

# SIP9A

## STATEMENT OF INSOLVENCY PRACTICE 9A (NORTHERN IRELAND)

### REMUNERATION OF INSOLVENCY OFFICEHOLDERS

#### Contents

#### *Paragraphs*

Introduction .....	1 - 8
Statutory provisions .....	9
Administration.....	10 - 16
Insolvent Liquidations and Bankruptcies .....	17 - 20
Members Voluntary Liquidations .....	21 - 22
Voluntary Arrangements.....	23 - 24
Receiverships.....	25
Other types of appointment .....	26
Provision of Information when Seeking Fee Approval .....	
Provision of Information before Fee Approval.....	27 - 34
Provision of Information after Fee Approval .....	35 - 37
Asset Realisations .....	38
Expenses and Disbursements .....	39 - 46
Payment in full .....	47
Closure of cases .....	48
Transitional provisions .....	49 - 50

#### *Appendices*

- 1. Relevant requirements of the Insolvency Rules (Northern Ireland) 1991 as amended.*
- 2. Official Receiver's scale of fees*
- 3. Creditors' guidance notes*
  - Administrators' fees*
  - Liquidators' fees*
  - Fees charged by trustees in bankruptcy*
  - Insolvency practitioners' fees in voluntary arrangements*
- 4. Suggested format for production of information*

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**Revised January 2007**

## INTRODUCTION

1. This Statement of Insolvency Practice (SIP) is one of a series of guidance notes issued to licensed insolvency practitioners with a view to maintaining standards by setting out agreed required practice and harmonising practitioners' approach to particular aspects of insolvency.
2. SIP 9A is issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC). It was commissioned by the JIC, produced by the Association of Business Recovery Professionals, and has been approved by the JIC and adopted by each of the regulatory authorities listed below:

### Recognised Professional Bodies:

- Association of Chartered Certified Accountants
- Insolvency Practitioners Association
- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Accountants in Ireland
- Institute of Chartered Accountants of Scotland
- Law Society
- Law Society of Scotland
- Law Society of Northern Ireland

### Competent Authority:

- The Insolvency Service (for the Secretary of State for Trade and Industry)
  - The Insolvency Service Northern Ireland (for the Minister for Enterprise, Trade and Investment)
3. The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standard(s) set out in the SIP(s) is a matter that may be considered by a practitioner's regulatory authority for the purposes of possible disciplinary or regulatory action.
  4. SIPs should not be relied upon as definitive statements of the law. No liability attaches to any body or person involved in the preparation or promulgation of SIPs.
  5. The purpose of this Statement of Insolvency Practice is to:
    - ensure that members are familiar with the statutory provisions relating to office holders' remuneration;
    - set out best practice with regard to the observance of the statutory provisions;

- set out best practice with regard to the provision of information to those responsible for the approval of fees to enable them to exercise their rights under the insolvency legislation.
  - set out best practice with regard to the disclosure and drawing of disbursements.
6. The Statement has been produced in recognition of the principle that those with a direct financial interest in the level of office holders' fees should feel confident that the rules relating to the charging of remuneration have been properly complied with, and that those charged with responsibility for approval of fees have access to sufficient information about the basis of fees to be able to make an informed judgement about the level of remuneration in any particular case. The statement applies to Northern Ireland only.
7. Members should be aware that the drawing of remuneration otherwise than in accordance with the relevant statutory provisions will render them in breach of the law.
8. The Statement is divided into the following sections:
- The statutory provisions
  - Provision of information when seeking fee approval
  - Provision of information after fee approval
  - Asset realisations
  - Expenses and disbursements
  - Payment in full
  - Closure of cases

## **STATUTORY PROVISIONS**

9. The statutory provisions relating to the remuneration of officeholders are set out in The Insolvency Rules (Northern Ireland) 1991 ("the Rules") as amended. The relevant rules are set out in full in Appendix 1. The main provisions relating to the most common types of insolvency appointment are summarised in the following paragraphs.

## **Administration**

10. The rules applicable in administration depend on whether the proceedings are based on a petition presented before 27.th March 2006. If they are, then the rules as they stood before changes introduced by the Insolvency (Amendment) Rules (Northern Ireland) 2006 – S.R 47 of 2006 – continue to apply. In all other cases the rules substituted by the 2006 Rules will apply. As far as remuneration is concerned the two sets of rules are in identical terms, with the exception of the qualification regarding creditors' resolutions noted in paragraph 14 below.

11. The basis for fixing the administrator's remuneration is set out in old Rule 2.51 for cases where the petition was presented before 27<sup>th</sup> March 2006 and new Rule 2.107 for all other cases. The rules state that it shall be fixed either:
  - as a percentage of the value of the property which the administrator has to deal with, or
  - by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration.
12. It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if as a percentage to determine what percentage is to be applied. In arriving at its determination the committee shall have regard to:
  - the complexity (or otherwise) of the case;
  - any responsibility of an exceptional kind or degree which falls on the administrator;
  - the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
  - the value and nature of the property which the administrator has to deal with.
13. If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors using the same criteria as would apply if fixed by the committee. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.
14. If the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors, except out of the reserved fund set aside out of floating charge assets, then a resolution of the creditors shall be taken as passed if (and only if) passed with the approval of –
  - Each secured creditor of the company; or
  - If the administrator has made or intends to make a distribution to preferential creditors –
    - each secured creditor of the company; or
    - preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
15. In cases where the petition is presented, or the appointment made, on or after 27<sup>th</sup> March 2006 a resolution of creditors may be taken by correspondence.
16. It should be noted that both rules 2.51 and 2.107 stipulate that the administrator's remuneration shall be fixed either on a percentage basis or on a time cost basis. Any resolutions purporting to allow the administrator to be

remunerated on whichever basis he chooses or whichever yields the higher remuneration will not be in accordance with the rule.

