

The Prescribed Part for Unsecured Creditors: A Pithy Review

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Abstract

This article examines the suitability of the prescribed part fund as a realisation tonic for unsecured creditors in contemporary English insolvency proceedings. It underscores difficulties with both the idea and operation of the fund. Ultimately, the article contemplates the sustainable role of the fund in light of recent and desired reforms to the English corporate insolvency framework.

A. Preliminary

As far as insolvency claimants go, unsecured creditors are often seen as deserving of some statutory protection. The fate of unsecured creditors in corporate insolvency is typically a political and impassioned issue. There are a number of reasons for this. Unsecured creditors are seen as habitual weaker parties relative to their corporate debtors (and secured creditors) when brokering a contract.¹ Moreover, certain unsecured creditors assume this status involuntarily without the opportunity to protect their pre- and post-insolvency positions by contract.² Further, the presence of security in commercial transactions is seen in some quarters as a threat to the ability of unsecured creditors to make recoveries in the advent of insolvency.³ In addition, this class of

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¹ LA Bebchuk and JM Fried, 'The Uneasy Case for the Priority of Secured Claims in Bankruptcy' (1996) 105 Yale Law Journal 857, pp.904-912.

² V Finch, 'Security, Insolvency and Risk: Who Pays the Price?' (1999) 62 MLR 633; R Kraakman et al, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, OUP 2017), Ch.5.

³ R Mokal, *Corporate Insolvency Law: Theory and Application* (OUP 2005), ch.5. English insolvency law is characterised by a tussle between reformers and institutional/secured creditors for the appropriate level of interference with their insolvency entitlements. Some call this tussle the "politics of meta-bargaining". See BG Carruthers and TC Halliday, *Rescuing Business, The Making of Corporate Bankruptcy Law in England and The United States* (OUP 1998), p.166.

creditors comprises certain stakeholders that (from Parliament's perspective) seem to be particularly deserving of the protectionist agenda in insolvency law or who, in the interest of society, should not be completely out of pocket in a corporate debtor's insolvency. These are consumers, employees to the extent of their non-preferential claims, and the Crown.⁴ We can also add to these insolvency office-holders with respect to expenses of the insolvency procedure.

Since 15 September 2003, unsecured creditors have the benefit of the prescribed part fund by which the office-holder of a company in liquidation, administration, or receivership is required to ring-fence an amount of money – up to a maximum of £600,000 – from corporate assets covered by a floating charge security for the satisfaction of unsecured debts.⁵ The aim of this fund is to increase the flow of insolvency value to unsecured creditors.⁶ Curiously, and quite different from the stated aim, recent evidence suggests that the fund is usually the only source of recovery for unsecured creditors in the few insolvencies in which the fund is set aside by the office-holder and distributed.⁷ This development raises a number of questions. First, why is the prescribed part the main source of unsecured creditors' recovery in English insolvency proceedings? Second, is this a favourable development for unsecured creditors? Lastly, how does this development fit into the scheme of engendering positive insolvency outcomes for all insolvency stakeholders?

This article deals with these questions by providing a contemporary review of the prescribed part fund. It scrutinises the idea behind the fund and its use in corporate insolvencies. In doing these, it will show that the fund not only raises some conceptual difficulties, it also creates inefficiencies in practice. Neither of these are, however, sufficient to call for an abolition of the prescribed part provision. Rather, scrupulous

⁴ Law Commission, *Consumer Prepayments on Retailer Insolvency* (Law Com No 368, 2016) (LCR 368). For employee preference, see *Hansard, Parliamentary Debates* (4th Series) 60 Vict, vol XLVI (10 February 1897), 73 col 1.

⁵ Insolvency Act 1986 (IA 1986), s 176A; The Insolvency Act 1986 (Prescribed Part) Order 2003 (SI 2003/2097).

⁶ Department of Trade and Industry (DTI), *Productivity and Enterprise: Insolvency - A Second Chance* (Cmnd 5234, 2001), para 2.19. Secured creditors can, however, participate in the prescribed part fund if they surrender their security; see *Re Pal SC Realisations 2007 Ltd* [2010] EWHC 2850 (Ch), *Re JT Frith Ltd* [2012] EWHC 196 (Ch).

