

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 3 4 1 0 6 4 3

Company name in full Salco Homes Limited

→ Filling in this form

Please complete in typescript or in
bold black capitals.

2 Liquidator's name

Full forename(s) Colin

Surname Hardman

3 Liquidator's address

Building name/number 25 Moorgate

Street London

Post town EC2R 6AY

County/Region

Postcode

Country

4 Liquidator's name ①

Full forename(s) Kevin

Surname Ley

① Other liquidator

Use this section to tell us about
another liquidator.

5 Liquidator's address ②

Building name/number 25 Moorgate

Street London

Post town EC2R 6AY

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

^d1^d6^m1^m2^y2^y0^y2^y0

To date

^d1^d5^m1^m2^y2^y0^y2^y1

7

Progress report

☒ The progress report is attached

8

Sign and date

Liquidator's signature

Signature

X

Colin Hardman

Colin Hardman (Feb 10, 2022 16:30 GMT)

X

Signature date

^d1^d0^m0^m2^y2^y0^y2^y2

**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 **Liam Clarke**

Company name **Smith & Williamson LLP**

Address **25 Moorgate**

London

Post town **EC2R 6AY**

County/Region

Postcode

Country

DX **119507 Finsbury Square EC2**

Telephone **020 7131 4000**

**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



Salco Homes Limited (in members' voluntary liquidation)

Joint liquidators' annual progress report for the period from 16
December 2020 to 15 December 2021

10 February 2022



Contents

1.	Glossary	3
2.	Introduction and statutory information	4
3.	Group wind-down	5
4.	Realisation of assets	6
5.	Creditors	6
6.	Distributions to members	7
7.	Liquidators' remuneration and expenses	7
8.	Outstanding matters	8
9.	Privacy and Data Protection	8
10.	Members' rights	9
11.	Next report	9

Appendices

I	Receipts and payments account	11
II	Staffing, charging, subcontractor and adviser policies and charge out rates	12
III	A Member's Guide to Liquidators' Fees in a Members' Voluntary Liquidation	15



1. Glossary

Abbreviation	Description
the Company	Salco Homes Limited
DOS	Declaration of Solvency
ETR	Estimated to realise
HMRC	HM Revenue & Customs
IA86	Insolvency Act 1986 If preceded by S this denotes a section number
IR16	Insolvency (England and Wales) Rules 2016 If preceded by R this denotes a rule number
the liquidators/joint liquidators	Colin Hardman and Kevin Ley
SIP	Statement of Insolvency Practice (England & Wales)
S&WEBC	Smith & Williamson Employee Benefits Consultancy, a division of Smith & Williamson Financial Services Limited
S&WFS	Smith & Williamson Financial Services Limited

2. Introduction and statutory information

This report provides an update on the progress in the liquidation of the Company for the year ended 15 December 2021. It should be read in conjunction with any previous reports. By way of reminder, we, Colin Hardman and Kevin Ley, of Smith & Williamson LLP, 25 Moorgate, London, EC2R 6AY, were appointed liquidators of the Company on 16 December 2020.

The joint liquidators of the Company are appointed to manage its affairs, business and property. They act as agents and without personal liability.

Both office-holders are authorised and licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales. Further details of their licensing body along with our complaints and compensation procedure can be accessed at: <https://smithandwilliamson.com/en/insolvency-licensing-bodies/>

The Joint Liquidators are bound by the Insolvency Code of Ethics which can be found at:

<https://www.icaew.com/technical/insolvency/sips-regulations-and-guidance/insolvency-code-of-ethics>

Prior to liquidation, the Company was a dormant subsidiary of the Butterfly Healthcare Group Limited, with a registered office of 2 Merchants Drive, Parkhouse, Carlisle, CA3 0JW. The Company's registered office is now 25 Moorgate, London, EC2R 6AY and its registered number is 03410643.

Following a re-organisation and group disposal of the care home operations, simplification of the legacy corporate structure has been undertaken, resulting in the liquidation of the Company together with other group companies.

