
STATUTORY INSTRUMENTS

2018 No. 1135

The Education Administration Rules 2018

PART 5

CLAIMS BY AND DISTRIBUTIONS TO CREDITORS

CHAPTER 2

Creditors' claims in education administration

Provable debts

5.2.—(1) All claims by creditors, except as provided in this rule, are provable as debts against the further education body, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) An obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(1) is not provable.

(3) The following claims are not provable until after all other claims of creditors have been paid in full with interest under rule 5.23—

- (a) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000(2), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.); and
- (b) a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed.

(4) Nothing in this rule prejudices any enactment or rules of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Proving a debt

5.3.—(1) A creditor wishing to recover a debt must submit a proof to the education administrator unless this rule or an order of the court provides otherwise.

(2) A creditor is deemed to have proved for the purposes of determination and payment of a dividend but not otherwise where—

- (a) the debt is a small debt;
- (b) a notice has been delivered to the creditor of notice of intention to declare a dividend or make a distribution under rule 5.26 which complies with rule 5.27 and 5.28; and
- (c) the creditor has not advised the education administrator that the debt is incorrect or not owed in response to the notice.

(1) 2002 c. 29. Relevant amendments are made by paragraph 75(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), Part 1 of Schedule 8 and paragraphs 1 and 2 of Schedule 14 to the Serious Crime Act 2007 (c. 27), and paragraphs 11 and 12 of the Schedule to the Prevention of Social Housing Fraud Act 2013 (c. 3).

(2) 2000 c. 8. Section 382 has been amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012 (c. 21).

Requirements for proof

5.4.—(1) A proof must—

- (a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) identify the further education body;
- (d) state the total amount of the creditor's claim (including any value added tax) as at the relevant date, less any payments made after that date in relation to the claim, any deduction under rule 5.20 and any adjustment by way of set-off in accordance with rule 5.24;
- (e) state whether or not the claim includes any outstanding uncapitalised interest;
- (f) contain particulars of how and when the debt was incurred;
- (g) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (h) provide details of any reservation of title in relation to goods to which the debt refers;
- (i) provide details of any document by reference to which the debt can be substantiated;
- (j) be dated and authenticated; and
- (k) state the name, postal address and authority of the person authenticating the proof (if someone other than the creditor).

(2) Where paragraph (1)(i) applies the document need not be delivered with the proof unless the education administrator has requested it.

(3) The education administrator may call for the creditor to produce any document or other evidence which the education administrator considers is necessary to substantiate the whole or part of any claim.

Costs of proving

5.5. Unless the court otherwise orders—

- (a) each creditor bears the cost of proving for that creditor's own debt, including costs incurred in providing documents or evidence under rule 5.4(3); and
- (b) costs incurred by the education administrator in estimating the value of a debt under rule 5.14 are payable out of the assets as an expense of the education administration.

Allowing inspection of proofs

5.6. The education administrator must, so long as proofs delivered to the education administrator are in the possession of the education administrator, allow them to be inspected, at all reasonable times on any business day, by the following—

- (a) a creditor who has delivered a proof (unless the proof has been wholly rejected for the purposes of dividend or otherwise or withdrawn);
- (b) a member or contributory of the further education body;
- (c) a person acting on behalf of any of the above.

Admission and rejection of proofs for dividend

5.7.—(1) The education administrator may admit or reject a proof for dividend (in whole or in part).

(2) If the education administrator rejects a proof in whole or in part, the education administrator must deliver to the creditor a statement of the reasons for doing so, as soon as reasonably practicable.

Appeal against decision on proof

5.8.—(1) If a creditor is dissatisfied with the education administrator’s decision under rule 5.7 in relation to the creditor’s own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under rule 5.7(2).

(3) A member, a contributory, or any other creditor may, if dissatisfied with the education administrator’s decision admitting or rejecting the whole or any part of a proof or agreeing to revalue a creditor’s security under rule 5.15, apply to the court for the decision to be reversed or varied within 21 days of becoming aware of the education administrator’s decision.

(4) The court must fix a venue for the application to be heard.

(5) The applicant must deliver notice of the date and venue to the creditor who delivered the proof in question (unless it is the applicant’s own proof) and the education administrator.

(6) The education administrator must, on receipt of the notice, file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under rule 5.7(2).

(7) After the application has been heard and determined, a proof which was submitted by the creditor in hard copy form must be returned by the court to the education administrator.

Education administrator not liable for costs under rule 5.8

5.9. The education administrator is not personally liable for costs incurred by any person in respect of an application under rule 5.8 unless the court otherwise orders.

Withdrawal or variation of proof

5.10.—(1) A creditor may withdraw a proof at any time by delivering a written notice to the education administrator.

(2) The amount claimed by a creditor’s proof may be varied at any time by agreement between the creditor and the education administrator.

Exclusion of proof by the court

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

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

(2) Where an application is made under paragraph (1), the court must fix a venue for the application to be heard.

(3) The applicant must deliver notice of the venue—

- (a) if the applicant is the education administrator, to the creditor who submitted the proof;
- (b) if the applicant is a creditor, a contributory, or a member, to the education administrator and to the creditor who made the proof (if not the applicant).

Debts of further education bodies to rank equally

5.12. Debts of further education bodies other than preferential debts rank equally between themselves and, after preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Division of unsold assets

5.13.—(1) This rule applies to any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold.

(2) The education administrator may with agreement of the creditors divide the property in its existing form among the further education body's creditors according to its estimated value.

