

SECTION 9

CONCLUSIONS

9.1 Options for Delivery

9.1.1 As in explained Section 3, insolvency policy aims to deal fairly and effectively with financial failure (i.e. providing a route out of bankruptcy or corporate insolvency by rescue or rehabilitation) while deterring fraud and misconduct.

We consider 5 inter linked operational areas:

- Policy - advice to Ministers on insolvency issues.
- OR Operations - the administration and investigation of all compulsory personal and corporate insolvencies.
- Enforcement - dealing with the reports of possible criminality and of unfit conduct (including voluntary liquidations, administrative receiverships and administrations).
- Insolvency Practitioner Regulation - the regulatory framework for insolvency practitioners and monitoring those authorised by the Secretary of State .
- Banking and Investment - banking service for users of the Insolvency Services Account.

We analyse these functions against the 5 options set out in the Cabinet Office Guidance:

- Abolition
- Continued Agency Status
- Strategic Contracting Out
- Market Test
- Privatised.

ABOLITION

Policy Advice to Ministers

9.1.2 The Service advises DTI Ministers on Insolvency Policy and other Ministers on insolvency aspects of their policies (e.g. rail privatisation, environmental policy). This is an essential function but could be provided within DTI. There are no hard and fast rules as to whether responsibility for policy should lie with agencies or parent departments. Given the risk of dilution of expertise if the policy function moved back to DTI centre and the satisfaction expressed by many people about the conduct of the recent policy reviews, **we conclude that it should remain with The Service.**

Administration

9.1.3 The OR as officer of the court makes arrangements for orders to be implemented. The Scottish experience before 1985 suggests that cases with no or few assets would not be dealt with without public sector funding of the costs of administration. This would not be consistent with the objective of enabling people to start again.

Certain statutory functions of the OR cannot be contracted out under current legislation.

Some 26,000 compulsory orders are made annually. The OR carries out an initial examination to establish the extent of the assets. Cases where assets are sufficient to cover costs (some 25%) are already passed out to IPs after the initial examination.

Some arrangements are needed to ensure the 75% of cases with insufficient assets to cover the costs of an IP appointment are picked up and closed; public sector management and payment is required but the work need not necessarily be done in the public sector.

Enforcement

9.1.4 The rationale for taking action against fraud and misconduct was explained in Section 7.2. Past experience suggests that creditors or the police would be unlikely to take action if The Service did not do so.

Investigation must be undertaken but not necessarily in the public sector.

It seems sensible in bankruptcy or compulsory winding up to carry out the initial investigation as part of the initial examination by the OR rather than refer all cases to Enforcement Directorate for separate investigation. IPs also weed out non-starters though they do not investigate in as much depth as the OR so there is more work to be done by that Unit.

The general view of those we consulted was that the decision to disqualify or to prosecute was a serious step and that it must be seen to be impartial. **The decision on whether to take action must be taken by the SOS so the process needs to be managed in the public sector.**

Regulation of the Profession

9.1.5 Our consultations established that there is widespread support for regulation of the profession. The need for regulation of IPs was recognised in 1883 by requiring IPs to deposit funds in ISA. The 1986 Act brought the profession into line with a modern approach and set standards for IPs and for professional bodies to monitor IPs.

The Service monitor RPBs' regulation of IPs. Following a review of regulation, the IPC is being established to advise on standards for the Insolvency Profession.

There is no evidence that tighter statutory regulation is needed. We recommend waiting to see how it develops.

Banking

9.1.6 The requirement that IPs should pay assets from insolvent estates into the ISA was originally designed as a regulatory measure to safeguard clients' funds (in the wake of 19th century financial scandals) and also to cover the costs of The Service. Although several such accounts were set up in the 19th century, ISA will shortly be unique.

The IP profession is now regulated and bonded, so that there seems no justification for the requirement on regulatory grounds. Nor does it conform to current rules on charging for services.

While there appears to be little justification for the requirement to pay funds from estates into the ISA, as explained in para 8.1.27 above we stop short of recommending its abolition until work is completed on the financial regime for The Service.

Conclusion

With the possible exception of the banking function, we conclude that the main functions of The Service are essential and would not happen without public sector involvement and/or funding. The extent to which they need to be carried out in the public sector is considered below.

CONTINUED AGENCY STATUS

9.1.7 The funding regime, as explained elsewhere, causes friction and limits flexibility. The Service has made good use of their personal flexibilities e.g. in designing its own pay and grading structures and an NVQ for examiners.

In general staff valued agency status but felt that in practice flexibility was limited by central controls particularly on funding and pay negotiations.

Over the last 5 years the targets set for The Service have secured year on year improvements in performance, as shown in Section 4.

Most people we have consulted have commented on the improved performance. With the possible exception of the ISA and authorisation of IPs none has suggested that The Service should not continue to manage the functions. There have however been a number of suggestions about the scope for greater input from the private sector.

The Service have undertaken comprehensive reviews of key processes and are just embarking on another of the OR functions. Various studies are in hand (e.g. telephone interviews, flexible working) and customer surveys are in hand. EFQM is at an early Stage as is external benchmarking.

Staff while recognising that targets were effective in improving performance felt that in some areas they were reaching the point of diminishing returns and that a step change (e.g. by more effective use of IT or restructuring the work) would be needed to achieve substantial further improvement. The TU Side were also concerned at increasing pressures on staff.

The functions of The Service form a coherent block which benefit from being managed as a whole and which, apart from the policy function, do not need Ministerial involvement in the day to day issues.

We believe that continued agency status is appropriate for management of the current functions of The Service but consider further the scope for contracting out some of the work.

CONTRACTING OUT AND MARKET TESTING

9.1.8 Tenders were invited to carry out the case administration functions of Official Receivers at the time of the last QR. For reasons explained in para 7.1.18 above Ministers decided not to proceed. Since then The Service has delivered the functions within the benchmark set and is currently embarking on a review to improve performance further. More generally experience of contracted out services has not been entirely satisfactory. One of the previous bidders told us that they would be unlikely in future to bid for core

services but preferred blocks of stand-alone support services which did not raise interface problems. The banking function was market tested in 1993 the in-house team narrowly won the tender and subsequent performance has improved over the benchmark set.

Case administration work can clearly be contracted out, as the Scottish Agency scheme shows. The key issues are quality and cost. We do not believe it is conducive to staff morale, and hence to performance, if successive QRs are simply seen as occasions to repeat the invitation to tender. For the OR functions there is the outcome of the joint review between The Service and LCD on CCAOs, which could affect their role significantly. What is important is that The Service measures itself against the best in the private sector and sets up arrangements to test and improve its performance continuously.

We also draw attention in 7.1.23 above to the scope for some selective use of agents for handling fluctuations in workload

We recommend that The Service takes advantage of the techniques now available, benchmarks activities against best practice in the private sector and considers restructuring and reorganisation of the work, if this is done we believe that the quality and costs of delivering the function can be controlled as effectively in the public as in the private sector.

The extensive use of STAs, mainly lawyers, in the DU suggests however that this work can be carried out by non-civil servants with little insolvency experience. While the process needs to be managed by civil servants empowered to take decisions on behalf of the SoS, there seems no objection in principle to investigation work being carried out in the private sector. Similar work is contracted out by other organisations.

The decision on whether to seek disqualification must be taken by the SoS so the process needs to be managed by the public sector. Solicitor agents are already used to taking IP disqualification cases to court and we understand that the costs of using these agents has fallen significantly as a result of competitive tendering and tighter contract management by The Service. If there were an increase in workload e.g. if the economy were to slow down or policy changes encourage more petitions for bankruptcy and legislation it is difficult to see how The Service would cope with an increase in the short term without cutting back on investigation. It would make sense to build up relationships with the private sector that could be expanded if the need arose.

We recommend that The Service invite tenders from suitably qualified organisations to carry out some of the investigation work. As well as offering flexibility in handling changes in workload, this would also enable The Service to monitor comparative costs and performance while maintaining sufficient in-house capability to support its ability to manage the function in future.

