

Statement of Insolvency Practice 9 (Scotland)

Payments to insolvency office holders and their associates

Introduction

1. The particular nature of an insolvency office holder's position renders transparency and fairness in their dealings of primary importance. Creditors and other interested parties with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to charging have been properly complied with.¹

Principles

2. Payments to an office holder or his or her associates should be appropriate, reasonable and commensurate reflections of the work necessarily and properly undertaken.
3. Those responsible for approving payments to an office holder or the basis upon which the payments are to be calculated should be provided with sufficient information to make an informed judgement about the reasonableness of the office holder's requests.
4. Requests for additional information about payments to an office holder or their associates should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the case.

Key compliance standards

Provisions of general application

5. The information provided and the way in which the approval of payments to insolvency office holders and their associates for remuneration is sought should enable creditors and other interested parties¹ to exercise properly their rights under the insolvency legislation.
6. An office holder should disclose:
 - (a) payments, remuneration and expenses arising from an insolvency appointment to the office holder or his or her associates;
 - (b) any business or personal relationships with parties responsible for approving his or her remuneration or who provide services to the office holder in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.
7. An office holder should inform creditors and other interested parties of their rights under insolvency legislation. Information on how to find a suitable explanatory note setting out the rights of creditors should be given in the first communication with creditors following appointment and in each subsequent report to creditors.

¹ "other interested parties" means those parties with rights pursuant to the prevailing insolvency legislation to information about the office holder's receipts and payments. This may include the creditors' committee, the members (shareholders) of a company or, in personal insolvency, the debtor.

Suggested format

8. A suggested format for the provision of information is in the Appendix, including the suggested levels at which the provision of further information may be appropriate.

Provision of information when fixing the basis of remuneration

9. When seeking approval for the basis of remuneration, an office holder should provide sufficient supporting information to enable the approving body, having regard to all the circumstances of the case, to make an informed judgement as to whether the basis sought is appropriate. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought.

10. If the remuneration is sought on a time costs basis, an office holder should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.

11. An office holder should also provide details and the cost of any work that has been or is intended to be sub-contracted out and that could otherwise be carried out by the office holder or his or her staff.

Provision of information when seeking approval of remuneration

12. The requirements in this section are in addition to reporting requirements under insolvency legislation.

13. When seeking approval for his remuneration, an office holder should provide sufficient supporting information to enable the approving body, having regard to all the circumstances of the case, to make an informed judgement as to whether the remuneration sought is reasonable. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought.

14. An office holder should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed. Where the remuneration is on a time costs basis, an office holder should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable.

15. An office holder should also provide details and the cost of any work that has been sub-contracted out and that could otherwise be carried out by the office holder or his or her staff.

Provision of information when reporting approval of remuneration

16. When advising creditors of the quantum of the remuneration and disbursements which have been approved and advising of the rights of appeal, the office holder should provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the office holder must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate).

17. Where the remuneration is on a time costs basis, an office holder should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the

periods applicable. An office holder should also provide details and the cost of any work that has been sub-contracted out and that could otherwise be carried out by the office holder or his or her staff.

Disbursements

18. Costs met by and reimbursed to an office holder in connection with an insolvency appointment should be appropriate and reasonable. Such costs will fall into two categories:

- (a) Category 1 disbursements: These are costs where there is specific expenditure directly referable both to the appointment in question and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the office holder or his or her staff.
- (b) Category 2 disbursements: These are costs that are directly referable to the appointment in question but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis, for example, business mileage.

19. Category 1 disbursements can be drawn without prior approval, although an office holder should be prepared to disclose information about them in the same way as any other expenses.

20. Category 2 disbursements may be drawn if they have been approved in the same manner as an office holder's remuneration. When seeking approval, an office holder should explain, for each category of expense, the basis on which the charge is being made.

21. The following are not permissible:

- (a) a charge calculated as a percentage of remuneration;
- (b) an administration fee or charge additional to an office holder's remuneration;
- (c) recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

22. If an office holder has obtained approval for the basis on which a charge for category 2 disbursements is made, that basis may continue to be used where he takes a sequential appointment for which further approval of the basis of remuneration is not required, or where he is replaced.

Pre-appointment costs

23. When approval is sought for the payment of outstanding costs incurred prior to an office holder's appointment, disclosure should follow the principles and standards contained in this statement.

Payments to associates

24. Where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship, an office holder should take particular care to ensure that the best value and service is being provided. An office holder should also have regard to relationships where the practice is held out to be part of a national or international association.

25. Payments that could reasonably be perceived as presenting a threat to the office holder's objectivity by virtue of a professional or personal relationship should not be made unless approved in the same manner as an office holder's remuneration or category 2 disbursements.

Provision of information to successive office holders

26. When an office holder's appointment is followed by the appointment of another insolvency practitioner, whether or not in the same proceedings, the prior office holder should provide the successor with information in accordance with the principles and standards contained in this statement.

Provision of information to interested parties

27. Where realisations are sufficient for payment of creditors in full with interest, the creditors will not have the principal financial interest in the level of remuneration. An office holder should provide the beneficiaries of the anticipated surplus, on request, with information in accordance with the principles and standards contained in this statement.

Effective date: This SIP applies to insolvency appointments starting on or after 1 June 2012. However, insolvency practitioners are encouraged to apply the SIP to all cases regardless of the starting date where to do so would not be onerous or give rise to excessive costs.

Date of issue: 1 May 2012