

Statement of Insolvency Practice 9 England and Wales

PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES FROM AN ESTATE INTRODUCTION

1. The particular nature of an insolvency office holder's position renders transparency and fairness of primary importance in all their dealings. Creditors and other interested parties¹ with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to the approval and disclosure of payments to insolvency office holders and their associates have been properly complied with.

2. The term associate is defined in the insolvency legislation. For the purposes of this statement of insolvency practice, office holders should, in addition to the definition in the insolvency legislation, consider the substance or likely perception of any association between the insolvency practitioner, their firm, or an individual within the insolvency practitioner's firm and the recipient of a payment. Where a reasonable and informed third party might consider there would be an association, payments should be treated as if they are being made to an associate, notwithstanding the nature of the association may not meet the definition in the Insolvency Act 1986. Where the remainder of this SIP refers to "associates", it should be read as including recipients of these payments.

3. This statement applies to all forms of insolvency proceedings under the Insolvency Act 1986. Nothing within this statement obligates an office holder to provide a fees estimate where one is not required by statute.

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 a creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor.

PRINCIPLES

4. All payments from an estate should be fair and reasonable and proportionate to the insolvency appointment.

5. Payments to an office holder from an estate should be fair and reasonable reflections of the work necessarily and properly undertaken in an insolvency appointment.

6. Payments to the associates of an office holder from an estate should be fair and reasonable reflections of the work necessarily and properly undertaken in an insolvency appointment.

7. All payments should be directly attributable to the estate from which they are being made or sought.

8. Payments should not be approved by any party with whom the office holder has a professional or personal relationship which gives rise to a conflict of interest.

Commented [MB1]: This is too vague. I have "an association" with the IPA, but I would hope that this would not be considered as a threat to my objectivity. Para 9 makes a far better stab at dealing with perceived threats.

Commented [MB2]: Although I prefer para 9's definition, I think that this is required in the intro.

Commented [MB3]: Is this meant to exclude MVLs? R1.1(2) includes MVLs in "insolvency proceedings", so the SIP will need to be clearer if the intention is to exclude MVLs. It would also be helpful if the SIP could state whether or not moratoria are included.

Commented [MB4]: These are unhelpful: para 4 refers to "all payments", but 5 and 6 only refer to connected payments... so does this mean that an unconnected payment does not need to be a fair and reasonable reflection of the work necessarily and properly undertaken?? To avoid this nonsensical conclusion, I recommend that para 4 restrict itself only to "payments to insolvency office holders and their associates [and other parties perceived to present a threat to objectivity]" as per the title of the SIP. In fact, para 4 seems redundant... unless by "proportionate", you mean something other than that the payment should be proportionate to the work necessarily and properly undertaken (in which case, please explain in para 4 what you mean by "proportionate to the insolvency appointment")??

Commented [MB5]: This appears to contradict para 31, which states that "shared" expenses may be discharged from estates.

Commented [MB6]: What, *all* payments? IPs' managers "approve" payments all the time, e.g. to advertising agents, solicitors, bond providers...

Commented [MB7]: Please see my answer to Q2 regarding the apparently excessively wide scope of this.

9. Payments that could reasonably be perceived as presenting a threat to the office holder's objectivity or independence by virtue of a professional or personal relationship, including to an associate, should not be made from the estate unless disclosed and approved in the same manner as an office holder's remuneration or category 2 expenses.

10. Those responsible for approving payments from an estate to an office holder or their associates should be provided with sufficient information to enable them to make an informed judgement about the reasonableness of the office holder's requests.

11. Disclosures by an office holder should be of assistance to creditors and other interested parties¹ in understanding what was done, why it was done, and how much it cost.

12. Information provided by an office holder should be presented in a manner which is transparent, consistent throughout the life of the appointment and useful to creditors and other interested parties¹, whilst being proportionate to the circumstances of the appointment.

KEY COMPLIANCE STANDARDS

Provisions of general application

13. An office holder should disclose:

a) all payments, arising from an insolvency appointment to the office holder or their associates;

b) the form and nature of any professional or personal relationships between the office holder and their associates.

14. An office holder should inform creditors and other interested parties¹ of their rights under insolvency legislation. Creditors should be advised how they may access suitable information setting out their rights within the first communication with them and in each subsequent report. An insolvency practitioner is not precluded from providing information, including a fees estimate, within pre-appointment communications (such as when assisting directors in commencing an insolvency process).

15. Where an office holder sub-contracts work that could otherwise be carried out by the office holder or their staff, this should be drawn to the attention of creditors and other interested parties¹ with an explanation of why it is being done.

16. The key issues of concern to creditors and other interested parties¹ will commonly be:

a) the work the office holder anticipates will be done and why that work is necessary;

b) the anticipated payment for that work;

c) whether it is anticipated that the work will provide a financial benefit to creditors, and if so what anticipated benefit (or if the work provides no direct financial benefit, but is required by statute);

d) the work actually done and why that work was necessary;

e) the actual payment for the work, as against any estimate provided;

f) whether the work has provided a financial benefit to creditors, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute).

17. When providing information about payments from an insolvent estate the office holder should do so in a way which clearly explains the key issues. Narrative explanations should be provided to support any numerical information supplied. Such an approach allows creditors and other interested parties¹ to better recognise the nature of an office holder's role and the work they intend to undertake, or have undertaken, in accordance with the key issues.

Commented [MB8]: Is this meant to exclude MVLs? As mentioned above, I'm still not sure what the scope of this draft SIP is. Also... if, say, an Admin turns out to have sufficient money to pay all creditors, then no such information needs to be provided??

18. The following are not permissible as either remuneration or an expense:

- a) an expense or any other charge calculated as a percentage of remuneration;
- b) an administration fee or charge additional to an office holder's remuneration;
- c) the recovery of any overheads other than those absorbed in the charge out rates.

Provisions of specific application

Basis of remuneration

19. The office holder should provide an indication of the likely return to creditors when seeking approval for the basis of their remuneration.

20. When approval for a set fee or a percentage basis is sought, the office holder should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the office holder anticipates will be undertaken. Where a set amount or a percentage basis is being used, an explanation should be provided of the direct costs included. The office holder should not seek to separately recover sums already included in a set amount or percentage basis fee and should be transparent in presenting any information.

21. Where remuneration is sought on more than one basis, it should be clearly stated to which part of the office holder's activities each basis relates.

22. When providing a fees estimate the office holder should supply that information in sufficient time for creditors (including when acting through a committee) to be able to make an informed judgement about the reasonableness of the office holder's requests. Fees estimates should be based on all of the information available to the office holder at the time that the estimate is provided.

23. When providing a fees estimate of time to be spent, creditors and other interested parties¹ may find a blended rate² (or rates) and total hours anticipated to be spent on each part of the anticipated work more easily understandable and comparable than detail covering each grade or person working on the appointment. The estimate should also clearly describe what activities are anticipated to be conducted in respect of the estimated fee. When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each part should be provided for comparison purposes.

24. The information provided in the fees estimate may not be presented on the basis of alternative scenarios and/or provide a range of estimated charges. However for other payments that an office holder anticipates will, or are likely to be, made, it is acceptable to provide a range, or repeat a range quoted by a third party, for example legal costs in litigation.

25. To provide creditors and other interested parties¹ with sufficient information to make an informed judgement, office holders should divide the narrative explanations and any fees estimate provided, into areas such as:

- a) administration (including statutory reporting)
- b) realisation of assets
- c) creditors (claims and distribution)
- d) investigations
- e) trading (where applicable)
- f) appointment specific matters (where applicable).

² "A blended rate" is calculated as the prospective average cost per hour for the appointment (or category of work in the appointment), based upon the estimated time to be expended by each grade of staff at their specific charge out rate. SIP 9 E&W clean Page 4 of 5

Commented [MB9]: How else could an overhead be dealt with by a firm?! If they're not charged directly to the estate and they're not absorbed in the charge-out rates, then... they won't get paid or do IPs have access to a money-tree?? It seems to me also that IPs who charge fees as a set amount or on percentages must also be "absorbing" overheads into those fees.

Commented [MB10]: This would appear to prohibit IPs from seeking fee approval at an early stage, which I believe would be contrary to the InsS' policy intention behind the 2015 Rule changes. How do you propose IPs should deal with speculative work: are you expecting them to work without fee approval and only get this when the outcome is clearer? This seems a step backwards to me.

26. These are examples of common activities and not an exhaustive list. Alternative or further sub-divisions may be appropriate, depending on the nature and complexity of the appointment and the bases of remuneration sought and/or approved. It is unlikely that the same divisions will be appropriate in all appointments and an office holder should consider what divisions are likely to be appropriate and proportionate in the circumstances of each appointment.

