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# CARMICHAEL & CO

## GUIDE TO FEES

### (ALL CASES IF APPOINTED AFTER 1 OCTOBER 2015)

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#### Statement of Insolvency Practice 9

Extracts from The Insolvency (England and Wales) Rules 2016  
relating to remuneration

Carmichael & Co Remuneration and Disbursements Policy

Carmichael & Co Complaints Policy

This leaflet should be read in conjunction with

R3 Guide to Liquidators Fees (appointed after 1 October 2015)

The case specific fees estimate (if prepared)

(all of which can be downloaded from the Carmichael & Co  
website or are available on request)

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Marc Landsman is licensed to act as an Insolvency Practitioner in the UK  
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## **Introduction**

The law covering how Licensed Insolvency Practitioners charge for what we do, and what information we should provide so that you can see why we think we are charging a fair rate, was drastically changed in October 2015 (after some relatively minor changes in the few years before) for most insolvency appointments made from that time. This leaflet explains how we now intend to apply the legislation when acting as office holder in insolvency appointments. The legislation allows different fee bases to be used for different tasks within the same appointment. The fee basis, or combination of bases, set for a particular appointment is/are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the Court.

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at [www.creditorinsolvencyguide.co.uk](http://www.creditorinsolvencyguide.co.uk). Details about how an office holder's fees may be approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) and can be accessed at [carmichaelsinsolvency.co.uk/our-fees/fee-leaflets](http://carmichaelsinsolvency.co.uk/our-fees/fee-leaflets), where there is the latest version of this leaflet as well as other ones we think may help you. If you ask us, a paper copy of any leaflets will be sent to you free of charge.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. The report will provide a breakdown of the remuneration drawn. If approval has been obtained for remuneration on a time costs basis, i.e. by reference to time properly spent by members of staff of the practice at our standard charge out rates, the time incurred will also be disclosed, whether drawn or not, together with the average, or "blended" rates of such costs. Under the legislation, any such report must disclose how creditors can seek further information and challenge the basis on which the fees are calculated and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

Under some old legislation, which still applies for insolvency appointments commenced before 6 April 2010, there is no equivalent mechanism for fees to be challenged.

The remuneration rules were changed again in April 2017 following the enactment of The Insolvency (England and Wales) Rules 2016.

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

### **PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES**

#### **Introduction**

1. The particular nature of an insolvency office holder's position renders transparency and fairness of primary importance in all their dealings. Creditors and other interested parties 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, with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to approval and disclosure of fees and expenses have been properly complied with.
2. This statement applies to all forms of proceedings under the Insolvency Act 1986. Nothing within this SIP obligates a practitioner to provide a fee estimate where one is not required by statute.

#### **Principles**

3. Payments to an office holder or their associates, and expenses incurred by an office holder, should be fair and reasonable reflections of the work necessarily and properly undertaken.
4. Those responsible for approving payments to an office holder or their associates should be provided with sufficient information to make an informed judgement about the reasonableness of the office holder's requests.
5. Information provided by an office holder should be presented in a manner which is transparent, consistent throughout the life of the case and useful to creditors and other interested parties, whilst being proportionate to the circumstances of the case.

### **KEY COMPLIANCE STANDARDS**

#### **Provisions of general application**

6. An office holder should disclose:
  - a) payments, remuneration and expenses arising from an insolvency appointment to the office holder or his or her associates;
  - b) any business or personal relationships with parties responsible for approving his or her remuneration or who provide services to the office holder in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.
7. An office holder should inform creditors and other interested parties of their rights under insolvency legislation. 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 fee estimate, within pre-appointment communications (such as when assisting directors in commencing an insolvency process).

8. Where an office holder sub-contracts out work that could otherwise be carried out by the office holder or his or her staff, this should be drawn to the attention of creditors with an explanation of why it is being done.
9. The key issues of concern to those who have a financial interest in the level of payments from the insolvency estate will commonly be:
  - a) the work the office holder anticipates will be done and why that work is necessary;
  - b) the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
  - 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 costs of the work, including any expenses incurred in connection with it, 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).

When providing information about payments, fees and expenses to those with a financial interest in the level of payments from an insolvent estate, the office holder should do so in a way which facilitates clarity of understanding of these key issues. Narrative explanations should be provided to support any numerical information supplied. Such an approach allows creditors and other interested parties 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. Where it is practical to do so, the office holder should provide an indication of the likely return to creditors when seeking approval for the basis of their remuneration.

10. When approval for a fixed amount 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.
11. When providing a fee estimate the office holder should supply that information in sufficient time to facilitate that body making an informed judgement about the reasonableness of the office holder's requests. Fee estimates should be based on all of the information available to the office holder at the time that the estimate is provided and may not be presented on the basis of alternative scenarios and/or provide a range of estimated charges.
12. Each part of an office holder's activities will require different levels of expertise, and therefore related cost. It will generally assist the understanding of creditors and other interested parties to divide the office holder's narrative explanations and any fee 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) case specific matters (where applicable).
13. 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 case and the bases of remuneration sought and/or approved. It is unlikely that the same divisions will be appropriate in all cases and an office holder should consider what divisions are likely to be appropriate and proportionate in the circumstances of each case.
14. When providing a fee estimate of time to be spent, creditors and other interested parties may find a blended rate [“A blended rate” is calculated as the prospective average cost per hour for the case (or category of work in the case), based upon the estimated time to be expended by each grade of staff at their specific charge out rate] (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 case. 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.
15. Where remuneration is sought on more than one basis, it should be clearly stated to which part of the office holder’s activities the basis relates. In all cases, an office holder should endeavour to use consistent divisions throughout the duration of the case. The use of additional categories or further division may become necessary where a task was not foreseen at the commencement of the appointment.

### **Reports to creditors and other interested parties**

16. Any disclosure by an office holder of payments, remuneration and expenses 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.
17. Irrespective of the basis or bases of remuneration approved, reports to creditors and 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.
18. When reporting the amount of remuneration charged or expenses incurred during a period, the office holder should use a consistent format throughout the life of the case and provide figures for both the period being reported upon and on a cumulative basis.
19. Requests for additional information about payments to an office holder or their associates, or about expenses incurred by an office holder, should be treated by an office

holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the case.

## **Expenses**

20. Expenses are amounts properly payable by the office holder from the estate which are not otherwise categorised as the office holder's remuneration or as a distribution to a creditor or creditors. These may include, but are not limited to, legal and agents' fees, trading expenses and tax liabilities. When providing details of the expenses an office holder anticipates will, or are likely to be, incurred it is acceptable to provide a range, or repeat a range quoted by a third party (for instance for legal costs in litigation).

## **Disbursements**

21. Disbursements are expenses met by and reimbursed to an office holder in connection with an insolvency appointment and will fall into two categories; Category 1 and Category 2.
22. Category 1 disbursements: These are payments to independent third parties where there is specific expenditure directly referable to the appointment in question. Category 1 disbursements can be drawn without prior approval, although an office holder should be prepared to disclose information about them in the same way as any other expenses.
23. Category 2 disbursements: These are expenses that are directly referable to the appointment in question but not to a payment to an independent third party. They may include shared or allocated costs that may be incurred by the office holder or their firm, and that can be allocated to the appointment on a proper and reasonable basis. Category 2 disbursements require approval in the same manner as an office holder's remuneration. When seeking approval, an office holder should explain, for each category of cost, the basis on which the charge is being made. If an office holder has obtained approval for the basis of Category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the office holder is replaced.
24. The following are not permissible as disbursements:
  - a) a charge calculated as a percentage of remuneration;
  - b) an administration fee or charge additional to an office holder's remuneration;
  - c) recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

## **Pre-appointment costs**

25. Where recovery of pre-appointment cost is expressly permitted and approval is sought for the payment of outstanding costs from the estate, disclosure should follow the principles and standards contained in this statement. Disclosure should also be made of amounts already paid to the office holder in respect of pre-appointment costs, giving the amounts paid, the name of the payor and its relationship to the estate and the nature of the payment.

## **Payments to associates**

26. Where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship, an office holder should take particular care to ensure that the best value and service is being provided. An office holder should also have regard to relationships where the practice is held out to be part of a national or international network.
27. Payments that could reasonably be perceived as presenting a threat to the office holder's objectivity by virtue of a professional or personal relationship should not be made unless disclosed and approved in the same manner as an office holder's remuneration or category 2 disbursements.

## **Provision of information to successive office holders**

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

## **Provision of information**

29. In order to facilitate information requests under statute or to support the reporting of remuneration, time recording systems used by insolvency practitioners should record time units of not greater than 6 minutes for each grade of staff used.
30. Where realisations are sufficient for payment of creditors in full with interest, the creditors will not have the principal financial interest in the level of remuneration. An office holder should provide the beneficiaries of the anticipated surplus, on request, with information in accordance with the principles and standards contained in this statement.

Effective Date: 1 December 2015

# **EXTRACTS FROM THE INSOLVENCY (ENGLAND AND WALES) RULES 2016 RELATING TO REMUNERATION**

## **REPORTING AND REMUNERATION OF OFFICE-HOLDERS**

Note: this Part does not apply to the official receiver acting as an office-holder.

### **18.1 Scope of Part 18 and interpretation**

- (1) This Part applies to administration, winding up and bankruptcy.
- (2) However this Part does not apply to the official receiver as office-holder or in respect of any period for which the official receiver is the office-holder.

- (3) In particular an office-holder other than the official receiver is not required to make any report in respect of a period during which the official receiver was office-holder.
- (4) In this Part “committee” means either or both of a creditors’ committee and a liquidation committee as the context requires.

## **18.2 Reporting by the office-holder**

The office-holder in an administration, winding up or bankruptcy must prepare and deliver reports in accordance with this Chapter.

## **18.3 Contents of progress reports in administration, winding up and bankruptcy**

- (1) The office-holder’s progress report in an administration, winding up and bankruptcy must contain the following—
  - (a) identification details for the proceedings;
  - (b) identification details for the bankrupt;
  - (c) identification and contact details for the office-holder;
  - (d) the date of appointment of the office-holder and any changes in the office-holder in accordance with paragraphs (3) and (4);
  - (e) details of progress during the period of the report, including a summary account of receipts and payments during the period of the report;
  - (f) the information relating to remuneration and expenses required by rule 18.4;
  - (g) the information relating to distributions required by rules 18.10 to 18.13 as applicable;
  - (h) details of what remains to be done; and
  - (i) any other information of relevance to the creditors.
- (2) The receipts and payments account in a final progress report must state the amount paid to unsecured creditors by virtue of the application of section 176A.
- (3) A change in the office-holder is only required to be shown in the next report after the change.
- (4) However if the current office-holder is seeking the repayment of pre-administration expenses from a former office-holder the change in office-holder must continue to be shown until the next report after the claim is settled.
- (5) Where the period of an administrator’s appointment is extended the next progress report after the date the extension is granted must contain details of the extension.
- (6) Where an administration has converted to a voluntary winding up the first progress report by the liquidator must include a note of any information received by the liquidator from the former administrator under rule 3.60(5) (matters occurring after the date of the administrator’s final progress report).

## **18.4 Information about remuneration**

- (1) The information relating to remuneration and expenses referred to in rule 18.3(1)(f) is as follows—
  - (a) the basis fixed for the remuneration of the office-holder under rules 18.16 and 18.18 to 18.21 as applicable, (or, if not fixed at the date of the report, the steps taken during the period of the report to fix it);
  - (b) if the basis of remuneration has been fixed, a statement of—
    - (i) the remuneration charged by the office-holder during the period of the report, and

- (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the office-holder during the periods covered by the previous reports, together with a description of the things done by the office-holder during those periods in respect of which the remuneration was charged;
- (c) where the basis of the remuneration is fixed as a set amount under rule 18.16(2)(c), it may be shown as that amount without any apportionment to the period of the report;
- (d) a statement of the expenses incurred by the office-holder during the period of the report;
- (e) a statement setting out whether at the date of the report—
  - (i) in a case other than a members' voluntary winding up, the remuneration expected to be charged by the office-holder is likely to exceed the fees estimate or any approval given under rule 18.16(4),
  - (ii) the expenses incurred or expected to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration, and
  - (iii) the reasons for that excess; and
- (f) a statement of the rights of creditors and, in a members' voluntary winding up, of members—
  - (i) to request information about remuneration or expenses under rule 18.9, and
  - (ii) to challenge the office-holder's remuneration and expenses under rule 18.34.
- (2) The information about remuneration and expenses is required irrespective of whether payment was made in respect of them during the period of the report.

### **18.5 Information about pre-administration costs**

- (1) Where the administrator has made a statement of pre-administration costs under rule 3.35(10)(a)—
  - (a) if they are approved under rule 3.52, the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;
  - (b) while any of the costs remain unapproved each successive report must include a statement of any steps taken to get approval.
- (2) However if either the administrator has decided not to seek approval, or another insolvency practitioner entitled to seek approval has told the administrator of that practitioner's decision not to seek approval then—
  - (a) the next report after that must include a statement of whichever is the case; and
  - (b) no statement under paragraph (1)(b) is required in subsequent reports.

### **18.6 Progress reports in administration: timing**

- (1) The administrator's progress report in an administration must cover the periods of—
  - (a) six months starting on the date the company entered administration; and
  - (b) each subsequent period of six months.
- (2) The periods for which progress reports are required under paragraph (1) are unaffected by any change in the administrator.

- (3) However where an administrator ceases to act the succeeding administrator must, as soon as reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding administrator thinks the creditors should be informed.
- (4) The administrator must deliver a copy of a report to the registrar of companies and the creditors within one month of the end of the period covered by the report unless the report is a final progress report under rule 3.55.
- (5) An administrator who makes default in delivering a progress report within the time limit in paragraph (4) is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

### **18.7 Progress reports in voluntary winding up: timing**

- (1) This rule applies for the purposes of sections 92A and 104A(a) and prescribes the periods for which reports must be made.
- (2) The liquidator's progress reports in a voluntary winding up must cover the periods of—
  - (a) 12 months starting on the date the liquidator is appointed; and
  - (b) each subsequent period of 12 months.
- (3) The periods for which progress reports are required under paragraph (2) are unaffected by any change in the liquidator.
- (4) However where a liquidator ceases to act the succeeding liquidator must, as soon as reasonably practicable after being appointed, deliver a notice to the members (in a members' voluntary winding up) or to members and creditors (in a creditors' voluntary winding up) of any matters about which the succeeding liquidator thinks the members or creditors should be informed.
- (5) A progress report is not required for any period which ends after the date to which a final account is made up under section 94 or 106(b) and is delivered by the liquidator to members (members' voluntary winding up) or to members and creditors (creditors' voluntary winding up).
- (6) The liquidator must send a copy of each progress report within two months after the end of the period covered by the report to—
  - (a) the registrar of companies (who is a prescribed person for the purposes of sections 92A and 104A);
  - (b) the members; and
  - (c) in a creditors' voluntary liquidation, the creditors.

