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STATUTORY INSTRUMENTS

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**2018 No. 1135**

**The Education Administration Rules 2018**

**PART 5**

**CLAIMS BY AND DISTRIBUTIONS TO CREDITORS**

**CHAPTER 1**

**Interpretation**

**Interpretation**

**5.1.**—(1) In this Part, the following definitions apply—

“debt” means (subject to the next paragraph) any of the following—

- (a) any debt or liability to which the further education body is subject at the relevant date;
- (b) any debt or liability to which the further education body may become subject after the relevant date by reason of any obligation incurred before that date;
- (c) any interest provable as mentioned in rule 5.23;

“dividend” includes a distribution;

“provable debt” is to be interpreted in accordance with rule 5.2;

“relevant date” means the date on which the further education body entered education administration; and

“small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A of Schedule 8 to the Act<sup>(1)</sup>).

(2) Any liability in tort is a debt provable in the education administration, if either—

- (a) the cause of action has accrued at the relevant date; or
- (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) It is immaterial whether a debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and reference to owing a debt are to be read accordingly.

(4) “Liability” means (subject to paragraph (2)) a liability to pay money or money’s worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

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(1) Paragraph 13A was inserted into Schedule 8 by section 131 of the Small Business, Enterprise and Employment Act 2015 (c. 26).

## CHAPTER 2

### Creditors' claims in education administration

#### Provable debts

**5.2.**—(1) All claims by creditors, except as provided in this rule, are provable as debts against the further education body, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) An obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(2) is not provable.

(3) The following claims are not provable until after all other claims of creditors have been paid in full with interest under rule 5.23—

- (a) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000(3), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.); and
- (b) a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed.

(4) Nothing in this rule prejudices any enactment or rules of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

#### Proving a debt

**5.3.**—(1) A creditor wishing to recover a debt must submit a proof to the education administrator unless this rule or an order of the court provides otherwise.

(2) A creditor is deemed to have proved for the purposes of determination and payment of a dividend but not otherwise where—

- (a) the debt is a small debt;
- (b) a notice has been delivered to the creditor of notice of intention to declare a dividend or make a distribution under rule 5.26 which complies with rule 5.27 and 5.28; and
- (c) the creditor has not advised the education administrator that the debt is incorrect or not owed in response to the notice.

#### Requirements for proof

**5.4.**—(1) A proof must—

- (a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) identify the further education body;
- (d) state the total amount of the creditor's claim (including any value added tax) as at the relevant date, less any payments made after that date in relation to the claim, any deduction under rule 5.20 and any adjustment by way of set-off in accordance with rule 5.24;
- (e) state whether or not the claim includes any outstanding uncapitalised interest;

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(2) [2002 c. 29](#). Relevant amendments are made by paragraph 75(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 ([c. 44](#)), Part 1 of Schedule 8 and paragraphs 1 and 2 of Schedule 14 to the Serious Crime Act 2007 ([c. 27](#)), and paragraphs 11 and 12 of the Schedule to the Prevention of Social Housing Fraud Act 2013 ([c. 3](#)).

(3) [2000 c. 8](#). Section 382 has been amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012 ([c. 21](#)).

- (f) contain particulars of how and when the debt was incurred;
- (g) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (h) provide details of any reservation of title in relation to goods to which the debt refers;
- (i) provide details of any document by reference to which the debt can be substantiated;
- (j) be dated and authenticated; and
- (k) state the name, postal address and authority of the person authenticating the proof (if someone other than the creditor).

(2) Where paragraph (1)(i) applies the document need not be delivered with the proof unless the education administrator has requested it.

(3) The education administrator may call for the creditor to produce any document or other evidence which the education administrator considers is necessary to substantiate the whole or part of any claim.

### **Costs of proving**

**5.5.** Unless the court otherwise orders—

- (a) each creditor bears the cost of proving for that creditor's own debt, including costs incurred in providing documents or evidence under rule 5.4(3); and
- (b) costs incurred by the education administrator in estimating the value of a debt under rule 5.14 are payable out of the assets as an expense of the education administration.

### **Allowing inspection of proofs**

**5.6.** The education administrator must, so long as proofs delivered to the education administrator are in the possession of the education administrator, allow them to be inspected, at all reasonable times on any business day, by the following—

- (a) a creditor who has delivered a proof (unless the proof has been wholly rejected for the purposes of dividend or otherwise or withdrawn);
- (b) a member or contributory of the further education body;
- (c) a person acting on behalf of any of the above.

