

## **1. Introduction**

- 1.1.** This sheet explains the alternative fee bases allowed by the insolvency 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. The request to fix the basis of remuneration will indicate the basis, or bases, being requested in that particular case and will make it clear what work is to be undertaken in respect of each basis.
- 1.2.** Details about how an office holder's fees may be approved for each case type are available in a series of guides issued by R3 and can be accessed at <https://www.r3.org.uk/technical-library/northern-ireland/technical-guidance/fees/>. Alternatively, a hard copy may be requested from Maria McKinless of CavanaghKelly by emailing [maria.mckinless@cavanaghkelly.com](mailto:maria.mckinless@cavanaghkelly.com) or phoning 028 8775 2990.
- 1.3.** Statement of Insolvency Practice 9 (SIP 9) contains various requirements that the office holder has to comply with in connection with their remuneration, both when seeking approval and when reporting to creditors and other interested parties after approval. One of the matters that an office holder has to comply with is that they must also seek approval for any payments that could reasonably be perceived as representing a threat to the office holder's objectivity or independence by virtue of a professional or personal relationship, including to an associate. Where it is anticipated that such payments will be made in a case they will be separately identified when seeking approval for the basis of the office holder's remuneration.
- 1.4.** An office holder is required to record the time spent on casework in all cases, even if they are being remunerated for that work on a basis other than time costs. Time is recorded directly to the relevant case and the nature of the work undertaken is recorded at that time. The work is generally recorded under the following categories:
- Case Administration (including statutory reporting).
  - Realisation of Assets.
  - Investigations.
  - Creditors (claims and distributions).
  - Trading

## **2. Time cost basis**

- 2.1.** When charging 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 with supporting narrative to explain the work undertaken.

### **Charge out Rates**

<b>Grade of staff</b>	<b>Current charge-out rate per hour, effective from 1 March 2021</b>	<b>Previous charge-out rate per hour, effective from 1 January 2019</b>
Insolvency Practitioner	£280	£250
Director	£180	n/a
Manager	£160	£120
Senior Associate	£100	£85
Junior Associate	£65	n/a
Support Staff	£35	£30

**2.2.** Where necessary and appropriate, members of staff from other departments of the practice will undertake work on a case. They will be charged at their normal charge out rates for undertaking such work. Their charge out rates are in line with the above.

### **3. Percentage basis**

**3.1.** 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. A request to fix the basis of remuneration will set out the potential assets in the case, and the remuneration percentage proposed in respect of any realisations.

**3.2.** The percentage approved in respect of realisations will be charged against the assets realised, and where approval is obtained on a mixture of bases, any fixed fee and time costs will then be charged against the funds remaining in the liquidation after the realisation percentage has been deducted.

**3.3.** A percentage of distributions made to unsecured creditors may also be requested, in order to cover the work associated with the agreement of claims and making the distribution.

**3.4.** In order to meet the requirements of SIP 9, the disclosure we make will explain why the basis requested is expected to produce a fair and reasonable reflection of the work that we anticipate will be undertaken on the case.

**3.5.** If the basis of remuneration has been approved on a percentage basis then an increase in the amount of the percentage applied 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 percentage applied. If there has not been a material and substantial change in the circumstances, then an increase can only be approved by the Court.

#### **4. Fixed fee**

- 4.1.** The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. A request to fix the basis of remuneration will set out the set fee that we propose to charge and the work covered by that remuneration.
- 4.2.** In order to meet the requirements of SIP 9 , the disclosure we make will explain why the basis requested is expected to produce a fair and reasonable reflection of the work that we anticipate will be undertaken on the case.
- 4.3.** If the basis of remuneration has been approved on a fixed fee basis then an increase in the amount of the fixed fee 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 fixed fee. If there has not been a material and substantial change in the circumstances, then an increase can only be approved by the Court.

#### **5. Direct Costs**

- 5.1.** Where we seek approval on a percentage and/or fixed fee basis, in order to meet the requirements of SIP 9 we also have to disclose the direct costs, such as staff costs, that are included within the remuneration that will be charged on those bases in respect of the work undertaken.

#### **6. Mixed basis**

- 6.1.** If remuneration is to be sought on a mixed basis, we will make it clear in the request to fix the basis of remuneration which basis will be charged for each category of work that is to be undertaken on the case.

#### **7. Members' voluntary liquidations and Voluntary Arrangements**

- 7.1.** The legislation is different for members' voluntary liquidations (MVL), Company Voluntary Arrangements (CVA) and Individual Voluntary Arrangements (IVA). In MVLs, the company's members set the fee basis, often as a fixed fee, and SIP 9 does not apply unless the members specifically request it. In CVAs and IVAs, the fee basis is set out in the proposals and creditors approve the fee basis when they approve the arrangement.

#### **8. All fee bases**

- 8.1.** With the exception of IVAs and CVAs, which are usually VAT exempt, the office holder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

## **9. Disbursements**

**9.1.** Disbursements are payments that are first paid by the office holder and then reimbursed from the insolvent estate. Expenses are divided into those that do not need approval before they are charged to the estate (Category 1) and those that do (Category 2).

**9.2.** Category 1 expenses are payments to persons providing the service to which the expense relates who are not an associate of the office holder. They can be paid by the office holder without obtaining prior approval. . Examples of costs that may amount to Category 1 expenses are professional advisors (who are not associates), statutory advertising, external meeting room hire (where the room is only hired for that meeting), external storage, specific penalty bond insurance, insolvency case management software fees charged on a per case basis, and Company search fees.

**9.3.** Category 2 expenses are either payments to associates, or payments in respect of expenses that have an element of shared costs, such as photocopying and mileage. Category 2 expenses require approval in the same manner as an office holder's remuneration before they can be paid.

**9.4.** The practice intends to seek approval to recover the following Category 2 expenses that include an element of shared costs:

Mileage	45p per mile
Photocopying	10p per sheet

**9.5.** Professional advisors may be instructed to assist the office holder on the case where they consider that such assistance is necessary to enable them to appropriately administer the case. The fees charged by any professional advisors used will be recharged at cost to the case. Where the professional advisor is not an associate of the office holder it will be for the office holder to agree the basis of their fees. Where the professional advisor is an associate of the office holder it will be for those responsible for fixing the basis of the office holder's remuneration to approve payments to them. Professional advisors that may be instructed on a case include:

- Solicitors/Legal Advisors;
- Auctioneers/Valuers;
- Accountants;
- Quantity Surveyors;
- Pension specialists\*;
- Employment Claims specialists\*;  
Estate Agents; and
- GDPR/Cyber Security specialists.

\* Note: where such professional advisors are instructed on a case, the office holder will not charge any remuneration to the case in respect of such work, other than in respect of supervising and monitoring their work.

## **10. Reporting**

- 10.1.** 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 charged by the office holder in the period covered by the report, i.e., the amount that the office holder is entitled to draw, together with the amount of remuneration actually drawn. If approval has been obtained for remuneration on a time costs basis, the time costs incurred will also be disclosed, whether drawn or not, together with the "blended" rates of such costs.