### **18.8 Progress reports in winding up by the court and bankruptcy: timing**

- (1) The liquidator or trustee's progress report in a winding up by the court or bankruptcy must cover the periods of—
  - (a) 12 months starting on the date a person other than the official receiver is appointed liquidator or trustee; and
  - (b) each subsequent period of 12 months.
- (2) The periods for which progress reports are required under paragraph (1) are unaffected by any change in the liquidator or trustee unless at any time the official receiver becomes liquidator or trustee in succession to another person in which case—
  - (a) the current reporting period under paragraph (1) ends; and
  - (b) if a person other than the official receiver is subsequently appointed as liquidator or trustee a new period begins under paragraph (1)(a).

- (3) Where a liquidator or trustee ceases to act the succeeding liquidator or trustee must as soon as reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding liquidator or trustee thinks the creditors should be informed.
- (4) A progress report is not required for any period which ends after the date to which a final account or report is made up under section 146 (winding up by the court) or section 331 (bankruptcy)(a) and is delivered by the liquidator or the trustee to the creditors.
- (5) In a winding up by the court, the liquidator must deliver a copy of the progress report to the registrar of companies, the members of the company and the creditors within two months of the end of the period covered by the report.
- (6) In a bankruptcy, the trustee must deliver a copy of the progress report to the creditors within two months of the end of the period covered by the report.

### **18.9 Creditors' and members' requests for further information in administration, winding up and bankruptcy**

- (1) The following may make a written request to the office-holder for further information about remuneration or expenses (other than pre-administration costs in an administration) set out in a progress report under rule 18.4(1)(b), (c) or (d) or a final report under rule 18.14—
  - (a) a secured creditor;
  - (b) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question);
  - (c) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company;
  - (d) any unsecured creditor with the permission of the court; or
  - (e) any member of the company in a members' voluntary winding up with the permission of the court.
- (2) A request, or an application to the court for permission, by such a person or persons must be made or filed with the court (as applicable) within 21 days of receipt of the report by the person, or by the last of them in the case of an application by more than one member or creditor.
- (3) The office-holder must, within 14 days of receipt of such a request respond to the person or persons who requested the information by—
  - (a) providing all of the information requested;
  - (b) providing some of the information requested; or
  - (c) declining to provide the information requested.
- (4) The office-holder may respond by providing only some of the information requested or decline to provide the information if—
  - (a) the time or cost of preparation of the information would be excessive; or
  - (b) disclosure of the information would be prejudicial to the conduct of the proceedings;
  - (c) disclosure of the information might reasonably be expected to lead to violence against any person; or
  - (d) the office-holder is subject to an obligation of confidentiality in relation to the information.

- (5) An office-holder who does not provide all the information or declines to provide the information must inform the person or persons who requested the information of the reasons for so doing.
- (6) A creditor, and a member of the company in a members' voluntary winding up, who need not be the same as the creditor or members who requested the information, may apply to the court within 21 days of—
  - (a) the office-holder giving reasons for not providing all of the information requested; or
  - (b) the expiry of the 14 days within which an office-holder must respond to a request.
- (7) The court may make such order as it thinks just on an application under paragraph (6).

### **18.10 Administration, creditors' voluntary liquidation and compulsory winding up: reporting distribution of property to creditors under rule 14.13**

- (1) This rule applies where in an administration, creditors' voluntary liquidation or compulsory winding up there has been a distribution of property to creditors under rule 14.13.
- (2) In any account or summary of receipts and payments which is required to be included in an account or report prepared under a rule listed in paragraph (3) the office-holder must—
  - (a) state the estimated value of the property divided among the creditors of the company during the period to which the account or summary relates; and
  - (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—
  - (a) rule 3.63 (administrator's intention to resign);
  - (b) rule 6.25 (liquidator's resignation and replacement);
  - (c) rule 7.61 (liquidator's resignation);
  - (d) rule 18.3 (contents of progress report); and
  - (e) rule 18.14 (contents of final account (winding up) and final report (bankruptcy)).

### **18.11 Voluntary winding up: reporting arrangement under section 110**

- (1) This rule applies where in a voluntary winding up there has been an arrangement under section 110 and a distribution to members has taken place under section 110(2) or (4).
- (2) In any account or summary of receipts and payments which is required to be included in an account or report prepared under a section or rule listed in paragraph (3) the liquidator must—
  - (a) state the estimated value during the period to which the account or report relates of—
    - (i) the property transferred to the transferee,
    - (ii) the property received from the transferee, and
    - (iii) the property distributed to members under section 110(2) or (4); and (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—

- (a) section 92A and rule 18.7 (members' voluntary winding up: progress report to company at year's end);
- (b) section 94 and rule 18.14 (members' voluntary winding up: final account prior to dissolution);
- (c) section 104A (creditors' voluntary winding up: progress report to company and creditors at year's end);
- (d) section 106 and rules 6.28 and 18.14 (creditors' voluntary winding up: final account prior to dissolution).

### **18.12 Members' voluntary winding up: reporting distribution to members other than under section 110**

- (1) This rule applies where in a members' voluntary winding up there has been a distribution of property to members in its existing form other than under an arrangement under section 110.
- (2) In any account or summary of receipts and payments which is required to be included in an account or report prepared under a section or rule listed in paragraph (3) the liquidator must—
  - (a) state the estimated value of the property distributed to the members of the company during the period to which the account or report relates; and
  - (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—
  - (a) section 92A (progress report);
  - (b) section 94 (final account prior to dissolution);
  - (c) rule 5.6 (liquidator's resignation).

### **18.13 Bankruptcy proceedings: reporting distribution of property to creditors under section 326**

- (1) This rule applies in bankruptcy where there has been a distribution of property to creditors under section 326.
- (2) In an account or report which the trustee is required to prepare under a section or rule listed in paragraph (3) the trustee must—
  - (a) state the estimated value of the property distributed among the creditors during the period to which the account or report relates; and
  - (b) provide details of the basis of the valuation in a note to the account or report.
- (3) Paragraph (2) applies to the following—
  - (a) section 331 (final report to creditors in bankruptcy);
  - (b) rule 10.77 (consideration of appointment of replacement trustee); and
  - (c) Chapters 2 and 3 of this Part.

### **18.14 Contents of final account (winding up) and final report (bankruptcy)**

- (1) The liquidator's final account under section 94, 106 or 146 or the trustee's final report under section 331 must contain an account of the liquidator's administration of the winding up or of the trustee's administration of the bankruptcy including—
  - (a) a summary of the office-holder's receipts and payments, including details of the officeholder's remuneration and expenses; and
  - (b) details of the basis fixed for the office-holder's remuneration.
- (2) The liquidator's final account under section 106 or 146(1)(a) must also include a statement as to the amount paid to unsecured creditors by virtue of section 176A.

- (3) The final account or report to creditors or members must also contain—
  - (a) details of the remuneration charged and expenses incurred by the office-holder during the period since the last progress report (if any);
  - (b) a description of the things done by the office-holder in that period in respect of which the remuneration was charged and the expenses incurred; and
  - (c) a summary of the receipts and payments during that period.
- (4) If the basis of the office-holder's remuneration had not been fixed by the date to which the last progress report was made up, the final account or report must also include details of the remuneration charged in the period of any preceding progress report in which details of remuneration were not included.
- (5) Where the basis of remuneration has been fixed as a set amount, it is sufficient for the officeholder to state that amount and to give details of the expenses charged within the period in question.

## **REMUNERATION AND EXPENSES IN ADMINISTRATION, WINDING UP AND BANKRUPTCY**

### **18.15 Application of Chapter**

- (1) This Chapter applies to the remuneration of—
  - (a) an administrator;
  - (a) a liquidator; and
  - (b) a trustee in bankruptcy.
- (2) This Chapter does not apply to the remuneration of a provisional liquidator or an interim receiver.

