
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

Fixing of remuneration

- 163.**—(1) The administrator is entitled to receive remuneration—
- (a) to be paid out of the estate of the institution for services given—
 - (i) in respect of the pursuit of Objectives 2 and 3, and
 - (ii) as a consequence of a failure by the institution to safeguard relevant funds, and
 - (b) to be paid out of relevant funds for services given in respect of the pursuit of Objective 1.
- (2) The basis of remuneration in both cases in paragraph (1) must be fixed—
- (a) as a percentage of the value of the property with which the administrator has to deal,
 - (b) by reference to the time properly given by the insolvency practitioner (as administrator) and their staff in attending to matters arising in the special administration, or
 - (c) as a set amount.
- (3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the administrator.
- (4) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the administrator.
- (5) It is for the creditors' committee (if there is one) to determine for each case—
- (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3), and
 - (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (4) and the amount (if any) to be set under paragraph (2)(c).
- (6) In making the determinations, the creditors' committee must have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the pursuit of either Objective 1, 2 or 3, there falls on the administrator any responsibility of an exceptional kind or degree,

(c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, their duties as such, and

(d) the value and nature in each case of the property with which the administrator has to deal.

(7) If there is no creditors' committee, or the committee does not make the requisite determinations, the basis of the administrator's remuneration in each case may be fixed (in accordance with paragraphs (2) to (5)) by resolutions of a meeting of creditors and customers, or in respect of the administrator's remuneration for the purpose outlined in rule 163(1)(b), a meeting of customers and paragraph (6) applies to them as it does to the creditors' committee.

(8) If not fixed in accordance with paragraphs (5) or (7), the basis of the administrator's remuneration must, on the administrator's application, be fixed by the court and the provisions above apply as they do to the fixing of the basis of remuneration by the creditors' committee.

(9) An application under paragraph (8) may not be made by the administrator unless the administrator has first sought to fix the basis in accordance with paragraph (5) or (7), and in any event may not be made more than eighteen months after the date of the administrator's appointment.

(10) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order, or

(b) to the creditors' committee or a meeting of creditors and customers, for settlement by resolution.

(11) If the administrator is a solicitor and employs their own firm, or any partner in it, to act on behalf of the institution, profit costs must not be paid unless this is authorised by the creditors' committee, the meeting of the creditors and customers, or the court.

Commencement Information

I1 Rule 163 in force at 12.11.2021, see [rule 2](#)

Recourse to meeting of creditors and customers

164. If the basis of the administrator's remuneration for either case in rule 163(1) has been fixed by the creditors' committee, and the administrator considers, in either or in both cases, the rate or amount to be insufficient, or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed by resolution of the creditors and the customers.

Commencement Information

I2 Rule 164 in force at 12.11.2021, see [rule 2](#)

Recourse to the court

165.—(1) If the administrator considers that the basis of remuneration for either case in rule 163(1) fixed for the administrator by—

(a) the creditors' committee, or

(b) by resolution of the creditors and customers, or as the case may be, a meeting of customers, is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(2) The administrator must give at least fourteen days' notice of the application under paragraph (1) to the members of the creditors' committee, and the creditors' committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(3) If there is no creditors' committee, the notice of the application must be sent to such one or more of the institution's creditors or customers as the court may direct and those creditors or customers must nominate one or more of their number to appear or be represented and be heard on the application.

(4) Notice of the application must also be given to the FCA and the FCA may nominate a person to appear and be heard on the application.

(5) The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor or customer so appearing or being represented, to be paid as an expense of the special administration.

Commencement Information

I3 Rule 165 in force at 12.11.2021, see [rule 2](#)

Creditors' and customers' request for further information

166.—(1) If—

- (a) within twenty-one days of receipt of a progress report under rule 87—
 - (i) a secured creditor,
 - (ii) an unsecured creditor with the concurrence of at least five per cent in value of the unsecured creditors (including the creditor in question), or
 - (iii) a customer with the concurrence of customers whose relevant funds claims represent at least five per cent of all relevant funds claims (including the customer in question), or
- (b) with the permission of the court upon an application made within that period of twenty-one days, any unsecured creditor or any customer,

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by rule 87(1)(h) or (i), the administrator must, within fourteen days of receipt of the request, comply with paragraph (2).

(2) The administrator complies with this paragraph by either—

- (a) providing all of the information asked for, or
- (b) so far as the administrator considers that—
 - (i) the time or cost of preparation of the information would be excessive,
 - (ii) disclosure of the information would be prejudicial to the conduct of the special administration or might reasonably be expected to lead to violence against any person, or
 - (iii) the administrator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(3) Any creditor or customer, who need not be the same as the person who requested further information under paragraph (1), may apply to the court within twenty-one days of—

(a) the giving by the administrator of reasons for not providing all of the information asked for, or

(b) the expiry of the fourteen days provided for in paragraph (1),

and the court may make such order as it thinks just.

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of eight weeks provided for in rule 167(4) by such further period as the court thinks just.

Commencement Information

I4 Rule 166 in force at 12.11.2021, see [rule 2](#)

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.

Commencement Information

I5 Rule 167 in force at 12.11.2021, see [rule 2](#)

Review of remuneration

168.—(1) Where, after the basis of the administrator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

- (a) where the creditors' committee fixed the basis, to the committee;
- (b) where the creditors and customers fixed the basis, to the creditors and customers;
- (c) where the court fixed the basis, by application to the court;

and this Chapter applies as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (1) and not for any earlier period.

Commencement Information

I6 Rule 168 in force at 12.11.2021, see [rule 2](#)

Remuneration of new administrator

169. If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

Commencement Information

I7 Rule 169 in force at 12.11.2021, see [rule 2](#)

Apportionment of set fee remuneration

170.—(1) In a case in which the basis of the administrator’s remuneration is a set amount under rule 163(2)(c) and the administrator (“the former administrator”) ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former administrator or the former administrator’s personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) An application under paragraph (1) may be made—

- (a) by the former administrator or the former administrator’s personal representative within the period of twenty-eight days beginning with the date upon which the former administrator ceased to hold office, or
- (b) by the administrator for the time being in office if the former administrator or the former administrator’s personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the creditors’ committee fixed the basis, to that committee for a resolution determining the portion;
- (b) where the creditors and customers fixed the basis, to the creditors and customers for a resolution determining the portion;
- (c) where the court fixed the basis, to the court for an order determining the portion;

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator’s personal representative, as the case may be (“the recipient”).

(5) The recipient may within twenty-one days of receipt of the copy of the application give notice of intent to make representations to the creditors’ committee or to the creditors and customers, or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the twenty-one days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented on the application, as the case may be.

(7) If the former administrator or the former administrator’s personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors’ committee or the creditors and customers is insufficient, that person may apply—

- (a) in the case of a determination by the creditors’ committee, to the creditors and customers for a resolution increasing the portion;
- (b) in the case of a resolution of the creditors and customers (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.

Commencement Information

18 Rule 170 in force at 12.11.2021, see [rule 2](#)

Changes to legislation:

There are currently no known outstanding effects for the The Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021, CHAPTER 2.