



Guidance Note

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

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

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

1. Introduction

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

2. The voluntary arrangement procedure

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

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

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

A proposal for an IVA may be made by a debtor whether or not he is already subject to bankruptcy proceedings. The proposal will be considered by a creditors' decision procedure convened for that purpose. The voluntary arrangement procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors.

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

3. Fees, costs and charges - statutory provisions

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

- Fees and expenses in relation to the nominee's services agreed with the company (or its administrator or liquidator) or the debtor (or the official receiver or the trustee where the debtor is subject to bankruptcy proceedings);
- Any disbursements made by the nominee prior to the arrangement coming into effect;
- any fees or expenses which:
 - are sanctioned by the terms of the arrangement (see below), or
 - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be).

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

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

4. The role of the creditors

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

5. What information should the creditors receive?

5.1 Whether the basis of the supervisor's remuneration is determined by the creditors at the same time as the approval of the arrangement or by a committee of creditors, the supervisor, or proposed supervisor should provide details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

5.2 The proposal should include details of the amounts and source of any payments made, or proposed to be made, to the nominee and supervisor and their firms in connection or otherwise with the proposed IVA, directly or indirectly and the reason(s) for the payment(s).

5.3 Where the supervisors' fees are to be agreed by a committee of creditors during the course of the arrangement, the supervisor should provide sufficient supporting information to enable the committee to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case, and should always provide an up to date receipts and payments account. Where the fee is to be charged on a time basis the supervisor should disclose the amount of time spent on the case and the charge out value of the time spent, together with such additional information as may reasonably be required having regard to the size and complexity of the case and the functions conferred on the supervisor under the terms of the arrangement. The additional information should comprise a sufficient explanation of what the supervisor has achieved and how it was achieved to enable the value of the exercise to be assessed and to establish that the time has been properly spent on the case.

5.4 Where the basis of the remuneration of the supervisor as set out in the proposal does not require any further approvals by the creditors or any committee of creditors, the supervisor should specify the amount of remuneration he has drawn in accordance with the provisions of the proposal in his subsequent reports to creditors on the progress of the arrangement. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the arrangement was approved. He should also provide such additional information as may be required in accordance with paragraph 5.2.

5.5 Where the supervisor proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the supervisor's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and

allocation.

5.5 Following approval of the arrangement, the supervisor should ensure that full disclosure is made, in reports to creditors, of the costs of the IVA/CVA and of any other sources of income of the IP or the practice, in relation to the case.,

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

6. Provision of information – additional requirements

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

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

The information which must be provided is –

- the total number of hours spent on the case by the insolvency practitioner or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the nominee's or supervisor's appointment, or where he has vacated office, the date that he vacated office.

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

7. Effective date

This guide applies where the nominee in relation to the arrangement agrees to act on or after 6 April 2017.