

## GUIDE TO FEES AND REQUESTS FOR INFORMATION

# LIQUIDATION

Statement of Insolvency Practice 9 (England and Wales)  
Payments to Insolvency Office Holders and their Associates

Creditors' Guide to Liquidators' Fees

Carmichael & Co Complaints Policy

Insolvency Rules 1986 (as amended) - Rule 4.49E  
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Fixing of remuneration

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Creditors' claim that remuneration is or other expenses are excessive

Carmichael & Co Specific Fees and Disbursements Charging Policy

Carmichael & Co Current Charging Rates and Disbursements Examples

Lowry House  
17, Marble Street  
Manchester  
M2 3AW

**Carmichael  
& Co**

127 High Street  
Hythe  
Kent  
CT21 5JJ

0330 223 0915      Tel      0330 223 0925  
0161 883 0480      or      01303 647 480

0330 223 0965      Out of Hours      0330 223 0965

0330 223 0985      Fax      0330 223 0985

DX 14346 MANCHESTER

[www.carmichaelsinsolvency.co.uk](http://www.carmichaelsinsolvency.co.uk)

[www.carmichaelsinsolvency.tel](http://www.carmichaelsinsolvency.tel)

[info@carmichaelsinsolvency.co.uk](mailto:info@carmichaelsinsolvency.co.uk)



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This leaflet incorporates several documents that would usually be circulated at different times within the course of a liquidation. Unless there are significant changes, a paper copy will not be provided again. The charge out rates will be stated in reports where remuneration is charged upon a time costs basis.

The information in this leaflet was last updated in November 2013.

A paper copy of the latest version of this leaflet is available on request or it may be downloaded from [www.carmichaelsinsolvency.co.uk](http://www.carmichaelsinsolvency.co.uk).

Other documents including case reports, leaflets, general guidance notes and questionnaires are also available from that site.

## **Authorship**

Statements of Insolvency Practice are a series of guidance notes issued to Licensed Insolvency Practitioners with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency.

They are issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee. They are approved by the Committee and adopted by the regulatory bodies.

The Creditors' Guide to Liquidators' Fees was originally issued as part of the Statement of Insolvency Practice - Remuneration of Insolvency Office Holders until the Statement of Insolvency Practice was updated with effect from 1 November 2011.

The Insolvency Rules 1986 (as amended) is part of the current legislation dealing with insolvency.

The Carmichael & Co Fees and Disbursements Charging Policy is clearly prepared by this firm.

# **Statement of Insolvency Practice 9 (England and Wales) - Payments to Insolvency Office Holders and their Associates**

## **Introduction**

1. The particular nature of an insolvency office holder's position renders transparency and fairness in all dealings of primary importance. Creditors and other interested parties<sup>1</sup> with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to charging have been properly complied with.

## **Principles**

2. Payments to an office holder or his or her associates should be appropriate, reasonable and commensurate reflections of the work necessarily and properly undertaken.
3. Those responsible for approving the basis or bases upon which payments to an office holder are to be calculated should be provided with sufficient information to make an informed judgement about the reasonableness of the office holder's requests.
4. Requests for additional information about payments to an office holder or his or her associates should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the case.

## **Key Compliance Standards**

### **Provisions of General Application**

5. The information provided and the way in which the approval of payments to insolvency office holders and their associates for remuneration is sought should enable creditors and other interested parties to exercise properly their rights under the insolvency legislation.
6. An office holder should disclose:
  - a) payments, remuneration and expenses arising from an insolvency appointment to the office holder or his or her associates;
  - b) any business or personal relationships with parties responsible for approving his or her remuneration or who provide services to the office holder in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.
7. An office holder should inform creditors and other interested parties of their rights under insolvency legislation. Information on how to find a suitable explanatory note setting out the rights of creditors should be given in the first communication with creditors following appointment and in each subsequent report to creditors.

### **Suggested Format**

8. A suggested format for the provision of information is in the Appendix, including the suggested levels at which the provision of further information may be appropriate.

## **Provision of Information**

### **When Fixing the Bases of Remuneration**

9. When seeking approval for the basis or bases of remuneration, an office holder should provide sufficient supporting information to enable the approving body, having regard to all the circumstances of the case, to make an informed judgement as to whether the basis or bases sought is/are appropriate. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought.
10. If any part of the remuneration is sought on a time costs basis, an office holder should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.
11. An office holder should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the office holder or his or her staff.
12. If work has already been carried out, an office holder should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the office holder should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. An office holder should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the office holder or his or her staff.

