
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 with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency.

SIP 9 is issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC). It was commissioned by the JIC, produced by the Association of Business Recovery Professionals, and has been approved by the JIC and adopted by each of the regulatory authorities listed below:

Recognised Professional Bodies:

- 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 for Trade and Industry)

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:

- ensure that members are familiar with the statutory provisions relating to office holders' remuneration;
- 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 fees to enable them to exercise their rights under the insolvency legislation;
- set out required practice with regard to the disclosure and drawing of disbursements.

The statement has been produced in recognition of the principle that those with a direct financial interest in the level of office holders' fees should feel confident that the rules relating to the charging of remuneration have been properly complied with, and that those charged with responsibility for approval of fees have access to sufficient information about the basis of fees to be able to make an informed judgement about the level of remuneration in any particular case. The statement applies to England and Wales only.

1.3. Members should be aware that the drawing of remuneration otherwise than in accordance with the relevant statutory provisions will render them in breach of the law.

1.4. The statement is divided into the following sections:

- The statutory provisions
- Provision of information when seeking fee approval
- Provision of information after fee approval
- Asset realizations
- Expenses and disbursements
- Payment in full
- Closure of cases
- 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. There are also disclosure requirements in the Insolvency Regulations 1994, as amended. The relevant rules and regulation are set out in full in Appendix A. The main provisions relating to the most common types of insolvency appointment are summarized in the following paragraphs.

2.2. Administration

2.2.1. The rules applicable in administration depend on whether the proceedings are based on a petition presented before 15 September 2003. If they are, then the rules as they stood before the changes introduced by the Enterprise Act 2002 and its associated legislation continue to apply. In all other cases the rules substituted by the Insolvency (Amendment) Rules 2003 will apply. As far as remuneration is concerned the two sets of rules are in identical terms, with the exception of the qualification regarding creditors' resolutions noted in paragraph 2.2.5 below.

2.2.2. The basis for fixing the administrator's remuneration is set out in old rule 2.47 for cases where the petition was presented before 15 September 2003, and new rule 2.106 for all other cases. The rules state that it shall be fixed either:

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

2.2.3. It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if as a percentage to determine what percentage is to be applied. In arriving at its determination the committee shall have regard to:

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the administrator;

- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the property which the administrator has to deal with.

2.2.4. If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors using the same criteria as would apply if fixed by the committee. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.

2.2.5. If the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the reserved fund set aside out of floating charge assets, then 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,

using the same criteria as would apply if fixed by the committee.

2.2.6. In cases where the application is made or the appointment made on or after 15 September 2003 a resolution of creditors may be taken by correspondence.

2.2.7. It should be noted that both rules 2.47 and 2.106 stipulate that the administrator's remuneration shall be fixed *either* on a percentage basis *or* on a time cost basis. Any resolutions purporting to allow the administrator to be remunerated on whichever basis he chooses or whichever yields the higher remuneration will not be in accordance with the rule.

2.3. Insolvent Liquidations and Bankruptcies

2.3.1. The basis for fixing the remuneration is broadly the same for both insolvent liquidations and bankruptcies. The relevant provisions are Rules 4.127 – 4.131 for liquidations and Rules 6.138 – 6.142 for bankruptcies. The rules state that the remuneration shall be fixed either:

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

2.3.2. It is for the liquidation or creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if as a percentage to determine what percentage is to be applied. In arriving at its determination the committee shall have regard to:

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

2.3.3. If there is no committee, or the committee does not make the requisite determination, the remuneration may be fixed by a resolution of a meeting of creditors using the same criteria as would apply if fixed by the committee. A resolution specifying the terms on which the office holder is to be remunerated may be taken at the section 98 meeting (rule 4.53) or at the first meeting of creditors in compulsory liquidations and bankruptcies (rule 4.52 for compulsory liquidation; rule 6.80 for bankruptcy). As in the case of administrations, the rules require the percentage and time cost bases to be treated as mutually exclusive and not supplementary, and any resolution purporting to allow the office holder to choose which basis to apply will be in breach of the rules.

