

Administrations

Getting paid.



Malcolm Niekirk
Insolvency & Restructuring Partner

Remuneration in administrations

- Basic principles
 - Proposals, remuneration and the committee;
 - **Basis** and value.
 - The timetable, post appointment
 - The committee
 - Creditor classes
 - Secured & unsecured
 - Different flavoured administrations
 - §52(1) of schedule B1
 - The procedure for approving the basis of remuneration
- 

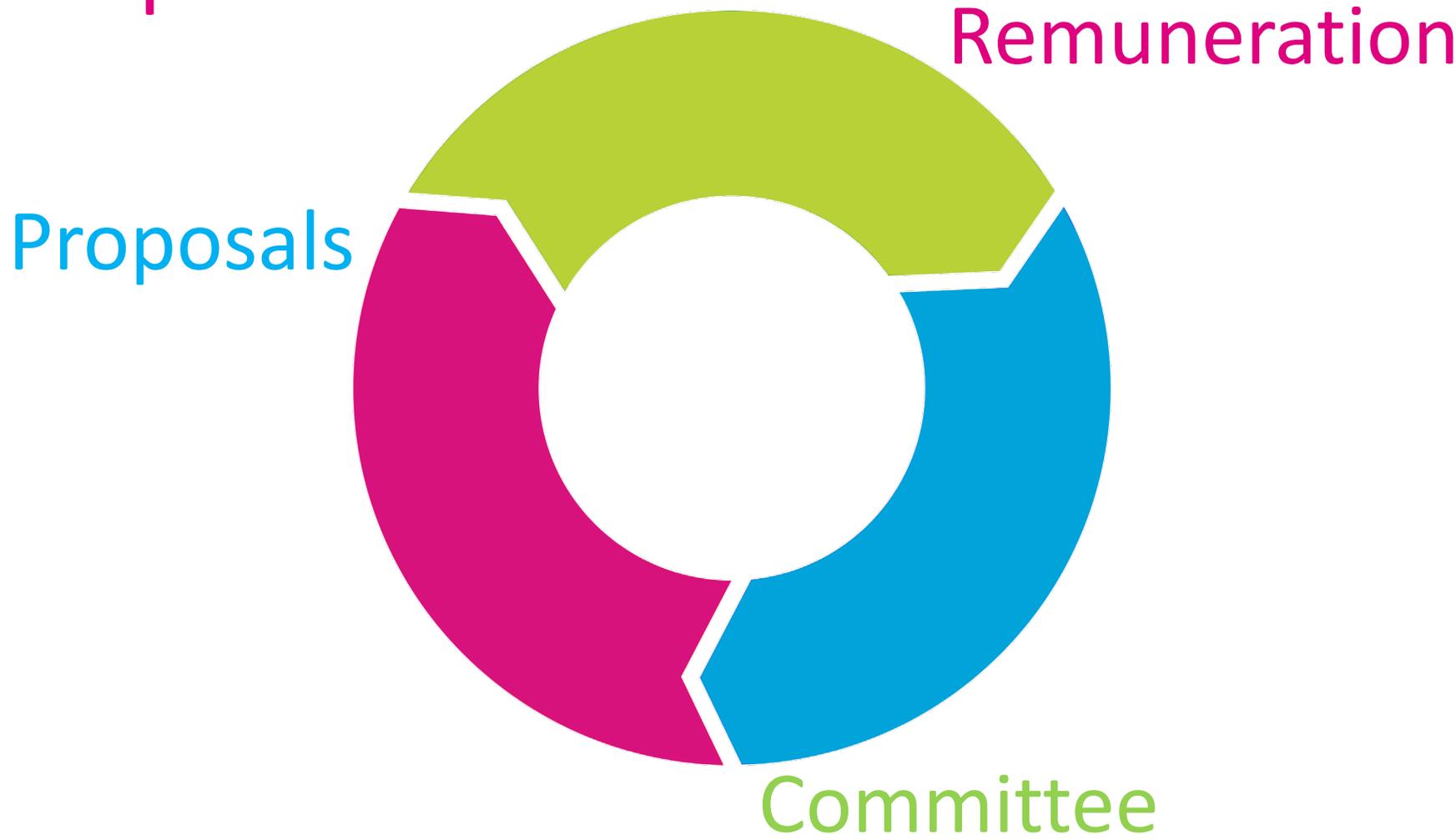
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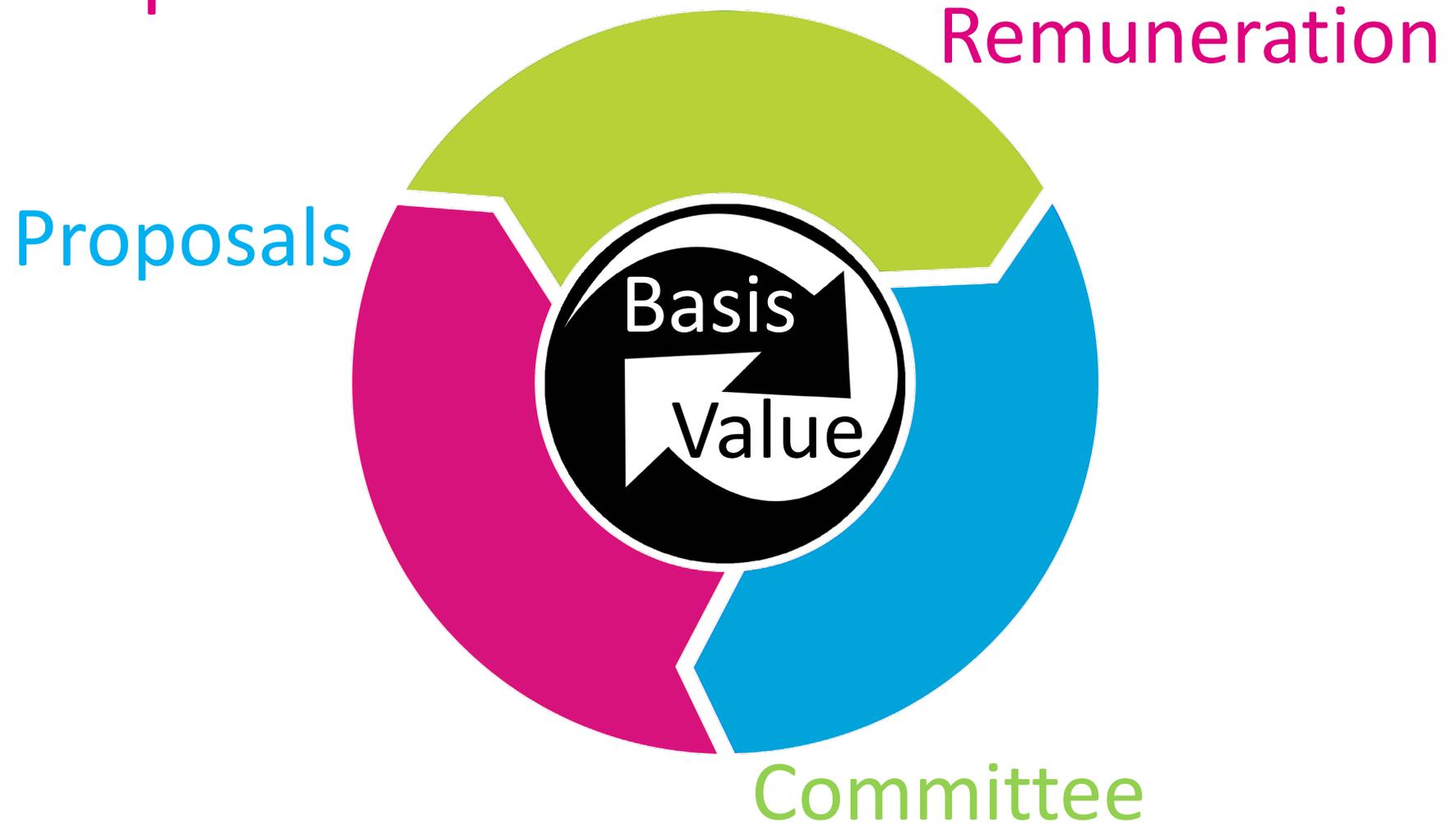
The basic principles

- Creditors approve the basis for your fees. For example:
 - Time costs
 - Ad valorem
 - Fixed fees
 - The creditors 'in the money' make the decision
 - Creditors can delegate to a committee
 - Creditors also approve your strategy (proposals).
 - If subjective (time costs), the value of your fees are capped
 - (By your own estimate).
- 

The basic principles



The basic principles



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Post-appointment timetable

- Put three decisions to the creditors :
 - Proposals, for:
 - Active approval; or
 - Deemed approval.
 - Committee, for:
 - Decision to form; and
 - Composition (if formed).
 - Remuneration, to confirm:
 - Basis
 - Fee estimate (if time costs)

Default decision

Default decision

Positive decision

Post-appointment timetable

- Put before creditors:

- **Proposals**, for:

- Active approval; or
 - Deemed approval.

- Committee, for:

- Decision to form; and
 - Composition (if formed).

- Remuneration, to confirm:

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 - Fee estimate (if time costs)

Default decision

Default decision

Positive decision

Post-appointment timetable

- Proposals
 - Publish (to creditors, Companies House and members) within 8 weeks. (para 49(4)-(5))
 - Seek approval within 10 weeks: (para 51(2)-(3))
 - By deemed consent; or
 - A qualifying decision procedure; unless
 - You don't need to.
 - You don't need to get them approved if you think:
 - All creditors will be paid in full; or (para 52(1)(a))
 - Unsecured creditors will get nothing (except through the prescribed part); or (para 52(1)(b))
 - The only possible statutory purpose is asset realisation for either: (para 52(1)(c))
 - One or more secured creditors; or
 - Preferential creditors.
- 

Post-appointment timetable

- Proposals – deemed approval

- Deemed approved when: (r3.38(4))

- You've said:

- All creditors will be paid in full; or (para 52(1)(a))

- Unsecured creditors will get nothing (except through the prescribed part); or (para 52(1)(b))

- The only possible statutory purpose is asset realisation for either: (para 52(1)(c))

- One or more secured creditors; or

- Preferential creditors.

