Northern Ireland Assembly

Committee for Enterprise, Trade and Investment

OFFICIAL REPORT (Hansard)

Insolvency (Amendment) Bill: Institute of Chartered Accountants Ireland and PricewaterhouseCoopers

9 December 2014

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Institute of Chartered Accountants Ireland and PricewaterhouseCoopers

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Members present for all or part of the proceedings:
Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

Witnesses:

Mr Sean Cavanagh	Institute of Chartered Accountants in Ireland
Mr Stephen Cave	PricewaterhouseCoopers
Mr Gareth Latimer	PricewaterhouseCoopers

The Chairperson (Mr McGlone): With us today are Mr Sean Cavanagh, chairperson of the insolvency technical committee (ITC) of the Institute of Chartered Accountants Ireland (ICAI) and partner at Cavanagh Kelly; Mr Stephen Cave, partner in PricewaterhouseCoopers and a member of the insolvency technical committee of the Institute of Chartered Accountants Ireland; and Mr Gareth Latimer, senior manager of business recovery services in PricewaterhouseCoopers (PwC). Thanks very much for coming today. You are very welcome indeed. We look forward to hearing from you and, indeed, to pursuing and maybe drilling down a bit deeper into some of the issues that you raised in your submission. The Committee has already received your detailed submission, so members have read what you had to say. I do not know who is fronting this bit initially. Is it you, Sean? That is grand. You will have the opportunity to make your opening statement. Then we will have the question-and-answer session with members. If you are happy enough to go with that, please go ahead.

Mr Sean Cavanagh (Institute of Chartered Accountants in Ireland): Yes, indeed, Mr Chairman. Thank you.

I want to briefly introduce myself. I am a partner at Cavanagh Kelly, which is a firm of insolvency practitioners and chartered accountants. I lead our insolvency department. We have five offices. We really welcome the opportunity to come here today. I just want to let the Committee know as well that, as the Chairman advised, I also chair the insolvency technical committee of the Institute of Chartered Accountants in Belfast. That represents all members in Northern Ireland.

We welcome the opportunity to be here with you this morning. I do not intend to go through all 14 clauses; suffice it to say that we welcome virtually all the submissions and legislation bar one clause, which is clause 14.

Some clauses concern objectives that we particularly welcome. The first concerns modernisation of communication methods, which I think you have all debated and which are well known. The second is on meetings, and the third, which I welcome particularly, is on facilitating banks to provide bank accounts for bankrupts, which, again, I understand was the subject of quite a bit of debate.

The one clause that we have issue with is clause 14, which really concerns the partial authorisation of insolvency practitioners. Our difficulty with that is that we do not see it as being in the public interest. We see it as causing greater cost to the taxpayer and the public at large, because if these provisions go through, the regulatory bodies will incur greater costs for monitoring and setting up systems for monitoring. That, in turn, will be passed on to insolvency practitioners through their fees, which in turn will mean less dividend to the public. We have a problem with that.

On a technical side, we also have a problem, in that, first, we do not see that there would be a great appetite for this in Northern Ireland. In our practice, we work across both corporate and personal insolvency. It is not even clear to a lot of individuals who come to us whether the solution to their insolvency issues would be to follow a personal or a corporate route. Some people will have been directors of companies, and we find that out only later on. Some people may well have been a partner in some particular business or other. Therefore, in our opinion, if the Bill goes through and this clause goes through the way that it is, there will be situations where there is partial authorisation — for example, when someone is authorised to take only personal work and they find that there is corporate work — and they find that they will not be able to take the case, basically. We really see a problem here. I think that the word "overlap" has been used in submissions up to now. There is great overlap, as we call it, between personal and corporate work. That is our particular problem with this clause. I will be happy to give you firm examples of that in practice that we have had to deal with in our everyday work.

The final thing that I will raise with the Committee is that the clause on partial authorisation in the GB legislation, which of course kicked off in 2010 and later in 2012, has not, as yet, been enacted. I understand that it will be enacted some time in 2015. It is interesting that, even in GB, no strong case was made for the enactment of that legislation. Therefore, when we looked to see whether we could find some items that would help us to support the Committee and that made a compelling case for its adoption, we could not find any. So, we are struggling both from the point of view of our personal experience and practice in Cavanagh Kelly and from the point of view of looking for external evidence of why this is necessary.

My final point will be that we think that this is designed maybe for what we would call the consumer debt category of activity. The consumer debt category of activity, I understand, does not involve us. It does not involve a lot of recognised professional bodies (RPBs), which are professional regulatory bodies. So, we do not know. I think that it will be regulated separately in GB, so we could be dealing with a different kind of scenario.

Therefore, as far as we can see the situation in Northern Ireland, we do not see that there will be any big appetite or interest in this. Those are the three main points with which we have a problem. Apart from that one clause, clause 14, we are very supportive of the rest of the legislation. There is a lot of positivity coming out of this.

The Chairperson (Mr McGlone): Right then. Thanks very much, Mr Cavanagh. I know from my personal experience of the professionalism of your firm. There is no doubting that.

To get back to partial licensing, we are kind of in the realms of hypothesis. You do not know how it works. In England, they do not know how it works, because it is not in yet. We put to the Department what the driver was for us. You may be aware of what it said. It informed the Committee that it is obliged to follow what has been done in England to comply with the EU services directive. Under the conditions for granting of authorisation, the directive states at article 10(4) that:

> *"The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory".*

Without getting into politics, in this instance, that is coming from Westminster. It continues:

"including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest."

The Department cited that legislation, and it cited it as the reason why it has been brought in over in Britain. Going back over to you basically, I do not know of any:

"overriding reason relating to the public interest."

Mr Cavanagh: Certainly, I have points to make on that, but Stephen Cave is happy to take that point on board.

Mr Stephen Cave (PricewaterhouseCoopers): Just to comment on that, we have discussed this at length both in the insolvency technical committee and the profession generally. Whilst we are supportive of everything else on this and believe that safeguards could be put in place, fundamentally, I think that it is a matter of public interest. That is because, particularly given the nature of our economy over here and the existence of the small to medium-sized enterprises (SME), quite often when an individual is sitting in —

The Chairperson (Mr McGlone): Bear in mind that this says:

"an overriding reason relating to the public interest."

