
STATUTORY INSTRUMENTS

2021 No. 1178

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

PART 8

The Administrator

CHAPTER 2

Fixing of remuneration

Claim that remuneration is excessive

167.—(1) The following persons may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator’s remuneration for services set out in rule 163(1)(a)—

- (a) a secured creditor,
- (b) an unsecured creditor with either the concurrence of at least ten per cent in value of the unsecured creditors (including that creditor) or the permission of the court,
- (c) a customer with the concurrence of customers whose relevant funds claims represent at least ten per cent of all relevant funds claims or with the permission of the court, or
- (d) the FCA.

(2) A customer, with the concurrence of customers whose relevant funds claims represent at least ten per cent of the total relevant funds claims, or with the permission of the court, may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator’s remuneration for services set out in rule 163(1)(b).

(3) An application under paragraphs (1) and (2) may be made on the grounds that—

- (a) the remuneration charged by the administrator is, or the expenses incurred by the administrator are, in all the circumstances, excessive, or
- (b) the basis fixed for the administrator’s remuneration is in all the circumstances excessive or inappropriate.

(4) The application must, subject to any order of the court under rule 166(4), be made no later than eight weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).

(5) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application without a hearing but it must not do so without giving the applicant at least five business days’ notice.

(6) Upon receipt of notice under paragraph (5), the applicant may require the court to list the application for a without notice hearing.

(7) If the application is not dismissed, the court must fix a venue for it to be heard, and give notice to the applicant accordingly.

(8) The applicant must, at least fourteen days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(9) If the court considers the application to be well-founded, it may make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the administrator was entitled to charge,
- (b) an order fixing the basis of remuneration at a reduced rate or amount,
- (c) an order changing the basis of remuneration,
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the special administration, or
- (e) an order that the administrator or the administrator's personal representative pay to the institution the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(10) Unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable as an expense of the special administration.