SIP 9 FAQs

The Recognised Professional Bodies (RPBs) have been asked a number of questions about the operation of the revised SIP 9 effective from 1 April 2021. ICAEW, IPA, ICAS and CAI have attempted to address these questions in the FAQs below.

Insolvency practitioners (IPs) should recognise that the SIPs are principles-based, and as such it is not possible to be prescriptive as to how the SIP will apply in individual circumstances. Some examples have been included after the FAQs to assist understanding of the approach to interpretation and application of SIP 9 in relation to expenses. When considering fees and expenses, IPs will be aware that the SIP has been revised to address actual and perceived abuse, and that the over-riding principles are those set out in paragraphs 5 to 13 of the SIP.

Where this document references an 'associate' or an association, this refers to the SIP 9 context, rather than the statutory definition.

	Queries	Answers
	Fixed costs	
1	Direct costs What kind of detail is required in explaining "the direct costs included" (paragraph 21) in a set amount or percentage fee? Is it really necessary to state that the fee covers the cost of employing staff to work on the job? What about the cost of the office stationery, files, telephone calls? If this is not what is intended, then what kind of direct costs are expected to be explained?	The over-riding requirement has not changed in that the costs charged to an insolvent estate should be fair and reasonable reflections of the work and costs required for a particular case. The requirement to reference the direct costs included in a set fee is to ensure transparency so creditors can understand what is included, or indeed not included, in the officeholder's proposed costs and the reasonableness of the IP's proposed fees. As an example, it should be set out whether the fixed fee includes only time spent on the case by the IP and their staff or whether other costs which might be incurred by the office holder are also included in the fixed fee. Recognising that it might not always be possible to set out what the

		fixed fee includes, it will be acceptable as an alternative to set out the types of expenses that the fixed fee does not include.
2	Where the new SIP comments on fixed/percentage fees – "where a set amount or a percentage is being used, an explanation should be provided of the direct costs included", is this referring to direct costs in the accounting sense, ie rent and rates etc, (which aren't directly attributable to the case, but may be absorbed by the charge out rates upon which the fixed fee level is estimated)?	See point 1 above
	Shared costs	
3	In an ICAS webinar, it was explained that if a conference room were hired to host meetings on three cases, this would be a shared cost, which would require creditor approval as a category 2 expense. While we see how this is the case from the wording of SIP 9, it is a curious outcome given that it would seem perfectly sensible to split the bill three ways. Is this truly how para 30 should be interpreted? By extension, should the following be treated as Category 2 expenses: • Agents' or solicitors' fees where they have worked on a group of companies? • Block transfer orders where the court orders that the costs be shared across the cases as expenses? • Other expenses on group insolvencies, e.g. where rent, rates, utilities etc. are being incurred as trading-on expenses for more than one company?	The definition of category 2 expenses is 'payments to associates or which have an element of shared costs'. Where costs, such as in this example the meeting room, are being allocated to different estates, they will require approval by the approving body on each case before they can be drawn. The rationale for this is that the costs are being allocated to the estates by the officeholder and his staff, which requires an element of judgement. Therefore it is appropriate for creditors to approve the basis of the calculation. With a number of third party costs, such as agents and solicitors costs, the officeholder should be able to negate the need to allocate the costs between estates if, when instructing the third party, they ask the service provider to invoice each individual estate. These invoices will then have no element of allocation, and should be directly attributable to each estate. With block transfer orders (BTOs) it is typical for the order to set out how the costs should be allocated. This may be something you need to address if your BTOs don't already contain this provision. Where utility costs and trading expenses are incurred on group cases,

		and each estate's share of the costs is being allocated by the officeholder or their staff, these costs include an element of allocation between estates, and so will need approval by creditors. This may again be something to consider at the outset of a case, where you know this is going to be an issue.
4	The ICAS webinar also gave the example of a third-party storage facility storing both office and case files and that these costs probably could not be split up as category 2 expenses. However, what if the storage facility stored only case files? Is there a difference?	In relation to third-party storage charges, whether this is an overhead, a category 1 or a category 2 expense will depend on the charging structure by the service provider. Where a third-party charges a global charge and the storage includes both insolvency case files and other items of storage (for example accounts or audit files, or storage of the firm's accounting records) then this will be an overhead as it relates, in part or in full, to either the activities of the business or other services of the business which are not related to insolvency appointments. None of the costs could be charged to insolvency cases, other than through absorption as part of setting charge-out rates. If a third-party charges per box and the box can be directly associated with a single case then the cost per box can be a category 1 expense, as the cost will be directly attributable to the estate and the cost isn't based on an allocation. If the third-party charges a global charge for use of the storage facility and it contains only insolvency-related storage, the cost of which is then allocated over the cases whose records are stored there, the cost will be a category 2 charge, which requires approval. Any storage provided by the firm is unlikely to be able to be charged separately to an insolvency estate as the underlying property costs are likely to fall within the definition of an overhead.