### **18.16 Remuneration: principles**

- (1) An administrator, liquidator or trustee in bankruptcy is entitled to receive remuneration for services as office-holder.
- (2) The basis of remuneration must be fixed—
  - (a) as a percentage of the value of—
    - (i) the property with which the administrator has to deal, or
    - (ii) the assets which are realised, distributed or both realised and distributed by the liquidator or trustee;
  - (b) by reference to the time properly given by the office-holder and the office-holder's staff in attending to matters arising in the administration, winding up or bankruptcy; or
  - (c) as a set amount.
- (3) The basis of remuneration may be one or a combination of the bases set out in paragraph (2) and different bases or percentages may be fixed in respect of different things done by the officeholder.
- (4) Where an office-holder, other than in a members' voluntary winding up, proposes to take all or any part of the remuneration on the basis set out in paragraph (2)(b), the office-holder must, prior to the determination of which of the bases set out in paragraph (2) are to be fixed, deliver to the creditors—
  - (a) a fees estimate; and
  - (b) details of the expenses the office-holder considers will be, or are likely to be, incurred.
- (5) The fees estimate and details of expenses given under paragraph (4) may include remuneration expected to be charged and expenses expected to be incurred if the

administrator becomes the liquidator where the administration moves into winding up.

- (6) An office-holder, other than in a members' voluntary winding up, must deliver to the creditors the information required under paragraph (7) before the determination of which of the bases set out in paragraph (2) is or are to be fixed, unless the information has already been delivered under paragraph (4).
- (7) The information the office-holder is required to give under this paragraph is—
  - (a) the work the office-holder proposes to undertake; and
  - (b) details of the expenses the office-holder considers will be, or are likely to be, incurred.
- (8) The matters to be determined in fixing the basis of remuneration are—
  - (a) which of the bases set out in paragraph (2) is or are to be fixed and (where appropriate) in what combination;
  - (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3);
  - (c) the amount (if any) to be set under paragraph (2)(c).
- (9) In arriving at that determination, regard must be had to the following—
  - (a) the complexity (or otherwise) of the case;
  - (b) any respects in which, in connection with the company's or bankrupt's affairs, there falls on the office-holder, any responsibility of an exceptional kind or degree;
  - (c) the effectiveness with which the office-holder appears to be carrying out, or to have carried out, the office-holder's duties; and
  - (d) the value and nature of the property with which the office-holder has to deal.
- (10) A proposed liquidator in respect of a creditors' voluntary winding up may deliver to the creditors the information required by paragraphs (4) or (6) before becoming liquidator in which case that person is not required to deliver that information again if that person is appointed as liquidator.

### **18.17 Remuneration of joint office-holders**

Where there are joint office-holders it is for them to agree between themselves how the remuneration payable should be apportioned; and any dispute arising between them may be referred—

- (a) to the committee, to the creditors (by a decision procedure) or (in a members' voluntary winding up) the company in general meeting, for settlement by resolution; or
- (b) to the court, for settlement by order.

### **18.18 Remuneration: procedure for initial determination in an administration**

- (1) This rule applies to the determination of the officer-holder's remuneration in an administration.
- (2) It is for the committee to determine the basis of remuneration.
- (3) If the committee fails to determine the basis of the remuneration or there is no committee then the basis of remuneration must be fixed by a decision of the creditors by a decision procedure.
- (4) Where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 that there are insufficient funds for distribution to unsecured creditors other than out of the prescribed part and either there is no committee,

or the committee fails to determine the basis of remuneration, the basis of the administrator's remuneration may be fixed by—

- (a) the consent of each of the secured creditors; or
- (b) if the administrator has made or intends to make a distribution to preferential creditors—
  - (i) the consent of each of the secured creditors, and
  - (ii) a decision of the preferential creditors in a decision procedure.

### **18.19 Remuneration: procedure for initial determination in a members' voluntary winding up**

In a members' voluntary winding up, it is for the company in general meeting to determine the basis of remuneration.

### **18.20 Remuneration: procedure for initial determination in a creditors' voluntary winding up or a winding up by the court**

- (1) This rule applies to the determination of the office-holder's remuneration in a creditors' voluntary winding up or a winding up by the court.
- (2) It is for the committee to determine the basis of remuneration.
- (3) If the committee fails to determine the basis of remuneration or there is no committee then the basis of remuneration may be fixed by a decision of the creditors by a decision procedure.
- (4) However where an administrator becomes liquidator in either of the following two cases the basis of remuneration fixed under rule 18.18 for the administrator is treated as having been fixed for the liquidator, and paragraphs (2) and (3) do not apply.
- (5) The two cases are where—
  - (a) a company which is in administration moves into winding up under paragraph 83(a) of Schedule B1 and the administrator becomes the liquidator; and
  - (b) a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect and the court under section 140(1) appoints as liquidator the person whose appointment as administrator has ceased to have effect.

### **18.21 Remuneration: procedure for initial determination in a bankruptcy**

- (1) This rule applies to the determination of the office-holder's remuneration in a bankruptcy.
- (2) It is for the committee to determine the basis of remuneration.
- (3) If the committee fails to determine the basis of the remuneration or there is no committee then the basis of the remuneration may be fixed by a decision of the creditors by a decision procedure.

### **18.22 Application of scale fees where creditors fail to fix the basis of the office-holder's remuneration**

- (1) This rule applies where in a winding up by the court or bankruptcy, the liquidator or trustee—
  - (a) has requested the creditors to fix the basis of remuneration under rule 18.20(3) or 18.21(3) as applicable and the creditors have not done so; or
  - (b) in any event if the basis of remuneration is not fixed by the creditors within 18 months after the date of the liquidator's or trustee's appointment.

- (2) The liquidator or trustee is entitled to such sum as is arrived at (subject to paragraph (3)) by—
  - (a) applying the realisation scale set out in Schedule 11 to the moneys received by the liquidator or trustee from the realisation of the assets of the company or bankrupt (including any Value Added Tax on the realisation but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company or bankrupt); and
  - (b) 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 11 to the value of assets distributed to creditors of the company or bankrupt (including payments made in respect of preferential debts) and to contributories.
- (3) In a bankruptcy that part of the trustee's remuneration calculated under paragraph (2) by reference to the realisation scale must not exceed such sum as is arrived at by applying the realisation scale to such part of the bankrupt's assets as are required to pay—
  - (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 by virtue of any order made under section 415(a); and
  - (d) the remuneration of the official receiver.

### **18.23 Remuneration: application to the court to fix the basis**

- (1) If the basis of the administrator's remuneration or the liquidator's remuneration in a voluntary winding up is not fixed under rules 18.18 to 18.20 (as applicable) then the administrator or liquidator must apply to the court for it to be fixed.
- (2) Before making such an application the liquidator or administrator must attempt to fix the basis in accordance with rules 18.18 to 18.20.
- (3) An application under this rule may not be made more than 18 months after the date of the administrator's or liquidator's appointment.
- (4) In a members' voluntary winding up—
  - (a) the liquidator must deliver at least 14 days' notice of such an application to the company's contributories, or such one or more of them as the court may direct; and
  - (b) the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

### **18.24 Remuneration: administrator, liquidator or trustee seeking increase etc.**

An office-holder who considers the rate or amount of remuneration fixed to be insufficient or the basis fixed to be inappropriate may—

- (a) request the creditors to increase the rate or amount or change the basis in accordance with rules 18.25 to 18.27;
- (b) apply to the court for an order increasing the rate or amount or changing the basis in accordance with rule 18.28.