⁷ LCR 368, 8.29.

application of recent amendments to the insolvency legislation coupled with some recommended adjustments to the operation of the fund should make it fit for purpose. The remainder of this article is split into three parts. Part B considers the veracity of the rationale behind the prescribed part fund. Part C explores the impact that the fund has on insolvency expenses and office-holder applications to disapply the fund. Part D concludes with some recommendations.

B. Reviewing the Origin of the Prescribed Part

The prescribed part fund could be said to have a three-phased origin in English insolvency law. The first phase was the consternation, post-recognition of the floating charge, at the “scandal” of a debenture holder sweeping off the entire pool of assets in an insolvent’s estate. A proposed redress of this concern can be seen in Lord Macnaghten’s suggestion that “ordinary trade creditors of a trading company ought to have a preferential claim on the assets in liquidation ...”⁸ The next phase was more concrete. The Cork Committee proposed a ten-percent fund to be carved out of floating charge assets for the benefit of unsecured creditors.⁹ According to the Committee’s proposals, unlike the extant law of the time, which would deliver nil returns to unsecured creditors whenever the company’s assets were insufficient to meet its debts, unsecured creditors should be entitled to receive a ten-percent distribution from floating charge assets provided the percentage of their recovery did not exceed that of the debenture holder.¹⁰ In consideration for this encroachment on a floating chargee’s security, the committee suggested a reduction in the category of preferential debts.¹¹

These proposals were however rejected by the Conservative Government of the time amidst concerns that they would lead to a reduction in lending, higher interest rates

⁸ *Salomon v Salomon* [1897] AC 22, 53.

⁹ The Cork Report (Cmnd 8558, 1982) (The Cork Report 1982), para 1538. In the United States, concern over the priority of secured credit led to the idea that as control of risky behaviour was the arguable objective of secured credit, victims of such behaviours should not rank last in an insolvency pay-out, but, rather, should be paid from a carve-out of secured assets. See E Warren, ‘Making Policy with Imperfect Information: The Article 9 Full Priority Debates’ (1997) 82 Cornell L Rev 1373, p.1377.

¹⁰ The Cork Report 1982, para 1539.

¹¹ *ibid*, paras 1536-1537.

or a reduction in the use of the floating charge - all of which were perceived to be harmful to smaller businesses.¹² It was also feared that lenders would simply switch to fixed security and so entirely avoid the depreciation in the floating charge security. In 2001, the final phase was put in motion by the Labour Government. The prescribed part fund was introduced through the Enterprise Act 2002 on the premise that the benefit of abolishing Crown preference should go to unsecured creditors and not floating charge holders.¹³

The basis of the prescribed part is not entirely convincing. Firstly, the idea that but for the fund there would be a windfall to a floating chargee is dubious or, at least, not entirely objectionable. Given that the provision only applies to floating charges created after 15 September 2003,¹⁴ a floating charge created before that date will enjoy the best of both worlds by getting the benefit of the abolition of Crown preference without being subject to the prescribed part. In any case, it is hard to conceive a windfall to a chargee, given that the erstwhile preferential claims of the Crown would have, where the company's assets were insufficient, been paid out of assets to which the chargee was entitled by virtue of a valid pre-insolvency expedient. Secondly, the fund like other redistributive provisions¹⁵ ignores certain benefits of secured credit. The floating charge where given in exchange for new cash engenders fiscal value as it provides a company with working capital. Its breadth, relative to the company's assets, and the fact that it is often taken with a fixed charge, also gives the creditor some control and an incentive to monitor the company's assets pre- and within insolvency. For example, research has shown that floating chargees control office-holder fees and monitor the incurring of other expenses.¹⁶ Unsecured creditors benefit from these incidents as the likelihood of corporate failure and asset mismanagement is reduced at

¹² Carruthers and Halliday, *Rescuing Business, The Making of Corporate Bankruptcy Law in England and The United States*, n.3 above, p.201.

¹³ DTI, *Productivity and Enterprise: Insolvency - A Second Chance*, para 2.19; *Re Permacell Finesse Ltd* [2008] BCC 208.

¹⁴ IA 1986, s 176A(9).

¹⁵ *ibid*, ss 175 and 176ZA, sch B1, para 70.

