

Rule 2.46

Form 2.23B

The Insolvency Act 1986

Notice of result of meeting of creditors

2.23B

Name of Company:
Gemflex Engineering Limited

Company number:
02582669

In the:
Derby County Court

[full name of court]

Court case number:
31 of 2006

(a) Insert full name(s) and
address(es) of the
administrator(s)

We, (a) Peter A Blair of Begbies Traynor, Regency House, 21 The Ropewalk, Nottingham NG1 5DU
and Richard A B Saville of Begbies Traynor, Regency House, 21 The Ropewalk, Nottingham NG1 5DU

* Delete as applicable

hereby report that *a meeting / ~~an adjourned~~ meeting of the creditors of the above company was held at

(b) Insert place of meeting

(b) The Strathdon Hotel, Derby Road, Nottingham, NG1 5FT on (c) 29 November 2006 at which:-

(c) Insert date of meeting
* Delete as applicable

*1. Proposals / ~~revised proposals~~ were approved.

*2. Proposals / ~~revised proposals were modified and approved.~~

The modifications made to the proposals are as follows:

(d) Give details of the
modifications (if any)

(d)

*3. ~~The proposals were rejected.~~

*4. ~~The meeting was adjourned to (e) on~~

(e) Insert time and date of
adjourned meeting

*5. ~~Other resolutions: (f)~~

(f) Details of other resolutions

The revised date for automatic end to administration is _____

*Delete as applicable

A creditors' committee ~~*was~~ / was not formed.

Signed: _____

Joint / Administrator(s)

Dated: _____

29.11.06

*Delete as applicable

A copy of the *original proposals / ~~modified proposals / revised proposals~~ is attached for those who did not receive such documents prior to the meeting.

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 searchers of the public record

Begbies Traynor

Regency House, 21 The Ropewalk, Nottingham, NG1 5DU

Tel Number: 0115 941 9899

Fax Number: 0115 945 4845



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12/12/2006

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COMPANIES HOUSE

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

Companies House, Crown Way, Cardiff, CF14 3UZ

DX 33050 Cardiff

TUESDAY

Peter A Blair and Richard A B Saville appointed Joint Administrators on 26 September 2006

The affairs, business and property of the Company are being managed by the Joint Administrators, who act as the Company's agents.

Gemflex Engineering Limited (In Administration)

Report and Proposals of the Joint Administrators under the provisions of Paragraph 49 of Schedule B1 to the Insolvency Act 1986

Contents

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1. INTERPRETATION

<u>Expression</u>	<u>Meaning</u>
“the Company”	Gemflex Engineering Limited - In Administration
“the administration”	The appointment of administrators under Schedule B1 of the Insolvency Act 1986 on 26 September 2006
“the Joint Administrators”	Peter A Blair of Begbies Traynor, Regency House, 21 The Ropewalk, Nottingham NG1 5DU and Richard A B Saville of Begbies Traynor, Regency House, 21 The Ropewalk, Nottingham NG1 5DU
“the Act”	The Insolvency Act 1986, as amended
“the Rules”	The Insolvency Rules 1986, as amended
“the creditors”	All preferential creditors and all unsecured creditors
“preferential creditor”	Any creditor of the Company whose claim is preferential within Section 386 of the Insolvency Act 1986 as at 26 September 2006 being the date the Company entered administration.
“unsecured creditor”	Any person (other than a preferential creditor) who has, or claims to have, any claim against the Company (whether the claim be present, future or contingent or prospective and whether liquidated or for damages and whether arising in contract or tort or otherwise) in connection with or arising from any matter occurring prior to 26 September 2006.

2. STATUTORY INFORMATION

Date of Incorporation:	14 February 1991
Company registered number:	02582669
Registered office:	Regency House, 21 The Ropewalk, Nottingham, NG1 5DU
Trading address:	Unit 4 Cossall Industrial Estate, Coronation Road, Ilkeston Derbyshire DE7 5UA
Principal business activities:	Manufacture other fabricated metal products
Trading names:	N/A
Directors:	Peter Keith Hatfield George Michael Statham Darren Keith Rodgers (resigned 14 July 2006)
Company Secretary:	Mrs Sandra Fretwell
Auditors:	UHY Hacker Young
Share capital:	10,000 Ordinary A £1 shares 150,000 Ordinary B £1 shares 100,000 Ordinary C £1 shares
Shareholders:	Mr P K Hatfield 7,000 Ordinary A £1 shares 25,000 Ordinary C £1 shares Mr G M Statham 1,500 Ordinary A £1 shares 25,000 Ordinary C £1 shares Mr D K Rodgers 1,500 Ordinary A £1 shares 25,000 Ordinary C £1 shares Mr C Norwicki 75,000 Ordinary B £1 shares Mr M Norwicki 75,000 Ordinary B £1 shares Mrs G E Hatfield 25,000 Ordinary C £1 shares

