

# Remuneration

The rules for bankruptcies



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# Remuneration – the rule for bankruptcies

- Themes

- Scenarios

- New bankruptcy; setting rem for the first time.
    - Established bankruptcy, but changing rem, either:
      - From the outset; or
      - From this point on.

- Rem Rules (Pt18 IR'16) cover

- Administrations
    - Bankruptcies
    - The three liquidations

- (I won't cover fee estimates today)

- Compulsory liquidations
    - Creditors' voluntary liquidations
    - Members' voluntary liquidations

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- Topics

- What are the bases?
  - Who sets the bases?
  - What is the 'default setting'?
  - How do you first set the basis?
  - How do you change it later (but for the whole bankruptcy)?
  - How do you change it later (but only from that point)?
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# Remuneration – what are the bases?

- You can choose from three options: (r18.16(2))
  - **Percentage**
    - Statutory scale rates
    - Any other scale rates
  - **Fixed fees**
    - For the whole case
    - For specific parts
  - **Time costs**
    - For the whole case
    - For specific parts
- You can mix and match (r18.16(3))

# Remuneration – what are the bases?

- How those options affect the amount: (r18.16(8))
    - **Percentage**
      - When fixing that as the basis, the percentage must also be set.
    - **Fixed fees**
      - When fixing that as the basis, the amount must also be set.
    - **Time costs**
      - This triggers the rules on fee estimates. (r18.16(4))
      - And you must say what work you will do. (r18.16(6))
  - SIP 9
    - If not time costs, say why it's fair and reasonable.
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# Remuneration – what are the bases?


- These are the factors that must inform the decision: (r18.16(6))
    - Complexity
    - Exceptional responsibility (from the bankrupt's affairs)
    - Effectiveness of the trustee's work
      - (But how can this be assessed in advance?)
    - Value
      - (and nature of the property)
  - See also SIP 9:
    - What work, and why
    - How much actually paid as rem
    - What benefit (to creditors, or compliance)
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# Remuneration – who sets the bases?

- You can ask any of these to set the basis: (r18.21)
    - The committee
      - (If you have a committee)
    - The creditors (by a decision procedure)
      - (If you have no committee)
      - (Or, if the committee has not set the basis)
      - (Or, if the committee has set a basis you don't want)
    - The court (r18.28(4))
      - (After the first 18 months, you don't need to ask the committee or creditors first – but the judge will ask why.)
  - You don't need to ask any to set the basis, if you're happy with statutory scale rates. (r18.22(1)(b))
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# Remuneration – what is the ‘default setting’?

- In a bankruptcy, statutory scale rates are the default setting. (r18.22)
  - They apply:
    - Automatically, after 18 months, if you have not asked the committee or creditors to set something else.
    - Earlier, in cases where:
      - You have asked the creditors to set something else; and
      - The creditors have refused to do so.
    - And, perhaps earlier too in cases where:
      - You have asked the committee to set something else; and
      - The committee have refused to do so; and
      - You have not then gone to the creditors.
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# Remuneration – how do you first set the basis?

- When asking for something other than statutory scale rates:
  - Start with the committee – if you have one. (r18.21)
  - Go to the creditors if:
    - You have no committee;
    - Or if the committee says no (but no point if it's a representative committee).
  - Go to the court if: (r18.28)
    - There is no committee;
    - And if the creditors are not interested;
    - Or if the committee / creditors are obstructive.
    - (Those are suggestions. You can wait 18 months and then start with the court. But the judge will want to know what the creditors think.)


# Remuneration – how do you first set the basis?

- Remember also that you need to offer a fee estimate if asking for time costs.
- And you need to give good information to creditors if asking for something else (which may often imply a fee estimate). (SIP 9, §21)

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# Remuneration – how do you change it later (but for the whole bankruptcy)?

- Two scenarios when you might want to do this: (rr18.24-25 & r18.28)
    - (1) The rate or amount is too low.
    - (2) The basis is not appropriate.
  - Did the committee set it?
    - You can ask the creditors to change it.
    - If the creditors refuse, you can go to court.
  - Did the creditors set it?
    - You can ask the creditors to change it.
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# Remuneration – how do you change it later (but for the whole bankruptcy)?


- Did the court set it?
  - You can ask the court to change it.
  - You will probably need to go to a higher court.
    - (The Court of Appeal or Supreme Court.)



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# Remuneration – how do you change it later (but only from that point)?

- The most likely scenario when you might want to do this is:
    - (1) The basis set is what you asked for.
    - (2) Something has changed so it is not now appropriate for the future work.
      - ‘... a material and substantial change in circumstances ...’ (r18.29(1))
  - Did the committee set it?
    - You can ask the committee to change it.
    - If the committee refuses, you ask the creditors.
    - If they also refuse, you can go to court.
  - Did the creditors set it?
    - You can ask the creditors to change it.
    - If the creditors refuse, you can go to court.
- 


# Remuneration – how do you change it later (but only from that point)?

- Did the court set it?
  - You can ask the court to change it.
  - In this case, it should be the same court.
  - What if the court says no?
    - Then you may need to go to a higher court (the Court of Appeal or Supreme Court).


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# Remuneration – what's different in other procedures?

- *These are not all the differences.*
  - Statutory scale rates apply automatically only in compulsory liquidations and bankruptcies. (r18.22)
  - In voluntary liquidations and administrations you have to set the basis within 18 months.
    - (That's the deadline for applying to court.) (r18.23(3))
  - In administrations it can get complicated to work out which creditors have the right to set the basis.
    - When ordinary unsecured creditors are expected to be 'out of the money', it's for the secured creditors (and sometimes unsecured preferential creditors) to decide. (r18.18(4))
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Remuneration – any questions?





# Dates for your diary:

- 12 December 2022 – Coffee break briefing
    - Debt financing (invoice discounting, factoring, etc)
  - 12 May 2023 – Frettons' Second Annual Insolvency Conference
  - R3 Southern & Thames Valley forum (Reading) – 23/24 March 2023
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# If you'd like to contact us...

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