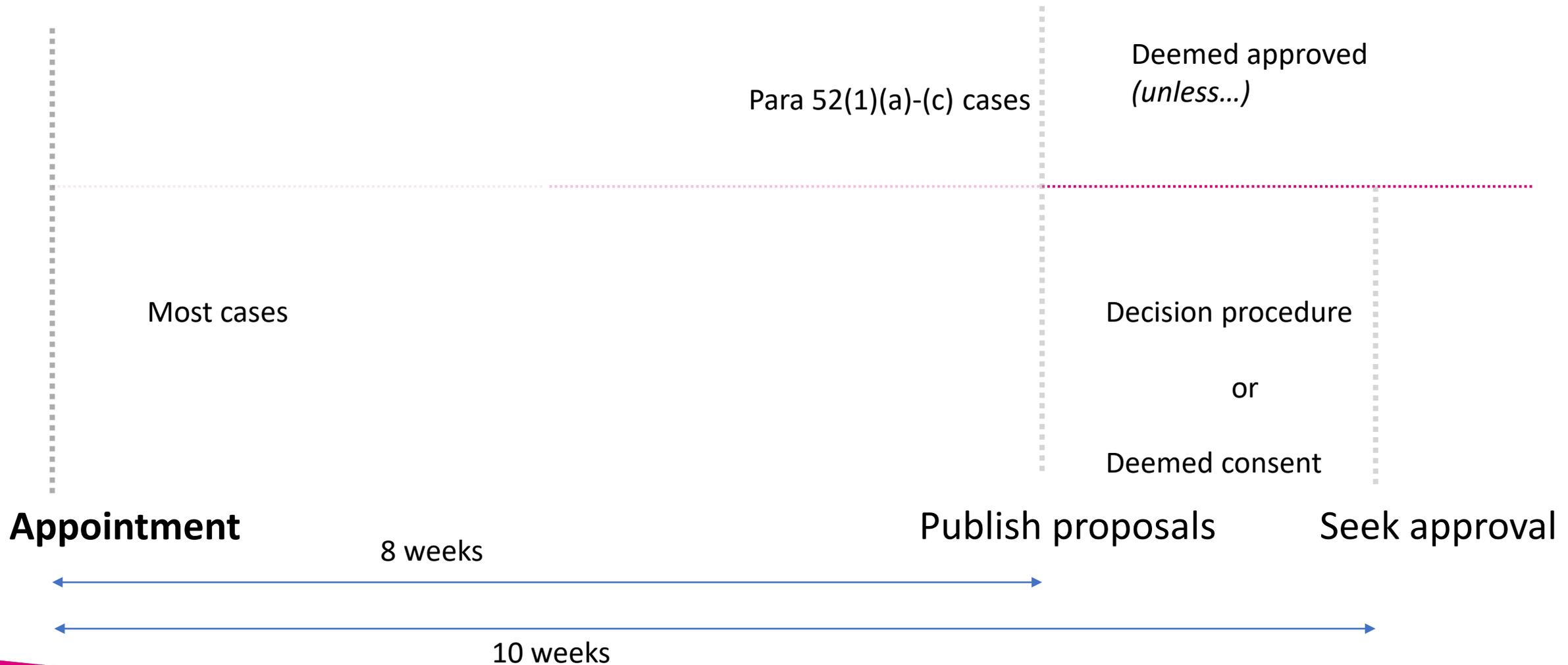
and

- You've not sought express approval

and

- The creditors have not called you to seek express approval

Post-appointment timetable



Post-appointment timetable

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Post-appointment timetable

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Post-appointment timetable

- Committee

- Ask creditors if they want to set up a committee whenever: (r3.39)
 - Asking them to approve proposals (even if by deemed consent)
 - Asking them to decide anything else (even if by deemed consent) if there's not already a committee
- The decision to set up a committee is conditional on creditors being willing to sit on it.
- *(You don't need to ask for a committee if:*
 - *it's a §52(1) job, and*
 - *you're getting your proposals 'deemed approved')*

Post-appointment timetable

- Committee establishment – easy compliant procedure:
 - Circulate a deemed consent notice
 - Follow the wording in the legislation

“The proposed decision by the creditors of the company is that a liquidation committee will be established

***if** sufficient* creditors are willing to be members of the committee and nominated by Friday 2 September 2022.”*

*Three or more.

Post-appointment timetable

- Put before creditors:

- Proposals, for:

- Active approval; or
 - Deemed approval.

Default decision

- **Committee, for:**

- Decision to form; and
 - Composition (if formed).

Default decision

- Remuneration, to confirm:

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 - Fee estimate (if time costs)

Positive decision



Post-appointment timetable

- Put before creditors:
 - Proposals, for:
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 - Committee, for:
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 - **Remuneration**, to confirm:
 - Basis
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Default decision

Default decision

Positive decision

Post-appointment timetable

- Remuneration
 - Basis must be fixed as one or more of these:
 - **Percentage** of
 - Total value; or
 - Realisations / distributions / both.
 - **Time** costs.
 - **Set fee**.
 - Creditors are entitled to information.
 - The basis must reflect:
 - Complexity.
 - Responsibility.
 - Effectiveness.
 - Value (and type of property)

(If anyone ever reads what you say about this, they're probably a judge.)

Post-appointment timetable

- Remuneration – the basis
 - [Start with the committee.]
 - Move on to the creditors.
 - (Complicated rules about which)
 - When necessary, ask a judge.
- Get it done within 18 months – the limit for going to court

(r18.23)



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The committee

- Do you want one (to approve your rem)?
 - If not, ask the creditors, before any committee is established.
 - (If there is no committee, the creditors decide.)
- When you need creditors to approve your proposals:
 - (That is, in cases where you can't have them deemed approved)
 - You must ask them – at the same time – if they want a committee.
- Suppose a committee might be inconvenient?
 - Send the rem resolution to creditors with the proposals.

r18.18(3)

Forming the committee

- Once set up, the committee cannot act until it is '*established*'.
- To establish the committee you must file a notice at Companies House.
- Before you can do that, you need:
 - 1 The creditors must decide they want a committee.
 - 2 The creditors must decide who they want on the committee.
 - 3 Each member must agree to be on it.
- You have to file the notice promptly once you have all that.
 - (By which time you may already have rem approved by the creditors.)

Forming the committee

Suppose more than five are proposed as members!

- You must ask the creditors to decide who is appointed
 - How?
 - Five largest creditors put on? (*Pragmatic, but not recommended.*)
 - Use deemed consent?
 - Use the r10.70 procedure?
 - (A series of votes; the least-supported nominee drops out after each.)
 - Could the creditors decide they want a committee of fewer than five?
 - Probably.
 - And by deemed consent.
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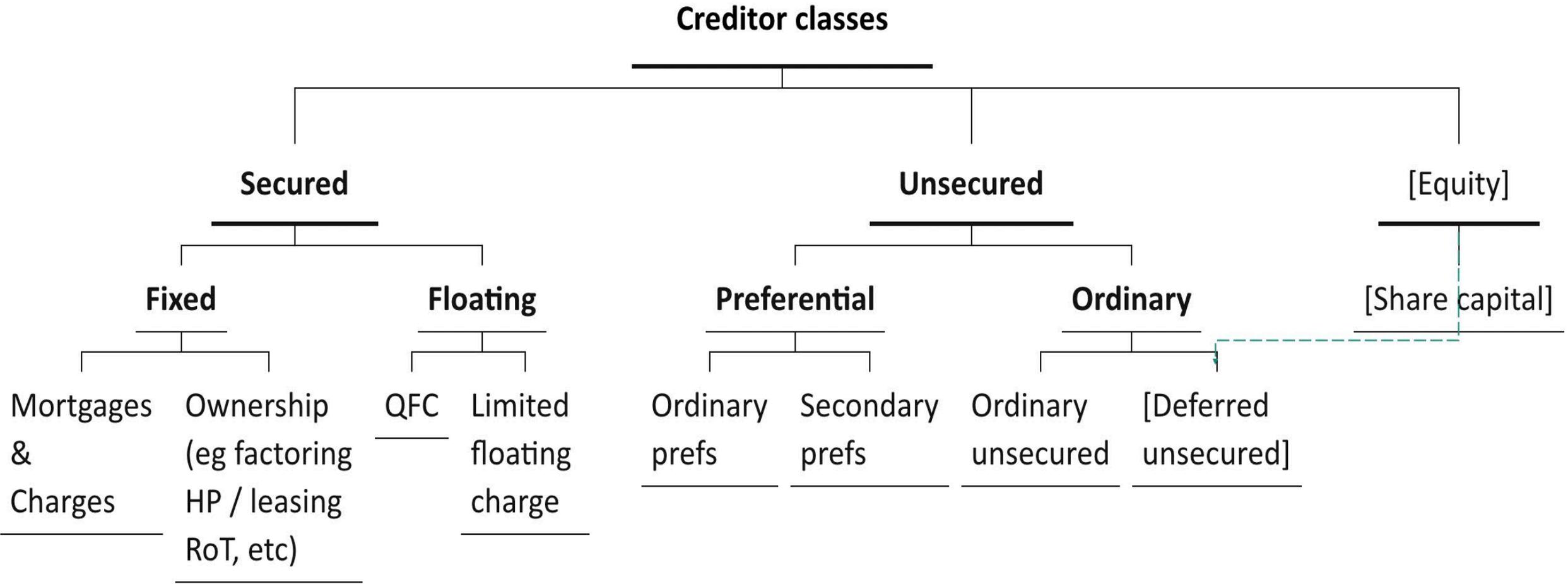
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Creditor classes



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Flavours of administrations

Flavours of administrations		
Appointor	Appointment procedure	Sub-procedure
<i>Creditor</i>	Administration order	
	By notice	
<i>Debtor</i>	Administration order	
	By notice	Notice of intention to appoint
		Notice of appointment

