



PPF Restructuring and Insolvency Team
Guidance Note 2
Insolvency Practitioner remuneration

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1. Background

- 1.1 This guidance note explains the Pension Protection Fund's (PPF's) approach to all payments made to insolvency office holders and their associates. Such payments are important to the PPF and its levy payers because recoveries from the estates of insolvent employers are one of its four sources of income.
- 1.2 Schemes may sometimes be well enough funded not transfer to the PPF. The return from the insolvent employer is still important in these circumstances because it directly impacts on the value for the scheme members.
- 1.3 For schemes that are eligible for the PPF, a qualifying insolvency event¹ in relation to the employer will trigger the commencement of a PPF assessment period. During the assessment period, the creditor rights in relation to any debt owed to the scheme trustees by the employer are exercised by the PPF to the exclusion of the trustees². That is the case even if the economic interest in the outcome of the insolvency sits with the trustees and the scheme members.
- 1.4 The content of this note is intended to complement the letter and spirit of the Insolvency Rules and Statement of Insolvency Practice 9 (SIP9). Our overall expectation is that office holders will comply fully with the principles of SIP9 and provide enough information to enable the PPF to make the informed judgment required of creditors.
- 1.5 We expect office holders to be capable of providing a concise and cogent explanation of how their proposed remuneration reflects the value provided to creditors. The explanation must not simply seek to reimburse the practitioner for time expended and cost incurred.
- 1.6 Arguments focused on the amount of time cost write off being faced on an assignment are unlikely to gain traction. We do, however, recognise that some elements of the office holder's work are required by statute or regulation.

¹ Section 121(3) Pensions Act 2004 and Regulation 5 Pension Protection Fund (Entry Rules) Regulations 2005

² Section 137 of the Pensions Act 2004

- 1.7 We also expect the office holder to recognise the PPF as the likely fee-approving body and to take that into consideration when formulating the strategy for stakeholder engagement.
- 1.8 Any resolution that an office holder obtains from the trustees of the pension scheme after the assessment period has started is invalid.
- 1.9 The content of this note anticipates that the PPF has an influence on the fee approval process in cases where it is a creditor or is exercising the creditors' rights. We expect office holders to apply the same principles to the prescribed part if that is the non-preferential creditors' only source of dividend return.

2. Pre-appointment remuneration authorisation

- 2.1 When incurring costs during the pre-appointment period, we expect the prospective office holder to identify the existence of the pension scheme and the PPF's likely economic interest. The insolvency practitioner should therefore take account of the content of this guidance note and apply the same considerations to costs or expenses incurred during the pre-appointment period.
- 2.2 We regard any agreement made between the prospective office holder and the scheme trustees as inappropriate, and will not be bound by it. Both parties should contact the PPF's Restructuring & Insolvency Team immediately when it becomes apparent that the PPF has an economic interest in decisions or events, or that there will be a qualifying insolvency event.

3. Post-appointment remuneration authorisation

- 3.1 The PPF will normally not approve an open-ended remuneration resolution.
- 3.2 In the vast majority of cases, office holders are required by law to provide the creditors with an estimate of their fees. We expect this to be done either before or as close to the commencement of the insolvency as possible. In most cases, such consultation should be conducted with the assistance of an estimated outcome statement, in accordance with the SIP9 requirement for office holders to provide an indication of the likely return to creditors when seeking approval for the basis of their remuneration. It should always be supported by a properly compiled fee budget.
- 3.3 Budgets should include all aspects of the assignment normally completed by IPs and their firms. We consider additional services such as tax and various forms of consultancy to be part of the estimate and not costs to be treated as disbursements.
- 3.4 We expect office holders to work within their estimate, which effectively operates as a cap. Only in exceptional circumstances will the PPF agree to fees in excess of the estimate. Tasks that have simply taken longer to complete than forecast do not comprise "exceptional circumstances".
- 3.5 We will authorise the drawing of fees on receipt of enough information to enable creditors to make the required informed judgment of reasonableness. The disclosure required by SIP9 goes much further than a matrix of hours charged to the case and a narrative of standard tasks.