¹⁶ E Kempson, *Review of Insolvency Practitioner Fees: Report to the Insolvency Service* <<http://www.bis.gov.uk/insolvency/insolvency-profession/review-of-ip-fees>> 4.2.1. (Accessed 1 April 2017).

little or no cost to them.¹⁷ Thirdly, some unsecured trade creditors can adjust to the putative risk caused by security. Where such creditors decide to do business with a company, they should be able to increase the price of their goods or services as a protective measure.¹⁸ Indeed, there is evidence that trade creditors adjust the cost of credit on the basis of a debtor's credit worthiness and propensity for misbehaviour.¹⁹ They could also manage their exposure by limiting the volume of business they conduct with one particular company. Therefore, allowing adjusting unsecured creditors to claim floating charge assets enables them to freeride at the expense of a floating charge holder. Fourthly, granted that majority of unsecured creditors cannot adjust properly, it can be argued that only a minority are deserving of protection in insolvency. Non-adjusting trade creditors should be held to their pre-insolvency inertia in failing to at least adjust the volume of credit extended to a distressed borrower. Consumers are typically owed negligible amounts.²⁰ Workers already have a bite at the cherry through the preferential claims and/or redundancy payments regime. The state, with respect to tax claims, is in a position to adjust its enforcement policies²¹ or absorb the cost of unsuccessful enforcements.

The foregoing suggests that only one member of the class of unsecured creditors - tort claimants - are truly deserving of protection. But then it is not entirely clear that this should be done through the prescribed part. Tort claims would typically arise in the course of a company's trading. Their claims might well be covered by insurers who are adjusting creditors. Further, it is not unlikely that such claims would have been settled by the court or between the parties. In the event that the judgment debt is still outstanding, such creditors may be execution creditors. Here, such creditors will have

¹⁷ Kraakman et al, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, n.2 above, 5.4.

¹⁸ Although Finch suggests that such creditors may be unable to price risk properly, she acknowledges the argument that "those trade creditors who are successful are those who build into their prices an interest rate element that, in a broad-brush manner, reflects averaged-out insolvency risks." See Finch, 'Security, Insolvency and Risk: Who Pays the Price?' n.2 above, p.644.

¹⁹ J Armour, 'Should We Redistribute in Insolvency?' in J Getzler and J Payne (eds), *Company Charges: Spectrum and beyond* (OUP 2006), p.215, fn.134.

²⁰ LCR 368, 4.4 - 4.5. This probably makes it costly for them to adjust.

²¹ K Pistor, 'Who Tolls the Bells for Firms? Tales from Transition Economies' (2007) 46 *Columbia Journal of Transnational Law* 612. That said, Schemes like the Business Payment Support Service suggest that this approach may not be forthcoming.

priority over the claims of floating chargees.²² There is no objection to such priority as it does not frustrate the charge holder's proprietary interest. This is because a floating chargee cannot, because of the chargor's freedom to deal with charged assets, have a claim against any third party with whom the chargor has dealt with in the ordinary course of business. Execution creditors are a component of the wider category of third parties dealt with in the course of business. Finally, there are alternatives to the prescribed part in relation to the protection of tort creditors in insolvency. These include imposing the burden of excess tort liabilities on shareholders on a pro rata basis and absolute shareholder liability where owners are responsible for the tort-inducing activities.²³

C. Reviewing the Cost and Application of the Prescribed Part

Recent data shows that the prescribed part fund is only set aside in a fraction of eligible insolvencies and, where set aside, the returns it provides to unsecured creditors are borderline irrelevant.²⁴ Yet, as stated earlier, the fund has become the only source of realisation for unsecured creditors.²⁵ If the aim of introducing the provision into the Insolvency Act is to give some realisation – however small – to unsecured creditors rather than having a scenario in which they are entirely out of pocket, then the fund may be seen as auspicious. But this must be balanced against the reality that unsecured creditors are in many cases out of pocket because the fund is hardly set aside. Moreover, such appraisal would be setting the bar of insolvency outcomes too low; the operation of the fund seems to generate inefficiencies for the insolvency process as a whole. What

²² *Evans v Rival Granite Quarries Ltd* [1910] 2 KB 979.

²³ Kraakman et al, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, n.2 above, 5.1.2.3.

²⁴ S Frisby, *Report on Insolvency Outcomes: Presented to the Insolvency Service* (26 June 2006), pp.55-56; P Walton and C Umfreville, *Pre-Pack Empirical Research: Characteristic and Outcome Analysis of Pre-Pack Administration* (Final Report to the Graham Review, April 2014); K Akintola, 'What is left of the Floating Charge? An Empirical Outlook' (2015) 7 JIBFL 404, 406. See also *Re International Sections Ltd* [2009] EWHC 137 (Ch), para 15 which suggests that returns are low regardless of cost.