3. DETAILS OF APPOINTMENT OF ADMINISTRATORS

Names of Joint Administrators:	Peter A Blair, Partner and Licensed Insolvency Practitioner of Begbies Traynor, Regency House, 21 The Ropewalk, Nottingham NG1 5DU and Richard A B Saville, Partner and Licensed Insolvency Practitioner of Begbies Traynor, Regency House, 21 The Ropewalk, Nottingham NG1 5DU
Date of administrators' appointment:	26 September 2006
Court:	Derby County Court 31 of 2006
Person making appointment / application:	Mr Peter K Hatfield
Acts of the Joint Administrators:	The Joint Administrators act as officers of the court and as agents of the Company without personal liability. Any act required or authorised under any enactment to be done by an administrator may be done by any one or more persons holding the office of administrator from time to time.
EC Regulation on Insolvency:	The EC Regulation on Insolvency Proceedings (Council Regulation (EC) No. 1346/2000) applies to these proceedings which are 'main proceedings' within the meaning of Article 3 of the Regulation.

STATUTORY PURPOSE OF ADMINISTRATION

Paragraph 3 of Schedule B1 to the Act provides as follows:

- “3 (1) The administrator of a company must perform his functions with the objective of:
- (a) rescuing the company as a going concern, or
 - (b) 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
 - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to subparagraph (4), the administrator of a company must perform his functions in the interests of the company’s creditors as a whole.
- (3) The administrator must perform his functions with the objective specified in subparagraph (1)(a) unless he thinks either:
- (a) that it is not reasonably practicable to achieve that objective, or
 - (b) that the objective specified in subparagraph (1)(b) would achieve a better result for the company’s creditors as a whole.
- (4) The administrator may perform his functions with the objective specified in subparagraph (1)(c) only if:
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in subparagraph (1)(a) and (b), and
 - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole.”

4. CIRCUMSTANCES GIVING RISE TO THE APPOINTMENT OF ADMINISTRATORS

The Company, which manufactured various metal products, started trading in 1991. In 2004, the Company faced financial pressures but was saved by the current directors who achieved a management buyout. The directors raised finance by re-mortgaging their homes and obtaining a bank loan, which was guaranteed by Leen Gate Engineering Co. Limited who hold a debenture over the assets of the Company.

The Company traded from three separate leasehold premises on Cossall Industrial Estate, Ilkeston. Since 2004, the Company has seen the cost of steel, its main raw material, increase, along with utility costs and wages. At the same time, customers have put pressure on the Company to lower their prices to remain competitive with overseas manufacturers. One customer made up approximately 50% of the Company’s orders and had put the Company under the price pressure mentioned above.

The management accounts for the period ending 31 August 2006 showed that the Company had made a trading loss before tax of approximately £307,000. The directors had made attempts to find ways to downscale operations but had been unsuccessful.

In view of the Company's financial position, the directors were faced with four options:

- To trade on without an insolvency procedure;
- To request Leen Gate Engineering Co. Limited or The Royal Bank of Scotland Invoice Finance Limited to appoint Administrative Receivers under the terms of their mortgage debenture;
- To cease trading and to place the Company into Creditors Voluntary Liquidation;
- To apply to the court for the making of an Administration Order.

It was not possible to continue to trade as HM Revenue & Customs, who had accepted a repayment agreement for outstanding VAT, were due a sum in excess of £20,000 as the next contribution. The Company was not in a position to make this payment. The cash flow forecasts also indicated that the Company would not be in a position to pay future wages and salaries. If the Company continued to trade the directors faced the possibility of charges of wrongful trading.

Leen Gate Engineering Co. Limited and The Royal Bank of Scotland Invoice Finance Limited confirmed that they would not appoint Administrative Receivers.

The Landlords of the various premises were in arrears of rent and, in a liquidation, they could have exercised their right to distrain over the Company assets. The distraint and uneven realisation of assets may have resulted in a lower realisation than would have been achieved through a controlled wind down. The directors thought that this would also have created a preference to the landlords at a time when they understood that all unsecured creditors should be treated equitably.

Whilst there was no business to sell, an administration appeared to be the best option, protecting the assets from any action by the landlords and allowing the sale of assets as a whole at auction, which would maximise the levels of recovery. Administration can protect the business and assets from actions of distraint whilst Receivership and Liquidation do not.

The directors believed that the appointment of Administrators, would be in the best interests of the Company's creditors. Accordingly, the appropriate papers were presented to the County Court in Derby on 19 September 2006 and an administration order was granted on 26 September 2006.

5. THE ADMINISTRATION PERIOD

Peter Hatfield, on behalf of the Board of Directors of the Company, applied to Court for an interim order prior to an Administration Order being granted on 19 September 2006. An Administration Order was granted at 3.15pm on 26 September 2006, following confirmation by the charge holders that they had no objections to the order.

Following our appointment we attended at the Company's premises at Cossall Industrial Estate, Ilkeston and took control of the assets.

We instructed King Sturge Plant and Machinery Limited to provide valuations of the assets and advise on sale alternatives. Their property arm was also asked to comment on the property leases.

