

To all Trustees
By email only

Our Ref GP/OPC/DT01/18

Date 4 May 2018

Dear Trustee

Applications to the Accountant in Bankruptcy (the Accountant) for recall of sequestration

1. Please bring the content of this Dear Trustee letter to the attention of all your staff who are involved in the administration of your bankruptcies.
2. Representatives from the insolvency recognised professional bodies (RPBs) have been consulted on the content of this Dear Trustee letter.
3. On notification that an application for recall has been made to the Accountant, trustees are reminded that they must prepare and submit to the Accountant a statement of the debtor's affairs before the expiry of 21 days, beginning with the day on which the notification was given. Section 32(3)(b) of The Bankruptcy (Scotland) Act 2016 ('the Act') refers.

A creditor list, detailing the names and addresses of creditors and the debt reference numbers, should also be submitted with the statement.

4. The trustee's statement must declare whether or not the trustee's fees and outlays (including any fees and outlays expected to be incurred) have been agreed by the debtor. Section 32(4) of the Act refers.

The Accountant will not accept the trustee's statement if it does not include this declaration.

5. If the trustee does not submit an acceptable statement within the prescribed 21 day time period, the trustee must obtain an order from the Accountant, in accordance with Section 212 of the Act, waiving the failure to comply with the 21 day time period, before they submit their statement.

6. A Section 212 application is made using [Form 1](#) to the Schedule to The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016.

7. If the debtor does not agree the trustee's fees and outlays, the trustee must, at the same time as submitting their statement to the Accountant, provide the Accountant with their accounts; any claim for remuneration and outlays (including anticipated remuneration and outlays); invoices in support of those outlays; detailed timesheets; the trustee's case and correspondence files and any other information the Accountant should be made aware of.

8. The Accountant will then issue a determination fixing the amount of outlays and remuneration payable to the trustee, in accordance with Section 33(3) of the Act.

9. Trustees should ensure that any contingency fees and outlays recorded in the accounts, for example, for distribution of funds and case closure action, can be justified, and that an explanation and calculation of the amount(s) claimed are submitted with the accounts.

10. The debtor should be advised that when the trustee's fees and outlays are not agreed and will be determined by the Accountant, the 17.5% determination fee will be charged and must be paid by the debtor as an outlay of the bankruptcy before recall can be granted.

11. If the trustee, or debtor, wishes the expenses of the petitioning creditor to be determined by the Accountant, this should be requested at the same time as the trustee's accounts are submitted for audit and evidence in support of the expenses provided, in accordance with section 33(4) of the Act.

12. When an application for recall is made, the trustee must notify every known creditor accordingly. This must be done either within seven days (if the trustee has applied for recall) or within seven days of notification (if another person has applied for recall). Section 32(5) of the Act refers.

13. If the notice to creditors is not issued within the prescribed statutory time period, the trustee must obtain an order from the Accountant, in accordance with Section 212 of the Act, waiving the failure to comply with the seven day time period, before they issue the notice to creditors.

14. Trustees should also be aware that statutory interest is not considered to form part of the debts that the debtor must pay as a condition of recall. Therefore, statutory interest should not be included in the total amount of the debtor's debts that the debtor must pay if recall is to be granted.

15. The Accountant's Notes for Guidance will be updated shortly to record the processes and requirements detailed in this Dear Trustee letter.

If you have any questions regarding the requirements and information that are detailed in this Dear Trustee letter, please contact Fiona Coyle, Head of Adjudication and Supervision, at: fiona.coyle@aib.gsi.gov.uk, or on 0300 200 2799.

Yours faithfully



Graeme Perry
Head of Operational Policy and Compliance