27. This statement does not mandate any particular fee basis. An insolvency practitioner's business model may influence the fee basis they choose. However, whatever the business model, the insolvency practitioner's commercial approach cannot override the principle that any work done for which payment is sought must be necessarily and properly undertaken in the context of an insolvency appointment.

Expenses

28. Expenses are any payments from the estate which are neither an office holder's remuneration nor a distribution to a creditor. Expenses also includes disbursements. Disbursements are payments which are first met by, and then reimbursed to, an office holder or their firm.

29. Expenses are divided into those that do not need advance approval before they are charged to the estate (category 1) and those that do (category 2).

□ Category 1 expenses: These are payments to persons who are not an associates. Category 1 expenses can be discharged from the estate paid without prior approval.

□ Category 2 expenses: These are payments to associates. Before being paid discharged from the estate, category 2 expenses require approval in the same manner as an office holder's remuneration.

30. When seeking approval of category 2 expenses, an office holder should explain for each payment the basis on which payment is proposed to being made.

31. Any shared or allocated expenses payments incurred (or proposed to be incurred) by the office holder or their firm are to be treated as category 2 expenses and approval sought before payment they are discharged from the estate. This is irrespective of whether the payment is being made to an associate, because the office holder will be deciding how the expenses are being shared or allocated between insolvency appointments. Requiring approval of these payments enables those who are approving the expenses to confirm that the approach being taken by the office holder is reasonable.

32. If an office holder has obtained approval for the basis of category 2 expenses, 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.

Reports to creditors and other interested parties

33. Any disclosure by an office holder of payments should be of assistance to those who have a financial interest in the level of payments from an insolvent estate in understanding what was done, why it was done, and how much it costs.

34. Reports to creditors and other interested parties should include a narrative update in respect of the office holder's activity during the period being reported upon, using consistent divisions for each part of the work reported upon, as far as possible.

35. When reporting payments during a period, the office holder should use a consistent format throughout the appointment and provide figures for both the period being reported upon and on a cumulative basis.

Commented [MB11]: This is not true. Expenses are not payments, but rather they can be paid. Also, not all expenses are paid from an estate – this does not mean that they are not expenses, but rather they could be discharged from the IP/firm (as this sentence explains re disbursements)... and may not be charged to the estate at all.

Commented [MB12]: So... if the firm pays the bond premium and then seeks reimbursement from the estate, is this no longer a Cat 1? Presumably, you mean that the original cost was incurred to a non-associate, rather than that the payment (from the estate) is to a non-associate?

Commented [MB13]: Given para 3, presumably this does not mean that detail to the extent of a fee estimate needs to be provided??

Commented [MB14]: Approval of the expenses or approval of the basis of expenses – see para 32 – or perhaps even approval that they may be discharged from the estate??

Commented [MB15]: Or for each charge? IPs don't normally ask for, say, approval to pay £x mileage one month and £x mileage for another.

Commented [MB16]: The previous SIP9 seems more successful. Do you no longer mean the basis on which the Cat 2 is charged?? If not, what does this mean, what do you expect to see?

Commented [MB17]: As above, para 30 suggests that it is the expenses that are being approved, not their basis

36. An office holder should endeavour to use consistent divisions throughout the appointment. The use of additional categories or further division may become necessary where a task was not foreseen at the commencement of the appointment.

37. Requests for additional information about payments 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 appointment.

Pre-appointment costs

38. Where recovery of pre-appointment costs is expressly permitted by statute and approval is sought from creditors for payment from the estate of these costs, disclosure should follow the principles and standards contained in this statement.

Provision of information

39. In order to facilitate information requests under statute or to support the reporting of the office holder's remuneration, time recording systems used by office holders should record time in units of not greater than six minutes for each grade of staff used.

40. Where realisations are sufficient for creditors to be paid in full with interest, the creditors will not have the principal financial interest in the level of payments from the estate. Once this has been established by the office holder, they should provide the beneficiaries of the anticipated surplus, on request, with information in accordance with the principles and standards contained in this statement.

41. When an office holder's appointment is followed by the appointment of another office holder, 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. This is in addition to any statutory obligations imposed on an office holder to provide information.

Effective Date: