



Guidance Note

# APPROACH TO SIP 9 REPORTING AND FEE ESTIMATES

May 2016

## **GUIDANCE TO MEMBERS – APPROACH TO SIP 9 REPORTING AND FEE ESTIMATES**

### **ENGLAND AND WALES**

#### **A. Overview – the Need for Narrative**

1. The following guidance is intended to provide members with some ideas and examples of matters which might be relevant to include as part of a meaningful narrative explanation to stakeholders in relation to the time spent by members and their staff in dealing with an appointment. It is anticipated that the narrative will precede the time and charge-out summary and, whilst some aspects may be generic in nature, the broader narrative would need to be tailored and be proportionate to the specific circumstances of each case.
2. The interests of the recipient of the report are paramount. The provision of large volumes of generic information, particularly where the information provided is not or is unlikely to be relevant to the specific case should be avoided as it will not assist the readers understanding of what work has or is proposed to be undertaken and may confuse or cause misunderstanding. Whilst a number of potentially useful and computational tools exist, practitioners should consider whether the provision of these to creditors is helpful, or whether they are ostensibly for internal use within their practice. Provision of a higher level of detail may be helpful when responding to a request for additional information.
3. The suggestions below are intended to show how a member might support and explain the numerical information provided in any table of time spent. Suggested categories of activity are attached; again, these will need tailoring to the nature of the engagement.
4. Population of a numerical table (or tables) alone will not be sufficient to comply with the legislative and best practice requirements in relation to disclosure of the member's fees, where these are based on time costs. A case specific narrative, in terms of scope and disclosure, will be required.
5. It is of paramount importance, and a fundamental principle of the narrative disclosure, that it clearly distinguishes between the following:
  - work that has been performed solely to comply with statutory requirements (e.g. statutory reporting on directors' conduct and statutory returns),
  - that which adds value, or is necessary to realise assets and distribute funds, and
  - work that has been necessarily been performed but ultimately did not add monetary value to the insolvent estate (e.g. an investigation that did not identify any transactions to pursue) although there may be value in creditors being satisfied that proper investigations have been carried out even if no successful claims or realisations resulted.
6. It should be clear to recipients what has been undertaken in the period being reported upon.
7. There are a number of differing points in the conduct of a case in which narrative will be required. These are:
  - Resolutions to support all fees bases – These will require narrative explaining the work that will be undertaken

- The fees estimate, where fees are to be based on time costs – These will require both narrative and figures
- Progress reports – These will require narrative explaining the work undertaken in the period, supported by figures if fees are being taken on a time cost basis

This guidance is intended to cover all of the above areas.

## **B. General**

8. Members should be aware that where fees are based on a fixed amount or percentage calculation, there will also be a need to provide some form of narrative explanation of the work done. It should be sufficiently detailed to ensure that creditors understand why the basis requested is expected to produce a fair and reasonable reflection of the work done by the Office Holder and his or her staff, and should cover the same or similar matters as those outlined below. Whilst it is not necessary to directly compare the fee proposed or charged to that which would have been charged had an alternative basis been used, it remains necessary to provide sufficient information to facilitate the making of informed judgements about the reasonableness of the office holder's requests. This might be achieved, for instance, by referring to prevailing market rates for collection activities or specific tasks or types of work.
9. When mixed bases for the calculation of remuneration are being used (or are proposed to be used), it will be particularly important to provide clear information about the tasks comprised in each of the categories, and the remuneration basis applicable to it. Reference can also usefully be made by Office Holders to the provisions of SIP 14 with regard to the apportionment of costs between fixed and floating charge realisations.
10. The narrative should provide an explanation if work has now been done that was not originally anticipated, for example, if a creditors' committee was appointed after the fee estimate had been prepared. The impact and implications of any variances from the fee estimate should be explained in the narrative statement.
11. Where significant amounts of time in a category are allocated to a particular grade of staff, the narrative should contain an explanation as to why, for example, the complexity of the work requires the involvement of that particular grade of staff (and, where the grade of staff might appear higher than might ordinarily be expected for the task, and explanation of the rationale for the more senior person doing that work), and the reason for the time spent. Similarly, it may be helpful to explain where any particular cost savings have been made in the grade of staff ultimately used, when compared to that previously anticipated.
12. Members should ensure that the narrative reports on matters arising during the period of the review and avoids repetition, save where it is required for contextual purposes. Where material is repeated, it will be helpful to note that the information was previously reported and when.

## **C. Suggested categories of activity**

13. The following are examples of typical workstreams that may be highlighted in a time and charge-out summary (these are not prescriptive or exhaustive). The numbered paragraphs below refer to the categories of activity set out in the illustrative time and charge-out summary below.

## **C.1 Case Administration and Planning**

14. This category of activity is likely to encompass work undertaken for both statutory and case strategy purposes. The narrative will provide an opportunity to explain the value to creditors of the work undertaken, bearing in mind that efficient case administration and planning adds value in terms of the time taken to carry out a job, the costs involved and ensuring, for example, a coherent planned process with as little duplication of effort as possible.
15. The narrative might usefully set out the nature and type of work, such as dealing with appointment and closure formalities, advertising, bonding, production of the statement of affairs, preparation of receipts and payments accounts and any fee estimates, submission of tax and VAT returns, winding up of pension schemes, non-statutory creditors' or shareholders' reports and/or meetings (unless there is a separate reporting category), liaising with creditors' committees, as well time spent determining or revising case strategy and general case management, including case reviews.
16. It may be helpful to set out the number and frequency of returns in relation to, say, the filing of receipts and payments accounts. Where assistance has been provided by any third party, say in relation to the preparation of the Statement of Affairs, or the winding up of the pension scheme, this should be explained in the narrative and the reasons why it was considered desirable and necessary to instruct a third party.
17. The narrative might also explain the reasons for any unanticipated costs being incurred, for example as a consequence of the company records being incomplete or inaccurate, a pension scheme being identified that was not known to exist at the date of appointment, or tax returns being brought up to date. Any revision in case strategy should be explained, together with the associated costs and the benefit to stakeholders in adopting the revised strategy.
18. Where appropriate, the narrative should explain the reasons for the production of any additional, non-statutory, reports (unless there is a separate reporting category), and the benefit derived as a consequence. Time spent liaising with a creditors' committee should be explained and it may be helpful to set out a brief explanation of the matters being considered by the committee in addition to the frequency of agreed reporting.
19. Consideration should be given to stating the anticipated duration of the case, and the impact this may have on the extent of work required.

## **C.2 Reporting**

20. Members may wish to include a narrative explanation setting out to whom they are reporting and the frequency. An office holder may have obligations to report to secured creditors, committees, creditors and shareholders, for both statutory and case management purposes. Reports may include administrators' proposals, progress reports and SIP 16 statements. Members may also wish to explain, in relation to any non-statutory reports, the reason for these being produced and the benefit to the estate, or recipient, in so doing.

### **C.3 Enquiries and Investigations**

21. The extent of disclosure in this section will be a matter for the discretion of the Office Holder and his or her legal advisers. Issues relating to privilege, disclosure prejudicial to the conduct of the insolvency process and 'tipping off', need to be considered when deciding what is disclosed here and in how much detail. This category will likely incorporate both the statutory obligation to review the directors' conduct as well as any necessary investigations to identify assets, and potential recovery actions in relation to antecedent transactions or voidable transactions.
22. Members should consider incorporating work done in relation to collecting and reviewing the company's accounting records, in order to identify potential assets and actions. If there has been a delay in the production of records, or they are incomplete or inaccurate, the impact on progress and costs may be commented upon within the narrative.
23. It may also be appropriate to comment on the co-operation of the directors or bankrupt in relation to any investigations.
24. Where a milestone approach has been used in relation to the fee estimate, members should set out the progress made to date, whether the milestone has been reached, and if the fee estimate has been exceeded, or is likely to be exceeded, the reasons for this.
25. If the review has identified any material antecedent transactions, or assets, that would warrant further investigation or legal action, these should be disclosed to creditors, together with a revised fee estimate if appropriate. This should help to ensure that all creditors will be satisfied that these areas have been investigated in a proportionate way even if there has been no monetary realisation as a result.

### **C.4. Realisation of Assets**

26. The narrative should be clear as to what work has been done by the Office Holder, as well as what, if any, aspects are being outsourced to a third party (for example use of debt collection agents, or use of agents to dispose of assets). This is particularly relevant in terms of asset realisations given the many options available for asset disposals. Further analysis, or categories, may be required to assist understanding where there are numerous assets or categories of assets.
27. The narrative should set out the marketing and disposal strategy adopted in relation to each asset (or category of assets), the anticipated timescale, and progress made to date. Members should set out the reasoning and impact behind the strategy adopted, in terms of time, cost and financial benefit to creditors.
28. Where the Office Holder has deemed it necessary to change strategy, the reasons for this should be explained in the narrative along with any impact on timing and costs as a result.
29. The narrative should make it clear what, if any, legal action will be required to facilitate any realisations, both in terms of securing and disposing of the assets. Any

difficulties in realising assets should be set out; for example, sitting tenants, the need to procure a possession order, whether the strategy is time dependent, and the likelihood of achieving the timescale. Creditors should be advised of any likelihood of a revision to the fee estimate if the initial strategy is not implemented.

30. The narrative should also comment upon work done in relation to identifying, securing and insuring assets as well as the actual realisation and what, if any, aspects are anticipated to be outsourced to a third party (for example, use of agents to market or auction chattel assets), or whether litigation may be required in connection with, say, realisation of book debtors or directors' loan accounts.
31. Where appropriate, details should be provided of work done to facilitate the sale of a business, including preparation of a sales pack, dealing with interested parties, and contract negotiations. Where not included within a trading scenario (see C.5 below) members may also wish to comment here on work done in dealing with ROT claims, third party assets, negotiations with landlords, and dealing with tenants and utility companies in relation to properties
32. The narrative should also make it clear what, if any, work will be required in terms of health and safety or environmental issues, in addition to work done in relation to dealing with utilities companies and other essential suppliers (if appropriate).

#### **C.5. Trading**

33. The narrative should include the reasons for trading the business post insolvency, the duration of trading and, where trading continues at the time that the time cost summary and/or the fee estimate is provided, an estimate of any future duration. Where trading is likely to continue indefinitely to support an ongoing marketing strategy, the narrative should comment on the strategy adopted and progress made at the date of the report.
34. The narrative should explain the extent to which the Office Holder and his or her staff have been involved in the trading, both from a management control and financial perspective, as well as any statutory obligations. It will therefore likely include information in relation to work done regarding the preparation of cash flow forecasts, profit and loss accounts, management accounts, dealing with customers, suppliers (and related ROT matters), landlords and employees. It should be clear from the table and the narrative what the cost of the involvement of the Office Holder's staff in trading has been on a weekly or monthly basis as appropriate.

#### **C.6. Creditors**

35. This category will include both statutory and non-statutory matters and members may wish to make a distinction in the narrative as well as making it clear what work has been done for the benefit of creditors (e.g. agreeing claims, paying a dividend) and to what extent this has been impacted by the quality of the books and records.
36. Members should identify any significant additional work in relation to agreeing claims, for example the need to employ lawyers or quantity surveyors to agree claims, as well as the nature of the dividend being paid (e.g. preferential, prescribed part, unsecured). The narrative should be clear as to whether any disputes, litigation or contentious matters have arisen, the extent to which members have engaged in such disputes, the reasons why and the overall benefit to creditors.

37. If not disclosed elsewhere this category may also include work done in relation to the production of statutory reports, or non-statutory reports. Where non statutory reports have been produced, the reasons for doing so, and the benefit, should be explained to the general creditor group.
38. This category might also include the general handling of communications with stakeholders such as customers and suppliers

### **C.7. Employees**

39. The narrative should make it clear to what extent the Office Holder anticipates communicating with employees as well as the nature of the work being done, including liaising with the RPO and Job Centre Plus, providing support to employees in terms of completion of forms, liaising with (or appointing) union representatives and payroll providers, reviewing employment contracts, in addition to the admission of claims.
40. Where appropriate, the narrative might set out the level of interaction and queries the Office Holder has dealt with both in respect of employees, the RPO and any other relevant parties as this will be likely to vary from case to case depending on the number of employees, the nature of the business and type of appointment.
41. If there are likely to be claims for unfair dismissal and protective awards and the Office Holder has attended or contributed to Tribunals, the extent of involvement of the Office Holder and his or her staff, the reasons for the involvement and/or the benefit derived, should be set out in the narrative.

### **C.8. Case Specific Matters**

42. This will include any matters specific to the case not covered by one of the other categories of activity. These may include dealing with matters specific to the industry in which the business operates, or matters of an exceptional or time-consuming nature. Where not incorporated elsewhere, or specific to, say, investigations or asset realisations, the narrative may incorporate matters such as engagement with stakeholders generally, legal advice in relation to litigation, as well as general advice regarding validity of appointment and/or security, work done in relation to seeking an extension to an administration appointment or legal advice pertaining thereto.





## Notes

- Population of the categories alone will not be sufficient to comply with the legislative requirements regarding a fee estimate, nor the disclosure requirements. A case specific narrative, in terms of scope and disclosure, will be required.
- Fixed fee / percentage resolutions will also require some form of narrative regarding the scope of the work to be done, albeit it is not anticipated that this will be as detailed as that required when producing a fee estimate in support of a time cost resolution, however it should be sufficiently detailed to ensure that creditors understand why the basis requested is expected to produce a fair and reasonable reflection of the work that the Office Holder anticipates will be undertaken.
- Members may find it more useful to differentiate between work that is required by statute and work that adds value, or is necessary to both realise assets and distribute funds