Insolvency Technical
ICAS
CA House
21 Haymarket Yards
Edinburgh, EH12 5BH

25 July 2017

Dear David,

Insolvency Code of Ethics Consultation

The Association of British Credit Unions (ABCUL) appreciates the opportunity to respond to this consultation.

There are around 330 credit unions in Great Britain, with more than 1.25 million members and £1.5 billion in assets under management. Credit unions are deposit-taking financial co-operatives primarily providing savings and loans facilities to their members. Credit unions have a key role in promoting financial inclusion and financial capability and have been supported in this by successive Governments.

We take a particular interest in matters of insolvency as, although credit unions do not necessarily experience a higher amount of insolvency cases as a percentage of their overall activity than other creditors, their structure means that they generally do not have the income to 'soak up' losses in the same way that a bank or a high interest credit provider might. Indeed, legislation in place means that credit unions cannot generate income through means other than lending, and it also sets a limit of what credit unions can charge in interest. This unique arrangement means that credit unions are automatically at disadvantage compared those organisations they are competing with in the lending market.

However, credit unions largely see providing access to affordable credit as an important part of their purpose, and wish to continue to be able to lend to those who are generally excluded from mainstream financial services. It is therefore vital that the arrangements in place for when an individual finds themselves in financial difficulty are fair to everyone, and that the system is set up in a way that enables small creditors to fully participate.

Though we have not responded to all questions within the consultation, we hope that the concerns we have raised below will be included in your considerations.

Questionnaire Questions 1 & 2

We welcome the efforts of the working group to strengthen the wording of the code to reflect market changes and, overall, we feel that the proposed wording is an improvement. However, we hope that the committee will take some time to consider how the code is applied and enforced.

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In reviewing the proposed changes, it was our feeling that the original code – whilst certainly weaker – does include provisions which should have dealt with many of issues that the working group is seeking to resolve.

For example, as is outlined in the Explanatory Note, the many of the changes proposed are in response to growing concerns about the impact of a firm's business development activity on its individual cases. Section 20 of the original code goes into some detail about the need for safeguards within the work environment to ensure the identification of, and rules to address, threats to the fundamental principles of the code – this includes the statement:

> "…*policies and procedures to prohibit individuals who are not members of the insolvency team from inappropriately influence the outcome of an insolvency appointment*".

We feel, therefore, that the existing code explicitly deals with this, and would question whether strengthening the language around it slightly will have the intended impact.

In working with our members to establish what prevents them from taking up matters of concern about individual cases with RPBs, we frequently hear stories about complaints largely not being withheld, or that nothing ever comes of their efforts to raise concerns. The feeling amongst our membership is that IPs have free reign to operate as they see fit. We would therefore like to press the joint committee to consider how well the code is being enforced currently, and whether any changes are necessary in light of this.

Questions 3, 4 and 5

In terms of additional guidance, although there is not much information in the consultation on what is being proposed, we agree that more guidance on what expectations stakeholders should have of IPs would be helpful. We have found from engagement with our own members that the particularly complex devolution arrangements in this area of law, as well as the numerous different bodies with an interest in the regulation of it, make accountability something of a grey area, and any more clarity that could be given would be helpful.

Question 8, 9, 10 and 11

There is growing consensus within those working in this sector that the changing business structures are resulting in abuse of the system. Our members have fed back tales of expenses associated with IT, couriers etc being included in proposals which, as well as appearing to be excessively high, are payable to a different division of the same company that employs the IP.

Given the recognition of this conflict within the Explanatory Note of the consultation document, we are disappointed that the proposed new wording does seek to more explicitly deal with the problem. Whilst we acknowledge that there is not necessarily an easy solution, we don't think the matter will be addressed by changing the word 'should' to 'shall'. We feel, for example, that the main safeguard noted in the code – that the IP should '*consider the disclosure of existence of such business relationships to the general body of creditors*' – is, by-and-large not acting as an effective safeguard. We would like the code altered to require all relationships to be fully disclosed (as opposed to the requirement being that the IP ought to consider it).

However, there also needs to be recognition that even disclosure is not necessarily a deterrent – very often creditors cannot challenge these costs. Whilst we fully appreciate that that is outwith the terms of this consultation, we would hope that the committee will consider whether the code might be edited to better address the issue generally.

