Technical Bulletin

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108.1 Tax Treatment of Misselling Redress Payments

- HMRC has clarified its view on the tax treatment of redress payments for misselling of interest rate hedging products and payment protection insurance.

In recent discussions HMRC has clarified its views on the tax treatment of redress payments for misselling of interest rate hedging products (IRHPs) and payment protection insurance (PPI).

IRHPs

In the case of IRHPs HMRC considers that the compensation is of a revenue character rather than capital, and is taxable in the hands of the recipient.

PPI

As a general rule, compensation will not be a taxable trade receipt where it is paid to an individual in their personal, non-trading capacity. This is the reason that most – though not all – payments of compensation for misspelling are not taxable. However, where any element of the compensation comprises statutory interest, tax at the debtor's marginal rate is payable on that element, as explained in the R3 guidance note issued in January 2014.

108.2 Integration of HMRC Claims in Insolvencies

- HMRC has asked us to publicise the following notice issued in October 2014.

Her Majesty's Revenue & Customs (HMRC) was formed in 2005 following the merger of Inland Revenue and HM Customs & Excise. Both former departments had their own separate arrangements for lodging claims in UK insolvencies. Unfortunately, since the merger it has not been technically feasible to marry together the insolvency claim arrangements for the two former departments to produce a single claim encompassing all HMRC taxes and duties.

However, following an internal restructuring of insolvency processing work, HMRC will shortly be in a position to issue 'integrated' insolvency claims encompassing all HMRC debt. This will be achieved by centralising insolvency claims handling work at the following sites for the following insolvency types:

<u>Bankruptcy/sequestration, trust deeds and liquidations (excluding Members voluntary liquidations (MVLs))</u>

Insolvency Claims Handling Unit (ICHU)
Benton Park View
Longbenton
Newcastle
NE98 1ZZ

<u>Company administrations and MVLs</u>

Enforcement & Insolvency Service (EIS) Worthing
Durrington Bridge House
Barrington Road
Worthing
BN12 4SE

What this will mean for insolvency practitioners is as follows:

- IPs should continue to complete a VAT 769 form on their appointment as now.

- For new appointments in bankruptcies/sequestrations, trust deeds and liquidations (excluding MVLs) the completed VAT 769 should be sent to ICHU at the above address with immediate effect.

- For new appointments in company administrations from 1 November 2014 onwards the completed VAT 769 should be sent to EIS Worthing at the above address.

- For new appointments in MVLs from 1 December 2014 onwards the completed VAT 769 should be sent to EIS Worthing at the above address

- IPs should please ensure that the VAT 769 form they use is the version available on the HMRC website.

- For company administrations, it will expedite processing of the VAT 769 if the form is accompanied by a Notice of Appointment 2.12.

- Unfortunately, due to the need to integrate VAT with the other HMRC taxes, details of any VAT debt owed by the insolvent business to HMRC may not be notified to the IP as quickly as has been the case in the past. So if the records of the business the IP is appointed over indicate a VAT debt to HMRC, please be patient as the integrated claim will be issued as soon as possible.

- EIS Worthing will also take on responsibility for managing the post-appointment VAT account on company administrations for new appointments from 1 November 2014 and MVLs for new appointments from 1 December 2014.

- However, EIS Worthing will not be responsible for cancelling the VAT registration. Requests for VAT deregistration for company administrations and MVLs should be sent to the Grimsby Deregistration Unit, Imperial House, 77 Victoria Street, Grimsby DN31 1NH.

- HMRC will require a dividend payment on the integrated claim, not on any separate components of the claim i.e. we will no longer require a separate dividend payment for the VAT element of HMRC's claim. Dividend payments should be sent to the appropriate office for the insolvency type as above.

- The procedure for HMRC lodging claims in voluntary arrangements is unaffected by this change.

HMRC expects that this change will be both cost effective and will help simplify IPs' interaction with the department. Any further changes in process that may become necessary as a result of the above transfer of work will be notified to you separately at the appropriate time. Any queries or concerns should be addressed to HMRC through R3 using the existing channels of communication.

108.3 Companies House – Free Data and New Search and Filing Service

- Companies House issued the following update in August 2014.

Free Data and New Search and Filing Service Update August 2014

Over the next 2 years our core systems will be replaced, allowing company information to be viewed and updated through a new unified online service.

With no need to provide separate search and filing systems (and their associated development, support and maintenance costs) Companies House will deliver a more efficient service with no associated cost for providing searches. This will allow Companies House data to be made available free for the first time, which will help underpin the significant economic activity built on company information and meet government aims for better access to data, as well as increase trust and transparency.

As part of the Companies House Service development the interface and interaction between software vendors and our current XML gateway interface will change. The high level plan is to change the XML gateway to become a RESTful API. This will affect both searching and filing of data through the current interface.

Some questions and answers to help understand what this means for you:

Will filing fees increase to allow information to be delivered free of charge?

There will be no increase in registration fees to make search information free of charge.

Search services where Companies House has to manually intervene will continue to attract a fee.

What information will be free of charge?

Everything available electronically through the new online service will be delivered free of charge. This includes:

- Company overview (company name, number, address, incorporation date, etc)
- Filing history of transactions
- Company officers
- Document images

The majority of Bulk Products will also be delivered free of charge (please see the listing at the end of this document)

When will the new unified online service be available?

The new service is currently being developed and will be rolled out in phases over the next 2 years. The first release of the online service will be launched in a beta format in August 2014, giving us valuable feedback for further enhancements. This first release will feature a new search facility, the company overview, full list of officers of a company, filing history of transactions with filtering on document categories; and the ability (with a company authentication code) to change a company's registered office address.

Future releases will provide even more data through the service, including document images and accounts data. The API will also be exposed for software customers.

Will document packages be free of charge?

Document packages are currently available via our existing services (e.g. Companies House Direct and Information Centre), and will remain chargeable via these services.

Will free information be available from all of the services (Companies House Direct, WebCHeck, Extranet, XML and Information Centres)?

Free information will be available via the new single online service starting from a date sometime between April and June 2015 (Date to be confirmed). The costs of the existing services will still need to be recovered and there will still be charges for these services. Assisted search services (e.g. Scan-upon-demand documents, Information Centre and Contact Centre systems) incur stand-alone search costs and as such will continue to have statutory fees, so the costs associated with assisted service data provision are recovered.

Will we still need credit accounts to purchase Certified Copies and Certificates?

Yes these continue to be chargeable items and will be when introduced into the new online service in future phases.

Will images that need to be scanned to be provided digitally be chargeable?

Yes, images that need scanning through our 'Scan-upon-demand' function require manual intervention and will remain chargeable via existing services.

Will passwords still be required if no credit account is required?

Credit accounts will still be required for the existing services (Companies House Direct, XML Gateway, Extranet), until these services are withdrawn.

What are the arrangements for customer support of the services?

The existing systems will continue to be supported in the same way through the same channels. The Companies House contact centre will be the contact point for all customer queries relating to the new unified online service (email enquiries@companieshouse.gov.uk and telephone 0303 1234 500).

How resilient are Companies House systems to cope with the increased traffic?

We have catered for increased demand as a result of free data; however the service is designed for inline, or on-demand, use, not for automated mass data operations. As a result, we reserve the right to throttle excessive, automated use by individual customers.

108.4 Post-Appointment Utility Liabilities Under Deemed Contracts Incurred Post-Administration Held to be Provable Debts and not Expenses of the Administration

- The post-appointment cost of utility supplied under a deemed contract will rank as a provable debt rather than an expense where the supply to the site occurred after the cessation of trade and was not used for the benefit of the administration.
- Liabilities under the deemed contracts were liabilities arising from obligations incurred prior to the insolvency and were therefore provable debts.

In *Laverty and others v British Gas Trading Limited* [2014] EWHC 2721 (Ch) the High Court considered the ranking of utility charges incurred by a company after the commencement of insolvency proceedings, where the usage of the supplied utilities was not for the benefit of the administration.

The Peacock group of companies operated a chain of retail clothing shops. The companies went into administration in January 2012 and into liquidation in July 2013. The administrators vacated the stores at various times in February and March 2013. British Gas Trading Limited ('BGT') supplied gas and electricity to the stores. The existing supply contracts were terminated in January 2012, but BGT continued to supply the stores under contracts deemed to arise under the Gas Act 1986 and the Electricity Act 1989.

The preliminary question was whether the charges owed to BGT under the deemed contracts were –

- provable debts within Rule 13.12(1)(b), or

- administration expenses within Rules 2.67(1)(f) of the Insolvency Rules 1986.

BGT contended that statutory deemed contracts gave rise to liability for post-appointment utility supplies to the sites after the company had vacated the premises. As the deemed contracts had arisen after the commencement of the administration, BGT argued that they should be paid as an expense of the administration. Under the terms of the deemed contracts, even after a customer had vacated the premises, liability could continue until another party that BG accepted as a customer had taken the supply.

The administrators had settled the amounts owed by the companies for the period in which they were in occupation. However, they disputed all charges for any periods that followed, asserting that these would rank as unsecured provable claims.

In determining whether the deemed contracts would rank as an expense and therefore in priority to other creditors, the Chancellor, applied the test in relation to contractual liabilities incurred by a company prior to insolvency which gave rise to a company's post-appointment statutory liabilities, as expressed by Lord Neuberger in *Nortel*.

He rejected BG's assertion that a deemed contract was analogous with a contract that the administrators had expressly entered into for the following reasons:

- the contracts had come into existence in the absence of any conscious act of the administrators,

- the terms therein were imposed upon the company and only arose upon the supplier's unilateral termination of a previous contract,

- neither the gas nor the electricity legislation stated that the continued supply would entitle providers to rank above other creditors for payment, and

- the fact that BG were able to request a personal guarantee from the administrators for payment under section 233 of the Insolvency Act 1986 weighed against any further priority of payment arising under the gas or electricity codes.

BGT contended that the liability under deemed contracts could not be a provable debt because all the relevant steps giving rise to liability arose after the administration began. The Chancellor rejected this argument. Rule 13.12(1)(b) provides that 'debt' includes 'any debt or liability to which the company may become subject after that date [the date of liquidation] by reason of any obligation incurred before that date…' Applying the reasoning in *Nortel*, immediately prior to the administration the companies were vulnerable to the specific liability under the deemed contract as there was a high probability that BGT would terminate the existing contracts thereby triggering the deemed contract provisions.

Liabilities under the deemed contracts were therefore liabilities to which the companies became subject after the date of administration by reason of an obligation incurred before that date, and were accordingly provable debts pursuant to rule 13.12(1)(b).

