

COOPER YOUNG: PRACTICE FEE RECOVERY POLICY

BACKGROUND & INTRODUCTION

This document explains how we intend to apply the alternative fee bases allowed by the insolvency legislation when acting as office holder in insolvency appointments. The legislation also 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 are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors by correspondence, in a meeting, or the Court. The report accompanying 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.

REQUIREMENTS FOR DISCLOSURE

SIP 9 also 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.

REPORTING TO CREDITORS & FURTHER SOURCES OF INFORMATION

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee, if there is one, and to each creditor. The report will provide details of the remuneration approved to date and a breakdown of the remuneration drawn by the office holder.

Where approval has been obtained for remuneration on a time costs basis, i.e. by reference to time properly spent by members of staff of the practice at our standard charge out rates, the time incurred will also be disclosed, whether drawn or not, together with the average, or "blended" rates of such costs. Whilst in respect of any fee approvals on a % of realisation basis, the report will clearly detail the gross realisations made and the basis of the fee calculation.

Under the legislation, any such report to the creditors must also disclose how creditors can seek further information and challenge the basis on which the fees are calculated, and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

Further information about creditors' rights can be obtained by visiting the website of the Association of Business Recovery Professionals (R3) at <https://www.r3.org.uk/technical-library/england-wales/technical-guidance/creditor-guides/>. Details about how an office holder's fees may be approved for each case type are available in a series of Guidance Notes issued with Statement of Insolvency Practice 9 can be accessed at <https://www.r3.org.uk/technical-library/england-wales/technical-guidance/fees/>. There are different versions of these Guidance Notes, and in this case please refer to the most recent version. Please kindly refer to the most recent version.

Alternatively, a hard copy may be requested from Cooper Young, Hunter House, 109 Snakes Lane West, Woodford, IG8 0DY or by email by contacting us at insol@cyca.co.uk.

We note that the legislation is different for Members' Voluntary Liquidations ("MVLs"), 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.

HOW WE RECORD OUR TIME?

Other than in respect of Voluntary Arrangements 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:

Pre-appointment

Pre-appointment work
Statutory & appointment

Post appointment

On appointment work
Creditors
Investigations
Asset realisations
HMRC enquiries & Tax
Review & progress reports
Exit routes & clearance

BASIS OF OUR REMUNERATION

1. Time cost basis

Our charge out rates have not been revised since 2022. 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 in six-minute units with supporting narrative to explain the work undertaken.

In accordance with the provisions of Statement of Insolvency Practice 9 ("SIP 9"), the charge out rates applicable to this appointment exclusive of VAT, are as follows:

	From 1 July 2022 £ /per hour	From 1 July 2021 £ /per hour
Partners / Office Holders	425 – 475	375 - 405
Senior Managers	325 – 375	300 - 350
Managers	290 – 325	280 - 310
Other senior professionals	175 – 225	175 - 205
Assistants & other support staff	95 – 145	95 - 135

Our charge out rates are reviewed annually on 1 July and may be adjusted to take account of inflation and the firm's overheads.

We take an objective and practical approach to each assignment which includes active Partner involvement from the outset. Other members of staff will be assigned on the basis of experience and specific skills to match the needs of the case. Time spent by secretarial and other support staff on specific case related matters, e.g. report dispatching, is charged. Details of any subcontractor(s) used are given in the reports. 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 in actual time with supporting narrative to explain the work undertaken.

When we seek time costs approval, we have to set out a fee estimate. That estimate acts as a cap on our time costs so that we cannot draw fees of more than the estimated time costs without further approval from those who approved our fees. When seeking approval for our fees, we will disclose the work that we intend to undertake, the hourly rates we intend to charge for each part of the work, and the time that we think each part of the work will take. We will summarise that information in an average or “blended” rate for all of the work being carried out within the estimate, and by reference to each separate category of work. The blended rate is calculated as the prospective average cost per hour, based upon the estimated time to be expended by each grade of staff at their specific charge out rate. We will also say whether we anticipate needing to seek approval to exceed the estimate and, if so, the reasons that we think that may be necessary.

