

# Return of Final Meeting in a Creditors' Voluntary Winding Up

# S.106

Pursuant to Section 106 of the Insolvency Act 1986

To the Registrar of Companies

Company Number

03046737

Name of Company

(a) Insert full name of company

(a) ABSOLUTE WINDOWS LIMITED

Limited

(b) Insert full name(s) and address(es)

1/We (b) STEPHEN BERRY, BERRY & CO, FIRST FLOOR,  
LLOYDS HOUSE, 18 LLOYD STREET, MANCHESTER,  
M2 SWA

(c) Delete as applicable

(d) Insert date

(e) The copy account must be authenticated by the written signature(s) of the liquidator(s)

(f) Insert venue of the meeting

1 give notice that a general meeting of the company was duly (c) [held on] ~~summoned for~~ (d) 18/12/13 pursuant to Section 106 of the Insolvency Act 1986, for the purpose of having an account (of which a copy is attached (e) laid before it showing how the winding up of the company has been disposed of and (c) [that the same was done accordingly] [no quorum was present at the meeting].

2 give notice that a meeting of the creditors of the company was duly (c) [held on] ~~summoned for~~ (d) 18/12/13 pursuant to Section 106 of the Insolvency Act 1986, for the purpose of having the said account laid before it showing how the winding up of the company has been conducted and the property of the company has been disposed of and (c) [that the same was done accordingly] [no quorum was present at the meeting]

The meeting was held at (f) 18/12/13

The winding up covers the period from (d) 15/11/11 (opening of winding up) to the final meeting (close of winding up)

The outcome of any meeting (including any resolutions passed) was as follows

THAT THE LIQUIDATORS FINAL REPORT AND  
ACCOUNT OF RECEIPTS AND PAYMENTS  
BE APPROVED

SATURDAY



A61

\*A2NOLPLK\*

21/12/2013

#220

COMPANIES HOUSE

Signed

Date

18/12/13

Presenter's name, address and reference (if any)

Stephen Berry of Berry & Co was appointed Liquidator on 15 November 2011. For the purposes of section 231 of the Act, the Liquidator confirms that he is authorised to carry out all functions, duties and powers pursuant to the Act

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## **Absolute Windows Limited (In Liquidation) ("the Company")**

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### **Final Report and Account of the Liquidator Pursuant to Rule 4.49C(4), 4.49D and 4.126 of the Insolvency Act and Rules 1986 (as amended).**

This report has been prepared for the sole purpose of updating the Creditors for information purposes. The report is private and confidential and may not be relied upon, referred to, reproduced or quoted from, in whole or in part, by Creditors for any purpose other than updating them for information purposes, or by any other person for any purpose whatsoever.

<b>Stephen Berry Contact Details</b>	
<b>Address</b>	Berry & Co First Floor, Lloyds House, 18 Lloyd Street, Manchester, M2 5WA
<b>Telephone Number</b>	0844 310 11 11
<b>Fax Number</b>	0844 504 0116
<b>Email</b>	smb@berry-ip.com

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## 1. Statutory Information

Company registered number	03046737
Nature of business	Painting and Glazing
Former trading address	Unit 6, Priestley Road, Worsley in Manchester, M28 2LY
Date winding up commenced	15 November 2011
Name of Liquidator	Stephen Berry
Date of Liquidator's appointment	15 November 2011
Changes in office holder (if any)	N/A
Registered office address	C/o Berry & Co, First Floor, Lloyds House 18 Lloyd Street Manchester M2 5WA

## 2 Introduction

This report has been prepared in accordance with Rules 4.49c(4), 4.49D and 4.126 of the Rules to provide creditors with a summary of the Liquidators' administration of the winding up of the Company. This report should be read in conjunction with the Liquidator's annual report of 15 November 2012.

This report was presented at the final meeting of members and creditors on 18 December 2013.

## 3. Background

The statutory meetings of members and creditors were held on 15 November 2011 at which Stephen Berry of Berry & Co of Lloyd House, 18 Lloyd Street, Manchester M2 5WA was appointed Liquidator of the Company.

