

All Trustees

Our Ref: FC/OPC

By email only

Date 6 July 2015

Dear Trustee

Form 3 - Negotiation of Trustee fee

The Accountant in Bankruptcy (the Accountant) has become aware of a number of trustees who are presenting trust deeds for protection where the majority creditor has objected to the Trust Deed becoming protected, due to the level of the Trustees fee. The Trustee has then negotiated directly with only the objecting creditor, reduced their fee and the creditor has subsequently agreed to the Trust Deed becoming protected.

The Accountant is concerned about transparency of this process and the purpose of this letter is to highlight that all creditors should be made aware of the amendment to the terms of the trust deed.

Previously, we asked the trustee to re-advertise the amended proposal, however, after consideration, we have reviewed this process. We will now consider proposals where negotiations have taken place between the trustee and creditors, however, we insist that an explanation of any negotiations, with regards to the reduction of fees, is provided when the Form 3 is submitted on ASTRA.

To ensure that all creditors understand that a revised position has been voted through, the trustee must issue a revised Form 3, following the protection of the trust deed, highlighting the newly agreed fee, so that creditors can measure future trustee performance on Form 4 against the improved position. This ensures transparency of the process to both creditors and negates the need for the Accountant in Bankruptcy to issue a direction under Regulation 19(1) of the Protected Trust Deed (Scotland) Regulations 2013.

The Trustee is reminded that should this process not be followed, the Accountant may have no alternative but to refer the matter to the sheriff court in terms of Regulation 28(1) of the Protected Trust Deed (Scotland) Regulations 2013, for a decision of the Court.



Yours faithfully

Fiona Coyle
Head of Operational Policy and Compliance