A report accompanying the request to fix the basis of remuneration will include the fees estimate, as well as details of the expenses that will be, or are likely to be, incurred. Further information about expenses is given in a separate section below.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal.

If we subsequently need to seek authority to draw fees in excess of the estimate, we will say why we have exceeded, or are likely to exceed the estimate; any additional work undertaken, or proposed to be undertaken; the hourly rates proposed for each part of the work; and the time that the additional work is expected to take. As with the original estimate, we will summarise that information in an average or “blended” rate for all of the work being carried out within the estimate, and by reference to each separate category of work, and will also say whether we anticipate needing further approval and, if so, why we think it may be necessary to seek further approval.

2. Percentage basis

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 report accompanying the request to fix the basis of remuneration will set out the potential assets in the case, the remuneration percentage proposed in respect of any realisations and the work covered by that remuneration, which may solely relate to work undertaken in connection with the realisation of the assets, although may also include other categories of work as listed above. The report will also include details of the expenses that will be, or are likely to be, incurred. Further information about expenses is given in a separate section below.

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.

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.

The disclosure that we make will include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any

responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal. In order to meet the requirements of SIP 9 it will also 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.

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.

3. Fixed fee

The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. A report accompanying the request to fix the basis of remuneration will set out the set fee that we proposed to charge and the work covered by that remuneration, as well as details of the expenses that will be, or are likely to be, incurred. Further information about expenses is given in a separate section below.

The disclosure that we make will include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal. In order to meet the requirements of SIP 9 we will also 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.

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.

Mixed basis

If remuneration is to be sought on a mixed basis, we will make it clear in the report accompanying 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.

WHO WILL WORK ON THE ENGAGEMENT AND IS WORK DONE REMOTELY?

Cooper Young may from time to time employ personnel (locally and overseas) to work on matters relating to an insolvency engagement. These services may include, but are not limited to, data entry, completion of insolvency work as well as dealing with ongoing communication & correspondence on the case. All personnel engaged by Cooper Young, irrespective of location, are carefully selected and have the required and the relevant insolvency expertise, skills and experience. The work is subject to the same requirements and quality control procedures as our employees in the UK and the team is bound by our client confidentiality and security terms.

Furthermore, in order to successfully deliver our services, we may also utilise cloud-based software packages (e.g. Office 365, Microsoft One Drive, etc.) that store files on remote servers operated by third parties, including the use of hosting providers overseas. Where utilised, the software provider

remains responsible for Confidentiality, Internet Communication, Data Protection Act and General Limitation of Liability. Whilst the transfer of personal information is minimised, as part of our work we may need to store personal information on these servers. Cooper Young will take all reasonable precautions to ensure that any electronic data that contains private information is securely stored and that any emails we send are not able to be intercepted by third parties. However, we cannot be held liable for any loss that you might incur as a consequence of any third-party intervention that accesses, procures or copies any data that contains your private information from any medium or device we use to store or transmit this information. If, despite our company having taken reasonable precautions to securely store your private information, you suffer any losses arising from unauthorised cyber-activity, you agree to forever release us from any claim for your losses.

WHAT OTHER COSTS MAY BE CHARGED TO THE ESTATE?

VAT

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.

Direct Costs

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 that are included within the remuneration that will be charged on those bases in respect of the work undertaken. The following are direct costs that will be included in respect of work undertaken in respect of each of the standard categories of work where the office holder is to be remunerated for such work on either a percentage or fixed fee basis:

- i) Administration and Planning – includes work such as planning how the case will be administered and progressed; the administrative set up of the case; notifying creditors and others of the appointment; keeping the records relating to the case up to date; and reporting on progress of the case to creditors and others. These costs are usually classified in our timesheets under (i) On appointment work; and (ii) Reviews & Progress Reports, dependent on the nature of work and stage of the insolvency.
- ii) Creditors – includes work such as communicating with creditors, including HMRC; dealing with creditors' claims; dealing with employees and liaising with the redundancy payments office; and where funds realised allow, paying dividends to creditors.
- i) Investigations – includes work such as undertaking an initial review of the financial affairs of the company and bankrupt; undertaking a detailed investigation with a view to making recoveries for the benefit of creditors where matters such as preferences or wrongful trading come to light as a result of the initial review; and reporting to the Insolvency Service on the conduct of the directors.
- ii) Realisation of Assets – includes work such as identifying, securing and insuring assets; dealing with retention of title claims; collecting debts owed; and selling assets.
- iii) Trading – which includes work such as managing and controlling all aspects of the business; and preparing financial records and information relating to that trading.