### **18.25 Application for an increase etc. in remuneration: the general rule**

- (1) This rule applies to a request by an office-holder in accordance with rule 18.24 for an increase in the rate or amount of remuneration or a change in the basis.
- (2) Subject to the exceptions set out in rules 18.26 and 18.27, where the basis of the officeholder's remuneration has been fixed by the committee an administrator, liquidator or trustee may make such a request to the creditors for approval by a decision procedure.

### **18.26 First exception: administrator has made a statement under paragraph 52(1)(b) of Schedule B1**

- (1) This exception applies in an administration where—
  - (a) the basis of the administrator's remuneration has been fixed by the committee; and
  - (b) the administrator has made a statement under paragraph 52(1)(b) of Schedule B1.
- (2) A request by the administrator for an increase in the rate or amount of remuneration or a change in the basis must be approved by—
  - (a) the consent of each of the secured creditors; or
  - (b) if the administrator has made or intends to make a distribution to preferential creditors—
    - (i) the consent of each of the secured creditors, and
    - (ii) a decision of the preferential creditors in a decision procedure.

### **18.27 Second exception: administrator who had applied for increase etc. under rule 18.24 becomes liquidator**

- (1) This exception applies in a liquidation where—
  - (a) an administrator has become the liquidator;
  - (b) the remuneration had been determined by the committee in the preceding administration;
  - (c) the basis of the liquidator's remuneration is treated under rule 18.20(4) and (5) as being that which was fixed in the administration; and
  - (d) the administrator had subsequently requested an increase under rule 18.24.
- (2) A request by the liquidator for an increase in the rate or amount of remuneration or a change in the basis may only be made by application to the court.
- (3) Rule 18.28(6) to (8) apply to such an application.

### **18.28 Remuneration: recourse by administrator, liquidator or trustee to the court**

- (1) This rule applies to an application by an office-holder to the court in accordance with rule 18.24 for an increase in the rate or amount of remuneration or change in the basis.
- (2) An administrator may make such an application where the basis of the administrator's remuneration has been fixed—
  - (a) by the committee and the administrator has requested that the rate or amount be increased or the basis changed by decision of the creditors (by a decision procedure), but the creditors have not changed it;
  - (b) by decision of the creditors (by decision procedure); or
  - (c) by the approval of either the secured creditors or the preferential creditors or both in a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1.

- (3) A liquidator may make such an application where the basis of the liquidator's remuneration has been fixed—
  - (a) by the committee, and the liquidator has requested that the rate or amount be increased or the basis changed by decision of the creditors (by a decision procedure), but the creditors have not changed it;
  - (b) by decision of the creditors (by a decision procedure);
  - (c) under rule 18.20(4) and (5) or 18.22; or
  - (d) in a members' voluntary winding up, by the company in general meeting.
- (4) A trustee may make such an application where the trustee's remuneration has been fixed—
  - (a) by the committee and the trustee has requested that the amount be increased or the basis changed by decision of the creditors (by a decision procedure), but the creditors have not changed it;
  - (b) by decision of the creditors (by a decision procedure); or
  - (c) under rule 18.22.
- (5) Where an application is made under paragraph (2)(c), the administrator must deliver notice to each of the creditors whose approval was sought under rule 18.18(4).
- (6) The office-holder must deliver a notice of the application at least 14 days before the hearing as follows—
  - (a) in an administration, a creditors' voluntary winding up, a winding up by the court or a bankruptcy—
    - (i) to the members of the committee, or
    - (ii) if there is no committee to such one or more of the creditors as the court may direct;
  - (b) in a members' voluntary winding up, to the company's contributories, or such one or more of them as the court may direct.
- (7) The committee, the creditors or the contributories (as the case may be) may nominate one or more of their number to appear or be represented and to be heard on the application.
- (8) The court may, if it appears to be a proper case (including in a members' voluntary winding up), order the costs of the office-holder's application, including the costs of any member of the committee appearing or being represented on it, or of any creditor or contributory so appearing or being represented on it, to be paid as an expense of the estate.

### **18.29 Remuneration: review at request of administrator, liquidator or trustee**

- (1) Where, after the basis of the office-holder's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the office-holder may request that the basis be changed.
- (2) The request must be made—
  - (a) to the company, where in a members' voluntary liquidation the company fixed the basis in general meeting;
  - (b) to the committee, where the committee fixed the basis;
  - (c) to the creditors or a particular class of creditors where the creditors or that class of creditors fixed the basis;
  - (d) by application to the court, where the court fixed the basis;

- (e) to the committee if there is one and otherwise to the creditors where, in a winding up or bankruptcy, the remuneration was determined under rule 18.22.
- (3) The preceding provisions of this Chapter which apply to the fixing of the office-holder's remuneration apply to a request for a change as appropriate.
- (4) However the exception in rule 18.27 which would require such an application to be made to the court in the circumstances there set out does not apply.
- (5) Any change in the basis of remuneration applies from the date of the request under paragraph (2) and not for any earlier period.

### **18.30 Remuneration: exceeding the fee estimate**

- (1) The office-holder must not draw remuneration in excess of the total amount set out in the fees estimate without approval.
- (2) The request for approval must be made—
  - (a) where the committee fixed the basis, to that committee;
  - (b) where the creditors or a class of creditors fixed the basis, to the creditors or that class of creditors;
  - (c) where the court fixed the basis, to the court;and rules 18.16 to 18.23 apply as appropriate.
- (3) The request for approval must specify—
  - (a) the reasons why the office-holder has exceeded, or is likely to exceed, the fees estimate;
  - (b) the additional work the office-holder has undertaken or proposes to undertake;
  - (c) the hourly rate or rates the office-holder proposes to charge for each part of that additional work;
  - (d) the time that additional work has taken or the office-holder expects that work will take;
  - (e) whether the office-holder anticipates that it will be necessary to seek further approval; and
  - (f) the reasons it will be necessary to seek further approval.

### **18.31 Remuneration: new administrator, liquidator or trustee**

- (1) This rule applies where a new administrator, liquidator or trustee is appointed in place of another.
- (2) Any decision, determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former office-holder ceased to hold office (including any application of scale fees under rule 18.22) continues to apply in relation to the remuneration of the new office-holder until a further decision, determination, resolution or court order is made in accordance with those provisions.

### **18.32 Remuneration: apportionment of set fees**

- (1) This rule applies where the basis of the office-holder's remuneration is a set amount under rule 18.16(2)(c) and the office-holder ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set.
- (2) A request or application may be made to determine what portion of the amount should be paid to the former office-holder or the former office-holder's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

- (3) The request or application may be made by—
  - (a) the former office-holder or the former office-holder’s personal representative within the period of 28 days beginning with the date upon which the former office-holder ceased to hold office; or
  - (b) the office-holder for the time being in office, if the former office-holder or the former office-holder’s personal representative has not applied by the end of that period.
- (4) The request or application to determine the portion must be made to the relevant person being—
  - (a) the company, where the company is in members’ voluntary liquidation and it fixed the basis in general meeting;
  - (b) the committee, where the committee fixed the basis;
  - (c) the creditors or a class of creditors where the creditors or that class fixed the basis;
  - (d) the court where the court fixed the basis.
- (5) In an administration where the circumstances set out in rule 18.18(4) apply the relevant person is to be determined under that paragraph.
- (6) The person making the request or application must deliver a copy of it to the office-holder for the time being or to the former office-holder or the former office-holder’s personal representative, as the case may be (“the recipient”).
- (7) The recipient may, within 21 days of receipt of the copy of the request or application, deliver notice of intent to make representations to the relevant person or to appear or be represented before the court on an application to the court.
- (8) No determination may be made upon the request or application until either—
  - (a) the expiry of the 21 days, or
  - (b) if the recipient delivers a notice of intent, the recipient has been given the opportunity to make representations or to appear or be represented.
- (9) Where the former office-holder or the former office-holder’s personal representative (whether or not the original person making the request or application) considers that the portion so determined is insufficient that person may apply—
  - (a) to the creditors for a decision increasing the portion, in the case of a determination by the committee;
  - (b) to the court, in the case of a decision or resolution (as the case may be) of—
    - (i) the creditors (whether under paragraph (4)(c) or under sub-paragraph (a)), or
    - (ii) the company in general meeting.
- (10) Paragraphs (6) to (8) apply to an application under paragraph (9) as appropriate.