		As always, if the expense is incurred to the officeholder's firm or any party who is an associate this will be a category 2 expense which requires approval by creditors.
5	How does an element of shared costs requiring creditor approval apply on group appointments?	See point 3 above
6	What is meant by "an element of shared costs" (paragraph 27) in relation to category 2 expenses? "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. " Does this apply to costs shared between group appointments (e.g. the legal advice that benefits more than one company in the group or a security guard that protects the building and contents owed by separate group companies, train ticket to travel to site to speak to with directors about more than one of their insolvent companies?) This seems practically unworkable. Or is this only costs which are shared with the IP or his firm or amongst unrelated appointments?	The April 2021 version of SIP 9 extends the previous position (where shared or allocated disbursements needed approval prior to payment) to any shared or allocated expenses incurred in dealing with an estate. The SIP requires the costs allocated to individual estates to be fair, reasonable and proportionate.
7	How do shared expenses work with trading groups? For example, where an administrator is appointed over a group of companies, all occupying and trading wholly or partly from leasehold premises, where rent is unpaid at appointment. I'm assuming (as is usually the case) that there is a lease in the name of one of the companies	The example and process set out is correct. Officeholders are encouraged to consider such issues as part of case planning or as early as possible following appointment and seek approval in their early reports. Any risk of needing to make urgent

	in administration, and that the administrators wish to continue beneficial occupation of the premises to seek achievement of their chosen objectives for the companies, and that the landlord will require payment. I also assume that the rent will be paid from estate funds, and not met by the office holder. My thought process is as follows: • Any payment made to the landlord will (according to the provisions of the SIP) be an expense, being neither an office holder's remuneration nor a distribution to a creditor or a member. It will not be classed with the subset of disbursements, being paid directly. • The invoice will need to be shared between the various companies in administration, allocated by the office holders on the basis they think best, and documented as a decision for the file. • According to para 32, as a shared or allocated payment incurred by the office holder, the rent is a category 2 expense and approval must be sought before payment, because the office holder will be deciding how the expense is being shared or allocated between insolvency appointments. • Unless the office holder pays the rent himself and reclaims as a disbursement (post approval of his allocation), he can't pay rent to the landlord until he has approval from the appropriate stakeholder(s). Maybe I'm missing something obvious here, but the definition of Cat 2 expenses, payments to associates or which have an element of shared costs, seems consistent with the above logic.	payments without having authority can then be minimised. Recharging a trading or wind-down cost (such as utility or rental costs) on the same basis as would have been applied pre-appointment wouldn't be deemed to be a shared or allocated cost, as the officeholder hasn't exercised their judgement. However the officeholder should consider whether the previous charging structure provides a fair and reasonable allocation of costs given that use and capacity may have changed as a result of the insolvency. In exceptional cases an officeholder many need to make an urgent payment before they have been able to seek approval. Where that is the case, we would expect the file to justify that treatment. Should the approving body not approve the payment then the office holder will need to either seek to reach a mutually agreeable split between all the parties affected (across all the estates), repay the sum to the estate or go to court for approval. This change to the SIP wasn't intended to make life more difficult for officeholders when dealing with trading / wind down scenarios. The RPBs will keep this area under review and will report back to JIC.

	Overhead or case charges	
8	The SIP includes a lot of wording relating to category 1 and 2 expenses, but does not define what is meant by an overhead, either in the context of expenses or in the context of remuneration. We know that concerns have been expressed in the past about treatment of insolvency software invoiced to the practice on a per case basis, as a category 1 disbursement. It appears to us though that under the revised SIP, such insolvency software provided on a per case basis direct to the practice could still clearly be treated as a category 1 expense, not as a practice overhead, as long as it was provided by an unconnected supplier. Is this your understanding of the wording of the revised SIP? We fully appreciate, and agree though, that an annual insolvency software charge that is not invoiced on a per case basis, is clearly a practice overhead and cannot be recharged to individual cases.	The revised SIP deliberately didn't include a definition of an overhead, and deliberately moved away from providing a list of potential overheads. The overhead provisions should be read alongside the principle that payments from an insolvency estate should be directly attributable to the estate from which they are sought. A useful and reasonable rule of thumb is that an overhead is a cost that is incurred which isn't specific to an individual case but which is incurred for the running of the business / providing a service other than in relation to insolvency casework. The principle is that officeholders shouldn't be recovering general costs from insolvency estates other than those which might be recoverable through the underlying basis of fixing hourly rate charges. Such costs are an underlying cost of being in business as an IP and it isn't fair and reasonable to creditors to levy such costs to individual estates. It is likely to be reasonable to treat costs that are charged on a per case basis, where they aren't being charged by an associate, as a category 1 expense. However these costs should be necessarily incurred, fair, reasonable and proportionate in dealing with that estate. The revised code of ethics effective from 1 May 2020 also requires the rationale for choosing a particular service provider to be documented and arrangements should be periodically reviewed to ensure that best value and service continues to be obtained in relation to each insolvency appointment. Where data migration costs are incurred, they should be considered against the criteria of whether they have been necessarily incurred, and whether they are fair, reasonable and proportionate. In many cases it is unlikely that they will meet those criteria. Where they are incurred as a result of the acquisition of an entity or a block of cases, they should

