

Usually, the creditors of the insolvent company are the ones that will agree the basis upon which a liquidator or administrator (referred to in this note as “IP”) will be paid, whether that is a percentage of realisations, on time-costs basis or a fixed amount. It is only where creditors do not agree, or an IP wishes to change something previously agreed in respect of fees, that they will have to ask the court to assist.

In this special edition of Restructuring Roundup, we explore some key lessons from recent cases concerning the remuneration of IPs.

### Key Takeaways

- Carefully consider who the creditors are when seeking fee approval.
- Provide the court with sufficient information to make a decision when making an application to court seeking to fix the basis or quantum of remuneration.
- Office holders do not need to be in office to make an application under Part 18 of the Insolvency Rules.
- Accept risk when fixing fees on a percentage basis.
- Do not seek to limit liability.



## Agreeing the Basis Upon Which Fees Are To Be Paid

An IP has 18 months to fix the basis of their remuneration. This time limit can lead to difficulties where the requisite creditors will not engage in the approval process, particularly where the company is in administration and the creditors committee fails to determine the basis of remuneration, or there is no such committee. In that case, depending on whether a Paragraph 52(1)(b) statement has been given or not, Rule 18.18 requires the IP's remuneration to be approved by:

- Each secured creditor; or
- If the administrator has made or intends to make a distribution to preferential creditors, each secured creditor and the preferential creditors

Identifying which creditors need to approve fees and how, is therefore important.

Thankfully [Dear IP 168](#) (released last year) gives IPs some discretion when deciding which creditors need to approve fees, by allowing them to apply their professional judgment to decide who is a creditor for the purposes of any specific insolvency provision. This is particularly helpful in the case of secured creditors, who are often paid in full early on in the insolvency process. If a creditor has already been paid in full, it would be reasonable for the IP to conclude that they do not need that creditor's consent.

However, despite the flexibility that Dear IP 168 provides, there are still some unanswered questions. For example, do you just ask preferential creditors for consent under Rule 18.18 if all secured creditors have been paid?

Rule 18.18 also states that where a Paragraph 52(1)(b) statement has been given, the consent of preferential creditors is required where there has been a distribution to preferential creditors. This creates its own difficulties. Firstly, Rule 15.11 says that IPs do not need to send notices to creditors who have subsequently been paid in full, and in light of Dear IP 168, it would seem reasonable not to seek a decision from paid preferential creditors, and reasonable for them not to engage. If that is the case, who then approves fees if there are no unpaid preferential creditors? The position is far from clear, notwithstanding the discretion IPs have.

What if a Paragraph 52(1)(b) statement was made at the start of the administration but there will no longer be any distribution to preferential creditors at the time fee approval is sought?

It is not unusual to find that the position assumed on appointment changes. Creditors who were thought to be creditors are not; creditors might get paid earlier or not at all if realisations are not as expected.

This issue was recently considered by the court in the context of preferential creditor consent required to extend an administration.

In *CDI Realisations Ltd*, the court considered whether the consent of preferential creditors was required to an administration extension in circumstances where the administrators had given a Paragraph 52(1)(b) statement and thought there would be a distribution to preferential creditors. However, at the time of extending the administration, that was no longer the case, and they therefore extended the administration based on the consent of secured creditors only. See our [blog](#) for the reasons why.

The court considered Paragraph 78(2)(b) and concluded that the consent of preferential creditors was only required where the administrator "thinks" that a distribution will be made. The court placed emphasis on the present-tense wording. Therefore, because at the time that consent was sought, the administrators no longer thought that there would be a distribution to preferential creditors, the extension (based on the consent of secured creditors only) was valid.

In reaching this decision, the court drew a distinction between the wording in Paragraph 78(2)(b), and that in Paragraph 52(1)(b), which is framed in the past tense. The language in Rule 18.18 is similar to Paragraph 78(2) but not the same. It is framed in both the past and present tense.

Plainly, it would make sense for an IP to consider the position at the point of seeking fee approval, rather than being bound by the original Paragraph 52(1)(b) statement.

If the answer to the questions – "Has the administrator made a distribution to preferential creditors?" and "Do they intend to make a distribution to preferential creditors?" is "No" (e.g. because the factual position has changed since making the Paragraph 52(1)(b) statement) it would seem reasonable, applying the logic from *CDI*, for an IP to rely on the consent of secured creditors only.

There are now a number of cases where the courts have advocated looking only to those creditors that have an existing economic interest to make decisions. While this approach aligns with Dear IP 168, none of those cases specifically concern remuneration decisions. Therefore, care is required, and an IP should take advice on the specifics of a particular case, to ensure the correct approvals are sought and obtained.

### Key Takeaway

Carefully consider who are the creditors when seeking fee approval

## Remuneration Applications

### Fixing the Basis

When creditors decline or fail to fix the basis of an IP's remuneration, Rule 18.23 allows an IP to make an application to the court to determine the basis.

In *Poxon and another v. Wejo Ltd (in administration)* [2025] EWHC 135 (Ch), the court considered whether, and to what extent, the court ought to scrutinise the quantum of the administrators' fees estimate when faced with an application to fix the basis of remuneration on a time-spent basis. The administrators argued that the court was only concerned with the basis, not the quantum, of remuneration, but the court disagreed. Creditors are entitled to scrutinise the fees, and, in the absence of their approval, the court should do the same.

The court made it clear that when applying to fix the basis of remuneration on a time spent basis, an IP needs to:

- Satisfy the court that the fee estimate is/was reasonable and commensurate with the nature and extent of work properly undertaken/to be undertaken
- Provide sufficient information and evidence to enable the court to decide the effectiveness with which the IPs appear to have carried out/be carrying out their duties.

### Pre-appointment Costs

The judge was also asked to consider pre-appointment costs in *Poxon*.

Rule 3.52 allows creditors (or the court, if creditors do not agree) to determine whether and to what extent unpaid preappointment costs should be approved for payment, but there is no case law that explains the approach the court should take when doing so.

In *Poxon*, the judge applied the same standards that apply when fixing the basis of remuneration – namely that it is for IPs to justify the fees sought, and they must provide full but proportionate detail to justify the amount sought.

### Remuneration Applications Generally

*Poxon* also reminds IPs that it is for them to justify their entitlement to remuneration. It is not enough for IPs to “list the total number of hours spent by them, or other fee earning members of their staff, and multiply this total by a sum claimed to be the charging rate of the individual whose time was spent.” They must, when making such an application, provide an explanation that identifies:

- The nature of each main task undertaken
- The considerations that led them to embark upon that task
- If the task proved more difficult or more expensive than expected, explain why they persevered with it

The time spent needs to be linked to the explanation, so that it can be seen what time was devoted to each task. However, the amount of detail that needs to be provided should be proportionate to the specific case.

## Key Takeaway

### Provide the court with sufficient information to make a decision when seeking to fix the basis of remuneration

When asking the court to fix the basis of remuneration, an IP needs to do more than simply ask the court to do so, especially when seeking approval on a time-spent basis. One of the most difficult challenges to balance is proportionality – what is enough information to justify what you are asking for, without spending significant cost in doing that?

Fixing fees as a set amount, or as a percentage of realisations, will likely require less detail, but an IP will still have to justify what it is that they are asking for. But if an IP is seeking to fix remuneration as a percentage of realisations, there are some important learning points from *Cork v. Penfold*, which are covered below.

*Poxon* also highlights the “guiding principles” in Paragraph 21 of the [Insolvency Practice Direction](#) which outlines the information an IP should provide when making a remuneration application.

Note also that IPs must consider the remuneration “principles” in the rules – in particular those set out in Rule 18.16.

See [our blog](#) for further discussion about the details of *Poxon*.

## Increasing the Rate or Changing the Basis Upon Which Fees Are Paid

If an IP considers the rate or amount of remuneration fixed to be insufficient or the basis fixed to be inappropriate, Rule 18.24 provides that an IP can seek to increase the rate or amount, or change the basis by seeking creditor approval under rules 18.25 to 18.27 or by court application under Rule 18.28.

In *Cork v. Penfold* [2025] EWHC 1356 (Ch) the court considered an IPs' application to increase the percentage rate of realisation at which this remuneration was fixed.

The liquidators had initially agreed fees fixed at 5% of realisations. They subsequently applied to court to increase the percentage, claiming that the scope, scale, complexity and duration of the work required exceeded what was originally anticipated when the 5% rate was agreed. Much of the additional work was due to the level of engagement required with hostile directors. The liquidators also justified their application on the basis that there were unexpected workstreams (for example, a planning application) which were not reasonably foreseeable at the outset.

The court rejected the applications and held that the liquidators knew about the hostility prior to their appointment and fixed their fees accordingly. Further, there was nothing out of the ordinary that they had to deal with – their work was foreseeable as part of dealing with the liquidation of property development companies.

## Key Takeaway

### Accept risk when fixing fees on a percentage basis

Where fees are fixed as a percentage of realisations, an IP is taken to have accepted a degree of risk. In some cases, they might recover more than anticipated where, for example, realisations are greater than expected, but in others they might recover less, where, for example, realisations are not as good as hoped. However, this case illustrates that the mere fact that the outcome is not as expected does not in itself give an IP grounds to justify an increase in the percentage to be applied.

When fixing the basis of remuneration as a percentage of realisations, an IP should therefore carefully consider what they reasonably anticipate they will need to do, in light of the particular circumstances of the matter:

- Are there hostile creditors or directors?
- In what state are the company's books and records?
- What sector does the business operate in, and what work might they typically be expected to do as a consequence?
- Are there particular types or categories of assets that may be more challenging to realise?

Unless the work subsequently undertaken is out of the ordinary, then an application to increase the percentage is likely to be difficult to justify.

However, if unexpected work is required, *Cork* highlights that the court expects an application to increase or change the basis of remuneration to be made prospectively, not retrospectively, with the burden placed firmly on the IP to say why the rate or amount is insufficient, or why the basis is inappropriate.

The court will also have regard to the principles in Part 6 of the [Insolvency Practice Direction](#), including whether an IP's remuneration is fair and reasonable given the nature and extent of work properly undertaken.



## Apply Under the Correct Rules

The chances of a situation arising similar to that in the case of *Frost & Anor v. The Good Box Co Labs Ltd & Ors* [2024] EWHC 422 (Ch) are slim. This case concerned a company in administration that ended when a restructuring plan proposed by one of the company's creditors was sanctioned. There followed an application to the court by the former administrators after the restructuring plan administrators refused to agree that the former administrators could be paid additional fees without a court order. This case was unusual, but the Court of Appeal decision clarifies the following:

- Former office holders can make an application under Part 18. They do not need to be in office.
- Where creditors have approved remuneration on a time-cost basis, subject to a cap on drawings, Rule 18.30 applies if the officeholder wishes to draw fees in excess of the approved estimate.
- Rule 18.24 and Rule 18.28 do not apply if there is already a valid resolution for payment of remuneration.
- Rule 18.24 only applies if an office holder wants to (a) increase the set amount or percentage rate, or (b) change the basis of remuneration (i.e. changing from time-cost to fixed).

