

Getting in a Fix over Fees (and other compliance issues)

Getting in a Fix over Fees



- The Basics of Decisions
- The Basics of Fees Estimates
- MVL Fees
- Pre-CVL Fees
- Pre-ADM Fees
- ADM Fees
- Exceeding the Fees Estimate
- The 18 Month Rule

Before we start

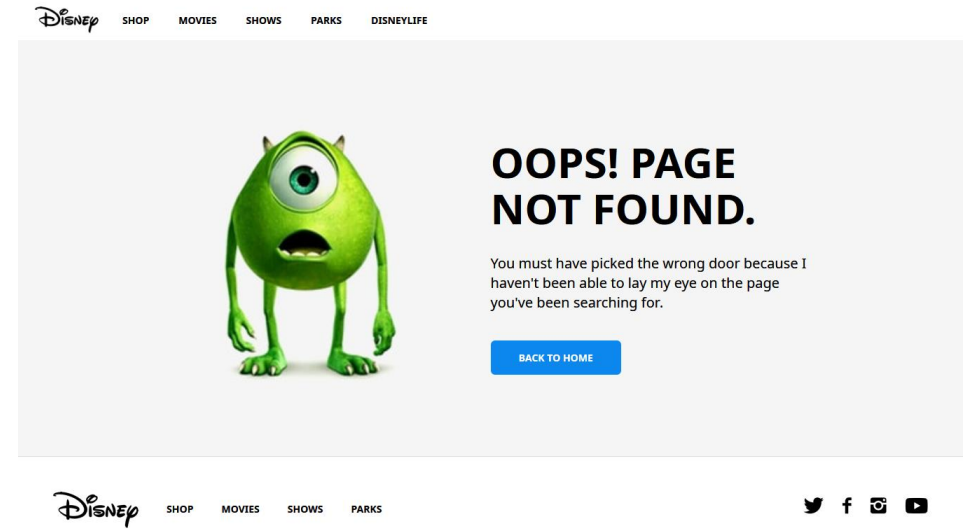
Please bear in mind that this presentation involves interpreting legislation and SIPs.

Whilst I endeavour to explain their application in practice, I make no assurances that I have achieved this.

The information presented should not be relied upon as advice. It represents only the personal opinion of the presenter.



The Basics of Decisions (1)



- Delivering successfully:
 - R1.49 / R1.50 notices:
 - Have all creditors received the notice by post (or email)?
 - Did the notice comply?
 - Did the notice provide the correct web address?
 - Did the notice provide the correct login details?
 - Has the pack been uploaded to the website?
 - Test and evidence

The Basics of Decisions (2)



- Delivering successfully:
 - ... and in time:
 - CPR: clear days = ignore start date and end date
 - R15.11: notices must be *delivered*...
 - i.e. excluding delivery day and decision date
 - S100: 3 business days between delivery and decision date
 - Others generally: 14 (calendar) days
 - It helps to give plenty of notice
 - Reviewing/signing delays
 - Using multiple delivery methods

The Basics of Decisions (3)

- Where is..?
 - Notice of Decision Procedure
 - Notice Inviting Committee Nominations
 - Link to Fees *Guide*, not to SIP9
- Be consistent with decision wording and decision date



The Basics of Fees Estimates (1)



- Take a step back
 - Have you estimated and explained all likely time cost categories?
 - “case specific matters”
 - Have you updated your tasks list?
 - We don’t have final meetings anymore!
 - SIP16 is only relevant to Admins
 - A S100 CVL is quite different to a Para 83 (e.g. D-reporting)
 - How long will tasks take you?
 - £30K recovery for £10K time costs - reasonable?
 - ...but 40 hours to collect one book debt??

The Basics of Fees Estimates (2)



- IPS fees estimate alone will not be sufficient
 - SIP9: “financial benefit (if any)”?
 - Gaps in the SoA/SIP6 report?
 - Large expenses?
 - Do you anticipate further approval will be necessary and, if so, why?
 - End date of estimate?