		be taken into account as part of the purchase price and not charged to the individual estate(s).
9	Please clarify the interpretation of the new SIP specifically in relation to Case Management System (CMS) costs where these can be directly attributable to the case. There are different licencing models for CMSs, for example some where the licence is based on the number of users and some where each case added to the system is billed directly. Our understanding is that the Regulators don't look favourably on the charging of the CMS costs to a case, even though the cost *appears* to be direct.	We can't, and don't want to, dictate how suppliers charge for their services. Where an un-associated supplier levies a charge that is directly attributed to an insolvent estate (either billed directly to an individual estate, or where a global invoice is levied, which clearly states the charge for individual cases), that is likely to be a category 1 charge. However, that charge should be fair, reasonable and proportionate and necessarily charged to that estate. Arrangements should be periodically reviewed to ensure that best value and service continues to be obtained in relation to each insolvency appointment. The RPBs have seen some software charges calculated on a per case basis where the amount charged to an estate appears unexceptional but when considered over an office holder's whole portfolio, these charges are substantial. In such instances it can be difficult to understand how such arrangements represent best value, and office holders should be prepared to evidence that best value is being obtained.
10	Can AML charges be recoverable as an expense?	AML requirements stem from The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and IPs are required to comply with the CCAB Anti-Money Laundering and Counter-Terrorist Financing Guidance for the Accountancy Sector and the Appendix Guidance for Insolvency Practitioners. The Appendix sets out at F.3.3 the expectations for when IPs are expected to conduct Customer Due Diligence (CDD) relating to various

		appointment types. In essence, it is expected that CDD is conducted prior to appointment. Paragraph 36 of SIP 9 states that 'Where recovery of pre-appointment costs is expressly permitted by statute and approval is sought from creditors for payment from the estate of these costs, disclosure should follow the principles and standards contained in this statement'. There is limited provision in legislation for the recovery of pre-appointment costs. In England & Wales rule 6.7 sets out the pre-appointment costs that can be recovered in a CVL as an expense of the liquidation, Rule 3.36 covers administrations and Rules 8.30 and 2.43 cover the position for IVAs and CVAs. In Scotland, similar provisions apply to administrations, CVLs and CVAs. Section 183(1)(c) of the Bankruptcy (Scotland) Act 2016 sets out the position for Protected Trust Deeds. Otherwise there is no provision for the recovery of pre-appointment costs. Pre-appointment ethical checks and anti-money laundering checks are carried out to ensure that the officeholder is in a position to accept the appointment, and aren't for the benefit of the insolvent estate. This is reinforced by the principle in paragraph 6 of SIP 9 which refers to payments being fair and reasonable reflections of the work necessarily and properly undertaken *in* an insolvency appointment. The RPBs don't expect to see pre-appointment costs in relation to carrying out ethical or anti-money laundering (AML) checks, or system charges relating to such costs, recovered from insolvent estates. With regards to charges for ongoing AML CDD throughout the lifetime

		of a case, consideration will need to be given as to whether such expenses would fall under the principle of an overhead (for example, a flat monthly/quarterly/annual fee is paid for the service) or whether you are charged on a per search basis which can be directly attributed to the case and therefore potentially recoverable as an expense. The charge should be fair, reasonable, and proportionate. Arrangements should be periodically reviewed to ensure that best value and service continues to be obtained in relation to each insolvency appointment.
	Associates	
11	What makes a relationship an association?	The SIP explains that officeholders should, in addition to the definition in the insolvency legislation, consider the substance or likely perception of any association between the insolvency practitioner, their firm, or an individual within the insolvency practitioner's firm and the recipient of a payment. It judges this against a 'reasonable and informed third party' test – something which is familiar and used in the Code of Ethics when considering the perception of others. It will be down to individual officeholders to determine who falls within the category of an associate, as they will need to consider the personal and professional relationships relating to themselves, the insolvency team and the firm and only they really know the extent of those relationships.
12	Definition of Associate – paragraph 2 Would the following comprise a relationship that "a reasonable and informed third party might consider there would be an association"? • Where an IP/firm engages specialists regularly, perhaps on all their appointments, e.g. when using solicitors,	The reasonable and informed third party test is fundamental to making this judgement. In many cases an agent and / or a lawyer will not fall into the associate category, particularly when they are working on arm's length commercial terms. Where specialist skills and knowledge are required to assist an IP it is inevitable that certain advisors will be instructed multiple times. However, it will be for officeholders to determine which relationships make an individual an associate, using

