your views on why that happens, but, as we have not got masses of time, perhaps you might want to put that to me in writing after the event. Really, the question is: do insolvency practitioners take a different role when dealing with very small companies in difficulties, or is it just very much a broad-brush approach?

Phillip Sykes: No. If you are an insolvency practitioner, every case is different. Although the law, as applied, is the same, the people you are dealing with and the assets you are dealing with are going to be different in every case, and you tailor your approach to what you are dealing with. If you are dealing with a small start-up, that may well be a situation where you end up selling that business back to the existing management because all the intellectual property is in their head and they are the ones who will take it forward. Then there are regulations around that as to what they can and cannot do going forward. The answer to your question, “Do you adopt a different approach to small start-ups?” is you adopt a different approach to pretty much every company you deal with. It does depend on the personalities and the assets and what you get to deal with.

Q104 Caroline Dinenage: According to R3, late payment caused 20% of insolvency last year. Has the Prompt Payment Code made any difference? What steps should be taken to ensure that the signatories of the Prompt Payment Code adhere to its regulations?

Phillip Sykes: There is quite a lot of regulation out there, because as well as the Prompt Payment Code, for larger companies you have also got the accounting reporting requirements as to what sort of code they are adhering to and what they do and what they have. That information appears in their accounts. The trouble with the Prompt Payment Code—if you can call it trouble—is that it is purely voluntary. It is at the behest of the creditor to invoke it. I think it is true to say that there is not really yet a culture in commerce today where people automatically reach for it. That is something that possibly will change, although it has to be said when interest rates are as low as they are at the moment, if you are trading okay there is no massive push for it. It would be good if one did see a cultural change so that people really felt that they should be abiding by that code and not just at the behest of the supplier.

Q105 Caroline Dinenage: How would that cultural change come about?

Phillip Sykes: The press would help; if Government is focusing on it. Government is doing its bit, after all, by trying to stick to the 30-day rule, although that does not always happen. There is that aspect. Certainly a number of the large companies are also trying to do it. The more people that do it, the more you will see it coming into the culture that when you agree to pay somebody on 30 days you mean it and you will do it. It is moving, but it is very slow.

Q106 Chair: Thank you. That concludes our questions, except I have just got one to the BBA. In the previous panel, Mr Healey of NARA said that some banks appointed unregulated receivers to carry out administration. Were you aware of this? What do you think the scale of the problem is? What do you think the motives are?

Irene Graham: I was not aware of that. My understanding is the bank really looks at appointing those that are regulated and normally has a panel of those. I do not, therefore, know of the instances where it is not a regulated practitioner. Whether that is down to the borrower’s adviser’s request for a particular receiver or whether it is given a particular instance—that in the area, or whatever, there is not a regulated receiver—I do not know, but my understanding certainly from the industry has been where possible, as you suggested, they seek to appoint those that are regulated, either through NARA or RICS.

Q107 Chair: From my position and observation, I would reasonably expect there to be regulation for a purpose and you would reasonably hope that banks would understand and accept that purpose and underpin it by only employing those that conform to that regulation. Could you talk to Mr Healey and, indeed, anybody else who might be able to give an insight into this issue and send us some supplementary evidence based on the research that you do with them?

Irene Graham: I certainly will do so.

Chair: Thank you. That concludes this session of questioning, and we now move on to the Insolvency Service.

Examination of Witnesses

Witnesses: **Sarah Albon**, Chief Executive, Insolvency Service, **Graham Horne**, Deputy Chief Executive and Director of Operations, Insolvency Service, and **Anne Willcocks**, Director of External Affairs, Insolvency Service, gave evidence.

Q108 Chair: Can I thank you for agreeing to help us with our inquiry? We are somewhat depleted in numbers because this is coincidental with Prime Minister's Questions and there are members who are involved in that. However, we have quality if not quantity. Please introduce yourselves for voice-transcription purposes, starting with you, Graham.

Graham Horne: Graham Horne, Deputy Chief Executive of the Insolvency Service.

Sarah Albon: Sarah Albon, Chief Executive of the Insolvency Service.

Anne Willcocks: Anne Willcocks, Director of External Affairs, Insolvency Service.

Q109 Chair: I will repeat what I said to the first panel. Some questions will be person-specific. That does not preclude any others from jumping in and adding to them. Equally, on the more general ones, if you feel that your views have been adequately expressed by another speaker, do not feel obliged to participate. My first question is to you, Sarah. You only started in the job last month. I am sure you are totally settled in now—feet under the table, etc. What are your main priorities to start with?

Sarah Albon: As you say, I have been in post now for just four weeks. It makes sense for a new Chief Executive, particularly one who is new to the organisation, to spend a bit of time understanding that organisation and understanding the work that it does and not to jump to conclusions about what needs to be changed, but I can certainly give you a few observations.

Chair: If you could just keep them brief, I would be grateful, but yes.

Sarah Albon: I will. I have come to an organisation that, as this Committee is only too aware, has gone through a period of really considerable change. Externally, insolvency cases handled by the service have dropped from 80,000 some five years ago to an expected out-turn of between 20,000 and 23,000 cases this year. As you would expect

from anybody, it has had to respond to that. There has been a significant reduction; staff numbers have halved and 15 out of 36 offices have closed. That is inevitably quite bruising on an organisation, but in spite of that there have been some real positives. Customer satisfaction is at 95%. Recently, they have retained customer service excellence accreditation, and stakeholder confidence, which I know has been, again, something that this Committee has focused on and been concerned about, has increased to 73%. We have been launching new services. Online redundancy claims will enable 75,000 claims a year to be made online and we expect to maintain the levels of disqualification this year at about 1,200.

That is not to say that I am coming into an organisation and complacently sitting around thinking, “This is fantastic. It is all going in the right direction. There is nothing more to be done.” You always want to do more to push to greater standards of customer service improvement, and we have to be aware that the workload is still in decline, so we are likely to face further challenges on efficiency. Supporting the service to continue to focus on improving the services that it offers to the range of customers that it has, and to maintain the focus on integrity and confidence from the public in the overall insolvency regime whilst bearing down on internal cost will prove to be a challenge. I plan to spend another few weeks really reflecting on what I am seeing and discussing that with my senior leaders before I reach any conclusion about courses of action or new strategies.

Q110 Chair: I have a question about your approach to insolvency. If you have a company that has become insolvent, what is your priority? Retrieving money for the lender? Preserving jobs? How do you influence administrators, or do you just leave it up to them to determine?

Sarah Albon: Whether it be an official receiver or an independent insolvency practitioner, the regime will set out certain statutory obligations on what they have to do in an insolvency. Clearly, if a company is insolvent, there is a duty to creditors that has to be followed. At the same time, if jobs can be preserved, if there is a part of the company or all of the company that can be rescued and continue to trade, I do not think there is likely to be a conflict with the interests of creditors, because in an insolvent situation inevitably you have not got enough money to pay everybody everything that is owed. If you can keep a company going properly and appropriately solvent, everybody would win from that situation.

Q111 Chair: You partly anticipated this next question in your previous answer. We reported in 2013 that the reduction in costs and staffing may put pressure on you. Are you satisfied now that you have the resources necessary to carry out the range of responsibilities that will confront you?

Sarah Albon: Yes, I am. What I have seen is a very constructive relationship between the team at the Insolvency Service, BIS—who partially fund, where we do not get money from fees—and the Treasury, but it is the case across the whole of the public sector, clearly, that there is real constraint on the ability to spend money, and that is entirely reasonable. We have had to face a situation of significantly and swiftly declining workload. That is difficult for an organisation, but it is completely appropriate that you respond to it and reduce your resource in order that you can still deal appropriately with the workload that you have.

Q112 Chair: What you have said is quite correct. The problem is if your workload suddenly expands and you only have a reduced capacity to deal with it. What do you have within your organisation that could anticipate changes in the workload and maybe an increase in that workload?