MVL Fees (1)



- Where Liquidators' fees are to be paid from the estate post-appointment:
 - Informal shareholder approval is not enough
 - Fees must be approved by members' resolution
 - R18.19: by "company in general meeting"
 - R15.41(2) allows CA06 written resolution
 - Check the company's articles

MVL Fees (2)



- SIP9 principles apply:
 - Provide all SIP9 information to all shareholders before they pass a resolution
 - Would an engagement letter addressed to the Company be sufficient?
 - What if the director manages all shareholder notices?

MVL Fees (3)



- Other SIP9 requirements (all fee bases):
 - Information on members' rights
 - Proportionate explanation of work (to be) undertaken
 - “Key issues of concern include... the anticipated cost of that work...”
 - “... including expenses”
 - If time costs, full fees estimate?
 - “Nothing within this SIP obligates a practitioner to provide a fee estimate where one is not required by statute”

MVL Fees (4)

- Other SIP9 requirements:
 - Category 2 disbursements schedule
 - Time costs:
 - Charge-out rates
 - Set amount (or %):
 - “Explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the office holder anticipates will be undertaken”



Pre-CVL Fees (1)

- If being paid by the estate after appointment:
 - R6.7(1) & (2): “any reasonable and necessary expenses of...”
 - “Preparing the Statement of Affairs; and
 - “The decision procedure or deemed consent procedure to seek a decision on the nomination of the liquidator”
 - “may be paid out of the company’s assets... as an expense of the winding up”

Pre-CVL Fees (2)

- Work not caught by R6.7:
 - General advice
 - Costs of seeking members' winding-up resolution
 - Costs of dealing with employees
 - Costs of securing or disposing assets pre-liquidation
 - Costs of exploring non-CVL options



Pre-CVL Fees (3)



- So I cannot be paid for non-R6.7 work?
 - Pre-CVL payment by company
 - Must be *paid*, not just in a client account
 - Third party payment (pre or post)
 - Not a post-appointment “contribution to costs”
 - VAT reclaim?

Pre-CVL Fees (4)



- Clear boundaries:
 - If time costs, allocate time between R6.7/non-R6.7 work
 - If set amount, only refer to £x for non-R6.7 work if you are looking to be paid outside of the post-appointment estate
 - “£x for [describe work restricted by R6.7]”
- Be consistent with wording:
 - Engagement letter
 - SIP6 report
 - Proposed creditors’ decision

Pre-CVL Fees (5)

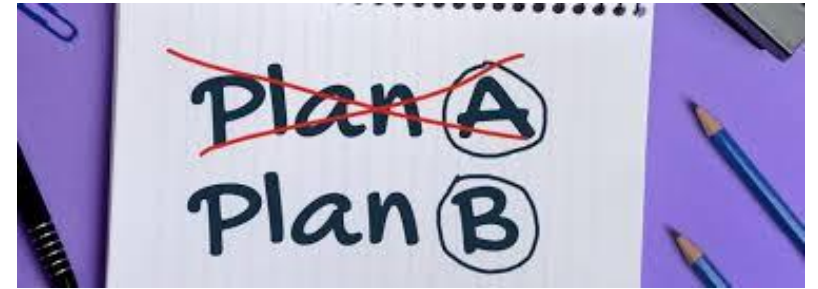


- Approval required
 - R6.7(5):
 - “Such a payment may not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors, or the court”
 - If new (unconnected) liquidator appointed:
 - Creditors’ approval is not required
 - But the liquidator decides what is “reasonable and necessary”

Pre-ADM Fees (1)

- R3.1: defines “pre-administration costs”:
 - “fees charged and expenses incurred by the administrator” or other IP
 - “before the Company entered administration, but with a view to it doing so”
- Wider than R6.7
 - Costs are not defined, but the objective is