	agents. • Perhaps the IP/firm has even agreed a special rate across their whole case portfolio, e.g. when using pension or ERA specialists or debt collectors. • Where an accountant or solicitor (or other party) has introduced the IP to the potential appointment and then the accountant or solicitor is instructed to do some work on the case for the IP (or pre-appointment to be paid after appointment). • Where an IP is appointed by the company/director and then engages connected Newco to collect debts.	the reasonable and informed third party test on a case by case basis, taking into account their personal and professional relationships. Insolvency practitioners also need to consider the requirements of the code of ethics in the context of obtaining specialist advice and services and agencies and referrals, and the need to review any such arrangements periodically, to ensure that best value and service continue to be obtained in relation to each insolvency appointment.
13	As payments should not be approved by any party with whom the office holder has a professional or personal relationship which gives rise to a conflict of interest, how should the conflict of interest test be approached eg actual v potential to perceive	Officeholders should apply the reasonable and informed third party test. They should also bear in mind that safeguards can reduce the threat of a conflict of interest to reduce or eliminate the threat.
14	In a situation where the only voting creditor is the director or referrer, would they automatically be classed as an Associate, therefore invalidating the vote?	Not necessarily. The test in the SIP is whether the relationship gives rise to a conflict of interest. This is a conflict of interest to be assessed specifically in the context of the code of ethics. It's worth noting that the code of ethics requires an insolvency practitioner not to accept the insolvency appointment in circumstances where a threat to the principle of objectivity or other fundamental principles cannot be eliminated and safeguards cannot be applied to reduce the threat to an acceptable level. Given that requirement, it would be unlikely that an insolvency practitioner would be in office where there is a conflict of interest if so assessed in the context of the code of ethics.

		Office holders should apply the reasonable and informed third party test. They should also bear in mind that safeguards can reduce or eliminate the threat of a conflict of interest. Such considerations should be evidenced on file with contemporaneous file notes. Where office holders consider that there is a reasonable/high probability/possibility that no non-associates votes may be received, when seeking fee approval, a statement could be made that, should no non-associate votes be received in relation to fee approval then votes of those assessed by the insolvency practitioner to be an associate will be taken into account.
15	Would the following comprise a "party with whom the office holder has a professional or personal relationship which gives rise to a conflict of interest" such that they should not approve the office holder's fees – all those listed below with voting power would appear to have some self-interest threats in voting for approval of the IP's fees..? • Where an accountant or solicitor (etc.) has been instructed by the office holder to do work and the accountant or solicitor is also a creditor. • Where an IP has been appointed by the creditor. • Anyone with a personal relationship with the office holder. What should an office holder do if such a creditor does vote? If it is a valid vote under the rules, can it simply be ignored? What if this results in the office holder needing to go to court for approval, might the office holder risk the court stating that the office has applied unnecessarily and thus they might not allow their costs?	Only the office holder will be able to determine the extent, nature and degree of both a personal and a professional relationship. Office holders should apply the reasonable and informed third party test, and also consider whether there is a conflict of interest as assessed in the context of the code of ethics Where an officeholder has been appointed by a creditor but doesn't have a personal or professional relationship with that creditor then it is unlikely that the creditor will be an associate, just because the creditor has supported their appointment. If the officeholder is satisfied that the creditor isn't an associate they should allow the vote. Where the creditor is an associate, the officeholder should consider whether any safeguards can be applied to mitigate any risk of a conflict of interest. Such considerations should be evidenced on file with contemporaneous file notes. It's worth noting that the code of ethics requires an insolvency practitioner not to accept the insolvency appointment in circumstances where a threat to the principle of objectivity or other fundamental