There will be SMEs in Britain — in Scotland, England and Wales — so I think that it would need to be a quite exceptional reason. Stephen, you are a man who is well practised in this stuff, so you know what I am talking about.

Mr Cave: That is a fair point. However, the issue is about providing the right advice to the business at hand, and the difficulty is that, if you are licensed purely to practice personal insolvency and the person is sitting in front of you, you often do not know, in that first interaction or those first several interactions, whether that is going down a personal insolvency line, a corporate one or, as is often the case, a mix of the two. However, I take your point, Mr Chair.

The Chairperson (Mr McGlone): One issue has cropped up. If this is not going to apply in a lot of cases, why do you worry about it?

Mr Cavanagh: I agree with that. This is not going to apply in a lot of cases, but, at the same time, if the legislation comes in, the RPBs will be obliged to provide the framework for dealing with requests for partial authorisation. That will mean that there will be a cost that will be passed on to the consumer. My understanding is that, as the legislation outworks through GB, a lot of the consideration is on the amount of savings that will be achieved. That, in my opinion, is part of the public interest, but I could be wrong.

The Chairperson (Mr McGlone): Let us come back to "an overriding reason". That is the reason that the Department has given to us, and I am seeking to tease it out. I am trying to pick up on this. I think that, in your evidence, you said that there are not going to be that many cases where this will apply. You are the accountant, so if that is the case, there will not be an awful lot of money involved in monitoring it.

Mr Cavanagh: No, but there will be money involved in setting up the procedures for monitoring it. That is where the expense will be. My understanding was that, in the earlier consultation, there was a figure of £2,500 that the Chartered Accountants Regulatory Board (CARB), which is the regulatory body for the Institute of Chartered Accountants, calculated. With respect to the Committee, £2,500 will not establish the requisite monitoring systems to set that up. However, I take your point that there may not be a big take-up.

However, at the same time, even if there are only three or four, some system will have to be set up. Indeed, in some cases it will perhaps require dual visits by RPBs to firms like ours, for example. If we had a partial licensee, someone is going to have to regulate that and to regulate the cases that are taken on. It is going to be complicated. As you know, the regulatory bodies all regulate all the insolvency firms in Northern Ireland.

The Chairperson (Mr McGlone): This is my point: if your argument is that it will apply only in a limited number of cases, or a few cases, by logic it will be complicated but only for a few cases. You are all seasoned practitioners, and you have dealt with the multiplicity of complexities in these things. That is why you are here today. I am just trying to get where exactly the consistency of the argument is coming from. If it is going to be complex, it will be so for a few cases, so a huge magnitude of stuff will not be coming in your direction.

Mr Cavanagh: No. Being frank and honest about it, Stephen and I have debated this in our practices, and I have debated it. We are conscious, Mr Chairman, that you are using the phrase "an overriding interest". If human rights legislation and the desire to follow the legislation as it outworks in GB have to be followed, we would reluctantly have to concede that that extra dimension of overriding that requirement is difficult to deal with. So, I am conscious of and understand your views, Mr Chairman.

It is interesting that, in GB, as I alluded to, there was nothing in the consultation or in the submissions from the Institute of Chartered Accountants in England and Wales (ICAEW) or, indeed, the Institute of Chartered Accountants of Scotland (ICAS) that indicated that they could find in favour of it.

The Chairperson (Mr McGlone): I appreciate that, but the Department is citing EU legislation and EU services directives. I am trying to be devil's advocate.

Mr Cavanagh: Of course.

The Chairperson (Mr McGlone): Obviously, like so many of these items, read-across and compliance are almost a given.

I want to tease something out a bit further. Again, we are into the realms of hypotheses, but your hypothesis is given with you wearing the experienced, seasoned hat of what you do. You said that partial authorisation would have a detrimental impact on the quality of advice and on the prospects of recovering money from debtors. In that realm of what might happen, will you give us an indication of how you see that creating difficulties in that area?

Mr Cavanagh: Yes. At a practical level, when we are doing individual voluntary arrangements (IVAs), we find that we have, for example, a husband and wife. You have a debtor situation. You will have a person who owes money, for example, in relation to a personal guarantee or in relation to a debt that was incurred while they were in their guise as a director of some company. When you are actually dealing with that at the coalface, you find that the partially licensed person who is licensed to carry out only personal work has to say to that debtor, "I can't act for you." They have to get someone who is experienced in corporate work who understands what a director is, what the concerns are, what the company issues concerning directors are or, more particularly, what the corporate issues surrounding personal guarantees are. That is an actual coalface, practical point. There will be situations where we have to say that to them. As it pertains at the moment, being duly qualified means that we can deal with those cases there and then seamlessly and have no issue. That debtor is not disadvantaged in any way, whereas someone who is only personally licensed is not going to be aware of the company, of the ramifications for directors, what it means for the directors disqualifications unit (DDU) or what it means for so many other parts of legislation. So, in our opinion, the debtor in that instance could be disadvantaged.

The Chairperson (Mr McGlone): I will draw an analogy. To pluck an example out of the air, someone might require specialist advice in marital law and licensing law. You could go to the practitioner who does one and you could go to the one who does the other, and that would not really present a difference or a problem to people.

Mr Cavanagh: I do not think that the two analogies are exactly comparable. We call this the "overlap". For example, in my opinion, marital law and licensing law are more distinct —

The Chairperson (Mr McGlone): Sorry; I am just pulling that out of the air. If you want things done, you go to somebody who knows what they are doing. In your case, your argument is, "Well, we can handle it all here." What if you go along to someone, you discuss the case with them — I am trying to get to the bottom of this — and they say, "Well, I deal only with corporate issues. You have to go to somebody to deal with your personal matters"? That could be grand, and even a small company could say, "I don't deal with that, but he or she deals with it". What is wrong with that?

Mr Cavanagh: I can answer that only by saying that, at the coalface in our practice, which is representative of a lot of the insolvency work that is carried out in Northern Ireland, there are still very many situations where there is an — forgive me for using the word again — overlap of disciplines between the personal and the corporate. People come in looking for debt advice. There can often be situations where, if we are doing an IVA, we would advise them to go down certain corporate routes. Perhaps they could form a limited company, for example. The personal practitioner is going to say, "I can't answer that question".