## **Insolvent Liquidations and Bankruptcies**

17. The basis for fixing the remuneration is broadly the same for both insolvent liquidations and bankruptcies. The relevant provisions are Rule 4.134 for liquidations and Rule 6.135 for bankruptcies. The rules state that the remuneration shall be fixed either:
  - as a percentage of the value of the assets which are realised or distributed or both, or
  - by reference to the time properly given by the officeholder and his staff in attending to matters arising in the insolvency.
18. It is for the liquidation or creditor's committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if as a percentage to determine what percentage is to be applied. In arriving at its determination the committee shall have regard to:
  - the complexity (or otherwise) of the case;
  - any responsibility of an exceptional kind or degree which falls on the office holder in connection with the insolvency;
  - the effectiveness with which the office holder appears to be carrying out, or to have carried out, his duties;
  - the value and nature of the assets which the officeholder has to deal with.
19. If there is no committee, or the committee does not make the requisite determination, the remuneration may be fixed by a resolution of a meeting of creditors using the same criteria as would apply if fixed by the committee. A resolution specifying the terms on which the office holder is to be remunerated may be taken at the meeting held under Article 84 (Rule 4.058) or at the first meeting of creditors in compulsory liquidations and bankruptcies (Rule 4.057 for compulsory liquidation; Rule 6.078 for bankruptcy). As in the case of administrations, the rules require the percentage and time cost bases to be treated as mutually exclusive and not supplementary, and any resolution purporting to allow the office holder to choose which basis to apply will be in breach of the rules.
20. If the remuneration is not fixed as above, it will be in accordance with the scale laid down for official receivers. The Official Receiver's scale is set out in Regulation 22 of the Insolvency Regulations (Northern Ireland) 1991, which is reproduced in Appendix B. Fees should not be drawn on the Official Receiver's scale without first attempting to obtain the agreement of the committee or the creditors to a basis for the fixing of the remuneration, nor as an interim measure pending the agreement of the committee or creditors. This does not, however,

preclude the fixing of fees by the committee or the creditors on the same scale as that applicable to Official Receivers.

### **Members' Voluntary Liquidations**

21. The basis for fixing the liquidator's remuneration in a member's voluntary liquidation is set out in Rule 4.156. The basis is the same as for insolvent liquidations, except that it is to be determined by the members of the company in general meeting and not by the creditors. In determining the basis of the liquidator's remuneration the members must have regard to the same factors as the creditors do in an insolvent liquidation.
22. If the remuneration is not fixed in this way, it will be in accordance with the Official Receiver's scale. The same observations apply to the application of percentage or time costs as set out in paragraph 19 above in relation to insolvent liquidations. Remuneration should not be drawn on the Official Receiver's scale without first attempting to obtain the agreement of the members to a basis for fixing the remuneration, nor as an interim measure pending the agreement of the members.

### **Voluntary Arrangements**

23. The costs which may be incurred for any of the purposes of a voluntary arrangement are set out in the Rules (Rule 1.28 for company voluntary arrangements and Rule 5.31 for individual voluntary arrangements). They are:
  - any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and the company (or the administrator or liquidator, as the case may be) or the debtor (or the official receiver or trustee, as the case may be);
  - any costs which
    - are sanctioned by the terms of the arrangement, or
    - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be).

The Rules also require the following matters to be stated or otherwise dealt with in the proposal (Rule 1.03 for company voluntary arrangements; Rule 5.04 for individual voluntary arrangements):

- the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses, and
  - the manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed.
24. It is for the creditors' meeting to decide whether to agree these terms along with the other provisions of the proposal. The creditors' meeting has the power to modify any of the terms of the proposal (with the consent of the debtor in the case of an individual voluntary arrangement), including those relating to the

fixing of remuneration. The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to the fixing of remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration, provided such terms have been agreed by the creditors' meeting. Where a committee set up under the terms of a voluntary arrangement is given the power to fix remuneration, it should be provided with the same information as if it were fixing remuneration in an administration.

## **Receiverships**

25. Generally speaking the remuneration of a receiver appointed over property under powers contained in a document of charge will be a matter for agreement between the receiver and the holder of the charge under which he is appointed. In the case of a receiver appointed over the property of a company, there is provision under Article 46 of the Insolvency (Northern Ireland) Order 1989 for the High Court to fix the remuneration of the receiver on application by the liquidator. In the English High Court case of *Re Potter Oils (No2)* ([1986]1WLR 201; (1985) 1 BCC 99,593) it was held that such power is only to be exercised where the receiver's remuneration is excessive and not as a routine way of taxing receivers' costs. Once such an order has been made, an application may be made to the High Court by either the liquidator or receiver to vary or amend it. There is no equivalent provision for receivers appointed over the property of an individual or a partnership.

## **Other types of appointment**

26. Other appointments which may be encountered include receivers, special managers and provisional liquidators appointed by the court. In these cases the remuneration of the office holder is fixed by the court. When fixing the remuneration of a provisional liquidator the court will take into account the matters set out in Rule 4.033, which is reproduced in Appendix 1.

## **PROVISION OF INFORMATION WHEN SEEKING FEE APPROVAL**

### **Provision of information before fee approval**

27. Members should be mindful at all times of the rights accorded to creditors in relation to fees under insolvency legislation, and when acting in an advisory capacity or as office holder should ensure that adequate steps are taken to bring those rights to their attention. Appendix 3 contains the text of a set of explanatory notes on the basis on which office holders' remuneration is fixed in a format suitable for making creditors aware of the relevant provisions. Members are required to ensure that information on how to access the explanatory note appropriate to the type of insolvency proceedings concerned or the equivalent information in some other suitable format, is made available to

creditors before any resolution is passed to fix or approve the office holder's remuneration.

28. The particular nature of an insolvency officeholder's position renders it of primary importance that all payments made to his own firm out of funds under his control should be disclosed and explained to those who are charged with the responsibility for approving his remuneration. When seeking agreement to his fees, the officeholder should be prepared to provide sufficient supporting information to enable those responsible for approving his remuneration to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:
- the nature of the approval being sought;
  - the stage during the administration of the case at which it is being sought; and
  - the size and complexity of the case.

Where the fee is based on time costs the office holder should be prepared to disclose the time spent and the charge-out value in the particular case, together with such additional information as may reasonably be required having regard to the size and complexity of the case.

29. Where, at any creditors' or committee meeting, agreement is sought to the terms on which the office holder is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.
30. Where agreement is sought to fees during the course of the assignment, an up to date receipts and payments account should always be provided. Where the proposed fee is based on time costs the office holder should disclose to the approving body the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case.

The additional information should comprise a sufficient explanation of what the office holder has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the office holder must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time spent has been properly given. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraphs 11 and 18 above. Appendix 4 sets out a suggested format, with explanatory notes, for producing the information required to enable this assessment to be carried out. It provides for a degree of analysis of time by activity and grade of staff and sets out suggested categories for the purposes of this analysis. Whilst the approach embodied in Appendix 4 is potentially applicable to all types and sizes of case, the degree of analysis and form of presentation should be



proportionate to the size and complexity of the case, and not all categories of activity will always be relevant.