		principles cannot be eliminated and safeguards cannot be applied to reduce the threat to an acceptable level. Given that requirement, it would be unlikely that an insolvency practitioner would be in office where there is a conflict of interest if so assessed in the context of the code of ethics. Where office holders consider that there is a reasonable/high probability/possibility that no non-associates votes may be received, when seeking fee approval, a statement could be made that, should no non-associate votes be received in relation to fee approval then votes of those assessed by the insolvency practitioner to be an associate will be taken into account.
16	For the purposes of this statement of insolvency practice, office holders should, in addition to the definition in the insolvency legislation, consider the substance or likely perception of any association between the insolvency practitioner, their firm, or an individual within the insolvency practitioner's firm and the recipient of a payment. Where a reasonable and informed third party might consider there would be an association, payments should be treated as if they are being made to an associate, notwithstanding the nature of the association may not meet the definition in the legislation." This could be read to mean that creditor approval is required for any payment is made to every supplier the firm audits or has done other work for or has an employee who is the firm's employee's family member or friend. This would involve a large number of creditor decisions and suppliers would be reluctant to supply goods or do work not knowing when and whether creditors will go on to approve costs.	The extent to which these examples would render a creditor / supplier an associate will depend on a number of factors, including the size of the firm. Where arrangements and contracts are being negotiated on normal commercial terms, it is unlikely that the reasonable and informed third party would deem the creditor an associate, even if the firm audits the supplier. In relation to the third paragraph, the code of ethics already requires officeholders to consider whether they are getting best value and service from their suppliers, and this requires periodic reviews. If the contract with the supplier is on normal contractual terms, and the firm doesn't get any benefit from the relationship with the supplier, other than the provision of storage in accordance with the firm's standards, then it is difficult to see that the storage supplier would be an associate.

	In the ICAS webinar it was indicated that this wording covers situations where there is a sole supplier to the IP across their cases. Is this all this additional wording is meant to encompass? If it is, would it be necessary to get approval to pay a storage company that is used across all cases where the firm receives no benefit and one firm is used for ease of administration and because of its data protection accreditations and the storage charges are periodically checked to ensure they are market rate?	
17	Would using someone like Marsh as an end provider for your bond, or the Gazette, gives rise to a professional relationship that will make it a category 2 expense given it is someone used across the board. During the ICAS webinar it was suggested to use the Ethics view for deciding whether any relationship falls into category 2, which indicates it is an issue if the relationship gives rise to any potential or perceived conflict that cannot be safeguarded. Clearly it has an impact for IP authorisation especially if it is expected to be every and any professional relationship. Where IPs have previously had a policy of not seeking any category 2 expenses they are querying if they now need to. I am not aware that Bond/insurance type payments have ever been seen as one of the expenses of issue but it could be they fall foul of the law of unintended consequences. Can you give me any clarification on the view being taken by the RPB teams?	Officeholders need to take a common sense approach to this and consider whether the service arrangements are negotiated at arm's length and the reasonably informed third party test. It's also crucial that there is no volume or performance rebate in connection with the supply.
18	Payments should not be approved by any party with whom the office holder has a professional or personal relationship which gives rise to a conflict of interest." Given IP's firms will have relationships with lots of secured creditors	While officeholders will have professional or personal relationships with HMRC or the PPF, in many cases they will just be relationships in the normal course of business. However it will always be for the IP to consider whether the relationship with either, or individuals there, is such that the creditor should be treated as an associate.

	and large creditors such as HMRC and PPF the "which gives rise to a conflict of interest" wording is going to be key to disenfranchising a whole raft of legitimate creditors. Is it sufficient that the fee approver doesn't receive a gain by agreeing our fees or lose out by not agreeing, or does there need to be no perception of a possibility. (e.g. if a creditor is an audit client, a third party could say they only approved your fee so you'll give them a clean audit.)	
19	Concern has been expressed about the implications of paragraph 10, which provides that: “payments should not be approved by any party with whom the office holder has a professional or personal relationship which gives rise to a conflict of interest”. Is it accepted that the accountant or other professional who introduces a case to an IP is someone with whom the office holder has a professional or personal relationship which will give rise to a conflict of interest, and so cannot vote to approve the office holder’s fees? Will paragraph 10 also extend to the vote of the directors who have instructed the IP to place the company where they are directors into liquidation? Is that connection a professional relationship for the purposes of paragraph 10? If it is, then clearly it would give rise to a conflict of interest if the persons instructing the office holder were to then approve the office holder’s fees. In some cases there can be issues with a lack of creditor engagement, and relatively frequently the only creditors are the accountant, possibly the director on the rare occasions where there is no overdrawn director’s loan account, the company’s bankers	We don’t agree that the officeholder will necessarily have a professional or personal relationship with the accountant or other professional in this example. But that will depend on other factors, such as how many cases that party has referred and the nature of the professional / personal relationship. If the officeholder’s view is that the relationship is sufficiently close that the relationship will give rise to a conflict of interest, the officeholder should have taken this into account when considering whether they could accept the appointment. We believe the position is the same with the director. For example, if the proposed officeholder has dealt with a number of sequential appointments where the same director/(s) are involved, this might result in a professional and / or personal relationship which, if safeguards can’t be applied, could prevent the officeholder from taking the appointment. However in most cases we would expect that the personal or professional relationship with the directors is unlikely to be significant and should be manageable. Their vote wouldn’t need to be disallowed if the creditor has a valid claim, as the SIP can’t over-ride the law, but their vote could not alone approve the IP’s fees.