### **18.33 Remuneration: variation of the application of rules 18.29, 18.30 and 18.32**

- (1) This rule applies where the basis of remuneration has been fixed in accordance with rule 18.18(4) and all of the following apply—
  - (a) there is now, or is likely to be, sufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a); and
  - (b) the administrator or liquidator in a winding up which immediately follows an administration makes a request under rule 18.29, 18.30 or 18.32.
- (2) A request under 18.29, 18.30 or 18.32, must be made—

- (a) where there is a committee, to the committee; or
- (b) where there is no committee, to the creditors for a decision by decision procedure.

### **18.34 Remuneration and expenses: application to court by a creditor or member on grounds that remuneration or expenses are excessive**

- (1) This rule applies to an application in an administration, a winding-up or a bankruptcy made by a person mentioned in paragraph (2) on the grounds that—
  - (a) the remuneration charged by the office-holder is in all the circumstances excessive;
  - (b) the basis fixed for the office-holder's remuneration under rules 18.16, 18.18, 18.19, 18.20 and 18.21 (as applicable) is inappropriate; or
  - (c) the expenses incurred by the office-holder are in all the circumstances excessive.
- (2) The following may make such an application for one or more of the orders set out in rule 18.36 or 18.37 as applicable—
  - (a) a secured creditor,
  - (b) an unsecured creditor with either—
    - (i) the concurrence of at least 10% in value of the unsecured creditors (including that creditor), or
    - (ii) the permission of the court, or
  - (c) in a members' voluntary winding up—
    - (i) members of the company with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the company, or
    - (ii) a member of the company with the permission of the court.
- (3) The application by a creditor or member must be made no later than eight weeks after receipt by the applicant of the progress report under rule 18.3, or final report or account under rule 18.14 which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

### **18.35 Remuneration and expenses: application to court by a bankrupt on grounds that remuneration or expenses are excessive**

Note: where a bankrupt is applying for an annulment under section 282(1)(b) the bankrupt may also make an application in respect of the trustee's remuneration or expenses. See rule 10.134.

- (1) A bankrupt may, with the permission of the court, make an application on the grounds that—
  - (a) the remuneration charged by the office-holder is in all the circumstances excessive;
  - (b) the expenses incurred by the office-holder are in all the circumstances excessive.
- (2) The bankrupt may make such an application for one or more of the orders set out in rule 18.36(4).
- (3) The application must be made no later than eight weeks after receipt by the bankrupt of the report under rule 10.87.
- (4) The court must not give the bankrupt permission to make an application unless the bankrupt shows that—
  - (a) there is (or would be but for the remuneration or expenses in question); or

- (b) it is likely that there will be (or would be but for the remuneration or expenses in question), a surplus of assets to which the bankrupt would be entitled.
- (5) Paragraph (4) is without prejudice to the generality of the matters which the court may take into account in determining whether to give the bankrupt permission.

### **18.36 Applications under rules 18.34 and 18.35 where the court has given permission for the application**

- (1) This rule applies to applications made with permission under rules 18.34 and 18.35.
- (2) Where the court has given permission, it must fix a venue for the application to be heard.
- (3) The applicant must, at least 14 days before the hearing, deliver to the office-holder a notice stating the venue and accompanied by a copy of the application and of any evidence on which the applicant intends to rely.
- (4) If the court considers the application to be well-founded, it must make one or more of the following orders—
  - (a) an order reducing the amount of remuneration which the office-holder is entitled to charge;
  - (b) an order reducing any fixed rate or amount;
  - (c) an order changing the basis of remuneration;
  - (d) an order that some or all of the remuneration or expenses in question is not to be treated as expenses of the administration, winding up or bankruptcy;
  - (e) an order for the payment of the amount of the excess of remuneration or expenses or such part of the excess as the court may specify by —
    - (i) the administrator or liquidator or the administrator's or liquidator's personal representative to the company, or
    - (ii) the trustee or the trustee's personal representative to such person as the court may specify as property comprised in the bankrupt's estate;
  - (f) any other order that it thinks just.
- (5) An order under paragraph (4)(b) or (c) may only be made in respect of periods after the period covered by the relevant report.
- (6) Unless the court orders otherwise the costs of the application must be paid by the applicant, and are not payable as an expense of the administration, winding up or bankruptcy.

### **18.37 Applications under rule 18.34 where the court's permission is not required for the application**

- (1) On receipt of an application under rule 18.34 for which the court's permission is not required, the court may, if it is satisfied that no sufficient cause is shown for the application, dismiss it without giving notice to any party other than the applicant.
- (2) Unless the application is dismissed, the court must fix a venue for it to be heard.
- (3) The applicant must, at least 14 days before any hearing, deliver to the office-holder a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.
- (4) If the court considers the application to be well-founded, it must make one or more of the following orders—
  - (a) an order reducing the amount of remuneration which the office-holder is entitled to charge;

- (b) an order reducing any fixed rate or amount;
  - (c) an order changing the basis of remuneration;
  - (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration or winding up or bankruptcy;
  - (e) an order for the payment of the amount of the excess of remuneration or expenses or such part of the excess as the court may specify by —
    - (i) the administrator or liquidator or the administrator's or liquidator's personal representative to the company, or
    - (ii) the trustee or the trustee's personal representative to such person as the court may specify as property comprised in the bankrupt's estate;
  - (f) any other order that it thinks just.
- (5) An order under paragraph (4)(b) or (c) may only be made in respect of periods after the period covered by the relevant report.
- (6) Unless the court orders otherwise the costs of the application must be paid by the applicant, and are not payable as an expense of the administration or as winding up or bankruptcy.

### **18.38 Remuneration of a liquidator or trustee who realises assets on behalf of a secured creditor**

- (1) A liquidator or trustee who realises assets on behalf of a secured creditor is entitled to such sum by way of remuneration as is arrived at as follows, unless the liquidator or trustee has agreed otherwise with the secured creditor—
- (a) in a winding up—
    - (i) where the assets are subject to a charge which when created was a mortgage or a fixed charge, such sum as is arrived at by applying the realisation scale in Schedule 11 to the monies received in respect of the assets realised (including any sums received in respect of Value Added Tax on them but after deducting any sums spent out of money received in carrying on the business of the company),
    - (ii) where the assets are subject to a charge which when created was a floating charge such sum as is arrived at by—
      - (aa) first applying the realisation scale in Schedule 11 to monies received by the liquidator from the realisation of the assets (including any Value Added Tax on the realisation but ignoring any sums received which are spent in carrying on the business of the company),
      - (bb) then by adding to the sum arrived at under sub-paragraph (a)(ii)(aa) such sum as is arrived at by applying the distribution scale in Schedule 11 to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts; or
  - (b) in a bankruptcy such sum as is arrived at by applying the realisation scale in Schedule 11 to the monies received in respect of the assets realised (including any Value Added Tax on them).
- (2) The sum to which the liquidator or trustee is entitled must be taken out of the proceeds of the realisation.