## 4. Receipts and Payments Account

Attached at schedule 2 is the Liquidator's account of receipts and payments demonstrating consecutive periods to date. The Liquidator has also provided a summary of expected receipts and payments in the period from the date of this report to the final meeting of creditors.

In this section further, if any, comments are detailed in respect of the receipts and payments account during the period since the Liquidator's appointment.

### Receipts

Please refer to the Liquidator's annual report of 15 November 2012, since this date a VAT rebate has been received.

## Payments

Please refer to the Liquidator's annual report of 15 November 2012, since this date the following payments have been made from the liquidation estate -

<b>Payment Made</b>	<b>£</b>
Office Holder's Remuneration	(2,840 00)
Bank charges	(55 18)
Bank Charges	(10 00)
Office Holder's Remuneration	(562 83)
Advertisement of final MOC <sup>1</sup>	(90 00)

Since the 15 November 2011 to 18 December 2013, a total of 120 70 hours have been spent by the Liquidator and staff on matters arising in the liquidation, incurring total charges of £41,164 50 representing which gives an average charge out rate of £341 05 per hour across all grades of staff

It is intended that any remaining remuneration outstanding to the Liquidator will be written off due to lack of funds

A breakdown of these fees are enclosed with this report

The work has been categorised into the following task headings and sub-categories -

### **Administration and Planning**

Includes case planning, case set up, notification of appointment, maintenance of case files and insolvency case record, statutory reporting, compliance, cashiering and accounting

### **Investigations**

Includes, investigating the Company's affairs and in particular any antecedent transactions and also reporting on the conduct of the directors

### **Realisation of Assets**

Includes identifying/securing and insuring assets, sale of business, transition of contracts, property issues, dispose of stock, collection of debts, realisation of other fixed assets

### **Creditors**

Includes set up of creditor records, creditor communication, preferential claims, unsecured claims, secured and employee claims

### **Other Matters/Case Specific Matters**

Includes VAT and taxation matters and issues specific to that particular case

Please note, all payments have been made in accordance with the rules and regulations generally as to the payment of costs and expenses in the Liquidation

The matters remaining in the liquidation to be dealt with are holding final creditors' meeting, minuting and recording the same, filing resolutions and notifying relevant parties, placing files into storage

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<sup>1</sup> VAT paid on sale of chattels

Accordingly, it is intended that the remaining Liquidator's remuneration which it is intended will be written off

For the sake of completeness please find at schedule 3 a breakdown of the time incurred on this matter in any event

## **5. Investigations**

I have complied with my statutory duties, including investigating and reporting to the Department for Business Innovation and Skills in respect of the conduct of the Company's director. My report and disclosures are confidential and are not available to creditors

## **6. Creditor Claims**

### **Preferential creditors**

The Liquidator received several RP1 forms from former employees of the Company shortly after they entered into liquidation. The Liquidator submitted the RP1 forms directly to the Redundancy Payments Office ("RPO") together with statutory forms RP14/A. Accordingly, due to a certain number of employees being offered employment positions with a Connected Company the RPO office rejected all claims on the grounds that Transfer of Undertaking Protection of Employment ("TUPE") applied to all former employees of the Company.

Due to the refusals of the RP1 claims, a majority of the employees made claims against the Connected Company and the Liquidator was made aware of several employment tribunals.

The Connected Company disputed these claims and argued that TUPE was not applicable. Accordingly, after lengthy court cases the claims against the Connected Company were dismissed and employees were awarded their claims.

Moreover, several employees were awarded incorrect payments from the RPO due to incorrect information being submitted from the Company's former accountants. The Liquidator liaised with the Company's former accountants and RPO until this was rectified. Accordingly, the Liquidator has been informed by several former employees subject to such payments that this matter has now been resolved. Following these payments the Liquidator has received several "withdrawal of claim" notices from the employment tribunal department. To date, no preferential claims have been received from the RPO.

Creditors will be aware the preferential creditors on the statement of affairs were estimated to be £15,634.

### **Unsecured creditors**

The unsecured creditors claims in the director's sworn statement of affairs is £504,167. In order to minimise costs associated with any insolvency procedure it is Berry & Co's policy to only agree the claims of unsecured creditors in the event that a distribution is declared. Accordingly, I confirm that I have not agreed any of the claims of the unsecured creditors.