## Key Takeaway

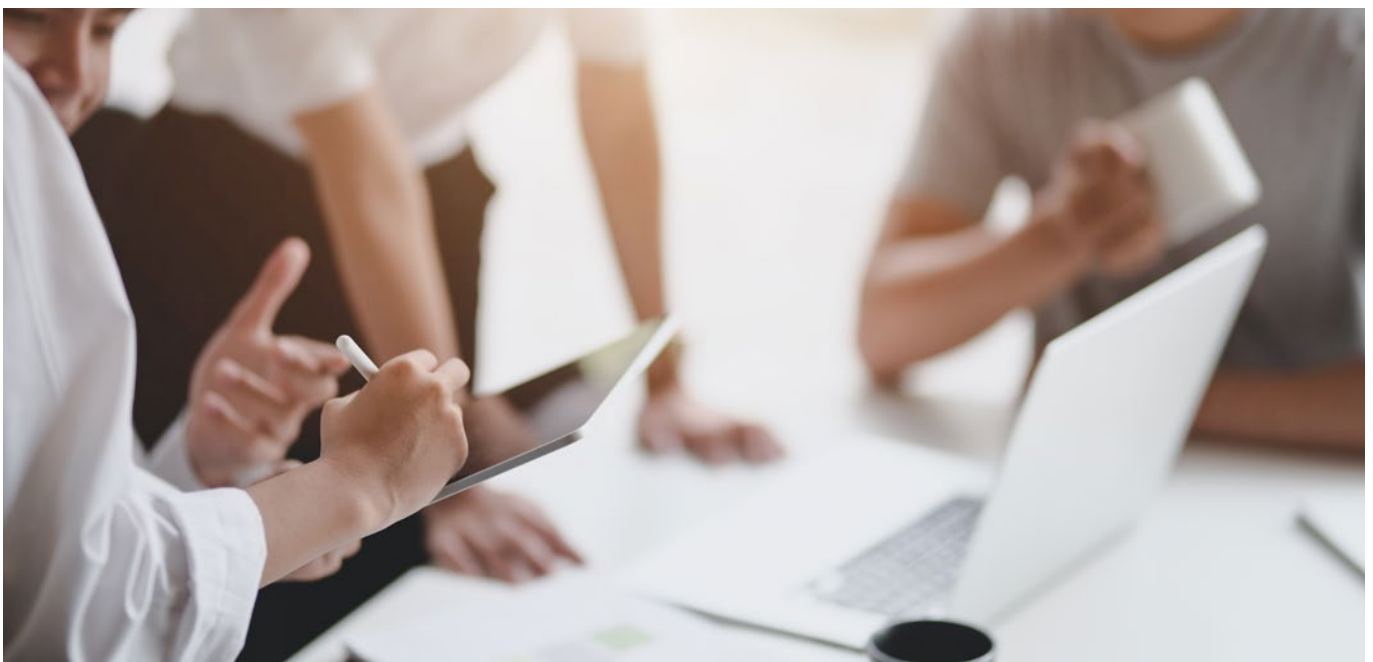
### Pick your Rules carefully

The court did not grant the former administrators' application in this case because they had applied under Rule 18.24. This rule did not apply because their fees had been fixed on a time-cost basis and the quantum capped in accordance with the fee estimate which had been approved by creditors. As a general rule, administrators can continue to draw remuneration up to the value of their approved fee estimate, from money within the administration estate without further recourse to anyone. If they wish to draw fees beyond that, further creditor approval is required and the relevant rule for the purposes of drawing additional fees is Rule 18.30 (not Rule 18.24).

In this case, the former administrators found that they were caught in what the court described as a "procedural muddle". The restructuring plan provided that "any other fees or expenses claimed by the Administrators will be subject to the Adjudication Process and in the absence of agreement with the Plan Administrators the Administrators shall be at liberty to apply to Court for approval in accordance with the Rules." The plan administrators refused to pay additional fees without a court order and wrote to the former administrators to say that they follow the procedure "set out under Insolvency Rule 18.24(b)". That prompted the former administrators to apply to the court under Rules 18.24 and 18.28.

Whilst such a procedural muddle is unlikely to arise in the future, the case highlights the need to think carefully about which Insolvency Rules apply to ensure that the court has the power to deal with the application.

One question this case did not address is: "What happens where Rule 18.30 applies, and creditors do not agree that the officeholder can draw more fees?" The rule itself does not address this question. The Court of Appeal in *Good Box* seemed to suggest that the court could not assist and that the administrators would instead need to issue a claim under Part 7. But can this be right? One would expect that the court can deal with this question under its inherent jurisdiction – the view of the Court in *GoodBox* might therefore be something that is confined to the unusual facts of that case!



