



**CROMWELL & CO**  
INSOLVENCY PRACTITIONERS

## **PRACTICE FEE RECOVERY POLICY FOR CROMWELL & CO INSOLVENCY PRACTITIONERS**

### **Introduction**

An office holder is required to have the basis of his/her remuneration approved before it is paid. They must also provide the fee approving body with sufficient information for them to make an informed judgement about the reasonableness of the office holder's requests. Insolvency law determines who the fee approving body is, but it is usually those creditors who have a direct interest in the amount paid as it impacts on how much those creditors will recover.

For each appointment, we are required to provide creditors with details of the work that we anticipate to undertake and the expenses that are likely to be incurred. In addition, where fees are proposed to include remuneration calculated on a time cost basis, we must also provide creditors with an estimate of those fees.

Creditors' have a right to request further information from an office-holder regarding their remuneration and/or expenses, and a right to challenge their remuneration and/or expenses, following receipt of a progress report. Information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk>. Further information can also be obtained by visiting <https://www.r3.org.uk/what-we-do/publications/professional/fees>. These Guides provide guidance on creditors' rights on how to approve and monitor the remuneration of an office holder and how the remuneration is set. 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") which can be accessed at <https://www.r3.org.uk/technical-library/northern-ireland/sips/more/29169/page/1/sip-9-remuneration-of-insolvency-officeholders/>. Alternatively, if you require a hard copy of any of the above, please contact our offices and we will arrange to send you a copy free of charge.

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, failing which the creditors via a decision procedure, or the Court. Insolvency legislation allows the basis of our fees to be calculated as follows:

- As a percentage of the value of the property with which the office-holder has to deal with (often referred to as a "percentage basis"); or
- By reference to the time properly given by the office-holder and his staff in attending to matters arising ("time costs basis"); or
- As a set amount ("a fixed fee").

The basis of our fees can be combination of the above and different bases can be used for different parts of my work. The fee approving body decides which basis (or combination of bases) should be used to calculate fees, once it is satisfied that the fee basis proposed represents the most appropriate mechanism in the circumstances of the case.

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 given by the office holder and his/her staff in attending to matters arising, 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.

### **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.

## Charge-out Rates

Grade of Staff	Current charge-out rate per hour effective from 1 January 2024
Partner – Appointment Taker	£400.00
Manager	£275.00
Case Administrators and Cashiers	£195.00

Grade of Staff	Previous charge-out rate per hour from 01 Jan 2017 to 31 Dec 2023
Partner – Appointment Taker	£360.00
Manager	£250.00
Case Administrators and Cashiers	£180.00

These charge-out rates charged are reviewed on 1 January each year and are adjusted to take account of inflation and the firm's overheads.

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
- Investigations
- Realisation of Assets
- Creditors
- Trading
- Case specific matters

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, 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. 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.

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 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. 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.

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 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**

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 VAT exempt, the office holder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

### **Expenses**

Expenses are payments from the estate which are neither an office holder's remuneration nor a distribution to a creditor or member. Expenses also include disbursements, which are expenses that are initially paid by the office holder's own firm, but which are subsequently reimbursed from the estate when funds are available.

Best practice guidance classifies expenses into two broad categories:

- Category 1 expenses (approval not required) – Specific expenditure that is directly related to the case and referable to an independent external supplier's invoice. All such items are charged to the case as they are incurred.
- Category 2 expenses (approval required) – Items of expenditure that are directly related to the case and either:
  - (i) include an element of shared or allocated cost and are based on a reasonable method of calculation, but which are not payable to an independent third party; or
  - (ii) are items of expenditure which are payable to an associate of the office holder and/or their firm.

For appointments made on or after 1 October 2015, the office holder will provide details of expenses incurred, or likely to be incurred, when seeking fee approval. When reporting to the committee (if applicable) and creditors during the course of the insolvency appointment, the actual expenses incurred will be compared with the original estimate provided.

It is not our policy to recover Category 2 disbursements.

### **Agent's Costs**

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