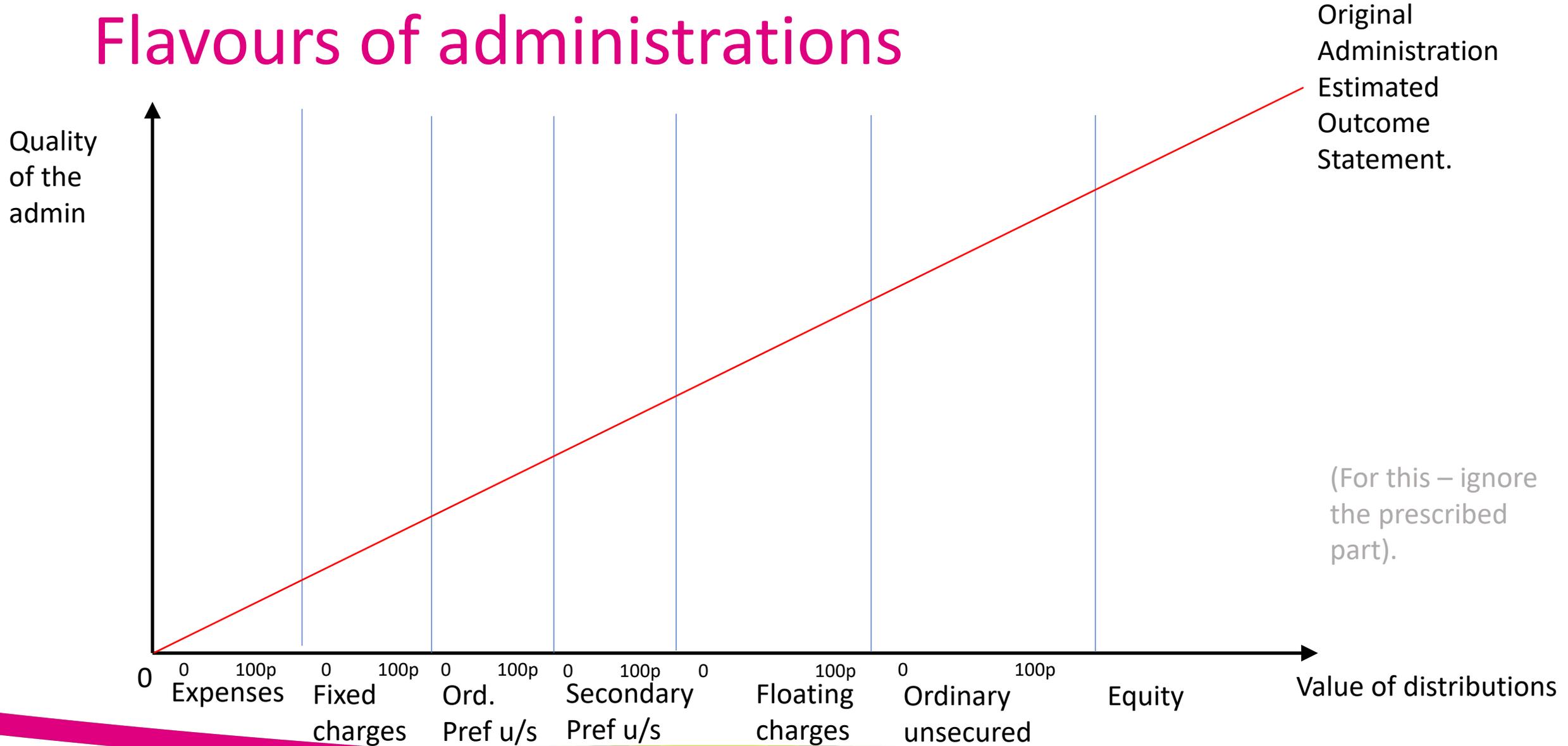
Flavours of administrations

- Different rules apply for approving the basis for your rem.
 - They depend on which creditors you think will be 'in the money'.
 - The principle is this.

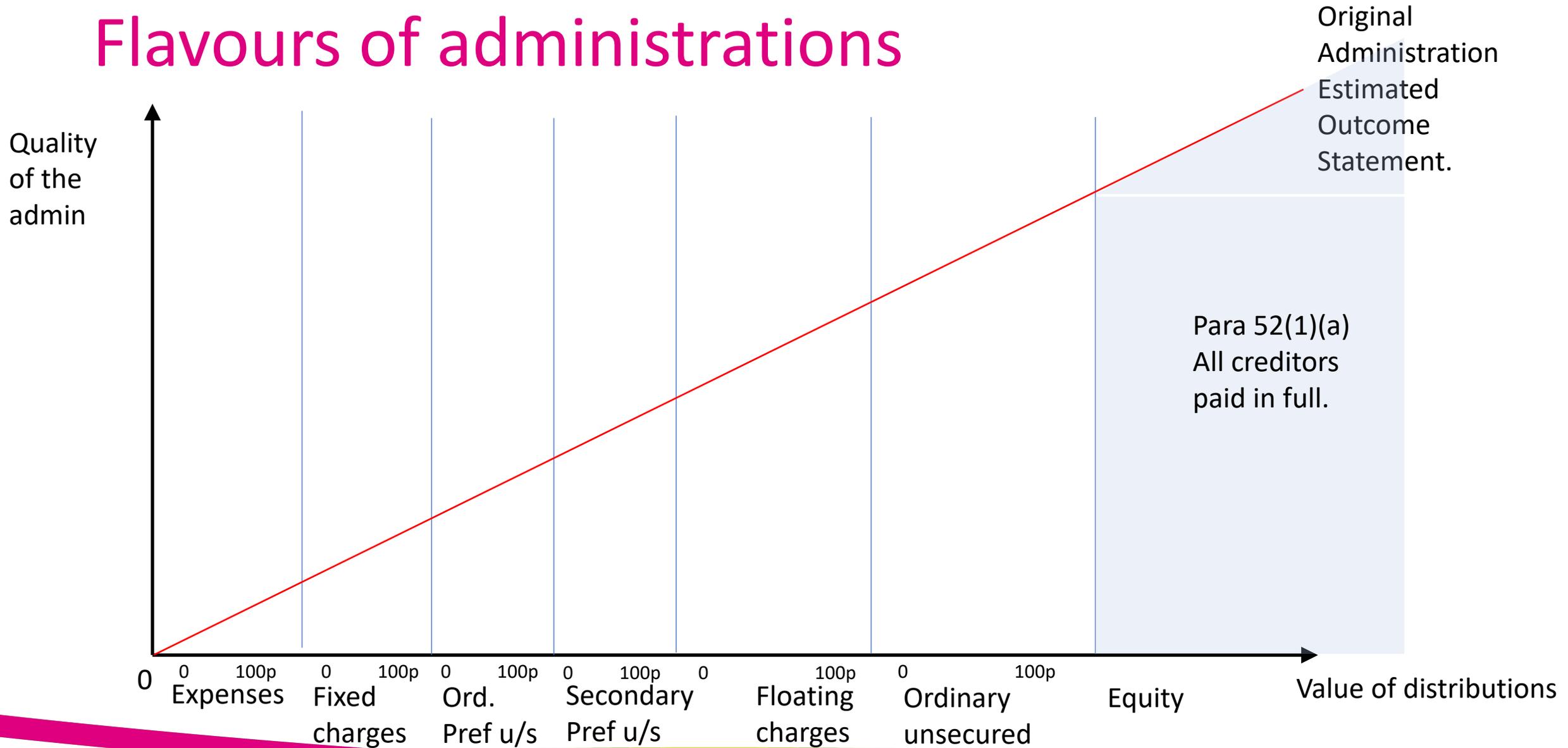
 - The creditors
 - who decide how you are to be paid
 - are those affected by the decision.