	and HMRC. As it is common for neither the banks nor HMRC to engage and vote, as a result of paragraph 10 of SIP 9 there is a concern that the office holder will then have no alternative but to apply to Court to fix the basis of their remuneration and approve their pre-appointment fees, with the costs and delay that will inevitably bring. A couple of solutions have been mooted whereby the decision procedure is adjourned if no votes in favour are received, notice then given to the creditors of the adjourned decision date, indicating to them that the votes of any creditor whose claim gives rise to the conflict will be used to vote on the decision. Alternatively, a further decision procedure would be convened rather than the original one being adjourned, again with the creditors being notified that at the second decision procedure the votes of any creditor whose claim gives rise to the conflict will be used to vote on the decision. Is finding a solution or work around to this practical problem for office holders something that the regulators have discussed and/or are proposing?	As noted above, if the officeholder's view is that the relationship is sufficiently close that the relationship will give rise to a conflict of interest, the officeholder should have taken this into account when considering whether they could accept the appointment. Where office holders consider that there is a reasonable/high probability/possibility that no non-associates votes may be received, when seeking fee approval, a statement could be made that, should no non-associate votes be received in relation to fee approval then votes of those assessed by the insolvency practitioner to be an associate will be taken into account.
	Transitional provisions	
20	The lack of transitional provisions appears to be problematic in relation to cases where notifications of decision procedures re potential appointments have been sent out with a decision date on or after 1 April 2021.	Any sums paid before 1 April that were satisfactorily approved under the previous SIP do not need to be repaid. Officeholders should review their existing approvals to ensure that they are compliant. If any services would now fall within category 2 expenses because they are being provided by associates then they will need to get further approval before drawing such incurred costs, unless the costs of doing so would be disproportionate. Where such costs are incurred post 1 April 2021 then officeholders will need to seek approval, as a category 2 expense, before drawing such costs.

		Likewise if estate expenses will now fall within the definition of shared or allocated costs, officeholders should seek approval before paying further tranches of such costs.
21	Presumably, if before 1 April an office holder had obtained approval for Category 2 disbursements, which were no longer allowed as Category 2 expenses (e.g. internal room hire or a per-creditor stationery charge), they would not be allowed to draw payment for these after 1 April, would that be right? Presumably also it would not make a difference if the charge had been incurred before 1 April?	See above
22	Would you expect office holders to repay any now-disallowed Category 2 disbursements? What about already-paid amounts to associates (who were not viewed as associates before 1 April)?	No. Officeholders can rely on existing approvals provided they were compliant with the applicable version of SIP 9.
23	Do I need to obtain new agreements for disbursements / expenses for all existing cases going forward?	See question 20 above.
	Sub-contractors	
24	The SIP increases the level of disclosure required when seeking fee approval and the intention is to use sub-contractors on the assignment, as it will require that the anticipated costs of the sub-contractor be disclosed. That is logical given the need to disclose estimated expenses as well as the officeholder's proposed quantum of remuneration and since sub-contractors are categorised as somewhere in between the two. However, I cannot recall ever seeing any guidance on what is a "sub-contractor" in an insolvency environment. Our view is that pensions advisors and ERA specialists who are instructed on a particular case, for example, would not be sub-contractors but would be professional advisors given the specialist nature of the services they are providing within an increasingly complex legislative framework. In	The only change in the new SIP in relation to sub-contractors is that IPs now need to not only explain why the work is being sub contracted, but also what is being done, and how much it will cost. A sub-contractor may not necessarily be providing services to multiple practices, but is likely to be providing services that creditors would typically expect to be included in an IP's charges. The disclosure of work that has been sub-contracted is needed so that creditors understand whether the officeholder's proposed fees are fair and reasonable reflections of the work undertaken. It also allows creditors to understand what, if anything, is likely to be charged in addition to the IP's remuneration that they are being asked to approve. Examples of sub-contracted work that the RPBs typically see include where