Open insurance cover was put in place with Alexander Forbes International Risk Services.

The business had ceased trading on 19 September 2006. The majority of employees had been made redundant by the directors on this date. The directors were made redundant on 29 September 2006 as they had been paid up until this date.

We instructed Actons Solicitors to validate the deed of priority between the two debentures holders and to confirm that the charges were in order.

Creditors were advised of the Administration on 27 September 2006. Several creditors claimed Retention of Title and visited the premises to identify their goods.

Some value for the limited amount of work in progress was obtained from two customers, which was significantly greater than the alternative of scrap value.

King Sturge advised that an onsite auction would be the best course of action to maximise realisations of the assets. A very successful auction was held on 1 November 2006, including webcasts and realisations achieved exceeded expectations by 50%.

Receipts and Payments

Attached at Appendix 1 is our account of receipts and payments from the commencement of administration to date, incorporating our projected outcome for creditors.

6. JOINT ADMINISTRATORS' PROPOSALS

Purpose of the Administration

We are required to set out our proposals for achieving the purpose of the administration which in this context means one of the objectives specified in paragraph 3 of Schedule B1 to the Act as set out at section 3 of this report above.

For the reasons set out in our report, we presently consider that it is not reasonably practicable to achieve the objective specified in subparagraph 3(1)(a), and consequently the most appropriate objective to pursue in this case is that specified in subparagraph 3(1)(b), namely 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).

We seek approval of the following actions taken to date:

Chattel Assets

- The engagement of King Sturge to arrange an auction to sell the assets of the Company. (This auction took place on 1 November 2006.)
- The debtor book of the Company is subject to a factoring agreement with The Royal Bank of Scotland Invoice Finance Limited ('RBSIF'). RBSIF will be collecting the book debts until their indebtedness is satisfied. Any remaining book debts will then revert to the Company and it is proposed that these be collected by the administrators or agents appointed by the administrators.

Stock and Work in Progress

The administrators with the assistance of King Sturge will sell any work in progress and stock.

Summary

We believe that by proceeding with the Administration creditors as a whole will receive an enhanced distribution above that would have been the case had the Company first gone into liquidation due to the following:

- Landlords' distraint proceedings have been avoided, together with asset losses and costs.
- Generated realisations selling the assets as a whole have been greater.
- Rent arrears (of approximately £15,000), which would have been added to distraint proceedings, were avoided.

In order that the purpose of the administration may be fully achieved, we propose to remain in office as administrators in order to conclude the realisation of the Company's property. The principal matters to deal with in this respect are

- Realisation of funds from the sale of assets (presently being completed by agents);
- Collection of surplus book debts, if applicable;
- Agreement of the claims of the secured and preferential creditors

Following these events we propose to finalise distributions to the secured and preferential creditors.

We therefore confirm that the resolutions proposed for passing by the creditors are as follows:

1. "That the Joint Administrators' proposals for achieving the purpose of the administration, as set out in this document entitled *Report and Proposals of the Joint Administrators under the provisions of Paragraph 49 of Schedule B1 to the Insolvency Act 1986*, be and hereby are approved."
2. "That the Joint Administrators' remuneration be fixed on the basis of their hourly costs at scale rates calculated on the time properly spent in the course of the administration and, subject to full disclosure to creditors in accordance with *Statement of Insolvency Practice 9* issued by the Joint Insolvency Committee on behalf of the administrators' licensing bodies, they may draw their remuneration on account as and when funds permit."
3. "That the Joint Administrators be authorised to draw disbursements in accordance with the explanatory note on the subject, which accompanied the above-mentioned report".
4. "That, in order that the purpose of the administration may be fully achieved, we propose to remain in office as administrators".
5. "That the Joint Administrators may cease to act once the claims of the secured and preferential creditors have been agreed and the funds held in the estate have been distributed to them as appropriate"

Exit from Administration

We confirm that we are of the opinion that the total amount which each secured creditor of the Company is likely to receive has been set aside for him and that a distribution will be made to the unsecured creditors of the Company¹.

However as administrators we do not have a general power to make a distribution to unsecured creditors and may only do so if the court gives permission. It is considered that the court will only grant such permission in exceptional circumstances where the normal course for making distributions to unsecured creditors in a voluntary liquidation is inappropriate. Additionally there may be matters for enquiry concerning a company's affairs which are not within the scope of an administrator's powers and which can only be properly dealt with by a liquidator. We have considered the option of a CVA but believe that costs will be similar to, or may exceed those of, liquidation. Also, in a liquidation, funds will be able to be paid into a government "ISA" account which provides a higher rate of interest than banks (after a recent rate increase to 6%, less minor charges).

