

## STATEMENT OF INSOLVENCY PRACTICE 9 (ENGLAND AND WALES)

### 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 all 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.

#### 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 the basis or bases upon which payments to an office holder 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 his or her 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 parties 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.

#### **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 bases of remuneration**

9. When seeking approval for the basis or bases 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 or bases sought is/are 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 any part of 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 that could otherwise be carried out by the office holder or his or her staff.

12. If work has already been carried out, 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 and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the office holder should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. An office holder should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the office holder or his or her staff.

### **Provision of information after the bases of remuneration have been fixed**

13. The requirements in this section are in addition to reporting requirements under insolvency legislation.
14. When reporting periodically to creditors, an office holder should provide an explanation of what has been achieved in the period under review 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).
15. Where any 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.
16. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable.
17. An office holder should also provide details and the cost of any work that has been sub-contracted out 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 of category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the office holder 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 November 2011. 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.

## APPENDIX

### SUGGESTED FORMAT FOR PROVISION OF INFORMATION

#### INTRODUCTION

1. Information provided by an office holder should be presented in a manner that is transparent, consistent and useful to the recipient, whilst being proportionate to the circumstances of the case. The level of disclosure suggested below may not be appropriate in all instances and the office holder may take account of proportionality considerations. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.
2. It is a matter for each office holder to decide what detailed information and explanations are required, having regard to the circumstances of the case. However, the importance of consistency and clarity should be recognised, and this Appendix sets out suggestions in relation to the presentation of information in a standard way. Those receiving the information ought to be able to make an informed judgement about the reasonableness of the office holder's request. The information provided should facilitate comparisons between cases.

#### A NARRATIVE OVERVIEW OF THE CASE

3. In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:
  - a) the complexity of the case;
  - b) any exceptional responsibility falling on the office-holder;
  - c) the office-holder's effectiveness;
  - d) the value and nature of the property in question.
4. The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:
  - a) an explanation of the nature, and the office-holder's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known);

- b) initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
- c) any significant aspects of the case, particularly those that affect the remuneration and cost expended;
- d) the reasons for subsequent changes in strategy;
- e) the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing;
- f) any existing agreement about remuneration;
- g) 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;
- h) in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
- i) details of work undertaken during the period;
- j) any additional value brought to the estate during the period, for which the office holder wishes to claim increased remuneration.

## TIME COST BASIS

5. Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:
- a) An explanation of the office-holder's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
  - b) A description of work carried out, which might include:
    - details of work undertaken during the period, related to the table of time spent for the period;
    - an explanation of 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;
    - any comments on any figures in the summary of time spent accompanying the request the office-holder wishes to make.
  - c) Time spent and charge-out summaries, in an appropriate format.

6. It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case, in particular to facilitate comparisons between cases:

Hours							
Classification of work function	Partner	Manager	Other senior professionals	Assistants and support staff	Total hours	Time cost £	Average hourly rate £
Administration and planning							
Investigations							
Realisation of assets							
Trading							
Creditors							
Case-specific matters (Specify the matters)							
Total hours							
Total fees claimed (£)							

7. The level of disclosure suggested by the standard format will not be appropriate in all instances and the office holder should take account of proportionality considerations:
- a) where the cumulative time costs are, and are expected to be, less than £10,000 the office holder should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case;
  - b) where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features);
  - c) where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted.