INTERIM STATEMENT OF INSOLVENCY PRACTICE 9

REMUNERATION OF INSOLVENCY OFFICE HOLDERS (ENGLAND AND WALES)

You will be aware that substantial amendments are being made to the Insolvency Rules 1986, with effect from 6 April 2010. In particular, there will be changes to the basis on which office holders' remuneration may be approved, and also provisions that enable creditors (in certain circumstances) to seek information on and challenge the level of remuneration.

Importantly, there are also parallel provisions enabling creditors to seek information on and challenge expenses. The interim SIP also recognises that those with a direct financial interest in the outcome of a case should have access to sufficient information to be able to make an informed judgement about all expenses incurred by an office holder.

The Recognised Professional Bodies and the Insolvency Service have agreed on the form of an Interim SIP 9 dealing with remuneration, covering appointments both before and after 6 April 2010, to be in force pending a more detailed review of the SIP that is already under way. The creditors' guides which accompany the SIP have also been amended.

One option under consideration for the future, is that expenses will be dealt with separately, possibly within SIP 7 (Preparation of Office Holders' Receipts and Payments Accounts), and a detailed review of that SIP will be carried out concurrently with the work on a new SIP 9. Both new SIPs are likely to be subject to normal consultation processes.

STATEMENT OF INSOLVENCY PRACTICE 9 (E & W)

Remuneration of insolvency office holders

Contents

Effective date 6 April 2010

STATEMENT OF INSOLVENCY PRACTICE 9 (E&W)

REMUNERATION OF INSOLVENCY OFFICE HOLDERS

ENGLAND AND WALES

1. INTRODUCTION

1.1 This Statement of Insolvency Practice (SIP) is one of a series issued to licensed insolvency practitioners under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC), with a view to maintaining high standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency.

SIP9 was produced by the JIC, and has been adopted by each of the regulatory authorities listed below.

Recognised Professional Bodies:

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

Competent Authority:

- The Insolvency Service for the Secretary of State

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.

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.

1.2 The purpose of this statement of insolvency practice is to:

- set out required practice with regard to the observance of the statutory provisions;
- set out required practice with regard to the provision of information to those responsible for the approval of remuneration to enable them to exercise their rights under the insolvency legislation;
- set out required practice with regard to the disclosure and drawing of remuneration and disbursements and other expenses to enable creditors (and where relevant members and the bankrupt) to exercise their rights under the insolvency legislation.

The statement has been produced in recognition of the principle that those with a direct financial interest in the level of office holders' remuneration, disbursements and other

expenses should be confident that the rules relating to charging have been properly complied with. Those charged with responsibility for approval of remuneration, or with the right to challenge remuneration or expenses, should have access to sufficient information about those charges to be able to make an informed judgement about their level in any particular case.

1.3 Practitioners 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.

1.4 The statement is divided into the following sections:

- The statutory provisions
- Provision of information when seeking approval for remuneration
- Provision of information after remuneration approval
- Asset realisations
- Disbursements
- Expenses
- Provision of information to members and the debtor
- Transitional provisions

2 THE STATUTORY PROVISIONS

2.1 The statutory provisions relating to the remuneration of office holders are set out in The Insolvency Rules 1986 ('the Rules') as amended. The rules for cases commenced prior to 06 April 2010 differ from those after that date by virtue of the application of the Insolvency (Amendment) Rules 2010.

2.2 There are also disclosure requirements in the Insolvency Regulations 1994, as amended, and time recording requirements contained in the Insolvency Practitioner Regulations 2005, as amended, and the Insolvency Rules 1986, as amended.

2.3 In addition to the statutory provisions, remuneration should not be drawn on the statutory 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 remuneration by the committee or the creditors on the basis of the scale or the automatic application of the scale upon the expiry of 18 months from the commencement of the office holder's appointment in bankruptcy or compulsory liquidation matters commencing on or after 06 April 2010.