3. Group wind-down

The liquidation of the Company is part of an ongoing corporate simplification process undertaken for Butterfly Group Healthcare Limited (the intermediate parent company within the group).

In total there have been 15 formal insolvency appointments: 13 members' voluntary liquidations ("MVL") and 2 creditors' voluntary liquidations ("CVL"). A schedule of the companies in question (which includes the Company) are outlined below:

Company name (in App Order)	Company Number	Appointment Date	Appointment Type
World Trade Properties Limited	05617532	16 December 2020	MVL
Aspenframe Limited	03407287	16 December 2020	MVL
Salco Homes Limited	03410643	16 December 2020	MVL
Eagle View Care Home Limited	04499419	17 December 2020	MVL
System Cycle Limited	03047307	17 December 2020	MVL
Express Care Limited	05722121	17 December 2020	MVL
Primrose Care Home Limited	04595746	17 December 2020	MVL
Executive Health Care Limited	04851843	17 December 2020	MVL
Sovereign Guest Services Limited	07224440	17 December 2020	MVL
Hillcrest Care Homes Limited	02780067	17 December 2020	MVL
Express Care (Guest Services) Limited	04562740	17 December 2020	MVL
Windmill Hills Care Homes Limited	03164158	17 December 2020	MVL
Crossco (1332) Limited	08585509	18 December 2020	MVL
Crossco (1334) Limited	08622282	8 March 2021	CVL
Sovereign Care Homes Limited	09262607	8 March 2021	CVL

In accordance with the terms of the joint liquidators' engagement letter dated 3 December 2020, Butterfly Group Healthcare Limited is the party liable for the costs and expenses of the MVL appointments including Smith & Williamson LLP's pre-liquidation costs.

4. Realisation of assets

Attached at Appendix I is our receipts and payments account for the period from 16 December 2020 to 15 December 2021.

The receipts and payments account also includes a comparison with the directors' DOS values.

As outlined in the directors' DOS, no asset realisations were envisaged in respect of the liquidation. As detailed in the receipts and payments account, there have been no asset realisations within the period.

To date, the joint liquidators are unaware of any other assets to realise and therefore do not envisage further funds being paid into the estate.

5. Creditors

5.1 Secured creditors

No secured creditor claims were disclosed by the directors of the Company in the DOS and no claims in this regard have been received.

5.2 Ordinary and secondary preferential creditors

No ordinary or secondary preferential claims were disclosed by the Company and no preferential claims have been received within the liquidation.

5.3 Unsecured creditors

The joint liquidators formally advertised their appointment on 22 December 2020 and requested any creditor to prove any claims against the Company by 5 February 2021.

No unsecured claims were disclosed by the directors of the Company in the DOS, and no claims in this regard have been received.

At present, matters in respect of finalising the Company's corporation tax affairs are on-going but, based on current information, the joint liquidators are not expecting any liabilities owed to HMRC.

5.4 Directors' Declaration of Solvency

Prior to the Company entering into solvent liquidation, the directors made a DOS to the effect that all of the Company's debts would be paid in full, together with statutory interest, within 12 months of the commencement of the winding up.

6. Distributions to members

6.1 Cash distributions

No cash distributions have been declared to members within the period.

6.2 Distributions in specie

No distributions in specie have been declared to members within the period.

7. Liquidators' remuneration and expenses

7.1 Pre-appointment remuneration

In accordance with the terms of the joint liquidators' engagement letter dated 3 December 2020, Butterfly Group Healthcare Limited is the party liable for Smith & Williamson LLP's pre-liquidation costs.

For the purposes of transparency, our fees and costs in respect of all pre-appointment work have been approved by Butterfly Group Healthcare Limited and will be paid directly by it. The funds will not be drawn from the liquidation estate.

7.2 Joint liquidators' remuneration

In accordance with the terms of the joint liquidators' engagement letter dated 3 December 2020, Butterfly Group Healthcare Limited are the parties liable for the payment of the joint liquidators' fees.