2.3.4. If the remuneration is not fixed as above, it will be in accordance with the relevant statutory scale. In cases where the company goes into liquidation, or the bankruptcy order is made, on or after 1 April 2004, the scale will be that set out in Schedule 6 to the Rules. In other cases it will be the scale laid down for official receivers in Schedule 2 to the Insolvency Regulations 1994, which is deemed still to apply in such cases. Both scales are the same, and are reproduced in Appendix B. Fees should not be drawn on the scale without first attempting to obtain the agreement of the committee or the creditors to a basis for the fixing of the remuneration, nor as an interim measure pending the agreement of the committee or creditors. This does not, however, preclude the fixing of fees by the committee or the creditors on the basis of the scale.

2.4. Members' Voluntary Liquidations

- 2.4.1. The basis for fixing the liquidator's remuneration in a member's voluntary liquidation is set out in rules 4.148A and 4.148B. The basis is the same as for insolvent liquidations, except that it is to be determined by the members of the company in general meeting and not by the creditors. In determining the basis of the liquidator's remuneration the members must have regard to the same factors as the creditors do in an insolvent liquidation.
- 2.4.2. If the remuneration is not fixed in this way, it will be in accordance with the relevant statutory scale. In cases where the company goes into liquidation on or after 1 April 2004, the scale will be that set out in Schedule 6 to the Rules. In other cases it will be the scale laid down for official receivers in Schedule 2 to the Insolvency Regulations 1994, which is deemed still to apply in such cases. The same observations apply to the application of percentage or time costs as set out in paragraph 2.3.3 above in relation to insolvent liquidations. Remuneration should not be drawn on the scale without first attempting to obtain the agreement of the members to a basis for fixing the remuneration, nor as an interim measure pending the agreement of the members.

2.5. Voluntary Arrangements

2.5.1. The fees, costs, charges and expenses which may be incurred for any of the purposes of a voluntary arrangement are set out in the Rules (rule 1.28 for company voluntary arrangements and rule 5.33 (previously rule 5.28) for individual voluntary arrangements). They are:

- any disbursements made by the nominee prior to the arrangement coming into effect, and any remuneration for his services as such agreed between himself and the company (or the administrator or liquidator, as the case may be) or the debtor (or the official receiver or trustee, as the case may be);
- any fees, costs, charges or expenses which
 - are sanctioned by the terms of the arrangement, or
 - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be).

The Rules also require the following matters to be stated or otherwise dealt with in the proposal (rule 1.3 for company voluntary arrangements; rule 5.3 for individual voluntary arrangements):

- the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses, and
 - the manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed.
- 2.5.2. It is for the creditors' meeting to decide whether to agree these terms along with the other provisions of the proposal. The creditors' meeting has the power to modify any of the terms of the proposal (with the consent of the debtor in the case of an individual voluntary arrangement), including those relating to the fixing of remuneration. The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to the fixing of remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration, provided such terms have been agreed by the creditors' meeting. Where a committee set up under the terms of a voluntary arrangement is given the power to fix remuneration, it

should be provided with the same information as if it were fixing remuneration in an administration.

2.6. Receiverships

Generally speaking the remuneration of a receiver appointed over property under powers contained in a document of charge will be a matter for agreement between the receiver and the holder of the charge under which he is appointed. In the case of a receiver appointed over the property of a company, there is provision under section 36 of the Insolvency Act 1986 for the court to fix the remuneration of the receiver on application by the liquidator. Such power is only to be exercised where the receiver's remuneration is excessive and not as a routine way of taxing receivers' costs (*Re Potters Oils (No. 2)*, [1986]1WLR 201; (1985) 1 BCC 99,593). Once such an order has been made, an application may be made to the court by either the liquidator or receiver to vary or amend it. There is no equivalent provision for receivers appointed over the property of an individual or a partnership.

2.7. Other types of appointment

Other appointments which may be encountered include receivers, special managers and provisional liquidators appointed by the court. In these cases the remuneration of the office holder is fixed by the court. When fixing the remuneration of a provisional liquidator the court will take into account the matters set out in rule 4.30, which is reproduced in Appendix A.

