

OUTLAYS AND THIRD PARTY PAYMENTS IN TRUST DEEDS AND SEQUESTRATIONS

Guidance on Fact-Find payments and other outlays after the commencement of The Protected Trust Deeds (Scotland) Regulations 2013.

Background

The Protected Trust Deeds (Scotland) Regulations 2013 (“the Regulations”) come into effect on 28 November 2013. Amongst other matters the Regulations will prohibit outlays incurred prior to the signing of the trust deed being paid as an expense from the trust deed estate. Any debt due to a third party for work done prior to the date of signing of the trust deed does not rank higher than any other creditors claim.

At present, SIP3A recognises that fact-find fees may be paid from the estate subject to certain conditions. Therefore, the provisions within legislation and SIP3A are not currently aligned. Insolvency Practitioners are reminded that in the event of a conflict between SIP and statutory provisions, the statutory provisions will necessarily prevail.

Payments of Fact-Find Fees

Following the commencement of the Regulations, where an office holder uses an agent for work carried out prior to appointment, such costs will be a liability of the office holder’s practice. Details of the agent and amounts paid or payable to the agent for this work should be disclosed to creditors in the first circular. There should be no cost to the estate from employing the agent. Insolvency Practitioners are reminded that any payment to an agent should reflect the value of the work undertaken, comply with the Code of Ethics of their Authorising Body generally and comply with guidance issued by the Accountant in Bankruptcy (AiB). The AiB has published detailed PTD guidance notes on their website.

Revision of SIP3A

SIP3A has been the subject of consultation for revision earlier in 2013. It was however decided to hold off issuing a revised SIP3A in the knowledge that the

Regulations, once published, would result in a further revision of SIP3A being required. The working group set up to look at the revised SIP3A has met to discuss the revisions required and is currently considering whether the changes required will require a further consultation period.

Sequestration appointments

Regulatory bodies have recently had to consider circumstances where payments are made which result in a practitioner being appointed as Trustee in sequestration appointments.

Payment of the Debtor Application Fee

Any debtor application fee payment paid either directly or indirectly by a practitioner or their firm, which results in the practitioner being appointed Trustee in a debtor application is considered inappropriate and contrary to the Code of Ethics.

Payment to Fact Find agents

Any payment made for fact find information to an individual or organisation who has introduced a potential appointment, either prior to or during a sequestration appointment, paid directly or indirectly by a practitioner or their firm, which results in the practitioner being appointed Trustee is considered inappropriate and contrary to the Code of Ethics.

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