MERGER WITH OTHER COMPLEMENTARY ACTIVITIES

9.1.9 There are two DTI units which carry out similar or related activities.

Company Investigation Branch (CIB) carries out investigations of companies under S447 of the Companies Act 1985. These are usually complex and sensitive high profile investigations undertaken where there is "good reason" to suspect fraud or misconduct. In some cases the company takes remedial action but in others the Secretary of State may petition for winding up in which case the OR becomes interim receiver. Links between the two organisations are good. The work of investigation is similar and several CIB staff are on secondment from The Service. Given the sensitivity of the cases and that the companies being investigated are not in financial difficulties, we believe it is right that CIB should remain within DTI but suggest that CIB may be a potential benchmarking partner.

The Redundancy Payments Unit pays redundancy pay to employees when a company has become insolvent and cannot meet its responsibilities. They work with IPs and with ORs but they are effectively creditors and we believe that it would not be appropriate to transfer this function to The Service which must be seen to provide an impartial service.

PRIVATISATION

9.1.10 Much of the asset realisation and distribution work has been effectively privatised in that IPs carry out functions where the costs can be covered from the assets. Indeed we question in para 7.1.22 whether this represents the best return to creditors and **suggest that consideration be given to bringing some low asset cases in-house, though this would depend on designing a financial regime which allowed The Service to cover the extra cost - which we expect would be self financing.**

Making use of agents suggested above might develop a market but it is difficult to see how costs could be covered without public sector involvement.

We do not see scope for privatisation of major functions, although abolishing the requirement to bank with the ISA might effectively amount to privatisation.

FUTURE DEVELOPMENTS

9.1.11 Policy reviews in DTI and LCD could have major implications on the future of The Service and could change the nature of the work.

(a) “Fresh Start”

The results of the consultation are still being analysed and a paper prepared for Ministers. We note here some of the comments that were made to us during the Review:

- Many people to whom we spoke felt that The Service did not appreciate the work that was needed to set up post-bankruptcy IVAs to which creditors agreement would have

to be secured. Different skills from those used in IPOs i.e. negotiation and mediation, would be needed.

- The justification for The Service taking on this role is economies of scale. If agreed, they would need to consider how to manage the work. How much would be needed to cover costs?
- Restriction orders would increase investigation load. How would costs be accommodated given current pressures on budgets?
- Training – a large measure of support but not necessarily to be done by The Service who could refer appropriate clients to suitable providers.

(b) County Court Administration Orders

The current discussions between LCD and The Service on the extent that there might be an overlap between a revised county court administration order regime and the bankruptcy regime might have major implications for the role and organisation of The Service, if a unified procedure is adopted. This is dependent on the nature and scope of the unified procedure. Among the options is the provision of a gateway administered by The Service that would identify which route was most appropriate for debtors. This would have major implications for the role and organisation of The Service and among the organisational options which might be considered are:

- The Service remains as a DTI Agency undertaking some functions on behalf of LCD.
- A joint agency DTI/LCD.
- Re-allocate functions e.g. OR to Courts/LCD, enforcement to CIB/DTI, policy to DTI, regulation of professional bodies to DTI.

The costs of administration are potentially large. The experience in Scotland when public sector funding was introduced should be borne in mind. The provision of a route opened up a new market and saw the case load soar from the estimated 300 cases costing £10,000pa to 12,000 costing £26m pa.

In assessing the outcome of the LCD/Service discussions, account will need to be taken of when the OR should be involved in investigation, and the extent to which any proposals might result in an undesirable increase in this type of work.

The Review of Company Rescue and Business Reconstruction Mechanisms

9.1.12 The Service do not expect any significant impact on the work of ORs as a result of this Review; though there may be a minimal impact on the HQ and Enforcement functions of The Service. We wonder however whether there would be a reduction in the number of compulsory winding up orders, especially if there is a change in the approach of IR and C&E and more CVAs result.

Advice

9.1.13 Many responses to the consultation commented on The Service's role in providing advice on bankruptcy and corporate insolvency. There is a comprehensive series of publications, a website and a person to handle general inquiries in each OR office. The general view was that direct advice should be avoided because of potential conflicts of interest but that The Service should ensure that intermediaries provided better guidance.