3 PROVISION OF INFORMATION WHEN SEEKING APPROVAL FOR REMUNERATION

3.1 Practitioners should be mindful at all times of the rights accorded to creditors in relation to remuneration 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 C contains the text of a set of explanatory notes on the bases on which office holders' remuneration is fixed in a format suitable for making creditors aware of the relevant provisions. It also explains creditors' rights to seek further information about and challenge the level of remuneration, disbursements and other expenses. Practitioners are required to ensure that information on how to access the explanatory note appropriate to both the type of insolvency proceedings concerned and the legislation applicable, 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.

3.2 The particular nature of an insolvency office holder'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 or with a right to challenge his remuneration, disbursements or other expenses. When seeking agreement to payments made to his own firm, the office holder should provide sufficient supporting information to enable those responsible for approving those payments ('the approving body') to form a judgement as to whether they are 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.

3.3 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.

3.4 Where agreement is sought to remuneration during the course of the assignment, an up to date receipts and payments account should always be provided. Where the proposed remuneration 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 complexity of the case, any responsibility of an exceptional kind which falls on the office-holder, and the value and nature of the assets which the office-holder has to deal with. Appendix D 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 D 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.

3.5 Where the remuneration, or any part of it, is charged on a percentage basis or as a set amount, the office holder 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.

3.6 On the request of the company's liquidator, a receiver appointed in relation to a company should provide the information specified in paragraph 3.4 and a record of time spent on the case by him and any persons assigned to the case.

3.7 When notices are sent out convening meetings under section 98 of the Insolvency Act 1986 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. Practitioners should advise directors when convening section 98 meetings that the notices despatched to creditors should include such a statement and contain the information on how to access the appropriate

explanatory note referred to in paragraph 3.1. If that advice is given orally and not accepted by the directors it should be confirmed in writing.

4. PROVISION OF INFORMATION AFTER REMUNERATION APPROVAL

4.1 Where a resolution fixing the basis of remuneration is passed at any creditors' meeting held before he has substantially completed his functions the office holder 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 office holder should specify the amount of remuneration he has drawn in accordance with the resolution. Where the remuneration, or any part of it, is based on time costs he also should provide details of the time spent and charge-out value to date of the remuneration so charged 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 3.4. Where the remuneration, or any part of it, is charged on a percentage basis or as a set amount, the office holder should provide the details set out in paragraph 3.5 above regarding work so charged which has been sub-contracted out. The requirements of this paragraph also apply 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.

4.2 It should be borne in mind that creditors (and in a Members Voluntary Liquidation, also members) of the company may have the right to seek further information regarding remuneration, disbursements and other expenses, to requisition a meeting, or to apply to the court if they consider the office holder's remuneration to be excessive, or the basis of remuneration to be inappropriate. The office holder should provide creditors (and where relevant, members) with sufficient information to enable them to decide whether to exercise those rights. The information provided in relation to remuneration in accordance with paragraph 3.4 should, where the basis of the remuneration is on time costs, normally be sufficient for this purpose. Where, however, creditors (and where relevant, members) make a reasonable request for further information, it should be provided in all cases.

4.3 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 remuneration, and in his reports to creditors.

5. ASSET REALISATIONS

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 remuneration in relation to the realisation must be approved in the usual way.

6. DISBURSEMENTS

6.1 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.

6.2 In the absence of a clear statutory definition 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. Practitioners should be prepared to disclose information about specific category 1 disbursements where reasonably requested in all cases.

6.3 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.

6.4 A charge for disbursements calculated as a percentage of the amount charged for remuneration is not permissible.

6.5 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.

6.6 Payments to outside parties in which the office holder or his firm or any associate (as defined by section 435 of the Insolvency Act 1986) has an interest should be treated as category 2 disbursements.

6.7 Where, in a liquidation or a bankruptcy, remuneration is being taken on the statutory 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.

6.8 It is the office holder's obligation to satisfy himself of the appropriateness of disbursements and the office holder should bear in mind the matters referred to in paragraph 4.2 above.

7. EXPENSES

7.1 There are additional statutory requirements in relation to expenses incurred in certain cases commenced after 6 April 2010. Creditors (and in a Members Voluntary Liquidation, also members) may have the statutory right to seek information regarding expenses, and to apply to the court if they consider them to be excessive in all the circumstances of the case.

8. PROVISION OF INFORMATION TO MEMBERS AND THE DEBTOR

8.1 In a bankruptcy, voluntary arrangement, administration or initially insolvent liquidation where realisations are sufficient for payment of creditors in full with interest, it should be remembered that, notwithstanding the right of the creditors or the committee to fix the office holder'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 remuneration. The office holder should therefore on request provide them with information, in accordance with the principles set out in this Statement of Insolvency Practice, about how the remuneration, disbursements and other expenses have been calculated.

8.2 In bankruptcy cases where realisations are not sufficient for payment of creditors in full, the office holder should consider requests for information from the bankrupt about how the remuneration, disbursements and other expenses have been calculated and approved to provide the bankrupt with sufficient information to enable him to make an informed judgement about exercising his rights.

9. TRANSITIONAL PROVISIONS

9.1 Version 2 of Statement of Insolvency Practice 9, which was the first to require a degree of analysis of time by activity and grade of staff, came into effect on 31 December 2002 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 this SIP. However, where any analysis or disclosure required for such a report or resolution relates to a period prior to 31 December 2002, it should comply with this SIP as far as the available records reasonably allow.

The present version of the SIP has been revised to take account of legislative changes relating to remuneration, disbursements and other expenses introduced since that time, including those introduced by The Insolvency (Amendment) Rules 2010, and will apply in all cases.

Effective date: 6 April 2010

APPENDIX A

[Suspended with effect from 06 April 2010 in respect of cases commenced on or after 06 April 2010]

APPENDIX B

Insolvency Rules 1986

Schedule 6

DETERMINATION OF INSOLVENCY OFFICE HOLDER'S REMUNERATION

As regards the determination of the remuneration of trustees and liquidators the realisation and distribution scales are as set out in the table below–

The realisation scale

(i) on the first £5000 or fraction thereof	20%
(ii) on the next £5000 or fraction thereof	15%
(iii) on the next £90000 or fraction thereof	10%
(iv) on all further sums realised	5%

The distribution scale

(i) on the first £5000 or fraction thereof	10%
(ii) on the next £5000 or fraction thereof	7.5%
(iii) on the next £90000 or fraction thereof	5%
(iv) on all further sums distributed	2.5%

APPENDIX C

A CREDITORS' GUIDE TO ADMINISTRATORS' FEES

ENGLAND AND WALES

1 Introduction

1.1 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, explains the basis on which fees are fixed and how creditors can seek information about expenses incurred by the administrator and challenge those they consider to be excessive..

2 The nature of administration

2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the following objective:

- rescuing the company as a going concern, or
- achieving a better result for the creditors as a whole than would be likely if the company were wound up without first being in administration,

or, if the administrator thinks neither of these objectives is reasonably practicable

- realising property in order to make a distribution to secured or preferential creditors.

3 The creditors' committee

3.1 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 normally established at the meeting of creditors which the administrator is required to hold within a maximum of 10 weeks from the beginning of the administration to consider his proposals. The administrator must call the first meeting of the committee within 6 weeks 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 needs to hold one. The committee has power to summon the administrator to attend before it and provide information about the exercise of his functions.

4 Fixing the administrator's remuneration

4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.106 of the Insolvency Rules 1986, which states that it shall be fixed:

- as a percentage of the value of the property which the administrator has to deal with,
- by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration, or
- as a set amount.

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the administrator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the administrator.

It is for the creditors' committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied, and where it is a set amount, to determine that amount. Rule 2.106 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.

4.2 If there is no creditors' committee, or the committee does not make the requisite determination (and provided the circumstances described in paragraph 4.3 do not apply), the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as apply in the case of 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, but the administrator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment.

4.3 There are special rules about creditors' resolutions in cases where 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 which may have to be set aside out of floating charge assets.

In this case, if there is no creditors' committee, or the committee does not make the requisite determination, the remuneration may be fixed by 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; and
    - 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,

having regard to the same matters as the committee would.

Note that there is no requirement to hold a creditors' meeting in such cases unless a meeting is requisitioned by creditors whose debts amount to at least 10 per cent of the total debts of the company.

4.4 A resolution of creditors may be obtained by correspondence.

5. Review of remuneration

5.1 Where there has been a material and substantial change in circumstances since the basis of the administrator's remuneration was fixed, the administrator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

6. Approval of pre-administration costs

6.1 Sometimes the administrator may need to seek approval for the payment of costs in connection with preparatory work incurred before the company went into administration but which remain unpaid. Such costs may relate to work done either by the administrator or by another insolvency practitioner. Details of such costs must be included in the administrator's proposals.

6.2 Where there is a creditors' committee, it is for the committee to determine whether, and to what extent, such costs should be approved for payment. If there is no committee or the committee does not make the necessary determination, or if it does but the administrator, or other insolvency practitioner who has incurred pre-administration costs, considers the amount agreed to be insufficient, approval may be given by a meeting of creditors. Where the circumstances described in paragraph 4.3 apply, the determination may be made by the same creditors as approve the administrator's remuneration.

6.3 The administrator must convene a meting of the committee or the creditors for the purposes of approving the payment of pre-administration costs if requested to do so by another insolvency practitioner who has incurred such costs. If there is no determination under these provisions, or if there is but the administrator or other insolvency practitioner considers the amount agreed to be insufficient, the administrator may apply to the court for a determination.

7 What information should be provided by the administrator?

7.1 When seeking remuneration approval

7.1.1 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.

7.1.2 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.

7.1.3 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 4.1 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.

7.1.4 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.

7.2 After remuneration approval

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 (see further paragraph 8.1 below). 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 7.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 7.1.4 above regarding work which has been sub-contracted out.

7.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. 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.

8 Progress reports and requests for further information

8.1 The administrator is required to send a progress report to creditors at 6-monthly intervals. The report must include:

- details of the basis fixed for the remuneration of the administrator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the administrator during the period of the report, irrespective of whether payment was actually made during that period;
- the date of approval of any pre-administration costs and the amount approved;
- a statement of the creditors' rights to request further information, as explained in paragraph 8.2, and their right to challenge the administrator's remuneration and expenses.

8.2 Within 21 days of receipt of a progress report a creditor may request the administrator to provide further information about the remuneration and expenses (other than pre-administration costs) set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

8.3 The administrator must provide the requested information within 14 days, unless he considers that:

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the administration or might be expected to lead to violence against any person, or
- the administrator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the administrator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

9. Provision of information – additional requirements

The administrator must provide certain information about time spent on a case, free of charge, upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- the total number of hours spent on the case by the administrator or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the administrator's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the administrator, and requests must be made within two years from vacation of office.

10 What if a creditor is dissatisfied?

101 If a creditor believes that the administrator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the administrator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

10.2 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the administrator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 8.1 above). 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.

10.3 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not as an expense of the administration.

11 What if the administrator is dissatisfied?

11.1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. 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.

12 Other matters relating to remuneration

12.1 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.

12.2 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.

12.3 If a new administrator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new administrator until a further determination, resolution or court order is made.

12.4 Where the basis of the remuneration is a set amount, and the administrator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing administrator. The application must be made to the same body as approved the remuneration. Where the outgoing administrator and the incoming administrator are from the same firm, they will usually agree the apportionment between them.

13. Effective date

This guide applies where a company enters administration on or after 6 April 2010, except where:

- the application for an administration order was made before that date, or
- where the administration was preceded by a liquidation which commenced before that date.

APPENDIX C

A CREDITOR'S GUIDE TO LIQUIDATORS' FEES

ENGLAND AND WALES

1 Introduction

1.1 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, explains the basis on which fees are fixed and how creditors can seek information about expenses incurred by the liquidator and challenge those they consider to be excessive.

2 Liquidation procedure

2.1 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.

2.2 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.

2.3 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 court and an official belonging to The Insolvency Service. 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 Insolvency Service on behalf of the Secretary of State. Where an insolvency practitioner is not appointed the official receiver remains liquidator.

2.4 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.

3 The liquidation committee

3.1 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.

3.2 The liquidator must call the first meeting of the committee within 6 weeks 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.