### **Prescribed part of net property**

As creditors are aware there is a fixed and floating charge in favour of the HSBC Invoice Finance. However, the realisable value of the assets is below the de minimis level of £10,000 and therefore no prescribed part was applicable in the event of net property being available to the secured creditor.

### **Notice that no Dividend will be Declared**

In the context of the information herein presented, accordingly Notice has been given to creditors pursuant to Rule 4 186 of The Insolvency Rules 1986 that no dividend will be declared in respect of creditors in this matter for the reason that the funds realised have been used for defraying the expenses of administration as per the receipts and payments account enclosed herein Accordingly, there are no funds to distribute

## 7. Creditor 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 Liquidators remuneration and expenses, within 21 days of this report Any secured creditor may request the same details in the same time limit

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

Copies of the requisite rules are enclosed for your information

## 8. Conclusion

There was no quorum present for either of the final meetings of members or creditors and therefore the chairman declared the meetings closed

Should you have any queries regarding this matter please do not hesitate to contact this office

Yours faithfully



Stephen Berry  
Liquidator

Dated

**ABSOLUTE WINDOWS LIMITED – IN LIQUIDATION**  
**MINUTES OF THE FINAL CREDITORS MEETING OF CREDITORS**

convened pursuant to Section 106 of the Insolvency Act 1986  
and held at the offices of Berry & Co, First Floor, Lloyds House, 18 Lloyd Street, Manchester, M2 5WA on 18  
December 2013 at 11 30am

Present	Stephen Berry of Berry & Co
Members in attendance	See attached Attendance Register
In attendance	N/A
Formal business	The final report and account previously circulated to creditors was laid before the meeting

No quorum was present at the meeting



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**Stephen Berry**  
Chairman

Dated 18/12/13



**ABSOLUTE WINDOWS LIMITED – IN LIQUIDATION**

**MINUTES OF THE FINAL MEMBERS MEETING OF THE COMPANY**

convened pursuant to Section 106 of the Insolvency Act 1986  
and held at the offices of Berry & Co, First Floor, Lloyds House, 18 Lloyd Street, Manchester, M2 5WA on 18  
December 2013 at 11 00am

Present	Stephen Berry of Berry & Co
Members in attendance	See attached Attendance Register
In attendance	N/A
Formal business	The final report and account previously circulated to members was laid before the meeting

No quorum was present at the meeting

  

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**Stephen Berry**  
Chairman

Dated 18/12/13 .



# ABSOLUTE WINDOWS LIMITED – IN LIQUIDATION

## ATTENDANCE REGISTER

For the Final Meetings of Members and Creditors  
held pursuant to Section 106 of the Insolvency Act 1986  
at the offices of Berry & Co, First Floor, Lloyds House, 18 Lloyd Street, Manchester, M2 5WA on 18 December 2013 at 11 00am and 11 30am

PAGE .. ...OF . . .

PLEASE PRINT CLEARLY

FOR OFFICIAL USE ONLY

YOUR NAME	NAME OF MEMBER/CREDITOR WHO YOU ARE REPRESENTING	AMOUNT OF CLAIM £	SIGNATURE	PER S/A £	ADMITTED TO VOTE £
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### MEMBERS

NO QUORUM WAS PRESENT AT THE MEETING.


### CREDITORS

NO QUORUM WAS PRESENT AT THE MEETING.