### **Admission and rejection of proofs for dividend**

**5.7.—(1)** The education administrator may admit or reject a proof for dividend (in whole or in part).

(2) If the education administrator rejects a proof in whole or in part, the education administrator must deliver to the creditor a statement of the reasons for doing so, as soon as reasonably practicable.

### **Appeal against decision on proof**

**5.8.—(1)** If a creditor is dissatisfied with the education administrator's decision under rule 5.7 in relation to the creditor's own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under rule 5.7(2).

(3) A member, a contributory, or any other creditor may, if dissatisfied with the education administrator's decision admitting or rejecting the whole or any part of a proof or agreeing to revalue

a creditor's security under rule 5.15, apply to the court for the decision to be reversed or varied within 21 days of becoming aware of the education administrator's decision.

(4) The court must fix a venue for the application to be heard.

(5) The applicant must deliver notice of the date and venue to the creditor who delivered the proof in question (unless it is the applicant's own proof) and the education administrator.

(6) The education administrator must, on receipt of the notice, file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under rule 5.7(2).

(7) After the application has been heard and determined, a proof which was submitted by the creditor in hard copy form must be returned by the court to the education administrator.

#### **Education administrator not liable for costs under rule 5.8**

**5.9.** The education administrator is not personally liable for costs incurred by any person in respect of an application under rule 5.8 unless the court otherwise orders.

#### **Withdrawal or variation of proof**

**5.10.—**(1) A creditor may withdraw a proof at any time by delivering a written notice to the education administrator.

(2) The amount claimed by a creditor's proof may be varied at any time by agreement between the creditor and the education administrator.

#### **Exclusion of proof by the court**

**5.11.—**(1) The court may exclude a proof or reduce the amount claimed—

- (a) on the education administrator's application, where the education administrator thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, a contributory, or a member, if the education administrator declines to interfere in the matter.

(2) Where an application is made under paragraph (1), the court must fix a venue for the application to be heard.

(3) The applicant must deliver notice of the venue—

- (a) if the applicant is the education administrator, to the creditor who submitted the proof;
- (b) if the applicant is a creditor, a contributory, or a member, to the education administrator and to the creditor who made the proof (if not the applicant).

#### **Debts of further education bodies to rank equally**

**5.12.** Debts of further education bodies other than preferential debts rank equally between themselves and, after preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

#### **Division of unsold assets**

**5.13.—**(1) This rule applies to any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold.

(2) The education administrator may with agreement of the creditors divide the property in its existing form among the further education body's creditors according to its estimated value.

### **Estimate of value of debt**

**5.14.**—(1) The education administrator must estimate the value of a debt that does not have a certain value because it is subject to a contingency or for any other reason.

(2) The education administrator may revise such an estimate by reference to a change of circumstances or to information becoming available to the education administrator.

(3) The education administrator must inform the creditor of the education administrator's estimate and any revision.

(4) Where the value of a debt is estimated under this rule, or by the court under section 168(3) or (5), the amount provable in the case of that debt is that of the estimate for the time being.

### **Secured creditor: value of security**

**5.15.**—(1) A secured creditor may, with the agreement of the education administrator or the permission of the court, at any time alter the value which that creditor has put upon a security in a proof.

(2) Where a secured creditor has voted in respect of the unsecured balance of the debt—

(a) the secured creditor may re-value the security only with the agreement of the education administrator or the permission of the court; and

(b) where the revaluation was by agreement, the education administrator must deliver a notice of the revaluation to the creditors within five business days after the education administrator's agreement.

### **Secured creditor: surrender for non-disclosure**

**5.16.**—(1) If a secured creditor fails to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

### **Secured creditor: redemption by education administrator**

**5.17.**—(1) The education administrator may at any time deliver a notice to a creditor whose debt is secured that the education administrator proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the education administrator may allow) in which to alter the value of the security in accordance with rule 5.15.

(3) If the creditor alters the value of the security with the agreement of the education administrator or the court then the education administrator may only redeem at the new value.

(4) If the education administrator redeems the security the cost of transferring it is payable as an expense out of the estate.

(5) A creditor whose debt is secured may at any time deliver a notice to the education administrator requiring the education administrator to elect whether or not to redeem the security at the value then placed on it.

(6) The education administrator then has three months in which to redeem the security or elect not to redeem the security.

### **Secured creditor: test of security's value**

**5.18.**—(1) If the education administrator is dissatisfied with the value which a secured creditor puts on a security in the creditor's proof, the education administrator may require any property comprised in the security to be offered for sale.