 - The rules are based on those for approving your proposals.
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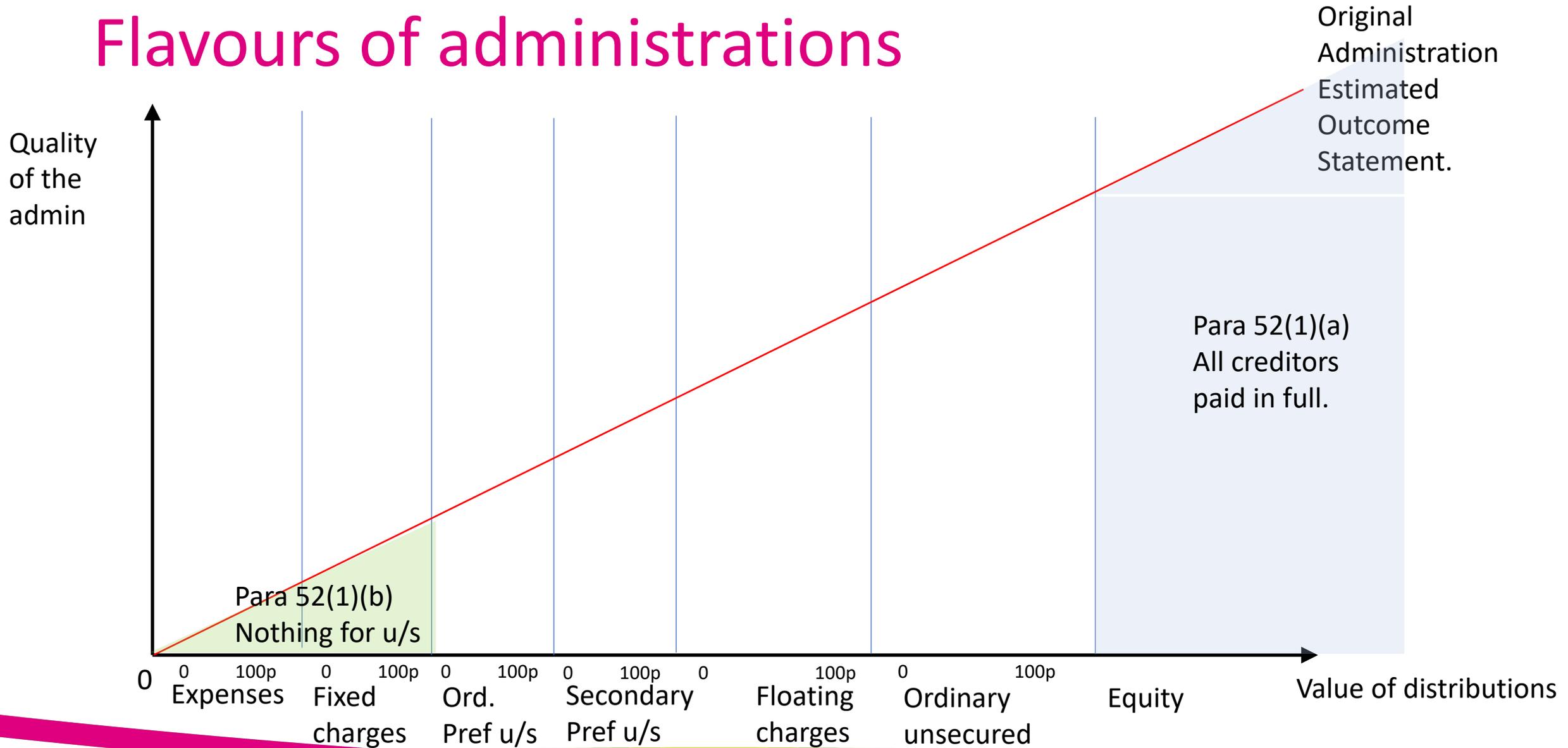
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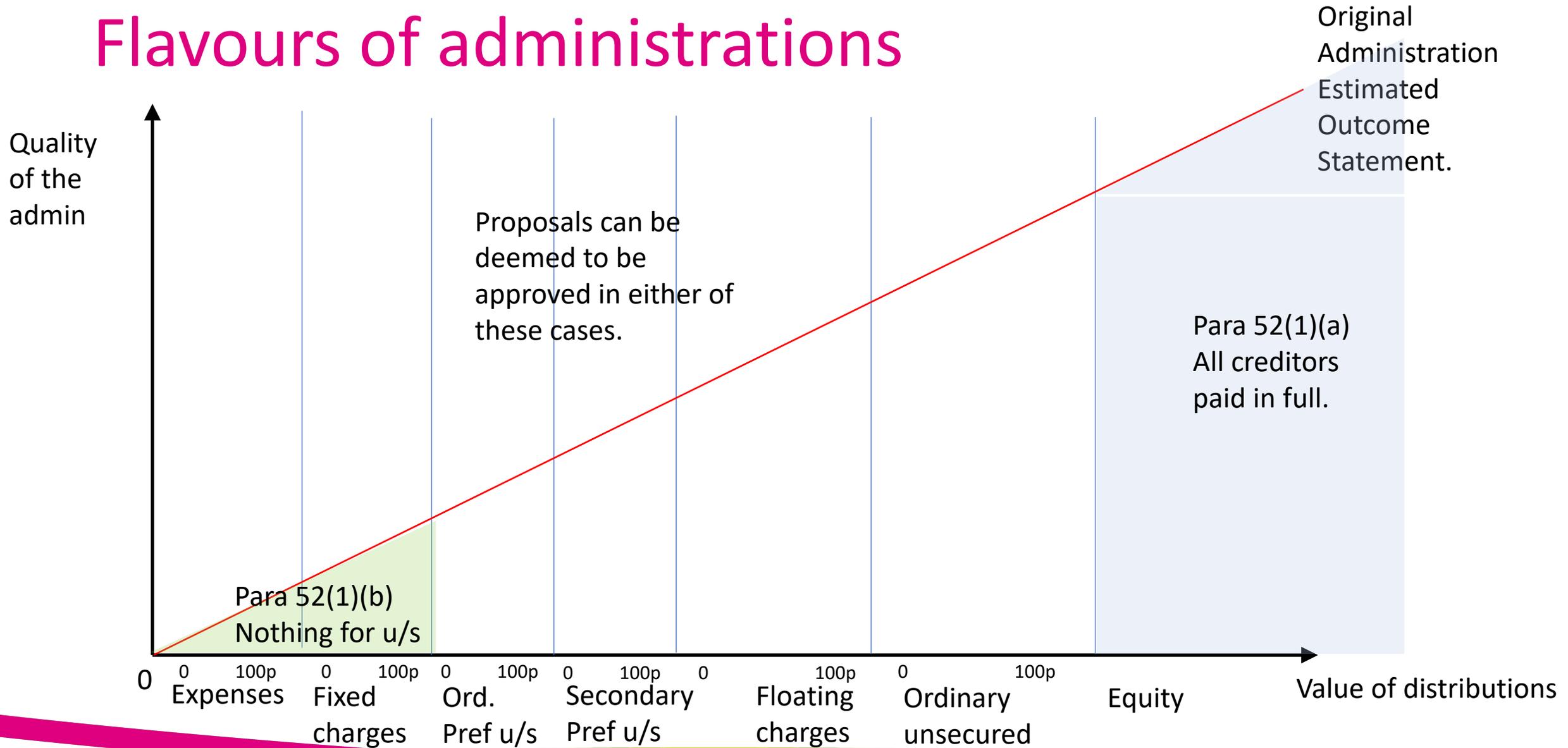
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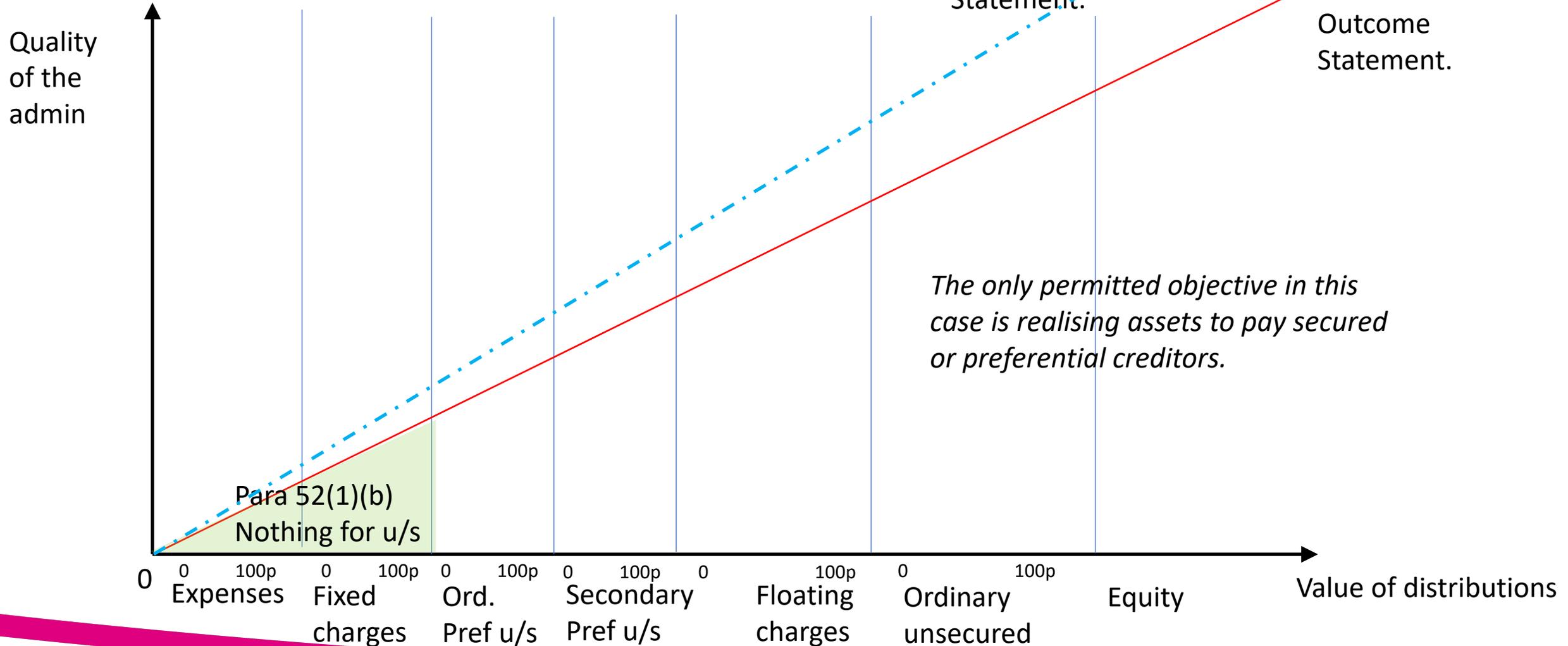
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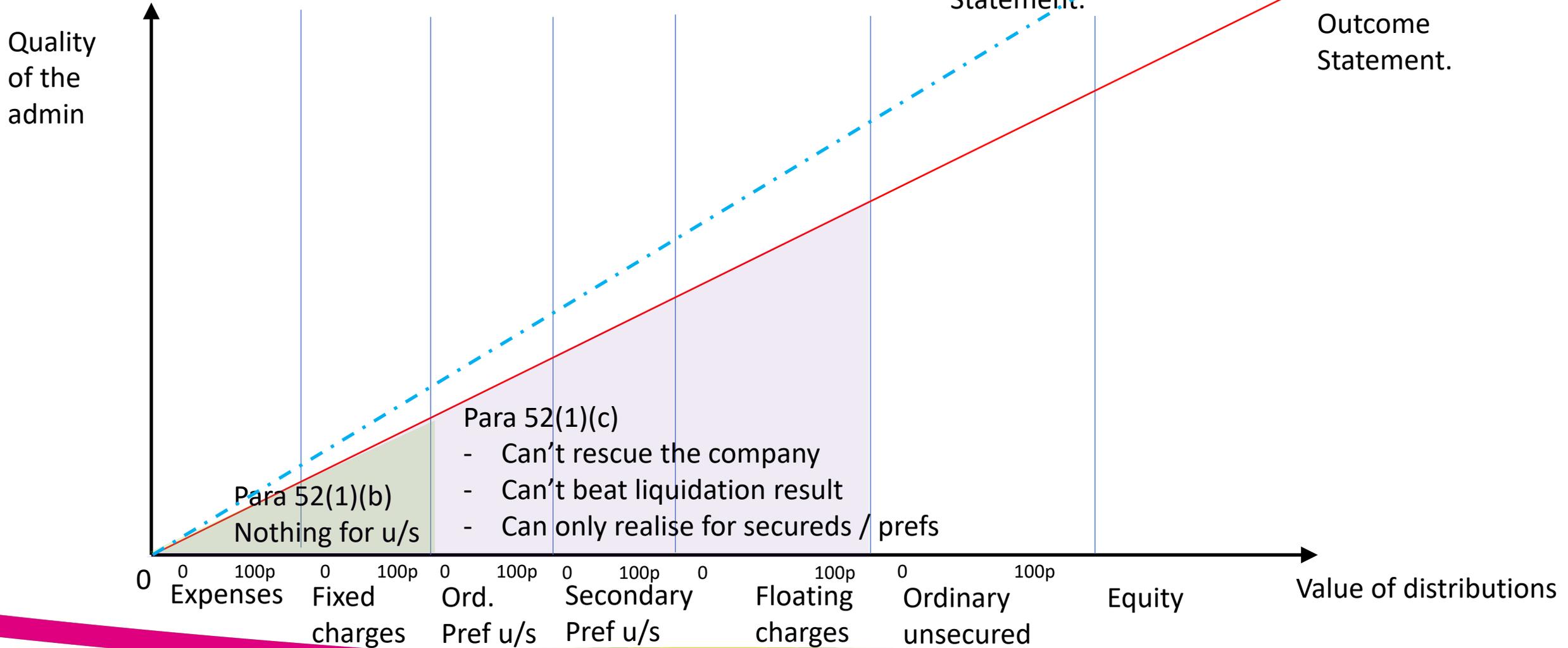