# **Absolute Windows Limited – In Liquidation**

## **Final Receipts and Payments for the Period 15/11/2011 to closure**

<b><u>Receipts</u></b>	<b><u>15/11/2011 to 15/11/2012</u></b>	<b><u>16/11/2012 to 16/10/2013</u></b>	<b><u>17/10/2013 to 18/12/2013</u></b>	<b><u>Total</u></b>	<b><u>Statement of Affairs</u></b>
<b>Asset Sale -<sup>1</sup></b>					
Plant and Machinery <sup>2</sup>	600 00	-	-	600 00	60,000 00
Furniture and Fittings <sup>3</sup>	500 00	-	-	500 00	8,000 00
Vehicle <sup>4</sup>	2,700 00	-	-	2 700 00	2,000 00
Stock <sup>5</sup>	1,250 00	-	-	1 250 00	2,000 00
VAT	1,010 00	-	-	1,010 00	-
Intercompany Loan	11,066 00	-	-	11,066 00	-
Director's Loan	2,267 00	-	-	2,267 00	-
Trade Debtors <sup>6</sup>	0 00	-	-	0 00	92,000 00
Vat Rebate	-	2,915 99	567 14	3,483 13	-
Chattels	-	-	-	-	-
Book Debts	-	-	-	-	-
Balance Carried Forward	-	79 88	95 69	-	-
<b>Total</b>	<b>19,393 00</b>	<b>2,995.87</b>	<b>662 83</b>	<b>22,782.32</b>	
<b><u>Payments</u></b>					
Office Holder's Remuneration	(17,496 05)	(2,840 00)	(562 83)	(20,898 88)	-
HMRC VAT on Sale of Assets	(1,010 00)	-	-	(1,010 00)	-
Advertising notice of appointment	(153 95)	-	-	(153 95)	-
Advertisement of Final MOC	-	-	(90 00)	(90 00)	-
Bank Charges	(53 12)	(60 18)	(10 00)	(112 30)	-
Bond	(600 00)	-	-	(600 00)	-
<b>Total</b>	<b>(19,313 12)</b>	<b>(2,900.18)</b>	<b>(662.83)</b>	<b>(22,782 32)</b>	<b>0 00</b>
<b>Account Balance</b>	<b>79 88</b>	<b>95 69</b>	<b>0.00</b>	<b>0 00</b>	<b>00 00</b>

<sup>1</sup> The asset sale has been broken down into separate headings for each group of assets. Creditors should note that the same headings have been used that have been used in the statement of affairs for ease of comparison.

<sup>2</sup> A Receiver was appointed to repossess the main machines to which most of the estimated figure relates pursuant to the lenders secured charge.

<sup>3</sup> Residual furniture and fittings was inventoried by the independent chartered surveyors and included in the asset sale. The estimated figures to realise included terms such as software packages which were deemed to be unsellable by the chartered surveyors.

<sup>4</sup> The vehicle was valued at the higher figure of between £2,500 and £2,700. The latter figure was obtained by the liquidator.

<sup>5</sup> Further retention of title claims were received post the date of liquidation reflected in the independent valuation of the stock.

<sup>6</sup> Pursuant to the statutory agreement of 5 December 2011 the book debts were collected in by HSBC Invoice Finance. It has been confirmed that there is no surplus from the book back to the liquidation estate.

# Time Entry - Detailed SIP9 Time & Cost Summary

L0132153 - Absolute Windows Limited  
From 15/11/2011 To 18/12/2013  
Project Code POST

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
700 Formalities	26.80	0.00	9.20	0.00	36.00	12,246.00	340.17
Admin & Planning	26.80	0.00	9.20	0.00	36.00	12,246.00	340.17
300 Ident / Securing & Insuring	6.20	0.00	0.20	0.00	6.40	2,457.00	383.91
202 Pursuing Antecedent Transactions	13.00	0.00	0.20	0.00	13.20	5,109.00	387.05
303 Book Debts	0.20	0.00	0.60	0.00	0.80	195.00	243.75
301 ROT	1.50	0.00	1.40	0.00	2.90	858.00	295.86
304 Plant & Machinery / Motor Vehicles	7.30	0.00	1.40	0.00	8.70	3,120.00	358.62
306 Other Assets	0.90	0.00	0.00	0.00	0.90	351.00	390.00
Asset Realisation	28.10	0.00	3.80	0.00	32.90	12,090.00	367.48
501 Unsecured Creditors	0.30	0.00	1.00	0.00	1.30	312.00	240.00
505 Report / Secured Creditor	0.20	0.00	0.20	0.00	0.40	117.00	292.50
504 Statutory Reporting to Creditors	27.80	0.00	0.00	0.00	27.80	10,942.00	390.00
502 Employee Matters	3.10	0.00	15.50	0.00	18.60	4,231.50	227.50
503 Committee Report & Meeting	1.50	0.00	0.00	0.00	1.50	585.00	390.00
Creditors	32.90	0.00	16.70	0.00	49.60	16,087.50	324.34
403 Ongoing Employee Issues	1.60	0.00	0.80	0.00	2.20	741.00	336.82
Trading	1.60	0.00	0.60	0.00	2.20	741.00	336.82
Total Hours	80.40	0.00	30.30	0.00	120.70	41,164.50	341.05
Total Fees Claimed Excl VAT						17,415.73	
Fees intended to be written off due to lack of funds						23,748.77	