Consequently, as soon as we are satisfied that we have fully discharged our duties as administrators and that the purpose of the administration has been fully achieved, we propose to implement the provisions of Paragraph 83 of Schedule B1 to the Act whereby on the registration of a notice sent to the Registrar of Companies, our appointment as administrators shall cease to have effect and the company will automatically be placed into creditors voluntary liquidation. Paragraph 83(7) provides:

¹ Insolvency Act 1986, Sch B1, para 83(1)

The liquidators for the purpose of the winding up shall be-

- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
- (b) if no person is nominated under paragraph (a), the administrator.

We confirm that as part of our proposals we seek nomination as liquidators in the subsequent winding up of the Company. Creditors may nominate a different person as the proposed liquidator provided that the nomination is made after the receipt of the proposals and before the proposals are approved. The appointment of a person nominated as liquidator takes effect by the creditors approval, with or without modification, of the administrators' proposals.

Section 176A Fund for Unsecured Creditors

Section 176A of the Act provides that, where the company has created a floating charge after 15 September 2003, the administrator must make a *prescribed part* of the company's *net property* available for the unsecured creditors and not distribute it to the floating charge holder except in so far as it exceeds the amount required for the satisfaction of unsecured claims. *Net property* means the amount which would, were it not for this provision, be available to floating charge holders out of floating charge assets (i.e. after accounting for preferential debts and the costs of realisation). The *prescribed part* is calculated by reference to a sliding scale as follows:

- ❑ 50% of the first £10,000 of *net property*;
- ❑ 20% of *net property* thereafter;
- ❑ Up to a maximum amount to be made available of £600,000

An administrator will not be required to set aside the *prescribed part* if:

- ❑ the *net property* is less than £10,000 and he thinks that the cost of distributing the *prescribed part* would be disproportionate to the benefit; (Section 176A(3)) or
- ❑ he applies to the court for an order on the grounds that the cost of distributing the *prescribed part* would be disproportionate to the benefit and the court orders that the provision shall not apply (Section 176A(5)).

Rule 2.33 of the Rules requires that our proposals for achieving the purpose of the administration shall include, to the best of our knowledge and belief, an estimate of the value of the *prescribed part* and an estimate of the value of the Company's *net property*.

There are two floating charges in this case. The floating charge created in favour of Leen Gate Engineering Co. Limited was created prior to 15 September 2003 and therefore the provisions of section 176A have no application. The fixed and floating charge created in favour of The Royal Bank of Scotland Invoice Finance Limited was created post 15 September 2003, however we believe at this point that their indebtedness will be satisfied from the collection of the Book Debts under their fixed charge. The provisions of section 176A will again, therefore, have no application and consequently the value of both the *prescribed part* and the Company's *net property* is nil.

Administrators' Remuneration

The Joint Administrators propose to be remunerated on the basis of their hourly costs at scale rates calculated on the time properly spent in the course of the administration and that they may draw their remuneration on account as and when funds permit. The Joint Administrators also seek approval to re-charge expenses in line with their firm's policy.

Remuneration drawn will be notified to any creditors' committee appointed under paragraph 57 of Schedule B1 to the Act. In the absence of a creditors' committee, details of time incurred and disbursements drawn will be reported to creditors in accordance with *Statement of Insolvency Practice 9* issued by the Joint Insolvency Committee on behalf of the administrators' licensing bodies.

Total time spent to date on this assignment amounts to 234.20 hours at an average composite rate of £158.50 per hour resulting in total time costs to date of £37,118.50.

To assist creditors in determining this matter, the following further information as regards time costs and expenses is set out at Appendix 3:

- ☐ Begbies Traynor policy for re-charging expenses
- ☐ Begbies Traynor charge-out rates
- ☐ Summary of time costs incurred and summary by staff grade and work activity
- ☐ A creditors' guide to administrators' fees

7. STATEMENT OF AFFAIRS

The directors have been granted an extension by the administrators to prepare their estimated statement of affairs as at 26 September 2006. As a guide, a forecast of the anticipated final statement of affairs, prepared from the Company books and records, is attached at Appendix 2. It makes no provision for the costs of the administration or any subsequent liquidation or voluntary arrangement.

Our comments on the attached statement of affairs are as follows:

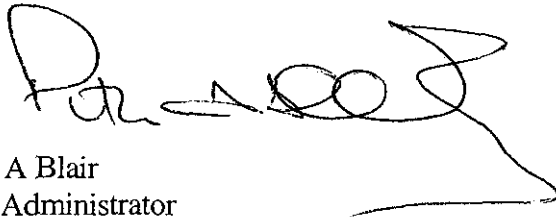
1. The book debts are subject to a factoring agreement with The Royal Bank of Scotland Invoice Finance Limited. They hold a fixed and floating charge created on 30 March 2004 and registered on 31 March 2004. After general and specific provisions applied, it is anticipated that The Royal Bank of Scotland Invoice Finance Limited will be paid in full leaving a surplus of £32,000.
2. The assets have been professionally valued by King Sturge. The initial valuation suggested realisations between £150,000 and £180,000. An auction of the assets took place on 1 November 2006, realising £280,000.
3. The majority of stock was subject to retention of title claims. There was a small amount of free stock and WIP which the administrators were able to sell.