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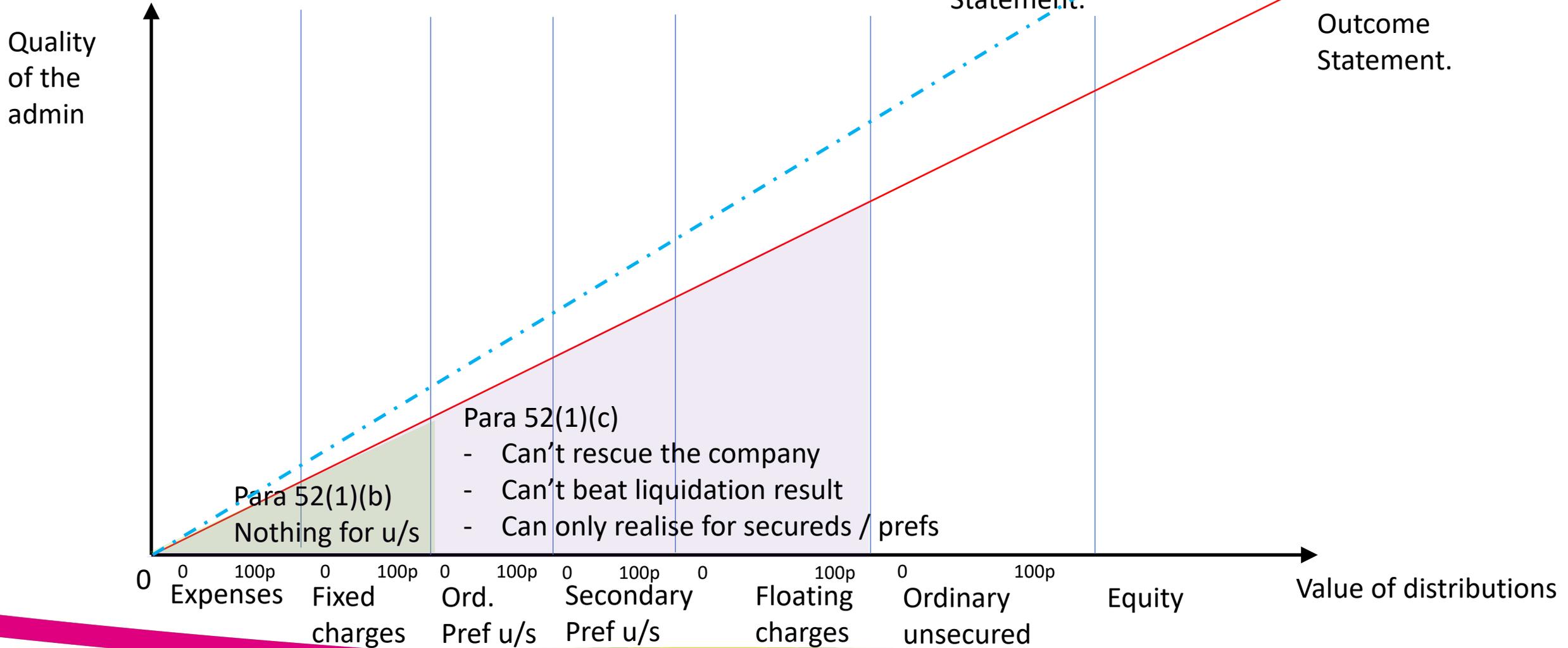
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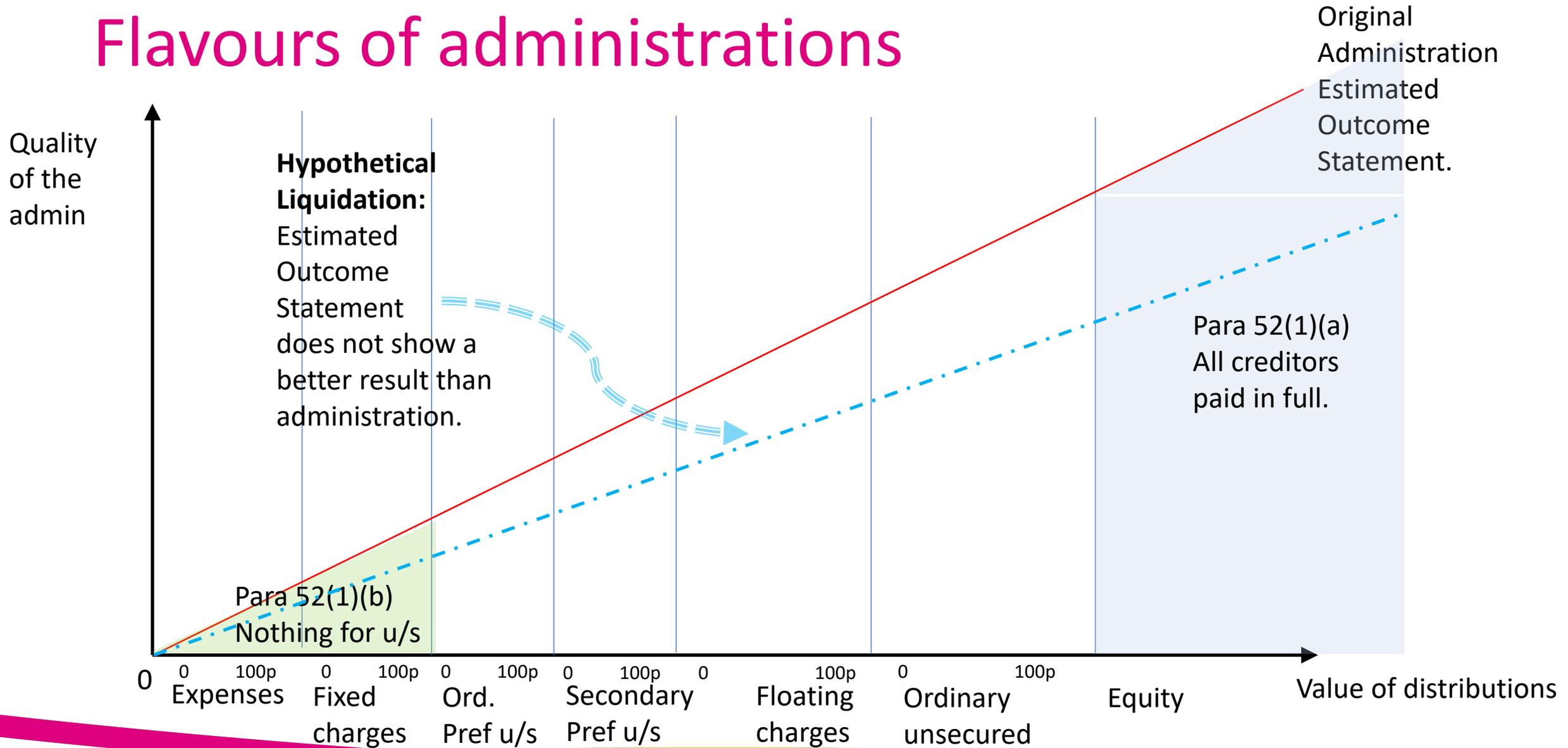
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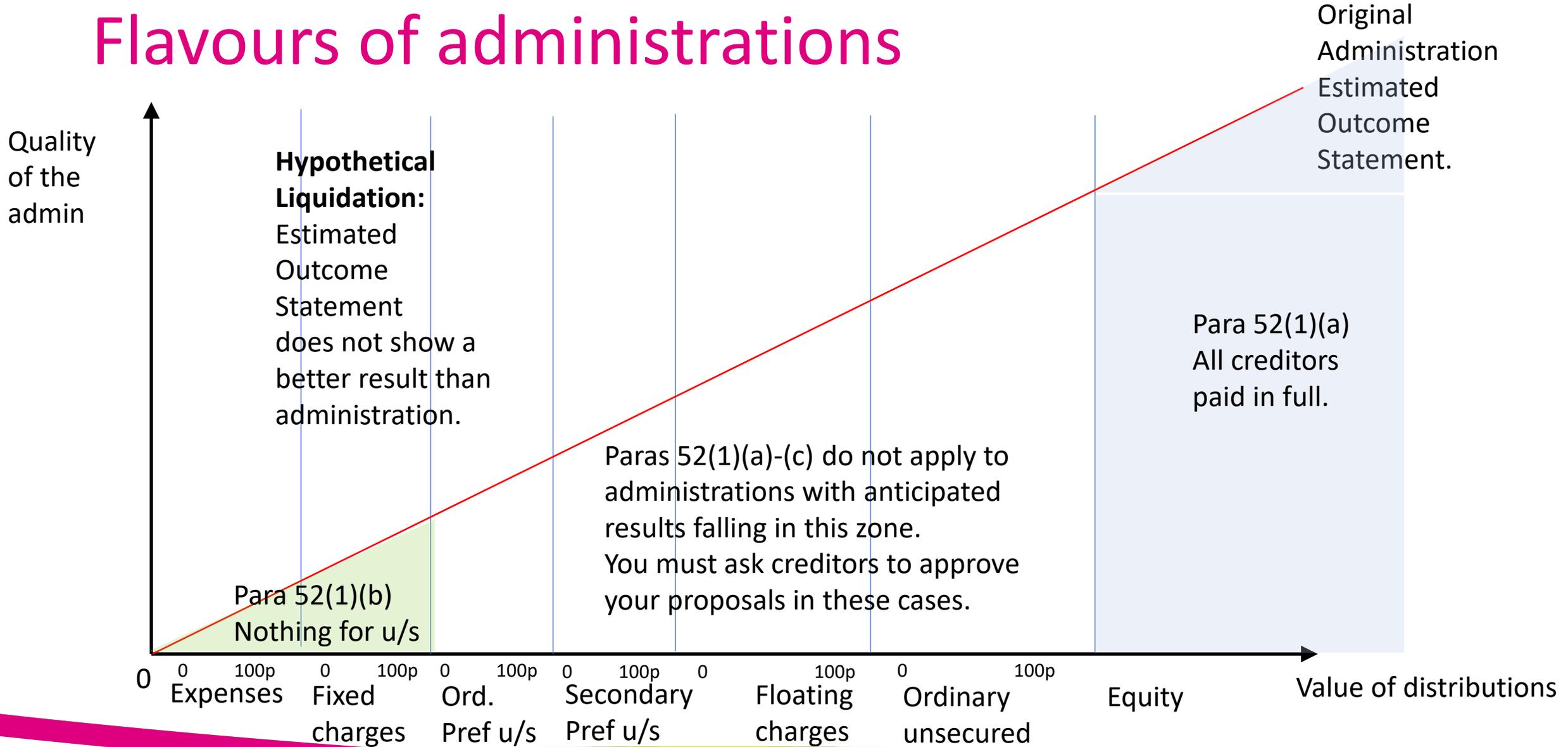
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Flavours of administrations