	contrast, using a 3rd party provider, who provides services to a number of different IP practices, to undertake initial SIP 2 investigations on a case, or to close a case, would be using a sub-contractor since they are undertaking work that an IP should clearly be able to undertake themselves within their own practice as part of their statutory duties. Do you agree with that conclusion?	cashiering work, ERA work and or routine, non-specialist debt collection work is outsourced, but there may be other examples.
25	But what about instructing book debt collection agents? If an officeholder routinely instructed a book debt collection firm on appointment without making any attempt to collect the book debts themselves, then our view is that would be classed as sub-contracting the work. In contrast though, if the officeholder only instructed collection agents after making attempts to recover the book debts, or if they required specialist input, such as construction industry debts, then the officeholder would be using a professional advisor. Do you agree with that conclusion?	This conclusion appears in line with question 25 above. It is important to look at whether a certain level of expertise, or regulatory authorisations, are required. Construction book debts would likely involve the need for an experienced quantity surveyor and an IP would not necessarily be expected to have this level of expertise. The work, therefore, would be being undertaken by a professional advisor and not be sub-contracted work.
26	When is the disclosure expected? "Why it is being done" etc. suggests that the disclosure is required only when the sub-contractor has already been instructed, not before and not after the work has been completed – is this correct? How do you measure "work that could otherwise be carried out by the office holder or their staff"? For example, an IP/staff may have the expertise to carry out some pension and ERA tasks, but not all of them, so do pension or ERA specialists fall under this para?	We would expect the officeholder to provide this disclosure before seeking approval to the basis of their remuneration, as this disclosure is key to creditors having sufficient understanding to be able to make an informed decision as to the reasonableness of the IP's fees.
	The likely return	
27	If an office holder feels unable to "provide an indication of the likely return to creditors" because the case involves too many uncertainties, does para 20 mean that they should not seek approval for fees until they *can* do so?	The SIP refers to an indication, which could be quite broad. It isn't looking for officeholders to necessarily provide a definitive statement of dividend levels. It may be appropriate in certain circumstances for an officeholder to just indicate whether there is likely to be a return to

		particular classes of creditors or not. But where possible to do so, it is expected that office holders will provide an estimated quantum, or range, of likely dividend. Where it isn't possible to do that, officeholders should explain why that's the case. Being unable to provide an indication in many cases won't prohibit an officeholder seeking agreement to their fee basis, provided they can give creditors sufficient information to enable them to make an informed judgement about the reasonableness of the office holder's requests.
	Approval before payment of category 2 costs – paragraph 30-32	
28	Paragraphs 30 and 32 refer to Category 2 expenses requiring approval "before being paid" and "before payment". Presumably this means: before being paid from the *estate,* doesn't it? I.e. can the IP pay the expense from the office account without approval, even though para 30 says that "Category 2 expenses require approval whether paid directly from the estate or as a disbursement"?	Category 2 payments require approval before being paid from the insolvent estate. If they are paid firstly from a firm account they will need approval before the repayment to the firm is paid.
29	What exactly are creditors approving? Is it the expense itself (i.e. quantified) or the *basis* on which it will be *calculated*? Para 30 seems to suggest it is the expense itself that is being approved, whereas para 31 states that the pre-approval explanation is "the basis on which the expense is being charged to the estate".	Creditors are approving the basis of the payment, ie how it is to be calculated, as is currently the case with category 2 disbursements. Officeholders don't need to seek approval for each individual payment, provided that the basis has been approved, and that there is no change between periodic payments, either to the basis of calculation or to the status of the payee. For example, if the officeholder changes the supplier of a category 2 expense to an associate, a further approval should be sought.
	MVLs	
30	SIP 9 will no longer apply to MVLs, "unless those paying the fees require such disclosure". That puts the onus on the wishes of the members/3rd party paying the fees and gives rise to a number	For some time there had been queries as to whether, and to what extent, SIP 9 applied to MVLs. That has now been clarified. Given that the members have the financial interest in an MVL, under the revised

	of questions: 1. Presumably if just one member, holding one share, wants such disclosure to be made, then the liquidator will have to provide the information, and that it is not based on what the majority of members want. While in theory the liquidator could provide the information to just that member, in practice it is far easier to provide it to all members. 2. Following on from that, since the default position under the SIP is for the liquidator not to provide the information, we assume that the IP will have to ask to members whether or not they want the information to be provided to them, and to evidence such a request being made and the outcome of it, to comply with SIP 1. 3. Checking with the members about whether or not they want disclosure to be made to them is another hurdle for IPs to jump through in what are already competitively priced assignments. Instead, some may prefer to just continue to provide the disclosure required by SIP 9 when seeking fee approval and when reporting subsequently since that is already embedded in the standards they use. Would you have a problem with them continuing to do so?	SIP it is down to them whether they require the IP to provide information about their fees and costs. We would expect the liquidator to ascertain the members' views prior to their appointment, and document both the request and their response. In most cases, where only one member requires the disclosure, we agree that it's probably most cost effective to provide the information to all members in one report. We can't see that other members would object to receiving it. Where there are significant numbers of members, the officeholder will need to consider how best to seek their views in an efficient manner. We can see a potential downside to an officeholder deciding to provide the disclosures without seeking the members' views, if doing so results in the officeholder incurring higher costs than would otherwise be the case, and passing these onto members.
	Payments other than from the estate	
31	SIP 9 has been changed so that there is now no mention of disclosure of payments to office holders and associates other than from an insolvent estate e.g. pre appointment remuneration paid before appointment in a liquidation. Both the new SIP 3.2 and new SIP 7 do still require disclosure of payments to office holders, firms and associates other than from an insolvent estate. The effect of this is that any payments to office holders, firms and associates other than from an insolvent estate still have to be disclosed to	To some extent which SIP requires the disclosure is irrelevant. The key point is that the disclosure of payments to office holders, firms and associates other than from an insolvent estate still have to be disclosed to creditors and other interested parties.