4. The claims of the Department of Trade and Industry represent employees' estimated claims under The Employment Rights Act 1996 in respect of arrears of pay to a maximum of £800 per employee and holiday pay which are claimed preferentially, and pay in lieu of notice, redundancy pay and arrears of pay in excess of £800 which are non-preferential.
5. Leen Gate Engineering Co. Limited have a debenture created 9 October 1991 and registered on 11 October 1991. Leen Gate Engineering Co. Limited have guaranteed the Company's remaining Bank loan, with Royal Bank of Scotland, which is approximately £109,000. The Company had a credit balance on their current account in the sum of £25,000. The Bank have exercised their right of set-off between the two accounts.
6. The claim from HM Revenue & Customs represents PAYE and NIC outstanding since month 5 of 2006.
7. The claim from HM Revenue & Customs represents VAT outstanding since October 2005. The Company have been on a payment plan and have made payments in respect of January 2006 and April 2006 quarter ends.

8. CONCLUSION

Pursuant to paragraph 51 of Schedule B1 to the Act, the Joint Administrators' proposals will be considered at an initial meeting of the Company's creditors summoned in accordance with the Notice of meeting (Form 2.20B) accompanying this document.

Subject to the approval of our proposals I will report on progress again approximately six months after the commencement of the administration, or at the conclusion of the administration, whichever is the sooner.

A handwritten signature in black ink, appearing to read 'Peter A Blair', with a long, sweeping horizontal line extending to the right.

Peter A Blair
Joint Administrator

Date: 10 November 2006

JOINT ADMINISTRATORS' ACCOUNT OF RECEIPTS AND PAYMENTS, INCORPORATING ESTIMATED OUTCOME FOR CREDITORS

Period 26 September 2006 to 10 November 2006

	Receipts & Payments to date £	Anticipated Receipts & Payments £	Projected Outcome £
ASSETS NOT SPECIFICALLY PLEDGED			
Plant, machinery and vehicles	-	280,000	280,000
Stock and WIP	14,289	2,000	16,289
Book Debt Surplus	-	32,000	32,000
Insurance Refund	250	-	250
Bank Interest	5	100	105
	<u>14,544</u>	<u>314,100</u>	<u>328,644</u>
Payments			
Administrators' disbursements	-	1,000	1,000
Administrators' fees	-	70,000	70,000
Administrators' pre-appointment fee	6,047	-	6,047
Agents' fees & expenses	-	60,000	60,000
Bank charges & Sundry	-	200	200
Bordereau (statutory bond)	150	-	150
Insurance	-	2,000	2,000
Legal fees	2,442	3,500	5,942
Mail redirection	23	-	23
Rent & utilities	-	55,000	55,000
Wages & Salaries	1,111	-	1,111
Security	-	1,000	1,000
Statement of Affairs	-	2,000	2,000
Storage Costs	382	1,800	2,182
Statutory advertising	109	200	309
	<u>10,263</u>	<u>196,700</u>	<u>206,963</u>
Available for preferential creditors	4,281	117,400	121,681
<i>Less: Arrears of wages and holiday pay</i>	<i>-</i>	<i>8,416</i>	<i>8,416</i>
Available for floating charge holder	4,281	108,984	113,265
Floating charge holder - Leen Gate Engineering Co. Limited	-	90,000	90,000
Available for unsecured creditors	4,281	18,984	23,265

ESTIMATED STATEMENT OF AFFAIRS AS AT 26 SEPTEMBER 2006

	Notes	Book value £'000	Estimated to realise £'000
Assets subject to fixed charge	1		
Book Debts		715	572
<i>Less:</i> The Royal Bank of Scotland Invoice Finance Limited		540	540
Surplus as regards fixed charge holder		<u>175</u>	<u>32</u>
Assets subject to finance agreement		727	0
<i>Less:</i> due to finance companies		<u>(727)</u>	<u>0</u>
		<u>0</u>	<u>0</u>
Other assets			
Plant, Machinery and Motor Vehicles	2	697	280
Stock and WIP	3	263	16
Book Debt surplus	1	175	32
Estimated total assets available for preferential creditors		<u>1,135</u>	<u>328</u>
<i>Less: Preferential creditors</i>			
Arrears of wages & holiday pay	4		<u>(8)</u>
Estimated total assets available for floating charge holders			<u>320</u>
<i>Less: Debts secured by floating charge</i>	5		<u>(90)</u>
Estimated total assets available for unsecured creditors			<u>230</u>
<i>Less: Non-preferential Creditors</i>			
Trade & expense creditors			771
HM Revenue & Customs (VAT)	6		176
HM Revenue & Customs (PAYE/NI)	7		66
Pay in lieu of notice & redundancy	4		<u>202</u>
Estimated deficiency as regards creditors			(985)
Issued and called up capital			
Ordinary shareholders			(260)
Estimated total deficiency as regards members			<u>(1,245)</u>

APPENDIX 3

TIME COST ANALYSIS AS AT 10 NOVEMBER 2006

The following table is a summary of time costs incurred by staff grade and work activity from 19 September 2006¹ to 10 November 2006.