31. The case records required to be maintained and retained under the Insolvency Practitioners (Northern Ireland) Regulations 2006 should include sufficient information to show full details of the time spent on the case by the office holder and his staff in cases where fees are on a time cost basis.
32. Where the fee is charged on a percentage basis the officeholder should provide the approving body with details of any work which has been or is intended to be sub-contracted out which would normally be carried out by office holders themselves.
33. A receiver appointed in relation to a company should on request provide the information specified in paragraphs 30 and 32 above to the company's liquidator.
34. When notices are sent out convening meetings under Article 84 of the Insolvency (Northern Ireland) Order 1989 they should include a statement to the effect that the resolutions to be taken at the meeting may include a resolution specifying the terms on which the liquidator is to be remunerated, and that the meeting may receive information about, or be called upon to approve, the costs of preparing the statement of affairs and convening the meeting. Members should advise directors when convening meetings under Article 84 that the notices despatched to creditors should include such a statement and be accompanied by the appropriate explanatory note referred to in paragraph 27 above. If that advice is given orally and not accepted by the directors it should be confirmed in writing.

#### **Provision of information after fee approval**

35. Where a resolution fixing the basis of fees is passed at any creditors meeting held before he has substantially completed his administration the officeholder should immediately notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the office holder should specify the amount of remuneration he has drawn in accordance with the resolution.

Where the fee is based on time costs he also should provide details of the time spent and charge-out value to date and any material changes in the rates charged since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 30 above. Where the fee is charged on a percentage basis the office holder should provide the details set out in paragraph 32 above regarding work which has been sub-contracted out. The same applies where the basis of the remuneration of a supervisor in a voluntary arrangement as set out in the proposal does not require any further approvals by the creditors or any creditors' committee established under the proposal.

36. Where, in a liquidation or bankruptcy, a resolution specifying the terms on which the office holder is to be remunerated is passed at a creditors' meeting, there is no statutory requirement for further creditor approval for the drawing of remuneration. It should be borne in mind, however, that in such cases creditors have the right to requisition a meeting or to apply to the court if they consider the office holder's remuneration to be excessive. The office holder should provide creditors with sufficient information to enable them to decide whether to exercise those rights. The information provided in accordance with paragraph 30 above should normally be sufficient for this purpose. Where, however, creditors make a reasonable request for further information, it should be provided.
37. In a liquidation or a bankruptcy, where the office holder realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds, he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purposes of determining his fees, and in his reports to creditors.

## **ASSET REALISATIONS**

38. Practitioners are reminded that any monies received by a trustee in bankruptcy in relation to the sale of the bankrupt's interest in his matrimonial home, as in the case of any other property, represent realisations which must be paid into the Insolvency Services Account. Any fees in relation to the realisation must be approved in the usual way.

## **EXPENSES AND DISBURSEMENTS**

39. Approval is not required for the drawing of necessary disbursements. However, not all costs properly charged in connection with insolvency assignments may necessarily be regarded as disbursements. The precise demarcation line between disbursements and remuneration is not defined by statute and has not been specifically determined by the courts. Particular difficulties arise in connection with charges that involve calculations of shared and overhead costs, as these may include an element of remuneration.
40. In the absence of a clear statutory definition best practice is that only those costs that clearly meet the definition of disbursements, where there is specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party, are treated as disbursements recoverable without approval. In this statement these are referred to as 'category 1 disbursements' (approval not required). Category 1 disbursements will generally comprise external supplies of incidental services specifically identifiable to the case, typically for items such as identifiable telephone calls, postage, case advertising, invoiced travel and properly reimbursed expenses incurred by personnel in connection with the case. Also included will be services specific to the case where these cannot practically be provided

internally such as printing, room hire and document storage. Members should be prepared to disclose information about specific category 1 disbursements where reasonably requested.

41. Where it is proposed to recover costs which, whilst being in the nature of expenses or disbursements, include elements of shared or allocated costs, they should be identified and subject to approval by those responsible for approving remuneration. If the office holder wishes to make a separate charge for expenses in this second category, he may do so provided that:
- such expenses are of an incidental nature and are directly incurred on the case, and there is a reasonable method of calculation and allocation; it will be persuasive evidence of reasonableness, if the resultant charge to creditors is in line with the cost of external provision; and
  - the basis of the proposed charge is disclosed and is authorised by those responsible for approving his remuneration.

These are defined as category 2 disbursements (approval required). Category 2 disbursements will comprise cost allocations which may arise on some of the category 1 expense where supplied internally: typically, items such as room hire and document storage. Also typically included will be routine or more specialist copying and printing, and allocated communication costs provided by the practitioner or his firm.

42. A charge calculated as a percentage of the amount charged for remuneration will not constitute either category 1 or category 2 disbursements.
43. Basic non-incidental costs, including such items as time costs, office and equipment rental, depreciation, standing charges, finance charges, accounting and administration costs, may not be the subject of separate charges.
44. Payments to outside parties in which the office holder or his firm or any associate (as defined by Article 4, Insolvency Order 1989) has an interest should be treated as category 2 disbursements.
45. Where, in a liquidation or a bankruptcy, remuneration is being taken on the Official Receiver's scale and there is no committee and it has not been possible to obtain a resolution of the creditors, category 2 disbursements may only be recovered if authorised by the creditors.
46. Members are reminded that it is the office holder's obligation to satisfy himself of the appropriateness of disbursements.

## **PAYMENTS IN FULL**

47. In a bankruptcy, voluntary arrangement, administration or an initially insolvent liquidation where realisations are sufficient for payment of creditors in full, it should be remembered that, notwithstanding the right of the creditors or the

committee to fix the officeholder's remuneration, it will be the debtor or the members, as the case may be, who will have the principal financial interest in the level of fees. The office holder should therefore on request provide them with information, in accordance with the principles set out in this Statement, about how the remuneration, expenses and disbursements have been calculated.

## **CLOSURE OF CASES**

48. On the closure of a liquidation or bankruptcy there will frequently be a small residual balance of funds in hand, due to the unavoidable difficulty of calculating the final outcome with absolute precision. Such monies should be paid into the Insolvency Account as undistributed assets in accordance with regulations 18 and 19 of the Insolvency Regulations (Northern Ireland) 1991. Where the funds are already held in the Insolvency Account the Centralised Accounting Unit should be notified by letter that they represent undistributed assets.

## **TRANSITIONAL PROVISIONS**

49. The amended Statement of Insolvency Practice 9A came into effect in August 2004 and should be complied with in all cases beginning on or after that date. As regards cases commenced previously, any reports issued or resolutions taken after that date should comply with the amended SIP. However, where any analysis or disclosure required for such a report or resolution relates to a period prior to August 2004, it should comply with the amended SIP as far as the available records reasonably allow.
50. This SIP, which has been revised to take account of legislative changes related to remuneration, comes into effect on 1<sup>st</sup> April 2007. It will apply to all cases governed by the new legislative provisions.

## ***APPENDIX 1***

The following is the full text of the rules relating to the remuneration of office holders in the various types of proceedings covered by this Statement of Insolvency Practice.