(2) The terms of sale is to be as agreed between the education administrator and the secured creditor, or as the court may direct.

(3) If the sale is by auction, the education administrator, on behalf of the further education body or the estate, and the creditor may bid.

(4) This rule does not apply if the value of the security has been altered with the court's permission.

### **Realisation or surrender of security by creditor**

**5.19.**—(1) If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the education administrator)—

(a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and

(b) the creditor may prove for the balance of the creditor's debt.

(2) A creditor who voluntarily surrenders a security may prove for the whole of the creditor's debt as if it were unsecured.

### **Discounts**

**5.20.** All trade and other discounts (except a discount for immediate or early settlement) which would have been available to the further education body or the debtor but for the education administration proceedings must be deducted from the claim.

### **Debts in foreign currency**

**5.21.**—(1) A proof for a debt incurred or payable in a foreign currency must state the amount of the debt in that currency.

(2) The education administrator must convert all such debts into sterling at a single rate for each currency determined by the education administrator by reference to the exchange rates prevailing on the relevant date.

(3) On the next occasion when the education administrator communicates with the creditors, the education administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the education administrator is unreasonable may apply to the court.

(5) If, on hearing the application, the court finds that the rate is unreasonable it may itself determine the rate.

### **Payments of a periodical nature**

**5.22.**—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the relevant date.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have been due at that date, if accruing from day to day.

## Interest

**5.23.**—(1) Where a debt proved in education administration proceedings bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) In the circumstances set out in this rule, the creditor’s claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(4) If the debt is due otherwise, interest may only be claimed if demand for payment of the debt was made in writing by or on behalf of the creditor and notice was delivered that interest would be payable from the date of the demand to the date of payment before the relevant date.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and, for the purposes of the Act and these Rules, must be charged at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838(4) on the relevant date.

(7) In an education administration—

- (a) any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;
- (b) all interest payable under sub-paragraph (a) ranks equally whether or not the debts on which it is payable rank equally; and
- (c) the rate of interest payable under sub-paragraph (a) is whichever is the greater of the rate specified in paragraph (6) and the rate applicable to the debt apart from the education administration.

## Mutual dealings and set-off

**5.24.**—(1) This rule applies where the education administrator intends to make a distribution and has delivered a notice under rule 5.26.

(2) An account must be taken as at the date of the notice of what is due from the further education body and a creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the education administration.

(4) If there is a balance owed to the further education body that must be paid to the education administrator as part of the assets.

(5) However if all or part of the balance owed to the further education body results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under rule 5.41) if and when that debt becomes due and payable.

(6) In this rule—

“obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

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(4) 1838 c. 110. Section 17 was amended by the Statute Law Revision (No. 2) Act 1988 (c. 57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c. 59) and article 3(c) of S.I. 1998/3132.

“mutual dealings” means mutual credits, mutual debts or other mutual dealings between the further education body and a creditor proving or claiming to prove for a debt in the education administration but does not include any of the following—

- (a) a debt arising out of an obligation incurred after the further education body entered education administration;
  - (b) a debt arising out of an obligation incurred at a time when the creditor had notice that an application for an education administration order was pending;
  - (c) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
    - (i) after the further education body entered education administration, or
    - (ii) at a time when the creditor had notice that an application for an education administration order was pending.
- (7) A sum must be treated as being due to or from the further education body for the purposes of paragraph (2) whether—
- (a) it is payable at present or in the future;
  - (b) the obligation by virtue of which it is payable is certain or contingent; or
  - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (8) For the purposes of this rule—
- (a) rule 5.14 applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;
  - (b) rules 5.21 to 5.23 apply to sums due to the further education body which—
    - (i) are payable in a currency other than sterling,
    - (ii) are of a periodical nature, or
    - (iii) bear interest; and
  - (c) rule 5.41 applies to a sum due to or from the further education body which is payable in the future.

## CHAPTER 3

### Distribution to creditors

#### **Application of Chapter to particular class of creditors and to distributions**

**5.25.**—(1) This Chapter applies where the education administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors in an education administration, a reference in this Chapter to creditors is a reference to that class of creditors only.

#### **Individual notices to creditors etc of intended dividend or distribution**

**5.26.**—(1) Where the education administrator intends to make a distribution to creditors or declare a dividend, the education administrator must deliver a notice of that intention to all the creditors in the education administration.

(2) Where the intended dividend is only for preferential creditors, the education administrator is only required to deliver such a notice to the preferential creditors.