The full text of the judgement is available on the British and Irish Legal Information Institute website at:

http://www.bailii.org/ew/cases/EWHC/Ch/2014/2721.html

108.5 Retention of Title claims – High Court Provides Clarification on the Scope of Office Holder's Duties and the Extent of Potential Damages

- Retention of Title – the onus is on claimants to locate and identify retention of title goods.
- The only obligation upon office-holders where a potential claim has arisen is to provide supervised access to an alleged owner for purposes of identification and then to adjudicate on that claim.
- There must be an unequivocal demand for the return of the goods and also a revocation of any express or implied right to sell.
- If conversion had been procured, the correct assessment of damages would be limited to any diminution in the value of the goods during the period of wrongful detention.

In *Blue Monkey Gaming Limited v Hudson & Others* [2014] All ER (D) 222 the Court provided guidance on the extent of an administrator's duties in relation to identification and preservation of goods purportedly subject to a retention of title('ROT') clause. The decision serves as a useful reiteration of the core principles in relation to ROT claims in insolvency.

The case involved a £4 million claim in conversion brought personally against the joint administrators of a chain of amusement arcades by the supplier of gaming machines which had purportedly been subject to ROT terms. The claim was ultimately dismissed in its entirety as the claimants had failed to take adequate steps to identify or locate its machines and the Court rejected the claimant's assertion that the administrators had wrongfully denied or interfered with their title rights.

The Agora group companies had all entered into administration in 2009. They had been supplied gaming machines by MDM Leisure Limited on ROT terms. MDM subsequently entered into liquidation and the liquidator assigned its rights of action to Blue Monkey Gaming Limited ('BMG'), the claimants. BMG brought the claim against the Agora group administrators personally on the grounds that they had caused one of the companies to make money for the administration using MDM's machines in breach of the terms of supply and further, that they had failed to deliver up the machines after MDM had demanded their return.

In his judgement, HHJ McCahill QC held that it was the company that had been in possession of the machines, not the administrators personally and that possession had not been revoked prior to the asset sale in December 2010. The request made for the return of the goods in the letter from MDM's solicitors was found to be mere posturing and did not specifically identify the property which was being reclaimed. The judge rejected BMG's argument that the administrators were under a duty to compile a detailed inventory (a desk-top valuation of company assets was used for the sale) and also identify third party goods stating that to do so *'would be not only totally unrealistic and practically unworkable but would also impose an obligation on Administrators which I do not consider the law demands.'* He went on to say that in his view, in the circumstances the administrators had complied with their duty which was *'to permit and supervise access to an alleged owner to enable it to identify its own goods and then to adjudicate on any claim arising on the basis of all the evidence supplied.'*

On the facts, MDM were seen to have consented to its machines remaining in possession of the company in administration and be used without charge, a circumstance underlined by the fact that MDM had failed to make an application for payment as an expense under paragraph 43 of schedule B1 to the Insolvency Act 1986.

The rejection of MDM's ROT claim was the administrator's prerogative and they were held to be entitled to have done so. There had been a disputed issue in relation whether a £2.1 million payment to MDM had been toward the machines or in discharge of a loan which would have required Court direction. HHJ McCahill QC went on to state that even if the claim had been successful, damages would be assessed in relation to any loss in value of the goods during which they were unlawfully detained, not on a hypothetical profit share as had been claimed by BMG.

Members will be aware of the Insolvency Guidance Paper on dealing with retention of title claims issued in November 2014.

108.6 Income Payments Order Made in Respect of Income Arising After the Bankruptcy Order

- An income payments order under section 310 of the Insolvency Act 1986 could be made in respect of any income arising after the making of a bankruptcy order, and was not limited to income arising after the making of the income payments order.
- Section 310 should not be taken in isolation – the asset protection provisions of the Insolvency Act should be read collectively

In *Official Receiver v Baker* [2013] EWCH 4594 (Ch), the High Court considered an application under section 310 of the Insolvency Act 1986 in respect of a post-bankruptcy receipt of a lump sum into the bank account of a debtor who was a professional gambler.

Because of the timing of the payment into the debtor's account, the funds did not vest in the bankruptcy estate under section 306 and did not fall into the category of assets that the debtor could be ordered to deliver-up under section 367. The bankrupt claimed that the funds were 'professional gambling winnings' and were therefore income. The official receiver chose to make an application for the funds to be appropriated for the benefit of the bankruptcy by means of an income payment order (IPO) rather than by using after-acquired property provisions, despite the fact that the IPO being sought was in respect of 'income' already received rather than earnings likely to arise after the making of the order.

The official receiver made an application under section 310. At first instance, the Deputy District Judge dismissed the application as he felt that the court lacked the jurisdiction to make the order in respect of the income being claimed. His view was that the period during which income may be subject to an IPO referred to in section 310(1) must refer to a period after the date that any such order was made and therefore an IPO could not attach to the credit balance in the debtor's accounts.

On appeal to the High Court, Mr Justice Warren overturned this ruling. He considered the interaction between the IPO and after acquired property provisions (sections 310 and 307 respectively) and also the inadequacy of obligations and appropriate sanctions to ensure a debtor reported increases in earnings. The judge held that for the purposes of section 310, 'income' fell outside of the scope of section 307 (after acquired property), and further, that it could also take the form of an irregular one-off payment. Funds received after a debtor entered into bankruptcy but before an IPO was granted would be covered by the section 310(1) definition. To find otherwise would potentially have meant that a bankrupt's surplus earnings during that 'twilight period' could fall outside of the scope of both section 307 and 310 leaving 'a possible and possibly serious lacuna in the provisions'.

Mr Justice Warren said that the Courts must regard the particular purpose of the statutory provision 'even if it requires some modest distortion of the language of the statute', which was not necessary in this case. His preference was to accept a wider interpretation of the definition of the bankrupt's income which could be subject to an IPO, as this avoided the 'lacuna' and achieved the policy objective. He reasoned that section 310 should not be taken in isolation and that a purposive approach should be adopted, reading the section in conjunction with other provisions of the Insolvency Act (in particular sections 310(3), 307 and 333).

The statutory objective could not have been to leave a lacuna in respect of a bankrupt's income received during the 'twilight period' between bankruptcy order and IPO. The correct construction was that such income (which does not fall under section 307), could be subject to section 310 and therefore the court had the power to make an order in respect of any income arising after the date of the bankruptcy order.

It should be noted that some commentators have pointed out that the decision in *Official Receiver v Baker* took a particularly wide interpretation of section 310(1) where the IPO was essentially given retrospective effect, and that this principle could potentially be subject to challenge in future cases.

The full text of the judgement is available on the British and Irish Legal Information Institute website at:

http://www.bailii.org/ew/cases/EWHC/Ch/2013/4594.html

108.7 English Bankruptcy Order Made in Respect of Russian Citizen

- The English Court made a bankruptcy order on a debtor's petition presented by a Russian citizen whose principal residence and place of business was Russia.

This case concerned forum-shopping by a Russian citizen who sought to make himself bankrupt under UK insolvency law. As this was not a case to which the European Regulation on Insolvency Proceedings applied, the question of jurisdiction fell to be decided by domestic English law and the principles developed by the courts.

Under section 265 of the Insolvency Act 1986 law an individual can present his own bankruptcy petition if he –

a) is domiciled in England and Wales,

b) is personally present in England and Wales on the day on which the bankruptcy petition is presented, or

c) has carried on business or been resident in England and Wales in the preceding three years.

Mr Kekhman was a Russian citizen, resident in Russia. His businesses fell into financial difficulties and insolvency proceedings were commenced against some of his businesses in Russia. He subsequently travelled to the United Kingdom for four days and presented a bankruptcy petition pursuant to the English court's jurisdiction under section 265(1)(b) (being personally present in England and Wales on the day on which the petition was presented). The court made the bankruptcy order.

Two of Mr Kekhman's creditors subsequently applied for an annulment of the bankruptcy order on the grounds, among others, that the debtor had no real connection with the jurisdiction and was forum-shopping in an attempt to evade Russian law, which did not provide a mechanism for him to make himself bankrupt. Registrar Baister dismissed the application.

In the course of his judgment the Registrar observed that the English courts had recognised that there can be good and bad forum shopping, and were prepared to countenance forum shopping provided it is of a legitimate and beneficial kind. He also noted that the courts had discretion to refuse to make an order if there is some impropriety in the application, or an order would be of no practical effect or serve no practical purpose. He was persuaded that the present case was not a bankruptcy tourism case of the kind that had recently been considered by the courts in relation to debtors who had shifted their centres of main interest to England opportunistically to avoid their domestic bankruptcy regimes. He gave the following reasons in support of the view that it had been appropriate for the court to exercise its jurisdiction in favour of making the order:

- The fact that the debtor's visit to England was only fleeting did not circumscribe the court's jurisdiction.

- There was no personal bankruptcy regime in Russia which could have formed an alternative vehicle for dealing with the insolvency.

- The debtor had assets outside Russia which could be dealt with in the English bankruptcy in an orderly manner, avoiding the otherwise inevitable disorderly asset grab.

- Some of the debtor's guarantee obligations were expressly subject to English law.

- There was no suggestion that the bankruptcy was sought for an improper purpose.

- The English bankruptcy enabled investigation of the debtor's affairs.

- The English bankruptcy was unlikely to be recognised in Russia, and was therefore not prejudicial to the creditors there.

In the course of his judgment, Registrar Baister reviewed a wide range of previous forum-shopping cases in relation to bankruptcies, liquidations and Companies Act schemes, and summarised the principles which the English courts will adopt when considering an application by a foreign company or debtor as follows:

- The English courts will act to fill lacunae in foreign jurisdictions when it is proper to do so.[1]
- The existence of insolvency proceedings in another jurisdiction is a relevant consideration, but not a bar to making an order.[2]
- In determining whether there is a sufficient connection with the jurisdiction, the real test is the existence of some commercial subject-matter on which the process can operate. The presence of assets or claims in the jurisdiction may be, but is not necessarily, a factor.[3]
- There is a need to show some benefit. The court will not make an order which will be of no effect or which will serve no purpose.[4]
- The presence of debts and debtor in the jurisdiction may be a consideration.[5]
- Submission to the jurisdiction appears to be relevant.[6]
- The need for investigation is a relevant factor.[7]
- The rehabilitation of the debtor or preservation of something for his benefit may be taken into account.[8]

JSC Bank of Moscow v Vladimir Abramovich Kekhman, No 4983 of 2012.

The text of the judgment is available here:

http://cisarbitration.com/wp-content/uploads/2014/08/UK-High-Court-in-Buncruptcy-Bank-of-Moscow-and-Sberbank-Leasing-v-Vladimir-Kekhman-and-others-Judgment-April-2014.pdf

108.8 Court's Common Law Power to Assist Foreign Court

- The Privy Council outlined the limits of the court's common law power to assist a foreign court in overseas insolvency proceedings.

The Privy Council held that the court has a common law power to assist a foreign court in overseas insolvency proceedings, but that it can only provide assistance which would be available as a matter of domestic law in the country that receives the request, and does not extend to relief that would not be available in the foreign office holder's own country 'as if' the foreign insolvency were a local insolvency.

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[1] *SEA Assets Limited v Perusahaan Perseroan (Persero) PT Perusahaan Penerbangan Garuda Indonesia* [2001] EWCA Civ 1696; *Re Rodenstock GmbH* [2011] EWHC 1104 (Ch)

[2] *In re a Debtor* (No 737 of 1928) [1929] Ch 362; *In re Thulin* [1995] 1 WLR 165

[3] *Banque des Marchands de Moscou (Koupetschesky) v Kindersley* [1951] 1 Ch 112; *Ex parte Robinson* (1883) 22 Ch. D 816; *Re Betts* [1897] 1 Q.B. 50; *Ex Parte Painter* [1895] 1 QB 85; *Re Thulin*; *In re Field* [1978] 1 Ch 371; *International Westminster Bank plc v Okeanos Maritime Corp* [1987] BCLC 450; *Stocznia Gdanska SA v Latreefers Inc* (No 2) [2001] 2 BCLC 116; *Shepherd v Legal Services Commission* [2003] BCC 728

[4] *Stocznia Gdanska SA v Latreefers SA*; *Re Magyar Telecom BV* [2013] EWHC 3800 (Ch); *Ex parte Robinson*; *Re Betts*

[5] *In re a Debtor* (No 737 of 1928)

[6] *Banque des Marchands de Moscou v Kindersley*

[7] *In re Field*; *Re Betts*; *Re Thulin*; *Shepherd v Legal Services Commission*

[8] *Ex parte Painter*

Singularis Holdings Limited , a Cayman Island company, was wound up by order of the Grand Court of the Cayman Islands. The liquidators sought information from the company's auditors, who were based in Bermuda. The liquidators had already sought documents belonging to the company, which the auditors had provided. They now sought to obtain material belonging to the auditors themselves, by invoking powers conferred on the Supreme Court of Bermuda. Bermuda law empowers the court to require any person to produce any books or papers in his custody relating to the company; this is wider than the power conferred by Cayman Islands law, which provides only for the production of documents belonging to the insolvent company. However, the Bermuda court's power only applies to companies which it has ordered to be wound up. The Court of Appeal of Bermuda had refused to require the auditors to produce the material, and the liquidators appealed to the Privy Council.

The Privy Council upheld the decision of the Bermuda court. The Board confirmed that there was a common law power to assist a court in an overseas insolvency by ordering the production of information in oral or documentary form. However, that power was limited. It was available only to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers. It was also a power of assistance and was not available to enable officers to do something which they could not do under the law by which they were appointed. The power was available only when it was necessary for the performance of the office-holder's functions. It also had to be consistent with the substantive law and public policy of the assisting court. In the present case the liquidators were seeking relief in Bermuda that was not available in the Cayman Islands.

The members of the Board were in agreement in dismissing the appeal, but were divided on other issues, including whether investigatory powers such as those provided by Bermuda law were available at common law.

Singularis Holdings Limited v PricewaterhouseCoopers [2014] UKPC 36.

Members who want to pursue the arguments in detail should refer to the transcript of the judgment, which is available on the British and Irish Legal Information Institute website at:

http://www.bailii.org/uk/cases/UKPC/2014/36.html

108.9 New Practice Direction on Insolvency Proceedings

- A new Practice Direction on Insolvency Proceedings came into effect on 29 July 2014.

A new Practice Direction on Insolvency Proceedings came into effect on 29 July 2014. It replaces the Practice Direction issued in February 2012. It replaces all previous Practice Directions, Practice Statements and Practice Notes relating to insolvency proceedings with the exception of CPR PD 49B order under section 127 Insolvency Act 1986 which deals with contributories' winding up petitions.

The text of the Practice Direction is reproduced in the Appendix to this Bulletin. It is also available on the Justice website at:

http://www.justice.gov.uk/courts/procedure-rules/civil/rules/insolvency_pd

APPENDIX

PRACTICE DIRECTION – INSOLVENCY PROCEEDINGS

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PART ONE: GENERAL PROVISIONS

1. Definitions

1.1 In this Practice Direction:

(1) 'The Act' means the Insolvency Act 1986 and includes the Act as applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001 or to any other person or body by virtue of the Act or any other legislation;

(2) 'The Insolvency Rules' means the rules for the time being in force and made under s.411 and s.412 of the Act in relation to insolvency proceedings, and, save where otherwise provided, any reference to a rule is to a rule in the Insolvency Rules;

(3) 'CPR' means the Civil Procedure Rules and 'CPR' followed by a Part or rule identified by number means the Part or rule with that number in those Rules;

(4) 'EC Regulation on Insolvency Proceedings' means Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings;

(5) 'Service Regulation' means Council Regulation (EC) No. 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents);

(6) 'Insolvency proceedings' means:

(a) any proceedings under the Act, the Insolvency Rules, the Administration of Insolvent Estates of Deceased Persons Order 1986 (S.I. 1986 No.1999), the Insolvent Partnerships Order 1994 (S.I. 1994 No. 2421) or the Limited Liability Partnerships Regulations 2001;

(b) any proceedings under the EC Regulation on Insolvency Proceedings or the Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030);

(7) References to a 'company' include a limited liability partnership and references to a 'contributory' include a member of a limited liability partnership;

(8) References to a 'Registrar' are to a Registrar in Bankruptcy of the High Court and (save in cases where it is clear from the context that a particular provision applies only to the Royal Courts of Justice) include a District Judge in a District Registry of the High Court and in any county court hearing centre having relevant insolvency jurisdiction;

(9) 'Court' means the High Court or any county court hearing centre having relevant insolvency jurisdiction;

(10) 'Royal Courts of Justice' means the Royal Courts of Justice, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL or such other place in London where the Registrars sit;

(11) In Part Six of this Practice Direction:

(a) "appointee" means:

(i) a provisional liquidator appointed under section 135 of the Act;

(ii) a special manager appointed under section 177 or section 370 of the Act;

(iii) a liquidator appointed by the members of a company or partnership or by the creditors of a company or partnership or by the Secretary of State pursuant to section 137 of the Act, or by the court pursuant to section 140 of the Act;

(iv) an administrator of a company appointed to manage the property, business and affairs of that company under the Act or other enactment and to which the provisions of the Act are applicable;

(v) a trustee in bankruptcy (other than the Official Receiver) appointed under the Act;

(vi) a nominee or supervisor of a voluntary arrangement under Part I or Part VIII of the Act;

(vii) a licensed insolvency practitioner appointed by the court pursuant to section 273 of the Act;

(viii) an interim receiver appointed by the court pursuant to section 286 of the Act;

(b) "assessor" means a person appointed in accordance with CPR 35.15;

(c) "remuneration application" means any application to fix, approve or challenge the remuneration or expenses of an appointee or the basis of remuneration;

(d) "remuneration" includes expenses (where the Act or the Insolvency Rules give the court jurisdiction in relation thereto) and, in the case of an administrator, any pre-appointment administration costs or remuneration.

2. Coming into force

2.1 This Practice Direction shall come into force on 29 July 2014 and shall replace all previous Practice Directions, Practice Statements and Practice Notes relating to insolvency proceedings. For the avoidance of doubt, this Practice Direction does not affect the Practice Direction relating to contributories' winding up petitions (Practice Direction 49B – Order under section 127 Insolvency Act 1986).

3. Distribution of business

3.1 As a general rule all petitions and applications (except those listed in paragraphs 3.2 and 3.3 below) should be listed for initial hearing before a Registrar in accordance with rule 7.6A(2) and (3).

3.2 The following applications relating to insolvent companies should always be listed before a Judge:

(1) applications for committal for contempt;

(2) applications for an administration order;

(3) applications for an injunction pursuant to the Court's inherent jurisdiction (e.g. to restrain the presentation or advertisement of a winding up petition) or pursuant to section 37 of the Senior Courts Act 1981 or section 38 of the County Courts Act 1984 but not applications for any order to be made pursuant to the Act or the Rules;

(4) applications for the appointment of a provisional liquidator;

(5) interim applications and applications for directions or case management after any proceedings have been referred or adjourned to the Judge (except where liberty to apply to the Registrar has been given).

3.3 The following applications relating to insolvent individuals should always be listed before a Judge:

(1) applications for committal for contempt;

(2) applications for an injunction pursuant to the Court's inherent jurisdiction (e.g. to restrain the presentation of a bankruptcy petition) or pursuant to section 37 of the Senior Courts Act 1981 or section 38 of the County Courts Act 1984 but not applications for any order to be made pursuant to the Act or the Rules;

(3) interim applications and applications for directions or case management after any proceedings have been referred or adjourned to the Judge (except where liberty to apply to the Registrar has been given).

3.4 When deciding whether to hear proceedings or to refer or adjourn them to the Judge, the Registrar should have regard to the following factors:

(1) the complexity of the proceedings;

(2) whether the proceedings raise new or controversial points of law;

(3) the likely date and length of the hearing;

(4) public interest in the proceedings.

4. Court documents

4.1 All insolvency proceedings should be commenced and applications in proceedings should be made using the forms prescribed by the Act, the Insolvency Rules or other legislation under which the same is or are brought or made and/or should contain the information prescribed by the Act, the Insolvency Rules or other legislation.

4.2 Every court document in insolvency proceedings under Parts I to VII of the Act shall be headed:

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
[DISTRICT REGISTRY] or in the Royal Courts of Justice
[COMPANIES COURT]

or

IN THE COUNTY COURT AT [ ]

followed by

IN THE MATTER OF [name of company]
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

4.3 Every court document in insolvency proceedings under Parts IX to XI of the Act shall be headed:

> IN THE [HIGH COURT OF JUSTICE] or [COUNTY COURT AT [ ]]
> IN BANKRUPTCY
>
> IN THE MATTER OF [name of bankrupt]
>
> or
>
> RE: [name of bankrupt].
>
> Every application should also be headed:
> AND IN THE MATTER OF THE INSOLVENCY ACT 1986

4.4 Every court document in proceedings to which the Act applies by virtue of other legislation should also be headed:

> IN THE MATTER OF [THE FINANCIAL SERVICES AND MARKETS ACT 2000 or as the case may be]
> AND IN THE MATTER OF THE INSOLVENCY ACT 1986

5. Evidence

5.1 Subject to the provisions of rule 7.9 or any other provisions or directions as to the form in which evidence should be given, written evidence in insolvency proceedings must be given by witness statement.

