Statement of Insolvency Practice 9
England and Wales

PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES FROM AN ESTATE

INTRODUCTION

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

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

~~2.~~3. This statement applies to all forms of insolvency proceedings under the Insolvency Act 1986. Nothing within this ~~SIP~~statement obligates ~~a practitioner~~ an office holder to provide a ~~fee~~fees estimate where one is not required by statute.

PRINCIPLES

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

5. Payments to an office holder ~~or their associates, and expenses incurred by an office holder,~~from an estate should be fair and reasonable reflections of the work necessarily and properly undertaken~~.~~ in an insolvency appointment.

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

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

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

[1] "other interested parties" means those parties with rights pursuant to the prevailing insolvency legislation to information about the office holder's receipts and payments. This may include a creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor.

~~3.~~9. Payments that could reasonably be perceived as presenting a threat to the office holder's objectivity or independence by virtue of a professional or personal relationship, including to an associate, should not be made unless disclosed and approved in the same manner as an office holder's remuneration or category 2 expenses.

~~4.~~10. Those responsible for approving payments from an estate to an office holder or their associates should be provided with sufficient information to enable them to make an informed judgement about the reasonableness of the office holder's requests.

11. Disclosures by an office holder should be of assistance to creditors and other interested parties[1] in understanding what was done, why it was done, and how much it cost.

~~5.~~12. Information provided by an office holder should be presented in a manner which is transparent, consistent throughout the life of the ~~case~~appointment and useful to creditors and other interested parties~~,~~[1], whilst being proportionate to the circumstances of the ~~case~~appointment.

KEY COMPLIANCE STANDARDS

Provisions of general application

~~6.~~13. An office holder should disclose:

a) all payments, ~~remuneration and expenses~~ arising from an insolvency appointment to the office holder or ~~his or her~~their associates;
b) the form and nature of any ~~business~~professional or personal relationships ~~with parties responsible for approving his or her remuneration or who provide services to~~between the office holder ~~in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.~~ and their associates.

~~7.~~14. An office holder should inform creditors and other interested parties[1] 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~~fees estimate, within pre-appointment communications (such as when assisting directors in commencing an insolvency process).

~~8.~~15. Where an office holder sub-contracts ~~out~~ work that could otherwise be carried out by the office holder or ~~his or her~~their staff, this should be drawn to the attention of creditors and other interested parties[1] with an explanation of why it is being done.

~~9.~~16. The key issues of concern to ~~those who have a financial interest in the level of payments from the insolvency estate~~creditors and other interested parties[1] 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~~payment for that work;
c) whether it is anticipated that the work will provide a financial benefit to creditors, and if so what anticipated benefit (or if the work provides no direct financial benefit, but is required by statute);
d) the work actually done and why that work was necessary;
e) the actual ~~costs of~~payment for 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).

17. 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~~clearly explains the key issues. Narrative explanations should be provided to support any numerical information supplied. Such an approach allows creditors and other interested parties[1] 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.

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

a) an expense or any other charge calculated as a percentage of remuneration;
b) an administration fee or charge additional to an office holder's remuneration;
c) ~~Where it is practical to do so, the~~the recovery of any overheads other than those absorbed in the charge out rates.

Provisions of specific application

Basis of remuneration

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

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

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

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

23. When providing a fees estimate of time to be spent, creditors and other interested parties[1] may find a blended rate[2] (or rates) and total hours anticipated to be spent on each part of the anticipated work more easily understandable and comparable than detail covering each grade or person working on the appointment. The estimate should also clearly describe what activities are anticipated to be conducted in respect of the estimated fee. When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each part should be provided for comparison purposes.

~~21.~~24. The information provided in the fees estimate may not be presented on the basis of alternative scenarios and/or provide a range of estimated charges. However for other payments that an office holder anticipates will, or are likely to be, made, it is acceptable to provide a range, or repeat a range quoted by a third party, for example legal costs in litigation.

~~22.~~25. ~~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~~To provide creditors and

[2] "A blended rate" is calculated as the prospective average cost per hour for the appointment (or category of work in the appointment), based upon the estimated time to be expended by each grade of staff at their specific charge out rate.

other interested parties[1] with sufficient information to make an informed judgement, office holders should divide the ~~office holder's~~ narrative explanations and any ~~fee~~fees estimate provided, into areas such as:

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

~~23.~~26. These are examples of common activities and not an exhaustive list. Alternative or further sub-divisions may be appropriate, depending on the nature and complexity of the ~~case~~appointment and the bases of remuneration sought and/or approved. It is unlikely that the same divisions will be appropriate in all ~~cases~~appointments and an office holder should consider what divisions are likely to be appropriate and proportionate in the circumstances of each ~~case.~~ appointment.

27. ~~When providing a fee estimate of time to be spent, creditors and other interested parties may find a blended rate[3] (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.~~ This statement does not mandate any particular fee basis. An insolvency practitioner's business model may influence the fee basis they choose. However, whatever the business model, the insolvency practitioner's commercial approach cannot override the principle that any work done for which payment is sought must be necessarily and properly undertaken in the context of an insolvency appointment.

Expenses

~~24. 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.~~

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

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

- Category 1 expenses: These are payments to persons who are not an associate. Category 1 expenses can be paid without prior approval.
- Category 2 expenses: These are payments to associates. Before being paid, category 2 expenses require approval in the same manner as an office holder's remuneration.

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

~~[3] "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.~~

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

32. If an office holder has obtained approval for the basis of category 2 expenses, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the office holder is replaced.

~~25.1. 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

~~26.~~33. 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.

~~27.~~34. ~~Irrespective of the basis or bases of remuneration approved, reports~~Reports to creditors and other interested parties[1] 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.

~~28.~~35. When reporting ~~the amount of remuneration charged or expenses incurred~~ payments during a period, the office holder should use a consistent format throughout the ~~life of the case~~appointment and provide figures for both the period being reported upon and on a cumulative basis.

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

~~29.~~37. Requests for additional information about payments ~~to an office holder or their associates, or about expenses incurred by an office holder,~~ 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~~appointment.

~~**Expenses**~~

~~30. 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**~~

~~31. 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.~~

~~32. **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.~~

~~33. **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.~~

~~34. The following are not permissible as disbursements:~~

~~a) a charge calculated as a percentage of remuneration;~~
~~b)~~a) ~~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

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

Provision of information

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

~~35.~~40. Where realisations are sufficient for creditors to be ~~made of amounts already~~ paid ~~to the office holder in respect of pre-appointment costs, giving~~in full with interest, the ~~amounts paid, creditors will not have~~ the ~~name of~~ principal financial interest in the ~~payor and its relationship to~~ level of payments from the estate ~~and the nature of the payment~~. Once this has been established by the office holder, they should provide the beneficiaries of the anticipated surplus, on request, with information in accordance with the principles and standards contained in this statement.

~~**Payments to associates**~~

~~36. 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.~~

~~37. 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**~~

~~38.~~41. When an office holder's appointment is followed by the appointment of another ~~insolvency practitioner~~office holder, whether or not in the same proceedings, the prior office holder should provide the successor with information in accordance with the principles and standards

contained in this statement. This is in addition to any statutory obligations imposed on an office holder to provide information.

~~**Provision of information**~~

~~39. 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.~~

~~40. 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: