
STATUTORY INSTRUMENTS

2021 No. 1178

The Payment and Electronic Money Institution
Insolvency (England and Wales) Rules 2021

PART 7

Distributions to creditors

CHAPTER 2

Proofs of debt

Proving a debt

120.—(1) Subject to paragraph (7), a person claiming to be a creditor of the institution and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the administrator.

(2) A creditor who claims is referred to as “proving” for their debt and a document by which that creditor seeks to establish their claim is their “proof”.

(3) Subject to paragraph (4) and paragraph (6), a proof must—

(a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf, and

(b) state the following matters—

(i) the creditor’s name and address,

(ii) if the creditor is a company, its registered number,

(iii) the total amount of the creditor’s claim (including value added tax) as at the date on which the institution entered special administration, less any payments made after that date in respect of the claim, any deduction under rule 131 and any adjustment by way of set-off in accordance with rule 132,

(iv) whether or not the claim includes outstanding uncapitalised interest,

(v) particulars of how and when the debt was incurred by the institution,

(vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it,

(vii) details of any reservation of title in respect of goods to which the debt refers, and

(viii) the name, address and authority of the person authenticating the proof (if not the creditor).

(4) There must be specified in the proof details of any documents by reference to which the debt can be substantiated but, subject to paragraph (5), it is not essential that such document be attached to the proof or submitted with it.

(5) The administrator may call for any document or other evidence to be produced, where the administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

(6) Where the administrator has become aware that a customer has a shortfall claim, the administrator must—

- (a) keep a record of the shortfall claim, including the details set out in paragraph (3)(b) to the extent relevant,
- (b) treat each record under sub-paragraph (a) as if it were a proof submitted by a customer in respect of its shortfall claim and references to “proofs” and to “proving” shall include all records prepared under sub-paragraph (a), and
- (c) notify the customer that a proof for the shortfall claim has been submitted under this rule as soon as is reasonably practicable.

(7) Where paragraph (6) applies, a customer does not need to submit a separate proof under paragraph (1) for a shortfall claim.

Costs of proving

121. Unless the court otherwise orders—

- (a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under rule 120, except where the administrator has proved a debt in relation to a customer’s shortfall claim under rule 120(6), and
- (b) costs incurred by the administrator in estimating the quantum of a debt under rule 128 are payable out of the institution’s assets as an expense of the special administration.

Administrator to allow inspection of proofs

122. The administrator must, so long as proofs lodged are in the administrator’s hands, allow them to be inspected, at all reasonable times on any business day, by—

- (a) any creditor who has submitted a proof of debt (unless that proof has been wholly rejected for purposes of dividend or otherwise),
- (b) any contributory of the company, or
- (c) any person acting on behalf of either of the above.

New administrator appointed

123.—(1) If a new administrator is appointed in place of another, the former administrator must as soon as is reasonably practicable transmit to the new administrator all proofs received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the proofs, and return it to the former administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new administrator.

Admission and rejection of proofs for dividend

124.—(1) The administrator may admit or reject a proof in whole or in part.

(2) If the administrator rejects a proof in whole or in part, the administrator must prepare a written statement of reasons for doing so, and send it as soon as is reasonably practicable to the creditor.

Appeal against decision on proof

125.—(1) If a creditor is dissatisfied with the administrator’s decision with respect to their proof (including any decision on the question of preference), that creditor may apply to the court for the decision to be reversed or varied.

(2) An application under paragraph (1) must be made within twenty-one days of the creditor receiving the statement sent under rule 124.

(3) A member or any other creditor may, if dissatisfied with the administrator’s decision admitting or rejecting the whole or any part of a proof, make an application to the court for the decision to be reversed or varied within twenty-one days of becoming aware of the administrator’s decision.

(4) The applicant must give notice of an application under paragraph (1) or (3) to the FCA

(5) Where an application is made to the court under this rule, the court must fix a venue for the application to be heard.

(6) The applicant must send notice of the venue set by the court under paragraph (5) to—

- (a) the creditor who lodged the proof in question (if the applicant is not that creditor),
- (b) the administrator, and
- (c) the FCA.

(7) The administrator must, on receipt of the notice, file with the court the relevant proof, together (if relevant) with a copy of the statement sent under rule 124.

(8) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the institution would be entitled.

(9) After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the court to the administrator.

(10) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

Withdrawal or variation of proof

126. A creditor’s proof may at any time, by agreement with the administrator, be withdrawn or varied as to the amount claimed.

Exclusion of proof by the court

127.—(1) The court may exclude a proof or reduce the amount claimed—

- (a) on the administrator’s application, where the administrator thinks that the proof has been improperly admitted, or ought to be reduced, or
- (b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this rule, the court must fix a venue for the application to be heard, notice of which must be sent by the applicant—

- (a) in the case of an application by the administrator, to the creditor who made the proof, and
- (b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if the applicant is not the same creditor).