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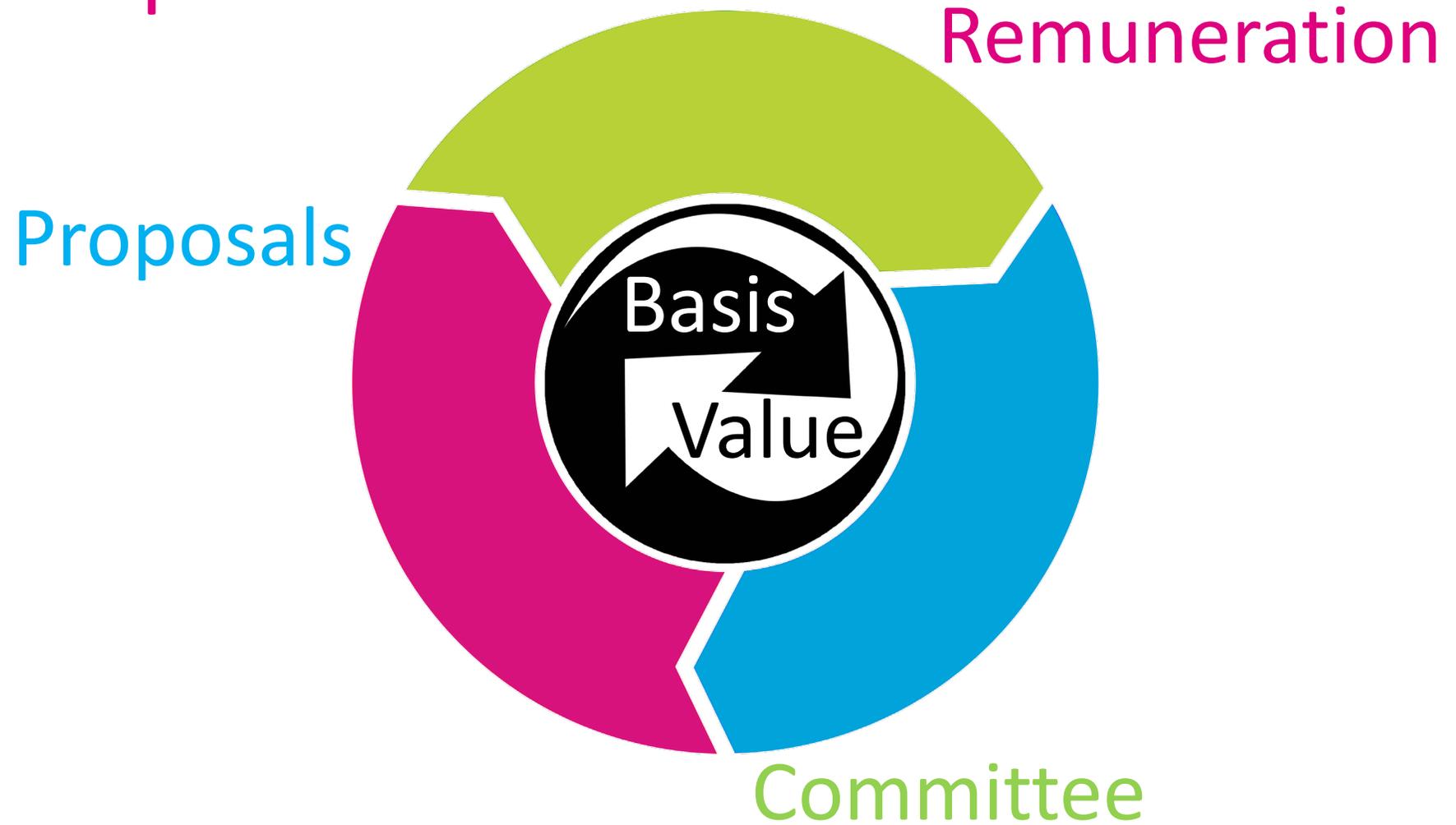
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The procedure for setting the rem basis