3. PROVISION OF INFORMATION WHEN SEEKING FEE APPROVAL

- 3.1. Members should be mindful at all times of the rights accorded to creditors in relation to fees under insolvency legislation, and when acting in an advisory capacity or as office holder should ensure that adequate steps are taken to bring those rights to their attention. Appendix 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. Members are required to ensure that information on how to access the explanatory note appropriate to the type of insolvency proceedings concerned or the equivalent information in some other suitable format, is made available to creditors before any resolution is passed to fix or approve the office holder's remuneration.
- 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. When seeking agreement to his fees, the office holder should provide sufficient supporting information to enable those responsible for approving his remuneration ('the approving body') 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.
- 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 fees during the course of the assignment, an up to date receipts and payments account should always be provided. Where the proposed fee is based on time costs the office holder should disclose to the approving body the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation

of what the office holder has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the office holder must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time spent has been properly given. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraphs 2.2.2 and 2.3.2 above. 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. New Regulation 36A requires insolvency office holders to provide certain information about time spent on a case, free of charge, upon request by specified persons. The persons entitled to ask for this information are –

- any creditor in the case;
- where the case relates to a company, any director or contributory of that company; and
- where the case relates to an individual, that individual.

The information which must be provided is -

- the total number of hours spent on the case by the 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 practitioner'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 insolvency practitioner, and requests must be made within two years from vacation of office.

This provision applies in any case where the insolvency practitioner is appointed on or after 1 April 2005.

- 3.6. The case records required to be maintained and retained under the Insolvency Practitioners Regulations 2005 include records of the amount of time spent on the case by the office holder and any persons assigned to assist in the administration of the case. This applies in any case where the insolvency practitioner is appointed on or after 1 April 2005.
- 3.7. Where the fee is charged on a percentage basis 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.
- 3.8. A receiver appointed in relation to a company should on request provide the information specified in paragraphs 3.4 and 3.6 to the company's liquidator.
- 3.9. 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. Members should advise directors when convening section 98 meetings that the notices despatched to creditors should include such a statement and be accompanied by 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 FEE APPROVAL

- 4.1. Where a resolution fixing the basis of fees 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 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 3.4. Where the fee is charged on a percentage basis the office holder should provide the details set out in paragraph 3.6 above regarding work 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. Where, in a liquidation or bankruptcy, a resolution specifying the terms on which the office holder is to be remunerated is passed at a creditors' meeting, there is no statutory requirement for further creditor approval for the drawing of remuneration. It should be borne in mind, however, that in such cases creditors have the right to requisition a meeting or to apply to the court if they consider the office holder's remuneration to be excessive. The office holder should provide creditors with sufficient information to enable them to decide whether to exercise those rights. The information provided in accordance with paragraph 3.4 should normally be sufficient for this purpose. Where, however, creditors make a reasonable request for further information, it should be provided.
- 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 fees, and in his reports to creditors.

5. ASSET REALISATIONS

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

6. EXPENSES AND 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 best practice is that only those costs that clearly meet the definition of disbursements, where there is specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party, are treated as disbursements recoverable without approval. In this statement these are referred to as 'category 1 disbursements' (approval not required). Category 1 disbursements will generally comprise external supplies of incidental services specifically

identifiable to the case, typically for items such as identifiable telephone calls, postage, case advertising, invoiced travel and properly reimbursed expenses incurred by personnel in connection with the case. Also included will be services specific to the case where these cannot practically be provided internally such as printing, room hire and document storage. Members should be prepared to disclose information about specific category 1 disbursements where reasonably requested.

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. Members are reminded that it is the office holder's obligation to satisfy himself of the appropriateness of disbursements.

7. PAYMENT IN FULL

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 fees. 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, expenses and disbursements have been calculated.

8. CLOSURE OF CASES

On the closure of a liquidation or bankruptcy there will frequently be a small residual balance of funds in hand, due to the unavoidable difficulty of calculating the final outcome with absolute precision. Such monies should be paid into the Insolvency Services Account as undistributed assets in accordance with regulations 18 and 31 of the Insolvency Regulations 1994. Where the funds are already held in the Insolvency Services Account IP Banking Unit should be notified by letter that they represent undistributed assets.

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 the new 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 the new SIP as far as the available records reasonably allow.
- 9.2. The present version (version 4) of the SIP has been revised to take account of legislative changes relating to remuneration introduced since that time, and will apply in all cases to which the new legislative provisions apply.

APPENDIX A

The following is the full text of the rules relating to the remuneration of office holders in the various types of proceedings covered by this statement of insolvency practice.