Estimate of value of debt

5.14.—(1) The education administrator must estimate the value of a debt that does not have a certain value because it is subject to a contingency or for any other reason.

(2) The education administrator may revise such an estimate by reference to a change of circumstances or to information becoming available to the education administrator.

(3) The education administrator must inform the creditor of the education administrator's estimate and any revision.

(4) Where the value of a debt is estimated under this rule, or by the court under section 168(3) or (5), the amount provable in the case of that debt is that of the estimate for the time being.

Secured creditor: value of security

5.15.—(1) A secured creditor may, with the agreement of the education administrator or the permission of the court, at any time alter the value which that creditor has put upon a security in a proof.

(2) Where a secured creditor has voted in respect of the unsecured balance of the debt—

(a) the secured creditor may re-value the security only with the agreement of the education administrator or the permission of the court; and

(b) where the revaluation was by agreement, the education administrator must deliver a notice of the revaluation to the creditors within five business days after the education administrator's agreement.

Secured creditor: surrender for non-disclosure

5.16.—(1) If a secured creditor fails to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

Secured creditor: redemption by education administrator

5.17.—(1) The education administrator may at any time deliver a notice to a creditor whose debt is secured that the education administrator proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the education administrator may allow) in which to alter the value of the security in accordance with rule 5.15.

(3) If the creditor alters the value of the security with the agreement of the education administrator or the court then the education administrator may only redeem at the new value.

(4) If the education administrator redeems the security the cost of transferring it is payable as an expense out of the estate.

(5) A creditor whose debt is secured may at any time deliver a notice to the education administrator requiring the education administrator to elect whether or not to redeem the security at the value then placed on it.

(6) The education administrator then has three months in which to redeem the security or elect not to redeem the security.

Secured creditor: test of security's value

5.18.—(1) If the education administrator is dissatisfied with the value which a secured creditor puts on a security in the creditor's proof, the education administrator may require any property comprised in the security to be offered for sale.

(2) The terms of sale is to be as agreed between the education administrator and the secured creditor, or as the court may direct.

(3) If the sale is by auction, the education administrator, on behalf of the further education body or the estate, and the creditor may bid.

(4) This rule does not apply if the value of the security has been altered with the court's permission.

Realisation or surrender of security by creditor

5.19.—(1) If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the education administrator)—

(a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and

(b) the creditor may prove for the balance of the creditor's debt.

(2) A creditor who voluntarily surrenders a security may prove for the whole of the creditor's debt as if it were unsecured.

Discounts

5.20. All trade and other discounts (except a discount for immediate or early settlement) which would have been available to the further education body or the debtor but for the education administration proceedings must be deducted from the claim.

Debts in foreign currency

5.21.—(1) A proof for a debt incurred or payable in a foreign currency must state the amount of the debt in that currency.

(2) The education administrator must convert all such debts into sterling at a single rate for each currency determined by the education administrator by reference to the exchange rates prevailing on the relevant date.

(3) On the next occasion when the education administrator communicates with the creditors, the education administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the education administrator is unreasonable may apply to the court.

(5) If, on hearing the application, the court finds that the rate is unreasonable it may itself determine the rate.

Payments of a periodical nature

5.22.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the relevant date.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have been due at that date, if accruing from day to day.

Interest

5.23.—(1) Where a debt proved in education administration proceedings bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) In the circumstances set out in this rule, the creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(4) If the debt is due otherwise, interest may only be claimed if demand for payment of the debt was made in writing by or on behalf of the creditor and notice was delivered that interest would be payable from the date of the demand to the date of payment before the relevant date.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and, for the purposes of the Act and these Rules, must be charged at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838(3) on the relevant date.

(7) In an education administration—

- (a) any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;
- (b) all interest payable under sub-paragraph (a) ranks equally whether or not the debts on which it is payable rank equally; and
- (c) the rate of interest payable under sub-paragraph (a) is whichever is the greater of the rate specified in paragraph (6) and the rate applicable to the debt apart from the education administration.

Mutual dealings and set-off

5.24.—(1) This rule applies where the education administrator intends to make a distribution and has delivered a notice under rule 5.26.

(2) An account must be taken as at the date of the notice of what is due from the further education body and a creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) 1838 c. 110. Section 17 was amended by the Statute Law Revision (No. 2) Act 1988 (c. 57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c. 59) and article 3(c) of S.I. 1998/3132.

(3) If there is a balance owed to the creditor then only that balance is provable in the education administration.

(4) If there is a balance owed to the further education body that must be paid to the education administrator as part of the assets.

(5) However if all or part of the balance owed to the further education body results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under rule 5.41) if and when that debt becomes due and payable.

(6) In this rule—

“obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

“mutual dealings” means mutual credits, mutual debts or other mutual dealings between the further education body and a creditor proving or claiming to prove for a debt in the education administration but does not include any of the following—

- (a) a debt arising out of an obligation incurred after the further education body entered education administration;
- (b) a debt arising out of an obligation incurred at a time when the creditor had notice that an application for an education administration order was pending;
- (c) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
 - (i) after the further education body entered education administration, or
 - (ii) at a time when the creditor had notice that an application for an education administration order was pending.

(7) A sum must be treated as being due to or from the further education body for the purposes of paragraph (2) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(8) For the purposes of this rule—

- (a) rule 5.14 applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;
- (b) rules 5.21 to 5.23 apply to sums due to the further education body which—
 - (i) are payable in a currency other than sterling,
 - (ii) are of a periodical nature, or
 - (iii) bear interest; and
- (c) rule 5.41 applies to a sum due to or from the further education body which is payable in the future.