The Chairperson (Mr McGlone): Can I just tease it out a stage further? I am getting a bit of a picture at the moment. Say, for example, I am partially authorised and you are partially authorised, and we have a working arrangement. I do corporate and you do personal, or whatever it might be. Somebody might come to me, and I will say, "Sorry, I don't do personal, but Sean is good at it", and that working arrangement is there. What is wrong with that?

Mr Cavanagh: In theory, there would be nothing wrong with it, except that, again, you would be adding another layer of cost, because the corporate specialist is going to have to come in. If you are dealing with one person who has both disciplines in his academic armoury, he is able to handle that question there and then, whereas in the situation that you just outlined, we would have to bring another person in. So, that would add another layer of cost to the exercise.

Mr Cave: I think that the practical, logistical arrangements to deal with those types of situation are not insurmountable. As to your point, I think the reality, in whatever analogies we use, is that, within an initial one-hour consultation with a business in financial stress, you often cross back and forth across those areas many times. So, I do not think that the practical arrangements for dealing with that are insurmountable, but I think that it presents practical issues.

The Chairperson (Mr McGlone): I was going to come to this, but since you are taking me there, I presume that you have in your firm people who specialise in corporate and others who specialise in personal.

Mr Cave: Yes.

The Chairperson (Mr McGlone): Not everybody is an expert in everything.

Mr Cave: That is correct, and there are occasions when you refer to a particular person who specialises in personal bankruptcy, whether they are actually a licensed insolvency practitioner in that area, and where you can bring in the relevant disciplines. Where your analogy is concerned, there may be a tax situation when you need to bring in a tax person. You call on those specialists as and when they are needed. The concern that we are referring to is in bringing that together if, through the analogy, you are sitting at the far side of the table, often in a distressed situation because you have perhaps run out of cash and you need advice to quickly and efficiently deal with that across that spectrum. That is the concern, but we do not believe that it is insurmountable.

The Chairperson (Mr McGlone): You are good at what you do. That is why you are doing what you are doing where you are doing it. Surely the market will determine whether someone is pretty shabby at their job. They are not going to go to them, even if there are, as you say, a limited number of cases where those partial licences will be issued or operable. I am just trying to get to the nub of the issue.

Mr Cavanagh: That is a very fair point indeed. We operate in a market-dictated environment; there is no question about that. The only fear we have is that, if a debtor comes for advice and some element of the solution to their problems lies in having some knowledge of corporate law, that debtor, as I indicated, is going to be slightly disadvantaged. The debtor, sadly, will not be aware, unless they find out later, that there were other options that, had they been able to consider, could have left them in a better position.

The Chairperson (Mr McGlone): PwC raised an issue about grandfathering. Will you elaborate a wee bit more on how that operates? What is that concept?

Mr Cave: Going back some 20 years-plus, before the introduction of formal examinations across a range of disciplines to allow someone to become a licensed insolvency practitioner and to take formal appointments, there was a system whereby, provided that their experience record was signed off, they did not have to formally sit exams, so they were grandfathered in to that system. There is a mix of

practitioners still in the market: those who have sat the formal examinations to become qualified, such as myself; and those who were grandfathered it.The point is that we have absolutely no issue with people who were grandfathered in, continue to practise in that space and who have had that as, if you will excuse the expression, their day job, as against those who were perhaps out of the market for quite some time doing many, varied and totally diverse things. Post the recession that we are hopefully now out of, they have effectively reapplied to get their licence back. It seems that, while we have a debate about authorisation and people having to go through and achieve a competency, that does not sit right in that framework.

The Chairperson (Mr McGlone): Are there many insolvency practitioners who have qualified in that way?

Mr Cave: Who are still practising?

The Chairperson (Mr McGlone): Yes, people who have inherited that role.

Mr Cave: There is probably a handful; no more than that.

The Chairperson (Mr McGlone): OK. Thanks very much for that.

Mr Frew: My questions relate to PwC more than those of the other contributors here today. They are to do with clause 1 with regards to having a single physical location and being able to modernise it and use technology in order to get a forum or meeting in place whereby all the creditors and players in it can hear and communicate with one another, albeit even if they are not in the same room. The PwC response talks about the sorts of problems that could arise as a result of rules not being sufficiently prescriptive. To use your term: you talk about statements of insolvency practice (SIPs). Can you give us some detail of what you mean by that? What do you see as being something that would be fit for purpose?

Mr Cave: I will clarify the point, Mr Frew. First, we are hugely supportive on the whole of modernising, to use your term, which is, I think, a good one, the approach and ultimately trying to make this more efficient and, indeed, more cost-effective for creditors in situations. The points of concern were again around practical application: how you deal with a situation in which somebody says that their link to get into that meeting did not work. How do you verify that it is actually Mr Frew, who is purported to be a creditor of the business, on the other end of the phone, videoconference or whatever? Again, it is a layer beneath, hence why we referred to the statements of insolvency practice, which often sit, as best practice standards, beneath the legislation to make sure that there is consistency of approach around how a particular practitioner and their firm implements that.

Mr Frew: I take your point about the difficulties there. Technology fails from time to time: you may be about to have a very important meeting and then something goes wrong. Is there any way that you can guard against that? This seems to be a very good idea and the way forward, but is there any way that you know of that can get around that problem? If you have items that will resolve this issue and take away the concern, how would you put that in the Bill?

Mr Cave: That is a fair point. I think that, because we have not got into that space as yet, there is an element of that needing to evolve. There needs to be consistency on how practices approach that, because one particular firm's systems and how it deals with that may be totally different from another. It is about how you bring consistency of approach so that the creditors see that. I think that it can all be managed and dealt with and, in some ways, to use an analogy, it is no different from someone who was stuck in traffic and did not attend the meeting when they were supposed to attend. You have the option there to adjourn the meeting. Similar principles can be adopted in practice to deal with that, because it would be hugely beneficial in moving things forward in the modern age.

Mr Cavanagh: An analogy with that is that, nowadays, with meetings held, for example, at a lot of what I would call very high-end auctions, you might have someone in Malta, Venezuela or Australia, and you have to be absolutely certain, because you may be dealing with several hundred million pounds, that there is a mechanism there for making sure that the guy on the other end of that phone is who he says he is, otherwise you would be out a lot of money. I envisage that technology will go down that route of ensuring that there is a password for each particular case that will be unique to each case.