6. Service of court documents in insolvency proceedings

6.1 Except where the Insolvency Rules otherwise provide (and, in this regard, the attention of practitioners is particularly drawn to rule 12A.16(2)), CPR Part 6 applies to the service of court documents both within and out of the jurisdiction as modified by this Practice Direction or as the court may otherwise direct.

6.2 Except where the Insolvency Rules otherwise provide or as may be required under the Service Regulation, service of documents in insolvency proceedings will be the responsibility of the parties and will not be undertaken by the court.

6.3 A document which, pursuant to rule 12A.16(3)(b), is treated as a claim form, is deemed to have been served on the date specified in CPR Part 6.14, and any other document (including any document which is treated as a claim form pursuant to rule 12A.16(3)(a) but which is not a document of a type specified in rule 12A.16(2)) is deemed to have been served on the date specified in CPR Part 6.26, unless the court otherwise directs. (Pursuant to rule 12A.16(2), the provisions of CPR Part 6 do not apply to the service of any of the following documents within the jurisdiction: (a) a winding-up petition; (b) a bankruptcy petition; (c) any document relating to such a petition; or (d) any administration, winding-up or bankruptcy order.)

6.4 Except as provided below, service out of the jurisdiction of an application which is to be treated as a claim form under rule 12A.16(3) requires the permission of the court.

6.5 An application which is to be treated as a claim form under rule 12A.16(3) may be served out of the jurisdiction without the permission of the court if:

(1) the application is by an office-holder appointed in insolvency proceedings in respect of an individual or company with its centre of main interests within the jurisdiction exercising a statutory power under the Act, and the person to be served is to be served within the EU; or

(2) it is a copy of an application, being served on a Member State liquidator (as defined by Article 2 of the EC Regulation on Insolvency Proceedings).

6.6 An application for permission to serve out of the jurisdiction must be supported by a witness statement setting out:

(1) the nature of the claim or application and the relief sought;

(2) that the applicant believes that the claim has a reasonable prospect of success; and

(3) the address of the person to be served or, if not known, in what place or country that person is, or is likely, to be found.

6.7 CPR 6.36 and 6.37(1) and (2) do not apply in insolvency proceedings.

7. Jurisdiction

7.1 Where CPR 2.4 provides for the court to perform any act, that act may be performed by a Registrar.

8. Drawing up of orders

8.1 The court will draw up all orders except orders on the application of the Official Receiver or for which the Treasury Solicitor is responsible or where the court otherwise directs.

9. Urgent applications

9.1 In the Royal Courts of Justice the Registrars (and in other courts exercising insolvency jurisdiction the District Judges) operate urgent applications lists for urgent and time-critical applications and may be available to hear urgent applications at other times. Parties asking for an application to be dealt with in the urgent applications lists or urgently at any other time must complete the certificate below:

No:

Heading of action

I estimate that this matter is likely to occupy the court for ……. mins/hours.

I certify that it is urgent for the following reasons:

……..

[name of representative]

……..

[telephone number]

Counsel/Solicitor for the …….

WARNING. If, in the opinion of the Registrar/District Judge, the application is not urgent then such sanction will be applied as is thought appropriate in all the circumstances.

PART TWO: COMPANY INSOLVENCY

10. Administrations

10.1 In the absence of special circumstances, an application for the extension of an administration should be made not less than one month before the end of the administration. The evidence in support of any later application must explain why the application is being made late. The court will consider whether any part of the costs should be disallowed where an application is made less than one month before the end of the administration.

11. Winding-up petitions

11.1 Before presenting a winding-up petition the creditor must conduct a search to ensure that no petition is already pending. Save in exceptional circumstances a second winding up petition should not be presented whilst a prior petition is pending. A petitioner who presents his own petition while another petition is pending does so at risk as to costs.

11.2 Save where by reason of the nature of the company or its place of incorporation the information cannot be stated (in which case as much similar information as is available should be given), every creditor's winding-up petition must (in the case of a company) contain the following:

(1) the full name and address of the petitioner;

(2) the name and any registered number/s of the company in respect of which a winding up order is sought;

(3) the date of incorporation of the company and the legislation under which it was incorporated;

(4) the address of the company's registered office and, in the case of any overseas company, the address of any establishment registered under the Companies Act or Acts;

(5)

(a) In the case of companies incorporated under any of the Companies Acts prior to the Companies Act 2006, a statement of the nominal capital of the company, the manner in which its shares are divided up and the amount of the capital paid up or credited as paid up; or

(b) In the case of any other companies, a statement of the known issued share capital of the company, the manner in which its shares are divided up and the amount of the capital paid up or credited as paid up.

(6)

(a) In the case of companies incorporated under any of the Companies Acts prior to the Companies Act 2006, brief details of the principal objects for which the company was established followed, where appropriate, by the words "and other objects stated in the memorandum of association of the company"; or

(b) In the case of companies incorporated under the Companies Act 2006, either:

(i) a statement confirming that its objects are unrestricted pursuant to section 31(1) of the Companies Act 2006, or alternatively

(ii) a statement confirming that its objects are restricted by its Articles of Association and brief details of such restrictions;

(7) details of the basis on which it is contended that the company is insolvent including, where a debt is relied on, sufficient particulars of the debt (the amount, nature and approximate date(s) on which it was incurred) to enable the company and the court to identify the debt;

(8) a statement that the company is insolvent and unable to pay its debts;

(9) a statement that for the reasons set out in the evidence verifying the petition the EC Regulation on Insolvency Proceedings either applies or does not and if the former whether the proceedings will be main, territorial or secondary proceedings;

(10) the statement that, "In the circumstances it is just and equitable that the company be wound up under the provisions of the Insolvency Act 1986";

(11) a prayer that the company be wound up, for such other order as the court thinks fit and any other specific relief sought.

Similar information (so far as is appropriate) should be given where the petition is presented against a partnership.

11.3 The statement of truth verifying the petition in accordance with rule 4.12 should be made no more than ten business days before the date of issue of the petition.

11.4 Where the company to be wound up has been struck off the register, the petition should state that fact and include as part of the relief sought an order that it be restored to the register. Save where the petition has been presented by a Minister of the Crown or a government department, evidence of service on the Treasury Solicitor or the Solicitor for the affairs of the Duchy of Lancaster or the Solicitor to the Duchy of Cornwall (as appropriate) should be filed exhibiting the bona vacantia waiver letter.

11.5 Gazetting of the petition

11.5.1 Rule 4.11 must be complied with (unless waived by the court): it is designed to ensure that the class remedy of winding up by the court is made available to all creditors, and is not used as a means of putting improper pressure on the company to pay the petitioner's debt or costs. Failure to comply with the rule, without good reason accepted by the court, may lead to the summary dismissal of the petition on the return date (rule 4.11(6)) or to the court depriving the petitioner of the costs of the hearing. If the court, in its discretion, grants an adjournment, this will usually be on terms that notice of the petition is gazetted or otherwise given in accordance with the rule in due time for the adjourned hearing. No further adjournment for the purpose of gazetting will normally be granted.

11.5.2 Copies of every notice gazetted in connection with a winding up petition, or where this is not practicable a description of the form and content of the notice, must be lodged with the court as soon as possible after publication and in any event not later than five business days before the hearing of the petition. This direction applies even if the notice is defective in any way (e.g. is published on a date not in accordance with the Insolvency Rules, or omits or misprints some important words) or if the petitioner decides not to pursue the petition (e.g. on receiving payment).

11.6 Errors in petitions

11.6.1 Applications for permission to amend errors in petitions which are discovered after a winding up order has been made should be made to the member of court staff in charge of the winding up list in the Royal Courts of Justice or to a District Judge in any other court.

11.6.2 Where the error is an error in the name of the company, the member of court staff in charge of the winding up list in the Royal Courts of Justice or a District Judge in any other court may make any necessary amendments to ensure that the winding up order is drawn up with the correct name of the company inserted. If there is any doubt, e.g. where there might be another company in existence which could be confused with the company to be wound up, the member of court staff in charge of the winding up list will refer the application to a Registrar at the Royal Courts of Justice and a District Judge may refer it to a Judge.

11.6.3 Where it is discovered that the company has been struck off the Register of Companies prior to the winding up order being made, the matter must be restored to the list as soon as possible to enable an order for the restoration of the name to be made as well as the order to wind up and, save where the petition has been presented by a Minister of the Crown or a government department, evidence of service on the Treasury Solicitor or the Solicitor for the Affairs of the Duchy of Lancaster or the Solicitor to the Duchy of Cornwall (as appropriate) should be filed exhibiting the bona vacantia waiver letter.

11.7 Rescission of a winding up order

11.7.1 An application to rescind a winding up order must be made by application.

11.7.2 The application should normally be made within five business days after the date on which the order was made (rule 7.47(4)) failing which it should include an application to extend time. Notice of any such application must be given to the petitioning creditor, any supporting or opposing creditor and the Official Receiver.

11.7.3 Applications will only be entertained if made (a) by a creditor, or (b) by a contributory, or (c) by the company jointly with a creditor or with a contributory. The application must be supported by a witness statement which should include details of assets and liabilities and (where appropriate) reasons for any failure to apply within five business days.

11.7.4 In the case of an unsuccessful application the costs of the petitioning creditor, any supporting creditors and of the Official Receiver will normally be ordered to be paid by the creditor or the contributory making or joining in the application. The reason for this is that if the costs of an unsuccessful application are made payable by the company, they fall unfairly on the general body of creditors.

11.8 Validation orders

11.8.1 A company against which a winding up petition has been presented may apply to the court after presentation of the petition for relief from the effects of section 127(1) of the Act by seeking an order that a disposition or dispositions of its property, including payments out of its bank account (whether such account is in credit or overdrawn), shall not be void in the event of a winding up order being made on the hearing of the petition (a validation order).

11.8.2 An application for a validation order should generally be made to the Registrar. An application should be made to the Judge only if: (a) it is urgent and no Registrar is available to hear it; or (b) it is complex or raises new or controversial points of law; or (c) it is estimated to last longer than 30 minutes.

11.8.3 Save in exceptional circumstances, notice of the making of the application should be given to: (a) the petitioning creditor; (b) any person entitled to receive a copy of the petition pursuant to rule 4.10; (c) any creditor who has given notice to the petitioner of his intention to appear on the hearing of the petition pursuant to rule 4.16; and (d) any creditor who has been substituted as petitioner pursuant to rule 4.19.

11.8.4 The application should be supported by a witness statement which, save in exceptional circumstances, should be made by a director or officer of the company who is intimately acquainted with the company's affairs and financial circumstances. If appropriate, supporting evidence in the form of a witness statement from the company's accountant should also be produced.

11.8.5 The extent and contents of the evidence will vary according to the circumstances and the nature of the relief sought, but in the majority of cases it should include, as a minimum, the following information:

(1) when and to whom notice has been given in accordance with paragraph 11.8.3 above;

(2) the company's registered office;

(3) the company's nominal and paid up capital;

(4) brief details of the circumstances leading to presentation of the petition;

(5) how the company became aware of presentation of the petition;

(6) whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;

(7) full details of the company's financial position including details of its assets (including details of any security and the amount(s) secured) and liabilities, which should be supported, as far as possible, by documentary evidence, e.g. the latest filed accounts, any draft audited accounts, management accounts or estimated statement of affairs;

(8) a cash flow forecast and profit and loss projection for the period for which the order is sought;

(9) details of the dispositions or payments in respect of which an order is sought;

(10) the reasons relied on in support of the need for such dispositions or payments to be made;

(11) any other information relevant to the exercise of the court's discretion;

(12) details of any consents obtained from the persons mentioned in paragraph 11.8.3 above (supported by documentary evidence where appropriate);

(13) details of any relevant bank account, including its number and the address and sort code of the bank at which such account is held and the amount of the credit or debit balance on such account at the time of making the application.

11.8.6 Where an application is made urgently to enable payments to be made which are essential to continued trading (e.g. wages) and it is not possible to assemble all the evidence listed above, the court may consider granting limited relief for a short period, but there should be sufficient evidence to satisfy the court that the interests of creditors are unlikely to be prejudiced.

11.8.7 Where the application involves a disposition of property the court will need details of the property (including its title number if the property is land) and to be satisfied that any proposed disposal will be at a proper value. Accordingly, an independent valuation should be obtained and exhibited to the evidence.

11.8.8 The court will need to be satisfied by credible evidence either that the company is solvent and able to pay its debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class (Denney v John Hudson & Co Ltd [1992] BCLC 901; Re Fairway Graphics Ltd [1991] BCLC 468).

11.8.9 A draft of the order sought should be attached to the application.

11.8.10 Similar considerations to those set out above are likely to apply to applications seeking ratification of a transaction or payment after the making of a winding-up order.

12. Applications

12.1 In accordance with rule 13.2(2), in the Royal Courts of Justice the member of court staff in charge of the winding up list has been authorised to deal with applications:

(1) to extend or abridge time prescribed by the Insolvency Rules in connection with winding up (rule 4.3);

(2) for permission to withdraw a winding up petition (rule 4.15);

(3) for the substitution of a petitioner (rule 4.19);

(4) by the Official Receiver for limited disclosure of a statement of affairs (rule 4.35);

(5) by the Official Receiver for relief from duties imposed upon him by the Insolvency Rules (rule 4.47);

(6) by the Official Receiver for permission to give notice of a meeting by advertisement only (rule 4.59);

(7) to transfer proceedings from the High Court (Royal Courts of Justice) to a county court hearing centre (in which proceedings to wind up companies may be commenced under the Act) after the making of a winding-up order (rule 7.11).

12.2 In District Registries or the County Court such applications must be made to a District Judge.

PART THREE: PERSONAL INSOLVENCY

13. Statutory demands

13.1 Service abroad of statutory demands

13.1.1 A statutory demand is not a document issued by the court. Permission to serve out of the jurisdiction is not, therefore, required.

13.1.2 Rule 6.3(2) ('Requirements as to service') applies to service of the statutory demand whether within or out of the jurisdiction.

13.1.3 A creditor wishing to serve a statutory demand out of the jurisdiction in a foreign country with which a civil procedure convention has been made (including the Hague Convention) may and, if the assistance of a British Consul is desired, must adopt the procedure prescribed by CPR Part 6.42 and 6.43. In the case of any doubt whether the country is a 'convention country', enquiries should be made of the Queen's Bench Masters' Secretary Department, Royal Courts of Justice, Strand, London WC2A 2LL.

13.1.4 In all other cases, service of the demand must be effected by private arrangement in accordance with rule 6.3(2) and local foreign law.

13.1.5 When a statutory demand is to be served out of the jurisdiction, the time limits of 21 days and 18 days respectively referred to in the demand must be amended as provided in the next paragraph. For this purpose reference should be made to the table set out in the practice direction supplementing Section IV of CPR Part 6.

13.1.6 A creditor should amend the statutory demand as follows:

(1) for any reference to 18 days there must be substituted the appropriate number of days set out in the table plus 4 days;

(2) for any reference to 21 days there must be substituted the appropriate number of days in the table plus 7 days.

13.1.7 Attention is drawn to the fact that in all forms of the statutory demand the figure 18 and the figure 21 occur in more than one place.

13.2 Substituted service of statutory demands

13.2.1 The creditor is under an obligation to do all that is reasonable to bring the statutory demand to the debtor's attention and, if practicable, to cause personal service to be effected (rule 6.3(2)).

13.2.2 In the circumstances set out in rule 6.3(3) the demand may instead be advertised. As there is no statutory form of advertisement, the court will accept an advertisement in the following form:

STATUTORY DEMAND
(Debt for liquidated sum payable immediately following a judgment or order of the court)

_____

To (Block letters)

of

TAKE NOTICE that a statutory demand has been issued by:

Name of Creditor:

Address:

The creditor demands payment of £ the amount now due on a judgment or order of the (High Court of Justice Division)(County Court at) dated the [day] of [month] 20[ ].

The statutory demand is an important document and it is deemed to have been served on you on the date of the first appearance of this advertisement. You must deal with this demand within 21 days of the service upon you or you could be made bankrupt and your property and goods taken away from you. If you are in any doubt as to your position, you should seek advice immediately from a solicitor or your nearest Citizens' Advice Bureau. The statutory demand can be obtained or is available for inspection and collection from:

Name:

Address:

(Solicitor for) the creditor

Tel. No. Reference:

You have only 21 days from the date of the first appearance of this advertisement before the creditor may present a bankruptcy petition. You have only 18 days from the date of the first appearance of this advertisement within which to apply to the court to set aside the demand.

13.2.3 Where personal service is not effected or the demand is not advertised in the limited circumstances permitted by rule 6.3(3), substituted service is permitted, but the creditor must have taken all those steps which would justify the court making an order for substituted service of a petition. The steps to be taken to obtain an order for substituted service of a petition are set out below. Failure to comply with these requirements may result in the court declining to issue the petition (rule 6.11(9)) or dismissing it.

13.2.4 In most cases, evidence of the following steps will suffice to justify acceptance for presentation of a petition where the statutory demand has been served by substituted service (or to justify making an order for substituted service of a petition):

(1) One personal call at the residence and place of business of the debtor where both are known or at either of such places as is known. Where it is known that the debtor has more than one residential or business address, personal calls should be made at all the addresses.

(2) Should the creditor fail to effect personal service, a letter should be written to the debtor referring to the call(s), the purpose of the same and the failure to meet the debtor, adding that a further call will be made for the same purpose on the [day] of [month] 20[ ] at [ ] hours at [place]. Such letter may be sent by first class prepaid post or left at or delivered to the debtor's address in such a way as it is reasonably likely to come to the debtor's attention. At least two business days' notice should be given of the appointment and copies of the letter sent to or left at all known addresses of the debtor. The appointment letter should also state that:

(a) in the event of the time and place not being convenient, the debtor should propose some other time and place reasonably convenient for the purpose;

(b) (In the case of a statutory demand) if the debtor fails to keep the appointment the creditor proposes to serve the debtor by [advertisement] [post] [insertion through a letter box] or as the case may be, and that, in the event of a bankruptcy petition being presented, the court will be asked to treat such service as service of the demand on the debtor;

(c) (In the case of a petition) if the debtor fails to keep the appointment, application will be made to the Court for an order for substituted service either by advertisement, or in such other manner as the court may think fit.

(3) When attending any appointment made by letter, inquiry should be made as to whether the debtor has received all letters left for him. If the debtor is away, inquiry should also be made as to whether or not letters are being forwarded to an address within the jurisdiction (England and Wales) or elsewhere.

(4) If the debtor is represented by a solicitor, an attempt should be made to arrange an appointment for personal service through such solicitor. The Insolvency Rules enable a solicitor to accept service of a statutory demand on behalf of his client but there is no similar provision in respect of service of a bankruptcy petition.

(5) The certificate of service of a statutory demand filed pursuant to rule 6.11 should deal with all the above matters including all relevant facts as to the debtor's whereabouts and whether the appointment letter(s) have been returned. It should also set out the reasons for the belief that the debtor resides at the relevant address or works at the relevant place of business and whether, so far as is known, the debtor is represented by a solicitor.

13.3 Setting aside a statutory demand

13.3.1 The application (Form 6.4) and witness statement in support (Form 6.5) exhibiting a copy of the statutory demand must be filed in court within 18 days of service of the statutory demand on the debtor. Where service is effected by advertisement the period of 18 days is calculated from the date of the first appearance of the advertisement. Three copies of each document must be lodged with the application to enable the court to serve notice of the hearing date on the applicant, the creditor and the person named in Part B of the statutory demand.

13.3.2 Where copies of the documents are not lodged with the application, any order of the Registrar fixing a venue is conditional upon copies of the documents being lodged on the next business day after the Registrar's order otherwise the application will be deemed to have been dismissed.

13.3.3 Where the debt claimed in the statutory demand is based on a judgment, order, liability order, costs certificate, tax assessment or decision of a tribunal, the court will not at this stage inquire into the validity of the debt nor, as a general rule, will it adjourn the application to await the result of an application to set aside the judgment, order decision, costs certificate or any appeal.

13.3.4 Where the debtor (a) claims to have a counterclaim, set-off or cross demand (whether or not he could have raised it in the action in which the judgment or order was obtained) which equals or exceeds the amount of the debt or debts specified in the statutory demand or (b) disputes the debt (not being a debt subject to a judgment, order, liability order, costs certificate or tax assessment) the court will normally set aside the statutory demand if, in its opinion, on the evidence there is a genuine triable issue.

