

## SIO supervisor guidelines



### What you need to know

The information in these guidelines is of a general nature. The guidelines are designed to assist supervisors by providing general details of the legal framework and the Official Assignee's expectations of supervisors. The Guidelines are not intended to be a manual on how to supervise a Summary Instalment Order.

In addition to using these guidelines, supervisors must refer to the Insolvency Act 2006 and the Personal Insolvency Regulations 2007 and are expected to be fully aware of the relevant provisions in them.

Any reference to days in this document is working days.

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## Role of a Summary Instalment Order Supervisor

Anyone wanting to apply to be a supervisor of a Summary Instalment Order should be competent in the ability to administer a Summary Instalment Order and the ability to be impartial.

## Where can I apply to become a Summary Instalment Order Supervisor?

[Read how to apply to become a SIO supervisor.](#)

## Criteria for entering into a Summary Instalment Order

**(See Insolvency Act 2006 Sections 343)**

To apply for a Summary Instalment Order, debtors' unsecured debts (excluding any student loan balance) should not be more than \$40,000<sup>1</sup>. Debtors' should not be in a position to be able to repay their debts immediately. Proposals should include a statement from the debtor / intended supervisor of the advantages to creditors if the proposal is accepted. This statement needs to be sufficiently detailed to address all creditors concerns and therefore reduce the number of objections that may be received.

<sup>1</sup>This amount may be varied biannually by the Governor-General by Order in Council to take account of increases of the Consumer Price Index. Any change will be recorded on our website.

## Before a Summary Instalment Order is made

**(See Insolvency Act 2006 Sections 341, 342, 353 & 354 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, regulations 44, 45, 46, 53)**

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## Who can file a Summary Instalment Order and how?

A Summary Instalment Order application can be filed by either a debtor or a creditor (with the debtor's consent). A Summary Instalment Order application must be accompanied by a correctly completed statement of affairs. Where an application is made electronically (from 03/12/07), a copy of the application will either be downloaded by the applicant or sent by the Official Assignee's office to the applicant for his/her signature and the application will not be considered by the Official Assignee until the signed verification statement is received. Debtors wanting assistance in completing their statement of affairs can phone our Business Service Centre on 0508 467 658 to make an appointment for assistance completing their statement of affairs. Debtors can also register and log in to our website (from 03/12/07) to complete statements of affairs online. If the statement of affairs is not completed correctly it will be rejected which will slow down the processing period.

## How are creditors notified of an application for a Summary Instalment Order?

Once the Official Assignee has received an acceptable application for a Summary Instalment Order, the application will be assessed by the Official Assignee within 10 working days. Should the application be accepted the nominated supervisor and debtor will be advised by the Official Assignee. The applicant then has to send notice to all creditors and guarantors listed in the application advising them of the application. Supervisors may send notification on the applicant's behalf. A copy of the notification to creditors and guarantors must be sent to the Official Assignee and can be emailed to the Official Assignee at [sio@insolvency.govt.nz](mailto:sio@insolvency.govt.nz) or sent to Private Bag 4714, Christchurch. A summary of the debtor's statement of affairs and proposal must be attached to the notification to creditors. The notice to creditors and guarantors must include the following information:

- Details of proposed supervisor and whether they will be using the Official Assignee's trust account.
- Summary Instalment Order proposal
- Reasons in support
- Creditors details
- Asset details
- Set out objection process and actual date that objections must be received.

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## How long does a creditor or the debtor have to object to a proposed Summary Instalment Order application?

A creditor or a debtor can lodge an objection within 10 working days of the date of notice advising them that an application has been made. Objections should be lodged with the Official Assignee either by post to Official Assignee, Private Bag 4714, Christchurch or email to [sio@insolvency.govt.nz](mailto:sio@insolvency.govt.nz).