For the purposes of transparency, our fees and costs in respect of all post liquidation work have been approved by Butterfly Group Healthcare Limited and will be paid directly by it. The funds will not be drawn from the liquidation estate.

7.3 Subcontractors

The joint liquidators have not instructed any subcontractors in respect of this appointment.

7.4 Professional advisers

On this assignment we have sought input from professional advisers who have had historic dealings with the Company's affairs as part of the wider group simplification and wind-down, namely the following:

- BDO LLP - In respect of the Company's historic accounts and tax affairs; and
- Baines Wilson LLP - In respect of the Company's legal affairs.

At present no party has been formally instructed by the joint liquidators in respect of ongoing matters, but in accordance with the other costs incurred in respect of this process, Butterfly Group Healthcare Limited have agreed to settle these costs directly.

7.5 Liquidators' expenses

The following expenses have been incurred in the current period:

Description	Costs incurred in current period £	Costs paid in current period £	Total costs outstanding at period end £
Statutory Advertising	182.00	-	182.00
Specific bond	46.67	-	46.67
Total	228.67	-	228.67

In accordance with the terms of the joint liquidators' engagement letter dated 3 December 2020, Butterfly Group Healthcare Limited is the party liable for the payment of the joint liquidators' fees and expenses.

7.6 Policies regarding use of third parties and expense recovery

Appendix II provides details of Smith & Williamson LLP's policies in relation to the use of subcontractors and professional advisers, and the recovery of expenses.

8. Outstanding matters

The remaining actions to be concluded in the liquidation are as follows:

- Finalise the Company's pre and post liquidation corporation tax position.
- Obtaining tax clearance from HMRC.
- Closure of the liquidation, including preparing and issuing the draft final account.

9. Privacy and Data Protection

As part of our role as joint liquidators, I would advise you that we may need to access and use data relating to individuals. In doing so, we must abide by data protection requirements. Information about the way that we will use and store personal data in relation to insolvency appointments can be found at <https://smithandwilliamson.com/rsgdpr>. If you are unable to download this, please contact my office and a hard copy will be provided free of charge.

To the extent that you hold any personal data of the Company's data subjects provided to you by the Company or obtained otherwise, you must process such data in accordance with the UK data protection legislation. Please contact Liam Clarke of our office if you believe this applies.

The Joint Liquidators may act as controllers of personal data, as defined by the UK data protection law, depending upon the specific processing activities undertaken. Smith and Williamson LLP may act as a processor on the instructions of the Joint Liquidators. Personal data will be kept secure and processed only for matters relating to the Joint Liquidators' appointment.

The Fair Processing Notice in relation to the UK General Data Protection Regulation can be accessed at <http://smithandwilliamson.com/rsgdpr>

Should you wish to be supplied with a hard copy of any notice, attachment or document relating to a case matter, please contact the staff member dealing with this matter at any time via telephone, email or by post and this will be provided free of charge within five business days of receipt of the request.

10. Members' rights

Within 21 days of the receipt of this report, members with at least 5% of the total voting rights of all members having the right to vote at general meetings of the Company or otherwise with the court's permission may request in writing that the liquidators provide further information about their remuneration or expenses which have been itemised in this report.

Any members with at least 10% of the total voting rights of all members having the right to vote at general meetings of the Company or otherwise with the court's permission may within 8 weeks of receipt of this report make an application to court on the grounds that, in all the circumstances, the basis fixed for the liquidators' remuneration is inappropriate and/or the remuneration charged or the expenses incurred (including any paid) by the liquidators, as set out in this report, are excessive.

The above rights apply only to matters which have not been disclosed in previous reports.

Whilst members do have these rights, these only apply to remuneration or expenses settled directly from the liquidation estate. As stated in sections 7 & 8 above, our fees have been paid outside of the estate by Butterfly Group Healthcare Limited, in accordance with our engagement letter. As such, whilst the joint liquidators have a duty to inform members of such rights, they do not apply within this matter.