### **A.1 ADMINISTRATION**

#### **A.1.1 PETITION PROPOSED BEFORE 27th MARCH 2006**

##### **Rule 2.51 Fixing of remuneration**

**2.51(1)** The administrator is entitled to receive remuneration for his services as such.

**2.51(2)** The remuneration shall be fixed either:

- (a) as a percentage of the value of the property with which he has to deal, or
- (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.

**2.51(3)** It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

**2.51(4)** In arriving at that determination, the committee shall have regard to the following matters:

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such, and
- (d) the value and nature of the property with which he has to deal.

**2.51(5)** If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

- 2.51(6)** If not fixed under paragraphs (2) to (5), the administrator's remuneration shall, on his application, be fixed by the court.
- 2.51(7)** Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:
- (a) to the court, for settlement by order, or
  - (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.
- 2.51(8)** If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

**Rule 2.52 Recourse to meeting of creditors**

- 2.52** If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

**Rule 2.53 Recourse to the court**

- 2.53(1)** If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.
- 2.53(2)** The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.
- 2.53(3)** If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.
- 2.53(4)** The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

**2.54 Creditors' claim that remuneration is excessive**

- 2.54(1)** Any creditor of the company may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an

order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

- 2.54(2)** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.
- 2.54(3)** If the application is not dismissed under paragraph (2), the court shall fix a venue for it to be heard, and given notice to the applicant accordingly.
- 2.54(4)** The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- 2.54(5)** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
- 2.54(6)** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

**A.1.2** PETITION PRESENTED OR APPOINTMENT MADE ON OR AFTER  
27TH MARCH 2006

**Rule 2.17 Fixing of remuneration**

- 2.107(1)** The administrator is entitled to receive remuneration for his services as such.
- 2.107 (2)** The remuneration shall be fixed either:
- (a) as a percentage of the value of the property with which he has to deal, or
  - (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.
- 2 107 (3)** It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- 2. 107 (4)** In arriving at that determination, the committee shall have regard to the following matters:
- (a) the complexity (or otherwise) of the case,

- (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such, and
- (d) the value and nature of the property with which he has to deal.

**2. 107 (5)** If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

**2.107 (6)** In a case where the administrator has made a statement under paragraph 53(1)(b), if there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by the approval of-

- (a) each secured creditor of the company: or
- (b) if the administrator has made or intends to make a distribution to preferential creditors-
  - (i) each secured creditor of the company; and
  - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval;

and paragraph (4) applies to them as it does to the creditors' committee.

**2. 107 (7)** If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.

**2. 107 (8)** Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

- (a) to the court, for settlement by order, or
- (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.



- 2. 107 (9)** If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

**Rule 2.108 Recourse to meeting of creditors**

- 2.108 (1)** If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.
- 2.108 (2)** In a case where the administrator has made a statement under paragraph 53(1)(b), if the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by the approval of-
- (a) each secured creditor of the company: or
  - (b) if the administrator has made or intends to make a distribution to preferential creditors-
    - (i) each secured creditor of the company; and
    - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

**Rule 2.109 Recourse to the court**

- 2. 109 (1)** If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate..
- 2.109 (2)** In a case where the administrator has made a statement under paragraph 53(1)(b), if the administrator considers that the remuneration fixed by the approval of the creditors in accordance with Rule 2.107(2) is insufficient, he may apply to the court for an order increasing its amount or rate.
- 2. 109 (3)** The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard on the application.
- 2. 109 (4)** If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

- 2. 109 (5)** The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

**2.110 Creditors' claim that remuneration is excessive**

- 2. 110 (1)** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 2. 110 (2)** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 7 days' notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing.
- 2.110(3)** If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.
- 2.110 (4)** The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- 2. 110 (5)** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
- 2. 110 (6)** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

**A.2 PROVISIONAL LIQUIDATION**

**Rule 4.033 Remuneration**

- 4.033(1)** The remuneration of the provisional liquidator (other than the official receiver) shall be fixed by the court from time to time on his application.
- 4.033(2)** In fixing his remuneration, the court shall take into account:
- (a) the time properly given by him (as provisional liquidator) and his staff in attending to the company's affairs;
  - (b) the complexity (or otherwise) of the case;

- (c) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;
- (d) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties; and
- (e) the value and nature of the property with which he has to deal.

**4.033(3)** Without prejudice to any order the court may make as to costs, the provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under Article 151) reimbursed:

- (a) if a winding-up order is not made, out of the property of the company; and
- (b) if a winding-up order is made, out of the assets, in the prescribed order of priority,

or, in either case (the relevant funds being insufficient), out of the deposit under Rule 4.030.

**4.033(4)** Unless the court otherwise directs, in a case falling within paragraph (3)(a) above the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses.

**4.033(5)** Where a person other than the official receiver has been appointed provisional liquidator, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under the Rules, he shall pay the official receiver such sum (if any) as the court may direct.

## **A.3 LIQUIDATION**

### **Rule 4.134 Fixing of remuneration**

**4.134(1)** The liquidator is entitled to receive remuneration for his services as such.

**4.134(2)** The remuneration shall be fixed either:

- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
- (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up.

- 4.134(3)** Where the liquidator is other than the official receiver, it is for the liquidation committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- 4.134(4)** In arriving at that determination, the committee shall have regard to the following matters:
- (a) the complexity (or otherwise) of the case,
  - (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,
  - (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator, and
  - (d) the value and nature of the assets with which the liquidator has to deal.
- 4.134(5)** If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.
- 4.134(6)** If not fixed under paragraphs (2) to (5), the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.
- 4.135 Other matters affecting remuneration**
- 4.135(1)** Where the liquidator sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to that which is chargeable in corresponding circumstances by the official receiver under general regulations.
- 4.135(2)** Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:
- (a) to the court, for settlement by order, or
  - (b) to the liquidation committee or a meeting of creditors, for settlement by resolution.

**4.135(3)** If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the liquidation committee, the creditors or the court.

**4.136 Recourse of liquidator to meeting of creditors**

**4.136(1)** If the liquidator's remuneration has been fixed by the liquidation committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

**4.137 Recourse to the court**

**4.137(1)** If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, or as under Rule 4.134(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

**4.137(2)** The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

**4.137(3)** If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

**4.137(4)** The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the assets.

**Rule 4.138 Creditors' claim that remuneration is excessive**

**4.138(1)** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

**4.138(2)** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.

**4.138(3)** If the application is not dismissed under paragraph (2), the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

- 4.138(4)** The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- 4.138(5)** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
- 4.131(6)** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable out of the assets.