## **What if the Official Assignee receives an objection to a proposed Summary Instalment Order application?**

Objections received by the Official Assignee will be dealt with within 15 working days of receipt. If additional information is required to enable the Official Assignee to make a decision, the Official Assignee will request additional information be provided within 7 days of request. If additional information requested is not received, the objection may be rejected. Those affected by the Official Assignee's decision will be notified.

## **Can a second application be made for a Summary Instalment Order?**

If the Official Assignee rejects an application for a Summary Instalment Order a new application can be made at anytime if the reason for rejection/termination of the previous application no longer exists. Each application is assessed on its' merits.

## **When is the Summary Instalment Order made?**

If the Official Assignee does not receive any objections to the making of the proposed Summary Instalment Order the order may be made on the next working day after the objection period has finished. If objections have been received but they are rejected by the Official Assignee, the Summary Instalment Order will be made after the objection period has finished and the objections received have been rejected.

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## **Once the Summary Instalment Order has been made**

**(See Insolvency Act 2006 Section 353 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulation 47)**

### **Who is notified once a Summary Instalment Order is made?**

Once a Summary Instalment Order is made the Official Assignee will notify the debtor and the Supervisor. The Official Assignee will also list the debtor on the public register of persons who are currently subject to a Summary Instalment Order. The Supervisor is responsible for notifying all creditors and this should be done within 15 working days of the date of issue of the order, a notice should also be sent to the Official Assignee.

Supervisors should include in their notice details of how a creditor accesses the Official Assignee's website to lodge a claim. Information on how to register as a creditor and how to register a claim online is available from our

website: <http://www.insolvency.govt.nz/cms/creditor-information/how-do-i-file-a-claim>

## **Creditors' claims**

**(See Insolvency Act 2006 Section 356 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulation 48, 49, 50, 52)**

### **When should creditors' submit their claim?**

Creditors are required to submit to the supervisor a creditors claim form within 15 working days of receiving the notification of the Summary Instalment Order from the supervisor. If a supervisor is using the Official Assignee's trust account creditors will be able to lodge their claim online through our website.

### **How should supervisors deal with interest on debts?**

Interest should not accrue after the date of the Summary Instalment Order and cannot be included in a creditor's claim. Should a Summary Instalment Order be terminated, then the creditor can continue to charge interest from the date of the order.

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### **How should supervisors deal with joint debts?**

If a supervisor is dealing with two individual Summary Instalment Orders where each debtor shares a joint creditor, the joint debt should be admitted for the full amount of the debt in each Summary Instalment Order. For example, Mr and Mrs Smith have a joint debt of \$20,000. The debt should be admitted in Mr Smith's Summary Instalment Order for \$20,000 and admitted in Mrs Smith's Summary Instalment Order for \$20,000. The Supervisor should monitor the distribution from each Summary Instalment Order, when the debt has been repaid to the creditor in full, the claim should be withdrawn by the creditor from each Summary Instalment Order. This ensures that the creditor does not receive more funds than they are due.

Supervisors using the Official Assignee's trust account will have payments of joint debts monitored for them. Joint debts are admitted for the full amount in each Summary Instalment Order because the debtor is jointly and severally liable and the creditor has the right to claim the full amount of the debt from each debtor.

## **What if admitting a joint debt for the full amount in each individual Summary Instalment Order makes the total debts exceed \$40,000?**

If admitting a joint debt for the full amount in each individual Summary Instalment Order makes the total debts for one or both of the debtors exceed \$40,000 the debtor / supervisor can approach the joint creditor. An agreement may be reached with the joint creditor to submit a claim for 50%<sup>2</sup> of the debt in each individual Summary Instalment Order to enable the debtors to make application for Summary Instalment Orders. However, if one of the Summary Instalment Orders failed the joint creditor would not be able to make a claim for the failed share of the debt in the remaining Summary Instalment Order. Therefore, joint creditors may be reluctant to submit claims at less than their full value.

<sup>2</sup> or other % as agreed.