²⁵ See n.7 above.

follows is a consideration of the nexus between the cost of the prescribed part and the application/disapplication of the prescribed part fund by office-holders.

In the wake of the Enterprise Act, insolvency proceedings have become more transparent and collective.²⁶ These are achieved by measures that seek to achieve disclosure and creditor engagement through, *inter alia*, increased flow of communication to creditors.²⁷ The content of the communication is, perforce, important.²⁸ The corollary of these developments is an obligation on office-holders to implement those measures. The obligation is acute because achieving an effective outcome in the interest of the general body of creditors is at the nub of insolvency proceedings.²⁹ In practical terms, taking administration as an example, this may mean that the office-holder is involved in (a) investigating the company's affairs in the eve of insolvency; (b) trading the company in insolvency, which could involve detailed negotiations with customers, employees, suppliers and lenders; (c) completing executory contracts; (d) the sale of assets on a break-up or going concern basis; (e) litigation to swell corporate assets ; (f) agreeing creditor claims; and (g) distributing dividends. Notice of the office-holder's involvement in the foregoing would also have to be disseminated to creditors in periodic progress reports. It also follows, therefore, that the offshoot of these measures is an increase in insolvency expenses.³⁰

The picture that emerges is that it is rather difficult to divorce the cost of the prescribed part from core incidents of insolvency proceedings. It is apposite to elaborate on this. First, other incidents of insolvency proceedings such as trading, litigation and asset/business sale can determine the volume of assets available for distribution to all creditors, including unsecured creditors claiming under the prescribed part. Second, the company's available net property (property available to satisfy claims of floating chargees) is dependent on other insolvency costs since those costs are top-sliced from

²⁶ DTI, *Productivity and Enterprise: Insolvency - A Second Chance*, paras 2.2-2.5.

²⁷ IA 1986, sch B1 paras 46-58.

²⁸ Insolvency (England and Wales) Rules 2016/1024 (IR 2016), rr 1.28-1.34. For obligation to provide information on the prescribed part, see IR 2016, rr 3.35, 4.22-4.24, 6.15, 7.49, 7.70, 18.14.

²⁹ See for example, IA 1986, sch B1, para 3(2). The same may be said of liquidators and office-holders as they are fiduciaries of some sort who owe a duty to all parties with an interest in the company's available assets.

³⁰ The Insolvency Service, 'Enterprise Act 2002 – Corporate Insolvency Provisions: Evaluation Report' (January 2008), pp.112-113.

floating charge assets in priority to preferential claims and the prescribed part.³¹ Third, office-holders have certain duties in insolvency whenever there is an intention to declare a dividend. These include sending a notice of intention to declare such dividend, agreeing the claims of eligible creditors, and making distributions. The prescribed part fund, being a form of dividend, requires office-holders to perform these duties. As such, unsecured creditors are only entitled to the net fund after deducting the costs associated with these duties.³²

We can therefore chalk up, to some extent, the low use of the prescribed part and poor unsecured creditor returns thereunder to the cost of the fund and insolvency proceedings. This is properly manifested in applications to disapply the fund. Limited evidence suggests that office-holders often make applications to disapply the prescribed part where they consider that the cost of setting the fund aside would be disproportionate to the benefits.³³ It is often alleged that such disproportionality would occur where the value of the fund is low and the office-holder has to agree a large number of unsecured claims, many of which have a modest value.³⁴ Two cases illustrate the treatment of such office-holder applications. In *Re International Sections Ltd*,³⁵ the court refused an application in liquidation to disapply a prescribed part of £6,731 with costs of £3,332 which would deliver a dividend of 1.48p in the £ to 66 unsecured creditors, of which 46 were owed less than £1,000. This meant a return of no more than £14.80 to majority of the creditors. The basis of the court's ruling was that disapplication of the fund should be the exception. As such, regard should be had to the benefit that will accrue to creditors as a body rather than the fact that the benefit to individual creditors would be small.³⁶ In *Joint Administrators of Castlebridge Plant Ltd*,³⁷ the court refused an application in administration to disapply the fund which would deliver at most 0.58p in the £ to 76-211 unsecured creditors. The basis for this decision was that

³¹ IA 1986, s 176ZA.

