

Introduction

The insolvency legislation was changed in October 2015, with one or two exceptions, for insolvency appointments made from that time. This sheet explains how we intend to apply the alternative fee bases allowed by the 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.

Further information about creditors' rights can be obtained by visiting the creditZone section of our website www.carterclark.co.uk. Details about how an office holder's fees may be approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) and can be accessed at www.carterclark.co.uk. Alternatively a hard copy may be requested from Carter Clark at Recovery House, 15-17 Roebuck Road, Hainault Business Park, Ilford, Essex, IG6 3TU. Please note that we have provided further details in this policy document.

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 drawn. If 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. Under the legislation, any such report must 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.

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.

Time cost basis

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 6 minute units with supporting narrative to explain the work undertaken.

Chargeout rates

Period	From 01/05/24	01/01/22 to 30/04/24	01/05/20 to 31/12/21	01/11/14 to 30/04/20
	£	£	£	£
Partners (or equivalent)	525 - 600	425 - 495	385 - 425	310 - 385
Managers	420 - 495	380 - 420	310 - 350	270 - 325
Senior administrators	270 - 325	250 - 310	240 - 285	200 - 250
Administrators	200 - 250	190 - 230	170 - 200	150 - 190

* Rates vary between individuals, reflecting experience. For certain more complex tasks, Carter Clark may seek to apply a higher rate in respect of work to be undertaken, but subject to prior authorisation in accordance with the Act. For further information on the manner in which an office holder's fees may be fixed, please refer to the applicable Creditors' guide to fees. Support staff will also occasionally charge their time when performing a substantial administrative task within a case. Support staff charge their time at £160 per hour.

These charge-out rates charged are reviewed annually and are adjusted to take account of inflation and the firm's overheads.

The constitution of the case team will usually consist of a Partner, a Manager, and an Administrator. The exact constitution of the case team will depend on the anticipated size and complexity of the assignment and the levels of experience required. Staff are employed in various jurisdictions with a standard charge-out rate. The Officeholder reserves the right to use staff in any jurisdiction, as appropriate, based on the complexity of the matter and to ensure the most time and cost-efficient service is provided.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. The work is generally recorded under the following categories:

- Administration and Planning.
- Investigations.
- Realisation of Assets.
- Creditors.
- Trading.
- Case specific matters.

In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015.

When we seek time costs approval we have to set out a fees 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. 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.

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. For example, 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 say whether we anticipate needing further approval and, if so, why we think it may be necessary to seek further approval.

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. In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and we now seek remuneration on fixed or a percentage basis more often. A report accompanying any fee request will set out the potential assets in the case, the remuneration percentage proposed for any realisations and the work covered by that remuneration, as well as the expenses that will be, or are likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context.

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.

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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.

Fixed fee

The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and we now seek remuneration on a fixed fee basis more often. A report accompanying any fee request will set out the set fee that we proposed to charge and the work covered by that remuneration, as well as the expenses that will be, or are likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context.

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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.

Members' voluntary liquidations and Voluntary Arrangements

The legislation changes that took effect from 1 October 2015 did not apply to members' voluntary liquidations (MVL), Company Voluntary Arrangements (CVA) or Individual Voluntary Arrangements (IVA). In MVLs, the company's members set the fee basis, often as a fixed fee. In CVAs and IVAs, the fee basis is set out in the proposals and creditors approve the fee basis when they approve the arrangement.

All bases

With the exception of Individual Voluntary Arrangements and Company Voluntary Arrangements which are currently VAT exempt, the officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

Agent's costs

These are charged at cost based upon the charge made by the Agent instructed. The term Agent includes:

- Solicitors/Legal Advisors
- Auctioneers/Valuers
- Accountants

- Quantity Surveyors
- Estate Agents
- Other Specialist Advisors

In appointments made after 1 October 2015, the office holder will provide details of expenses to be incurred, or likely to be incurred, when seeking fee approval. 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. Agent's costs in a Voluntary Arrangement will be subject to VAT.

Expenses

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

Category 1 expenses: These are payments to persons providing the service to which the expense relates who are not an associate of the office holder. Category 1 expenses can be paid without prior approval.

Category 2 expenses: These are payments to associates or which have an element of shared costs. Before being paid, category 2 expenses require approval in the same manner as an office holder's remuneration. Category 2 expenses require approval whether paid directly from the estate or as a disbursement.

When seeking approval of category 2 expenses, an office holder should explain for each expense the basis on which the expense is being charged to the estate.

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.

As a general rule Category 2 expenses are not recovered. Where approval from Creditors is sought for the recovery of Category 2 expenses, details of any cost allocation to the insolvency estate will be supplied at the time approval is sought. This will include the basis for that allocation together with the proposed charges.

Provision of Information

Each statutory report made by the office holder containing an account of receipts & payments relevant to that appointment will generally be accompanied by a Summary of the office holders fees and expenses in the form suggested by SIP9. Where further information is requested, reports will be provided on receipt of a written request to Carter Clark. Carter Clark reserves the right to either refuse to comply with such request or to insist upon payment of costs by the recipient wherever, in their professional opinion, the request is manifestly frivolous or out of proportion to the circumstances.

Authorising Body

Alan Clark, Paul Higley and Jenny Poleykett are licensed to act as Insolvency Practitioners in the UK under the authority of the Institute of Chartered Accountants in England & Wales and hold enabling bonds to receive appointments under their licences.