### **Berry & Co. Charge Out Rates and Disbursement's Policy**

In accordance with Statement of Insolvency Practice 9 we detail our charge out rates and disbursements policy applicable on all cases from 1<sup>st</sup> January 2010

Fees are charged on a time costs plus disbursements basis as follows

#### **Hourly Charge Out Rates**

The rates depend on the complexity of the case

Insolvency Practitioner	£390
Manager	£280
Senior Case Administrator	£195
Case Administrator	£150

The above charge out rates incorporate the charges made for "support staff", that is to say secretaries/cashiers

The office holder(s) will seek approval from creditors to draw remuneration on a time cost basis, in accordance with the rates detailed above, at the meeting of creditors

In common with all professional firms, our charge out rates increase from time to time. We reserve the right to change the rates without prior notice to you. Any change will be reported in the next statutory report to creditors.

Time is recorded on files in six minute units in accordance with the industry standard for professional services

#### **Rechargeable Disbursements**

The firm also may charge the following NOT charged by third parties (SIP9 category 2 disbursements) as follows

- Photocopying 17p per copy
- Mileage at 40/60p per mile
- Storage of boxes internally £8 per annum per box
- Destruction of boxes £8.50 each
- Room Hire where meeting held at Berry & Co 's office £100 per hour

The office holder(s) will seek approval from creditors at the respective creditors meeting should they intend to draw such expenses

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

### **ENGLAND AND WALES**

#### **1 Introduction**

- 1 1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope 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 liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees and explains the basis on which fees are fixed.

#### **2 Liquidation procedure**

- 2 1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.
- 2 2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
- 2 3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and a member of the Insolvency Service, an executive agency within the Department of Trade and Industry. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by the Secretary of State for Trade and Industry. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2 4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An administrator may also subsequently act as liquidator in a CVL.



### **3 The liquidation committee**

- 3.1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
- 3.2 The liquidator must call the first meeting of the committee within 3 months of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

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

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed either

as a percentage of the value of the assets which are realised or distributed or both, or by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation.

It is for the liquidation committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to be applied. Rule 4.127 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 liquidator in connection with the insolvency;  
the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties,  
the value and nature of the assets which the liquidator has to deal with.

- 4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as the committee would. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the remuneration is not fixed in any of these ways, it will be in accordance with a scale set out in the Rules.

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

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

- 5.1.1 When seeking agreement to his fees the liquidator 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 liquidator 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 liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator 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 liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator 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 liquidator 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 liquidator'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 liquidator 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 liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator 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 liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he 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 liquidator 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 liquidator 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 liquidator'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.

## **5.4 Realisations for secured creditors**

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 8.1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

## **5.5 Reporting in compulsory liquidations**

It should be borne in mind that in compulsory liquidations there is no statutory requirement for the liquidator to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the liquidation unless they specifically request it.

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

6.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.

6.2 If a creditor believes that the liquidator'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 liquidator 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 out of the assets of the insolvent company.

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

If the liquidator considers that the remuneration fixed by the 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 or in accordance with the statutory scale 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 committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the 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 out of the assets.

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

8.1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

8.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.

8.3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.

8.4 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are

sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

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

In any case where the liquidator is appointed on or after 1 April 2005 he must provide certain information about the time spent on the 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 liquidator 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 liquidator's appointment, or where he has vacated office, the date that he vacated office.

