



Insolvency Practitioner remuneration

PPF RESTRUCTURING & INSOLVENCY TEAM –
GUIDANCE NOTE 2

December 2018

Contents

Section 1

Background

3

Section 2

Pre-appointment remuneration authorisation

4

Section 3

Post-appointment remuneration authorisation

5

Section 4

PPF as a secured creditor

7

Section 5

Pre-packs

8

Section 6

Restructuring & Insolvency Team contact details

9

Background

- 1.1** This guidance note explains the Pension Protection Fund's approach to all payments made to insolvency office holders. Such payments are of paramount importance to the Pension Protection Fund (PPF) and its levy payers, as recoveries from the estate have a direct effect on our funding level¹.
- 1.2** The PPF acquires the pension scheme's creditor rights following an insolvency event from the start of the assessment period² (s137 Pensions Act 2004), usually the occurrence of an insolvency event³. The PPF exercises these rights to the statutory exclusion of the trustees. Any resolution that an office holder obtains from the trustees of the pension scheme after the assessment period has started is therefore invalid.
- 1.3** The content of this note is intended to complement the letter and spirit of the Insolvency Rules and SIP9⁴. Our overall expectation is that office holders comply fully with the principles of SIP9 and provide enough information to enable the PPF to make the informed judgement required of creditors.
- 1.4** We expect the office holder to be capable of providing a concise and cogent explanation of how the proposed remuneration reflects the value provided to creditors. The explanation must not simply seek to reimburse the practitioner for time expended and cost incurred⁵. We recognise that some elements of the office holder's work are required by statute or regulation.
- 1.5** We also expect the office holder to recognise the PPF as the likely fee-approving body and to consult on the fee basis and quantum at an early stage. In most cases such consultation should be done with the assistance of an estimated outcome statement.
- 1.6** We regard any prior agreement between the office holder and the scheme trustees as invalid and may not ratify it subsequently.
- 1.7** The content of this note anticipates that the PPF has an influence on the fee approval process in cases where it is a creditor or is exercising creditors' rights. We expect office holders to apply the same principles to the prescribed part, if this is the PPF's only source of dividend return.

¹ www.ppf.co.uk/how-we-are-funded

² www.ppf.co.uk/your-role-assessment-process

³ s121(3) Pensions Act 2004 and Regulation 5 Pension Protection Fund (Entry Rules) Regulations 2005. See appendix 1, PPF guidance for Insolvency Practitioners www.ppf.co.uk/further-guidance-and-support

⁴ Statement of Insolvency Practice 9 (England & Wales) – Payments to insolvency office holders and their associates <https://www.r3.org.uk/what-we-do/publications/professional/statements-of-insolvency-practice/e-and-w/sip-9-list>

⁵ Why transparency matters, p19, R3 Recovery Magazine Autumn 2012 <http://vm1.r3.org.uk/media/documents/publications/recovery/Autumn12.pdf>

Pre-appointment remuneration authorisation

2.1 When incurring costs during the pre-appointment period we expect the prospective office holder to identify the existence of the pension scheme and therefore the PPF's likely economic interest. We therefore expect the practitioner to take account of the content of this guidance note and apply the same considerations to costs or expenses incurred during this period.

2.2 We regard any agreement made between the prospective office holder and the scheme trustees as inappropriate, and will not be bound by it. Both parties should contact the PPF's Restructuring & Insolvency Team immediately when it becomes apparent that the PPF has an economic interest in decisions or events, or that there will be a defined insolvency event⁶.



When incurring costs during the pre-appointment period we expect the prospective office holder to identify the existence of the pension scheme and therefore the PPF's likely economic interest."

⁶ s121(3) Pensions Act 2004 and Regulation 5 Pension Protection Fund (Entry Rules) Regulations 2005. See appendix 1, PPF guidance for Insolvency Practitioners www.ppf.co.uk/further-guidance-and-support

Post-appointment remuneration authorisation

- 3.1** The PPF will normally not approve an open-ended remuneration resolution.
- 3.2** In the vast majority of cases office holders are required by law to provide the creditors with an estimate of their fees. We expect this to be done as early as practical and we welcome engagement on the best way to properly remunerate office holders for the value they have contributed to the case.
- 3.3** We expect office holders to work within their estimate which effectively operates as a cap. Only in exceptional circumstances will the PPF agree to fees in excess of the estimate.
- 3.4** We will authorise drawing of fees on receipt of enough information to enable creditors to make the required informed judgement of reasonableness. We expect office holders to recognise that the disclosure required by SIP9 goes much further than a matrix of hours charged to the case and a narrative of standard tasks⁷. The PPF will exert its statutory rights to challenge remuneration if necessary.
- 3.5** The disclosure must be sufficiently transparent so as to enable an assessment of the value delivered to creditors. We expect to be able to identify what the office holder has achieved, particularly in terms of the efficiency and effectiveness of the work carried out.
- 3.6** We expect the basis of office holder fees to be appropriate for the circumstances of the case. We are flexible on how this is achieved. We are prepared to consider fee proposals which incorporate a different basis of charging for different aspects of the work required (e.g. fixed fee for statutory work, percentage basis for asset realisation work, and time cost basis for investigation or contentious litigation work). We also acknowledge that where exceptional responsibilities fall on the office holder the work may attract a higher rate or fee.
- 3.7** We expect that a well written progress report will provide the necessary information for creditors to make the requisite judgement, without any requirement for the office holder to provide more information than is already required by the principles contained in SIP9.
- 3.8** Once a basis for remuneration is approved we do not expect to have to seek anything from office holders beyond minor clarification matters when considering resolutions to authorise the drawing of fees.
- 3.9** We will not approve the recovery of costs relating to any remedial work required due to the incorrect submission of a s120 notice (or any other statutory obligation falling on an office holder). It is inappropriate for creditors to bear any expense arising from an office holder failing to fulfil their statutory obligations and we expect any such costs to be excluded from fee proposals submitted for approval.

⁷ Why transparency matters, p19, R3 Recovery Magazine Autumn 2012 <http://vm1.r3.org.uk/media/documents/publications/recovery/Autumn12.pdf>

Post-appointment remuneration authorisation continued

3.10 The PPF will not approve any recovery of costs relating to an office holder seeking to look beyond a s75⁸ certificate supporting the PPF's claim. The authority in *Gleave*⁹ provides office holders with sufficient protection from challenge by other creditors on the adjudication. We do not anticipate any necessity for further work to be carried out by Insolvency Practitioners (IPs) or their staff – particularly pension specialists – once a s75 certificate has been supplied with the PPF's final claim. Any such costs must be excluded from fee proposals submitted for approval. If the office holder believes that any work is required to verify the validity of the s75 certificate, then this must be discussed directly with the Restructuring and Insolvency (R&I) Team beforehand.



The PPF will not approve any recovery of costs relating to an office holder seeking to look beyond a s75 certificate supporting the PPF's claim."

⁸ s75 Pensions Act 1995

⁹ *Gleave & Ors -v- The Board of the Pension Protection Fund* [2008] EWHC 1099 (Ch) (21 May 2008)

PPF as a secured creditor

- 4.1** We consider that s137 of the Pensions Act 2004 encompasses any situation where the pension scheme trustees hold security granted by the company.
- 4.2** During the assessment period¹⁰ the security will remain under the control of the trustees, who should act in accordance with their own discussions with the PPF's Restructuring & Insolvency Team. The trustees and their advisers will remain involved in matters relating to dealing with the security documentation, but all fee-related matters remain within the purview of the PPF and are subject to the content of this guidance note.
- 4.3** The office holder should seek agreement or approval from the PPF before proceeding with any strategy that relates to the security held by the trustees.
- 4.4** This is particularly important where a fixed charge receiver has or will be appointed.



During the assessment period the security will remain under the control of the trustees, who should act in accordance with their own discussions with the PPF's Restructuring & Insolvency Team."

¹⁰ www.ppf.co.uk/your-role-assessment-process

Pre-packs

- 5.1** The nature of pre-pack transactions means that transparency and evident value are paramount. We expect the content of this note and the principles of SIP16¹¹ to be applied throughout.
- 5.2** Any failure by the practitioner to involve the Restructuring & Insolvency Team in early consideration of a pre-pack transaction which results in the scheme entering a PPF assessment period risks being removed by way of our nomination of alternative liquidators. The PPF will also exercise the scheme's other creditor rights if we consider it necessary and appropriate.
- 5.3** Specific guidance on this topic is covered in Guidance Note 3.



The nature of pre-pack transactions means that transparency and evident value are paramount.”

¹¹ Statement of Insolvency Practice 16 (England & Wales) – Pre-packaged sales in administrations
https://www.r3.org.uk/media/documents/technical_library/SIPS/SIP%2016%20Version%203%20Nov%202015.pdf

Restructuring & Insolvency Team contact details

Malcolm Weir

Director of Restructuring & Insolvency
malcolm.weir@ppf.gsi.gov.uk
020 8633 4940

Mark Allen

Case Manager
mark.allen@ppf.gsi.gov.uk
020 8633 5823

Mark Stonestreet

Case Advisor
mark.stonestreet@ppf.gsi.gov.uk
020 8633 5941

Address for all correspondence:

The Pension Protection Fund

Restructuring & Insolvency Team
Renaissance
12 Dingwall Road
Croydon, CR0 2NA

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

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