³² See for example IR 2016, r 3.50(2).

³³ IA 1986, s 176A(5); Akintola, 'What is left of the Floating Charge? An Empirical Outlook', n.24 above. For the procedure for making an application under IA 1986, s 176A(5), see IR 2016, rr 12.14-12.16.

³⁴ See the application in *Re International Sections Ltd* [2009] EWHC 137 (Ch) and *Joint Administrators of Castlebridge Plant Ltd*, *Noters* [2015] CSOH 165.

³⁵ *ibid.*

³⁶ *ibid.*, [15].

³⁷ n.34 above.

despite the estimated cost of £15,000-£25,000 for dealing with unsecured claims, there would still be approximately £81,000 available for distribution. Therefore, regard should be had to the global sum that would accrue to the body of unsecured creditors as a whole.³⁸ The court however parted from Judge Purle QC's ruling in *Re International Sections* and held that individual benefit to unsecured creditors is a factor that the court should take into consideration.

It is clear that disapplications will account for a number of cases where the fund was not set aside. Interestingly, cases which apply the fund, such as the ones considered above, seem to serve as a lingering rationale for the many cases of poor individual-creditor returns under the prescribed part. Although the *Castlebridge Plant Ltd* case ruled that minuscule returns to individual creditors is a relevant factor in applications to disapply the fund, in that case the fact that a number of creditors would not receive a dividend payment in excess of £100 was insufficient to persuade the court to grant the application. This author's survey of 704 post-Enterprise Act floating charges from administrations and liquidations also illustrates this disconnect between the application of the fund and the quantum of return to individual creditors. In that survey,³⁹ only 95 prescribed part funds were set aside. Of this 95, average unsecured claims stood at £2,935,230; average prescribed part dividend was £63,152; average number of creditors was 71; and average return ratio to individual creditors was 7.3p in the £. The survey showed that oodles of unsecured creditors with small claims would have a bearing on the cost of the prescribed part and the dividend ratio for individual creditors. For example, one of those 95 cases had an unsecured debt of £3.9M, a prescribed part dividend of circa £41,500 but a return of less than 1p in the £ due to the cost of dealing with approximately 252 creditors. To take another example that stands on the opposite end of the spectrum, a group of 26 unsecured creditors that were collectively owed £504,973 achieved a return ratio of 42p in the £ from a prescribed part fund of £154,628.

³⁸ *ibid*, paras 12-16.

³⁹ A summary can be found in Akintola, 'What is left of the Floating Charge? An Empirical Outlook', n.24 above.

The fate of unsecured creditors in this regard is exacerbated by the fact that there cannot be selective disapplication of the fund.⁴⁰ Perhaps such strict policy prescription ought to be righted by Parliament in order to create efficiencies. It should be stressed however that in light of the policy behind the prescribed part, the case being made in this article is not that significant aggregate sums available under the fund should be given to floating charge holders whenever individual returns to creditors would be puny. Rather, the proposition here is that there is scope to streamline the operation of the prescribed part in a manner that reduces the costs associated with the fund and improves individual creditor returns. This is particularly important in an insolvency climate where the fund is the only pot of money available to unsecured creditors.

D. Closing

It is suggested here that an efficient prescribed part fund would not only deliver greater benefits to individual unsecured creditors, it would also promote better insolvency outcomes for other insolvency stakeholders. The latter benefit would manifest itself in lower insolvency expenses and some residual returns for claimants that rank behind the prescribed part, which could again be unsecured creditors since it is not unusual to find the debts owed to holders of floating charges largely satisfied under a fixed charge or receivables financing scheme.

How then can we achieve some efficiency under the prescribed part? What follows is a consideration of measures internal and external to the prescribed part. These measures are however subject to some caveats. First, their efficacy depends on how circumspect office-holders are when carrying out their duties generally and in relation to agreeing creditor claims under the prescribed part. Second, their efficacy is also dependent on the availability of floating charge assets, which is not a given due to the

⁴⁰ *Re Courts Plc* [2008] EWHC 2339 (Ch).

plethora of inroads into the floating charge by insolvency legislation.⁴¹ This instant point indicates that a solution to the prescribed part is not to increase the level that is currently carved from floating charge assets.