(3) Where the education administrator intends to declare a dividend to unsecured creditors, the notice must also state the value of the prescribed part or that the court has made an order under section 176A(5) of the Act.

### **Contents of notice of intention to declare a dividend or make a distribution**

**5.27.** A notice under 5.26 must contain the following—

- (a) a statement that the education administrator intends to make a distribution to creditors or declare a dividend (as the case may be) within the period of two months from the last date for proving;
- (b) a statement whether the proposed distribution or dividend is interim or final;
- (c) the last date by which proofs may be delivered which must be—
  - (i) the same date for all creditors who prove, and
  - (ii) not less than 21 days from the date of the notice;
- (d) a statement of the place to which proofs must be delivered; and
- (e) the additional information required by rule 5.28 where the education administrator intends to treat a small debt as proved for the purposes of paying a dividend.

### **Further contents of notice to creditors owed small debts etc.**

**5.28.—**(1) The education administrator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the further education body, as if it were proved for the purposes of paying a dividend.

(2) Where the education administrator intends to treat such a debt as if it were proved, the notice delivered under rule 5.26 must also—

- (a) state the amount of the debt which the education administrator believes to be owed to the creditor according to the accounting records or statement of affairs of the further education body;
- (b) state that the education administrator will treat the debt which is stated in the notice, being for £1,000 or less, as proved for the purposes of paying a dividend unless the creditor advises the education administrator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the education administrator by the last date for proving if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the education administrator that the amount of the debt is incorrect the creditor must also submit a proof to receive a dividend.

(3) The information required by paragraph (2)(a) may take the form of a list of small debts which the education administration intends to treat as proved which includes the debt owed to the particular creditor upon whom the notice is being delivered.

### **Gazette notice of intended first dividend or distribution**

**5.29.—**(1) Subject to paragraphs (2) and (4) where the education administrator intends to declare a first dividend or distribution, the education administrator must gazette a notice containing—

- (a) a statement that the education administrator intends to declare a first dividend or distribution;
- (b) the date by which and place to which proofs must be delivered.

(2) Where the intended dividend is only to preferential creditors, the education administrator need only gazette a notice if the education administrator thinks fit.

(3) The education administrator may in addition advertise such a notice in such other manner (if any) as the education administrator thinks fit.

(4) Paragraph (1) does not apply where the education administrator has previously, by a notice which has been gazetted, invited creditors to prove their debts.

#### **Admission or rejection of proofs following last date for proving**

**5.30.**—(1) Unless the education administrator has already dealt with them, the education administrator must within 14 days of the last date for proving set out in the notice under rule 5.26—

- (a) admit or reject (in whole or in part) proofs delivered to the education administrator; or
- (b) make such provision in relation to them as the education administrator thinks fit.

(2) The education administrator is not obliged to deal with a proof delivered after the last date for proving, but the education administrator may do if the education administrator thinks fit.

(3) In the declaration of a dividend a payment must not be made more than once by virtue of the same debt.

#### **Postponement or cancellation of dividend**

**5.31.**—(1) The education administrator may postpone or cancel the dividend in the period of two months from the last date for proving if an application is made to the court for the education administrator's decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

(2) The education administrator may postpone a dividend if the education administrator considers that, due to the nature of the affairs of the further education body to which the education administration relates, there is real complexity in admitting or rejecting proofs of claims submitted.

(3) Where the dividend is postponed or cancelled a new notice under rule 5.26 will be required if the dividend is paid subsequently.

#### **Declaration of dividend**

**5.32.**—(1) The education administrator must declare the dividend in the two month period referred to in rule 5.27(a) in accordance with the notice of intention to declare a dividend unless the education administrator has had cause to postpone or cancel the dividend.

(2) The education administrator must not declare a dividend so long as there is pending an application to the court to reverse or vary a decision of the education administrator on a proof, or to exclude a proof or to reduce the amount claimed unless the court gives permission.

(3) If the court gives such permission, the education administrator must make such provision in relation to the proof as the court directs.

#### **Notice of declaration of a dividend**

**5.33.**—(1) Where the education administrator declares a dividend, the education administrator must deliver notice of that fact to all creditors who have proved for their debts (subject to paragraph (5)).

(2) The notice declaring a dividend may be delivered at the same time as the dividend is distributed.

(3) The notice must include the following in relation to the education administration proceedings—

- (a) the amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) the payments made by the education administrator in carrying out the education administrator's functions;
- (c) the provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (d) the total amount to be distributed and the rate of dividend; and
- (e) whether, and if so when, any further dividend is to be expected.