**Rule 4.156 Remuneration of liquidator in members' voluntary winding up**

- 4.156(1)** The liquidator is entitled to receive remuneration for his services as such.
- 4.156(2)** The remuneration shall be fixed either:
- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
  - (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up;
- and the company in general meeting shall determine whether the remuneration is to be fixed under subparagraph (a) or (b) and, if under subparagraph (a), the percentage to be applied as there mentioned.
- 4.156(3)** In arriving at that determination the company in general meeting shall have regard to the matters set out in paragraph (4) of Rule 4.134.
- 4.156(4)** If not fixed under paragraphs (2) and (3), the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.
- 4.156(5)** Rule 4.135 shall apply in relation to the remuneration of the liquidator in respect of the matters there mentioned and for this purpose references in that Rule to "the liquidation committee" and "a meeting of creditors" shall be read as references to the company in general meeting.
- 4.156(6)** If the liquidator considers that the remuneration fixed for him by the company in general meeting, or as under paragraph (4), is insufficient, he may apply to the court for an order increasing its amount or rate.
- 4.156(7)** The liquidator shall give at least 14 days' notice of an application under paragraph (6) to the company's contributories, or such one or more of them as the Court may direct and the contributors may nominate any one or more of their number to appear or be represented.

- 4.156(8)** The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any contributory appearing or being represented on it, to be paid out of the assets.

#### **A.4 BANKRUPTCY**

##### **6.135 Fixing of remuneration**

- 6.135(1)** The trustee is entitled to receive remuneration for his services as such.

- 6.135(2)** The remuneration shall be fixed either:

- (a) as a percentage of the value of the assets in the bankrupt's estate which are realised or distributed, or of the one value and the other in combination, or
- (b) by reference to the time properly given by the insolvency practitioner (as trustee) and his staff in attending to matters arising in the bankruptcy.

- 6.135(3)** Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine whether his remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

- 6.135(4)** In arriving at that determination, the committee shall have regard to the following matters:

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the administration of the estate, there falls on the insolvency practitioner (as trustee) any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as trustee, and
- (d) the value and nature of the assets in the estate with which the trustee has to deal.

- 6.135(5)** If there is no creditors' committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

- 6.135(6)** If not fixed under paragraphs (2) to (5), the trustee's remuneration shall be on the scale laid down for the official receiver under general regulations.

### **Rule 6.136 Other matters affecting remuneration**

- 6.136(1)** Where the trustee sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to the remuneration chargeable in corresponding circumstances by the official receiver under general regulations.
- 6.136(2)** Where there are joint trustees, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:
- (a) to the court, for settlement by order, or
  - (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.
- 6.136(3)** If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

### **6.137 Recourse of trustee to meeting of creditors**

- 6.137** If the trustee's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

### **Rule 6.138 Recourse to the court**

- 6.138(1)** If the trustee considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, or as under Rule 6.135(6), is insufficient, he may apply to the court for an order increasing its amount or rate.
- 6.138(2)** The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard on the application.
- 6.138(3)** If there is not creditors' committee, the trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.
- 6.138(4)** The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the estate.



### **Rule 6.139 Creditor's claim that remuneration is excessive**

- 6.139(1)** Any creditor of the bankrupt may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the trustee's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 6.139(2)** The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.
- 6.139(3)** If the application is not dismissed under paragraph (2), the court shall fix a venue for it to be heard.
- 6.139(4)** The applicant shall, at least 14 days before the hearing, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- 6.139(5)** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
- 6.139(6)** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.

## **A.5 VOLUNTARY ARRANGEMENTS**

### **A.5.1 Company Voluntary Arrangements**

#### **Rule 1.28 Costs**

- 1.28** The costs that may be incurred for any of the purposes of the voluntary arrangement are:
- (a) any disbursements made by the nominee prior to the decision approving the arrangement taking effect and any remuneration for his services as such agreed between himself and the company (or, as the case may be, the administrator or liquidator);
  - (b) any fees, costs, charges or expenses which:
    - (i) are sanctioned by the terms of the arrangement, or
    - (ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

### **Rule 1.03 Contents of proposal**

**1.03(2)** The following matters shall be stated, or otherwise dealt with, in the directors' proposal:

- ..... (g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed;
- .....

### **A.5.2 Individual Voluntary Arrangements**

#### **5.31 Fees, Costs, Charges and Expenses**

**5.31** The fees, costs, charges and expenses that may be incurred for any purposes of the voluntary arrangement are:

- (a) any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and the debtor, the official receiver or the trustee;
- (b) any fees, costs, charges and expenses which:
  - (i) are sanctioned by the terms of the arrangement, or
  - (ii) would be payable, or correspond to those which would be payable, in the debtor's bankruptcy.

### **Rule 5.04 Contents of proposal**

**5.04(2)** The following matters shall be stated, or otherwise dealt with, in the proposal:

- ..... (g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed;
- .....

## **A.6 RECEIVERSHIPS**

### **Article 46 Court's power to fix remuneration**

- 46(1)** The High Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.
- 46(2)** The High Court's power under paragraph (1), where no previous order has been made with respect thereto under that paragraph:
- (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
  - (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
  - (c) subject to paragraph (3), where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.
- 46(3)** The power conferred by sub-paragraph 2(c) shall not be exercised as respects any period before the making of the application for the order under this Article, unless in the opinion of the High Court there are special circumstances making it proper for the power to be exercised.
- 46(4)** The High Court may on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under paragraph (1).

**The Official Receiver's Scale**

*The realisation scale*

I	On the first £5,000 or fraction thereof .....	20%
ii	On the next £5,000 or fraction thereof .....	15%
iii	On the next £90,000 or fraction thereof .....	10%
iv	On all further sums realised .....	5%

*The distribution scale*

I	On the first £5,000 or fraction thereof .....	10%
ii	On the next £5,000 or fraction thereof .....	7½%
iii	On the next £90,000 or fraction thereof .....	5%
iv	On all further sums distributed .....	2½%

### ***APPENDIX 3***

#### **Text of creditors' guidance notes**

The pages which follow contain the text of the following explanatory notes for creditors:

- A creditors' guide to administrators' fees
- A creditors' guide to liquidators' fees
- A creditors' guide to fees charged by trustees in bankruptcy
- Voluntary arrangements - a creditors' guide to insolvency practitioners' fees

## **A CREDITORS' GUIDE TO ADMINISTRATORS' FEES**

### **WHERE PETITION PRESENTED BEFORE 27TH MARCH 2006 NORTHERN IRELAND**

#### **Introduction**

1. When a company goes into administration the costs of the proceedings are paid out of its assets. The creditors, who hope eventually to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's fees. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor fees and explains the basis on which fees are fixed.

#### **The nature of administration**

2. Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the High Court in order to achieve one or more of the following statutory purposes:
  - the survival of the company and its business in whole or in part;
  - the approval of a company voluntary arrangement;
  - the sanctioning of a compromise or arrangement under Article 418 of the Companies (Northern Ireland) Order 1986;
  - a better realisation of assets than would be possible in a liquidation.

Administration may be followed by a company voluntary arrangement or liquidation.

