

To Trustees & RPBs
By email only

Our Ref FC/OPC/PTDs2
Date 29 November 2016

Dear Trustee

Fiona Coyle's Dear Trustee letter of 14 July set out the Accountant's view that cases where the Trustee does not propose to realise equity in full were, by definition, a "non-standard arrangement." Where the financial circumstances of individual cases do not have appropriate grounds to justify this approach, the Accountant considers that non-realisation of equity is likely to breach the trust, and in particular, the trustee's duties to creditors. Creditors may be able to successfully challenge such arrangements if they are not in their best interests.

That letter reinforced the need, in any such cases in which this occurs, for relevant justification to be explained clearly in the notes box on Form 3 in order to provide transparency for creditors and to allow the Recognised Professional Bodies to determine whether Insolvency Practitioners have acted in accordance with SIP3.3.

The purpose of this letter is to give notice that, for Trust Deeds signed on or after 5 January 2017 where the Trustee does not propose to realise the equity in full, the Accountant will not grant protected status where the notes box on Form 3 fails to provide such a relevant justification. Rather, such Trust Deeds will be returned to allow an explanation to be provided. This will necessitate the Trust Deed being re-advertised and the revised Form 3 being recirculated to creditors, allowing them a further 5 weeks to accede or object to the proposal.

In order to satisfy this requirement, the following information should be included in the Form 3:

- The percentage of equity that is planned to be realised in the trust deed;
- Details of the exceptional circumstances of the case to explain why it is not appropriate to realise the full equity value;

- In cases where the debtor will make additional contributions in lieu of equity, the factors considered in fixing the duration of the additional contribution period;
- Where the trustee has investigated a re-mortgage that has not proved feasible, relevant details should be explained, including calculations; and
- Confirmation that it has not been possible to arrange a third-party buy-out to realise the equity.

In the Accountant's view, the explanation provided must be specific to the individual circumstances of the case, so a standard form of words is unlikely to be sufficient.

To be clear, the Accountant at this stage is not refusing to give protection to such trust deeds because of the nature of the arrangement proposed. Rather, the issue is ensuring full transparency for creditors in assessing what is put before them.

Trustees are reminded that if the Accountant believes that a trustee has acted inappropriately in an individual case, or multiple cases, a complaint may be made to the relevant RPB.

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 trust deeds.

Yours faithfully



Richard Dennis
Accountant in Bankruptcy and Agency Chief Executive