Sarah Albon: We have a well-qualified and professional modelling team, who have built up a good understanding and a good working econometric model of the wider economic factors that tend to cause a shift in insolvency. They have a good view of the leading indicators that would suggest that there will be a change in the level of insolvencies coming through. Together with that econometric modelling, we have a group that we call the consensus group, which is a group of internal and external experts who take the raw model and bring their expertise and their working knowledge to that model and challenge it. From that, we form a view of the likely trend in the different types of insolvency. That enables us to plan ahead both for downturn and upturn, to the extent that that is possible. I am satisfied that if we saw an increase in insolvencies, we would be able to respond to that.

Clearly, as any organisation, if we saw an overnight doubling or trebling of the level of insolvencies, which is extremely unlikely, that would be a challenge for us. It would be a challenge for any organisation that had a sudden turnaround and a sudden increase in work. Having said that, we have some areas of our work that are discretionary; we have an ability to use external professionals ourselves and instruct outsiders if we need to do that to deal with burdens on supply. Our agenda to digitalise the parts of the process that we can also will allow us over time to use fewer people doing some of the processes, which means that we are not quite so vulnerable to change in workloads as we would have previously been.

Q113 Caroline Dinenage: I just want to know—I am not sure who wants to answer this—how you would describe the trends within the latest insolvency figures.

Sarah Albon: Broadly still down, but the curve is getting flatter. Graham, I do not know if you want to pick up.

Graham Horne: Yes. We are expecting a 15% drop in this year's numbers over last year's numbers, and we think next year there will be a similar drop in case numbers. We are making some changes to petition levels, which should further depress bankruptcy numbers. We really think 2015-16 will be down on 2014-15 and do not really anticipate any increase in cases at least until 2016-17 and possibly even later than that. The econometric models are also not showing any signs of an upturn in case numbers.

Anne Willcocks: It is perhaps worth saying that it is debtors petitioning for their own bankruptcy that have particularly been the ones that have fallen so steeply. Those are the cases that have caused this huge drop.

Caroline Dinenage: So that has gone down.

Anne Willcocks: That has gone down dramatically. It is falling at a slower rate than before, but that is where the drop has been sharpest. The key factor that seems to influence that is the overall level of household debt. There are other factors that also play

a part, but the household debt factor is the one that has the biggest correlation, with quite a significant lag. We monitor that very closely to see what is happening.

Q114 Mr Bain: In our 2013 report, the Committee was sceptical that the income-generated model for the Official Receiver's Office was likely to be sustainable. Given the fall in insolvency casework that you have pointed to this morning, what work have you and the organisation been doing to improve the sustainability of the Insolvency Service's funding?

Sarah Albon: The service has been working closely with BIS colleagues and with the Treasury to look at how fees may be modelled in the future, but through that process we have not found that the fees in that Official Receiver work have been insufficient to cover the work that remains. The challenge for us has not really been that the fees were not enough; it is just being able to respond sufficiently quickly to reduce our resource to match the work. I do not think it would be appropriate for fee payers or, frankly, for central Government funders to be left in a position where we do not reduce our resource to match our workload and somebody else has to pay for us to stay inefficient. I do not think that is a tenable proposition.

Q115 Mr Bain: Are you confident that the structures that you have put in place in terms of fees will see you through to the next Spending Review in the next Parliament without the need for further changes?

Sarah Albon: After the election, and in the context of the Spending Review, I would expect to want to discuss with incoming Ministers and with the Treasury what our ongoing fee structure should be in Official Receiver but also across the range of our activities. You should always look to keep under review structures and to understand both the effect that a fee structure can have in the policy world and the behaviours a particular fee structure will drive as well as overall the income and the benefit that is coming for us.

Q116 Mr Bain: Also in that report in 2013 we were critical about the levels of stakeholder confidence in the Insolvency Service's investigations and enforcement regime. You have said that stakeholder confidence has increased from 69% last year to 73% now.

Sarah Albon: 73%, yes.

Mr Bain: What work are you doing to further increase that and see that improvement sustained?

