

## The Insolvency Act 1986

**Administrator's progress report****2.24B**

Name of Company C.H. Brannam Limited	Company number 00136499
In the High Court of Justice, Chancery Division, Companies Court (full name of court)	For court use only 3594 of 2005

(a) Insert full name(s) and address(es) of administrators

We (a) Andrew Gordon Stoneman and Jason James Godefroy of Menzies Corporate Restructuring, 43-45 Portman Square, London, W1H 6LY,

Administrator(s) of the above company attach a progress report for the period

From

To

(b) Insert date

(b) 1 December 2005

(b) 31 May 2006

Signed

Joint Administrator

Dated

26-6-06

**Contact Details:**

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searches of the public record

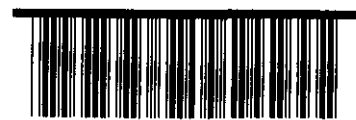
Menzies Corporate Restructuring  
43-45 Portman Square  
London  
W1H 6LY

Tel: 020 7487 7240

When you have completed and signed this form please send it to the Registrar of Companies at:

Companies House, Crown Way, Cardiff CF14 3UZ

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288  
28/06/2006

DX 33050 Cardiff

**C.H. Brannam Limited  
(In Administration)**

**Progress Report to Creditors  
Pursuant to Rule 2.47 (1) of the  
Insolvency Rules 1986 as amended**

**26 June 2006**



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**Names of Joint Administrators:** Andrew Gordon Stoneman  
Jason James Godefroy

**Date of appointment:** 1 June 2005

**Date of report:** 26 June 2006

**Appointed by:** Close Invoice Finance Limited  
Southbrook House  
26 Bartholomew Street  
Newbury  
Berkshire  
RG14 5LL

**Menzies Corporate Restructuring**  
43-45 Portman Square  
London  
W1H 6LY

## **1. INTRODUCTION**

- 1.1 Andrew Gordon Stoneman and Jason James Godefroy of Menzies Corporate Restructuring ("MCR") were appointed Joint Administrators of C.H. Brannam Limited ("CHB" and "the Company") on 1 June 2005 by Close Invoice Finance Limited ("CIFL"), the holder of a qualifying floating charge under Paragraph 14 of Schedule B1 to the Insolvency Act 1986. The appointment documents were filed at the High Court (Court number 3594 of 2005).
- 1.2 In accordance with Paragraph 100(2) of Schedule B1 of the Insolvency Act 1986 the functions of the Joint Administrators are being exercised jointly and severally.
- 1.3 The purpose of this report is to provide creditors with details on the progress of the Administration, in accordance with Rule 2.47(1) of the Insolvency Rules 1986.
- 1.4 This report should be read in conjunction with the Joint Administrators' earlier reports to creditors dated 25 July 2005 and 20 December 2005.

## **2. BACKGROUND**

- 2.1 CHB was incorporated on 18 June 1914. Statutory information on the Company and a summary of its financial position is included within Appendix 1.
- 2.2 The Company operated as a distributor of predominantly pottery items. More recently, the Company imported garden products from Europe and the Far East to service its customers.
- 2.3 The main cause of the Company's failure was the impact on turnover levels by a fall in demand from its customers and a reduction in margins as a result of pricing pressures from major customers, together with the Company's failure to obtain planning consent to enable part of the site to be sold to raise monies to fund working capital requirements. Please refer to the Joint Administrators' proposals dated 25 July 2005 for further details.
- 2.4 The purpose of an Administration is to achieve the following hierarchical objective:
  - Rescuing the Company as a going concern, or
  - Achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration), or
  - Realising property in order to make a distribution to one or more secured or preferential creditors.
- 2.5 In accordance with Paragraph 49(2)(b) of Schedule B1 to the Insolvency Act 1986, the Joint Administrators advise that they have been successful in achieving the second of the above objectives.