A.1 Administration

A.1.1 Petition presented before 15 September 2003

Rule 2.47 Fixing of remuneration

2.47(1) [Entitlement to remuneration] The administrator is entitled to receive remuneration for his services as such.

2.47(2) [How Fixed] The remuneration shall be fixed either:

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

2.47(3) [Determination under r. 2.47(2)] It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

2.47(4) [Matters relevant to r.2.47(3) determination] In arriving at that determination, the committee shall have regard to the following matters:

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

2.47(5) [If no committee or determination] If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

2.47(6) [Fixed by court] If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.

2.47(7) [Where joint administrators] Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

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

2.47(8) [Where administrator solicitor] If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the

creditors or the court.

Rule 2.48 Recourse of meeting of creditors

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

Rule 2.49 Recourse to the court

- 2.49(1)** **2.49(1) [Administrator may apply to court]** If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.
- 2.49(2)** **2.49(2) [Notice to committee members etc.]** The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.
- 2.49(3)** **[Where no committee]** If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.
- 2.49(4)** **[Costs of application]** The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

2.50 Creditors' claim that remuneration is excessive

- 2.50(1)** **[Creditor may apply to court]** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 2.50(2)** **[Power of court to dismiss etc.]** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.
- If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.
- 2.50(3)** **[Notice to administrator]** The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- 2.50(4)** **2.50(4) [Court Order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
- 2.50(5)** **[Costs of application]** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

A.1.2 Application or appointment made on or after 15 September 2003

Rule 2.106 Fixing of remuneration

- 2.106(1)** **[Entitlement to remuneration]** The administrator is entitled to receive remuneration for his services as such.
- 2.106(2)** **[How Fixed]** The remuneration shall be fixed either:

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

2.106(3) **[Determination under r. 2. 106 (2)]** It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

2.106(4) **2. 106 (4) [Matters relevant to r.2. 106 (3) determination]** In arriving at that determination, the committee shall have regard to the following matters:

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

2.106(5) **[If no committee or determination]** If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

2.106(5A) **[Approval where insufficient to pay unsecured creditors]** In a case where the administrator has made a statement under paragraph 52(1)(b), if there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by the approval of-

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

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

2.106(6) **[Fixed by court]** If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.

2.106(7) **[Where joint administrators]** Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

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

2.106(8) **[Where administrator solicitor]** If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Rule 2.107 Recourse to meeting of creditors

2.107(1) If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

2.107(2) In a case where the administrator has made a statement under paragraph 52(1)(b), if the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by the approval of-

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

Rule 2.108 Recourse to the court

2.108(1) **[Administrator may apply to court]** If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.

2.108(A) In a case where the administrator has made a statement under paragraph 52(1)(b), if the administrator considers that the remuneration fixed by the approval of the creditors in accordance with Rule 2.107(2) is insufficient, he may apply to the court for an order increasing its amount or rate.

2.108(2) **[Notice to committee members etc.]** The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard on the application.

2.108(3) **[Where no committee]** If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

2.108(4) **[Costs of application]** The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

2.109 Creditors' claim that remuneration is excessive

2.109(1) **[Creditor may apply to court]** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

2.109(2) **[Power of court to dismiss etc.]** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 7 days' notice, upon receipt of which the

applicant may require the court to list the application for a without notice hearing.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

2.109(3) **[Notice to administrator]** The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

2.109(4) **[Court Order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

2.109(5) **[Costs of application]** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

A.2 Provisional Liquidation

Rule 4.30 Remuneration

4.30(1) **[To be fixed by court]** The remuneration of the provisional liquidator (other than the official receiver) shall be fixed by the court from time to time on his application.

4.30(2) **[Matters to be taken into account]** In fixing his remuneration, the court shall take into account:

- a) the time properly given by him (as provisional liquidator) and his staff in attending to the company's affairs;
- b) the complexity (or otherwise) of the case;
- c) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;
- d) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties; and
- e) the value and nature of the property with which he has to deal.

4.30(3) **[Source of payment of remuneration etc.]** Without prejudice to any order the court may make as to costs, the provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 177) reimbursed:

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

or, in either case (the relevant funds being insufficient), out of the deposit under Rule 4.27.

