Guidance Note

# VOLUNTARY ARRANGEMENTS A CREDITOR'S GUIDE TO INSOLVENCY PRACTITIONERS' FEES

Amended for changes introduced by The Insolvency (England and Wales) Rules 2016
6 April 2017

# VOLUNTARY ARRANGEMENTS - A CREDITORS' GUIDE TO INSOLVENCY PRACTITIONERS' FEES

## 1. Introduction

1.1 In a voluntary arrangement, as in other types of insolvency, the amount of money available for creditors is likely to be affected by the level of costs, including the remuneration of the insolvency practitioner appointed to implement the arrangement. This guide explains how fees are fixed in voluntary arrangements, how the creditors can affect the level of fees, and the information which should be made available to them regarding fees.

## 2. The voluntary arrangement procedure

2.1 Voluntary arrangements are available to both companies and individual debtors. Company voluntary arrangements are often referred to as CVAs, and individual voluntary arrangements as IVAs.

2.2 The procedure is similar for both CVAs and IVAs and enables the company or individual to put a proposal to their creditors for a composition in satisfaction of their debts or a scheme of arrangement to settle their affairs. A composition is an agreement under which creditors agree to accept a certain sum of money in settlement of the debts due to them.

2.3 A CVA may be used as a stand-alone procedure or as an exit route from an administration. It may also be used where a company is in liquidation, but this is extremely rare. The proposal will be made by the directors, the administrator or the liquidator, depending on the circumstances.

2.4 A proposal for an IVA may be made by a debtor whether or not he is already subject to bankruptcy proceedings.

2.5 The voluntary arrangement procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors.

2.6 In both CVAs and IVAs the proposal must provide for an insolvency practitioner to supervise the implementation of the arrangement. Until the proposal is approved by the creditors, the practitioner is known as the nominee. If the proposal is approved, the nominee (or if the creditors choose to replace him, his replacement) becomes the supervisor.

## 3. Fees, costs and charges - statutory provisions

3.1 The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency (England and Wales) Rules 2016. They are:

- Fees and expenses in relation to the nominee's services agreed with the company (or its administrator or liquidator) or the debtor (or the official receiver or the trustee where the debtor is subject to bankruptcy proceedings);
- Any disbursements made by the nominee prior to the arrangement coming into effect;
- any fees or expenses which:
    - are sanctioned by the terms of the arrangement (see below), or
    - where they are not sanctioned by the terms of the arrangement, would be payable, or correspond to those which would be payable, in an

administration, winding up or bankruptcy (as the case may be).

3.2 The rules require the following matters to be stated or otherwise dealt with in the proposal:

- The amount proposed to be paid to the nominee (as such) by way of fees and expenses, and
- How the fees and expenses of the supervisor will be determined and paid.

3.3 The rules do not specify on what basis the fees of the nominee or supervisor is to be calculated. This is for agreement between the debtor or the company and the creditors. The fees may be stated as a fixed sum, as a percentage of funds coming into the arrangement or by reference to the time costs of the nominee or supervisor and his staff.

## 4. The role of the creditors

4.1 It is for the creditors to decide whether to agree the terms relating to remuneration along with the other provisions of the proposal. The creditors have the power to modify any of the terms of the proposal (with the consent of the debtor in the case of an IVA), including those relating to the fixing of remuneration. The nominee should be prepared to disclose the basis of his fees, and proposals for charging the supervisor's fees to the creditors. Although there are no further statutory provisions relating to remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration.

## 5. What information should the creditors receive?

### 5.1 General principles

5.1.1 Those responsible for approving payments to the nominee, supervisor or their associates should be provided with sufficient information to make an informed judgement about the reasonableness of their requests.

5.1.2 Information provided by the nominee, supervisor or proposed supervisor should be presented in a manner which is transparent, consistent throughout the life of the case and useful to creditors and other interested parties, whilst being proportionate to the case.

5.1.3 A nominee/supervisor should disclose:

- Payments, remuneration and expenses arising from the insolvency appointment to him or his associates
- Any business or personal relationships with parties responsible for approving his remuneration or who provide services to the nominee/supervisor in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.

5.1.4 The nominee/supervisor should inform creditors and other interested parties of their rights under insolvency legislation and should advise them how they may access suitable information setting out their rights within the first communication with them and in each subsequent report.