Mr Frew: I understand. That brings with it the security of making sure that all the characters and players —

Mr Cavanagh: Password-orientated security will end up solving that, in my opinion.

Mr Frew: With regard to technology, it is vital that everyone at the meeting, whether they are there or remotely there, hears and communicates with everyone. A phone call, surely, will not cut it; it will need more advanced technology.

Mr Cavanagh: Both Stephen and we use videoconferencing for a lot of our ordinary corporate meetings. I am sure all members are aware that that has come a long, long way. I just finished a case last week with a client in Bangalore, in India. There was no problem whatsoever with overcoming all the normal difficulties. That technology is with us today and why we welcome the legislation.

Mr Frew: An issue is also raised in the PwC report around the amount of time needed to sort out the logistics: to identify a venue, inform the creditors of the venue and so on. You talk about sufficient time. In your eyes, what is sufficient time to organise that? I know it is logistics, but it is just so that we get it right.

Mr Cave: It will vary from case to case depending on the spread of your creditors. To follow on from Sean's analogy: in a situation where you have a lot of foreign creditors and perhaps different time zones are involved, that will require more logistical planning. Typically, in our world, that is a minimum of two weeks. Under the existing legislation, the notice period will range from two to four weeks for any given meeting. Within a similar time frame is more than sufficient to do what is needed. We need to make sure, in the practical implementation of this, that it is consistently applied; hence the reference to perhaps a statement of insolvency practice around it. Indeed, without doing my own firm an injustice, to make sure that the small one-person practitioner firm is not being ousted from the market, for want of a better phrase, because they feel that they cannot make the investment in the technology, it is about how we get something that moves it all forward but, by the same token, continues with the competitive and proper landscape that is there for insolvency practitioners.

Mr Frew: Is this open to abuse with regard to delaying?

Mr Cave: Anything is open to abuse, as we all see in cybercrime and the use of technology. There is an element of evolution in all this and we need to stay close to the situation to see how it is working and then adopt it. However, the legislation should provide the framework umbrella, as opposed to changing the legislation, and, within that, the statements of insolvency practice and guidelines can be tweaked as needs be to try to eliminate any such activities.

Mr Cavanagh: I want to make a very practical point on that, Mr Frew. You are absolutely correct in your observation. On the issue of electronically transferring dividend payments — this is getting down to the coalface — you could hit a wrong number. Banking legislation will have to be brought into the modern world to cope with the likes of that where there is an issue of fraudulent payment or a payment made by a simple clerical error. We are entering into a completely new world. Some of us are already there, but, essentially, a lot of people are just going to have to be a lot more careful.

Mr Frew: I want to change tack now and talk about the regulation, or the lack of regulation, with regard to insolvency practitioners. If I was to say that we should have, in the Bill, more effective supervisions and regulation of insolvency practitioners, what would you say about that?

Mr Cavanagh: I will take that question, Mr Frew. Wearing my hat as chair of the insolvency technical committee, I work closely with the CARB, which is the regulatory body for the Institute of Chartered Accountants Ireland. I work very closely as well with bodies across the water. I submit to the Committee that the insolvency profession — this is accepted; it is not just my observation — is one of the most highly regulated in the world. And I mean the world. The OECD data that has come out finds that, in the UK, the insolvency profession is the sixth best. Do not ask me what the other five are, please — *[Laughter.]*

The Chairperson (Mr McGlone): As long as they are not partially licensed.

Mr Cavanagh: Maybe so. There is a very strict and robust monitoring regime. It is highly regulated by an ethics committee. All insolvency practitioners have to sign up. On the monitoring visits, they are compliant with strict ethical guidelines that are monitored every year.

I could literally take half an hour and go through it and bore you to tears with the details of where we are. We have moved on in the modern world. If there are problems or shortcomings in the quality of advice that emerges from monitoring reports, our committee will act. Those reports are published and in the public domain. Believe you me that any people inside our profession who fall sort of certain standards are brought to book. I am pleased to see that government recognises that generally in its reports.

The Insolvency Service is the overarching body that monitors the monitoring bodies. The IPs have the monitoring bodies — the RPBs, as I call them. The layer on top of that is the Insolvency Service, which is obviously government and also monitors. Those are not paper exercises but actual visits. In England, and also in Northern Ireland, the Insolvency Service carries out monitoring of the RPBs.

Mr Frew: I take the point, and you have every right to defend your profession. I have absolutely no problem with that, and I take what you say that you could spend half an hour on that.

Yet with all that, we still hear of cases of people being oppressive and unfair to clients, and the assets of a business being used to pay money to people who were not even creditors. If the profession is, as you suggest, heavily regulated, how can things like that still happen and no penalty be incurred by the practitioner?

Mr Cavanagh: I am aware of a reference to that. Perhaps, Mr Frew, you are referring to something that was discussed, apparently, at one of these previous meetings. I did not check this out, but I understand that the person concerned was certainly not a part of the RPBs that I would be directly concerned with. Clearly, that person had to be authorised somewhere in the process, so I am not for one moment minimising that comment or trying to brush it under the carpet. Therefore, obviously, I cannot make any comment in relation to that case.

Mr Frew: No, I understand.

Mr Cavanagh: There is always a chance. I do not think that any system is ever perfect. It would be remiss of me not to say that, on the monitoring visits, some members do fall short.

Stephen made this point. We started, in the past few years, a system called SIPs, statements of insolvency practice, which you mentioned earlier. Those SIPs are more than just persuasive; they are guidelines that all our members have to adhere to. I think there are 17 in place at the moment covering nearly every aspect of work. That is why I could go down into a level of detail. On the monitoring visits, our members have to adhere to those statements of insolvency practice. That does not take away from the fact that you are alluding to: one case where obviously those standards were not adhered to.

Mr Frew: Would you support a statutory provision for a code of conduct for insolvency practitioners and/or even a continual professional development (CPD) programme?

Mr Cavanagh: We have a CPD programme. We are already there, Mr Chairman. We have a certain number of hours. It is very strictly regulated. I am talking about the RPB that Stephen and I are part of. There are seven RPBs. Maybe this Committee is not aware that there are seven RPBs. I agree with you. I would be one for an absolutely level playing field across all RPBs, which maybe is —

Mr Frew: Is it a statutory provision, though?