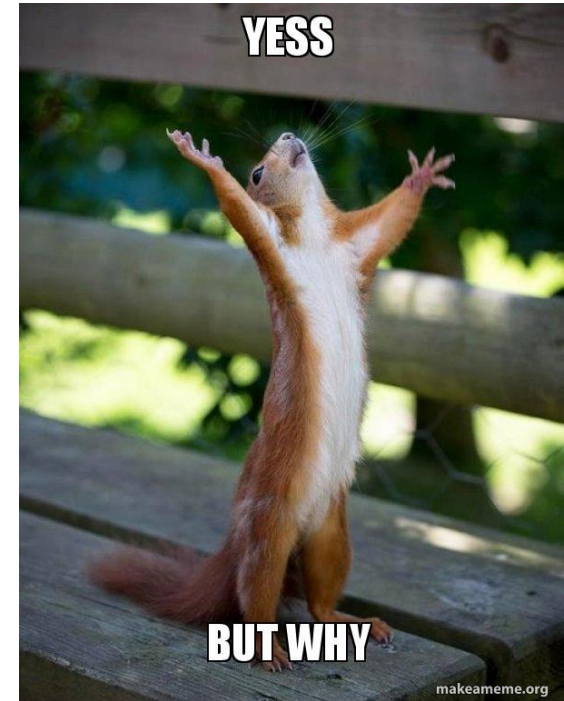
Pre-ADM Fees (2)



- Includes:
 - Advice *after* the decision to enter ADM
 - Costs of dealing with employees
 - Costs of securing or disposing assets, e.g. pre-packs
 - Costs around ADM appointment formalities
- Excludes:
 - Advice pre-decision
 - Work in pursuing alternatives, e.g. possible funding, CVL

Pre-ADM Fees (3)

- Proposals must disclose (R3.36):
 - Agreements re fees/costs
 - What work was done
 - i.e. work per R3.1 “pre-administration costs”
 - ***An explanation of why the work was done pre-ADM and how it had been intended to further the achievement of an ADM objective***
 - Pre-pack
 - Due diligence - appointment, strategy, trading, valuations
 - All payments on account and who paid



ADM Fees (1)

- Para 52(1): where the statement of proposals states that the administrator thinks that:
 - (a) creditors will be paid in full
 - **(b) there is insufficient property for a distribution to unsecureds other than from the prescribed part**
 - (c) neither of the first two ADM objectives can be achieved (i.e. the ADM result will not be better than LIQ)
- The fee-approval process is only different for Para 52(1)(b) statement cases

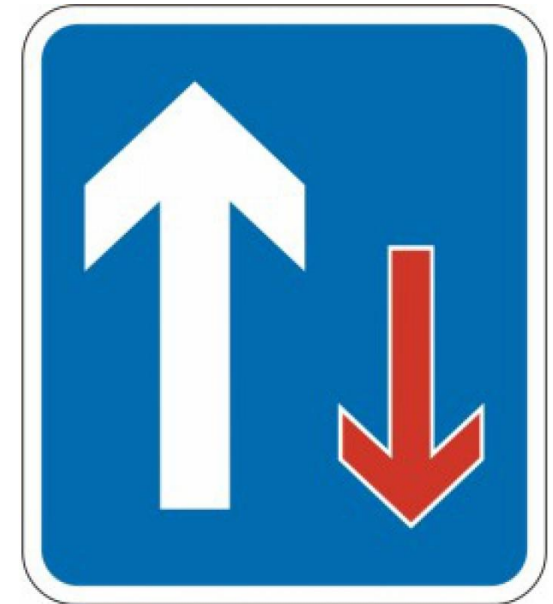
ADM Fees (2)

- Non-Para 52(1)(b) cases:
 - Committee
 - If no Committee, then unsecured creditors by decision procedure
- Para 52(1)(b) cases:
 - Committee
 - If no Committee, then (R18.18(4)):
 - Each secured creditor - must be positive approval
 - And, if you have made or intend to make a distribution to prefs, then also by prefs by decision procedure
- All cases, if seeking payment from fixed realisations, seek approval from fixed charge creditor