5.1.5 Where a nominee/supervisor sub-contracts out work that could otherwise be carried out by the office holder or his staff, this should be drawn to the attention of creditors with an explanation of why it is being done.

### 5.2 Key issues

5.2.1 The key issues of concern to those with a financial interest in the level of payments from the insolvency estate will commonly be:

- The work the nominee/supervisor anticipates will be done, and why that work is necessary; and the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
- Whether it is anticipated that the work done will provide a financial benefit to creditors, and if so what anticipated benefit (or if the work provided no direct financial benefit, but was required by statute);
- The work actually done and why that was necessary;
- The actual costs of the work, including any expenses incurred in connection with it, as against any estimate provided;
- 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)

5.2.2 When providing information about payments, fees and expenses to those with a financial interest in the level of payments from the arrangement, the nominee/supervisor should do so in a way which facilitates clarity of understanding of these key issues. Narrative explanations should be provided to support any numerical information supplied. Such an approach should allow creditors and other interested parties to better recognise the nature of a nominee's/supervisor's role and the work they intend to undertake, or have undertaken, in accordance with the key issues. The nominee/supervisor should provide an indication of the likely return to creditors when seeking approval for the basis of their remuneration.

5.2.3 Where approval for a fixed amount or percentage basis is sought, the nominee/supervisor/proposed supervisor should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the nominee/supervisor/proposed supervisor anticipates will be undertaken.

## 6 Disbursements and other expenses

6.1 The proposal should include full disclosure of all costs and disbursements anticipated to be incurred during the arrangement.

6.2 Costs met by and reimbursed to the supervisor in connection with the arrangement will fall into two categories:

- Category 1 disbursements: These are payments to independent third parties where there is specific expenditure directly referable to the arrangement. Category 1 disbursements can be drawn without prior approval, although the nominee/supervisor should be prepared to disclose information about them in the same way as other expenses.
- Category 2 disbursements: These are costs that are directly referable to the arrangement but not to a payment to an independent third party. They may include shared or allocated costs that may be incurred by the nominee/ supervisor or their firm and that can be allocated to the arrangement on a proper or reasonable basis. Category 2 disbursements require approval in the same manner as a supervisor's remuneration. When seeking approval, the nominee/supervisor should explain, for each category of cost, the basis on which the charge is being made.

6.3 The following are not permissible as disbursements:

- A charge calculated as a percentage of remuneration
- An administration fee or charge additional to the supervisor's remuneration
- Recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

## 7. Progress reports and the provision of additional information

7.1 Following approval of the arrangement, the supervisor should ensure that full disclosure is made, in reports to creditors, of the costs of the arrangement and of any other sources of income of the supervisor or their practice, in relation to the case. The supervisor should specify the amount of the remuneration he has drawn, in accordance with the terms of the proposal. Any disclosure by the supervisor of payments, remuneration and expenses should be of assistance to those who have a financial interest in the level of payments in understanding what was done, why it was done and how much it costs. Reports should include a narrative update in respect of the supervisor's activity during the period being reported upon and on a cumulative basis.

7.2 If the costs of the arrangement have increased beyond previously reported estimates, this increase should be reported at the next available opportunity.

7.3 The supervisor should also provide such additional information as may be required in accordance with paragraph 5.2. Requests for additional information should be treated in a fair and reasonable way and the provision of information should be proportionate to the circumstances of the case.

7.4 Where the basis of the remuneration of the nominee or supervisor has been fixed on the basis of time spent, the nominee or supervisor is required to provide certain information about the time spent on the case, free of charge, upon request by specified persons. The persons entitled to ask for this information are –

- any creditor;
- where the arrangement relates to a company, any director or member of that company; and
- where the arrangement relates to an individual, that individual.

7.5 The information which must be provided is –

- the total number of hours spent on the case by the insolvency practitioner 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.

7.6 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 nominee's or supervisor's appointment.

7.7 Where he has vacated office, information must be provided from the date of appointment to the date that he vacated office.

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

## 8. Effective date

This guide applies where the nominee in relation to the arrangement agrees to act on or after 6 April 2017, or where information is provided by the supervisor about fees, expenses or other payments on or after 6 April 2017.