	Hours					Time cost £	Average hourly rate
	Partners	Managers	Other senior professionals	Assistants & support staff	Total hours		
Administration and Accountancy	-	15.50	43.10	9.70	68.30	£7,442.00	108.96
Planning & Control	7.10	4.00	0.00	0.00	11.10	£3,185.00	286.94
Fixed Charge Assets	0.00	0.00	0.00	0.00	0.00	£0.00	0.00
Floating Charge Assets	34.30	11.50	0.00	0.00	45.80	£14,017.50	306.06
Trading	0.00	3.00	0.00	51.05	54.05	£3,843.25	71.11
Debt Collection	0.00	8.50	0.00	0.00	8.50	£1,487.50	175.00
Preferential, Unsecured & Members	0.00	0.00	0.00	12.35	12.35	£802.75	65.00
Employee Matters	0.00	7.00	2.00	11.20	20.20	£2,143.00	106.09
Meetings and Statutory duties	0.00	0.00	0.00	0.00	0.00	£0.00	0.00
Reports, SoA & Statutory returns	10.40	3.00	0.00	0.50	13.90	£4,197.50	301.98
Investigations	0.00	0.00	0.00	0.00	0.00	£0.00	0.00
Pre Appointment Time	2.10	20.00	8.50	18.00	48.60	£6,212.50	127.83
Total hours	53.90	72.50	53.60	102.80	282.80		
Total cost to date	£18,865.00	£12,687.50	£5,096.50	£6,682.00		£43,331.00	£153.22
Outstanding costs						£37,118.50	

¹ This date will pre-date the commencement of the administration if pre-appointment work has been carried out

POLICY FOR RE-CHARGING EXPENSES INCURRED BY OFFICE HOLDERS IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES

INTRODUCTION

This note applies where a licensed insolvency practitioner in the firm is acting as an office holder of an insolvent estate and seeks creditor approval to make a separate charge by way of expenses or disbursements to recover the cost of facilities provided by the firm. Standard professional practice¹ requires that such charges should be disclosed to those who are responsible for approving his remuneration, together with an explanation of how those charges are made up and the basis on which they are arrived at.

DEFINITIONS

Required professional practice classifies expenses into two broad categories:

- *Category 1 expenses (approval not required)* – specific expenditure that is directly related to a particular insolvency case, where the cost of the expense incurred is referable against an independent external supplier's invoice or published tariff of charges;
- *Category 2 expenses (approval required)* – all other items of expenditure:
 - Which cannot, or cannot easily, be directly related to a particular insolvency case because there is an element of shared or allocated cost; and/or
 - Where the cost of the expense incurred is an estimated, unitised cost with the estimate based on external costs or opportunity cost.

CHARGING POLICY

- *Category 1 expenses (approval not required)* – with the exception of any items referred to below, all such items are re-charged to the case as they are incurred.
- *Category 2 expenses (approval required)*
 - (A) The following items of expenditure are re-charged as described:
 - Internal meeting room usage for the purpose of statutory meetings of creditors is re-charged at the rate of £100 (London £150) per meeting;
 - Car mileage is re-charged at the rate of 40 pence per mile;
 - Storage of books and records (when not rechargeable as a *Category 1 expense*) is recharged on the basis that the number of standard archive boxes held in storage for a particular case bears to the total of all archive boxes for all cases in respect of the period for which the storage charge relates;
 - (B) The following items of expenditure will normally be treated as general office overheads not subject to a re-charge:
 - Telephone and facsimile
 - Printing and photocopying
 - Stationery

A re-charge may be made, however, where the precise cost to the case can be determined because the item satisfies the test of a *Category 1 expense*.

¹ Statement of Insolvency Practice 9 (SIP 9) effective from 1 August 2005.

BEGBIES TRAYNOR CHARGE-OUT RATES

Begbies Traynor is a national firm. The rates charged by the various grades of staff that may work on a case are set nationally, but vary to suit local market conditions.

The rates applying to the Nottingham office as at the date of this report are as follows:

Grade of staff	Charge-out Rate (£ per hour)
Partner	350
Senior Manager	205
Manager	175
Assistant Manager	140
Senior Administrator	110
Administrator	90

Time spent by support staff for carrying out shorter tasks, such as typing or dealing with post, is not charged to cases but is carried as an overhead. Only where a significant amount of time is spent at one time on a case is a charge made for support staff.

Time is recorded in units of 0.10 of an hour (i.e. 6 minute units).

**STATEMENT OF INSOLVENCY PRACTICE 9 (E&W)
REMUNERATION OF INSOLVENCY OFFICE HOLDERS**

A CREDITORS' GUIDE TO ADMINISTRATORS' FEES

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

ENGLAND AND WALES

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 here 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.

Version 4

Effective date: 1 August 2005.

ADMINISTRATION – A GUIDE FOR UNSECURED CREDITORS¹

Administration – When a company is facing financial difficulties it can be placed into administration. This means that the affairs, business and property of the company will be managed by a person appointed for that purpose.

A licensed insolvency practitioner has given you this because you, or your business, may be owed money by a company that is in administration.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to England and Wales. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult a licensed insolvency practitioner or solicitor.

Depending on the circumstances of the case, creditors who play an active role in an insolvency can make a significant difference to how much the insolvency practitioner will be able to recover for them. We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case could benefit you or your business.

In what circumstances does a company find itself in administration?

When a company is facing financial difficulties it can be placed into administration. This means that, during the period for which it is in administration, the affairs, business and property of the company will be managed by a person ('the administrator') appointed for that purpose. The administrator must be a licensed insolvency practitioner.

How can a company be placed into administration?

A company may be placed into administration:

- by an order of the court, on application by, amongst others, the company, its directors, one or more creditors, or, if it is in liquidation, its liquidator;
- without a court order, by the direct appointment of an administrator by the company, its directors or a creditor who holds comprehensive security of a type which qualifies him to make such an appointment.

What is the purpose of administration?

The administrator must perform his functions with the objective of:

- 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.

The administrator must perform his functions with the first of these objectives unless he thinks either:

- that it is not reasonably practicable to achieve that objective, or
- that the second objective would achieve a better result for the company's creditors as a whole.

The administrator may perform his functions with the third objective only if:

- he thinks that it is not reasonably practicable to achieve either of the first two objectives, and
- he does not unnecessarily harm the interests of the creditors of the company as a whole.

¹Reproduced by kind permission of R3, the Association of Business Recovery Professionals.

GEMFLEX ENGINEERING LIMITED – IN ADMINISTRATION

What are the powers of an administrator?

An administrator's powers are very broad. They include powers to carry on the company's business and realise its assets. The administrator displaces the company's board of directors from its management function and has the power to remove or appoint directors.

The administrator must prepare proposals for approval by the creditors setting out how he intends to achieve the purpose of administration.

Does the administrator pay unsecured creditors the money owed to them?

Debts due to unsecured creditors are frozen at the date of the administrator's appointment.

If the outcome of the administration is survival of the company, the management of the business and assets can be returned to the directors on the conclusion of the administration. The directors and staff of the company will then deal with unsecured creditors' pre-appointment claims.

If survival of the company is not possible, but sufficient sums are realised from the sale of the company's business and assets to enable funds to be distributed to unsecured creditors, the administrator may be able to deal with their claims and pay them a dividend, but he may only do so with the permission of the court.

Otherwise, after payment of the costs and expenses of the administration, any surplus funds will normally be passed to a liquidator, who will deal with creditors' claims. The administrator may himself become the liquidator.

Sometimes the outcome of the administration will be a company voluntary arrangement, within which creditors' claims will be dealt with.

Six months after writing off the debt in your accounts, you can claim VAT Bad Debt Relief from HM Customs and Excise for the VAT you have paid.

If you believe that you own something in the company's possession, you should contact the administrator as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The administrator will examine your claim carefully before deciding whether to release the goods in question, pay you for them or otherwise.

How does administration come to an end?

An administration may come to an end:

- automatically after one year – but this period may be extended with the agreement of the creditors or the permission of the court if more time is needed to achieve the purpose of administration;
- by court order, if the administrator thinks the purpose of administration cannot be achieved, or, where he was appointed by the court, if he thinks the purpose has been achieved.

On conclusion of an administration:

- the company may be returned to the control of its directors and management;
- the company may go into liquidation;
- the company may be dissolved (if there are no funds for distribution to unsecured creditors);
- if a voluntary arrangement has been agreed during the administration, the arrangement may continue according to its terms (it is possible for a voluntary arrangement to run concurrently with an administration).

Is the administrator bound by contracts entered into by the company prior to his appointment?

An administrator has a general duty to the company to attempt to achieve the purpose of administration. In doing so, the administrator may find it impracticable to have the company perform certain contracts entered into prior to his appointment, although he will have regard to the financial implications of breaches of the company's contracts. Special provisions apply to employment contracts.

Is the administrator liable for sums due under contracts entered into by the company subsequent to his appointment?

An administrator is not personally liable for contracts entered into as administrator, but normally the administrator will pay for goods or services provided subsequent to his appointment, as an expense of the administration.

GEMFLEX ENGINEERING LIMITED – IN ADMINISTRATION

As an unsecured creditor, what information am I entitled to?

The administrator must notify all known creditors of his appointment as soon as reasonably practicable, and must send a copy of his proposals for achieving the purpose of administration to all creditors within eight weeks of his appointment. A meeting of all creditors must then normally be held within ten weeks of the date the company went into administration in order to consider the administrator's proposals. However, there is no need for the administrator to hold a meeting if he has stated in his proposals that:

- the company has sufficient property to enable all creditors to be paid in full;
- 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; or
- neither of the first two purposes of administration can be achieved.

