

EXPLANATORY NOTE TO ACCOMPANY SIP 9 - PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES

This explanatory note does not form part of the mandatory guidance included within the Statement of Insolvency Practice covering payments to insolvency office holders and their associates. It has been prepared to assist Insolvency Practitioners (“IPs”) in their understanding of the expectations that arise for those IPs.

Why has the SIP changed so much?

Currently, the insolvency profession is self-regulated. Consequently, the Recognised Professional Bodies, and the Insolvency Service as the Oversight Regulator, rightly have high expectations of IPs. IPs need to ensure that they reach those expectations, in particular around independence, objectivity and transparency and their dealings with stakeholders.

In the latest iterations of the Statements of Insolvency Practice there has been a clear and deliberate shift towards principles based mandatory regulation and away from the detailed and prescriptive formats previously used. This approach reflects a collective decision of the RPBs, in accordance with the *Principles of Better Regulation*.

In relation to SIP 9, whilst providing suggested formats may assist the IP, and allow a level of comparison from estate to estate, reports based on such formats have been characterised by creditors as overly formulaic, repetitious and unhelpful. The aim of the principles based approach here is to enable a creditor to better understand what was done, why it was done, and how much it costs.

What is the SIP seeking to achieve?

Consumers of goods and services expect to have a clear understanding of the price they are paying for such goods and services. The issue of payments to Insolvency Practitioners is emotive, not least because there is often a level of confusion between creditors and stakeholders as to why the IP should be paid when they are not receiving any return. An explanation at this most basic level may be sufficient to satisfy an enquiry from an unsecured creditor or other stakeholder. IPs need to recognise that many creditors and stakeholders do not have the practical experience that they have of both managing and purchasing professional services. However, at this most basic level IPs need to ensure that they engage. The key objective of the Officeholder should be to ensure that the disclosure they are providing is assisting those who have a financial interest in the level of payments from an insolvency estate in understanding what was done, why it was done and how much it costs. IPs should not be deterred from providing this information in a transparent manner. Even if there is no likely dividend to creditors, creditors are still paying for the IP’s fees from assets which would otherwise be available to them.

Changes in the law mean IPs can be more flexible in their fees strategy

Changes in the legislation around payments to Insolvency Practitioners have broadened the options for an Insolvency Practitioner. It is no longer necessary to select either a fixed fee, or a time and rate approach, or a percentage basis on realisation and distribution. The IP, working with the stakeholders can determine what in his mind provides the creditors with the best return, having taken into consideration the risk and

rewards which the IP has carried. It is therefore possible to adopt a mix of approaches to fees, which, for instance may include an appropriate fixed fee to cover the statutory steps and a time and rate for investigations. Alternatively where the IP wishes, they may seek the agreement of the approving body to a percentage based on sums recovered, but with a fixed fee for the statutory steps. In each case the IP needs to ensure that the stakeholders understand what was done, and why it was done, and how much it costs or will cost.

When should IPs be providing information to creditors?

In all circumstances IPs must be aware that sufficient information should be given to enable the approving body to consider the request at the earliest opportunity. This may arise sometime after the Insolvency Practitioner's appointment, and in those instances the IP should be transparent about the steps he has taken, and why those steps were taken prior to seeking the agreement of the approving body.

Where possible an indication of the likely return to creditors should be given

In those instances where it is possible for the IP to give creditors an indication of the return at the commencement of an assignment such information should be provided to enable creditors to have a clear link between the value they will recover and the costs that will be associated with that recovery. Such information should assist the creditors and the approving body understand the IPs request.

The full range of payments to the IP and their associates should be included

To ensure sufficient transparency creditors should be given sufficient information to enable them to assess each of the payments which go to an Insolvency Practitioner's firm for fees, for the expenses of the estate paid to him or his firm, and any other expenses that are paid to the IP, or his firm, or to a party with whom the practice, or an individual within the practice, has a business or personal relationship. Third party funding either to enable trading or possibly litigation should also be clearly disclosed by an IP.

Recommended Actions

Nothing in this explanatory note is prepared or contemplated to amend the statutory obligations which an Insolvency Practitioner holds, and Insolvency Practitioners should understand that the statutory requirements have not been altered by it, and nor have the relevant regulations. IPs are encouraged to familiarise themselves with those regulations.

This note should be read in conjunction with the SIP, the relevant Act, Rules and Regulations so that an IP has a holistic view of the requirements upon them.