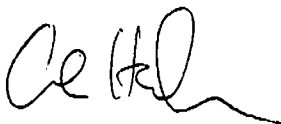
On a general note, if you have any comments or concerns in connection with our conduct, please contact Colin Hardman or Kevin Ley in the first instance. If the matter is not resolved to your satisfaction, you may contact our Head of Legal by writing to 25 Moorgate, London EC2R 6AY or by telephone on 020 7131 4000.

Thereafter, if you wish to take the matter further you may contact the Insolvency Services directly via Insolvency Complaints Gateway. They can be contacted by email, telephone or letter as follows:

- i) Email: insolvency.enquiryline@insolvency.gsi.gov.uk
- ii) Telephone number: +44 300 678 0015
- iii) Postal address: The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA.

11. Next report

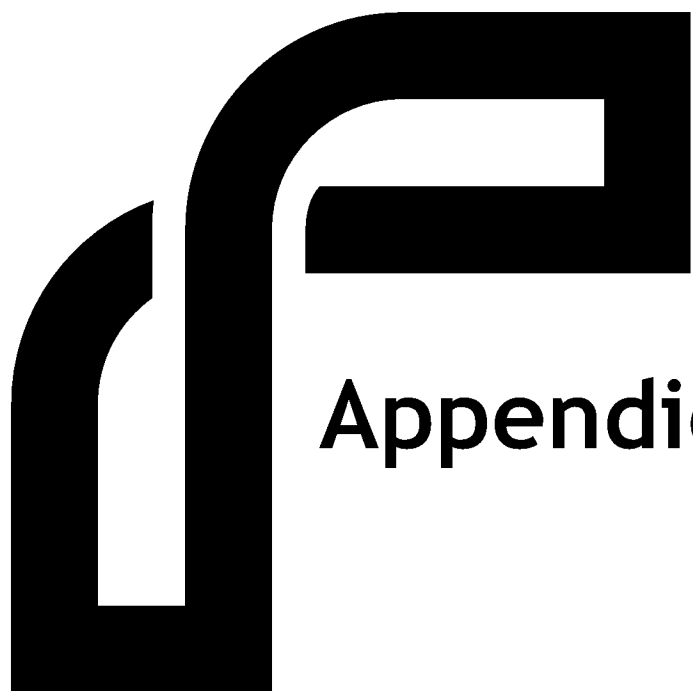
We are required to provide a further report on the progress of the liquidation within two months of the next anniversary of the liquidation unless we have concluded matters prior to this, in which case we will write to all members with our draft final account giving at least 8 weeks' notice of when members can expect to receive our final account.



Colin Hardman and Kevin Ley

Joint Liquidators

Date: 10 February 2022



Appendices

I Receipts and payments account

Receipts and payments account to 15 December 2021

Declaration of Solvency £	From 16/12/2020 To 15/12/2021 £	From 16/12/2020 To 15/12/2021 £
	NIL	NIL
REPRESENTED BY		NIL

Notes and further information required by SIP 7

- The liquidators' remuneration has not yet been approved from the estate.
- For the purposes of transparency, Smith & Williamson LLP's fees and costs in respect of all pre-appointment work have been approved by Butterfly Group Healthcare Limited and will be paid direct by them. The funds will not be drawn from the liquidation estate.
- For the purposes of transparency, the joint liquidators' fees and expenses in respect the liquidation, have been approved by Butterfly Group Healthcare Limited and will be paid direct by them. The funds will not be drawn from the liquidation estate.
- No payments have been made to us from outside the estate to date.
- Information concerning the liquidators' remuneration and expenses incurred is provided in the body of our report.
- Information concerning the ability to challenge the liquidators' remuneration and expenses of the liquidation is provided in our report.
- All bank accounts are non-interest bearing.
- There are no foreign currency holdings.

