ACCOUNTANT IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

RESTRICTED
1 Pennyburn Road
Kilwinning
KA13 6SA

t 0300 200 2600
f 0300 200 2601
www.aib.gov.uk

To Trustees and
Recognised
Professional Bodies

Our Ref: AiB/OPC/GP003
Your Ref

Date: 6 December 2017

By email only.

Dear Trustee

Outlays of Protected Trust Deeds (PTDs)

The Accountant in Bankruptcy (the Accountant) has identified a number of PTDs whereby trustees are claiming outlay costs in situations where the Accountant considers that the charged actions were either, not required, or excessive in cost. Paragraphs 2 and 18 of SIP 9 (Scotland) requires that payments claimed as remuneration or outlays should be appropriate and reasonable.

The Accountant considers that:

1. Where costs are incurred without reasonable justification then these costs cannot be claimed as outlays of the PTDs.

An example of this is the premium costs of an insurance policy taken out by the trustee for each debtor, for the purpose of paying the balance of any unpaid PTD contributions in the event of a debtor's death. This practice has been adopted for PTDs where there is no identified substantial risk to insure against and without adequate checks to ensure the policy is appropriate for each debtor.

The Accountant does not accept that this insurance is required and therefore, the premium costs are not appropriate and should not have been claimed as an outlay.

2. Where a cost incurred is deemed unreasonable for the work completed, the amount of the cost that can be claimed as an outlay of the PTD may be restricted.

An example of this may be courier costs. If a courier cost charged is deemed excessive, when compared to fees charged by other courier firms for similar transport of documents.

Where an outlay is identified that does not appear to have a reasonable justification, the Accountant shall seek further information from the trustee. If the Accountant is not satisfied that the outlay was appropriate and reasonable, the Accountant will audit the trustee's accounts and disallow, or reduce, the outlay. The trustee will then be required to reimburse the value of the expense to the debtor's estate.

Trustees are reminded that no cost should be applied as an outlay of a PTD unless it is appropriate and reasonable. No Category 2 disbursement cost can be drawn as an outlay, until the trustee has obtained the approval of the Accountant, or creditors. Paragraphs 18 to 21 of SIP 9 (Scotland) refer.

If the trustee has any doubt whether a cost they intend to incur during the trust deed administration can be categorised as a Category 1 or Category 2 disbursement, they should consult the Accountant and/or the creditors, prior to incurring that cost.

They should do this by writing to the Accountant and all creditors, providing them with full details of the action they propose to take and the expected cost to be incurred.

The information to be provided should include:

- the reason why the trustee believes the action and cost are necessary;
- how the cost has been determined;
- what will be the (potential) benefit for the creditors, against the cost of the action;
- details of the risk to the creditors if the action is approved/not approved;
- details of any third party who will be involved in the action to be taken, and
- the amount of any fee, commission, or interest that will be charged or paid, in respect of the action and the name of the associate who will receive this.

Once the creditors have been notified, their consent will be considered given if the trustee makes a declaration that the majority of creditors have acceded to, or are deemed as having acceded to, the action being taken. The cost may then to be drawn as an outlay of the PTD.

Where a trustee seeks the Accountant's opinion on the categorisation of a disbursement, a response will be supplied in writing, within 20 working days.

ACCOUNTANT IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

If the Accountant considers a trustee has incorrectly or inappropriately applied a cost as an outlay of a PTD, this matter may be reported to the trustee's recognised professional body.

Payments to associate companies and associates

Further to the Accountant's Dear Trustee letter dated 29 March 2017. The Accountant wishes to confirm and clarify that, although this letter makes reference only to associated companies, the principles and processes detailed in the Dear Trustee letter apply equally to any 'associate'. An 'associate' being any person or company so described in paragraph 24 of SIP 9 (Scotland).

Disclosure of a payment to an associate should be made in such a way that ensures the trustee is compliant with paragraph 8 of SIP 7.

I would be grateful if you could bring the content of this letter to the attention of all your staff who are involved in the set up and administration of your PTDs.

If you have any questions regarding the content of this letter, please contact Graeme Perry, Head of Operational Policy and Compliance, at: graeme.perry@aib.gsi.gov.uk or on: 0300 200 2713.

Yours faithfully

Graeme Perry
Head of Operational Policy and Compliance