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## **What if a supervisor rejects a creditor's claim?**

Supervisors should try to resolve disputes about claims before a claim is formally rejected. Supervisors should send the Official Assignee a copy of any notices sent to creditors rejecting claims. Supervisors must notify creditors of their right to appeal in their rejection notice. If agreement cannot be reached between the supervisor and the creditor then the creditor can appeal to the Official Assignee. Any appeal by a creditor of the rejection of their claim (either in whole or in part) by the supervisor should be made to the Official Assignee within 15 working days of notification of the rejection. The Official Assignee will subsequently notify the debtor and the supervisor of the appeal against the supervisor's decision to reject the claim. The Official Assignee will invite the supervisor, debtor and the creditor to make representations within 15 working days in relation to the rejection of the claim. The Official Assignee will then make a decision on the matter and notify all parties of the decision of the review. For general rights of appeal see section 226 of the Insolvency Act 2006.

## **What if a creditor objects to a Supervisor accepting a claim from another creditor?**

If a creditor objects to a Supervisor accepting the claim of another creditor, the Supervisor and creditors should try to resolve the dispute. If agreement cannot be reached between the supervisor and the creditor, the creditor can appeal to the Official Assignee. Appeals objecting to the acceptance of a creditors claim will be dealt with by the Official Assignee in the same way as appeals against rejection.

## **What if a creditor submits a claim after the making of a Summary Instalment Order?**

### **Debts incurred before Summary Instalment Order**

Where late claims are received in relation to debts incurred before the Summary Instalment Order was granted, they may only be admitted by the supervisor as part of the Summary Instalment Order if it is accepted by the supervisor and if the claiming creditor is not at fault (for example, if the creditor was not listed in the Summary Instalment Order application by the debtor). Any distributions made to creditors already part of the Summary Instalment Order would not be overturned. The supervisor will need to apply to the Official Assignee to have the Summary Instalment Order varied to include the additional creditor. Once the Summary Instalment Order is varied the additional creditor must receive back payments as funds allow them to bring their dividends to the same level as creditors already in the Summary Instalment Order.

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### **Debts incurred after Summary Instalment Order**

Where claims are received that relate to debts that have been incurred after the order was made, those claims may be accepted by the supervisor and the new creditor(s) can be included in the administration of the order of the debtor. The supervisor will need to apply to the Official Assignee to have the Summary Instalment Order varied to include the new creditor(s). However, no dividends will be paid to these creditors until all the existing creditors whose debts were incurred prior to the date of the initial order have been paid. Supervisors must ensure

creditors are told this.

## **Instalments**

**(See Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulation 62)**

### **When should the debtor pay their first instalment to the Supervisor?**

The debtor should make payment of their first instalment to the supervisor within 5 working days of the Summary Instalment Order being made by the Official Assignee.

### **How should instalments be paid to the supervisor?**

The amount required by the debtor as a regular instalment must be paid directly into the Official Assignee's trust account or an account nominated by the supervisor by means of an electronic payment. Details of the nominated bank account will be specified as part of the Summary Instalment Order.

### **Where should instalments be paid?**

A supervisor must bank all funds received from the debtor within 5 working days of receipt into -

a) The Official Assignee's trust account.

Or, only after satisfactory terms in relation to a bond have been agreed to:

b) An account in the joint names of the debtor and the supervisor.

The account must be held at a registered trading bank in New Zealand. If a supervisor elects not to use the Official Assignee's trust account they must bear the costs of any bank fees.[Top](#)

## **Defaulted Instalments**

Supervisors using the Official Assignee's trust account will be notified of any instalment default within 5 working days of the instalment due date. The supervisor is then responsible for investigating the default, recovering the missed payment and dealing with any application to vary/terminate the Summary Instalment Order where appropriate.