## **Provision of Information**

### **After the Bases of Remuneration Have Been Fixed**

13. The requirements in this section are in addition to reporting requirements under insolvency legislation.
14. When reporting periodically to creditors, an office holder should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the office holder must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate).
15. Where any remuneration is on a time costs basis, an office holder should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity.
16. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable.

17. An office holder should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the office holder or his or her staff.

### **Disbursements**

18. Costs met by and reimbursed to an office holder in connection with an insolvency appointment should be appropriate and reasonable. Such costs will fall into two categories:
  - a) Category 1 disbursements: These are costs where there is specific expenditure directly referable both to the appointment in question and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the office holder or his or her staff.
  - b) Category 2 disbursements: These are costs that are directly referable to the appointment in question but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis, for example, business mileage.
19. Category 1 disbursements can be drawn without prior approval, although an office holder should be prepared to disclose information about them in the same way as any other expenses.
20. Category 2 disbursements may be drawn if they have been approved in the same manner as an office holder's remuneration. When seeking approval, an office holder should explain, for each category of expense, the basis on which the charge is being made.
21. The following are not permissible:
  - a) a charge calculated as a percentage of remuneration;
  - b) an administration fee or charge additional to an office holder's remuneration;
  - c) recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.
22. If an office holder has obtained approval for the basis of category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the office holder is replaced.

### **Pre-Appointment Costs**

23. When approval is sought for the payment of outstanding costs incurred prior to an office holder's appointment, disclosure should follow the principles and standards contained in this statement.

### **Payments to Associates**

24. Where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal

relationship, an office holder should take particular care to ensure that the best value and service is being provided. An office holder should also have regard to relationships where the practice is held out to be part of a national or international association.

25. Payments that could reasonably be perceived as presenting a threat to the office holder's objectivity by virtue of a professional or personal relationship should not be made unless approved in the same manner as an office holder's remuneration or category 2 disbursements.

### **Provision of Information to Successive Office Holders**

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

### **Provision of Information to Interested Parties**

27. Where realisations are sufficient for payment of creditors in full with interest, the creditors will not have the principal financial interest in the level of remuneration. An office holder should provide the beneficiaries of the anticipated surplus, on request, with information in accordance with the principles and standards contained in this statement.

### **Effective Date**

This SIP applies to insolvency appointments starting on or after 1 November 2011. However, insolvency practitioners are encouraged to apply the SIP to all cases regardless of the starting date where to do so would not be onerous or give rise to excessive costs.

## **APPENDIX**

### **Suggested Format for Provision of Information**

#### **Introduction**

1. Information provided by an office holder should be presented in a manner that is transparent, consistent and useful to the recipient, whilst being proportionate to the circumstances of the case. The level of disclosure suggested below may not be appropriate in all instances and the office holder may take account of proportionality considerations. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.
2. It is a matter for each office holder to decide what detailed information and explanations are required, having regard to the circumstances of the case. However, the importance of consistency and clarity should be recognised, and this

Appendix sets out suggestions in relation to the presentation of information in a standard way. Those receiving the information ought to be able to make an informed judgement about the reasonableness of the office holder's request. The information provided should facilitate comparisons between cases.

### **A Narrative Overview of the Case**

3. In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:
  - a) the complexity of the case;
  - b) any exceptional responsibility falling on the office-holder;
  - c) the office-holder's effectiveness;
  - d) the value and nature of the property in question.
4. The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:
  - a) an explanation of the nature, and the office-holder's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known);
  - b) initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
  - c) any significant aspects of the case, particularly those that affect the remuneration and cost expended;
  - d) the reasons for subsequent changes in strategy;
  - e) the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing;
  - f) any existing agreement about remuneration;
  - g) details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees;
  - h) in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
  - i) details of work undertaken during the period;
  - j) any additional value brought to the estate during the period, for which the office holder wishes to claim increased remuneration.

### **Time Cost Basis**

5. Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:
  - a) An explanation of the office-holder's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of

support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.