The Chairperson (Mr McGlone): Is there statutory provision for one?

Mr Cavanagh: Well, it is heading that way.

The Chairperson (Mr McGlone): I am well aware that there is internal one for your profession. What about a statutory provision?

Mr Cavanagh: I would not have a problem with that. I submit, Mr Chairman, that, really and truly, the monitoring of our bodies is so strict at the moment that, if that became statutory, it would not cause a problem.

The Chairperson (Mr McGlone): OK. Thank you for that.

Mr Dunne: Thank you very much, gentlemen. I will be brief, because you have been here for some time. Clause 3 refers to the removal of requirement for annual meetings in relation to voluntary liquidation and creditors. What is your opinion on that?

Mr Cave: I will deal with that first, Mr Dunne. I think that that is a catch-up with the modern age in a lot of ways. If we were to survey the number of creditors who actually attend those annual meetings, you would find that you tend to get quite a good representation at perhaps an initial meeting, understandably, because people want to know whether they are going to get any money back, when that will be and perhaps put things on the table, such as, things they want investigated. Thereafter, there is a statutory requirement in liquidation processes to convene annual meetings. In doing that, there is time occupied and cost. Between us all, you ultimately often have no representation at those meetings or perhaps, at best, one or two people. So, it is about giving a facilitation so that the creditors still have a voice but removing the actual necessity to go through the formality of a meeting.

Mr Dunne: Would transitional arrangements be put in place for the changeover?

Mr Cave: Yes. I think that the proposal is that that will continue to apply to anything that is in force before that is enacted, but there will not be the requirement to do that in new cases.

The Chairperson (Mr McGlone): Sean, I think that your practice raised the issue of the transitional —

Mr Cavanagh: We did. We saw this, again, as an unnecessary cost. You are quite right, Mr Chairman. If this is enacted, it will only apply to new cases that start when the legislation comes through, say, in 2015. For a lot of our cases, we will be required to operate two parallel systems, two parallel sets of working papers: one for cases that are currently in progress and will continue for the next few years; and another for new cases where that is not required. That is the reason why we made that point. So, there is a duplication of energies required there, which is just a pity. I suppose, if the legislation could be worded in such a way that it applied to all extant cases, that would save us the bother. However, we do not see it as a huge issue. We are used to such things.

Let me say, just as an aside, that — Stephen and I were speaking about this before we came in — because the rules in GB often lag behind the rules in Northern Ireland — these are the rules that follow the legislation — we are used to operating parallel systems. So, to an extent, whilst we would like to have it done away with, it is not going to be a deal-breaker or a big issue.

Mr Dunne: So, the loss of the AGM would not be significant. In many ways, it is about communication.

Mr Cavanagh: It would actually save money; it would be of benefit. The cost of setting up such a meeting, of sending out, say, 400 notices for an AGM and no one turns up, can be a bit frustrating to say the least.

Mr Dunne: Thanks, gentlemen.

Mr McKinney: Thank you for your submission. I want to look at clause 13, specifically around PwC's written submission. Obviously, it makes provision for bank accounts but that does not mean that people will get bank accounts, so you have suggested that there should be a conversation between the Department and the banks. Is that the right way forward?

Mr Cave: Just to clarify the question, Mr McKinney: are you asking whether it is right to have the ability for discharged bankrupts or bankrupts to have bank accounts, or to have interaction with the banks?

Mr McKinney: I mean interaction with the banks.

Mr Cave: The point was made in the context of such situations that you are supposed to recover from bankruptcy. Bankruptcy is not for life. You need to encourage people to start again, to go again. That is an important part. We were referring to the practical implementation, where we can legislate for the fact that, as a bankrupt, you are allowed a bank account, but we need the banks to buy into that. It was around how you make that work most efficiently in practice through engagement with the banking community so that you appreciate that that is there, it is educated about that and it is applying it.

Mr McKinney: Would a conversation between the Department and the bank achieve that outcome?

Mr Cave: It is a fair question.

Mr McKinney: Sometimes, when we have conversations with the Department, we do not achieve anything.

Mr Cave: It is about education. It is often the fact that, on the ground, they assume that, because you are bankrupt, you cannot have a bank account. That is not the case. There is perhaps a piece between the Department and — dare I say it — the insolvency profession around the education and awareness piece for the banks.

Mr McKinney: That sounds loose. If you are looking to achieve an outcome —

Mr Cavanagh: It is interesting that, also emerging, funnily enough, as part of the regulatory regime, is a set of protocols. There is an IVA protocol. The British banking federation can come through that. Today, we cannot get bank accounts open for bankrupts, but if it were included as part of a protocol that the banking federation had to buy into, we could point to the banker in question at the coalface and say, "You are not adhering to your own protocol". I suggest that that could be a practical way forward.

Mr McKinney: How would you inject that into the protocol system?

Mr Cavanagh: You would make it part of the protocol. There is an IVA protocol at the moment, but it is for only IVAs. We are talking about bankruptcies. There is not a bankruptcy protocol, but it could be brought in as part of —

Mr McKinney: It would be a "shall" or "must" as opposed to a "may" or "could".

Mr Cavanagh: Correct. We, in our practice, feel very strongly about that point — not to cut across Stephen — because we find that a phenomenal number of people in rural environments cannot get bank accounts opened. How can you function?

Mr Cave: If we turn that question around and ask, "What stops the banks opening a bank account for bankrupt at the moment?", it is inevitably the internal lawyer, who thinks, rightfully so, that there is a potential challenge to whatever that bank transacts; pounds in and out of that account. The trustee in bankruptcy can potentially attack that. It would be great if we could build in that education, but I think of the hurdles to potentially get there. I genuinely believe that, if the legislation clearly pointed out when it applies to the internal legal departments of the banks, that would, effectively, deal with the issue.

Mr McKinney: Yes, but I think that this conversation is taking place in the context of the liability being removed, as is suggested by the legislation. That is one piece of the work that you would expect to open the door, but it appears that there is another piece of work to be done. You are talking about educating, and you are talking about protocol. I am trying to work out where the authority lies. Is it in a protocol? Is it in guidance? Is it in the legislation?

