



British Property Federation response to:

Professor Elaine Kempson's Review into IP fees

1. The British Property Federation (BPF) is pleased to respond to the review being undertaken by Professor Elaine Kempson on insolvency practitioner fees.
2. The British Property Federation is the voice of property in the UK, representing companies, owning, managing and investing in property. This includes a broad range of businesses comprising commercial and residential property owners, housing associations and financial institutions including pension funds, corporate property owners as well as a number of regional landlord associations. A list of our largest members can be found at the following link: http://www.bpf.org.uk/en/members/our_members.php
3. This response will not directly address the individual questions that have been posed by Professor Kempson but will give a general outline of the views of our members in relation to the charging of fees by insolvency practitioners. We would be delighted to provide any further information or clarification on any aspect of our response on request. In the first instance, please contact Stephanie Pollitt, Senior Policy Officer, Tel: 0207 802 0104 or Email: spollitt@bpf.org.uk
4. We welcome the review being undertaken by Professor Kempson and believe that an appraisal of any aspect of the insolvency process is of value. As has been noted, we have previously responded to the review of corporate insolvency conducted by the Office of Fair Trading and note that this work will act as a supplementary document to that consultation. Whilst we are unable to produce any specific evidence, we still believe it is worth outlining our issues pertaining to fees and fee structure for the purposes of this document.
5. Any new insolvency event in the current climate generates particular issues and difficulties. With the current volume of already empty units, members are finding their time focussed on, amongst other matters, minimising void periods, seeking new occupiers, pushing IP's for rental payments and getting them to comply with lease provisions. All this aside, rightly or wrongly, the level of IP remuneration is not given the attention that is needed to enforce a change.

6. However, there is a clear strength of feeling amongst members that where fees are charged for work done, it is often difficult to quantify the value of this cost. In particular with restructures through pre-pack there is rarely any hope of a dividend to unsecured creditors anyway, with the charge holders hoovering up any realisations long before ordinary creditors get a look in. Aside from the most straightforward of cases such as small company voluntary liquidations, the level of confidence relating to whether fees are commensurate with work undertaken is low.
7. Where it is felt that fees do not reflect the level of work, challenging these costs brings with it its own difficulties. Legislation allows for the formation of a creditors committee which has the purpose of assisting the administration. A key responsibility of the committee is to decide on which basis an IP should be remunerated and to provide a forum for creditors to challenge the fee levels set by the IP should they feel this necessary. However, in reality this committee does not provide the appropriate platform with which to raise disputes on fees and, as committees are not an essential feature of an administration, the IP is at liberty to decide on whether there should be a committee at all.
8. Where it is strongly felt that a challenge is necessary, the gathering of 10% of creditors by value poses significant barriers and, even if achievable, creditors will need to weigh up the costs of time and money bringing this group together and making the challenge. With all of the difficulties already mentioned, the process appears to lend itself to the IP freely charging what they wish without fear of significant challenge.
9. Our members have long campaigned for transparency within the insolvency system and that applies to fees as much as anything else. We believe that a system of fixed fees which are presented to creditors at the earliest opportunity and which are based around deliverable outcomes would help to ensure a more transparent process and alleviate the need for disputes further down the line. We also believe that fixed fees will incentivise the IP to achieve the best possible outcome and eliminate waste. Any fee structure that is based on an hourly rate will struggle to deliver value for money given that is not in the IP's interest to act quickly. If fees cannot be fixed, consideration should be given to a budget cap, whereupon reaching it would require the IP to explain why further fees are necessary.

Stephanie Pollitt
Senior Policy Officer