Supervisors not using the Official Assignee's trust account are required to advise the Official Assignee of instalment defaults. If a debtor defaults on an instalment and the supervisor is able to resolve the matter, (i.e. the debtor makes the defaulted instalment within a time period agreed by the supervisor and before the next distribution to creditors is due,) the supervisor need not advise the Official Assignee of the default. If the defaulted payment is not paid by the debtor before the next instalment to creditors is due, the supervisor must notify the Official Assignee. If a debtor defaults an instalment a second time during the term of their Summary Instalment Order then the supervisor must notify the Official Assignee providing details of any previous defaults and action taken by the supervisor to resolve the matter. If a debtor regularly defaults in paying instalments the Official Assignee will terminate the Summary Instalment Order whether requested to or not by the supervisor.

## **Dealing with assets included in a Summary Instalment Order**

### **How should supervisors deal with assets included in a Summary Instalment Order?**

The role of a supervisor may include dealing with assets included in a Summary Instalment Order. A debtor's assets do not vest in the supervisor or the Official Assignee. However, the supervisor has the authority to supervise the debtor's compliance with the terms of the Summary Instalment Order, including the sale of any assets included in the order. If a debtor has included assets as part of their Summary Instalment Order the supervisor must oversee the sale of the assets and ensure the security of the asset.

- Assets included in a Summary Instalment Order must be sold within 1 month of the Summary Instalment Order being made, unless other sale conditions are specified in the order. If assets are not sold within 1 month the Supervisor must notify the Official Assignee.
- Assets must be insured at the cost of the debtor until they are sold.

- Proceeds from the sale of assets must be deposited to the Supervisor's nominated account within 5 working days of their receipt.
- If the terms in the Summary Instalment Order relating to the sale of assets cannot be met, variation should be sought. Creditors then have the option to make application to the Official Assignee for the Summary Instalment Order to be terminated

Supervisors consenting to supervisor a debtor's Summary Instalment Order which includes the sale of assets must ensure assets have been valued realistically by the debtor.

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## **Distributions**

**(See Insolvency Act 2006 Section 358 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulation 63)**

### **How and when should distributions be made to creditors?**

#### **Supervisor using the Official Assignee's trust account**

If the Official Assignee's trust account is being used the Official Assignee will prepare all distributions and seek supervisors' approval before disbursing funds.

#### **Supervisor not using Official Assignee's trust account (only after satisfactory terms in relation to a bond have been agreed)**

Payments should be made to creditors every four months unless the Summary Instalment Order states otherwise. However, where any dividend (other than a final dividend) payable to a creditor is less than \$20, the supervisor may retain that dividend and any subsequent dividends less than \$20 until such time as the accumulated sum equals or exceeds \$20, at which time they can then be paid to the creditor.

All payments made from the account must be by cheque or electronic transfer, no cash withdrawals are to be made.

## **Accounts and Records**

**(See Insolvency Act 2006 Section 347 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulation 60)**

### **What records should be kept by a supervisor?**

Unless directed otherwise by the Official Assignee the supervisor must keep in either manual or electronic form;

#### **Supervisor using the Official Assignee's trust account**

The supervisor must keep a register of all Summary Instalment Order agreements administered by them and all correspondence relating to the Summary Instalment Orders – plus evidence verifying the amount of each admitted claim and copies of all correspondence.

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#### **Supervisor not using Official Assignee's trust account (only after satisfactory terms in relation to a bond have been agreed)**

- Details of creditors – name, address, amount claimed, amount admitted and amount paid to date.
- Evidence verifying the amount of each admitted claim.
- A cash book.
- An estate ledger account.
- Copies of bank statements
- A register of all Summary Instalment Order agreements administered by them.
- Copies of all correspondence.

### **When must supervisor provide accounts and have them audited?**

When requested by the Official Assignee a supervisor must within 10 working days provide a statement of receipts and payments summarising all transactions on account of the debtor along with a schedule showing how much each individual creditor was owed and how much they have been paid.

The Official Assignee may appoint an auditor to audit the supervisor's records or statement of receipts and payments or audit them himself. The auditor may be a member of the Official Assignee's staff or a contracted person.