Mr Cavanagh: Stephen and I addressed this issue as we were waiting to come in. Not all that long ago, there were meetings between the committee that I chair and the bankers on an annual basis. The reason for that was the same reason why we meet the Insolvency Service; it was precisely to address practical issues such as that, so that we could say to the bankers, "Look, this is not working. The bankers out at the coalface are not actually implementing this protocol or whatever". If we, in ITC, could go back to the days when we met the banking people in Northern Ireland, that would be a simple

answer to it; it is literally about getting round a table and saying, "Would you please ask the guys out at the branch offices to go and operate this system?".

Mr McKinney: Do we need more assurance, Chair? Does it sound —

The Chairperson (Mr McGlone): Just on that very point, StepChange suggested that the proposals in the Bill would remove liability from banks in instances of bankrupts or potential bankrupts.

Mr Cavanagh: Yes, that is true. There was always a problem with the definition of what we call, to use our technical jargon, after-acquired property. The problem was that we, as licensed insolvency practitioners, would come after the bank and say that some of those credits and moneys have come into the bank account. The bank would merely say that it would not enter into this situation at all. The only way around that was for insolvency practitioners to say that we would not take any action against a bank when it was operating a bank account in good faith, and that would prevent an IP from taking any legal challenge against a bank. The key phrase is "in good faith", because I am sure that members understand that, if a clear case of fraud is being perpetrated, the insolvency practitioner still has to challenge that transaction.

Mr McKinney: Does removing the liability from the banks and having the "in good faith" proviso remove liability fully?

Mr Cavanagh: The assumption is that fraud will happen only once in a blue moon, so we hope so.

The Chairperson (Mr McGlone): Obviously, good faith and fraud do not go hand in hand. If it is fraud, it is illegal, so liability would follow from that.

Mr Cavanagh: Yes. To take Mr McKinney's point, the good faith clause should bring the banks back to the table. My short answer is: that will work.

Mr McKinney: I am thinking that the good faith part comes in after the fact, whereas we will want bank accounts to be opened before the fact. How do you do that?

Mr Cavanagh: I am hoping that the banks see the legislation, see it on the statute book and realise that the opportunity for insolvency practitioners to come after them will not be there unless some highly exceptional event occurs that would enable them to say that they will allow bankrupts to operate bank accounts from here on in. Credit unions do it. We do not understand why there should be a fear on the part of the banks. I think that it should be all right. I am positive and hopeful on that.

Mr Humphrey: Thanks very much for your time and your presentation. I want to return to clause 14, which you said in your evidence, Mr Cavanagh, is the one that you have most concern about. The Chairman made a point about the terminology used: "throughout the national territory". Effectively, you represent the Institute of Chartered Accountants in Ireland. Have you had conversations with your sister organisations in the rest of the UK about that?

Mr Cavanagh: No, Mr Humphrey. I chair ITC, but I may have forgotten to mention one additional word: I chair ITC North. The Institute of Chartered Accountants has two insolvency committees, one in Dublin and one in Belfast. Obviously, I chair the one that deals with Northern Ireland legislation. We exchange minutes of meetings and relay them, but we largely cope with the Northern Ireland legislation on its own, and it is self-contained.

Mr Humphrey: That is my point, because "national territory" refers to the United Kingdom holistically as a unit, because the legislation is being handed down from Europe. I accept that you are part of the Irish institute. What I mean is: have you spoken to your sister organisations in Scotland, Wales or England, if they exist? The same will apply to them.

Mr Cavanagh: Yes it will, and this is where I have a difficulty. The desire to ensure that there is a level playing field for all practitioners in the UK means that I almost find myself defeating my own argument. It is a dilemma that you have to face, and you have to weigh the balance as to which is the greater need. My dilemma has been, on the one hand, the practical problems that I have, and, on the other hand, the ability to allow someone from Plymouth, Norwich or Sheffield to be able to operate in Belfast. I do not have a problem with that; that is a requirement. If there is other legislation — for

example, human rights legislation or this EU-wide directive — I have to defer to that. We wanted to come here today to make our case for the practical outworking of it as opposed to —

Mr Humphrey: Would it not be an idea to speak to your equivalents in other parts of the UK?

Mr Cavanagh: I spoke to our homologues in Scotland, and they struggled with the same idea. If people are aware of the Scottish legislation, they will know that Scotland has an even bigger problem because of deeds of arrangement legislation that do not apply anywhere but Scotland.

The Chairperson (Mr McGlone): The advantages of devolution.

Mr Humphrey: The point of the EU directive is to create a level playing field across the United Kingdom, presumably so that you do not have the anomalies that you are talking about that apply in Scotland because of more in-depth legislation. Mr Cave, you represent PricewaterhouseCoopers. You are a national, international and global company. Internally in your organisation, do you have experience of how the other constituent parts of the UK are dealing with this issue?

Mr Cave: Yes, but I will go back to Mr Cavanagh's point that, whilst the legislation has been passed in GB, from an enactment and in-practice point of view, we cannot find situations where it has come into play. We do not know the outflow of that at this stage. It is an absolutely valid point about liaison. That happens regularly in the insolvency operation group in our firm. Nobody has yet seen that put to the test. Ultimately, in our firm, we are saying that there are nuances of particular geographies. Ultimately, can it all work under one umbrella? It can, although, in some ways, it struggles to reconcile — this goes back to Sean's point — why, in UK legislation, we always seem to have a two- or three-year time lag for implementation. It almost leads you to take it on a composite basis, and, if there were something overriding, to use the word that was used earlier, relating to this geography, you would opt out — dare I say it — from that perspective as opposed to every time there is this lag. I can see both sides. That point is well made, Mr Humphrey.

Mr Humphrey: I accept your point that we sometimes take longer to implement legislation, but, equally, more recently, we have been leading the field in some other areas. Nevertheless, we have to keep coming back to the point that it is an EU directive. You talked about an opt-out. Effectively, your being uncomfortable with clause 14 comes down to the fact that you have to convince people that there should be an opt-out for Northern Ireland. The difficulty is that, because it is an EU directive — tragically, some 86% of our laws emanate from Europe — we then have to negotiate or try to secure an opt-out. Being realistic, if other parts of the UK have not been able to get that opt-out, how will we be able to do it?