Where applicable and as noted below, expenses incurred in respect of a particular insolvency are classified as either Category 1 or Category 2 and disclosed to the creditors as required by insolvency legislation.

Expenses

As noted previously, a report to the creditors for the approval of fees will include details of expenses to be incurred, or likely to be incurred. When reporting to the committee and creditors during the course of the insolvency appointment the actual expenses incurred will be compared with the original estimate provided.

Expenses are any payments from the insolvent estate that are neither an office holder's remuneration nor a distribution to a creditor, or a member. Expenses also include disbursements. 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).

1. Category 1 Expenses

Category 1 expenses are payments to persons providing the service to which the expense relates who are not an associate of the office holder. These are costs directly referable to an invoice from a third party, which is either in the name of the estate or Cooper Young and in the case of the latter, the invoice makes reference to, and therefore can be directly attributed to, the estate. Category 1 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.

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. The fees of any professional advisors are subject to the rights of creditors to seek further information about them or challenge them as summarised below. Professional advisors that may be instructed on a case include:

- Solicitors/Legal Advisors;
- Auctioneers/Valuers;
- Accountants;
- Quantity Surveyors;
- Estate Agents;
- Pension specialists;
- Tracing agents;
- Employment Claims specialists; 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.

2. Category 2 Expenses

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. We only intend to seek approval to recover the following Category 2 expenses that include an element of shared costs, where appropriate:

Photocopying	5p per sheet
--------------	--------------

As a general rule, we do not charge Category 2 expenses to the insolvency estate, unless these are

expected to be material in the circumstances of the case. Where these are to be charged, these will be clearly disclosed as part of our request for fee approval.

REPORTING AND RIGHTS TO CHALLENGE

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. The report will also compare the actual time costs incurred with those included in the fees estimate prepared when fixing the basis of the remuneration and indicate whether the fees estimate is likely to be exceeded. If the fees estimate has been exceeded, or is likely to be exceeded, the report will explain why that is the case.

The report will also provide information about expenses incurred in the period covered by the report, together with those actually paid, together with a comparison with the estimated expenses. If the expenses incurred, or anticipated to be incurred, have exceeded the estimate provided the report will explain why that is the case.

Under the insolvency legislation the report must also include a statement of the legislative rights of creditors to request further information about the remuneration charged and expenses incurred in the period covered by the report, or to challenge them on the grounds that they are excessive. Extracts of the relevant insolvency rules dealing with these rights are set out below. Once the time period to seek further information about the office holder's remuneration and/or expenses for the period covered by the report has elapsed, then a Court Order is required to compel the office holder to provide further information about the remuneration and expenses. A Court order is required to challenge the office holder's remuneration and/or expenses for the period covered by the report. Once that period has elapsed, then a separate Court Order is required to allow an application out of time.

Under rule 18.9 of the Insolvency (England and Wales) Rules 2006, an unsecured creditor may, with the permission of the court or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question) request further details of the office holder's remuneration and expenses, within 21 days of receipt of any report for the period. Any secured creditor may request the same details in the same time limit.

Under rule 18.34, an unsecured creditor may, with the permission of the court or with the concurrence of 10% in value of the unsecured creditors (including the creditor in question), apply to court to challenge the amount and/or basis of the office holder's fees and the amount of any proposed expenses or expenses already incurred, within 8 weeks of receipt of any report for the period. Any secured creditor may make a similar application to court within the same time limit.

Under some old legislation, which still applies for insolvency appointments commenced before 6 April 2010, there is no equivalent mechanism for fees to be challenged.
