

Statement of Insolvency Practice (SIP) 15 (E & W)

Reporting and providing information on their functions to committees in formal insolvencies – England and Wales

Version 3

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1. Introduction

This Statement of Insolvency Practice (SIP) is one of a series issued to licensed insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency.

SIP 15 is issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC). It was commissioned by the JIC, produced by the Association of Business Recovery Professionals, and has been approved by the JIC and adopted by each of the regulatory authorities listed below:

Recognised Professional Bodies:

- The Association of Chartered Certified Accountants
- The Insolvency Practitioners' Association
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Ireland
- The Institute of Chartered Accountants of Scotland
- The Law Society
- The Law Society of Scotland

Competent Authority:

- The Insolvency Service (for the Secretary of State for Trade and Industry)

The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standard(s) set out in the SIP(s) is a matter that may be considered by a practitioner's regulatory authority for the purposes of possible disciplinary or regulatory action.

SIPs should not be relied upon as definitive statements of the law. No liability attaches to any body or person involved in the preparation or promulgation of SIPs.

2. Scope

This Statement concerns:

- Written reporting by insolvency office holders to committees, both where there are statutory requirements to do so and in other cases.
- The provision of information to members of committees about the rights, duties and functions of the committee.

The Statement does not apply to members' voluntary liquidations.

The Statement applies to England and Wales only. References to rules are to the Insolvency Rules 1986 as amended, and references to regulations are to the Insolvency Regulations 1994.

3. Liquidations and bankruptcies

3.1 Statutory Requirements

- 3.1.1 In liquidations and bankruptcies statutory obligations are laid on the office holder to report to the liquidation committee or creditors' committee. The reporting requirements are set out in rules 4.155 and 4.168 for liquidations, and 6.152 and 6.163 for bankruptcies. In this part of the Statement the term 'office holder' refers to the liquidator or trustee in bankruptcy, as the case may be.
- 3.1.2 Rules 4.155(1) and 6.152(1) stipulate that it is the duty of the office holder to report to the members of the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up or bankruptcy.
- 3.1.3 The office holder need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient assets or funds in the estate to enable him to comply (rules 4.155(2); 6.152(2)).
- 3.1.4 Where the committee has come into being more than 28 days after the appointment of the office holder he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the proceedings (rules 4.155(3); 6.152(3)). A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the office holder, otherwise than in summary form, of any matters previously arising (rules 4.155(4); 6.152(4)). Nothing in rules 4.155 or 6.152 disentitles the committee or any member of it from having access to the office holder's records of the proceedings, or from seeking an explanation of any matter within the committee's responsibility (rules 4.155(5); 6.152(5)).
- 3.1.5 Rules 4.168(1) and 6.163(1) provide that the office holder shall, as and when directed by the committee (but not more than once every 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up or bankruptcy, and matters arising in connection with it to which he (the office holder) considers the committee's attention should be drawn. In the absence of such directions by the committee the office holder must send such a

report not less than once every 6 months (rules 4.168(2); 6.163(2)).

- 3.1.6 In addition, regulations 10(4) and 24(3) provide that the office holder shall submit his financial records in respect of the case to the committee when required for inspection.

3.2 Agreeing reporting intervals with committee members

The office holder should discuss with committee members at their first meeting with him their requirements for reports and obtain their directions, having advised them of the statutory provisions set out in Rule 4.168(1) or 6.163(1) (as applicable) referred to in paragraph 3.1.5 above. These directions are likely to depend on the circumstances of the case and may change during the course of the proceedings. The directions of the committee should be recorded in the minutes of the meeting at which they are given and any changes should be similarly recorded.

3.3 Consideration of matters for inclusion in reports

The office holder should also discuss with committee members at his first meeting with them the type of matters which they wish to have reported to them so that matters of particular concern to them are identified. These should be recorded in the minutes of the meeting.

It is the duty of the office holder to consider whenever he reports what matters (in addition to those already identified) he should include in his report, exercising his professional judgement as to which aspects of the proceedings should be of concern to the committee.

The office holder should bear in mind that the requirements of rules 4.155 and 6.152 to report matters of concern to the committee persist notwithstanding any directions given under rules 4.168 or 6.163. He should therefore ensure that during the conduct of the case he considers matter for report generally so that he is able to fulfil his obligations under rules 4.155 and 6.152 and should ensure that such matters are reported on a timely basis.

4. Administrations

The rules applicable in administration depend on whether the proceedings are based on a petition presented before 15 September 2003. If they are, then the rules as they stood before the changes introduced by the Enterprise Act 2002 and its associated legislation continue to apply. Otherwise, the rules substituted by the Insolvency (Amendment) Rules 2003 will apply.

In a case subject to the old rules the following requirements apply:

- The administrator must send an account of his receipts and payments to each member of the committee (rule 2.52).

- If the administrator intends to resign and there is no continuing administrator he must give the committee at least seven days' notice of his intention to do so or to apply for the court's permission to do so (rule 2.53).

In all other cases the second of these requirements applies regardless of whether there is a continuing administrator (rule 2.120). There is no longer a specific obligation to send a receipts and payments account to each committee member because there is a new requirement to send reports, including a receipts and payments account, to all creditors.

Although there are no further statutory requirements for written reports, members should ensure that any arrangements which are made for reporting to a committee in such cases are properly documented and adhered to.

5. Administrative receiverships

In administrative receiverships the following requirements apply:

- The receiver must send an account of his receipts and payments to each member of the committee (rule 3.32).
- If the receiver intends to resign he must give the committee at least seven days' notice of his intention to do so (rule 3.33).
- When a receiver vacates office he must forthwith give notice to the members of the committee (rule 3.35).

Apart from these there are no statutory requirements for written reports. However, members should ensure that any arrangements made for reporting to a committee in such cases are properly documented and adhered to.

6. Voluntary arrangements

Where a committee is established by a meeting held under paragraph 29 of Schedule A1 to the Insolvency Act 1986 or by the terms of an approved voluntary arrangement there are no statutory reporting requirements. Members should ensure that any arrangements made for reporting to a committee in such cases are properly documented and adhered to.

7. Provision of information to members of committees on their rights, duties and functions

The Association of Business Recovery Professionals has produced a series of guides for members of committees for use in formal insolvency proceedings. The texts of the guides are appended to this Statement. In all cases where a committee is established the insolvency office holder should ensure that the guide appropriate to the type of procedure concerned, or the equivalent information in some other suitable format, is made available to the members of the committee, either at the meeting at which the committee is established or as soon as practicable thereafter.