Question 12 and 13 and Question 15 and 16

As is acknowledged in the Explanatory Note, the changing nature of the insolvency business has made this area challenging, and we would agree with the growing body of people who are concerned about the actions of some firms within the market. One of our members summed up his experience of dealing with bulk providers of IVAs/PTDs (after explaining the problematic format which they nearly all take):

"*We have never received such a proposal from the more reputable companies such as [name of IP A] or [name of IP B], they seem to be the domain largely of [name of IP C] and a few others connected to them. It's a relatively new phenomenon here. We operated for 6 years and received perhaps 3 IVA proposals in that time, each of which were what I would call "proper" proposals. In the last 2 years since the [Name of IP C] ones started hitting they just keep on coming….. To date I have not seen from them a proposal that I would have considered appropriate as a debt adviser. We even had one proposal where the contributions to the IVA would have been far in excess of the entirety of the debts owed. I objected to a member being asked to pay contributions of almost £6000 for total debts of around half that amount. They couldn't understand why I would have a problem with that as we would get all of our money back!"*

We do not agree that the system – regardless of the phrasing of the code – is adequately addressing this problem. Even in those cases where the aggressive tactics of the practice are outwith the control of the individual IP, the code is fairly explicit in making an IP's priority the individual. Any IP who has managed one of the proposals referred to in the above quote has clearly been in breach of the code (when taken as a whole), even if they did not participate in the marketing or actions that lead to the case being on their desk. We would like the Joint Committee to consider, therefore, what steps can be taken to address this issue. We do not feel that a rule preventing referral fees is adequate in light of the changes in the landscape.

Question 19

Finally, the questionnaire seeks suggestions on any other areas in which the code might be modified. I should say from the outset that we do appreciate that no code of ethics can legislate against poor service. However, overwhelmingly, the issues raised by our members relate to frequent poor behaviour on the part of the IP which, when taken as a whole, suggests their business tactics are encouraging them to exclude creditors. We do fully accept that correspondence can be lost in the post, or creditor lists can end up incomplete. However, this happening repeatedly by the same companies suggests that it is a deliberate attempt to ensure that debt solutions are not challenged or rejected, and so guarantee their own fees.

I have outlined below some examples that have been posted on our online members forum over the past few months (not prompted by this consultation):

- *"We have received a number of documents from them dated between 22nd May and 7th June. These include an IVA proposal with the creditors meeting fixed for the 2nd of June, plus the notification of the IVA being agreed at that meeting, with all of this arriving with us in the same post on the 26th June so that we were not aware of the meeting and could not vote in it."*

- *"Our vote was 'invalid'. The reason given was that the Proxy Form had been incorrectly completed. When we looked at the form there is what we consider to be a misleading, squashed together paragraph at the bottom, about not needing to sign your job title, then needing to sign it. Our vote is invalid because I failed to put my job title on the form"*

- *"We have previously complained to IPA about [name of IP], after they failed to include us in the creditor list for one of our members. On that occasion if they had bothered to do more than a basic Equifax check they would have seen our loan on Experian. We would have voted against and again, it would likely have been rejected, allowing us to pursue recovery action. IPA have just dismissed our complaint."*

- *"We recently received such an IVA proposal, voted against it and successfully blocked it. About 2 months later we received notice from a different IVA company confirming that a creditors meeting had been held and an IVA approved. A cynic might believe that the original IVA company simply passed her over to another letter headed company who made sure that our proposal documents got "lost in the post" so that we didn't get to vote."*

- *"Yesterday we had a call; caller managed to answer 3 security questions and obtained loan balance. Then said he was thinking about an IVA and could he speak to somebody about it. When they got put through to me, turns out its 'Mike', an introducer for [name of IP].*

- *“We learnt from another member today there is a creditors' meeting on Monday about their proposed IVA. We knew nothing about it but, after being cut off twice by [name of IP] this afternoon, I have managed to get the meeting adjourned and got the pack by email.”*

Clearly this is a fairly random list, and there will always be genuine oversights and errors. However, when the main impression of our members is that the actions of IPs make is very difficult for them to participate in the system to the extent that the law states that they should, then this calls into question the abilities and ethics of the insolvency sector. We therefore feel that the code should make a stronger statement on the requirement for IPs to fully uphold the law, and set out steps to be taken in the event that this does not happen.

I hope that this is helpful in reflecting on the proposed changes to the Code of Ethics, and please feel free to contact us if you require any further information.

Yours sincerely

Karen Hurst
Association of British Credit Unions