

The SRA has decided that it will no longer regulate solicitor insolvency practitioners, but is this decision up to the SRA at all, asks PaulaMoffatt

The board of the Solicitors Regulation Authority (SRA) has announced that, from November 2015, [the SRA will no longer regulate solicitors who act as insolvency practitioners \(IPs\)](#). The press release announcing the decision is measured and pragmatic, commenting that 'insolvency practice is not integral to the services provided by solicitors so there is no case for us to regulate in this area'. As there are only 129 solicitors who operate as IPs, one can see that the SRA might consider it a waste of its resources to focus on so few solicitors.

But is this decision one that the board can take? The SRA's statement in its November 2014 consultation document that it is 'a recognised professional body (RPB) for the purposes of authorising solicitors to act as appointment holders in insolvency matters' requires careful consideration. As the [consultation document](#) goes on to say, the statutory recognition is not, in fact, granted to the SRA but to the Law Society, 'which has delegated its regulatory functions to the SRA'.

The waters are further muddied by the [Insolvency Service's listing](#) of RPBs, which lists the SRA as: 'Solicitors Regulation Authority - SRA (Law Society)'. It would be possible to construe from this entry that the terms 'SRA' and the 'Law Society' are synonymous, but they are clearly not. The Law Society is a corporate body with a constitution and is an 'approved regulator' for the purposes of schedule 4 of the Legal Services Act 2007 (LSA), while the SRA is the Law Society's operationally independent, regulatory arm, which is overseen by a board whose remit is to ensure that the SRA's regulatory functions under the LSA are fulfilled (SRA Governance Handbook, July 2014).

Regulatory functions

So, what, in the context of insolvency practice, has been delegated to the SRA? On the SRA's own analysis, it is the Law Society's 'regulatory functions'. This means that, insofar as solicitor IPs are to be regulated, it is the function of the SRA to regulate them. What it surely does not mean is that it is up to the SRA to decide that solicitor IPs are no longer to be regulated by it. It is a subtle distinction, but it is a distinction nonetheless: the Law Society has required the SRA to regulate IPs, and therefore the SRA must. By this token, the decision of the board of the SRA that the SRA will no longer regulate solicitor IPs is not one that it is authorised to take.

The Law Society is firmly of the view that the SRA should continue to regulate solicitor IPs on its behalf (shown by its response to the SRA's consultation, published in January 2015). It is unfortunate that the Law Society did not challenge the SRA's authority in this matter, although other respondents to the consultation, including Christopher Garwood, a partner at Wilkin Chapman and solicitor IP, did. The SRA contends in its consultation response (17 March 2015) that 'the Law Society is an important consultee but ... not the decision maker...' (at paragraph 38), although without legal authority to support this view, it is merely an assertion. As Mr Garwood has pointed out, the correct approach would have been for the SRA to propose the change to the Law Society and for the Law Society to conduct any consultations, if it considered that the proposals had merit.

Of 17 formal responses to the SRA consultation, 14 (including the Law Society's) disagreed with the SRA's proposals, yet the SRA went ahead with its decision. Aside from the concerns expressed by solicitor IPSas to the effect of this decision on insolvency practice, there is a wider issue at stake. Who is holding the SRA to account for its decisions or checking to see that it has the authority to make them in the first place?

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