13.3.5 A debtor who wishes to apply to set aside a statutory demand after the expiration of 18 days from the date of service of the statutory demand must apply for an extension of time within which to apply. If the applicant wishes to apply for an injunction to restrain presentation of a petition the application must be made to the Judge. Paragraphs 1 and 2 of Form 6.5 (witness statement in support of application to set aside statutory demand) should be used in support of the application for an extension of time with the following additional paragraphs:

"(3) To the best of my knowledge and belief the creditor(s) named in the demand has/have not presented a petition against me.

(4) The reasons for my failure to apply to set aside the demand within 18 days after service are as follows: …"

If application is made to restrain presentation of a bankruptcy petition the following additional paragraph should be added:

"(5) Unless restrained by injunction the creditor(s) may present a bankruptcy petition against me".

14. Bankruptcy petitions

14.1 Listing of petitions

14.1.1 All petitions presented will be listed under the name of the debtor unless the court directs otherwise.

14.2 Content of petitions

14.2.1 The attention of practitioners is drawn to the following points:

(1) A creditor's petition does not require dating, signing or witnessing but must be verified in accordance with rule 6.12.

(2) In the heading it is only necessary to recite the debtor's name e.g. Re John William Smith or Re J W Smith (Male). Any alias or trading name will appear in the body of the petition.

14.2.2 Where the petition is based solely on a statutory demand, only the debt claimed in the demand may be included in the petition.

14.2.3 The attention of practitioners is also drawn to rules 6.7 and 6.8, and in particular to rule 6.8(1) where the 'aggregate sum' is made up of a number of debts.

14.2.4 The date of service of the statutory demand should be recited as follows:

(1) In the case of personal service, the date of service as set out in the certificate of service should be recited and whether service is effected before/after 16.00 hours on Monday to Friday or before/after 12.00 hours on a Saturday.

(2) In the case of substituted service (other than by advertisement), the date alleged in the certificate of service should be recited.

(3) In the strictly limited case of service by advertisement under rule 6.3, the date to be alleged is the date of the advertisement's appearance or, as the case may be, its first appearance (see rules 6.3(3) and 6.11(8)).

14.3 Searches

14.3.1 The petitioning creditor shall, before presenting a petition, conduct an Official Search with the Chief Land Registrar in the register of pending actions for pending petitions presented against the debtor and shall include the following certificate at the end of the petition:

> "I/we certify that within 7 days ending today I/we have conducted a search for pending petitions presented against the debtor and that to the best of my/our knowledge information and belief [no prior petitions have been presented which are still pending] [a prior petition (No [ ]) has been presented and is/may be pending in the [Court] and I/we am/are issuing this petition at risk as to costs].
>
> Signed….. Dated….".

14.4 Deposit

14.4.1 The deposit will be taken by the court and forwarded to the Official Receiver. In the Royal Courts of Justice the petition fee and deposit should be paid in the Fee Room, which will record the receipt and will impress two entries on the original petition, one in respect of the court fee and the other in respect of the deposit. In a District Registry or a county court hearing centre, the petition fee and deposit should be handed to the duly authorised officer of the court's staff who will record its receipt.

14.4.2 In all cases cheque(s) for the whole amount should be made payable to 'HM Courts and Tribunals Service' or 'HMCTS'.

14.5 Certificates of continuing debt and of notice of adjournment

14.5.1 On the hearing of a petition where a bankruptcy order is sought, in order to satisfy the court that the debt on which the petition is founded has not been paid or secured or compounded for the court will normally accept as sufficient a certificate signed by the person representing the petitioning creditor in the following form:

> "I certify that I have/my firm has made enquiries of the petitioning creditor(s) within the last business day prior to the hearing/adjourned hearing and to the best of my knowledge and belief the debt on which the petition is founded is still due and owing and has not been paid or secured or compounded for save as to …
>
> Signed …… Dated ……"

14.5.2 For convenience, in the Royal Courts of Justice this certificate is incorporated in the attendance sheet for the parties to complete when they come to court and which is filed after the hearing. A fresh certificate will be required on each adjourned hearing.

14.5.3 On any adjourned hearing of a petition where a bankruptcy order is sought, in order to satisfy the court that the petitioner has complied with rule 6.29, the petitioner will be required to file evidence of the date on which, manner in which and address to which notice of the making of the order of adjournment and of the venue for the adjourned hearing has been sent to:

(1) the debtor, and

(2) any creditor who has given notice under rule 6.23 but was not present at the hearing when the order for adjournment was made or was present at the hearing but the date of the adjourned hearing was not fixed at that hearing. For convenience, in the Royal Courts of Justice this certificate is incorporated in the attendance sheet for the parties to complete when they come to court and which is filed after the hearing and is as follows:

> "I certify that the petitioner has complied with rule 6.29 by sending notice of adjournment to the debtor [supporting/opposing creditor(s)] on [date] at [address]".

A fresh certificate will be required on each adjourned hearing.

14.6 Extension of hearing date of petition

14.6.1 Late applications for extension of hearing dates under rule 6.28, and failure to attend on the listed hearing of a petition, will be dealt with as follows:

(1) If an application is submitted less than two clear working days before the hearing date (for example, later than Monday for Thursday, or Wednesday for Monday) the costs of the application will not be allowed under rule 6.28(3).

(2) If the petition has not been served and no extension has been granted by the time fixed for the hearing of the petition, and if no one attends for the hearing, the petition may be dismissed or re-listed for hearing about 21 days later. The court will notify the petitioning creditor's solicitors (or the petitioning creditor in person), and any known supporting or opposing creditors or their solicitors, of the new date and times. Written evidence should then be filed on behalf of the petitioning creditor explaining fully the reasons for the failure to apply for an extension or to appear at the hearing, and (if appropriate) giving reasons why the petition should not be dismissed.

(3) On the re-listed hearing the court may dismiss the petition if not satisfied it should be adjourned or a further extension granted.

14.6.2 All applications for an extension should include a statement of the date fixed for the hearing of the petition.

14.6.3 The petitioning creditor should contact the court (by solicitors or in person) on or before the hearing date to ascertain whether the application has reached the file and been dealt with. It should not be assumed that an extension will be granted.

14.7 Substituted service of bankruptcy petitions

14.7.1 In most cases evidence that the steps set out in paragraph 13.3.4 have been taken will suffice to justify an order for substituted service of a bankruptcy petition.

14.8 Validation orders

14.8.1 A person against whom a bankruptcy petition has been presented ('the debtor') may apply to the court after presentation of the petition for relief from the effects of section 284(1) – (3) of the Act by seeking an order that any disposition of his assets or payment made out of his funds, including any bank account (whether it is in credit or overdrawn) shall not be void in the event of a bankruptcy order being made on the petition (a 'validation order').

14.8.2 Save in exceptional circumstances, notice of the making of the application should be given to (a) the petitioning creditor(s) or other petitioner, (b) any creditor who has given notice to the petitioner of his intention to appear on the hearing of the petition pursuant to rule 6.23 1986, (c) any creditor who has been substituted as petitioner pursuant to rule 6.30 Insolvency Rules 1986 and (d) any creditor who has carriage of the petition pursuant to rule 6.31 Insolvency Rules 1986.

14.8.3 The application should be supported by a witness statement which, save in exceptional circumstances, should be made by the debtor. If appropriate, supporting evidence in the form of a witness statement from the debtor's accountant should also be produced.

14.8.4 The extent and contents of the evidence will vary according to the circumstances and the nature of the relief sought, but in a case where the debtor is trading or carrying on business it should include, as a minimum, the following information:

(1) when and to whom notice has been given in accordance with paragraph 14.8.2 above;

(2) brief details of the circumstances leading to presentation of the petition;

(3) how the debtor became aware of the presentation of the petition;

(4) whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;

(5) full details of the debtor's financial position including details of his assets (including details of any security and the amount(s) secured) and liabilities, which should be supported, as far as possible, by documentary evidence, e.g. accounts, draft accounts, management accounts or estimated statement of affairs;

(6) a cash flow forecast and profit and loss projection for the period for which the order is sought;

(7) details of the dispositions or payments in respect of which an order is sought;

(8) the reasons relied on in support of the need for such dispositions or payments to be made;

(9) any other information relevant to the exercise of the court's discretion;

(10) details of any consents obtained from the persons mentioned in paragraph 14.8.2 above (supported by documentary evidence where appropriate);

(11) details of any relevant bank account, including its number and the address and sort code of the bank at which such account is held and the amount of the credit or debit balance on such account at the time of making the application.

14.8.5 Where an application is made urgently to enable payments to be made which are essential to continued trading (e.g. wages) and it is not possible to assemble all the evidence listed above, the court may consider granting limited relief for a short period, but there must be sufficient evidence to satisfy the court that the interests of creditors are unlikely to be prejudiced.

14.8.6 Where the debtor is not trading or carrying on business and the application relates only to a proposed sale, mortgage or re-mortgage of the debtor's home evidence of the following will generally suffice:

(1) when and to whom notice has been given in accordance with 14.8.2 above;

(2) whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;

(3) details of the property to be sold, mortgaged or re-mortgaged (including its title number);

(4) the value of the property and the proposed sale price, or details of the mortgage or re-mortgage;

(5) details of any existing mortgages or charges on the property and redemption figures;

(6) the costs of sale (e.g. solicitors' or agents' costs);

(7) how and by whom any net proceeds of sale (or sums coming into the debtor's hands as a result of any mortgage or re-mortgage) are to be held pending the final hearing of the petition;

(8) any other information relevant to the exercise of the court's discretion;

(9) details of any consents obtained from the persons mentioned in 14.8.2 above (supported by documentary evidence where appropriate).

14.8.7 Whether or not the debtor is trading or carrying on business, where the application involves a disposition of property the court will need to be satisfied that any proposed disposal will be at a proper value. Accordingly an independent valuation should be obtained and exhibited to the evidence.

14.8.8 The court will need to be satisfied by credible evidence that the debtor is solvent and able to pay his debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class (Denney v John Hudson & Co Ltd [1992] BCLC 901, [1992] BCC 503, CA; Re Fairway Graphics Ltd [1991] BCLC 468).

14.8.9 A draft of the order sought should be attached to the application.

14.8.10 Similar considerations to those set out above are likely to apply to applications seeking ratification of a transaction or payment after the making of a bankruptcy order.