## CARMICHAEL & CO REMUNERATION AND DISBURSEMENTS POLICY

### Time cost basis

Whilst we rarely expect to charge fees on a time costs basis, we use charge out rates appropriate to the skills and experience of a member of staff and the work that they perform. This is combined with the amount of time that they work on each case, recorded in 1 minute units with supporting narrative to explain the work undertaken.

The hourly charge out rates are as follows:

	From 1/12/2013	1/11/11 to 30/11/13	1/9/09 to 31/10/11	1/10/02 to 31/8/09
Insolvency Practitioner	£350	£325	£295	£180-270
Manager/Senior Consultant	£180-295	£165-275	£150-250	£120-230
Other Senior Professionals	£95-175	£85-160	£75-140	£60-130
Assistants (inc secretarial)	£55-110	£50-100	£45-90	£30-85

Sub-contractors are allocated a charge out rate equivalent to that payable if they were employed by the firm, and are thus referred to as staff.

Carmichael & Co is a small firm, so when staff carry out assignments which would usually be dealt with by a less experienced person in a larger firm their time is charged at the lower rate.

These charge-out rates charged are reviewed every year and may be adjusted to take account of inflation and the firm's overheads. They will not increase by more than 10% per year.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. It is recorded under the following headings: Administration and Planning (Administration including statutory reporting from 1 October 2015), Investigations, Realisation of Assets, Creditors (including claims and distributions from 1 October 2015), Trading, or Case specific matters.

After the legislation changed on 1 October 2015, we only seek time costs in relation to the latter stages of investigations where it is speculative and less likely that the work will lead to a realisation (or for specialist work probably not covered by the legislation).

If we seek time costs approval, we have to set out a fees estimate. That estimate acts as a cap on our time costs so that we cannot draw fees of more than the total estimated amount without further approval from those who approved our fees. The estimate will therefore need to specifically prepared for each individual case, and quite a considerable amount of time will need to be spent preparing it – in many cases when we do not expect to be able to draw the full fee anyway. Ensuring the integrity of the time recording system takes additional time, especially if the Licensed Insolvency Practitioner (£350 per hour) is doing work an assistant (£55) could do.

### Percentage basis

The legislation allows fees to be charged on a percentage of the value of the property with which the office holder has to deal (realisations and/or distributions). Different percentages can be used for different assets or types of assets.

## Fixed fee

The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks.

## Carmichael & Co Fee Basis

We will generally seek fees on the following bases:

### Before Insolvency

Creditors' Voluntary Liquidation Administration Voluntary Arrangement (Individual, Company or Partnership)	Fixed fee
Compulsory Liquidation Bankruptcy Members' Voluntary Liquidation	Not applicable

### After Insolvency

Creditors' Voluntary Liquidation Compulsory Liquidation Bankruptcy Administration	Fixed fee plus percentage of asset realisations plus fixed fee for distributions to unsecured creditors (Carmichael & Co hybrid fee basis)
Members' Voluntary Liquidation	Fixed fee with provision for additional fee if additional work required
Voluntary Arrangement (Individual, Company or Partnership)	Percentage of asset realisations

## Members' voluntary liquidations

The legislation changes that took effect from 1 October 2015 did not apply to Members' Voluntary Liquidations. In these cases, the company's shareholders set the fee basis, often as a fixed fee with time costs chargeable if there is additional work which could not have been envisaged when agreed (for instance an argument between the shareholders about who receives an asset which means it needs to be sold instead).

## Voluntary Arrangements

In Company Voluntary Arrangements, Individual Voluntary Arrangements and Partnership Voluntary Arrangements, the fee basis is set out in the proposals and creditors approve the fee basis when they approve the arrangement. This is usually a percentage of asset realisations.

## Carmichael & Co hybrid fee basis

We believe that this proposed basis is transparent and fair to creditors, and it is also easier for us to manage (saving administration time not chargeable to a case).

### *Fixed Fee Element – Statutory compliance*

We look to charge a fixed fee to deal with all the predictable work in the liquidation, bankruptcy or administration. A general list is at the end of this leaflet, a case specific list of the expected or potential work will be circulated when creditors are asked to consider our fees. This fee will vary by case type and individual estate, but is calculated as £2,500 plus additional amounts based upon whether the case is a bankruptcy or compulsory liquidation (as some of the work done before insolvency, such as searches and entering standard case information onto our case management system will not have been done), an amount per declared creditor or employee and an additional amount

based on any perceived difficulties at the outset. This formally reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder and that a case with a lot of creditors will generally involve more work (even if only taking phone calls or processing letters with reports).

***Fixed Fee Element – Paying Dividends to Unsecured Creditors***

In many cases we deal with there are insufficient assets to pay the costs of the insolvency. It is therefore of no benefit to most creditors to formally consider their claims (though this is sometimes needed by them for insurance or similar purposes). We have therefore decided that in order to reduce the costs generally, we will not agree all claims (though will do so if requested without extra charge) until we are ready to declare a dividend.

We will therefore look to charge a fixed fee for agreeing the creditors’ claims, the statutory work involved and processing the dividend. This will be based upon the number of creditors and type of case (in bankruptcy and compulsory liquidation payments are made by requesting them from the Insolvency Service and cheques are sent by them to us to be forwarded, in creditors' voluntary liquidation we need to physically write the cheque or make the electronic payment).

***Variable amount - Paying Dividends to Secured Creditors***

For the avoidance of doubt, there are special rules relating to payments under a fixed charge. This fee will be agreed with the charge-holder and does not need to be agreed by the unsecured creditors.

***Percentage Fee Element – Asset Realisations***

We will look to draw a percentage of asset realisations as follows:

	Previously Declared	Otherwise
Cash or equivalent (including bank balances held by the company, bankrupt or Carmichael & Co)	0%	10%
Other assets which are unlikely to be disputed but may need assistance from agents, such as stock or plant and machinery	10%	15%
Other assets which are more difficult to realise and tend to take longer to deal with (such as book debts or a property)	20%	30%
Assets which are likely to need a lot of negotiation to realise or tend to be most likely to need court action so take the longest to deal with (such as money owed to the company by the director or another company he is involved with, or recovery of a transaction at an undervalue)	30%	45%

A comprehensive list of the ‘usual’ assets which fall into each of these categories will be included within the case specific estimate. Where there is a different type of asset in a case if it is declared in the Statement of Affairs a percentage will be stated, otherwise it will be charged at the highest rate (but see ‘Reasons the fee may change from that agreed’).

These rates reflect that different amounts of work are required for different realisations (transferring a cash balance held by Carmichael & Co before liquidation is straightforward whereas agreeing repayment of an overdrawn director’s loan account is usually more complicated). If an asset has not been declared in the statement of affairs

it is only likely to be found by investigation, so the increase reflects that this will have been needed and will not have been included in the fixed fee element.

The percentage approved in respect of realisations will be charged against the assets realised, any fixed fee will then be charged against the funds remaining in the liquidation after the realisation percentage has been deducted.

### ***Reasons the fee may change from that agreed***

The fee will never increase without the agreement of creditors or the Court.

The fee may be reduced if:

- there are insufficient asset realisations with which to pay it
- the office - holder decides to reduce it
- an unexpected asset is realised which does not fall into an agreed category, but charging a realisation fee of 45% is clearly excessive based on the spirit of the categories.

### **All bases**

A report accompanying any fee request will set out the set fee that we propose to charge and the work covered by that remuneration, as well as the expenses that will be, or are likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, and the value and nature of the property with which the office holder has to deal.

If the basis of remuneration has been approved on a fixed fee or percentage basis then an increase in the amount of the fixed fee or percentage can only be approved by the committee or creditors (depending upon who approved the basis of remuneration) in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the fee. If there has not been a material and substantial change in the circumstances then an increase can only be approved by the Court.