However, he must hold a meeting if requested by creditors whose debts amount to at least 10% of the total debts of the company.

After approval of the administrator's proposals, a report on the progress of the administration is sent to all creditors every six months and at the end of the administration.

Can the unsecured creditors form a creditors' committee?

Yes. A creditors' committee may be appointed at a meeting of creditors and must consist of at least three and not more than five creditors. The creditors' committee receives reports from the administrator and may meet periodically.

Creditors' committee members are not paid, but will receive their reasonable travelling expenses as a cost of the administration.

Can a creditor initiate or continue legal actions against a company in administration?

No. Any petition for the winding up of the company must be dismissed or suspended. In addition, except with the consent of the administrator or permission of the court:

- no steps may be taken to enforce security over the company's property or to repossess goods in the company's possession under any sale or hire agreement;
- no other proceedings, execution, or legal process may be commenced or continued, and no distress may be levied, against the company or its property; and
- a landlord may not exercise a right of forfeiture in relation to premises let to the company.

How is the administrator's fee determined?

The creditors' committee (if there is one) agrees the administrator's fee. Otherwise, it can be fixed by the creditors or the court. Although the fee can be fixed as a percentage of the value of the property dealt with, it is normally based on the following factors:

- the time properly spent by the administrator and his staff;
- the complexity of the case;
- any exceptional responsibility borne by the administrator;
- the effectiveness with which the administrator carries out his duties;
- and
- the value and nature of the company's assets.

R3 has produced a separate guide explaining insolvency office holders' remuneration, which is available from the person who gave you this guide.

What should I do if I am dissatisfied with the administrator's handling of the case?

You should first contact the administrator to try and resolve the problem. If you are still not satisfied, you may be able to make an application to court.

If you think that the administrator is guilty of professional misconduct, you should contact his regulatory body.

GEMFLEX ENGINEERING LIMITED – IN ADMINISTRATION

R3 is the UK's leading trade association for licensed insolvency practitioners and business recovery professionals. R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

The Association of Chartered Certified Accountants

Tel: 020 7396 7000

www.accaglobal.com

The Institute of Chartered Accountants in England and Wales

Tel: 020 7920 8100

www.icaew.co.uk

The Institute of Chartered Accountants in Ireland

Tel: 00 353.1 637 7200

www.icaei.ie

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100

www.icas.org.uk

The Insolvency Practitioners Association

Tel: 020 7623 5108

www.ipa.uk.com

The Law Society of England and Wales

Tel: 020 7242 1222

www.lawsoc.org.uk

The Law Society of Northern Ireland

Tel: 028 9023 1614

www.lawsoc-ni.org

The Law Society of Scotland

Tel: 0131 226 7411

www.lawscot.org.uk

The Insolvency Service

Tel: 020 7291 6895

www.insolvency.gov.uk



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POLICY FOR RE-CHARGING EXPENSES INCURRED BY OFFICE HOLDERS IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES

INTRODUCTION

This note applies where a licensed insolvency practitioner in the firm is acting as an office holder of an insolvent estate and seeks creditor approval to make a separate charge by way of expenses or disbursements to recover the cost of facilities provided by the firm. Standard professional practice¹ requires that such charges should be disclosed to those who are responsible for approving his remuneration, together with an explanation of how those charges are made up and the basis on which they are arrived at.

DEFINITIONS

Required professional practice classifies expenses into two broad categories:

- *Category 1 expenses (approval not required)* – specific expenditure that is directly related to a particular insolvency case, where the cost of the expense incurred is referable against an independent external supplier's invoice or published tariff of charges;
- *Category 2 expenses (approval required)* – all other items of expenditure:
 - Which cannot, or cannot easily, be directly related to a particular insolvency case because there is an element of shared or allocated cost; and/or
 - Where the cost of the expense incurred is an estimated, unitised cost with the estimate based on external costs or opportunity cost.

CHARGING POLICY

- *Category 1 expenses (approval not required)* – with the exception of any items referred to below, all such items are re-charged to the case as they are incurred.
- *Category 2 expenses (approval required)*
 - (A) The following items of expenditure are re-charged as described:
 - Internal meeting room usage for the purpose of statutory meetings of creditors is re-charged at the rate of £100 (London £150) per meeting;
 - Car mileage is re-charged at the rate of 40 pence per mile;
 - Storage of books and records (when not rechargeable as a *Category 1 expense*) is recharged on the basis that the number of standard archive boxes held in storage for a particular case bears to the total of all archive boxes for all cases in respect of the period for which the storage charge relates;
 - (B) The following items of expenditure will normally be treated as general office overheads not subject to a re-charge:
 - Telephone and facsimile
 - Printing and photocopying
 - Stationery

A re-charge may be made, however, where the precise cost to the case can be determined because the item satisfies the test of a *Category 1 expense*.

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