15. Applications

15.1 In accordance with rule 13.2(2), in the Royal Courts of Justice the member of court staff in charge of the winding up list has been authorised to deal with applications:

(1) by petitioning creditors to extend the time for hearing petitions (rule 6.28);

(2) by the Official Receiver:

(a) to transfer proceedings from the High Court to a county court hearing centre (rule 7.13);

(b) to amend the title of the proceedings (rules 6.35 and 6.47).

15.2 In District Registries or the County Court such applications must be made to the District Judge.

16. Orders without attendance

16.1 In suitable cases the court will normally be prepared to make orders under Part VIII of the Act (Individual Voluntary Arrangements), without the attendance of the parties, provided there is no bankruptcy order in existence and (so far as is known) no pending petition. The orders are:

(1) A 14 day interim order adjourning the application for 14 days for consideration of the nominee's report, where the papers are in order, and the nominee's signed consent to act includes a waiver of notice of the application or the consent by the nominee to the making of an interim order without attendance.

(2) A standard order on consideration of the nominee's report, extending the interim order to a date seven weeks after the date of the proposed meeting, directing the meeting to be summoned and adjourning to a date about three weeks after the meeting. Such an order may be made without attendance if the nominee's report has been delivered to the court and complies with section 256(1) of the Act and rule 5.11(2) and (3) and proposes a date for the meeting not less than 14 days from that on which the nominee's report is filed in court under rule 5.11 nor more than 28 days from that on which that report is considered by the court under rule 5.13.

(3) A 'concertina' order, combining orders as under (1) and (2) above. Such an order may be made without attendance if the initial application for an interim order is accompanied by a report of the nominee and the conditions set out in (1) and (2) above are satisfied.

(4) A final order on consideration of the chairman's report. Such an order may be made without attendance if the chairman's report has been filed and complies with rule 5.27(1). The order will record the effect of the chairman's report and may discharge the interim order.

16.2 Provided that the conditions under sub-paragraphs (2) and (4) above are satisfied and that the appropriate report has been lodged with the court in due time the parties need not attend or be represented on the adjourned hearing for consideration of the nominee's report or of the chairman's report (as the case may be) unless they are notified by the court that attendance is required. Sealed copies of the order made (in all four cases as above) will be posted by the court to the applicant or his solicitor and to the nominee.

16.3 In suitable cases the court may also make consent orders without attendance by the parties. The written consent of the parties will be required. Examples of such orders are as follows:

(1) on applications to set aside a statutory demand, orders:

(a) dismissing the application, with or without an order for costs as may be agreed (permission will be given to present a petition on or after the seventh day after the date of the order, unless a different date is agreed);

(b) setting aside the demand, with or without an order for costs as may be agreed; or

(2) On petitions where there is a negative list of supporting or opposing creditors in Form 6.21, or a statement signed by or on behalf of the petitioning creditor that no notices have been received from supporting or opposing creditors, orders:

(a) dismissing the petition, with or without an order for costs as may be agreed; or

(b) if the petition has not been served, giving permission to withdraw the petition (with no order for costs).

(3) On other applications, orders:

(a) for sale of property, possession of property, disposal of proceeds of sale;

(b) giving interim directions;

(c) dismissing the application, with or without an order for costs as may be agreed;

(d) giving permission to withdraw the application, with or without an order for costs as may be agreed.

16.4 If, as may often be the case with orders under subparagraphs 3(a) or (b) above, an adjournment is required, whether generally with liberty to restore or to a fixed date, the order by consent may include an order for the adjournment. If adjournment to a date is requested, a time estimate should be given and the court will fix the first available date and time on or after the date requested.

16.5 The above lists should not be regarded as exhaustive, nor should it be assumed that an order will be made without attendance as requested.

16.6 Applications for consent orders without attendance should be lodged at least two clear working days (and preferably longer) before any hearing date.

16.7 Whenever a document is lodged or a letter sent, the correct case number should be quoted. A note should also be given of the date and time of the next hearing (if any).

17. Bankruptcy restrictions undertakings

17.1 Where a bankrupt has given a bankruptcy restrictions undertaking, the Secretary of State or official receiver must file a copy in court and send a copy to the bankrupt as soon as reasonably practicable (rule 6.250). In addition the Secretary of State must notify the court immediately that the bankrupt has given such an undertaking in order that any hearing date can be vacated.

18. Persons at risk of violence

18.1 Where an application is made pursuant to rule 5.67, 5.68, 5A.18, or 6.235B or otherwise to limit disclosure of information as to a person's current address by reason of the possibility of violence, the relevant application should be accompanied by a witness statement which includes the following:

(1) The grounds upon which it is contended that disclosure of the current address as defined by the Insolvency Rules might reasonably be expected to lead to violence against the debtor or a person who normally resides with him or her as a member of his or her family or where appropriate any other person.

(2) Where the application is made in respect of the address of the debtor, the debtor's proposals with regard to information which may safely be given to potential creditors in order that they can recognise that the debtor is a person who may be indebted to them, in particular the address at which the debtor previously resided or carried on business and the nature of such business.

(3) The terms of the order sought by the applicant by reference to the court's particular powers as set out in the rule under which the application is made and, unless impracticable, a draft of the order sought.

(4) Where the application is made by the debtor in respect of whom a nominee or supervisor has been appointed or against whom a bankruptcy order has been made, evidence of the consent of the nominee/supervisor, or, in the case of bankruptcy, the trustee in bankruptcy, if one has been appointed, and the official receiver if a trustee in bankruptcy has not been appointed. Where such consent is not available the statement must indicate whether such consent has been refused.

The application shall in any event make such person a respondent to the application.

18.2 The application shall be referred to the Registrar who will consider it without a hearing in the first instance but without prejudice to the right of the court to list it for hearing if:

(1) the court is minded to refuse the application;

(2) the consent of any respondent is not attached;

(3) the court is of the view that there is another reason why listing is appropriate.

PART FOUR: FINANCIAL MARKETS AND INSOLVENCY (SETTLEMENT FINALITY) REGULATIONS 1999 – REQUIRED INFORMATION

19.1 In any case in which the court is asked to make an order to which regulation 22(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) applies, the party applying for the order must include in the petition or application a statement to that effect, identifying the system operator of the relevant designated system, the relevant designating authority, and the email or other addresses to which the court will be required to send notice pursuant to regulation 22(1) if an order is made.

19.2 At the date of this Practice Direction, the Regulations apply where, in respect of "a participant in a designated system" (as those terms are defined in the Regulations), an order is made for administration, winding-up, bankruptcy, sequestration, bank insolvency, bank administration, building society insolvency, building society special administration or investment bank special administration. Applicants must before making the application check for any amendments to the Regulations.

PART FIVE: APPEALS

20. Appeals

20.1 An appeal from a decision of the County Court (whether made by a District Judge, a Recorder or a Circuit Judge) or of a Registrar in insolvency proceedings lies to a Judge of the High Court.

20.2 An appeal from a decision of a Judge of the High Court, whether at first instance or on appeal, lies to the Court of Appeal.

20.3 A first appeal, whether under 20.1 or 20.2 above, is subject to the permission requirements of CPR Part 52, rule 3.

20.4 An appeal from a decision of a Judge of the High Court which was made on a first appeal requires the permission of the Court of Appeal.

20.5 **Filing Appeals**

20.5.1 An appeal from a decision of a Registrar must be filed at the Royal Courts of Justice in London.

20.5.2 An appeal from a decision of a District Judge sitting in a district registry of the High Court may be filed:

(1) at the Royal Courts of Justice in London; or

(2) in that district registry.

20.6 The court centres at which appeals from decisions of the County Court at hearing centres on any particular Circuit must be filed, managed and heard (unless the appeal court otherwise orders) are as follows:

Midland Circuit: Birmingham
North Eastern Circuit: Leeds or Newcastle upon Tyne
Northern Circuit: Manchester or Liverpool
Wales Circuit: Cardiff, Caernarfon or Mold
Western Circuit: Bristol
South Eastern Circuit: Royal Courts of Justice.

20.7 Where the lower court is the County Court:

(1) an appeal or application for permission to appeal from a decision of a District Judge will be heard or considered by a High Court Judge or by any person authorised under section 9 of the Senior Courts Act 1981 to act as a judge of the High Court in the Chancery Division;

(2) an appeal or application for permission to appeal from a decision of a Recorder or a Circuit Judge will be heard or considered by a High Court Judge or by a person authorised under paragraphs (1), (2) or (4) of the table in section 9(1) of the Senior Courts Act 1981 to act as a judge of the High Court in the Chancery Division

(3) other applications in any appeal or application for permission to appeal may be heard or considered and directions may be given by a High Court Judge or by any person authorised under section 9 of the Senior Courts Act 1981 to act as a judge of the High Court in the Chancery Division.

20.8 In the case of appeals from decisions of Registrars or District Judges in the High Court, appeals, applications for permission to appeal and other applications may be heard or considered and directions may be given by a High Court Judge or by any person authorised under section 9 of the Senior Courts Act 1981 to act as a judge of the High Court in the Chancery Division.

20.9

20.9.1 CPR Part 52 and Practice Directions 52A, 52B and 52C and its Forms shall, as appropriate, apply to appeals in insolvency proceedings, save as provided in paragraph 20.9.2 below.

20.9.2 Paragraphs 4.3 to 4.5 of Practice Direction 52A and Section 2 and Tables A and B of Practice Direction 52B shall not apply.

20.10 For the avoidance of any doubt, references in this Part to the County Court include, in respect of decisions made before 22 April 2014, a county court.

PART SIX: APPLICATIONS RELATING TO THE REMUNERATION OF APPOINTEES

21. Remuneration of Appointees

21.1 Introduction

21.1.1 This Part of the Practice Direction applies to any remuneration application made under the Act or the Insolvency Rules.

21.2 The objective and guiding principles

21.2.1 The objective of this Part of the Practice Direction is to ensure that the remuneration of an appointee which is fixed and approved by the court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken by the appointee in any given case and is fixed and approved by a process which is consistent and predictable.

21.2.2 Set out below are the guiding principles by reference to which remuneration applications are to be considered both by applicants, in the preparation and presentation of their application, and by the court determining such applications.

21.2.3 The guiding principles are as follows:

(1) "Justification"

It is for the appointee who seeks to be remunerated at a particular level and / or in a particular manner to justify his claim and in order to do so the appointee should be prepared to provide full particulars of the basis for and the nature of his claim for remuneration.