- 3.6 The PPF will exert its statutory rights to challenge remuneration if necessary. We acknowledge that office holders have the right to go to court if they are dissatisfied with the remuneration agreed by the relevant approving body, and are comfortable with them doing that if they strongly believe that their case for increased fees is fully justified.
- 3.7 The disclosure must be sufficiently transparent to enable an assessment of the value delivered to creditors. We expect to be able to identify what the office holder has achieved, particularly in terms of the efficiency and effectiveness of the work carried out.
- 3.8 A well written progress report should provide the necessary information for creditors to make the requisite judgment, without any requirement for the office holder to provide more information than is already required by the principles contained in SIP9.
- 3.9 We expect the basis of office holder fees to be appropriate for the circumstances of the case. We are flexible on how this is achieved. We welcome engagement on the best way to remunerate office holders properly for the value they have contributed to the case and look favourably on innovative proposals designed to achieve that whilst maximising the return to the scheme/PPF. For example, we are prepared to consider fee proposals that incorporate different bases of charging for different aspects of the work required (e.g. fixed fee for statutory work, percentage basis for asset realisation work and time cost basis for investigation or contentious litigation work). We also acknowledge that where exceptional responsibilities fall on the office holder, the work may attract a higher fee.
- 3.10 Once a basis for remuneration is approved, we do not expect to have to seek anything from office holders beyond minor clarification matters when considering resolutions to authorise the drawing of fees.
- 3.11 We will not approve the recovery of costs relating to any remedial work required due to the incorrect submission of a section 120 notice (or any other statutory obligation falling on an office holder). It is inappropriate for creditors to bear any expense arising from an office holder failing to fulfil their statutory obligations and we expect any such costs to be excluded from fee proposals submitted for approval.
- 3.12 The PPF will not approve any recovery of costs relating to an office holder seeking to look beyond a section 75 certificate supporting the PPF's claim. See Guidance note 10 – Potential claims as a result of employer insolvency, for further information.
- 3.13 The PPF has published a rate card setting out the maximum hourly rates that it is prepared to accept, which may be found in the guidance section of our website. The rate card is split between London and regional rates determined by reference to whether the main operation of the insolvent company is based within the M25 area. IPs must take any limitation imposed by this rate card on their remuneration into account when deciding whether or not to accept an appointment where the PPF will have the voting power to determine fees.

4. PPF as a secured creditor

- 4.1 We consider that section 137 of the Pensions Act 2004 encompasses any situation where the pension scheme trustees hold security granted by the employer.



- 4.2 During the assessment period, the security will remain under the control of the trustees, who should act in accordance with their own discussions with the PPF's Restructuring & Insolvency Team. The trustees and their advisers will remain involved in matters relating to dealing with the security documentation, but all fee-related issues remain within the purview of the PPF and are subject to the content of this guidance note.
- 4.3 The office holder should seek approval from the PPF before proceeding with any strategy that relates to the security held by the trustees. See also Guidance Note 10.
- 4.4 This is particularly important where a fixed charge receiver has or will be appointed.

Contact details

Malcolm Weir

Director of Restructuring & Insolvency

malcolm.weir@ppf.co.uk

020 8633 4940

Mike Ridley

Head of Restructuring

mike.ridley@ppf.co.uk

020 8633 4998

Mark Allen

Senior Case Manager

mark.allen@ppf.co.uk

020 8633 5823

Ann Kirkby

Case Advisor

ann.kirkby@ppf.co.uk

020 8633 5942

The Pension Protection Fund
Restructuring & Insolvency Team
Renaissance,
12 Dingwall Road
Croydon, CR0 2NA

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Please note this leaflet seeks to assist stakeholders and insolvency professionals on our approach to restructuring and insolvency cases. It is an accompaniment to existing publications from the PPF published on our website, not a substitute. We encourage restructuring & insolvency practitioners and trustees to seek appropriate, specific case guidance.

See **www.ppf.co.uk** for further information.