#### **The Creditors' Committee**

3. The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is established at the meeting of creditors which the administrator is required to hold within 3 months of the administration order to consider his proposals. The administrator must call the first meeting of the committee within 3 months of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he need to hold one. The committee has power to summon the administrator to attend before it and provide such information as it may require.

### **Fixing the administrator's fees**

4. The basis for fixing the administrator's remuneration is set out in Rule 2.51 of the Insolvency Rules (Northern Ireland) 1991, which states that it shall be fixed either:
  - as a percentage of the value of the property which the administrator has to deal with, or
  - by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration.
5. It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is fixed as a percentage fix the percentage to be applied. Rule 2.51 says that in arriving at its decision the committee shall have regard to the following matters:
  - the complexity (or otherwise) of the case;
  - any responsibility of an exceptional kind or degree which falls on the administrator;
  - the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
  - the value and nature of the property which the administrator has to deal with.
6. If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as the committee would. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.

### **What information should be provided by the administrator?**

#### ***When seeking fee approval***

7. When seeking agreement to his fees the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:
  - the nature of the approval being sought;
  - the stage during the administration of the case at which it is being sought; and
  - the size and complexity of the case.
8. Where, at any creditors' or committee meeting, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the

meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

9. Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.



- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

10. Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff.

#### ***After fee approval***

11. Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 9. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 10 above regarding work which has been sub-contracted out.

#### **Expenses and disbursements**

12. There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

### **What if a creditor is dissatisfied?**

13. If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

### **What if the administrator is dissatisfied?**

14. If the administrator considers that the remuneration fixed by the creditors' committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid as an expense of the administration.

### **Other matters relating to fees**

15. Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.
16. If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.

## **A CREDITORS' GUIDE TO LIQUIDATORS' FEES**

### **NORTHERN IRELAND**

#### **Introduction**

1. When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees and explains the basis on which fees are fixed.

#### **Liquidation procedure**

2. Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.
3. Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
4. In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the High Court and a member of The Insolvency Service, an executive agency within the Department of Enterprise, Trade and Investment. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by the Department of Enterprise, Trade and Investment. Where an insolvency practitioner is not appointed the official receiver remains liquidator. Official receivers charge their fees on the basis of a statutory scale which is laid down by the Insolvency Regulations (Northern Ireland) 1994.

5. Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An administrator may also subsequently act as liquidator in a CVL.

### **The Liquidation Committee**

6. In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
7. The liquidator must call the first meeting of the committee within 3 months of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

### **Fixing the liquidator's fees**

8. The basis for fixing the liquidator's remuneration is set out in Rule 4.134 of the Insolvency Rules (Northern Ireland) 1991. The Rule states that the remuneration shall be fixed either:
  - as a percentage of the value of the assets which are realised or distributed or both, or
  - by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation

It is for the liquidation committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to be applied. Rule 4.134 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the liquidator in connection with the insolvency;
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the assets which the liquidator has to deal with.

9. If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as the committee would. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the remuneration is not fixed in any of these ways, it will be in accordance with the scale laid down for official receivers.

### **What information should be provided by the liquidator?**

#### ***When seeking fee approval***

10. When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:
- the nature of the approval being sought;
  - the stage during the administration of the case at which it is being sought; and
  - the size and complexity of the case.
11. Where, at any creditors' or committee meeting, the liquidator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.
12. Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 8 above. To enable this assessment to be carried out it may be necessary for the liquidator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this

subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the liquidator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

13. Where the fee is charged on a percentage basis the liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator or his staff.

### ***After fee approval***

14. Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 12. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 13 above regarding work which has been sub-contracted out.

### **Expenses and disbursements**

15. There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

### **Realisations for Secured Creditors**

16. Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 21 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

### **Reporting in compulsory liquidations**

17. It should be borne in mind that in compulsory liquidations there is no statutory requirement for the liquidator to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the liquidation unless they specifically request it.

### **What if a creditor is dissatisfied?**

18. Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing
19. If a creditor believes that the liquidator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not out of the assets of the insolvent company.

### **What if the liquidator is dissatisfied?**

20. If the liquidator considers that the remuneration fixed by the committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors or in accordance with the official receiver's scale is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

### **Other matters relating to fees**

21. Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with the scale laid down for the official receivers. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.
22. Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.
23. If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.



24. There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration

# **A CREDITORS' GUIDE TO FEES CHARGED BY TRUSTEES IN BANKRUPTCY**

## **NORTHERN IRELAND**

### **Introduction**

1. When an individual becomes bankrupt the costs of the bankruptcy proceedings are paid out of his or her assets. The creditors, who hope to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as trustee. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the trustee's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees explains the basis on which fees are fixed.

### **Bankruptcy procedure**

2. Bankruptcy is the administration of the affairs of an insolvent individual by a trustee in the interests of his creditors generally. The trustee's function is to realise the assets and distribute them among the creditors in a prescribed order of priority. Bankruptcy proceedings commence with the making of a bankruptcy order by the court. Immediately on the making of the order an official called the official receiver becomes receiver and manager of the bankrupt's estate pending the appointment of a trustee. The official receiver is an officer of the High Court and a member of The Insolvency Service, an executive agency within the Department of Enterprise, Trade and Investment. Official receivers charge their fees on the basis of a statutory scale laid down by the Insolvency Regulations (Northern Ireland) 1994. Where there are significant assets an insolvency practitioner will usually be appointed to act as trustee, either by a meeting of creditors or by the Department of Enterprise, Trade and Investment. Where no insolvency practitioner is appointed, or where there is a vacancy in the office of trustee, the official receiver acts as trustee.

### **The Creditors' Committee**

3. The creditors have the right to appoint a committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the bankruptcy and approve the trustee's fees. The committee may be established at the creditors' meeting which appoints the trustee or at a meeting convened for the purpose by the trustee after his appointment.
4. The trustee must call the first meeting of the committee within 3 months of its establishment (or his appointment if that is later), and subsequent meetings must be held either at dates agreed by the committee, or when a member of the committee asks for one, or when the trustee decides he needs to hold one. The trustee is required to report to the committee at least every 6 months on the progress of the bankruptcy. This provides opportunity for the committee to

monitor and discuss the progress of the insolvency and the level of the trustee's fees.

### **Fixing the trustee's fees**

5. The basis for fixing the trustee's remuneration is set out in Rule 6.135 of the Insolvency Rules (Northern Ireland) 1991. The Rule states that the remuneration shall be fixed either:
  - as a percentage of the value of the assets which are realised or distributed or both, or
  - by reference to the time properly given by the trustee and his staff in attending to matters arising in the [insolvency] *bankruptcy*.