The first measure is a suggestion that Parliament should engage in the exercise of creditor profiling in order to identify the categories of persons in insolvency that are truly deserving of the protection afforded by the prescribed part fund. For reasons presented in Part B of this article, it is suggested that unsecured claimants under the prescribed part be whittled down to tort claimants. The benefits of doing this include (a) cost savings in the number of creditor claims to be agreed by the office-holder; (b) removal of the need by Parliament to consider the more difficult case to instate selective disapplication of the fund since those trade creditors who are typically owed small amounts will no longer be entitled to the fund; and (c) ensuring that less deserving creditors such as the Crown and deep-pocket company directors are prevented from participating in the fund.

The second measure concerns office-holder fees. Increased emphasis on transparency means that office-holders now have to provide advance fee estimate to creditors.⁴² This will include estimated cost of the prescribed part where it is projected that it will be set aside. Since this measure acts as a check against excessive time-cost billings, it invariably seeks to improve net returns to creditors. However, it is somewhat incongruous to suggest that increasing communication to creditors, many of whom are rationally apathetic, will reduce insolvency costs. Further, care should be taken because the work of an office-holder is commercially complex. Indeed, it may sometimes be difficult to properly estimate the scope of expenses in a particular case. An upward revision of such estimate would require approval at an additional cost to creditors. There is also a possibility that less scrupulous office-holders may take advantage of the uncertain nature of insolvency events to provide a high estimate and rack up fees to justify such estimate. The foregoing serves as a reminder that concerted efforts of

⁴¹ Suggestions for dealing with the dearth of floating charge assets under the prescribed part fund can be found in K Akintola, 'The Proposed Preferential Priority of Prepaying Consumers – A Fair Pack of Insolvency Recommendations?' (2017) *Journal of Business Law* (forthcoming).

⁴² Insolvency (Amendment) Rules 2015, SI 2015/443.

creditors and judicious performance on the part of office-holders is required for this measure to deliver meaningful cost savings.

The final measure is a catalogue of cost-saving and realisation-enhancing provisions under the Small Business, Enterprise and Employment Act 2015 (SBEEA) and the new insolvency rules.⁴³ First is the provision which provides that recoveries from certain office-holder claims or proceeds from their assignment do not form part of a company's net property and, to that extent, would not be available for the satisfaction of the claims of floating charge holders.⁴⁴ In effect, those recoveries, where available, will swell assets available for distribution to unsecured creditors.⁴⁵ It mirrors the prescribed part provision in the sense that it seeks to reserve a pot of money for unsecured creditors. It should be stressed, however, that those recoveries will be enjoyed by unsecured creditors outside the prescribed part. This is because they do not form part of a company's net property – the asset pool from which the prescribed part fund is carved out. This could alleviate the current situation where returns to unsecured creditors are almost exclusively tied to the prescribed part. Then again, the viability of the provision will depend on a cost-efficient insolvency expenses regime.

Second is the provision that now enables an administrator to make a prescribed part distribution without a court order.⁴⁶ It would be hard to dispute that this would save some costs. That said, this provision is only likely to deliver increased returns where it works in tandem with other cost-saving provisions to which I now turn. The new insolvency rules bring in to force other provisions under the SBEEA which provide for decisions to be made by means other than physical meetings and allow creditors to opt out of receiving communications from office-holders.⁴⁷ There is every reason to be sanguine that provisions such as these would deliver savings, which would lead to lower insolvency costs and better returns for creditors.⁴⁸ That said, without being overly

⁴³ Insolvency (England and Wales) Rules 2016/1024 (IR 2016).

⁴⁴ IA 1986, s 176ZB (inserted by SBEEA 2015, s 119).

⁴⁵ *Cf Re Yagerphone Ltd* [1935] Ch. 392.

⁴⁶ Small Business, Enterprise and Employment Act 2015, s 128 (amending Insolvency Act 1986, Sch B1, para 65(3)).

⁴⁷ *ibid*, ss 122 and 124; IR 2016, pt 1(ch 9).

⁴⁸ Explanatory Memorandum to the Insolvency (England and Wales) Rules 2016, 10.1.

pessimistic, it is not apparent that apathetic creditors who hardly participate in the insolvency process would return a notice to opt out of communications. If this turns out to be the case, inefficient costs would continue to be incurred by the office-holder in sending communications to those creditors. Perhaps having an opt-in procedure would be better in this respect. This procedure will require creditors who desire to be kept abreast of developments to return an opt-in notice following initial communication from the office-holder.