4 Fixing the liquidator's remuneration

4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed:

- as a percentage of the value of the assets which are realised or distributed or both,
- by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation, or
- as a set amount.

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the liquidator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the liquidator.

It is for the liquidation committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied. Rule 4.127 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.

4.2 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 apply in the case of the committee. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.

4.3 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.

4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

5. Review of remuneration

Where there has been a material and substantial change in circumstances since the basis of the liquidator's remuneration was fixed, the liquidator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

6 What information should be provided by the liquidator?

6.1 When seeking remuneration approval

6.1.1 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.

6.1.2 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.

6.1.3 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 4.1 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.

6.1.4 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.

6.2 After remuneration approval

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 (see further paragraph 7.1 below). 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 6.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

6.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. 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.

6.4 Realisations for secured creditors

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 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.

7. Progress reports and requests for further information

7.1 The liquidator is required to send annual progress reports to creditors. The reports must include:

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses.

7.2 Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

7.3 The liquidator must provide the requested information within 14 days, unless he considers that:

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- the liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the liquidator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

8. Provision of information – additional requirements

The liquidator must provide certain information about the time spent on the case, free of charge, upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- the total number of hours spent on the case by the liquidator or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the liquidator, and requests must be made within two years from vacation of office.

9 What if a creditor is dissatisfied?

9.1 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

9.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). 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.

9.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must by paid by the applicant and not out of the assets of the insolvent company.

10. What if the liquidator is dissatisfied?

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. 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.

11 Other matters relating to remuneration

11.1 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 a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

11.2 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.

11.3 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.

11.4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.

11.5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.

11.6 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.

12. Effective date

This guide applies where a company –

- goes into liquidation on a winding-up resolution passed on or after 6 April 2010;
- goes into voluntary liquidation immediately following an administration on or after 6 April 2010, except where the preceding administration began before that date;
- goes into compulsory liquidation as the result of a petition presented on or after 6 April 2010, except where the liquidation was preceded by:
  – an administration which began before that date;
  – a voluntary liquidation in which the winding-up resolution was passed before that date.

APPENDIX C

A CREDITOR'S GUIDE TO FEES CHARGED BY TRUSTEES IN BANKRUPTCY

ENGLAND AND WALES

1 Introduction

1.1 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 and how creditors can seek information about expenses incurred by the trustee and challenge those they consider to be excessive. .

2 Bankruptcy procedure

2.1 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 court and an official belonging to The Insolvency Service. 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 Insolvency Service on behalf of the Secretary of State. Where no insolvency practitioner is appointed, or where there is a vacancy in the office of trustee, the official receiver acts as trustee.

3 The creditors' committee

3.1 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.

3.2 The trustee must call the first meeting of the committee within 6 weeks 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, 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 trustee's fees.

4 Fixing the trustee's remuneration

4.1 The basis for fixing the trustee's remuneration is set out in Rules 6.138 - 6.139 of the Insolvency Rules 1986. The Rule states that the remuneration shall be fixed:

- as a percentage of the value of the assets which are realised or distributed or both,
- by reference to the time properly given by the trustee and his staff in attending to matters arising in the bankruptcy, or
- as a set amount.

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the trustee. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the trustee.

It is for the committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied. Rule 6.138 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.

4.2 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 apply in the case of the committee. 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 within 18 months of the trustee's appointment, it will be fixed in accordance with a scale set out in the Rules.

5. Review of remuneration

Where there has been a material and substantial change in circumstances since the basis of the trustee's remuneration was fixed, the trustee may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

6 What information should be provided by the trustee?

6.1 When seeking remuneration approval

6.1.1 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.

6.1.2 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.

6.1.3 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 4.1 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.

6.1.4 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.

6.2 After remuneration approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the trustee should 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 (see further paragraph 7.1 below). 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 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 6.1.3. Where the fee is charged on a percentage basis the trustee should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

6.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. 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.

6.4 Realisations for secured creditors

Where the trustee realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 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.

