
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 10

THE TRUSTEE IN BANKRUPTCY

SECTION D: REMUNERATION

Fixing of remuneration

- 6.138.**—(1) The trustee is entitled to receive remuneration for his services as such.
- (2) The remuneration shall be fixed either—
- (a) as a percentage of the value of the assets in the bankrupt's estate which are realised or distributed, or of the one value and the other in combination, or
 - (b) by reference to the time properly given by the insolvency practitioner (as trustee) and his staff in attending to matters arising in the bankruptcy.
- (3) Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine whether his remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- (4) In arriving at that determination, the committee shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the administration of the estate, there falls on the insolvency practitioner (as trustee) any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as trustee, and
 - (d) the value and nature of the assets in the estate with which the trustee has to deal.
- (5) If there is no creditors' committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.
- (6) If not fixed as above, the trustee's remuneration shall be on the scale laid down for the official receiver by general regulations.

Other matters affecting remuneration

6.139.—(1) Where the trustee sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to the remuneration chargeable in corresponding circumstances by the official receiver under general regulations.

(2) Where there are joint trustees, 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, for settlement by resolution.

(3) If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Recourse of trustee to meeting of creditors

6.140. If the trustee's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Recourse to the court

6.141.—(1) If the trustee considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, or as under Rule 6.138(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the 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 trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing on it, or any creditor so appearing, to be paid out of the estate.

Creditor's claim that remuneration is excessive

6.142.—(1) Any creditor of the bankrupt may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an order that the trustee's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The applicant shall, at least 14 days before the hearing, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.