Sarah Albon: We have just had the results of the latest stakeholder survey. We use an external body to go to stakeholders on our behalf and to survey their satisfaction. That is a range of different stakeholders, from a group of people who know us very well—the insolvency-practitioner profession, accountants and lawyers—to independent directors of companies, many of whom will not have had any direct contact with us at all and, indeed, will not necessarily welcome any. The thing I have been particularly taking confidence in myself coming in is that the groups of people who are showing most confidence in the work of the Insolvency Service are those who know us best and have most dealings with us, which is not always the case in all confidence surveys. What do we do to stay confident? There are two strands always. Partly it is about a communication strategy. People who have not come across your organisation and have had no dealings with it are

likely to be neutral at best unless you spend some time and effort in explaining to the wider world what you do and what your successes are. There is always something about communication, but at the heart of it there is doing a good job. You are unlikely to get confidence from your stakeholder community unless you are doing well. That is really why I am saying that it certainly gives me confidence coming into the organisation to see that those with the greatest confidence are the ones that are closest to what we do.

Q117 Mr Bain: If I can turn to the issue of pre-pack administrations and the Graham Review, that review recommended voluntary scrutiny of pre-pack administrations, and the Government accepted the recommendations but said they would “loosely” scrutinise what the Insolvency Service was doing in terms of that. What view do you have on how workable the Graham recommendations are?

Sarah Albon: We think they are workable. We are hopeful that we are close now to seeing the pool of specialists being ready and launched. That should give greater confidence to creditors that where there has been a pre-pack it is appropriate and it has got the best deal for creditors. We have continued to monitor compliance with the existing statement of insolvency practice, SIP 16, and will continue to do so. We have got in the Bill that is going through Parliament backstop powers to step in and to do something about that on a compulsory basis rather than a voluntary basis, but we are hopeful that the voluntary measures will work. We need to recognise that pre-pack is not necessarily a bad thing. It is a bad thing to the extent that creditors do not get the value that they should from the overall administration. We need to strike the right balance between transparency, giving confidence to creditors that the process has been appropriate and fair and that the value in the assets has been the right one, but without acting in an overly draconian way if that is not necessary. We will continue to monitor it and, as I say, we have the legislative backstop if it is required.

Q118 Mr Bain: It is in the Small Business, Enterprise and Employment Bill, yes. On that issue about how you are looking into how the insolvency industry is implementing the recommendations of the Graham Review, what metrics are you putting together to analyse how they are implementing it—to look at their performance?

Sarah Albon: Can I ask my colleague Anne, who has been much more directly involved and will get the detail of that right? I am otherwise probably going to say I am going to have to write to you, but I suspect Anne has the knowledge in her head.

Anne Willcocks: As part of Teresa Graham’s report, she had in-depth research done by the University of Wolverhampton, so before considering or advising Ministers on whether to use the reserve power, we would want to see how some of those metrics had moved, because some of the understanding behind the recommendations was that in a connected-party pre-pack the outcomes were not as good as in unconnected pre-packs. Therefore, if one looks again, hopefully that will give us some idea of whether this—the greater transparency and the stronger SIP 16, because that is being revised as well to be further strengthened—is working. We can look at how well there is compliance with the new SIP 16, and we will also want to talk to creditors about their perception of how it is working and whether they feel this is working well.

Q119 Chair: Just before you come in with your next question, William, earlier, Sarah, you said you were “hopeful” it would work. Could I just stress that this is an issue that we have looked at on several occasions and, whilst I cannot commit any future BIS Select Committee, I suspect that future BIS Select Committees will want to monitor it? Could I say that I think we will be looking for a rather more robust approach than being hopeful? We would like to see a very close monitoring and, indeed, if it is not working well, then we would expect to see proposals from you.

Sarah Albon: I fully accept that. I had not intended to imply from that that our plan was to simply hope it would be okay and do nothing more. As Anne says, we intend to monitor it closely. We took the backstop statutory powers because we accept that if this does not work on a voluntary basis then we would need to do something that was compulsory, and we will only know if we need to use those powers if we have proper and appropriate monitoring and transparency about that. Indeed, I am sure that the scrutiny of any future Committee will play an important part in helping Government determine how well the overall regime is working and whether or not further action is required.

Q120 Mr Bain: If I could just specifically ask Anne, one of the recommendations of the Graham Report was that SIP 16 was to be amended to require valuations to be carried out by a valuer who holds professional indemnity insurance, and the purpose of that was to increase confidence that the sale would be for a fair price. Is there evidence that you have that indicates that that is being done so far?

Anne Willcocks: The SIP16 is in the process of being revised and is close to coming out.

Q121 Mr Bain: Would that be before the dissolution or is it likely to be after the end of March?

Anne Willcocks: It is very close, but there is not very much time left before dissolution.

Q122 Mr Bain: We shall wait and see on that one. Pre-packs by their very nature have to be undertaken very quickly. There have been some questions raised about who would form a pre-pack pool on such limited and short notice. What response would you have to that issue and also the connected question about whether there is a risk that the pool would fail to attract the right calibre of members?

Sarah Albon: Anne will be able to say more about the calibre of members, but the intention is to have a sufficiently sized pool who understand the requirement, as you say, to act swiftly when required so that, without over-burdening any one member of it, we are able to respond at appropriate speed. Anne, I do not know if you want to say more about the recruitment process and the quality.

Anne Willcocks: Yes. This is not something that we are running; it is being run by the industry, but they advertised for pool members and got a very good response of, I gather, quality candidates. I do not think they have concerns about the quality of the people who have put themselves forward.

Q123 Chair: Can I just come on to regulation? Can I first of all raise a question that was put to the previous panels? We have heard that in some cases insolvency practitioners are seconded to the bank or, indeed, work for the bank itself. I can quite understand why a

bank may wish to have a secondee and there would be a contractual relationship between them, but in some instances they have presented themselves to customers as bank employees. Are you aware of this? Do you think, if it is taking place, it is a conflict of interest? If so, what do you think you should do about it?

Sarah Albion: IPs are governed by an ethical code of conduct and they are officers of the court, so they are under strict rules about which appointments they can and cannot take. I do not know, Graham, if you want to say any more about anything you may have come across practically.

Graham Horne: I suppose it is a question of: if they are working for the bank, are they acting as an insolvency practitioner? They probably are not; they are acting as a bank employee. Presumably, therefore, if they are representing themselves, they are representing themselves as an employee of the bank. It is a question of on what basis they are working for the bank. They could not be working as an insolvency practitioner within the bank envelope, because they are only an insolvency practitioner if they are carrying out insolvency work. As Phillip Sykes said, they would be not capable to take an appointment had they been involved in the bank.

Q124 Chair: Yes. It would be perfectly legitimate to advise but not to carry out.

Graham Horne: Yes.

Chair: That is the distinction, and certainly we have had anecdotal evidence that this has taken place.

Graham Horne: I have not seen any evidence to that extent, but we would want to look at that very carefully and consider whether it should be the subject of a complaint to the regulated body.

Q125 Chair: Just more generally, what steps are you taking to improve regulation of the market? I appreciate, Sarah, having only been in post four weeks or so, you may wish to delegate this one.

Sarah Albion: Yes. I can tell you some of it and I would invite my colleagues to chip in and add to what you have recognised kindly, Chairman, as my own fairly limited knowledge. We are taking steps to strengthen the regulatory regime. We act at the moment as both regulator directly and oversight regulator, and we have recognised that there is a potentially inherent conflict in that for us, and so we are stepping away from the role as a direct regulator of IPs and strengthening our powers as an oversight regulator of the individual professional regulatory bodies. As an oversight regulator, really all we have previously had the power to do is to say, "You can no longer act as a regulatory body". That is a nuclear power and one that is, therefore, unlikely to be used. There is an argument, therefore, it is unlikely to be effective and you rely on relationships—and they can be very powerful, but it is not enough. We are taking powers to have financial sanction over the individual regulatory bodies if we think that is appropriate and also, if we find a case where we think the regulatory body has not acted appropriately and has not taken an appropriate sanction over one of its members, we will have the power to refer that to the court and to effectively intervene in an individual case and to seek to have a sanction imposed against an individual practitioner. Anne, I do not know if you want to chip in on any of that.