The responsibility for giving advice to business goes well beyond The Service and is a key element in the agenda of the Small Business Service. The Service's activities in this area need to be joined up with those who already provide this advice, whether in government or elsewhere. As far as advice to businesses, whether incorporated or not, is concerned **we recommend that The Service develop links to the SBS both nationally and at the local level through OR offices to define the appropriate role for The Service.** Similarly we have identified a need to bring greater professionalism to advice available to individual debtors. Interested parties include the CAB; the Money Advice Centres Network; Consumer Credit Advisers; DTI Consumer Affairs Directorate; and the National Debtline. The Service is already considering how to develop closer relations with these and similar organisations. **We shall work with them in Stage 2 to define roles more clearly and the kind of information to be provided.**

Name

9.1.14 The Society of Insolvency Practitioners has recently changed its name to the Association of Business Recovery Professionals to signal a new approach to companies in financial difficulties. When decisions have been taken on the current policy reviews and the role of The Service is clear, consideration should be given as to whether the name is in keeping with modern attitudes to insolvency.

9.2 RECOMMENDATIONS AND ISSUES FOR STAGE 2

Financial Regime

9.2.1 The financial regime under which The Service operates has emerged as the major issue in this QR. As long as The Service remains on gross running cost control, it will be difficult for it to respond to demand, whether this be to sudden changes in case load over which it has no control or new demands such as new functions, legislation to implement policy changes or implementation of recommendations in this report.

9.2.2 The priority in Stage 2 will be to investigate whether it is possible to devise a financial regime which gives The Service a sufficient degree of self-financing and hence flexibility of response. Implementation would however need legislation if it involved abolishing the ISA.

9.2.3 If we cannot design a suitable regime the essential question is how the £1,200 per administration and £13,000 per disqualification compare with other calls on DTI's budget. As we point out in para 9.1.3, without public sector funding, cases where there are insufficient assets to cover costs will remain unresolved and there will not be a route out of bankruptcy for those who want to start again. As NAO pointed out, if there is no action by the State to prosecute offenders or to disqualify directors, misconduct will go unpunished and confidence in the market will be undermined. Neither they, nor we could quantify fully the costs and benefits and we make recommendations for research and data collection - see 9.2.13 below.

IT

9.2.4 PKF confirm in their report, the urgent need to update the core business systems and improve document handling. They estimate this could cost some £16m. If the work is not undertaken, The Service will not achieve its targets for the next 3-year period. A new financial regime could give more flexibility in 2-3 years time but the investment is needed now. **We shall investigate options such as PPP, contracting out to an organisation that has spare capacity; or (less likely) a notional allocation or a loan that could be made from the surpluses (some £20m) earned on the ISA over the past two years.**

Contingency planning

9.2.5 The Service has improved its performance considerably against the background of a stable economy and a steady caseload. But it would have difficulty in responding to a sudden rise in demand without compromising other targets such as prosecutions and disqualification.

9.2.6 We have made suggestions for building up partnerships with the private sector to

give some flexibility.

- Investigating the scope for scale fees to be paid to IPs when they are appointed by the OR from the rota. The Service's legal advice is that this would need legislation so this is not an immediate option. But if it could be done, it would open up the option for extra work to be contracted out at scale fees and possibly paid for from programme budget.
- Structured trials of using solicitors to carry out investigations currently carried out by STAs in the Disqualification Unit. There are no objections in principle but a resource cost in running the trials and increased costs of the work, or lower levels of disqualification, initially at least.

Benchmarking

9.2.7 The Service has reviewed performance extensively against internal benchmarks and is beginning to use EFQM but has been unsuccessful in finding external benchmarking partners. So that benchmarking can be built into existing and planned process reviews, we intend to try to find suitable partners in Stage 2 e.g.

- Insolvency organisations in other countries, especially Scotland.
- (Case Administration) insurers, banks mortgage lenders.
- (Enforcement) Companies Investigation Branch.

Role of The Service

9.2.8 We have not recommended substantial changes to the role of The Service but draw attention to potential new functions e.g. LCD's proposals for changes to CCAOs which could have substantial implications for the role of The Service. It is unlikely that decisions on the 3 policy reviews will be taken within the timescale of this review so our recommendations that The Service remain an agency of DTI are interim.

A fourth issue is the extent to which The Service should be prepared to give advice. We recommend that The Service develop links with SBS nationally and at the local level through OR Offices to define the appropriate role for The Service. The position on advice to individuals is less clear cut in terms of identifying appropriate organisations but **we shall work with The Service in Stage 2 to define roles more clearly and the kind of information to be prioritised.**

Longer term organisation

9.2.9 Over the last 5 years, The Service has reduced its costs considerably achieving a

real term unit cost reduction against administering bankruptcy and compulsory liquidation cases of 16.5% across the period 1995/96 - 1998/99, has a major process review in hand and is undertaking several pilots aimed at reducing costs further. However, these initiatives do not seem to be part of an overall view of how The Service might be organised in future, particularly taking account of developments in IT.

We propose to work with PKF in Stage 2 to suggest a framework for analysing the opportunities and for ensuring that future changes are coherent. Factors to be taken into account include:

- | | |
|----------------------|---|
| Use of IT | <ul style="list-style-type: none">- improved document handling in line with best commercial practice,- centralising functions e.g. realisation of assets; inquiries, telephone interviews,- remote working to enable examiners to be closer to customers, including telephone interviewing. |
| Location | <ul style="list-style-type: none">- concentrate functions in areas of high unemployment,- greater delegation to regions,- decisions on which functions need to be undertaken at national, regional or local level, taking account of the Cabinet Office guidance on coherence with Standard Government regions. |
| Accommodation | <ul style="list-style-type: none">- number of offices,- location of HQ,- scope for short-term hiring,- use of accommodation e.g. at courts for remote workers. |

Working with The Service on issues already in hand

Performance

9.2.10 Work on outcomes is a key development for The Service and we will be examining the scope for establishing outcome-based targets more closely in Stage 2. This

will be done along side a review of the extensive set of process targets. These have clearly contributed to the overall effectiveness of The Service across the Review period but may no longer remain appropriate as key measures in some cases.

Some of the existing targets have been achieved with apparent ease in most years. We recognise The Service's expectation in its Corporate Plan for 2000-2003 that targets will be re-set at levels which are genuinely challenging, following its internal reviews and on the back of new IT. The Service envisages this to be for 2001-02. We will consider this in Stage 2.

Customers

9.2.11 The Service continues to develop its customer service strategy both in the light of the The Government's Service First (Charter Mark) initiative and in response to the Modernising Government Agenda. Details of the activities are at annex 5.1.

In Stage 2 we shall review the strategy including:

- **Plans to establish the demand for an enquiry service extending beyond normal office hours in the context of the Modernising Government Agenda.**
- **How The Service proposes to benchmark complaint assessment methodology, patterns and processes for improving service following evaluation of complaints received.**
- **Arrangements for ensuring information is available in all appropriate languages.**
- **Proposals to develop the website as an integral customer surveying tool.**

Other Issues and Recommendations

IP Regulation

9.2.12 We intend to examine the practicalities of IPA taking on the authorisation of IPs currently authorised by the Secretary of State. This would free up resource, but reduce income, though fees are only just being revised to cover costs. Timing depends on whether legislation is needed or whether IPs can be persuaded to transfer.

Research

9.2.13 We make a number of recommendations for further research:

- We endorse the suggestion that The Service should commission research to underpin the development of policy in future.

The Service should take the opportunity of the improved IT systems to review the collection of data from its own activities and discuss with ABRP which collects data and publishes statistics on IP activities.

- The Service is considering whether it is possible to build on the NAO cost benefit analysis and to develop impact measure(s) by undertaking a formal survey to elicit facts rather than the anecdotal views that have been given to us. This should include creditors, whose views do not often seem to be reported.
- The Service might also look at the balance between the promotion of enterprise and the need for a fair and effective regulatory framework in this activity as it has done for others.

In Stage 2 we will consider these areas and if research could be commissioned externally and charged to wider DTI research budgets.