### **3. ASSET REALISATIONS**

- 3.1 The manner in which the affairs and business of the Company have been managed since the appointment of Joint Administrators and will continue to be managed and financed are set out below.
- 3.2 As set out in the Joint Administrators' earlier report, the decision was taken to continue to trade CHB on a reduced scale, and to pursue a strategy of attempting to sell the business as a going concern. The Joint Administrators secured a going concern sale of the business and assets on 15 July 2005 to SR Newco 1 Limited. Please refer to the Joint Administrators' report dated 25 July 2005 for further details regarding the sale.
- 3.3 As a result of the decision to trade the CHB business on, the Joint Administrators have now successfully realised the vast majority of CHB's book debts. Further details are set out below.
- 3.4 During the Administration trading period, the Joint Administrators invoiced the sum of £670,842 excluding VAT. The sum of £646,786 excluding VAT has been collected. As advised in our previous report, Active Receivables Management Limited ("Active") were appointed by the Joint Administrators to act as debt collection agents. No further realisations are anticipated from the Joint Administrators' sales.

#### **Book Debts**

- 3.5 The book debts are subject to an invoice discounting agreement with CIFL. At the date of the Joint Administrators' appointment the Company's outstanding sales ledger was approximately £1,732,000. As set out in the Joint Administrators' earlier reports, it was estimated that the sum of CHB's collectable book debts would be of the order of £1,275,000. The sum of £1,284,258 has been collected. No further realisations are anticipated from the Company's book debts.

#### **Other Realisations**

- 3.6 Sundry receipts totalling £13,465 have been received during the Administration.
- 3.7 Bank interest of £869 and £3,583 has accrued during the Administration to date.

#### **Receipts and Payments**

- 3.8 Attached at Appendix 2 is the Joint Administrators' Receipts and Payments Account for the period 1 June 2005 to 26 June 2006.

### **4. CREDITORS' MEETING**

- 4.1 You will recall from our previous report that pursuant to Paragraph 52(1) of Schedule B1 to the Insolvency Act 1986, a creditors' meeting was not required to be held as there will be insufficient assets to enable a distribution to unsecured creditors, other than from the prescribed part (if any).
- 4.2 No meeting was convened and in accordance with Rule 2.33(5) of the Insolvency Rules 1986 the Administrators' proposals were deemed to have been approved by creditors.



**5. INVESTIGATION**

- 5.1 The directors conduct report was submitted to the Insolvency Practitioners Compliance Unit on 27 September 2005.

**6. DIVIDEND PROSPECTS / PRESCRIBED PART**

**Secured Creditors**

**Close Invoice Finance Limited**

- 6.1 As at the date of the Joint Administrators' appointment, the Company's indebtedness to CIFL was approximately £900,000, subject to accruing interest and charges.
- 6.2 CIFL have now been repaid in full.

**Lloyds Bank PLC**

- 6.3 As at the date of the Joint Administrators' appointment, the Company's indebtedness to Lloyds Bank PLC ("LB") was approximately £4,126,555, subject to accruing interest and charges.
- 6.4 It is currently anticipated that LB will suffer a shortfall in respect of its indebtedness.

**Preferential Creditors**

- 6.5 Pursuant to the directors' Statement of Affairs, the estimated preferential claims are £81,000. These are currently being adjudicated upon.
- 6.6 It is anticipated that there will be sufficient funds available to enable a distribution to preferential creditors.
- 6.7 It is likely that a significant element of the preferential claim will be subrogated to the Secretary of State, following payment by the Redundancy Payments Office.

**Prescribed Part**

- 6.8 It is currently anticipated that there will be insufficient funds available to form a prescribed part to distribute to non-preferential creditors.
- 6.9 The availability of a prescribed part will be primarily dependent upon the sum realised for the Company's freehold property located at Roundswell Industrial Estate, Barnstaple, Devon ("the Property").
- 6.10 As detailed in my earlier reports, LB holds a fixed charge over the Property. LB has appointed Mr Andrew Hughes and Mr Julian Smith of Alder King, Bristol to act as Law of Property Act Receivers over the Property and to dispose of it on its behalf.
- 6.11 It is anticipated that LB will suffer a shortfall on its indebtedness and as a result it appears unlikely that the Company will benefit from any sale of the Property.
- 6.12 It is therefore unlikely that there will be sufficient funds available to fund a distribution to the non-preferential creditors by way of a prescribed part.