Anne Willcocks: Certainly. The other thing that the Small Business, Enterprise and Employment Bill does is give regulatory objectives. That will apply both to us as oversight regulator and to the individual RPBs. In terms of how we are operating, we are trying to be much more transparent about how we act as oversight regulator. We have set out monitoring principles so that people understand what we do. We are now publishing our monitoring reports and what the response is from the regulatory body and, if there are follow-up visits—which there are if there is anything worrying—then we publish those as well. We have agreed common sanctions across the different RPBs, because it is really important to try to drive consistency across the different bodies. The ICAEW and the IPA have agreed to have a common reviewer of complaints. Then we have got this new gateway for complaints, which is within the Insolvency Service. This not only gives us a bit of a feel for how quickly the regulatory bodies are dealing with complaints and what the outcomes are, but you can also see themes emerging. If we see there are a lot of complaints about IVAs, then that is something we can pursue and see what action we need to take on that particular issue, because it may be one of perception or there may be something regulatory that we need to address. That will be a really helpful tool going forward for us and it is more accessible; people can understand where they have to complain to.

Q126 Chair: Can I just raise an issue that was raised by R3? They have expressed concern about the expanding role of the Insolvency Service in terms of its duty as an oversight regulator. In many ways we welcome that, but we have to recognise that you do have budget restraints and being given extra roles and responsibilities within the straightjacket of a particular budget is going to cause you difficulties. How would you respond to this concern?

Anne Willcocks: This function is funded by a specific fee, which is paid by the regulatory bodies, and we are going to be looking again at that fee to make sure that it does cover what is needed.

Chair: They have been warned.

Anne Willcocks: They have been warned. It will take a bit more resource to make sure that we are properly resourced to do this.

Q127 Chair: My supplementary to that, which you have probably anticipated, is: would you need extra resources from the Government?

Sarah Albon: I think not, because it is appropriate that those that are regulated bear the cost of that regulation and that we are transparent about what we do so that they can bring pressure on us if they think that we are not being efficient in the use of the fees that we raise.

Q128 Chair: Lastly, you have mentioned this Complaints Gateway. How long has it been established? What use has there been of it so far? How well-known is it as a service?

Anne Willcocks: We set it up in June 2013. In the first year there were 941 complaints, which is more than there were to the recognised bodies before, so it is already showing that people have found out where to come. Of those, 170 were rejected—things like complaints that people lost money in insolvency, which is obviously not a regulatory

matter. Then we had 547 complaints in the next six months. Given that it is from a standing start, it is already getting a good level of complaints and we will try to make sure that, with gov.uk, which is getting a lot of hits for insolvency, we signpost people well, and we will try to work with others who signpost creditors and others to make sure they know where to complain. We are constantly looking to make sure that we have got the right routings so that people do find it and do know where to go.

Q129 Chair: That is all very interesting. You said that losing money is not in itself a justification for a complaint, but presumably the processes or potential perceived conflicts of interest or procedures would be a basis for complaint.

Anne Willcocks: Absolutely.

Q130 Chair: Could you send us a breakdown of those complaints that you have had, what they covered and what the outcomes were?

Anne Willcocks: Yes, certainly. We did publish a report after the first year, and we can let you have that.

Chair: That would be very helpful.

Anne Willcocks: In our annual review of our oversight role, we will be updating that. The first one has already been published and the next one will be published shortly, and we will certainly send that to you as well.

Chair: Thank you very much. Have either of you any further questions? That concludes my questioning and that of the Committee, then, so can I thank you for your co-operation and just repeat what I said to the other panels? If in retrospect, when we have read through the transcript, we feel that we need to ask you one or two further questions, we would be very grateful for your co-operation in responding to them. Similarly, if you feel that perhaps you would like to elaborate on an answer that you have given to one of our questions today, feel free to do that in the form of supplementary evidence. Thank you very much.