7. Progress reports and requests for further information

7.1 The trustee is required to send annual progress reports to creditors. The report must include:

- details of the basis fixed for the remuneration of the trustee (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the trustee during the period of the report, irrespective of whether payment was actually made during that period;
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the trustee's remuneration and expenses.

7.2 Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the trustee's resignation) a creditor may request the trustee to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

7.3 The trustee must provide the requested information within 14 days, unless he considers that:

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the bankruptcy or might be expected to lead to violence against any person, or
- the trustee is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the trustee's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

8. Provision of information – additional requirements

The trustee must provide certain information about time spent on the case, free of charge, upon request by the bankrupt or any creditor. The information which must be provided is –

- the total number of hours spent on the case by the trustee or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the trustee's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the trustee, and requests must be made within two years from vacation of office.

9. **What if a creditor or the bankrupt is dissatisfied?**

9.1 Except in cases where there is a 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.

9.2 If a creditor believes that the trustee's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the trustee's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). 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.

9.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs must be paid by the applicant and not out of the bankrupt's assets.

9.5 The bankrupt also has the right to challenge the trustee's remuneration or expenses.

10 What if the trustee is dissatisfied?

10.1 If the trustee considers that the remuneration fixed by the committee is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If the trustee considers that the remuneration fixed by the committee or the creditors or in accordance with the statutory scale is insufficient or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. 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.

11 Other matters relating to remuneration

11.1 Where the trustee realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the trustee will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

11.2 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.

11.3 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.

11.4 If a new trustee is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new trustee until a further determination, resolution or court order is made.

11.5 Where the basis of the remuneration is a set amount, and the trustee ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing trustee. The application must be made to the same body as approved the remuneration. Where the outgoing trustee and the incoming trustee are from the same firm, they will usually agree the apportionment between them.

11.6 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.

12. Effective date

This guide applies where the bankruptcy order is made on a petition presented on or after 6 April 2010.

APPENDIX C

VOLUNTARY ARRANGEMENTS - A CREDITOR'S GUIDE TO INSOLVENCY PRACTITIONERS' FEES
ENGLAND AND WALES

1. Introduction

1.1 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.

2. The voluntary arrangement procedure

2.1 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.

2.2 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.

3. Fees, costs and charges - statutory provisions

3.1 The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency Rules 1986 (rule 1.28 for CVAs and rule 5.33 (previously 5.28) for IVAs). They are:

- any disbursements made by the nominee prior to 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 or 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).

3.2 The rules also require the following matters to be stated or otherwise dealt with in the proposal (rule 1.3 for CVAs and rule 5.3 for IVAs):

- 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.

4. The role of the creditors

4.1 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.

5. What information should the creditors receive?

5.1 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.

5.2 Where the supervisors' fees are to be agreed by a committee of creditors during the course of the arrangement, 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 provide an up to date receipts and payments account. Where the fee is to be charged on a time basis the supervisor should 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 and the functions conferred on the supervisor under the terms of the arrangement. 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.

5.3 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 the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the arrangement was approved. He should also provide such additional information as may be required in accordance with paragraph 5.2.

5.4 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.

6. Provision of information – additional requirements

The nominee or supervisor is required to provide certain information about the time spent on the case, free of charge, upon request by specified persons. The persons entitled to ask for this information are –

- any creditor;
- where the arrangement relates to a company, any director or member of that company; and
- where the arrangement relates to an individual, that individual.

The information which must be provided is –

- the total number of hours spent on the case by the insolvency practitioner or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the nominee's or supervisor's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the nominee or supervisor, and requests must be made within two years from vacation of office.

7. Effective date

This guide applies where the nominee in relation to the arrangement agrees to act on or after 6 April 2010.

APPENDIX D

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 3.4 of Statement of Insolvency Practice 9. 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

Case name	
Court and number	
Office Holder **Firm**	
Address **Telephone** **Reference**	
Type of Appointment **Date of Appointment**	

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 section 6 of SIP 9.

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							
Classification of work function	**Partner**	**Manager**	**Other Senior Professionals**	**Assistants & Support Staff**	**Total Hours**	**Time Cost £**	**Average hourly rate £**
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).
- Information about expenses accrued during the period but not yet paid (if applicable).