## Fees for Dealing With Fixed Charge Assets

Rule 18.34 enables creditors to challenge remuneration where they believe:

- The remuneration to be excessive
- It has been fixed on an inappropriate basis
- Expenses to be excessive

Although this appears to provide a broad platform for challenge, certain remuneration arrangements fall entirely outside of this rule.

In *Pagden and another v. Ridgley* [2024] EWCH 3047 (Ch), the administrator and original security trustee had agreed fees for the realisation of certain fixed charge assets. The replacement security trustee later sought to challenge that arrangement under Rule 18.34 on the basis that it was excessive.

The court held that sums paid out of fixed charge realisations were neither “remuneration” nor “expenses” for the purposes of Rule 18.34.

The costs of dealing with fixed charge assets are outside the scope of Part 18 of the Insolvency Rules, which only provides a mechanism for dealing with remuneration so far as it is an “expense” of the insolvency. As the cost for dealing with fixed charge assets are paid from the secured creditor’s collateral rather than the company’s estate, Part 18 cannot be used to challenge costs agreed between an IP and fixed charge holder.

### Key Takeaway

#### Fees relating to fixed charge realisations cannot be challenged under Part 18 of the Insolvency Rules

Where an IP has entered into a freely negotiated commercial arrangement with a fixed charge holder in respect of their fees for dealing with a fixed charge asset, subsequent dissatisfaction on the part of the secured creditor does not enable them to bring a challenge under Part 18 of the Insolvency Rules. However, that is not to say those fees are immune to challenge. The judge in *Pagden* indicated there might be other routes to challenge but did not explore this further in the judgment. That said, where both parties have agreed fees, it seems very unlikely that a court would interfere with that arrangement when they have been negotiated and agreed at arm’s length by two commercially astute parties.

We have explored the detail of this case in more detail in this [blog](#).



## Limiting Liability

In *Pagden & Ors v. Fry & Anor* [2025] EWHC 216 (Ch), the court considered whether liquidators and their firms can limit personal liability through contractual terms.

The issue arose in the context of a members' voluntary liquidation (MVL), where both the liquidators and their firm had included identical liability-limiting provisions in their letters of engagement, each seeking to cap liability at £1 million.

## Individual Liquidators

The court held that a liquidator cannot contractually limit their personal liability. A liquidator acts as a fiduciary administering a statutory trust, with duties imposed by statute rather than contract. Those statutory obligations cannot be excluded, diluted or restricted by contract, nor can they be waived by the company acting through its directors or shareholders.

## The Firm

In contrast, the liquidators' firm may owe separate duties to the company on a contractual or tortious basis. The liability cap was therefore effective insofar as it related to any independent liability of the firm.

Please see [here](#) for our analysis of this case.

## Key Takeaway

A liquidator cannot limit their liability

## The Big Picture

Whether IPs are fixing remuneration, seeking an increase or defending their position, the rules provide a clear framework, but only if the right procedure is followed at the right time. Navigating this framework carefully is essential to avoid delays, challenges or incurring additional costs.

## Contacts



### John Alderton

Partner, Leeds  
M +44 788 505 8896  
E john.alderton@squirepb.com



### Charlotte Møller

Partner, London  
M +44 788 180 4970  
E charlotte.moller@squirepb.com



### Deborah Brown

Partner, Birmingham  
M +44 754 511 0790  
E deborah.brown@squirepb.com



### Chris Roberts

Partner, Manchester  
M +44 773 647 9569  
E chris.roberts@squirepb.com



### Monika Lorenzo-Perez

Partner, London  
M +44 778 572 0439  
E monika.lorenzo-perez@squirepb.com



### Devinder Singh

Partner, Birmingham  
M +44 772 139 9625  
E devinder.singh@squirepb.com



### Rachael Markham

Senior Practice Development Lawyer,  
Leeds  
M +44 754 511 0781  
E rachael.markham@squirepb.com