Mr Cave: I refer back to my earlier point and the final paragraph of the PwC submission. As Sean said, to defer to that European directive, this will not break the system. There were simply considerations about some of the practical implications that are relevant to the nuances of our business environment in Northern Ireland. I accept that you could paint that into other geographies and regions. It is not that it fundamentally means that implementing partial authorisation would break the system. It would simply defer to the final paragraph. If, in that situation, an RPB gives somebody a personal insolvency licence — that goes back to the point about regulation — we need to be sure that the person or business in distress is getting the best possible advice across the board. I think that it can be dealt with.

Mr Humphrey: Good luck in trying to convince people that it can be dealt with.

Mr Cavanagh: I have a final comment on that, Mr Humphrey. We are talking about a market-led environment. If I want to do IVAs in Scotland, I have no choice but to tool up and organise myself for deeds of arrangement, otherwise I just cannot practise there; it is as simple as that. Those are market forces. That is Scottish law saying that, if you want to operate in our environment, you work according to the rules that we have set out. They have rules that are completely applicable only in Scotland.

Mr Humphrey: I think that that is the issue. You cannot have an uneven playing field on this issue — if that ever exists anywhere. If you are being disadvantaged for practising in Scotland, which is obviously a larger nation in the UK, that falls down with regard to the EU directive.

Mr Cavanagh: Correct.

Mr Humphrey: Either it applies universally across the kingdom or there are opt-outs. That is the basis on which you need to go forward.

Mr Flanagan: Thanks for your presentation and patience. I will ask a very simple question. What does "partial authorisation" mean to somebody who knows nothing about insolvency practice?

Mr Cavanagh: If this goes ahead, an insolvency practitioner can apply for a licence to take on personal insolvency cases only or corporate cases only, dealing with companies. We may see this sometimes when people operate with consumer debt for very small debtors who have only £10,000 or £15,000 of debt. They are not involved in the everyday work that Stephen and I do. Part of me thinks that this legislation will deal partly with those people who want to operate in a very limited personal field. We have a problem when individuals are also directors or have bigger cases and financial issues. That is when this legislation is a problem. For the small ones — the people who have small debts and so on — it is different. Those are what I call small consumer debts. Those people are being dealt with largely by Citizens Advice and so on. We think that it might be aiming at that kind of licence.

Mr Cave: If the business in question has "limited" at the end of its name, it requires a corporate insolvency practitioner. If it does not — if it is Stephen Cave trading as ABC — it is personal. To go back to an earlier comment, our world often overlaps, but, effectively, it is right: if you do not have "limited" — I am partially authorised and can practise personal insolvency — I can advise you. If you end up bankrupt, I can do your bankruptcy. What I cannot do is become an administrator or liquidator of your limited company.

Mr Flanagan: Right. The debate on partial authorisation is confusing me, and there is also the constitutional question. Do the two issues overlap here, or what is the story? There is all this talk about the national territory. Is that linked to partial authorisation, or are they two separate issues?

Mr Cavanagh: They are two separate issues.

Mr Flanagan: Does the EU services directive state that, if you want to provide insolvency services here, you have to do it all over Britain, too?

Mr Cavanagh: You have to be able to carry out that function all over Britain.

Mr Flanagan: Except when it is justified by an overriding reason relating to the public interest?

Mr Cavanagh: Yes. Our analogy is that if, in GB, someone comes from Manchester and has a personal insolvency licence — this is my interpretation of the legislation — by operation of this EU law, if they say that they want to apply to do work in Belfast, they cannot do it because we would not have the equivalent to GB legislation if we decided to have one and worked on what we call a dual licensing basis. That is the problem with the law.

Mr Flanagan: Are you saying that somebody in Manchester who is registered to do only personal insolvency would not be allowed to come over here and do personal insolvency?

Mr Cavanagh: No, because the way in which the law works here at the moment is that, when you are a licensed insolvency practitioner, you are licensed to do both personal and corporate work.

Mr Flanagan: Would that restrict somebody from Manchester offering personal work?

Mr Cavanagh: It would if they had a personal-only licence. The GB legislation has not gone ahead yet. If it goes ahead in spring 2015, which apparently is scheduled, and if that person in Manchester had a personal-only licence, he or she could not operate here.

The Chairperson (Mr McGlone): The can, however, operate at the minute.

Mr Cavanagh: They can at the moment, and there is no problem about that.

Mr Flanagan: William tried to blame all this on the EU. That is dead on; they can try. The briefing paper clearly states that DETI believes that specialisation would lead to benefits. I think that we would all agree with that. In some cases, it may be useful to have a specialised insolvency practitioner. I presume that, in your practice, you have people who specialise in corporate cases and people who specialise in personal cases.

Mr Cavanagh: We do.

Mr Flanagan: I appreciate that there is a difference between an individual and an organisation. I accept the Department's point that specialisation could lead to benefits, but I also accept your point that having a practice that can do everything under the one roof makes sense. That makes sense with a small business owner, a farmer or somebody who also has corporate interests as well. Has anybody tried to put forward the logic of the fact that there is a stretch of water between here and Britain as an overriding reason relating to the public interest as to why the directive may not need to be applied here? Has any logic been put forward as to why you think that we can get a derogation from the question of the national territory? That is where we need to go.

Mr Cavanagh: With respect, it is outside my competency to comment on that matter. In our submission, we concentrated on the practical outworkings of where we see that. I keep referring to the point about the very small consumer debt cases, and, apart from those, a lot of the other cases involve both. We see an advantage in having the dual system. In simple language, our view is: if it's not broken, don't fix it.

Mr Flanagan: I hear you, Sean, but we need a solution. I understand what you are saying about the implications. What if the law were worded in such a way that it offered the existing dual system and the specialisms that DETI has proposed? What if there were three types of licences: one for individual, one for corporate and a dual licence? What is your opinion of that?

Mr Cavanagh: In principle, I would not have any objection to that. I feel that the dual licence is a huge advantage. As I outlined, in our work, we find that having a dual licence is a very distinct advantage. CARB carried out a check and found that there was not a big appetite for individual-only licences among its membership of current IPs. I want to be fair, and there might be an appetite for a specialism in the world of small consumer debt. Indeed, I would not have the competency to deal with small consumer debt, and a specialism would be an advantage if someone came in with an issue like a lot of social security debt. We would submit that that is a very small if not minuscule field, and it is not the field that we deal with. However, we cannot say that it does not exist.

