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# GUIDE TO REQUESTS FOR INFORMATION (FROM 1 OCTOBER 2015) LIQUIDATION

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## Carmichael & Co Complaints Policy

**Insolvency Rules 1986 (as amended) - Rule 4.49E  
Creditors' and members' request for further information**

**Insolvency Rules 1986 (as amended) - Rule 4.127  
Fixing of remuneration**

**Insolvency Rules 1986 (as amended) - Rule 4.131  
Creditors' claim that remuneration is or other expenses are excessive**

This leaflet should be read in conjunction with

- Carmichael & Co Guide to Fees (all cases if appointed after 1 October 2015)
  - Statement of Insolvency Practice 9
- R3 Guide to Liquidators Fees (appointed after 1 October 2015)
  - The case specific estimates fees

(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 by the Institute of Chartered Accountants in England and Wales  
A member of the ICAEW Practice Assurance Scheme

## **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.