(2) "The benefit of the doubt"

The corollary of guiding principle (1) is that on any remuneration application, if after considering the evidence before it and after having regard to the guiding principles (in particular guiding principle (3)), the matters contained in paragraph 21.4.2 (in particular paragraph 21.4.2 (10)) and the matters referred to in paragraph 21.4.3 (as appropriate) there remains any element of doubt as to the appropriateness, fairness or reasonableness of the remuneration sought or to be fixed (whether arising from a lack of particularity as to the basis for and the nature of the appointee's claim to remuneration or otherwise) such element of doubt should be resolved by the court against the appointee.

(3) "Professional integrity"

The court should (where this is the case) give weight to the fact that the appointee is a member of a regulated profession and as such is subject to rules and guidance as to professional conduct and the fact that (where this is the case) the appointee is an officer of the court.

(4) "The value of the service rendered"

The remuneration of an appointee should reflect the value of the service rendered by the appointee, not simply reimburse the appointee in respect of time expended and cost incurred.

(5) "Fair and reasonable"

The amount of the appointee's remuneration should represent fair and reasonable remuneration for the work properly undertaken or to be undertaken.

(6) "Proportionality"

(a) "Proportionality of information"

In considering the nature and extent of the information which should be provided by an appointee in respect of a remuneration application the court, the appointee and any other parties to the application shall have regard to what is proportionate by reference to the amount of remuneration to be fixed, the nature, complexity and extent of the work to be completed (where the application relates to future remuneration) or that has been completed by the appointee and the value and nature of the assets and liabilities with which the appointee will have to deal or has had to deal.

(b) "Proportionality of remuneration"

The amount of remuneration to be fixed by the court should be proportionate to the nature, complexity and extent of the work to be completed (where the application relates to future remuneration) or that has been completed by the appointee and the value and nature of the assets and/or potential assets and the liabilities and/or potential liabilities with which the appointee will have to deal or has had to deal, the nature and degree of the responsibility to which the appointee has been subject in any given case, the nature and extent of the risk (if any) assumed by the appointee and the efficiency (in respect of both time and cost) with which the appointee has completed the work undertaken.

(7) "Professional guidance"

In respect of an application for the fixing and approval of the remuneration of an appointee, the appointee may have regard to the relevant and current statements of practice promulgated by any relevant regulatory and professional bodies in relation to the fixing of the remuneration of an appointee. In considering a remuneration application, the court may also have regard to such statements of practice and the extent of compliance with such statements of practice by the appointee.

(8) "Timing of application"

The court will take into account whether any application should have been made earlier and if so the reasons for any delay in making it.

21.3 Hearing of remuneration applications

21.3.1 On the hearing of the application the court shall consider the evidence then available to it and may either summarily determine the application or adjourn it giving such directions as it thinks appropriate.

21.3.2 Whilst the application will normally be determined summarily by a Registrar sitting alone, where it is sufficiently complex, the court may direct that:

(1) an assessor or a Costs Judge prepare a report to the court in respect of the remuneration which is sought to be fixed and approved; and/or

(2) the application be heard by the Registrar sitting with or without an assessor or a Costs Judge or by a Judge sitting with or without an assessor or a Costs Judge.

21.4 Relevant criteria and procedure

21.4.1 When considering a remuneration application the court shall have regard to the objective, the guiding principles and all relevant circumstances including the matters referred to in paragraph 21.4.2 and where appropriate paragraph 21.4.3, each of which should be addressed in the evidence placed before the court.

21.4.2 On any remuneration application, the appointee should:

(1) Provide a narrative description and explanation of:

(a) the background to, the relevant circumstances of and the reasons for the appointment;

(b) the work undertaken or to be undertaken in respect of the appointment; the description should be divided, insofar as possible, into individual tasks or categories of task (general descriptions of work, tasks, or categories of task should (insofar as possible) be avoided);

(c) the reasons why it is or was considered reasonable and/or necessary and/or beneficial for such work to be done, giving details of why particular tasks or categories of task were undertaken and why such tasks or categories of task are to be undertaken or have been undertaken by particular individuals and in a particular manner;

(d) the amount of time to be spent or that has been spent in respect of work to be completed or that has been completed and why it is considered to be fair, reasonable and proportionate;

(e) what is likely to be and has been achieved, the benefits that are likely to and have accrued as a consequence of the work that is to be or has been completed, the manner in which the work required in respect of the appointment is progressing and what, in the opinion of the appointee, remains to be achieved.

(2) Provide details sufficient for the court to determine the application by reference to the criteria which are required to be taken into account by reference to the Insolvency Rules and any other applicable enactments or rules relevant to the fixing of the remuneration.

(3) Provide a statement of the total number of hours of work undertaken or to be undertaken in respect of which the remuneration is sought, together with a breakdown of such hours by individual member of staff and individual tasks or categories of tasks to be performed or that have been performed. Where appropriate, a proportionate level of detail should also be given of:

(a) the tasks or categories of tasks to be undertaken as a proportion of the total amount of work to be undertaken in respect of which the remuneration is sought and the tasks or categories of tasks that have been undertaken as a proportion of the total amount of work that has been undertaken in respect of which the remuneration is sought; and

(b) the tasks or categories of task to be completed by individual members of staff or grade of personnel including the appointee as a proportion of the total amount of work to be completed by all members of staff including the appointee in respect of which the remuneration is sought, or the tasks or categories of task that have been completed by individual members of staff or grade of personnel as a proportion of the total amount of work that has been completed by all members of staff including the appointee in respect of which the remuneration is sought.

(4) Provide a statement of the total amount to be charged for the work to be undertaken or that has been undertaken in respect of which the remuneration is sought which should include:

(a) a breakdown of such amounts by individual member of staff and individual task or categories of task performed or to be performed;

(b) details of the time expended or to be expended and the remuneration charged or to be charged in respect of each individual task or category of task as a proportion (respectively) of the total time expended or to be expended and the total remuneration charged or to be charged.

In respect of an application pursuant to which some or all of the amount of the appointee's remuneration is to be fixed on a basis other than time properly spent, the appointee shall provide (for the purposes of comparison) the same details as are required by this paragraph (4), but on the basis of what would have been charged had he been seeking remuneration on the basis of the time properly spent by him and his staff.

(5) Provide details of each individual to be engaged or who has been engaged in work in respect of the appointment and in respect of which the remuneration is sought, including details of their relevant experience, training, qualifications and the level of their seniority.

(6) Provide an explanation of:

(a) the steps, if any, to be taken or that have been taken by the appointee to avoid duplication of effort and cost in respect of the work to be completed or that has been completed in respect of which the remuneration is sought;

(b) the steps to be taken or that have been taken to ensure that the work to be completed or that has been completed is to be or was undertaken by individuals of appropriate experience and seniority relative to the nature of the work to be or that has been undertaken.

(7) Provide details of the individual rates charged by the appointee and members of his staff in respect of the work to be completed or that has been completed and in respect of which the remuneration is sought. Such details should include:

(a) a general explanation of the policy adopted in relation to the fixing or calculation of such rates and the recording of time spent;

(b) where, exceptionally, the appointee seeks remuneration in respect of time spent by secretaries, cashiers or other administrative staff whose work would otherwise be regarded as an overhead cost forming a component part of the rates charged by the appointee and members of his staff, a detailed explanation as to why such costs should be allowed should be provided.

(8) Where the remuneration application is in respect of a period of time during which the charge-out rates of the appointee and/or members of his staff engaged in work in respect of the appointment have increased, provide an explanation of the nature, extent and reason for such increase and the date when such increase took effect. This paragraph (8) does not apply to applications to which paragraph 21.4.3 applies.

(9) Provide details of any remuneration previously fixed or approved in relation to the appointment (whether by the court or otherwise) including in particular the amounts that were previously sought to be fixed or approved and the amounts that were in fact fixed or approved and the basis upon which such amounts were fixed or approved.

(10) In order that the court may be able to consider the views of any persons who the appointee considers have an interest in the assets that are under his control, provide details of:

(a) what (if any) consultation has taken place between the appointee and those persons and if no such consultation has taken place an explanation as to the reason why;

(b) the number and value of the interests of the persons consulted including details of the proportion (by number and by value) of the interests of such persons by reference to the entirety of those persons having an interest in the assets under the control of the appointee.

(11) Provide such other relevant information as the appointee considers, in the circumstances, ought to be provided to the court.

21.4.3 This paragraph applies to applications where some or all of the remuneration of the appointee is to be fixed and approved on a basis other than time properly spent. On such applications in addition to the matters referred to in paragraph 21.4.2 (as applicable) the appointee shall:

(1) Provide a full description of the reasons for remuneration being sought by reference to the basis contended for.

(2) Where the remuneration is sought to be fixed by reference to a percentage of the value of the assets which are realised or distributed, provide a full explanation of the basis upon which any percentage rates to be applied to the values of the assets realised and/or distributed have been chosen.

(3) Provide a statement that to the best of the appointee's belief the percentage rates or other bases by reference to which some or all of the remuneration is to be fixed are similar to the percentage rates or other bases that are applied or have been applied in respect of other appointments of a similar nature.

(4) Provide a comparison of the amount to be charged by reference to the basis contended for and the amount that would otherwise have been charged by reference to the other available bases of remuneration, including the scale of fees in Schedule 6 to the Insolvency Rules.

21.4.4 If and insofar as any of the matters referred to in paragraph 21.4.2 or 21.4.3 (as appropriate) are not addressed in the evidence, an explanation for why this is the case should be included in such evidence.

21.4.5 For the avoidance of doubt and where appropriate and proportionate, paragraphs 21.4.2 to 21.4.4 (inclusive) are applicable to applications for the apportionment of remuneration as between a new appointee and a former appointee in circumstances where some or all of the former appointee's remuneration was based upon a set amount under the Insolvency Rules and the former appointee has ceased (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the set amount of remuneration was fixed.

21.4.6 The evidence placed before the court by the appointee in respect of any remuneration application should include the following documents:

(1) a copy of the most recent receipts and payments account;

(2) copies of any reports by the appointee to the persons having an interest in the assets under his control relevant to the period for which the remuneration sought to be fixed and approved relates;

(3) any schedules or such other documents providing the information referred to in paragraphs 21.4.2 and 21.4.3 where these are likely to be of assistance to the court in considering the application;

(4) evidence of any consultation with those persons having an interest in the assets under the control of appointee in relation to the remuneration of the appointee.

21.4.7 On any remuneration application the court may make an order allowing payments of remuneration to be made on account subject to final approval whether by the court or otherwise.

21.4.8 Unless otherwise ordered by the court (or as may otherwise be provided for in any enactment or rules of procedure) the costs of and occasioned by an application for the fixing and/or approval of the remuneration of an appointee, including those of any assessor, shall be paid out of the assets under the control of the appointee.