4.30(3A) **[Power of retention]** Unless the court otherwise directs, in a case falling within paragraph (3)(a) above the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses.

4.30(4) **[Provisional liquidator other than official receiver]** Where a person other than the official receiver has been appointed provisional liquidator, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under the Rules, he shall pay the official receiver such sum (if any) as the court may direct.

A.3 Liquidation

Rule 4.127 Fixing of remuneration

4.127(1) **[Entitlement to remuneration]** The liquidator is entitled to receive remuneration for his services as such.

4.127(2) **[How fixed]** The remuneration shall be fixed either:

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

4.127(3) **[Determination under r. 4.127(2)]** Where the liquidator is other than the official receiver, it is for the liquidation committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

4.127(4) **[Matters relevant r. 4.127(3) determination]** In arriving at that determination, the committee shall have regard to the following matters:

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

4.127(5) **[If no committee or no determination]** If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.

4.127(6) **[Otherwise fixed]** Where the liquidator is not the official receiver and his remuneration is not fixed as above, the liquidator shall be entitled to remuneration fixed in accordance with the provisions of Rule 4.127A.

Where company in liquidation before 1 April 2004

4.127(6) **[Otherwise fixed]** If not fixed as above, the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.

4.127A Liquidator's entitlement to remuneration where it is not fixed under Rule 4.127

4.127A(1) This Rule applies where the liquidator is not the official receiver and his remuneration is not fixed in accordance with Rule 4.127.

4.127A(2) **[Application of scale]** The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by –

- a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the company (including any Value Added Tax thereon but after deducting any sums paid to secured creditors and any sums spent out of money received in carrying on the business of the company); and
- b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories.

4.127B **Liquidator's remuneration where he realises assets on behalf of chargeholder**

4.127B(1) **[Where liquidator sells for secured creditor]** This Rule applies where the liquidator is not the official receiver and realises assets on behalf of a secured creditor.

4.127B(2) **[Where charge is mortgage or fixed charge]** Where the assets realised for a secured creditor are subject to a charge which when created was a mortgage or a fixed charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 6 to the monies received by him in respect of the assets realised (including any sums received in respect of Value Added Tax thereon but after deducting any sums spent out of money received in carrying on the business of the company).

4.127B(3) **[Where charge is floating charge]** Where the assets realised for a secured creditor are subject to a charge which when created was a floating charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by–

- a) first applying the realisation scale set out in Schedule 6 to monies received by him from the realisation of those assets (including any Value Added Tax thereon but ignoring any sums received which are spent in carrying on the business of the company); and
- b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts.

4.128 **Other matters affecting remuneration**

Where company in liquidation before 1 April 2004

4.128(1) **[Where liquidator sells for secured creditor]** Where the liquidator sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to that which is chargeable in corresponding circumstances by the official receiver under general regulations.]

4.128(2) **[Where joint liquidators]** Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

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

4.128(3) **[If liquidator is a solicitor]** If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the liquidation committee, the creditors or the court.

4.129 **Recourse of liquidator to meeting of creditors**

4.129(1) If the liquidator's remuneration has been fixed by the liquidation committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

4.130 **Recourse to the court**

4.130(1) **[Liquidator may apply to court]** If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, or as under Rule 4.127(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

4.130(2) **[Notice to committee etc.]** The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

4.130(3) **[Where no committee]** If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

4.130(4) **[Costs of application]** The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the assets.

Rule 4.131 **Creditors' claim that remuneration is excessive**

4.131(1) **[Creditor may apply to court]** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

4.131(2) **[Power of court to dismiss etc.]** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

4.131(3) **[Notice to liquidator]** The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

4.131(4) **[Court order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

4.131(5) **[Costs of application]** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable out of the assets.

Rule 4.148A **Remuneration of liquidator in members' voluntary winding up**

4.148A(1) **[Entitlement]** The liquidator is entitled to receive remuneration for his services as such.

4.148A(2) **[How fixed]** The remuneration shall be fixed either:

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

and the company in general meeting shall determine whether the remuneration is to be fixed under subparagraph (a) or (b) and, if under subparagraph (a), the percentage to be applied as there mentioned.

4.148A(3) **[Matters in determination]** In arriving at that determination the company in general meeting shall have regard to the matters set out in paragraph (4) of Rule 4.127.