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



**Schedule 6**

Statement of Creditors Rights Pursuant to Rules 4.131 and 4.49E of the Insolvency Act and Rules 1986 and Insolvency Regulations 1994 ("as amended")

**4.131.— Creditors' claim that remuneration is [ or other expenses are]<sup>1149</sup> excessive**

[ (1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10%

in value of the creditors (including that creditor) or the permission of the court, may apply to the

court for one or more of the orders in paragraph (4).

(1A) Application may be made on the grounds that—

(a) the remuneration charged by the liquidator,

(b) the basis fixed for the liquidator's remuneration under Rule 4.127, or

(c) expenses incurred by the liquidator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph

(b), inappropriate.

(1B) The application must, subject to any order of the court under Rule 4.49E(5), be made no later

than 8 weeks (or, in a case falling within Rule 4.108, 4 weeks) after receipt by the applicant of the

progress report, or the draft report under Rule 4.49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report") ]<sup>1150</sup>

<sup>1146</sup> Substituted by Insolvency (Amendment) Rules 2010/686 Sch 1 para 221(2) (April 6, 2010 substitution has effect

subject to savings and transitional provisions specified in SI 2010/686 Sch 4 and Sch 5 and SI 2010/734 rule 13)

<sup>1147</sup> Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch 1(1)(5) para.65 (January 11, 1988)

<sup>1148</sup> Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

<sup>1149</sup> Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(2) (April 6, 2010. insertion has effect

subject to savings and transitional provisions specified in SI 2010/686 Sch 4 and Sch 5 and SI 2010/734 rule 13)

<sup>1150</sup> Rule 4.131(1)-(1B) substituted for rule 4.131(1) by Insolvency (Amendment) Rules 2010/686 Sch 1 para 222(3)

(April 6, 2010 substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch 4

and Sch 5 and SI 2010/734 rule 13)

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(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for

[ a ] <sup>1151</sup> hearing, of which he has been given at least [ 5 business ] <sup>1152</sup> days' notice [ but which is

without notice to any other party]<sup>1153</sup>

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard,

and give notice to the applicant accordingly

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating

the venue and accompanied by a copy of the application, and of any evidence which the applicant

intends to adduce in support of it

[ (4) If the court considers the application to be well-founded, it must make one or more of the

following orders—

(a) an order reducing the amount of remuneration which the liquidator was entitled to



charge,

(b) an order fixing the basis of remuneration at a reduced rate or amount,

(c) an order changing the basis of remuneration,

(d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation,

(e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may

be made only in respect of periods after the period covered by the relevant report

1154

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant,

and are not payable [as an expense of the liquidation] 1155

**Commencement**

Pt 4(11) rule 4 131(1)-(5) December 29 1986

**Rule 4.49E of the Insolvency Rules 1986**

**4.49E Creditors' and members' request for further information**

**4.49E(1) (Duty of liquidator re remuneration or expenses) If -**

- (a) within the period mentioned in paragraph (2) -
  - (i) a secured creditor, or
  - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
  - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
- (b) with the permission of the Court upon an application made within the period mentioned in paragraph (2) -
  - (i) any unsecured creditor, or
  - (ii) any member of the company in a members' voluntary winding up,

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108

**4.49E(2) (Period for compliance with r.4.49E(1)) The period referred to in paragraph (1)(a) and (b) is -**

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
- (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case

**4.49E(3) (How liquidator to comply) The liquidator complies with this paragraph by either-**

- (a) providing all the information asked for, or
- (b) so far as the liquidator considers that -
  - (i) the time or cost of preparation of the information would be excessive, or
  - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
  - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all the information

**4.49E(4) (Application to Court by creditors and members) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the Court within 21 days of -**

- (a) the giving by the liquidator of reasons for not providing all the information asked for, or
- (b) the expiry of the 14 days provided for in paragraph (1)

and the Court may make such order as it thinks just

**4.49E(5) (Court may extend period in rr.4.131(1B), 4.148C(2)) Without prejudice to the generality of**



paragraph (4), the order of the Court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4 131(1B) or 4 148C(2) by such further period as the Court thinks just

**4.49E(6) (Non application to official receiver)** This Rule does not apply where the liquidator is the official receiver