With the exception of Voluntary Arrangements, which are VAT exempt, the officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

### **Drawing Fees**

We expect to draw percentage fees when the asset is realised.

We will attempt to draw the fixed element of the fees as funds allow.

If there are insufficient asset realisations to pay the fixed element of the fee, we will not seek to be paid by the general body of creditors.

### **Types of work which need to be carried out in an 'average' case**

Please note that not all these areas of work will arise in every type of case (not every bankrupt or company is VAT registered) or every specific case (not every bankrupt owns their home)

#### ***Administration including statutory reporting***

- Case planning - devising an appropriate strategy for dealing with the case and assigning appropriate staff to undertake the work on the case

- Setting up physical and electronic case files
- Setting up the case on the practice's electronic case management system and entering data (if not instructed to convene the meeting at which the company or person was declared insolvent)
- Issuing the statutory notifications to creditors and other required on appointment as office holder, including advertising the office holder's appointment.
- Obtaining a specific penalty bond
- Convening and holding general meetings of creditors and members
- Dealing with all routine correspondence and emails relating to the case
- Opening, maintaining and managing the office holder's estate bank account
- Creating, maintaining and managing the office holder's cashbook
- Undertaking regular bank reconciliations of the bank account containing estate funds
- Reviewing the adequacy of the specific penalty bond on a regular basis
- Obtaining information from the case records about employee claims
- Completing documentation for submission to the Redundancy Payments Office
- Corresponding with employees regarding their claims
- Liaising with the Redundancy Payments Office regarding employee claims
- Dealing with creditor correspondence, emails and telephone conversations regarding their claims
- Maintaining up to date creditor information on the case management system
- Undertaking periodic reviews of the progress of the case
- Overseeing and controlling the work done on the case by case administrators
- Preparing, reviewing and issuing annual progress reports to creditors and members
- Filing returns at Companies House
- Preparing and filing VAT returns and dealing with de-registration
- Preparing and filing Corporation Tax returns
- Seeking closure clearance from HM Revenue & Customs and other relevant parties
- Preparing, reviewing and issuing final reports to creditors and members
- Convening and holding final meetings of creditors and members
- Filing final returns at Companies House and in Court

### ***Asset realisation***

- Arranging suitable insurance over assets and monitoring the insurance cover in place
- Corresponding with debtors and attempting to collect outstanding book debts
- Liaising with the bank regarding the closure of the account
- Instructing agents to value known assets or carrying out the valuation using appropriate 'desktop' tools
- Liaising with agents to realise known assets
- Instructing solicitors to assist in the realisation of assets
- Registering my interest in respect of freehold property
- Agreeing any claims for shares in the property (such as by a spouse)
- Obtaining details from mortgagees about debts secured over property
- Instructing solicitors to assist in the realisation of the property

- Liaising with the secured creditors over the realisation of the assets subject to a mortgagee or other charge

### ***Investigations***

- Recovering the books and records for the case
- Listing the books and records recovered
- Preparing a report or return on the conduct of the directors as required by the Company Directors Disqualification Act
- Conducting an initial investigation with a view to identifying potential asset recoveries by seeking and obtaining information from relevant third parties, such as the bank, accountants, solicitors, etc
- Reviewing books and records to identify any transactions or actions the office holder may take against a third party in order to recover funds for the benefit of creditors

### ***Creditors (including claims and distributions)***

- Issuing a notice of intended dividend and placing an appropriate gazette notice
- Reviewing proofs of debt received from creditors, adjudicating on them (and requesting additional information if needed) and formally admitting them for the payment of a dividend
- Calculating and physically paying the dividend to creditors, and issuing the notice of declaration of dividend
- Paying tax deducted from the dividends paid to employees

### **Disbursements (or out of pocket expenses of the firm)**

The office holder will provide details of expenses to be incurred, or likely to be incurred, when seeking fee approval, though this is difficult if legal action needs to be taken and none was expected. When reporting to the committee and creditors during the course of the insolvency appointment the actual expenses incurred will be compared with the original estimate provided.

Disbursements are categorised as either Category 1 or Category 2.

#### **Category 1**

These expenses are directly referable to an invoice from a third party, which is either in the name of the estate; Carmichael & Co or the Office Holder where the invoice makes reference to, and therefore can be directly attributed to, the estate. These disbursements are recoverable in full from the estate without the prior approval of creditors either by a direct payment from the estate or, where the firm has made payment on behalf of the estate, by a recharge of the amount invoiced by the third party without any additional charge apart from VAT where necessary.

Where it is considered appropriate by the Insolvency Practitioner, the maximum amount chargeable to the estate for any hotel stay per night (including subsistence) will be equivalent to 1 hour at that person's charge out rate. If more than one person is staying, the maximum amount for the team is 1 hour at the team's combined rate.

Storage is charged based on the number of boxes of records and files (including those of this firm) held off-site and/or transported between the office and storage facility during the month. Where a box contains records relating to more than one case, the cost will be apportioned. A final fee may be charged in relation to future storage and destruction costs at the rates in force at the date of closure of the case.

Postage is incurred specifically for a case, but where an alternative to the Royal Mail is used if the delivery cost can be calculated that will be used, otherwise the Royal Mail rate will be used.

Telephone, fax and stationery/postage costs are not generally charged to the insolvency estate unless incurred in relation to a report or similar.

Agent's Costs are always charged at cost based upon the charge made by the Agent instructed. The term Agent includes Solicitors/Legal Advisors; Auctioneers/Valuers; Accountants; Quantity Surveyors; Estate Agents; or Other Specialist Advisors.

## Category 2

These are expenses incurred by the firm and recharged to the estate which are not attributed to the estate by a third party invoice so they may include a profit element (mileage is charged at the HM Revenue & Customs agreed rate so includes a potential profit for the driver). These disbursements are recoverable in full from the estate, subject to the basis of the disbursement charge being approved by creditors in advance.

Where items are held in stock (ie paper, envelopes etc) they are charged at the list price, which is regularly reviewed. Since the cost of these items is minimal, it is not practical to allocate specific costs.

If it is possible to combine 2 or more meetings or visits, the costs incurred for the shared element of travel is apportioned appropriately – this may include category 1 expenses such as a hotel as well as category 2 such as mileage.

## Other examples of disbursement costs

### Category 1

Statutory advertising	Approximately £80 depending on the notice required in London Gazette
Storage	up to 40p per box per month
Storage Movement	up to £1.25 per box
Company Searches	up to £1 per item, bulk discount usually received

### Category 2

Travel by car	45p per mile
Photocopying (inc paper)	From 1.2p per single sided white A4 page printed in black to 21.0p per double sided coloured A3 sheet printed in colour
Envelopes	1p – 3.4p depending on size

Neither this firm, nor anyone associated with it holds any interest in any supplier of rechargeable items to Carmichael & Co, except when paying staff for mileage or reimbursing them the cost of legitimate expenses that they have personally paid (such as hotels).

## CARMICHAEL & CO COMPLAINTS POLICY

No matter how hard any firm tries, there can sometimes be misunderstandings and occasionally mistakes. If you believe you have cause for complaint, please first contact Marc Landsman, our Licensed Insolvency Practitioner and Director.

If he cannot sort out the problem, you can contact the 'Complaints Gateway' at:

Email: [ip.complaints@insolvency.gsi.gov.uk](mailto:ip.complaints@insolvency.gsi.gov.uk);

Post: The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA;

Telephone: 0300 6780015;

Website: <https://www.gov.uk/complain-about-insolvency-practitioner>

This is a government department which assesses complaints and then forwards them to the relevant regulator (in this instance the Institute of Chartered Accountants in England and Wales).

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