- 6.13 In the Joint Administrators' progress report dated 20 December 2005, it was confirmed that Alder King had set a deadline for offers of 14 December 2005 and that a number of offers were being reviewed. An offer was accepted in January 2006. However, the terms of this offer were subsequently amended by the offeror and Alder King took the decision to reject the offer.
- 6.14 LB subsequently decided to fund the work associated with the forthcoming planning inquiry in respect of the Property, scheduled for 27 June 2006.
- 6.15 We understand that Alder King have now entered into an option agreement with a party in respect of the Property. The Joint Administrators are currently liaising with Alder King in order to establish whether there are likely to be any surplus funds available to the Company following the sale of the Property. The Joint Administrators understand that the prospect of any surplus is minimal.

#### **Non-Preferential Creditors**

- 6.16 According to the directors' Statement of Affairs, non-preferential creditors total £4,063,976. The non-preferential creditors can be summarised as follows:

	£
Trade & Expense Creditors	3,202,948
HM Customs & Excise	374,495
Inland Revenue	223,620
Directors	15,000
English Tourist Board Grant	Uncertain
Operating / finance leases	247,913
<b>Total</b>	<b>4,063,976</b>

- 6.17 Based upon the current information available, there will not be sufficient realisations to enable a distribution to the non-preferential creditors of the Company, other than from the prescribed part, if any.

#### **7. ADMINISTRATORS' REMUNERATION**

- 7.1 In accordance with Rule 2.106(5A) of the Insolvency Rules 1986, the Joint Administrators' remuneration was approved by the secured creditors, CIFL and LB and the preferential creditors of the Company. The Joint Administrators' remuneration is fixed by reference to the time properly given by them and their staff in attending to matters arising in the Administration.
- 7.2 The Joint Administrators' time costs for the period 1 June 2005 to 26 June 2006 total £428,572. An analysis of these time costs is set out at Appendix 3.
- 7.3 During the period 1 June 2005 to 26 June 2006, £387,899 has been drawn by the Joint Administrators' in respect of these costs.
- 7.4 A creditors guide to Administrators' fees is attached to the report at Appendix 4.





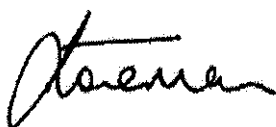
**8. EXTENSION OF ADMINISTRATION**

- 8.1 In accordance with paragraph 76(2)(b) of Schedule B1 to the Insolvency Act 1986, the Joint Administrators obtained the consent of CIFL and LB as the secured creditors and the preferential creditors, to allow the term of the administration to be extended by a period of six months.
- 8.2 The extension was necessary so that the Joint Administrators can now quantify the benefit to the Company, if any, of the sale of the Property. This will become clearer once a contract in relation to the sale of the Property has been entered into. The extension was also required to allow the Joint Administrators further time to adjudicate upon the claims of the preferential creditors of the Company prior to making any dividend distribution to the preferential creditors.

**9. CONCLUSION**

- 9.1 The Joint Administrators shall be continuing to progress the Administration and will report to you further by 1 December 2006.

Should you require further information or assistance, please do not hesitate to contact my colleague David Daniels in the first instance.



**Andrew Stoneman**  
Joint Administrator

Enc.



## **APPENDIX 1**

### **Statutory Information**

## STATUTORY INFORMATION

**Date of Incorporation** 18 June 1914

**Registered Number** 00136499

**Company Directors**  
Mr S Fox  
Mr C Dagger  
Mr M Neal  
Mr G Shaw

**Company Secretary** Mr M Neal

<b>Shareholders</b>	Mr C Dagger	Ms S Kent-Bassett
	Ms C Elworthy	Ms L Grant
	Mr B Fox	Ms O Hogan
	Ms M Fox	Mr N Kent
	Mr S Fox	Mr G Shaw
	Mr W Fox	Mr K Whitehead

**Trading Address**  
Roundswell Industrial Estate  
Barnstaple  
Devon  
EX31 3NJ

<b>Registered Office</b>	Current:	Formerly:
	43-45 Portman Square London W1H 6LY	Roundswell Industrial Estate Barnstaple Devon EX31 3NJ

<b>Financial Information</b>	6 Month Period Ended 31 Mar 2005 (Mgt) £	Year Ended 30 Sept 2004 (Mgt) £	Year Ended 30 Sept 2003 (Draft) £	9 Month Period Ended 30 Sept 2002 (Audited) £
Turnover	2,637,476	11,407,588	16,271,145	16,565,132
Gross Profit	469,588	2,850,530	4,087,372	4,079,283
Retained loss for the year	(925,978)	(1,230,905)	(944,743)	(165,813)

## **APPENDIX 2**

### **Receipts and Payments Account**

**C.H. Brannam Limited**  
(In Administration)  
**Joint Administrators' Receipts And Payments Account**  
**For the Period 1 June 2005 to 26 June 2006**

<b>RECEIPTS</b>	<b>Total (£)</b>
Sales	645,420.45
Sales Suspense Account	1,365.07
Sundry Receipts	11,883.94
Shop Sales	3,326.38
Goodwill	25,000.00
Book Debts	1,275,813.61
Book Debt Suspense Account	8,445.36
Gross Bank Interest - Fixed Account	868.68
Plant & Machinery	70,000.00
Motor Vehicles	44,995.00
Stock	200,000.00
Work In Progress	1.00
Bank Interest Gross	3,582.90
Seller's Records	1.00
Shareholding in Chinese Subsidiary	1.00
Propriety Software	1.00
Intellectual Property	1.00
Utilities Refund	27.46
Sundry Refund	1,553.42
VAT Payable	74,960.93
General VAT Control Account	22,212.39
Fixed Charge VAT Control Account	2,641.53
	<hr/>
	2,392,102.12

<b>PAYMENTS</b>	
Purchases (1)	190,648.21
IT Services - Trading	1,220.45
Haulage	105,318.61
Duty and Freight Costs	38,411.34
Direct Labour	51,894.39
Labour - Monthly Salaries	43,032.39
Insurance	2,000.00
Lease/HP Payments	5,235.03
Hire of Equipment	1,055.00
Repairs & Maintenance	2,738.18
Sundry Expenses	851.70
Vehicle Running Costs	357.30
Stationery	169.72
Employee Wage Deductions	333.20
Fuel Costs	4,000.00
Petty Cash	5,300.00
Outsourced Labour	7,206.09
Courier Costs	965.00
Pension Contributions	5,286.73
Security	956.67
Employee Expenses	1,722.60
Disposal of Damaged Stock	164.50
Utilities	6,732.09
Legal Fees - Fixed (1)	12,250.00
Agents/Valuers Fees - Fixed	4,594.50
Distribution To Lloyds TSB Bank Plc	6,000.00
Distribution To Close Invoice Finance	930,664.75
Debt Collection Costs - Fixed	53,150.00
Close Invoice Finance Charges - Fixed	81,362.78
Professional Fees - Pensions	600.00
Professional Fees - Insurance	1,500.00
Insurance of Assets	17,515.82
Storage Costs	225.00
Legal Disbursements - floating	18.87
Debt Collection Costs - Floating	30,000.00
Preparation of Statement of Affairs	3,000.00
Joint Administrators' Remuneration	387,899.00
Joint Administrators' Disbursements	22,875.08
PR Consultancy Fees	2,600.00
Agents/Valuers Fees - Floating	33,388.69
Legal Fees - Floating	26,398.89
Sale of Business Advert	2,160.00
IT Services - Other	2,128.50
Employee Consultant Services	1,100.00
Statutory Advertising	85.59
Close Invoice Finance Charges - Flt	23,346.58
PAYE & NI	20,879.71
Bank Charges	951.00
VAT Receivable	97,173.32
Fixed Charge VAT Receivable	2,641.53
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	2,240,108.81

Balance	<u>151,993.31</u>
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**MADE UP AS FOLLOWS**

Fixed Bank Account	31,605.62
Floating Bank Account	120,387.69
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	151,993.31