The supervisor must provide all records requested by the Official Assignee or the appointed auditor within 10 working days of any request being made.

Any costs incurred by the supervisor in relation to an audit are not to be passed on to the debtor or the creditors and must be borne by the supervisor. E.g. the costs incurred in obtaining duplicate copies of bank statements.

Failure to comply may result in a supervisor being suspended from administering summary instalment orders.

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## **Varying Summary Instalment Orders**

**(See Insolvency Act 2006 Section 350 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulations 51, 57, 58)**

### **What if the Summary Instalment Order needs to be varied?**

An application to vary a Summary Instalment Order can be made by the debtor, any creditor or supervisor. If a Summary Instalment Order needs to be varied, application should be made to the Official Assignee in writing clearly stating the reasons for and details of what is to be varied. If the variation of the Summary Instalment Order would detrimentally affect the interests of the creditors e.g. lengthen the term of the order, or reduce the amount creditors will receive, all affected parties should be notified of the application with reasons why the Summary Instalment Order should be varied. Affected parties will have 10 working days from the date of notification to object to the variation. If the Official Assignee consents to the variation the supervisor must notify creditors.

## **Discharge of Summary Instalment Order**

**(See Insolvency Act 2006 Section 350 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulations 57, 58, 61)**

### **Supervisor not using Official Assignee's trust account (only after satisfactory terms in relation to a bond have been agreed)**

Supervisors not using the Official Assignee's trust account must give notice to the Official Assignee of the discharge of the Summary Instalment Order within 20 working days of the Summary Instalment Order being discharged. The supervisor must also provide the Official Assignee with a statement of receipts and payments showing amounts received and paid under the Summary Instalment Order. Any excess money in a Supervisor's account at the completion of a Summary Instalment Order that represents funds due to creditors should be paid to the Inland Revenue Department and addressed to Unclaimed Money, Inland Revenue Department, PO Box 895, Wellington. Any other surplus funds can be paid to the debtor.

## **Fees and remuneration**

**(See Insolvency Act 2006 Section 358 and Insolvency (Personal Insolvency) Regulations 2007 Part 5, Regulation 64)**

### **What filing fees are charged for a Summary Instalment Order?**

There is no upfront fee. However an application fee of \$102.22(GST inclusive) per order applies. This fee is to be paid to the Official Assignee as a first charge on funds received pursuant to the order and must be paid to the Official Assignee by the supervisor before they pay any commission, or dividends to creditors.

- For supervisors using the Official Assignee's trust account this charge will be deducted as part of the distribution calculations.

The fee should be sent to the Official Assignee either:

1. by cheque made payable to Official Assignee, Private Bag 4714, Christchurch

2. by direct credit to our trust account, Official Assignee, The National Bank, 06 0501 0636146 02: The bank transfer should record the Summary Instalment Order file number in the reference field, the debtors name in the particulars field and "application fee" in the details field.

(Please note supervisors must make it clear when sending fees which Summary Instalment Order the fee is for so the Official Assignee can identify deposits. Name and unique identification number details must be supplied with each fee being sent).

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## **What remuneration can be charged by a Summary Instalment Order supervisor?**

A supervisor may charge a debtor remuneration for carrying out his or her duties at an amount or rate fixed by regulation. The current rate a Supervisor may charge is 7.5% of funds recovered. Supervisors are not able to charge additional fees above this rate.

If a supervisor does not want to charge remuneration they must notify the Official Assignee when they consent to administering the Summary Instalment Order.

Supervisors using the Official Assignee's trust account must either take the full 7.5% commission or no commission. It is not acceptable to request to take a lesser commission rate. If a Supervisor wants to charge less than 7.5% they should advise the Official Assignee to charge 7.5% then repay any additional commission they did not want to charge back into the trust account. Any commission paid back into the trust account would be redistributed at the next distribution date. On the final distribution the correct commission rate will be calculated.

NB. Supervisors must note that their fee can only be taken as a % of funds actually received. The amount of the total estimated fee cannot be taken from the first distribution.