4.148A(4) **[Otherwise fixed]** Where the liquidator's remuneration is not fixed as above, the liquidator shall be entitled to remuneration calculated in accordance with the provisions of Rule 4.148B.

Where company in liquidation before 1 April 2004

4.148A(4) **[Otherwise fixed]** If not fixed as above, the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.

4.148A(5) **[Application of r. 4.128]** Rule 4.128 and Rule 4.127B shall apply in relation to the remuneration of the liquidator in respect of the matters there mentioned and for this purpose references in that Rule to 'the liquidation committee' and 'a meeting of creditors' shall be read as references to the company in general meeting.

4.148A(6) **[Liquidator may apply to court]** If the liquidator considers that the remuneration fixed for him by the company in general meeting, or as under paragraph (4), is insufficient, he may apply to the court for an order increasing its amount or rate.

4.148A(7) **[Notice to contributories]** the liquidator shall give at least 14 days' notice of an application under paragraph (6) to the company's contributories, or such one or more of them as the court may direct, and the contributories may nominate any one or more of their number to appear or be represented.

4.148A(8) **[Costs of application]** The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any contributory appearing or being represented on it, to be paid out of the assets.

4.148B **Liquidator's remuneration in members' voluntary liquidation where it is not fixed under Rule 4.148A**

4.148B(1) This Rule applies where the liquidator's remuneration is not fixed in accordance with Rule 4.148A.

4.148B(2) **[Application of scale]** The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by-

- a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the company (including any Valued Added Tax thereon but after deducting any sums paid to secured creditors and any sums spent out of money received in carrying on the business of the company); and
- b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories

A.4 Bankruptcy

6.138 Fixing of remuneration

6.138(1) [Entitlement to remuneration] The trustee is entitled to receive remuneration for his services as such.

6.138(2) [How fixed] The remuneration shall be fixed either:

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

6.138(3) [Determination under r. 6.138(2)] Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine whether his remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

6.138(4) [Matters relevant to r. 6.138(3) determination] In arriving at that determination, the committee shall have regard to the following matters:

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

6.138(5) [If no committee or no determination] If there is no creditors' committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

6.138(6) [Otherwise fixed] Where the trustee is not the official receiver and his remuneration is not fixed as above, the trustee shall be entitled to remuneration calculated in accordance with Rule 6.138A.

Where bankruptcy order made before 1 April 2004

6.138(6) [Otherwise fixed] If not fixed as above, the trustee's remuneration shall be on the scale laid down for the official receiver by general regulations.]

6.138A Trustee's remuneration where it is not fixed in accordance with Rule 6.138

6.138A(1) This Rule applies where the trustee is not the official receiver and his remuneration is not fixed in accordance with Rule 6.138.

6.138A(2) [Application of scale] Subject to paragraph (3), the trustee shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by -

- a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the bankrupt (including any Valued Added Tax thereon but after deducting any sums

paid to secured creditors and any sums spent out of money received in carrying on the business of the bankrupt); and

- b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the bankrupt (including sums paid in respect of preferential debts).

6.138A(3) **[Limit on realisation scale]** That part of the trustee's remuneration calculated by reference to the realisation scale shall not exceed such sum as is arrived at by applying the realization scale to such part of the bankrupt's assets as are required to pay the items referred to in paragraph (4).

6.138A(4) The items referred to in paragraph (3) are –

- a) the bankruptcy debts (including any interest payable by virtue of section 328(4)) to the extent required to be paid by these Rules (ignoring those debts paid otherwise than out of the proceeds of the realisation of the bankrupt's assets or which have been secured to the satisfaction of the court);
- b) the expenses of the bankruptcy other than
 - (i) fees or the remuneration of the official receiver; and
 - (ii) any sums spent out of money received in carrying on the business of the bankrupt;
- c) fees payable under the Insolvency Proceedings (Fees) Order 2004; and
- d) the remuneration of the official receiver.

Rule 6.139 Other matters affecting remuneration

6.139(1) **[Where trustee sells for secured creditor]** Where the trustee (not being the official receiver) realises assets on behalf of a secured creditor, the trustee is entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 6 to the monies received by him in respect of the assets realised (including any Value Added Tax thereon).

