

LIQ03

Notice of progress report in voluntary winding up



Companies House

For further information, please
refer to our guidance at
www.gov.uk/companieshouse

1

Company details

Company number	0	2	7	2	2	1	3	6
Company name in full	Positive Clothing (London) Limited							

→ Filling in this form

Please complete in typescript or in
bold black capitals.

2

Liquidator's name

Full forename(s)	Situl Devji
Surname	Raithatha

3

Liquidator's address

Building name/number	38 De Montfort Street
Street	Leicester
Post town	
County/Region	
Postcode	L E 1 7 G S
Country	

4

Liquidator's name ①

Full forename(s)	
Surname	

① Other liquidator

Use this section to tell us about
another liquidator.

5

Liquidator's address ②


Building name/number	
Street	
Post town	
County/Region	
Postcode	
Country	

② Other liquidator

Use this section to tell us about
another liquidator.

LIQ03

Notice of progress report in voluntary winding up

6	Period of progress report															
From date	^d	1	^d	1	^m	1	^m	2	^y	2	^y	0	^y	2	^y	0
To date	^d	1	^d	0	^m	1	^m	2	^y	2	^y	0	^y	2	^y	1
7	Progress report															
<input checked="" type="checkbox"/> The progress report is attached																
8	Sign and date															
Liquidator's signature	<div>Signature</div> <div> X  X </div>															
Signature date	^d	2	^d	4	^m	0	^m	1	^y	2	^y	0	^y	2	^y	2

**Presenter information**

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

Contact name **Luke Littlejohn**

Company name **Springfields Advisory LLP**

Address **38 De Montfort Street**

Leicester

Post town **LE1 7GS**

County/Region

Postcode

Country

DX

Telephone **0116 299 4745**

**Checklist**

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.

**Important information**

All information on this form will appear on the public record.

**Where to send**

You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

**Further information**

For further information please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse

Positive Clothing (London) Limited – In Creditors’ Voluntary Liquidation

LIQUIDATOR’S PROGRESS REPORT TO CREDITORS AND MEMBERS

For the period 11 December 2020 to 10 December 2021 (“the Period”)

EXECUTIVE SUMMARY

All known assets have been realised. As previously reported, I instructed a third party firm of accountants to bring the Company’s tax affairs up-to-date and this has been completed in respect of the pre-Administration periods. It has been determined that a significant tax refund is due to the Company and this has been requested from HM Revenue & Customs (“HMRC”). HMRC have acknowledged that a refund is due and I await payment.

The preferential creditors have been paid in full. Dividends totalling 50p in the £ have been paid to the unsecured, non-preferential creditors to date. I expect to be in a position to make a further distribution to creditors, although the timing of the distribution will depend on when the tax refund is received.

STATUTORY INFORMATION

Company name:	Positive Clothing (London) Limited
Registered office:	38 De Montfort Street Leicester LE1 7GS
Former registered office:	20 Wells Mews London W1T 3HQ
Registered number:	02722136
Liquidator’s names:	Situl Devji Raithatha
Liquidator’s address:	38 De Montfort Street Leicester LE1 7GS
Liquidator’s date of appointment:	11 December 2014

Please note that Deviesh Ramesh Raikundalia has retired from Springfields Advisory LLP and was released and ceased to act as joint office holder in this matter by way of a Court Order effective 31 July 2020. Situl Devji Raithatha continues to act.

LIQUIDATOR’S ACTIONS SINCE LAST REPORT

Since the last report, I have been in correspondence with HMRC regarding the tax refund due to the Company.

There is certain work that I am required by the insolvency legislation to undertake in connection with the liquidation that provides no financial benefit for the creditors. A description of the routine work undertaken since my last report as Liquidator is contained in Appendix 1. Further details about the actions taken by the Liquidator are detailed throughout this report.

RECEIPTS AND PAYMENTS

My Receipts & Payments Account ("R&P") for the Period is attached at Appendix 2. This includes cumulative figures for the period from 11 December 2014 to 10 December 2021. All amounts are shown exclusive of VAT. I have reconciled the account against the financial records I am required to maintain.

ASSETS

Tax Refund

It was agreed with the Liquidation Committee ("the Committee") that a firm of accountants would be instructed to bring the Company's tax affairs up-to-date in order to determine whether a tax refund could be claimed as a result of trading losses incurred prior to the Administration. Mark J Rees LLP were instructed to undertake this work. The final VAT, PAYE and Corporation Tax returns have been submitted to HMRC who have now submitted a nil claim in the Liquidation and acknowledged that there is a refund of £131,673.53 due back to the Company. The refund has been outstanding for some time and my staff and I are in contact with HMRC in order to expedite this.

The level of refund acknowledged by HMRC is lower than the amount initially anticipated by my agent, which was expected to be in the region of £174,000. Once the refund has been received from HMRC, consideration will be given as to whether there is any commercial benefit in pursuing further refunds given the significant delays that have been experienced thus far.

LIABILITIES

Secured Creditors

An examination of the Company's mortgage register held by the Registrar of Companies, showed that the Company had granted various charges, which have been extensively detailed in previous reports. In summary, all charges had been discharged and released prior to the Company entering into Liquidation.

The legislation requires that if the Company has created a floating charge after 15 September 2003, a prescribed part of the Company's net property (i.e. the money that would otherwise be available to the charge holder) should be ring-fenced for distribution to unsecured creditors. In this case, the debt due to the chargeholder has already been discharged from fixed charge realisations and there is therefore no floating charge. These provisions will not apply.

Preferential Creditors

The Statement of Affairs anticipated that there would be preferential claims of £24,700 in respect of payments made to employees under the Employment Rights Act 1996. A number of claims were received and forwarded to the Redundancy Payments Service ("RPS") for payment, subject to statutory limits.

Claims totalling £20,458.70 were identified. A distribution at a rate of 100p in the £ was made to the preferential creditors on 26 November 2015. No further distribution is anticipated to the preferential creditors.

Crown Creditors

The Statement of Affairs included £302,355 owed to HMRC. As a result of the submission of outstanding tax returns, HMRC have submitted a nil claim in the Liquidation. As detailed above, it is understood that there is a significant tax refund due from HMRC.

Non-preferential unsecured Creditors

The Statement of Affairs included 61 non-preferential unsecured creditors with an estimated total liability of £2,367,733.33. I have received claims from 77 creditors at a total of £2,494,578.19. I have not received claims from 14 creditors with original estimated claims in the Statement of Affairs of £77,089.58. The increase in the claims received compared with those shown on the Statement of Affairs can be explained by the management accounts not having been updated prior to the date of Administration.

DIVIDEND PROSPECTS

A First Dividend of 25p in the £ was declared and paid to non-preferential unsecured creditors on 26 November 2015. A Second Dividend of 25p in the £ was declared on 27 January 2016 to the same class of creditors. Total dividends of 50p in the £ have therefore been paid to date in addition to the payments detailed earlier to the preferential creditors.

I expect to be in a position to make final distribution to the unsecured non preferential creditors once I am in receipt of the tax refund referred to above.

INVESTIGATION INTO THE AFFAIRS OF THE COMPANY

No further investigatory issues arose in the Period.

LIQUIDATORS' REMUNERATION

On 27 November 2014, the Committee agreed that the Liquidator's remuneration should be on a time cost basis and my firm's costs would be drawn as and when authorised by the Committee. Please refer to the enclosed R&P for details of the amount drawn in the Period and as agreed with the Committee.

A schedule of my time costs incurred in the Period (subject to the posting of timesheets) is attached at Appendix 3. This also includes cumulative figures for the period from 11 December 2014 to 10 December 2021.

You will note that at the end of the period, time costs of £449,583.70 had been incurred. To date I have authorisation from the Committee to draw £360,000 plus VAT on account of these costs.

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk/>. A copy of 'A Creditors Guide to Liquidators' Fees' published by the R3 is available at the link <http://www.insolvency-practitioners.org.uk/regulation-and-guidance/guides-to-fees>. Please note that there are different versions of the Guidance Notes, and in this case, you should refer to the November 2011 version. An explanatory note which shows Springfields Advisory LLP's fee policy is attached. A hard copy of both documents can be obtained on request from this office.

LIQUIDATOR'S EXPENSES

Expenses are any payments from the estate which are neither an office holder's remuneration nor a distribution to a creditor or a member. Expenses also includes disbursements. Disbursements are payments which are first met by the office holder and then reimbursed to the office holder from the estate. Expenses are split into:

- category 1 expenses, which are payments to persons providing the service to which the expense relates who are not an associate of the office holder; and
- category 2 expenses, which are payments to associates or which have an element of shared costs. Before being paid category 2 expenses require approval in the same manner as an office holder's remuneration.

I enclose a schedule of my expenses for the Period.

I have used the following agents or professional advisors in the Period:

Professional Advisor	Nature of Work	Basis of Fees
Mark J Rees LLP	Accountancy and tax	Fixed fee plus percentage of funds refunded from HMRC

As detailed above, Mark J Rees LLP have been instructed to assist in bringing the Company's tax affairs up-to-date to facilitate the recovery of a tax refund.

The choice of professionals was based on my perception of their experience and ability to perform this type of work and the complexity and nature of the assignment. I also considered that the basis on which they will charge their fees represented value for money. I have reviewed the charges they have made and am satisfied that they are reasonable in the circumstances of this case.

FURTHER INFORMATION

An unsecured creditor may, with the permission of the Court, or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question), request further details of the Liquidator's remuneration and expenses within 21 days of their receipt of this report. Any secured creditor may request the same details in the same time limit.

An unsecured creditor may, with the permission of the Court, or with the concurrence of 10% in value of the unsecured creditors (including the creditor in question), apply to Court to challenge the amount of remuneration charged by the Liquidator as being excessive, and/or the basis of the Liquidator's remuneration, and/or the amount of the expenses incurred as being excessive, within 8 weeks of their receipt of this report. Any secured creditor may make a similar application to court within the same time limit.

As an Insolvency Practitioner, when carrying out all professional work relating to an insolvency appointment, I am bound by the Insolvency Code of Ethics, as well as by the regulations of my professional body. More details about these matters and general information about Springfields Advisory LLP that is of relevance can be found at <https://www.springfields-uk.com/regulatory>.

SUMMARY

The Liquidation will remain open until the tax refund is received from HMRC and a final distribution is made to creditors. I am unable to estimate when this will be at this stage.

DISCLAIMER

This report has been prepared for the sole purpose of updating creditors and shareholders of the Company for information purposes to fulfil the necessary statutory requirements of the Liquidators. The report is private and confidential and may not be relied upon, referred to, reproduced or quoted from, in whole or in part, or otherwise used by creditors or shareholders for any purpose other than updating them for information purposes, or any other person for any purpose whatsoever.

If creditors have any queries regarding the conduct of the Liquidation, or if they want hard copies of any of the documents made available on-line, they should contact Luke Littlejohn on 0116 249 2018, or by email at luke.l@springfields-uk.com.

Yours faithfully
For and on behalf of
Positive Clothing (London) Limited

A handwritten signature in black ink, appearing to be 'SD' followed by a long horizontal stroke.

Situl Devji Raithatha
LIQUIDATOR

Encs

Appendix 1

1. Administration

This represents the work involved in the routine administrative functions of the case by the office holder and their staff, together with the control and supervision of the work done on the case by the office holder (and their managers). It does not give direct financial benefit to the creditors, but has to be undertaken by the office holder to meet their requirements under the insolvency legislation and the Statements of Insolvency Practice, which set out required practice that office holders must follow.

- Dealing with all routine correspondence and emails relating to the case.
- Maintaining and managing the office holder's estate bank account.
- Maintaining and managing the office holder's cashbook.
- Undertaking regular bank reconciliations of the bank account containing estate funds.
- Reviewing the adequacy of the specific penalty bond on a quarterly basis.
- Undertaking periodic reviews of the progress of the case.
- Overseeing and controlling the work done on the case by case administrators.
- Preparing, reviewing and issuing annual progress reports to creditors and members.
- Filing returns at Companies House.
- Preparing and filing VAT returns.
- Preparing and filing Corporation Tax returns.

2 Creditors

Claims of creditors - the office holder needs to maintain up to date records of the names and addresses of creditors, together with the amounts of their claims as part of the management of the case, and to ensure that notices and reports can be issued to the creditors. The office holder also needs to deal with correspondence and queries received from creditors regarding their claims and dividend prospects as they are received. The office holder is required to undertake this work as part of his statutory functions.

3 Realisation of assets

Liaising with Accountants and HMRC to finalise Company's Tax position and pursuing resulting refund.

Positive Clothing (London) Limited
(In Liquidation)
Liquidator's Summary of Receipts & Payments

Statement of Affairs £	From 11/12/2020 To 10/12/2021 £	From 11/12/2014 To 10/12/2021 £
TRANSFER FROM ADMINISTRATION		
Transfer from Administration	NIL	483,771.52
	NIL	483,771.52
ASSET REALISATIONS		
Antecedent Transactions	NIL	1,470,000.00
Bank Interest Gross	14.08	1,106.81
Book Debts	NIL	15,341.68
Interest on Settlement Funds	NIL	68,115.21
VAT from Admin	NIL	17,173.69
	14.08	1,571,737.39
COST OF REALISATIONS		
Accountancy / tax costs	NIL	10,000.00
Adverse Cost Insurance	NIL	108,650.00
Agents/Valuers Fees	NIL	40.81
Bank Charges	NIL	12.50
Computer Data Recovery	NIL	3,400.00
Computer Forensics	NIL	5,250.00
Corporation Tax	10.45	222.71
Courier Costs	NIL	198.44
Interviewee Expenses	NIL	855.40
Joint Administrator's Fee	NIL	35,756.00
Land Registry Fees	NIL	45.00
Legal Fees	NIL	43.48
Legal Fees & Disbursements	NIL	178,153.54
Liquidator's Remuneration	NIL	360,000.00
Meeting Room Hire	NIL	700.00
Mileage	NIL	99.00
Postage	NIL	174.64
Printing and Photocopying	NIL	1,762.50
Specific Penalty Bond	725.00	2,029.00
Statutory Advertising	NIL	149.20
Storage Costs	1,259.47	5,860.85
Tax Appeal Fees	NIL	500.00
Transcription Costs	NIL	1,249.34
Travelling expenses	NIL	1,710.01
	(1,994.92)	(716,862.42)
PREFERENTIAL CREDITORS		
Preferential Distribution (See Note 1)	NIL	20,458.70
	NIL	(20,458.70)
UNSECURED CREDITORS		
Unsecured Distribution (See Note 2)	NIL	1,188,853.84
	NIL	(1,188,853.84)
	(1,980.84)	129,333.95
REPRESENTED BY		
Current A/c - Bank 1		128,817.89
Vat Receivable		516.06
		129,333.95

Note:

Positive Clothing (London) Limited
(In Liquidation)
Liquidator's Summary of Receipts & Payments

Statement of Affairs £	From 11/12/2020 To 10/12/2021 £	From 11/12/2014 To 10/12/2021 £
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Note 1

The preferential creditors were paid in full on 26 November 2015.

Note 2

A First Dividend of 25p in the £ was declared and paid to the unsecured, non-preferential creditors on 26 November 2015. A Second dividend declared of 25p in the £ was declared on 27 January 2016 and paid to the unsecured, non-preferential creditors on 28 January 2016.

Time Entry - Cumulative Detailed SIP9 Time & Cost Summary

PO1563 - Positive Clothing (London) Limited
From: 11/12/2020 To: 10/12/2021
All Post Appointment Project Codes

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Avg Hourly Rate (£)	Hours Cum (POST Only)	Time Costs Cum (POST Only)
** 100 : Administration & Planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	20.10	3,566.00
101 : Case Planning	0.00	0.00	3.00	0.00	3.00	623.50	207.83	45.20	8,343.30
** 102 : Administrative set-up	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00	1,330.00
** 103 : Appointment Notification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.40	573.00
104 : Maintenance of Records	0.00	0.00	3.10	0.00	3.10	638.60	206.00	21.40	4,655.40
105 : Statutory Reporting	1.60	3.60	0.00	0.00	5.20	1,871.40	359.88	27.00	8,885.70
106 : VAT & Tax Returns	0.00	11.10	3.70	0.00	14.80	4,313.00	291.42	129.60	37,404.30
107 : Case Monitoring	0.60	2.70	0.70	0.00	4.00	1,258.30	314.57	76.50	21,970.70
Administration & Planning	2.20	17.40	10.50	0.00	30.10	8,704.80	289.20	326.20	86,708.40
** 600 : Case Specific	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.80	126.00
** 602 : Case Specific 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.90	1,635.00
Case specific matters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11.70	1,761.00
** 500 : Creditors	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.70	1,685.00
501 : Communication	0.00	0.30	0.00	0.00	0.30	98.10	327.00	29.90	9,853.90
** 502 : Claims inc emp, prefs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	331.63	98,287.00
503 : Report/secured creditor	0.00	0.00	0.60	0.00	0.60	123.60	206.00	2.60	599.40
** 504 : Committee Reporting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	69.50	23,662.90
** 505 : Final Report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.80	806.00
Creditors	0.00	0.30	0.60	0.00	0.90	221.70	246.33	445.13	134,894.20
** 200 : Investigations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	71.70	10,800.00
** 201 : SIP 2 review	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.70	105.00
** 202 : CDDA reports	0.00	0.00	0.00	0.00	0.00	0.00	0.00	44.40	8,460.00
** 203 : Antecedent transactions	0.00	0.00	0.00	0.00	0.00	0.00	0.00	542.90	171,807.00
Investigations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	659.70	191,172.00
** 301 : Ident, Sec, Insuring	0.00	0.00	0.00	0.00	0.00	0.00	0.00	30.20	12,543.30
** 302 : ROT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	48.00
** 303 : Debt collection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.20	1,117.80
304 : Sale of prop,bus,assets	0.80	0.00	0.00	0.00	0.80	380.00	475.00	0.60	380.00
** 305 : Legal matters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	70.50	20,835.00
Realisation of Assets	0.80	0.00	0.00	0.00	0.80	380.00	475.00	107.00	34,924.10
** 401 : Management of operations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	124.00
Trading	0.00	0.00	0.00	0.00	0.00	0.00	NAN	0.40	124.00
Total Hours	3.00	17.70	11.10	0.00	31.80	9,306.50	292.66	1,550.13	449,583.70

Positive Clothing (London) Limited - In Creditors' Voluntary Liquidation

Details of expenses incurred and paid from 11 December 2020 to 10 December 2021

Category 1 Disbursements

Type	Outstanding b/f (£)	Incurred in Period (£)	Paid in Period (£)	Outstanding c/f (£)
Corporation Tax	-	10.45	10.45	-
Specific Penalty Bond	725.00	-	725.00	-
TOTAL	725.00	10.45	735.45	-

Category 2 Disbursements

Type	Outstanding b/f (£)	Incurred in Period (£)	Paid in Period (£)	Outstanding c/f (£)
Storage Costs*	262.40	997.07	1,259.47	-
TOTAL	262.40	997.07	1,259.47	-

Notes

- * Please note that these costs continue to accrue and are billed periodically.

SPRINGFIELDS ADVISORY LLP PRACTICE FEE RECOVERY POLICY FOR INSOLVENCY APPOINTMENTS

Introduction

This sheet explains the alternative fee bases allowed by the insolvency legislation when acting as office holder in insolvency appointments. The legislation allows different fee bases to be used for different tasks within the same appointment. The fee basis, or combination of bases, set for a particular appointment is/are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the Court. The report accompanying the request to fix the basis of remuneration will indicate the basis, or bases, being requested in that particular case and will make it clear what work is to be undertaken in respect of each basis.

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk/>. Details about how an office holder's fees may be approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) and can be accessed at <http://www.insolvency-practitioners.org.uk/regulation-and-guidance/guides-to-fees>. Alternatively, a hard copy can be provided on request. Please note that we have provided further details in this policy document.

SIP 9 also contains various requirements that the office holder has to comply with in connection with their remuneration, both when seeking approval and when reporting to creditors and other interested parties after approval. One of the matters that an office holder has to comply with is that they must also seek approval for any payments that could reasonably be perceived as representing a threat to the office holder's objectivity or independence by virtue of a professional or personal relationship, including to an associate. Where it is anticipated that such payments will be made in a case they will be separately identified when seeking approval for the basis of the office holder's remuneration.

Other than in respect of Voluntary Arrangements an office holder is required to record the time spent on casework in all cases, even if they are being remunerated for that work on a basis other than time costs. Time is recorded directly to the relevant case and the nature of the work undertaken is recorded at that time. The work is generally recorded under the following categories:

- Case Administration
- Realisation of Assets
- Investigations.
- Creditors
- Trading
- Case specific matters.

Time cost basis

When charging fees on a time costs basis we use charge out rates appropriate to the skills and experience of a member of staff and the work that they perform. This is combined with the amount of time that they work on each case, recorded in 6 minute units with supporting narrative to explain the work undertaken.

Charge-out Rates

Grade of staff	Current charge-out rate per hour, effective from 1 August 2021 £	Previous charge-out rate per hour, effective from 1 August 2020 £
Partner	482	475
Manager	289-365	282-356
Administrator	165-245	161-239

Time is recorded in units of 6 minutes (prior to 08/01/2007 this was 15 minute units)

These charge-out rates charged are reviewed periodically and are adjusted to take account of inflation and the firm's overheads.

When we seek time costs approval, we have to set out a fees estimate. That estimate acts as a cap on our time costs so that we cannot draw fees of more than the estimated time costs without further approval from those who approved our fees. When seeking approval for our fees, we will disclose the work that we intend to undertake, the hourly rates we intend to charge for each part of the work, and the time that we think each part of the work will take. We will summarise that information in an average or "blended" rate for all of the work being carried out within the estimate, and by reference to each separate category of work. The blended rate is calculated as the prospective average cost per hour, based upon the estimated time to be expended by each grade of staff at their specific charge out rate. We will also say whether we anticipate needing to seek approval to exceed the estimate and, if so, the reasons that we think that may be necessary.

A report accompanying the request to fix the basis of remuneration will include the fees estimate, as well as details of the expenses that will be, or are likely to be, incurred. Further information about expenses is given in a separate section below.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal.

If we subsequently need to seek authority to draw fees in excess of the estimate, we will say why we have exceeded, or are likely to exceed the estimate; any additional work undertaken, or proposed to be undertaken; the hourly rates proposed for each part of the work; and the time that the additional work is expected to take. As with the original estimate, we will summarise that information in an average or "blended" rate for all of the work being carried out within the estimate, and by reference to each separate category of work, and will also say whether we anticipate needing further approval and, if so, why we think it may be necessary to seek further approval.

Percentage basis

The legislation allows fees to be charged on a percentage of the value of the property with which the office holder has to deal (realisations and/or distributions). Different percentages can be used for different assets or types of assets. A report accompanying the request to fix the basis of remuneration will set out the potential assets in the case, the remuneration percentage proposed in respect of any realisations and the work covered by that remuneration, which may solely relate to work undertaken in connection with the realisation of the assets, but might also include other categories of work as listed

above. The report will also include details of the expenses that will be, or are likely to be, incurred. Further information about expenses is given in a separate section below.

The percentage approved in respect of realisations will be charged against the assets realised, and where approval is obtained on a mixture of bases, any fixed fee and time costs will then be charged against the funds remaining in the liquidation after the realisation percentage has been deducted.

A percentage of distributions made to unsecured creditors may also be requested, in order to cover the work associated with the agreement of claims and making the distribution.

The disclosure that we make will include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal. In order to meet the requirements of SIP 9 it will also explain why the basis requested is expected to produce a fair and reasonable reflection of the work that we anticipate will be undertaken on the case.

If the basis of remuneration has been approved on a percentage basis then an increase in the amount of the percentage applied can only be approved by the committee or creditors (depending upon who approved the basis of remuneration) in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the percentage applied. If there has not been a material and substantial change in the circumstances, then an increase can only be approved by the Court.

Fixed fee

The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. A report accompanying the request to fix the basis of remuneration will set out the set fee that we proposed to charge and the work covered by that remuneration, as well as details of the expenses that will be, or are likely to be, incurred. Further information about expenses is given in a separate section below.

The disclosure that we make will include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal. In order to meet the requirements of SIP 9 we will also explain why the basis requested is expected to produce a fair and reasonable reflection of the work that we anticipate will be undertaken on the case.

If the basis of remuneration has been approved on a fixed fee basis then an increase in the amount of the fixed fee can only be approved by the committee or creditors (depending upon who approved the basis of remuneration) in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the fixed fee. If there has not been a material and substantial change in the circumstances, then an increase can only be approved by the Court.

Mixed basis

If remuneration is to be sought on a mixed basis, we will make it clear in the report accompanying the request to fix the basis of remuneration which basis will be charged for each category of work that is to be undertaken on the case.

Members' voluntary liquidations and Voluntary Arrangements

The legislation is different for members' voluntary liquidations (MVL), Company Voluntary Arrangements (CVA) and Individual Voluntary Arrangements (IVA). In MVLs, the company's members set the fee basis, often as a fixed fee, and SIP 9 does not apply unless the members specifically request it. In CVAs and IVAs, the fee basis is set out in the proposals and creditors approve the fee basis when they approve the arrangement.

All bases

With the exception of IVA's and CVA's, which are VAT exempt, the officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

Expenses

As already indicated, a report will accompany the request to fix the basis of remuneration and that will include details of expenses to be incurred, or likely to be incurred. When reporting to the committee and creditors during the course of the insolvency appointment the actual expenses incurred will be compared with the original estimate provided.

Expenses are any payments from the insolvent estate that are neither an office holder's remuneration nor a distribution to a creditor, or a member. Expenses also include disbursements. Disbursements are payments that are first paid by the office holder and then reimbursed from the insolvent estate. Expenses are divided into those that do not need approval before they are charged to the estate (Category 1) and those that do (Category 2).

Category 1 expenses are payments to persons providing the service to which the expense relates who are not an associate of the office holder. They can be paid by the office holder without obtaining prior approval. Examples of costs that may amount to Category 1 expenses are professional advisors (who are not associates), statutory advertising, external meeting room hire (where the room is only hired for that meeting), external storage, specific penalty bond insurance, insolvency case management software fees charged on a per case basis, and Company search fees.

Category 2 expenses are either payments to associates, or payments in respect of expenses that have an element of shared costs, such as photocopying and mileage. Category 2 expenses require approval in the same manner as an office holder's remuneration before they can be paid.

From 1 April 2021, the practice does not propose to recover any Category 2 expenses that include an element of shared costs.

Professional advisors may be instructed to assist the office holder on the case where they consider that such assistance is necessary to enable them to appropriately administer the case. The fees charged by any professional advisors used will be recharged at cost to the case. Where the professional advisor is not an associate of the office holder it will be for the office holder to agree the basis of their fees. Where the professional advisor is an associate of the office holder it will be for those responsible for fixing the basis of the office holder's remuneration to approve payments to them. The fees of any professional advisors are subject to the rights of creditors to seek further information about them or challenge them as summarised below. Professional advisors that may be instructed on a case include:

- Solicitors/Legal Advisors;
- Auctioneers/Valuers;
- Accountants;
- Quantity Surveyors;
- Estate Agents;
- Pension specialists;
- Employment Claims specialists; and
- GDPR/Cyber Security specialists.

Reporting and rights to challenge

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. The report will provide a breakdown of the remuneration charged by the office holder in the period covered by the report, i.e., the amount that the office holder is entitled to draw, together with the amount of remuneration actually drawn. If approval has been obtained for remuneration on a time costs basis, the time costs incurred will also be disclosed, whether drawn or not, together with the "blended" rates of such costs. The report will also compare the actual time costs incurred with those included in the fees estimate prepared when fixing the basis of the remuneration, and indicate whether the fees estimate is likely to be exceeded. If the fees estimate has been exceeded, or is likely to be exceeded, the report will explain why that is the case.

The report will also provide information about expenses incurred in the period covered by the report, together with those actually paid, together with a comparison with the estimated expenses. If the expenses incurred, or anticipated to be incurred, have exceeded the estimate provided the report will explain why that is the case.

Under the insolvency legislation the report must also include a statement of the legislative rights of creditors to request further information about the remuneration charged and expenses incurred in the period covered by the report, or to challenge them on the grounds that they are excessive. Extracts of the relevant insolvency rules dealing with these rights are set out below. Once the time period to seek further information about the office holder's remuneration and/or expenses for the period covered by the report has elapsed, then a Court Order is required to compel the office holder to provide further information about the remuneration and expenses. A Court order is required to challenge the office holder's remuneration and/or expenses for the period covered by the report. Once that period has elapsed, then a separate Court Order is required to allow an application out of time.

Under rule 18.9 of the Insolvency (England and Wales) Rules 2006, an unsecured creditor may, with the permission of the court or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question) request further details of the office holder's remuneration and expenses, within 21 days of receipt of any report for the period. Any secured creditor may request the same details in the same time limit.

Under rule 18.34, an unsecured creditor may, with the permission of the court or with the concurrence of 10% in value of the unsecured creditors (including the creditor in question), apply to court to challenge the amount and/or basis of the office holder's fees and the amount of any proposed expenses or expenses already incurred, within 8 weeks of receipt of any report for the period. Any secured creditor may make a similar application to court within the same time limit.

Under some old legislation, which still applies for insolvency appointments commenced before 6 April 2010, there is no equivalent mechanism for fees to be challenged.