It is for the committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to be applied. Rule 6.135 says that in arriving at its decision the committee shall have regard to:

- the complexity (or otherwise) of the case;
  - any responsibility of an exceptional kind or degree which falls on the trustee in connection with the bankruptcy;
  - the effectiveness with which the trustee appears to be carrying out, or to have carried out, his duties;
  - the value and nature of the assets which the trustee has to deal with.
6. If there is no committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed by a resolution of a meeting of creditors. The creditors must take account of the same matters as the committee would. A resolution specifying the basis on which the trustee is to be remunerated may be taken at the meeting which appoints the trustee. If the remuneration is not fixed in any of these ways, it will be in accordance with the scale laid down for official receivers.

### **What information should be provided by the trustee?**

#### ***When seeking fee approval***

7. When seeking agreement to his fees the trustee should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought;
  - the stage during the administration of the case at which it is being sought; and
  - the size and complexity of the case.
8. Where, at any creditors' or committee meeting, the trustee seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.
9. Where the trustee seeks agreement to his fees during the course of the bankruptcy, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the trustee should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the trustee has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the trustee must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 5 above. To enable this assessment to be carried out it may be necessary for the trustee to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the trustee's own initial assessment, including

the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the trustee wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

10. Where the fee is charged on a percentage basis the trustee should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a trustee or his staff.

#### ***After fee approval***

11. Where a resolution fixing the basis of fees is passed at any creditors meeting held before he has substantially completed his administration the trustee should immediately notify the creditors of the details of the resolution. When subsequently reporting to creditors on the progress of the bankruptcy, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he also should provide details of the time spent and charge-out value to date and any material changes in the rates charged since the resolution was first passed. Where the fee is charged on a percentage basis the trustee should provide the details set out in paragraph 7 above regarding work which has been sub-contracted out.

#### **Expenses and disbursements**

12. There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the trustee proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the trustee's own firm), they must be disclosed and be authorised by those responsible for

approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

### **Realisations for secured creditors**

13. Where the trustee realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds, he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purposes of determining his fees, and in any reports he send to creditors.

### **Reporting - General**

14. It should be borne in mind that there is no statutory requirement for the trustee to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the bankruptcy unless they specifically request it.

### **What if a creditor is dissatisfied?**

15. Except in cases where there is a creditors' committee it is the creditors as a body who have authority to approve the trustee's fees. To enable them to carry out this function they may require the trustee to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the trustee in writing
16. If a creditor believes that the trustee's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the trustee a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not out of the bankrupt's assets.

### **What if the trustee is dissatisfied?**

17. If the trustee considers that the remuneration fixed by the committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors or in accordance with the official receiver's scale is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the trustee's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

### **Other matters relating to fees**

18. Where joint trustees are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.
19. If the trustee is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.
20. There may also be occasions when creditors will agree to make funds available themselves to pay for the trustee to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the bankrupt's affairs. Any arrangements of this nature will be a matter for agreement between the trustee and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

# **VOLUNTARY ARRANGEMENTS**

## **A CREDITORS' GUIDE TO INSOLVENCY PRACTITIONERS' FEES**

### **NORTHERN IRELAND**

#### **Introduction**

1. In a voluntary arrangement, as in other types of insolvency, the amount of money available for creditors is likely to be affected by the level of costs, including the remuneration of the insolvency practitioner appointed to implement the arrangement. This guide explains how fees are fixed in voluntary arrangements, how the creditors can affect the level of fees, and the information which should be made available to them regarding fees.

#### **The Voluntary Arrangement Procedure**

2. Voluntary arrangements are available to both companies and individual debtors. Company voluntary arrangements are often referred to as CVAs, and individual voluntary arrangements as IVAs.
3. The procedure is similar for both CVAs and IVAs and enables the company or individual to put a proposal to their creditors for a composition in satisfaction of their debts or a scheme of arrangement of their affairs. A composition is an agreement under which creditors agree to accept a certain sum of money in settlement of the debts due to them. A CVA may be used as a stand-alone procedure or as an exit route from an administration. It may also be used where a company is in liquidation, but this is extremely rare. The proposal will be made by the directors, the administrator or the liquidator, depending on the circumstances. A proposal for an IVA may be made by a debtor whether or not he is already subject to bankruptcy proceedings. The proposal will be considered by creditors at a meeting convened for that purpose. The procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors. In both CVAs and IVAs the proposal must provide for an insolvency practitioner to supervise the implementation of the arrangement. Until the proposal is approved by the creditors, the practitioner is known as the nominee. If the proposal is approved, the nominee (or if the creditors choose to replace him, his replacement) becomes the supervisor.

#### **Fees, Costs and Charges - Statutory Provisions**

4. The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency Rules (Northern Ireland) 1991 (Rule 1.28 for CVAs and Rule 5.31 for IVAs). They are:
  - any disbursements made by the nominee prior to the [approval of the] arrangement coming into effect, and any remuneration for his services agreed between himself and the company (or the administrator or liquidator, as the case may be) or the debtor (or the official receiver or



trustee, where the debtor is subject to bankruptcy proceedings);

- any fees, costs, charges and expenses which:
  - are sanctioned by the terms of the arrangement (see below), or
  - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be).

5. The rules also require the following matters to be stated or otherwise dealt with in the proposal (Rule 1.03 for CVAs and Rule 5.03 for IVAs):

- The amount proposed to be paid to the nominee by way of remuneration and expenses, and
- The manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed.

### **The Role of the Creditors**

6. It is for the creditors' meeting to decide whether to agree the terms relating to remuneration along with the other provisions of the proposal. The creditors' meeting has the power to modify any of the terms of the proposal (with the consent of the debtor in the case of an IVA), including those relating to the fixing of remuneration. The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration.

### **What information should the creditors receive?**

7. Whether the basis of the supervisor's remuneration is determined at the meeting which approves the arrangement or by a committee of creditors, the supervisor, or proposed supervisor should provide details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

8. Where the supervisors' fees are to be agreed by a committee of creditors, the supervisor should provide sufficient supporting information to enable the committee to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case, and should always make available an up to date receipts and payments account. Where the fee is to be charged on a time basis the supervisor should be prepared to disclose the amount of time spent on the case and the charge out value of the time spent, together with such additional information as may reasonably be required

having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the supervisor has achieved and how it was achieved to enable the value of the exercise to be assessed and to establish that the time has been properly spent on the case:

9. Where the basis of the remuneration of the supervisor as set out in the proposal does not require any further approvals by the creditors or any committee of creditors, the supervisor should specify the amount of remuneration he has drawn in accordance with the provisions of the proposal in his subsequent reports to creditors on the progress of the arrangement. Where the fee is based on time costs he should also provide details of details of the time spent and charge out value to date and any material changes in the rates charged since the arrangement was approved. He should also provide such additional information as may be required in accordance with paragraph 8.
10. Where the supervisor proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the supervisor's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## **APPENDIX 4**

### **Suggested format for production of information**

#### **Notes**

1. The purpose of the attached form is to provide information to support requests for approval of office-holders' remuneration in a standard way so that those receiving such requests can make ready comparisons between cases and an informed assessment of each application. In larger or more complex cases further levels of narrative or tabular information may be needed.