- You'll have to decide:
 - What basis you want:
 - Time costs
 - Ad valorem
 - Set fee
 - Who is to decide:
 - Committee
 - Creditors
 - (This will affect the timing of your circulation of the fee estimate)
 - Your fee estimate
 - (if asking for time costs)
 - (you'll probably put it in the proposals)
- 

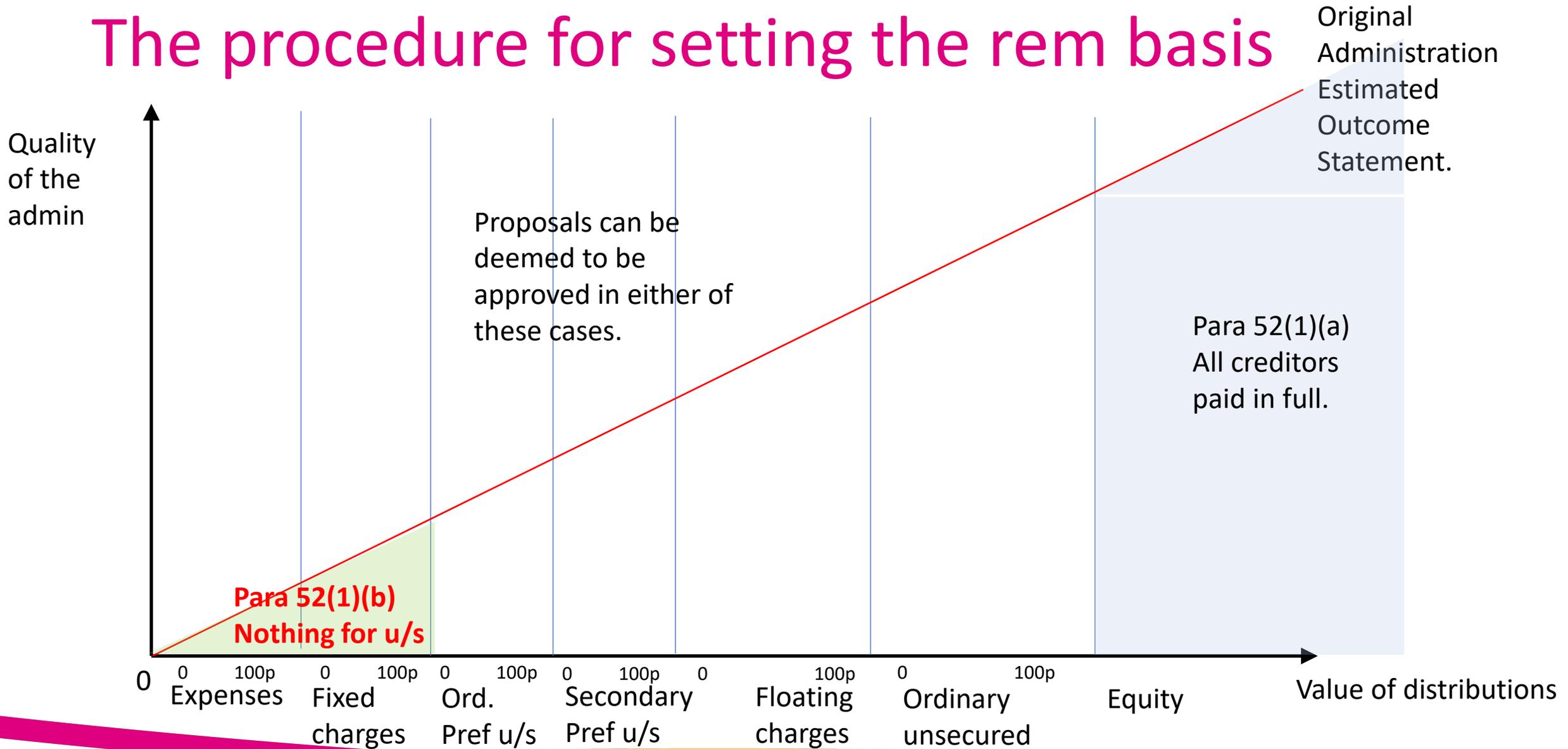
The basic principles



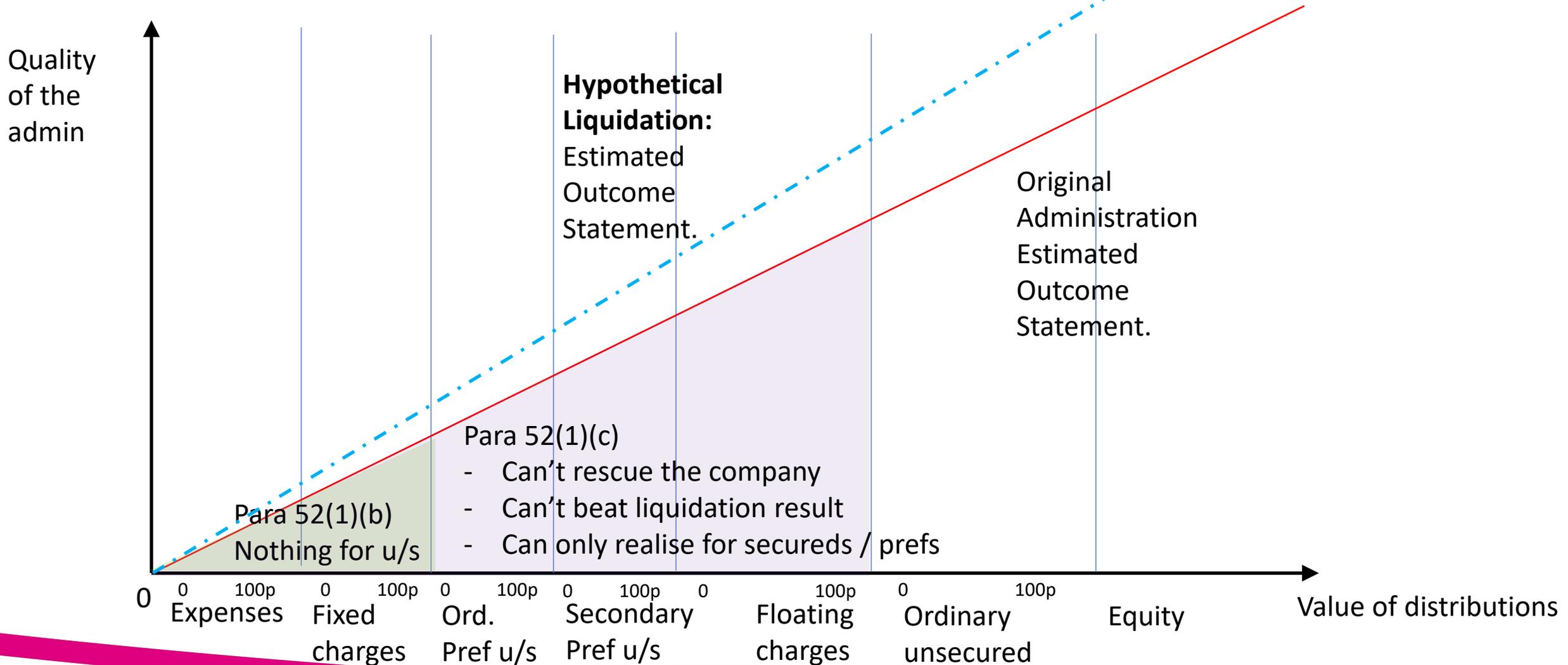
The procedure for setting the rem basis

- If the creditors decide – it's the creditors 'in the money' who decide.
- It must be by a decision procedure (you can't use deemed consent).
- The creditors 'in the money' are usually the unsecured creditors.
 - Remember: preferential creditors (both sorts) are unsecured.
- But u/s creditors are not 'in the money' if it's a para 52(1)(b) case.
- In that case, the creditors 'in the money' who vote are:
 - **Secured** creditors (by unanimous consent); and
 - (But only if you're going to pay them) **Prefs** (by decision procedure)

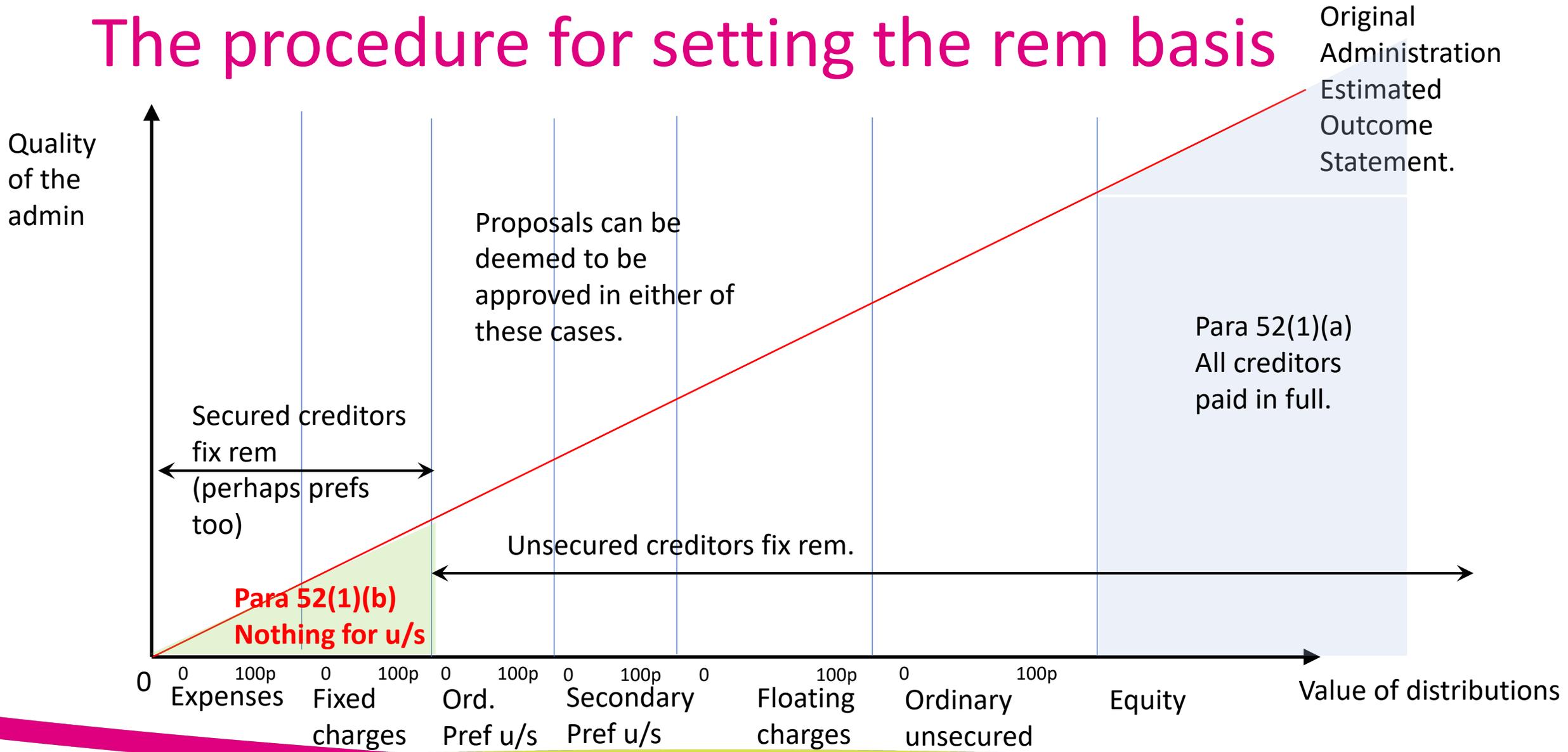
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The procedure for setting the rem basis



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The procedure for setting the rem basis

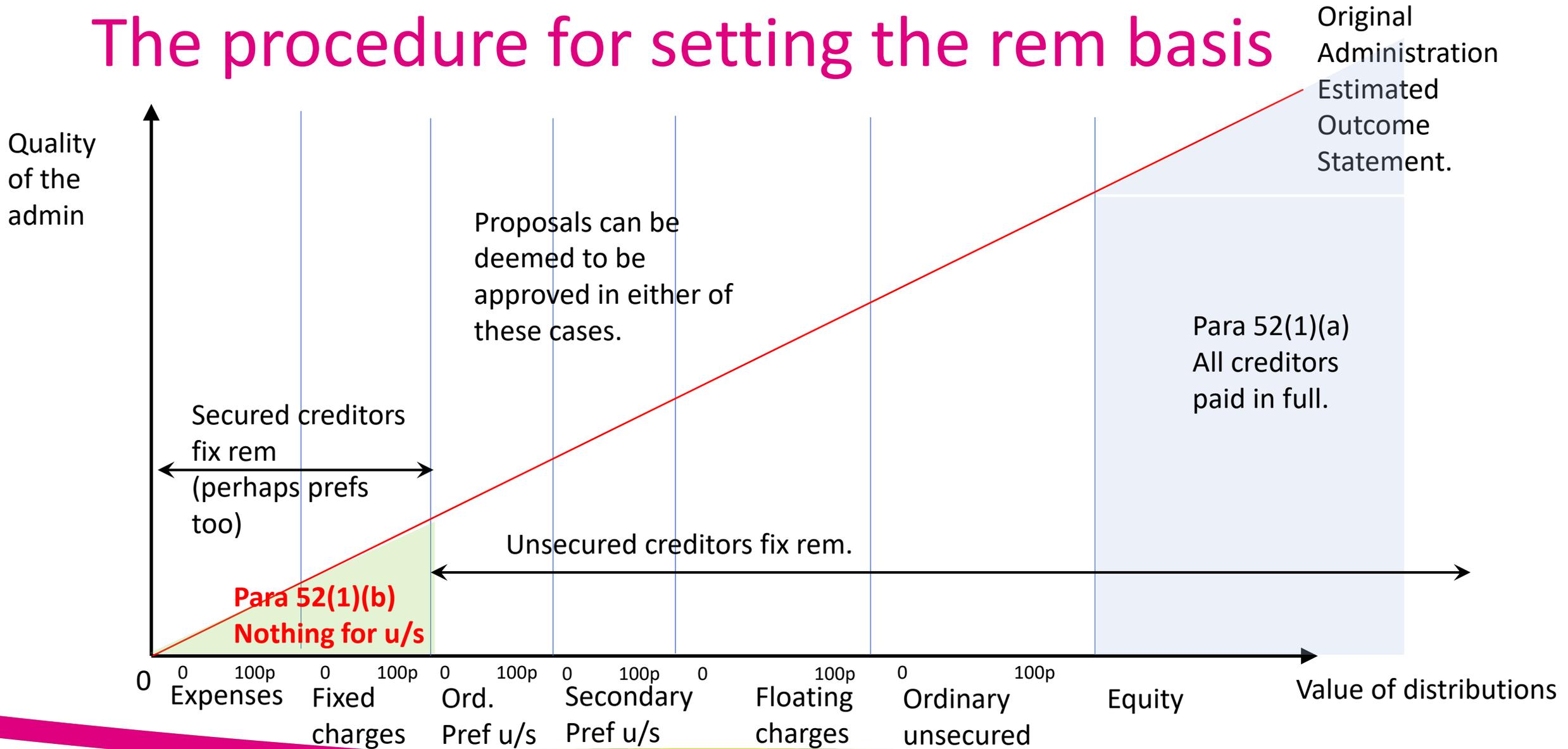
- In what circumstances do prefs get a vote in a para 52(1)(b) case?
 - Remember:
 - It's what you say in your proposals that fix it on the para 52(1)(b) track.
 - For the full duration.
 - It's a 52(1)(b) case if you say, in the proposals that you think the company hasn't enough to pay unsecured creditors (except through the prescribed part).
 - If that's what your EOS shows, that's probably enough to trigger para 52(1)(b).
 - Perhaps you didn't think there were any prefs?
 - Perhaps you've got more assets than you expected?
- 

The procedure for setting the rem basis

- What if there are no preferential creditors?

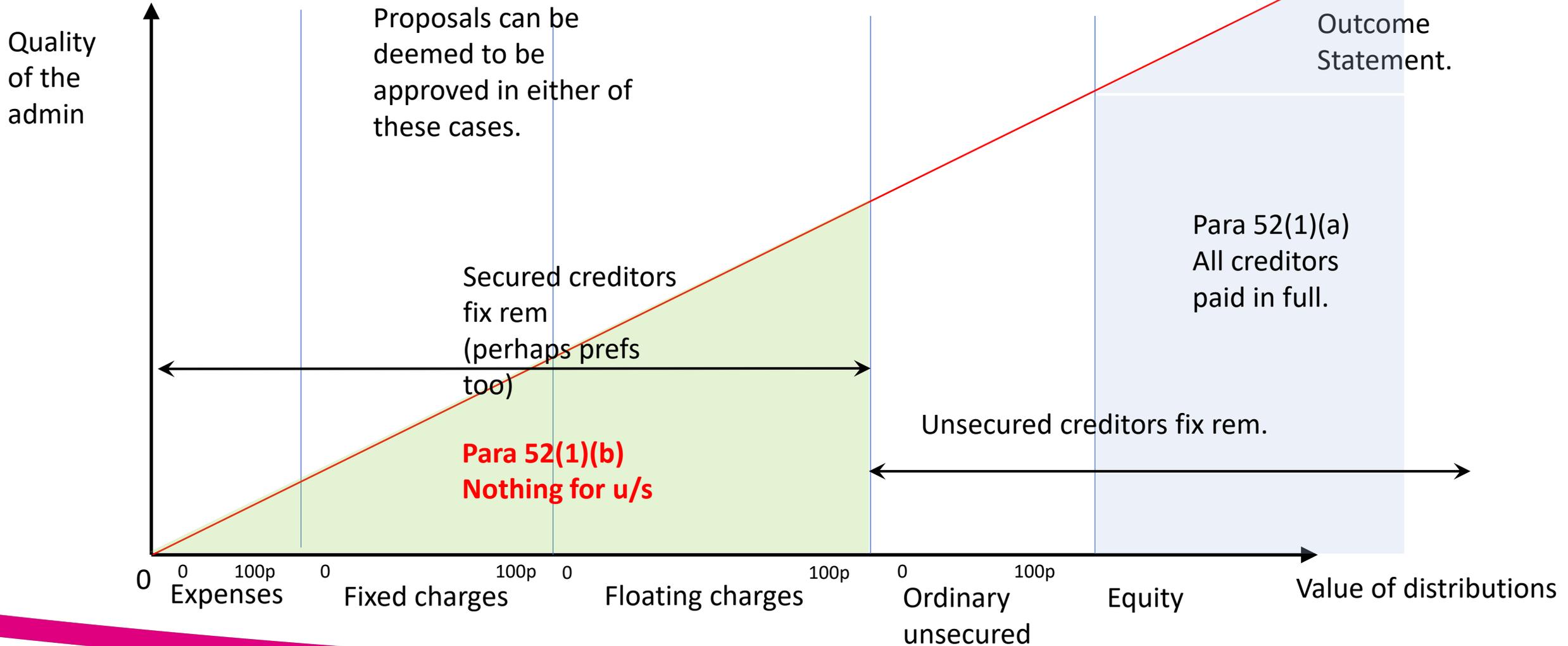


The procedure for setting the rem basis

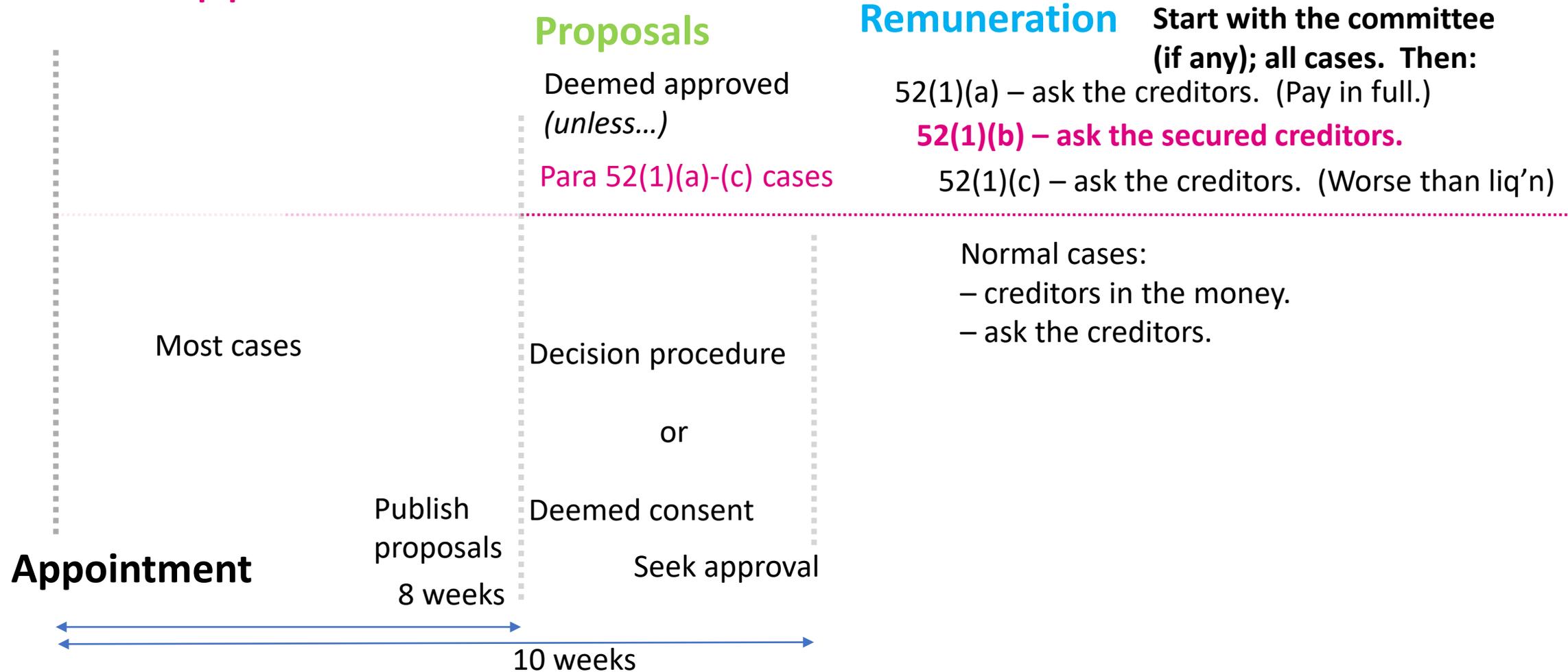


The procedure for setting the rem basis

Original
Administration
Estimated
Outcome
Statement.



Who approves remuneration basis?



Who approves remuneration basis?

Remuneration Start with the committee (if any); all cases. Then:

52(1)(a) – ask the creditors. (Pay in full.)

52(1)(b) – ask the secured creditors.

52(1)(c) – ask the creditors. (Worse than liq'n)

Proposals

Deemed approved (unless...)

Para 52(1)(a)-(c) cases

*What you think:
Sets the track.*

Most cases

Decision procedure

or

Deemed consent

Seek approval

Publish proposals
8 weeks

Appointment

10 weeks

18 months

Who approves remuneration basis?

Remuneration Start with the committee (if any); all cases. Then:

52(1)(a) – ask the creditors. (Pay in full.)

52(1)(b) – ask the secured creditors.

52(1)(c) – ask the creditors. (Worse than liq'n)

Proposals

Deemed approved (unless...)

Para 52(1)(a)-(c) cases

Decision procedure

or

Deemed consent

Seek approval

Most cases

Publish proposals
8 weeks

Appointment

10 weeks

Go to court



18 months

The procedure for setting the rem basis

- When all else fails – ask a judge to set it.
- You have 18 months to go to court. Don't be late.
- But try again first:
 - Committee.
 - Creditors 'in the money'.
- The judge will want to know what they think.
 - 'I haven't asked them.' would be a bad answer.



Q1

- Suppose:
 - Basis approved, with a cost estimate. And, then:
 - The statutory purpose for the administration has to change?



Q1

- Suppose:

- Basis approved, with a cost estimate. And, then:
- The statutory purpose for the administration has to change?

- I think:

- The original basis and estimate remain valid.
 - There is a procedure for changing the basis on a 'material and substantial' change, similar to the original fixing (by the same entity). r18.29
 - And there is a procedure for asking to draw beyond the estimate. r18.30
 - And another, if you think the basis or rate is wrong. r18.24
- 

Q2

- Suppose:
 - Basis approved, with a cost estimate.
 - Proposal did not envisage exit by CVL.
 - CVL became the best exit.
 - (But, outside the fee estimate.)

And, then:



Q2

- Suppose:

- Basis approved, with a cost estimate.
- Proposal did not envisage exit by CVL.
- CVL became the best exit.
 - (But, outside the fee estimate.)

And, then:

- As previous answer. But also:

- You don't need express creditor approval to convert
 - (but getting revised proposals approved is a really good idea).
- The existing basis is always carried over
 - (so you probably lack only a fee estimate).

r18.20(4)



If you'd like to contact us...

Malcolm Niekirk

Solicitor | Insolvency Practitioner

(Licensed by ICAEW)

01202 491769

07413 164814

mniekirk@frettens.co.uk