	creditors and other interested parties, but now under SIP 7 rather than SIP 9. Is this correct?	
	Other issues	
32	Where the officeholder has decided to delay seeking approval for the basis of their remuneration, does the revised SIP still require an officeholder to explain to the creditors in the first communication with them following appointment why that is the case, and to indicate the basis of remuneration the officeholder intends to seek at a later date?	While there is no explicit requirement to explain that the officeholder is delaying seeking approval for the basis of their remuneration, IPs may consider it would be helpful to explain this

The following examples are designed to assist understanding of the approach to interpretation and application of SIP 9 in relation to expenses. These are not exhaustive but designed to allow IPs to understand the matters which may require to be considered in applying SIP 9 to specific situations within their cases.

Example 1

Liquidator A is appointed to Company M and takes out a specific penalty bond with Insurer Z (not an associate).

a) Company M had a bank account with some funds in it at the date of appointment and the funds have been transferred to Liquidator A. The specific penalty bond premium is paid from the funds held.

This would be a category 1 expense as the expense is directly attributable to the case (both in terms of the necessity of the cost being incurred and by identification to the case) and the end service provider is not an associated party.

b) The estate of Company M does not have funds to pay the specific penalty bond premium and the payment is made by the firm of Liquidator A and subsequently paid from Company M estate when sufficient assets are realised.

This would be a category 1 expense as the expense is directly attributable to the case (both in terms of the necessity of the cost being incurred and by identification to the case) and the end service provider is not an associated party.

Example 2

Liquidator A is appointed to Company M. Liquidator A's firm uses the services of a mailing house to issue circulars to creditors. The mailing house issues a single invoice to Liquidator A's firm each month but details on the invoice separate charges for each mailing which can be attributed to each case.

Liquidator A's firm pays the invoice at the month end and disburses the invoice to each case in accordance with the charges identified as being attributable to each case mailing.

This would be a category 1 expense as the expense is capable of being directly attributed to the case (both in terms of the necessity of the cost being incurred and by identification to the case) and the end service provider is not an associated party.

Example 3

Administrator B is appointed to a group of companies (Companies X, Y and Z). A physical meeting is requested by the creditors to consider the administrators proposals. Arrangements are made to hire a room at a local venue for a morning (venue minimum terms apply) which will be sufficient time to hold all 3 meetings.

Administrator B charges each of Company X, Company Y and Company Z one third of the venue hire costs.

This is an expense shared amongst three insolvent estates and is therefore a Category 2 expense

Example 4

Insolvency Practitioner C retains files and records relating to closed cases in the firm's operating premises.

a) The premises are owned by the firm and the firm wishes to charge a flat fee of £5 per box relating to each case stored.

This is an administration fee as there is no cost to the IP associated with the service. No charge is permitted to the insolvent estate.

b) The premises are rented and the firm wishes to charge a flat fee of £5 per box relating to each case stored.

The costs associated with the premises are an overhead as the premises are used for example for administration of the business as well as for case work. No separate charge can be made and any recovery would have to be absorbed or taken account of within charge out rates only.

Example 5

Insolvency Practitioner C uses a web portal service to make documents available to creditors. The service is a monthly subscription fee which provides up a certain storage capacity.

a) The service is only used for insolvency cases.

The costs associated with the service are an overhead as there is no direct attribution to insolvency cases – the cost is incurred for the total storage irrespective of how much is used.

b) The web portal service is also used for accountancy clients of the firm to provide secure access to accounts, tax returns, etc.

The costs associated with the service are an overhead as it is used to support other activities of the business. No separate charge can be made and any recovery would have to be absorbed or taken account of within charge out rates only.

Example 6

Insolvency Practitioner D uses a courier company to deliver trust deeds for signing by debtors.

The courier cost is dependent on the delivery distance but in any case will be substantially higher than a premium Royal Mail service.

It is unlikely that the costs will be fair, reasonable and proportionate as a suitable alternative service is available at a substantially lower cost to the estate.