- b) A description of work carried out, which might include:
- details of work undertaken during the period, related to the table of time spent for the period;
  - an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used;
  - any comments on any figures in the summary of time spent accompanying the request the office-holder wishes to make.
- c) Time spent and charge-out summaries, in an appropriate format.

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

Classification of work function	Hours				Total Hours	Time Cost £	Average hourly rate £
	Partner	Manager	Other Senior Professionals	Assistants & Support Staff			
Administration and planning							
Investigations							
Realisation of assets							
Trading							
Creditors							
Case specific matters (Specify)							

Fee Drawn

Hours spent \_\_\_\_\_

Average Hourly Rate \_\_\_\_\_

7. The level of disclosure suggested by the standard format will not be appropriate in all instances and the office holder should take account of proportionality considerations:

- a) where the cumulative time costs are, and are expected to be, less than £10,000 the office holder should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case;
- b) where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features);
- c) where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted.

# CREDITORS' GUIDE TO LIQUIDATORS' FEES

## 1 Introduction

1.1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees, explains the basis on which fees are fixed and how creditors can seek information about expenses incurred by the liquidator and challenge those they consider to be excessive.

## 2 Liquidation procedure

2.1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.

2.2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.

2.3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and an official belonging to The Insolvency Service. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by The Insolvency Service on behalf of the Secretary of State. Where an insolvency practitioner is not appointed the official receiver remains liquidator.

2.4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An administrator may also subsequently act as liquidator in a CVL.

## 3 The liquidation committee

3.1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of

the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.

- 3.2 The liquidator must call the first meeting of the committee within 6 weeks of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

## 4 Fixing the liquidator's remuneration

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed:

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

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the liquidator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the liquidator.

It is for the liquidation committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied. Rule 4.127 says that in arriving at its decision the committee shall have regard to the following matters:

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

- 4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as apply in the case of the committee. A resolution specifying the

terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.

- 4.3 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.
- 4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## **5 Review of remuneration**

Where there has been a material and substantial change in circumstances since the basis of the liquidator's remuneration was fixed, the liquidator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

## **6 What information should be provided by the liquidator?**

### **6.1 When seeking remuneration approval**

6.1.1 When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought;
- the stage during the administration of the case at which it is being sought; and
- the size and complexity of the case.

6.1.2 Where, at any creditors' or committee meeting, the liquidator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

6.1.3 Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of

what the liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the liquidator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the liquidator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.

- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

6.1.4 Where the fee is charged on a percentage basis the liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator or his staff.

## 6.2 After remuneration approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution (see further paragraph 7.1 below). Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 6.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

## 6.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. Professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## 6.4 Realisations for secured creditors

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 below), he should disclose the amount of that remuneration to the committee

(if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

## **7 Progress reports and requests for further information**

7.1 The liquidator is required to send annual progress reports to creditors. The reports must include:

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses.

7.2 Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

7.3 The liquidator must provide the requested information within 14 days, unless he considers that:

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- the liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the liquidator's refusal to provide the requested information, or the expiry of the 14 days' time limit for the provision of the information.

## **8 Provision of information – additional requirements**

The liquidator must provide certain information about the time spent on the case, free of charge, upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- the total number of hours spent on the case by the liquidator or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the liquidator, and requests must be made within two years from vacation of office.

## **9 What if a creditor is dissatisfied?**

9.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing

9.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.

9.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the

application must be paid by the applicant and not out of the assets of the insolvent company.

## **10 What if the liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

## **11 Other matters relating to remuneration**

11.1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

11.2 Where two (or more) joint liquidators are appointed, it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.

11.3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.

11.4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.

11.5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.

11.6 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

## 12 Effective date

This guide applies where a company –

- goes into liquidation on a winding-up resolution passed on or after 6 April 2010;
- goes into voluntary liquidation immediately following an administration on or after 6 April 2010, except where the preceding administration began before that date;
- goes into compulsory liquidation as the result of a petition presented on or after 6 April 2010, except where the liquidation was preceded by:
  - an administration which began before that date;
  - a voluntary liquidation in which the winding-up resolution was passed before that date.