## **What remuneration will be charged by the Official Assignee?**

The Official Assignee will charge a debtor remuneration at a current rate of 2.5% of funds recovered. This will be applied towards covering the Official Assignee's costs in relation to administering summary instalment orders.

- For supervisors using the Official Assignee's trust account this charge will be deducted as part of the distribution calculations.
- If a supervisor is using their own account they will need to calculate and pay the Official Assignee the 2.5% every time a distribution is made and send to the Official Assignee either:
  1. by cheque made payable to Official Assignee, Private Bag 4714, Christchurch
  2. by direct credit to our trust account, Official Assignee, The National Bank, 06 0501 0636146 02: The bank transfer should record the Summary Instalment Order file number in the reference field, the debtors name in the particulars field and "commission" in the details field.

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## **What if a Supervisor cannot carry out the term of Summary Instalment Order?**

If a Supervisor is unable to finish the term of a Summary Instalment Order, a replacement Supervisor should be approached to supervise the remaining term of the Summary Instalment Order and the debtor asked to consent to the appointment of the replacement supervisor. An application should be made to the Official Assignee requesting the original Supervisor's appointment be terminated and the replacement Supervisor be appointed. The debtor's consent to the appointment of the replacement Supervisor should be provided with the application. The Official Assignee will notify both Supervisors and the debtor if the application is accepted. The Summary Instalment Order does not need to be varied when a new Supervisor is appointed. However, the newly appointed Supervisor must notify creditors of their appointment.

## **What if a Supervisor is unable to deal with a distribution when it's due?**

If a Supervisor is aware they will be unable to deal with a distribution when it's due. E.g. Supervisor is away on holiday. The Supervisor should notify the Official Assignee, debtor and creditors providing reasons for the distribution delay and details of when the distribution will be made. The Official Assignee will either consent to an extension of time to pay the distribution or, more likely, agree to it being paid early.

Supervisors using the Official Assignee's trust account will be advised when distribution calculations provided by the Official Assignee's office need to be authorised. Supervisors will be able to authorise distribution calculations by accessing the Official Assignee's website from anywhere that has internet access.

## **Debts with the Inland Revenue Department**

When a debtor is experiencing serious hardship or financial difficulties they can apply to the Inland Revenue to be considered for relief from payment of a debt. Any application by a debtor to the Inland Revenue should be made before submitting their application to the Official

Assignee for a Summary Instalment Order. The debtor should approach their local Inland Revenue Department office for this. If a debtor has a preferential debt with the Inland Revenue they should also contact the Inland Revenue before submitting their application for a Summary Instalment Order. There are no provisions for preferential claims in Summary Instalment Orders, the Inland Revenue may surrendered their preference and agree to the Summary Instalment Order application or they may object to the application.

We are liaising with Inland Revenue Department to be able to provide supervisors with specific contact details to use when the Inland Revenue Department is a creditor. These guidelines will be updated when an address is available.

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## **General right of appeal**

**(See Insolvency Act 2006 Section 226)**

If a creditor and supervisor cannot reach agreement over a claim then the creditor should first appeal to the Official Assignee.

A person whose interests, monetary or otherwise have been detrimentally affected by an act or decision made by the Official Assignee may apply to the High Court to reverse or modify the act or decision. Application should be made to the court nearest to where the debtor lives within 15 days of the act or decision.

## **How do supervisors get their details on the Official Assignee's website?**

Supervisors who are currently administering summary instalment orders are given the opportunity to be listed on our website for potential debtors to contact them. If you would like to be included on the list on our website then when you complete a consent to act for a Summary Instalment Order, tick the box on the consent form stating 'I would like to be added to the list of SIO Supervisor'. It is not compulsory to have your details on our website.

## **How can supervisors liaise with the Official Assignee?**

Email us at [sio@insolvency.govt.nz](mailto:sio@insolvency.govt.nz)