Note: The above figures are subject to further reconciliation

**APPENDIX 3**  
**Analysis of Time Costs**

# C. H. Brannam Limited (In Administration)

## Analysis of Joint Administrators' time costs for the period 1 June 2005 to 26 June 2006

Classification of Work Function	Hours					Total Hours	Time Cost	Average Hourly Rate
	Partner	Manager	Senior	Assistants	Support			
Trading - operations	46.67	334.57	279.37	299.27		959.87	157,415.83	164.00
General admin	1.00	104.63	157.53	292.83	3.10	559.10	68,902.33	123.24
Sale of business	54.37	128.00	24.40	18.33		225.10	56,132.17	249.37
Strategy planning & control	22.17	43.00	39.80	51.00		155.97	28,355.67	181.81
Book debts	23.50	40.70	26.60	0.40		91.20	23,297.50	255.46
General correspondence		28.30	14.13	91.33	47.47	181.23	16,251.17	89.67
Cashiering & accounting	0.30	0.90	47.60	39.20	0.30	88.30	12,085.00	136.86
Trading - accounting		10.70	35.50	50.30		96.50	11,920.00	123.52
Statutory meetings & reports	2.00	27.10	22.93	5.53		57.57	11,564.00	200.88
Employee matters		8.30	31.10	26.60		66.00	9,030.00	136.82
Reporting to appointor	18.50					18.50	6,290.00	340.00
CDDA reports		10.50	11.80	17.40		39.70	5,818.00	146.55
Unsecured creditors		3.60	12.67	37.20		53.47	5,397.17	100.94
Financial review	10.33	2.00	0.50			12.83	4,128.33	321.69
Fixed charge assets	9.67					9.67	3,286.67	340.00
Proposals	8.00					8.00	2,720.00	340.00
Retention of title		0.60	7.60	1.40		9.60	1,589.50	165.57
Floating charge assets		3.60	1.00			4.60	1,033.00	224.57
Statement of affairs		0.70	1.60	7.70		10.00	903.00	90.30
Meetings		2.33	0.53	0.87		3.73	760.00	203.57
Preferential creditors			2.67	1.80		4.47	614.67	137.61
IPS set up & maintenance		0.30	1.10	5.00		6.40	590.50	92.27
Secured Creditors		1.00	1.30			2.30	487.50	211.96
<b>Total Hours</b>	<b>196.50</b>	<b>750.83</b>	<b>719.73</b>	<b>946.17</b>	<b>50.87</b>	<b>2,664.10</b>	<b>428,572.00</b>	<b>160.87</b>
<b>Total Fees Claimed (£)</b>	<b>66,820.00</b>	<b>182,125.67</b>	<b>121,111.50</b>	<b>57,485.50</b>	<b>1,029.33</b>		<b>428,572.00</b>	

## Analysis of category 2 disbursements

Classification of Work Function	Details of Payee	£
Payroll Services	Menzies Chartered Accountants	1,100.00
Debt Collection	Active Receivables Management	83,150.00
<b>Total</b>		<b>84,250.00</b>

## **APPENDIX 4**

### **Creditors' Guide to Administrator's Fees**



## MENZIES CORPORATE RESTRUCTURING

### PROFESSIONAL FEES – SIP 9

MCR's mission statement is "to provide clients with an outstanding service based on technical excellence, effective problem solving and the highest level of client care". It provides a quality, partner led service and takes compliance with insolvency legislation and best practice guidance seriously.

This guide to our fees has been produced to provide creditors with information required by best practice guidance. We recommend that this guidance is read in conjunction with the note entitled "A Creditors Guide to Administrators Fees", which is attached.

At MCR we seek to recover fees on time cost basis. Set out below are our firm's hourly rates, with effect from 1 January 2006, excluding VAT:

	£
Insolvency Practitioner Partners	350
Managers	215 - 270
Supervisors	145 - 200
Assistants/Support staff	20 - 105

Other specialists may be called upon from within Menzies Chartered Accountants with hourly rates at between £50 and £250 per hour. Work undertaken to review and reclaim corporation tax prior to the appointment of administrators, when undertaken by Menzies Chartered Accountants, is charged as a percentage of realisations. The rate usually applied is 10%.

In addition, we occasionally use an associated business, Active Receivables Management Limited to assist with the collection of book debts and other matters that the officeholders deem necessary. Depending upon the complexity and difficulties with the debtor records, work is undertaken on a basis of a percentage of realisations. The rate usually applied is 10% plus VAT and expenses.

As previously stated, MCR prides itself on the quality of work undertaken. With that in mind, we would invite creditors to consider the following points:

1. In our financial year to 30 June 2005, if we divide the fees charged by hours available by staff and partners, we achieved an average rate of remuneration of £65.73 per hour.
2. Our own standards mean that we undertake an investigation into the affairs of all companies in liquidation irrespective of the level of realisations that will be achieved.
3. Time costs are not fully recovered in all cases undertaken. The practice has to meet its own overheads and those associated with an insolvent state irrespective of when fees are available from a particular case. We endeavour to allocate tasks to staff with the appropriate skills and at an appropriate charge-out rate.
4. Expenses and disbursements incurred by MCR in dealing with the administration of insolvent estates are discharged as a practice overhead out of fee income. This means that there are no hidden costs for recharging the use of internal meeting rooms, document storage and other services provided by the firm.
5. For the avoidance of doubt, direct costs relating to the administration of an estate are recovered if funds permit. These include, where applicable, advertising, travel expenses and expense claims by MCR staff where they are obliged to work away from the office. MCR only seeks to recover the costs of printing, room hire and document storage provided by external suppliers.

## **A CREDITORS' GUIDE TO ADMINISTRATORS' FEES**

**Where Petition Presented or Appointment Made On or After 15 September 2003**

### **ENGLAND AND WALES**

#### **1 Introduction**

- 1.1 When a company goes into administration the costs of the proceedings are paid out of its assets. The creditors, who hope eventually to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's fees. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor fees and explains the basis on which fees are fixed.

#### **2 The nature of administration**

- 2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the following objective:

- rescuing the company as a going concern, or
- achieving a better result for the creditors as a whole than would be likely if the company were wound up without first being in administration,

or, if the administrator thinks neither of these objectives is reasonably practicable

- realising property in order to make a distribution to secured or preferential creditors.

#### **3 The creditors' committee**

- 3.1 The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is normally established at the meeting of creditors which the administrator is required to hold within a maximum of 10 weeks from the beginning of the administration to consider his proposals. The administrator must call the first meeting of the committee within 6 weeks of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide information about the exercise of his functions.

#### **4 Fixing the administrator's fees**

- 4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.106 of the Insolvency Rules 1986, which states that it shall be fixed either:

- as a percentage of the value of the property which the administrator has to deal with, or
- by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration.

It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is fixed as a percentage fix the percentage to be applied. Rule 2.106 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the administrator;
- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;

- the value and nature of the property which the administrator has to deal with.
- 4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as the committee would. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.
- 4.3 There are special rules about creditors' resolutions in cases where the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the reserved fund which may have to be set aside out of floating charge assets.

In this case, if there is no creditors' committee, or the committee does not make the requisite determination, the remuneration may be fixed by the approval of –

- each secured creditor of the company; or
- if the administrator has made or intends to make a distribution to preferential creditors –
  - each secured creditor of the company; and
  - preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval,

having regard to the same matters as the committee would.

Note that there is no requirement to hold a creditors' meeting in such cases unless a meeting is requisitioned by creditors whose debts amount to at least 10 per cent of the total debts of the company.

- 4.4 A resolution of creditors may be obtained by correspondence.

## **5 What information should be provided by the administrator?**

### **5.1 When seeking fee approval**

- 5.1.1 When seeking agreement to his fees the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:
- the nature of the approval being sought;
  - the stage during the administration of the case at which it is being sought; and
  - the size and complexity of the case.
- 5.1.2 Where, at any creditors' or committee meeting, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.
- 5.1.3 Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the

professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

- 5.1.4 Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff.

## **5.2 After fee approval**

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 5.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 5.1.4 above regarding work which has been sub-contracted out.

## **5.3 Expenses and disbursements**

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such

expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## **6 What if a creditor is dissatisfied?**

- 6.1 If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

## **7 What if the administrator is dissatisfied?**

- 7.1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid as an expense of the administration.

## **8. Other matters relating to fees**

- 8.1 Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.
- 8.2 If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.

## **9. Provision of information – additional requirements**

In any case where the administrator is appointed on or after 1 April 2005 he must provide certain information about time spent on a case, free of charge, upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- the total number of hours spent on the case by the administrator or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the administrator's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the administrator, and requests must be made within two years from vacation of office.