Mr Flanagan: Can you think about the proposition I have put to you, maybe talk to some of your members and come back to us?

Mr Cavanagh: Yes; fine.

Mr Flanagan: Maybe we could tease that out. We have to find a solution that meets everybody's needs: meets the needs of people here but complies with legislation and with what DETI wants to achieve.

Mr Cavanagh: That is the triple system that you referred to.

Mr Flanagan: I think that we could tease that solution out more.

Your answer to my last question has answered my next one, but I will ask it anyway. Is your opposition to clause 14 commercial to protect your firm, or is it based on the needs of citizens and people here?

Mr Cavanagh: Absolutely not. I would hope that the Committee recognises that, whilst I am representing Cavanagh Kelly, we consider that it will add an extra layer of cost that the public will ultimately pay for. I say that without hesitation on behalf of the insolvency profession.

Mr Cave: I second that, Mr Flanagan. I will go with the theme of "If it ain't broke, don't fix it" and say that a lot of licensed insolvency practitioners have done exams and hold licences to do corporate and personal work. They then choose, for commercial or other reasons, to specialise in personal insolvency work or, more commonly, corporate work.

From the firm's point of view, I second what Sean says. The system caters for someone who gets their licence, becomes competent across the piece and then specialises. I will go back to the legal example: it is similar to someone qualifying as a lawyer and then deciding to specialise in matrimonial law.

Mr Flanagan: The rationale for changing the Insolvency (Amendment) Bill is to do with the length of time it has taken and the huge demand for services. Do you think that the Bill will do enough to address that issue?

Mr Cave: Could you perhaps clarify that?

Mr Flanagan: I will rephrase the question, maybe in proper English. There is a huge demand for insolvency services at the minute. We have been told that the Bill aims to streamline that to deal with the backlog and make it easier for people to get through the process. Do you think that the Bill will achieve that?

Mr Cave: I will touch on that. I do not think that there is any backlog with the provision of insolvency services, specifically in the Province or wider afield. There is nothing specific in the Bill that will hugely accelerate the process, although, just to clarify, I do not think that there is a need to accelerate it.

Mr Flanagan: My final question is about the Tomlinson report. Are you aware of it?

Mr Cavanagh: Yes.

Mr Cave: Yes.

Mr Flanagan: That deals with the work of RBS's global restructuring group (GRG). Businesses were put under pressure by RBS, and good and viable firms were forced into liquidation so that the bank could make more money. Do you have any evidence that that was happening here? No evidence was produced that it was, but claims were made. Through your work, do you have any evidence that any of that activity was happening here?

Mr Cave: I can comment only on my specific knowledge and the cases that I have been involved with, whether with that specific institution or more widely in the banking sector. I would say no. While people will hold different views about the circumstances and the reasons why something went into insolvency, more than 80% of cases in the last six or seven years — that is not an exact scientific figure — have been property-related failures. You will always have two sides to a story, but, to answer your question, I have certainly not come across any circumstances that would apply to the parameters and criteria you outlined.

Mr Flanagan: What about you, Sean?

Mr Cavanagh: I second that. We have direct experience of working on reconstructions and corporate reconstructions. We have no evidence that anything along the lines of the activity you outlined, or that was outlined in the Tomlinson report, was paramount in achieving an overall result.

Mr Flanagan: Have you worked with RBS?

Mr Cavanagh: We have worked with the Ulster Bank. We have also done a lot of work with GRG. We have been heavily involved with GRG and the Ulster Bank.

Mr Cave: It might be helpful to paint a picture for the Committee. The commonly held view is that an insolvency situation is driven by the bank and that you are appointed by the bank and act for it. To clarify, and speaking from my personal situation, we will on occasion take instructions from a bank to look at its options, but likewise, in many situations in recent years, we have acted on the corporate side and have tried to facilitate a restructuring with the bank to avoid insolvency. So I have seen it from both sides of the equation.

Mr Flanagan: Are there any changes that could be made to the proposed legislation to protect good and viable businesses from being forced into liquidation or insolvency to make banks or other financial firms more money?

Mr Cavanagh: Sorry, what was the last part of your question?

Mr Flanagan: It was about protecting good and viable firms from being forced into insolvency in a drive to make more money for the banks.

Mr Cavanagh: The CVA process is designed to prevent the insolvency process kicking in. We are involved in many CVAs, and I have operated them. That process is there, and there is no need for any extra layer. That process is in place at the moment through that legislation.

Mr Cave: I agree. I do not think that anything else needs to be introduced in the Bill. I will add the caveat that I do not believe that businesses are being forced into insolvency. There is sufficient room within the parameters of the legislation and the guidance under which practitioners operate to achieve viable restructures. The biggest challenge to that, although it has got better, is people in the business community seeking professional help at an earlier stage whilst many options are open.

The Chairperson (Mr McGlone): Gentlemen, thank you very much for your time and for coming along. I have one final question. Stephen, I listened very carefully when you spoke about the difference between personal and corporate. People may tell you that they are a limited company when they clearly are not. If you were to take the route of partial authorisation, would a five-minute conversation not very clearly and quickly determine whether you are the wrong person or the right person to deal with it?

Mr Cave: Theoretically, yes is the straightforward answer to your question, Mr Chairman. However, I accept that you could pull this in any region in terms of the nuances. Personal guarantees were a massive issue, particularly in the Province, associated with property debt. There was the impact of that on a limited company and trying to walk through from the point of view of a director's responsibility, and a personal situation with a personal guarantee in the background is a clear overlap of those two worlds. However, yes is the straightforward answer to your question. It can be difficult enough to get that out within that time period.

The Chairperson (Mr McGlone): People should know whether they have a limited company or not.

Mr Cavanagh: Yes, I think so. However, I support Stephen in this: they are not aware of the fact that they have other involvements or that they have involvement with not just limited companies but with partnerships —

Mr Cave: Partnerships are very important.

Mr Cavanagh: — and that is another problem.

The Chairperson (Mr McGlone): I am conscious of the pressures on your time and certainly on mine. I have to go to another meeting. You have devoted a lot of time to this, and I thank you for your involvement in other issues. You have been very helpful on other occasions.