(4) Where the education administrator intends to make a distribution to unsecured creditors, the notice must also state the value of the prescribed part unless there is no prescribed part or the court has made an order under section 176A(5).

(5) Where the education administrator declares a dividend for preferential creditors only, the notice under paragraph (1) need only be delivered to those preferential creditors who have proved for their debts.

#### **Notice of no dividend or no further dividend**

**5.34.**—(1) This rule applies where the education administrator is unable to declare any dividend or (as the case may be) any further dividend.

(2) Where this rule applies, the education administrator must deliver a notice, containing a statement to the effect that either—

- (a) no funds have been realised; or
- (b) the funds realised have already been distributed or used or allocated for paying the expenses of the education administration.

(3) The information required by paragraph (2) may be contained in a progress report.

#### **Sole or final dividend**

**5.35.**—(1) Where it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under rule 5.26, the education administrator must—

- (a) pay any outstanding pre-administration expenses;
- (b) pay any items payable in accordance with the provisions of paragraph 99 of Schedule B1(5);
- (c) pay any amount outstanding (including debts or liabilities and the education administrator's own remuneration and expenses) which would, if the education administrator were to cease to be the education administrator of the further education body, be payable out of the property of which the education administrator had custody or control in accordance with the provisions of paragraph 99 of Schedule B1; and
- (d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(2) The reference in paragraph (1)(d) to debts that have not been proved does not include small debts treated as proved by the education administrator.

(3) The court may, on the application of any person, postpone the date specified in the notice delivered under rule 5.26.

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(5) Paragraph 99 was amended by paragraph 27 of Schedule 6 to the Deregulation Act 2015 (c. 20).

### **Provisions as to dividends**

**5.36.** In the calculation and distribution of a dividend, the education administrator must make provision for—

- (a) any debts which are the subject of claims which have not yet been determined; and
- (b) any disputed proofs and claims.

### **Supplementary provisions as to dividends**

**5.37.—**(1) A creditor is not entitled to disturb the payment of any dividend or the making of any distribution because—

- (a) the amount claimed in the creditor’s proof is increased after payment of the dividend; or
- (b) the creditor did not prove for a debt before the declaration of the dividend.

(2) However the creditor is entitled to be paid a dividend or receive a distribution which the creditor has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(3) Such a dividend must be paid or distribution made before that money is applied to the payment of any further dividend or the making of any further distribution.

(4) If, after a creditor’s proof has been admitted, the proof is withdrawn or excluded, or the amount of it is reduced, the creditor is liable to repay to the education administrator, for the credit of the further education body’s estate, any amount overpaid by way of dividend.

### **Secured creditors**

**5.38.—**(1) The following applies where a creditor alters the value of a security after a dividend has been declared.

(2) If the alteration reduces the creditor’s unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the education administrator, for the credit of the further education body’s estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) If the alteration increases the creditor’s unsecured claim, the creditor is entitled to receive from the education administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

### **Disqualification from dividend**

**5.39.** If a creditor contravenes any provision of the Act or these Rules relating to the valuation of securities, the court may, on the application of the education administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

### **Assignment of right to dividend**

**5.40.—**(1) If a person entitled to a dividend (“the entitled person”) delivers notice to the education administrator that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the education administrator must pay the dividend to that other person accordingly.

(2) A notice delivered under this rule must specify the name and address of the person to whom payment is to be made.

### **Debt payable at future time**

**5.41.**—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, the creditor is entitled to the dividend equally with other creditors, but subject as follows.

(2) For the purpose of the dividend (and no other purpose) the amount of the creditor's admitted proof must be discounted by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- (a) “X” is the value of the admitted proof; and
- (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due, expressed in years (part of a year being expressed as a decimal fraction of a year).

### **Non payment of dividend**

**5.42.**—(1) No action lies against an education administrator for payment of a dividend.

(2) However, if the education administrator refuses to pay a dividend the court may, if it thinks just, order the education administrator to pay it and also to pay, out of the education administrator's own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

### **Reporting distribution of property to creditors under rule 5.13**

**5.43.**—(1) This rule applies where there has been a distribution of property to creditors under rule 5.13.

(2) In any account or summary of receipts and payments which is required to be included in a notice or report prepared under a rule listed in paragraph (3), the education administrator must—

- (a) state the estimated value of the property divided among the creditors of the further education body during the period to which the account or summary relates; and
  - (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—
- (a) rule 3.13 (progress reports); and
  - (b) rule 6.2 (notice of intention to resign).