Office-holders should appreciate that it is for them to provide the information that those receiving the request will need in order to be satisfied about the reasonableness of their request and that failure to provide adequate information is likely to have an adverse effect on the assessment.

2. The time and rate schedules should be completed to show the total hours spent. Office-holders, if requested, should be able to give a breakdown of hours by person by period together with an explanation of the activity performed. Any such breakdown should identify clearly how each figure in the schedule is constituted.
3. The level of disclosure suggested by the standard format may not be appropriate in all instances. The office-holder may take account of the proportionality considerations referred to in paragraph 27 of Statement of Insolvency Practice 9A. For example, where the cumulative fees for which approval is sought are expected to amount to less than £10,000 a breakdown of the summary should only be submitted if required to explain any unusual features. For cumulative fees between £10,000 and £50,000 a first level of breakdown similar to that shown may well provide the appropriate detail. Where cumulative fees exceed £50,000, proportionality is likely to require a further level of breakdown.
4. The total fees included in the approval request should exclude, and be expressed to exclude, VAT.
5. In larger cases it will be appropriate to show other categories of work, particularly if they have already been produced for budgeting purposes or for creditors or their representatives, for example in reports to a charge holder in a receivership, or to informal committees of creditors in a provisional liquidation.
6. All payments from or on behalf of the insolvent estate to the office-holder's firm or to any party in which the office-holder, or his firm or any associate has an interest should be included in the disbursements schedules whether or not they are true disbursements or relate to out of pocket expenses. The office-holder should categorise these payments according to the recipient and their nature and purpose and the figures should be readily cross-referable to the receipts and payments account and shown net of VAT.

### Suggested format

<b>Case name</b>	
<b>Court and number</b>	
<b>Office Holder</b> <b>Firm</b>	
<b>Address</b>  <b>Telephone</b>  <b>Reference</b>	
<b>Type of Appointment</b>  <b>Date of Appointment</b>	

#### 1. AN OVERVIEW OF THE CASE

This overview should be framed in terms that will enable the approving body to judge

- the complexity of the case,
- any exceptional responsibility falling on the office-holder,
- the office-holder's effectiveness, and
- the value and nature of the property in question.

This overview would normally be expected to include an explanation of the nature of the assignment and the office-holder's own initial assessment of the assignment (including the anticipated return to creditors) and the outcome (if known). This should refer to the initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers. It should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the office-holder wishes to make. Office-holders should recognise that if they are not able to provide a clear and sufficient explanation of time spent then this is likely to have an adverse impact on the fee assessment.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing, or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

In a larger case, particularly if it involved trading, the practitioner should be prepared to support his explanation with evidence of his considerations about staffing and managing the assignment and how he set and reviewed his strategy. Where they have been agreed with creditors or their representatives, he should also provide copies of his time budgets and fee reports.

## **2. EXPLANATION OF OFFICE-HOLDERS' CHARGING AND DISBURSEMENT RECOVERY POLICIES**

This section should comprise:

- A statement of the office-holder's charging policy in relation to time to enable those receiving the application to make a comparison with other applications and with current published fee information. It should be made clear what grades of staff were charged to the assignment and what sort of staff working on the assignment were not charged to it directly. For example, were secretaries and cashiers charged to the assignment for all the time they worked on it, only in respect of large blocks of time devoted to it or, being accounted for as an overhead cost of the office-holder's firm, not at all?
- A statement of the office-holder's policy in relation to recharges of disbursements. This should explain payments made to the office-holder's firm, whether simple reimbursement of actual payments made on behalf of the assignment, such as statutory advertising costs, or charges relating to the recovery of overhead costs, which are discussed in paragraphs 39 to 46 of SIP 9A.

### **3. NARRATIVE DESCRIPTION OF WORK CARRIED OUT**

The narrative should provide details of work undertaken during the period and should be related to the table of time spent for the period.

An explanation should be given regarding the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used.

Mention should also be made of any additional value brought to the estate during the period, for which the office-holder wishes to claim increased remuneration.

To aid understanding of the narrative it may be appropriate to divide it into separate time periods. These might be, for example, periods of 12 months, or periods devoted to trading or some other significant activity. In smaller or routine cases it may be appropriate for the narrative to treat the case as a whole.

#### 4. TIME AND CHARGE-OUT SUMMARIES

A table of time spent and charge-out value should be provided for each of the time periods chosen by the office-holder under paragraph 3 above. The summary should be in the following (or similar) format.

Hours						Time Cost £	Average hourly rate £
Classification of work function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours		
Administration and planning							
Investigations							
Realisation of assets							
Trading							
Creditors							
Case specific matters (Specify)							
Total hours							
Total fees claimed (£)							

(Further analysis may be necessary in larger cases. In smaller cases these categories of activity may not always be relevant. See paragraph b) below and note 3 of the Notes to the suggested format.)

To be able to produce this information the following points should be noted:-

- a) For each individual working on the case, hours spent, by activity, will need to be collated, together with the total fees attributed to that time and a resultant average hourly rate.
- b) The five standard activities - administration and planning, investigations, realisation of assets, trading and creditors - should be shown in every case (although, clearly, not all of these activities will always take place). However, there may well be additional activities that need to be identified separately in a particular case such as, for example, insurance litigation, managing investments in subsidiaries or negotiating settlement of claims against directors. A guide to what might be included in the standard activities is:

Standard Activity	Examples of work
Administration and Planning	Case planning Administrative set-up Appointment notification Maintenance of records Statutory reporting
Investigations	SIP 2 review CDDA reports Investigating antecedent transactions
Realisation of Assets	Identifying, securing, insuring assets Retention of title Debt collection Property, business and asset sales
Trading	Management of operations Accounting for trading On-going employee issues
Creditors	Communication with creditors Creditors' claims (including employees' and other preferential creditors')



## 5. CATEGORY 2 DISBURSEMENTS

Details of category 2 disbursements paid during each of the time periods should be provided in the following or similar format:-

Other amounts paid or payable to the office holder's firm or to any party in which the office holder or his firm or any associate has an interest (note 6)	
Type and purpose	£
Total	

## 6. SUPPORTING DOCUMENTS

Any relevant documents should be attached and details should be supplied here. Documents which will normally be required include:

- An up to date receipts and payments account which complies with current best practice
- A schedule of charge-out rates applied from time to time.
- Relevant resolutions (if any).