### **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).

## **EXTRACTS FROM THE INSOLVENCY RULES 1986 (AS AMENDED)**

### **4.49E Creditors' and members' request for further information**

- (1) If—
  - (a) within the period mentioned in paragraph (2)—
    - (i) a secured creditor, or
    - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
    - (iii) 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,

or
  - (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)—
    - (i) any unsecured creditor, or
    - (ii) any member of the company in a members' voluntary winding up, makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108.
- (2) The period referred to in paragraph (1)(a) and (b) is—
  - (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
  - (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case.
- (3) The liquidator complies with this paragraph by either—
  - (a) providing all of the information asked for, or
  - (b) so far as the liquidator considers that—
    - (i) the time or cost of preparation of the information would be excessive, or
    - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
    - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

- (4) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the court within 21 days of—
  - (a) the giving by the liquidator of reasons for not providing all of the information asked for, or
  - (b) the expiry of the 14 days provided for in paragraph (1), and the court may make such order as it thinks just.
- (5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4.131(1B) or 4.148C(2) by such further period as the court thinks just.
- (6) This Rule does not apply where the liquidator is the official receiver.

#### **4.127 Fixing of remuneration**

- (1) The liquidator is entitled to receive remuneration for his services as such.
- (2) The basis of remuneration shall be fixed -
  - (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
  - (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up, or
  - (c) as a set amount.
- (3) [deleted]
- (3A) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the liquidator.
- (3B) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the liquidator.
- (3C) Where the liquidator is other than the official receiver, and subject to paragraph (5A), it is for the liquidation committee (if there is one) to determine -
  - (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3A), and
  - (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3B) and the amount (if any) to be set under paragraph (2)(c).
- (4) In arriving at that determination, the committee shall have regard to the following matters -
  - (a) the complexity (or otherwise) of the case,
  - (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,

- (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator, and
  - (d) the value and nature of the assets with which the liquidator has to deal.
- (5) If there is no liquidation committee, or the committee does not make the requisite determination, and subject to paragraph (5A), the basis of the liquidator's remuneration may be fixed (in accordance with paragraphs (2), (3A) and (3B)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.
- (5A) Where—
- (a) a company which is in administration moves into winding up under paragraph 83 of Schedule B1 to the Act and the administrator becomes the liquidator, or
  - (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,
- the basis of remuneration fixed under Rule 2.106 is treated as having been fixed under this Rule and paragraphs (4) and (5) do not apply.
- (6) Where the liquidator is not the official receiver and the basis of his remuneration is not fixed as above within 18 months after the date of the liquidator's appointment, the liquidator shall be entitled to remuneration fixed in accordance with the provisions of Rule 4.127A. (NO CVL APPLICATION)
- (7) (CVL) If not fixed as above, the basis of the liquidator's remuneration shall, on application by the liquidator, be fixed by the court, and the provisions of paragraphs (2) to (4) apply as they do to the fixing of the basis of remuneration by the liquidation committee; but such an application may not be made by the liquidator unless the liquidator has first sought fixing of the basis in accordance with paragraph (3C) or (5), and in any event may not be made more than 18 months after the date of the liquidator's appointment.

#### **4.131 Creditors' claim that remuneration is or other expenses are excessive**

- (1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4).
- (1A) Application may be made on the grounds that—
- (a) the remuneration charged by the liquidator,
  - (b) the basis fixed for the liquidator's remuneration under Rule 4.127, or
  - (c) expenses incurred by the liquidator,
- is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.
- (1B) The application must, subject to any order of the court under Rule 4.49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4.108, 4 weeks) after

receipt by the applicant of the progress report, or the draft report under Rule 4.49D, which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).

- (2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least 5 business days' notice but which is without notice to any other party.

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

- (3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- (4) 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 liquidator was entitled to charge;
  - (b) an order fixing the basis of remuneration at a reduced 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 liquidation;
  - (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

- (5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the liquidation.

## **CARMICHAEL & CO FEES AND DISBURSEMENTS CHARGING POLICY**

### **General Policy**

There are rare occasions when a Winding Up Order is rescinded since the court made an error, or a third party has been unable to pay the debts and the company is reinstated. Where this occurs and a fee has been agreed on a percentage basis the fee will be calculated as if the funds had been paid into the liquidation and dividends paid by the Liquidator. In such instances, the Liquidator may reduce the fee though this shall be at his sole discretion.

Where an alternative charging structure has been agreed with creditors that structure will take precedence.