Where bankruptcy order made before 1 April 2004

6.139(1) **[Where trustee sells for secured creditor]** Where the trustee sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to the remuneration chargeable in corresponding circumstances by the official receiver under general regulations.

6.139(2) **[Where joint trustees]** Where there are joint trustees, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

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

6.139(3) **[If trustee is a solicitor]** If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

6.140 Recourse of trustee to meeting of creditors

6.140 If the trustee's remuneration has been fixed by the creditors' committee, and he

considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Rule 6.141 Recourse to the court

6.141(1) [Trustee may apply to court] If the trustee considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, or as under Rule 6.138(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

6.141(2) [Notice to committee etc.] The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

6.141(3) [If no committee] If there is no creditors' committee, the trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

6.141(4) [Costs of application] The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the estate.

Rule 6.142 Creditor's claim that remuneration is excessive

6.142(1) [Creditor may apply to court] Any creditor of the bankrupt may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the trustee's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

6.142(2) [Court may dismiss application etc.] The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

6.142(3) [Notice to trustee] The applicant shall, at least 14 days before the hearing, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

6.142(4) [Court order] If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

6.142(5) [Costs of application] Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.

A.5 Voluntary Arrangements

A.5.1 Company Voluntary Arrangements

Rule 1.28 Fees, costs, charges and expenses

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

- a) any disbursements made by the nominee prior to the decision approving the arrangement taking effect under section 4A, and any remuneration for his services as such agreed between himself and the company (or, as the case may be, the administrator or liquidator);

- b) any fees, costs, charges or expenses which:
 - (i) are sanctioned by the terms of the arrangement, or
 - (ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

Rule 1.3 Contents of proposal

1.3(2) [Other matters] The following matters shall be stated, or otherwise dealt with, in the directors' proposal:

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

A.5.2 Individual Voluntary Arrangements

5.33 Fees, costs, charges and expenses [previously rule 5.28, which still applies to pre-2003 cases]

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

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

Rule 5.3 Contents of proposal

5.3(2) [Other matters] The following matters shall be stated, or otherwise dealt with, in the proposal:

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

A.6 Receiverships

Section 36 Court's power to fix remuneration

36(1) [Remuneration] The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.

36(2) [Extent of court's power] The court's power under subsection (1), where no previous order has been made with respect thereto under the subsection:

- a) extends to fixing the remuneration for any period before the making of the order or the application for it,
- b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and

- c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

36(3) **[Variation, amendment of order]** The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

A.7 All cases

Information about time spent to be provided by insolvency practitioner

Regulation 36A, Insolvency Regulations 1994

- 36A.**
1. Subject as set out in this regulation, in respect of any case in which he acts, an insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).
 2. The persons referred to in paragraph (1) are—
 - 2.1. any creditor in the case;
 - 2.2. where the case relates to a company, any director or contributory of that company; and
 - 2.3. where the case relates to an individual, that individual.
 3. The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the practitioner's appointment and ending with the relevant date the following details—
 - 3.1. the total number of hours spent on the case by the practitioner or any staff assigned to the case during that period;
 - 3.2. for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
 - 3.3. the number of hours spent by each grade of staff during that period.
 4. In relation to paragraph (3) the 'relevant date' means the date next before the request on which the practitioner has completed any period in office which is a multiple of six months or, where the practitioner has vacated office, that date that he vacated office.
 5. Where an insolvency practitioner has vacated office, an obligation to provide information under this regulation shall only arise in relation to a request that is made within 2 years of the date he vacates office.
 6. Any statement required to be provided to any person under this regulation shall be supplied within 28 days of the date of the making of the request to the practitioner.

7. In this Regulation the expression 'insolvency practitioner' shall be construed in accordance with section 388 of the Insolvency Act 1986.

Regulation 3(7), Insolvency Regulations 1994

- 3(7)-** Regulation 36A applies in any case where an insolvency practitioner is appointed on or after 1st April 2005.

APPENDIX B

**The official receiver's scale and
Schedule 6 to the Insolvency Rules 1986**

The realisation scale

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

The distribution scale

i on the first £5,000 or fraction thereof	10%
ii on the next £5,000 or fraction thereof	7.5%
iii on the next £90,000 or fraction thereof	5%
iv on all further sums distributed	2.5%