Exceeding the fees estimate: ADMs

- Para 52(1)(b) cases:
 - If you now think there (likely) will be sufficient funds to pay a dividend to unsecureds other than via the prescribed part
 - Seek approval from unsecured creditors (R18.33)
 - Also where you want to change the basis (R18.29)
- It doesn't work the other way around
 - i.e. if you went to unsecured creditors for initial fee approval because it was not a Para 52(1)(b) case, you still go to them for excess fee approval even if the outcome has changed



Exceeding the fees estimate (1)



- Do I need creditors' approval if I exceed the fees estimate for one work category but I haven't exceeded the fees estimate overall?
 - R18.30: "The office-holder must not draw remuneration in excess of the *total* amount set out in the fees estimate without approval"

Exceeding the fees estimate (2)



- R18.30:
 - Reasons why you have exceeded or likely will exceed the fees estimate
 - The *additional* work you have undertaken or propose to undertake
 - Cannot simply be “more of the same”
 - Do not repeat what was in the original fees estimate, e.g. closure costs

Exceeding the fees estimate (3)



- R18.30 (cont.):
 - The time the additional work has taken or will take
 - Per work category
 - But only *additional* time
 - Not a “revised” fees estimate
 - Do you need to provide a new expenses estimate..?

Exceeding the fees estimate (4)



- What about expenses?
 - R18.30 does not specifically require it
 - But “Rules 18.26 to 18.23 apply as appropriate”
 - R18.4(1)(e)(ii) requires progress reports to use the original expenses estimate for comparison purposes
 - SIP9 requires “the anticipated cost... including any expenses expected to be incurred in connection with it”
 - So provide proportionate information, especially e.g. legal costs, associated with additional work

Exceeding the fees estimate (5)



- Other presentational factors
 - Although Rules focus on “additional” work and costs, creditors will need to see overall picture
 - So remind of original estimate, perhaps provide:
 - (i) original estimate + (ii) additional estimate = (iii) total
 - Ensure explanations tally with time incurred/expected per category
 - **Time**, not only time *costs*
 - Explain financial benefit anticipated, likely return to creditors
 - Opportunity to sell the story

The 18 Month Rule (1)



- ADMs & CVLs
 - R18.23: if creditors do not fix fee basis, must apply to court
 - But application must be made within 18 months of appointment
 - Can you ask creditors to fix your fee basis *after* 18 months..?

The 18 Month Rule (1)



- ADMs & CVLs
 - R18.23: if creditors do not fix fee basis, must apply to court
 - But application must be made within 18 months of appointment
 - Can you ask creditors to fix your fee basis *after* 18 months..?
 - Insolvency Service has confirmed that this does not mean you cannot ask creditors to fix basis after 18 months

The 18 Month Rule (2)

- WUCs & BKYs
 - R18.22: Schedule 11 scale rate fees apply where
 - Either you have asked creditors to fix fee basis, but they have not done so
 - Or in any event if creditors have not fixed basis within 18 months of appointment
 - So after 18 months, your fees are fixed
 - Does this mean you are stuck with scale rate fees..?

Changing the Fee Basis



- R18.29
 - Where, after the basis of fees has been fixed, “there is a material and substantial change in the circumstances which were taken into account in fixing it”, you may ask for the basis to be changed
 - What changes..?
 - Who do you ask..?
 - Whoever fixed the basis originally
 - ...or committee/creditors, if on scale rate default
 - Change only applies from the date of the request
 - Moving to time costs
 - Moving to percentage realisations

Before Drawing Fees



- R18.16(2): “by reference to the time properly given... in attending to matters arising in the administration, winding-up or bankruptcy”
 - Time charged for fixing mistakes
 - Time charged for ICR/QAD
 - Time charged by a senior for junior-level work
 - Time charged for gathering dust

The Bare Essentials

- Make sure that:
 - Docs are successfully *delivered* and *in time*
 - Docs are complete
 - Creditor notices and *full* Rules/SIP9 fee information
 - Information to *all* MVL shareholders
 - Pre-CVL and pre-ADM fees meet statutory definitions
 - Excess fee requests concentrate on *additional time*
 - Time billed has been *properly given*

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