Separate bank accounts are maintained for each formal insolvency estate into which accrued interest is paid, and charges made by the bank. Prior to insolvency, funds may be held in this firm's general (non-interest bearing) Clients Account unless the estimated interest receivable would be more than £10.

All amounts charged by this firm are subject to VAT where applicable.

### **Charging Policy**

Office Holders and staff are allocated a charge out rate which is reviewed from time to time. All time spent in relation to the insolvency estate is charged to the estate unless an alternative fee structure (such as a fixed fee or percentage rate) has been agreed.

Sub-contractors are allocated a charge out rate equivalent to that payable if they were employed by the firm.

Time is recorded in 1 minute units.

### **Disbursements Policy**

Disbursements (or out of pocket expenses of the firm) may include, but are not restricted to, professional fees of other firms; statutory advertising; Company/Land Registry/County Court Judgment searches; case-specific insurance and similar; travel; accommodation; room hire; postage and similar; stationery; telephone and storage.

Only the expenses and disbursements properly incurred in relation to an insolvency estate are re-charged to the estate.

Disbursements may originally be paid by Carmichael & Co and re-charged to the insolvency estate. Where this takes place (except where items are maintained in stock, when price averaging may take place) Carmichael & Co will not add any profit element.

Travel is charged at the cost incurred (if public transport) or at the statutory mileage rate as set down by HM Revenue and Customs. If it is possible to combine 2 or more meetings or visits, the costs incurred for the shared element of travel is apportioned appropriately.

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.

There are certain meetings at which the Licensed Insolvency Practitioner or Liquidator is required to be present. In such cases (including the first meeting of creditors) his mileage from the Manchester office and accommodation will be charged to the estate even if another office is nearer. In all other cases, it will be assumed that the travel has started at the nearest office and charged accordingly.

Storage is charged based on the number of boxes of records and files (including those of this firm) held off-site on the last working day of the month 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 costs at the rates in force at the date of closure of the case.

A charge may be made for disbursements involved in reporting to creditors when required to do so. This will relate to the costs of producing and sending the report and will not include any time element. Where the actual cost can be ascertained (ie postage or specially purchased items) this will be used. Where items are held in stock (ie paper, envelopes etc) they are charged at the price paid when last purchased or within the last 6 months. Since these are small stationery items, there is unlikely to be any significant difference.

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. A charge may therefore be made at the end of the proceedings as a 'round sum payment'. This will be equal to the interest which is credited to the bank account until the last cheque has cleared.

Where a member of this firm is not appointed in an insolvency procedure or the procedure does not take place, this policy shall be applied where possible, but the costs of the disbursements incurred shall be chargeable in full by reference to the file.

Neither this firm, nor anyone associated with it holds any interest in any supplier of rechargeable items to Carmichael & Co, except when recharging for payments made to independent third parties or for mileage.

## OFFICE HOLDER'S REMUNERATION AND DISBURSEMENTS

### The scale per Insolvency Rules 1986 Schedule 6 (also known as Official Receiver's Scale Rate)

	Realisations	Distributions
(i) on the first £5000 or fraction thereof	20.0%	10.0%
(ii) on the next £5000 or fraction thereof	15.0%	7.5%
(iii) on the next £90000 or fraction thereof	10.0%	5.0%
(iv) on all further sums	5.0%	2.5%

These are modified by Carmichael & Co when seeking fees on this basis as follows:

	Realisations	Distributions
(i) on the first £3000 or fraction thereof	100.0%	10.0%
(ii) on the next £2000 or fraction thereof	0.0%	10.0%
(iii) on the next £5000 or fraction thereof	15.0%	7.5%
(iv) on the next £90000 or fraction thereof	10.0%	5.0%
(v) on all further sums	5.0%	2.5%

### Carmichael & Co Hourly Charging Rates

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

### Examples of Common Disbursement Costs

Travel by car	45p per mile
Photocopying	from 1.1p per single sided white A4 page to 17.4p per double sided coloured A3 sheet
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
Specific item costs are available upon written request	

All costs are recharged at cost except where bought in bulk in which case they are charged at the price paid when last purchased or within the last 6 months. Since these are small stationery items, there is unlikely to be any significant difference.

### Costs Review

Actual prices shown are subject to change and will be charged at the rates prevailing when they are incurred. The hourly charging rate bands for Carmichael & Co will not increase by more than 10% per year.