II Staffing, charging, subcontractor and adviser policies and charge out rates

Introduction

Detailed below are:

- Smith & Williamson LLP's policy in relation to:
 - Staff allocation and the use of subcontractors
 - Professional advisers
 - Expense recovery
- Smith & Williamson LLP's current charge out rates

Staff allocation and the use of subcontractors

Our general approach to resourcing our assignments is to allocate staff with the skills and experience to meet the specific requirements of the case.

The constitution of the case team will usually consist of a partner and a partner or director or associate director or consultant as joint office-holders, a manager, and an administrator or assistant. The exact constitution of the case team will depend on the anticipated size and complexity of the assignment and the experience requirements of the assignment. The charge out rate schedule below provides details of all grades of staff and their experience level.

We and our team charge our time for the work we need to do in the case. We delegate tasks to suitable grades of staff, taking into account their experience and any specialist knowledge that is needed and we supervise them properly to maximise the cost effectiveness of the work done. Anything complex or important matters of exceptional responsibility are handled by our senior staff or us.

All of our staff who work on the case (including our cashiers, support and secretarial staff) charge time directly to the assignment and are included in any analysis of time charged. Each grade of staff has an hourly charge-out rate which is reviewed from time to time. Work carried out by our cashiers, support and secretarial staff is charged for separately and isn't included in the hourly rates charged by partners or other staff members. Time up to 31 July 2020 is recorded in units representing 3 minutes or multiples thereof. From 1 August 2020 time is recorded in 1 minute units or multiples thereof. The minimum time chargeable is one minute. We do not charge general or overhead costs.

It may be necessary to utilise staff from both regional and London offices, subject to the specific requirements, eg, geographical location, of individual cases.

We may use subcontractors to perform work which might ordinarily be carried out by us and our staff where it is cost effective to do so and/or where the specific expertise offered by the subcontractor is required.

Details of any subcontractors' services utilised in the period covered by this report are set out in the body of this report.

Use of professional advisers

We select professional advisers such as agents and solicitors on the basis of balancing a number of factors including:

- The industry and/or practice area expertise required to perform the required work.
- The complexity and nature of the assignment.
- The availability of resources to meet the critical deadlines in the case.

- The charge out rates or fee structures that would be applicable to the assignment.
- The extent to which we believe that the advisers in question can add best value and service to the assignment.
- The expertise and experience of the service provider;
- The provider holds appropriate regulatory authorisations; and
- The professional and ethical standards applicable to the service provider.

Arrangements will be reviewed periodically to ensure that best value and service continue to be obtained.

External professional advisers are third party entities. The insolvency practitioners and their firm do not have any association with any external provider of services and therefore they do not fall within the definition of an associate as defined in Section 435 of the Insolvency Act 1986 and in Statement of Insolvency Practice 9. Payments to external professional advisers for the services they provide are therefore not a category 2 expense as defined in Statement of Insolvency Practice 9 and therefore do not require prior approval from the members.

Expenses

Category 1 expenses do not require approval by members. The type of expenses that may be charged as a Category 1 expense to a case generally comprise external supplies of incidental services specifically identifiable to the case, such as postage, case advertising, invoiced travel and external printing, room hire and document storage. Also chargeable will be any properly reimbursed expenses incurred by personnel in connection with the case.

Category 2 expenses do require approval from members. These are costs which are directly referable to the appointment in question but are not payments which are made to an independent third party and may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis such as internal room hire, document storage or business mileage.

Since 7 July 2012 Smith & Williamson LLP's policy is to recover only one type of Category 2 expense, namely business mileage at HMRC's approved mileage rates at the relevant time. Current mileage rates are 45p per mile plus 5p per passenger per mile. Prior to 7 July 2012 approval may have been obtained to recover other types of Category 2 expenses.

Details of any Category 2 expenses incurred and/or recovered in the period covered by this report are set out in the body of this report.

Charge out rates

A schedule of Smith & Williamson LLP's charge out rates was issued to members at the time the basis of the liquidators' remuneration was approved.

Please note that following the merger of Tilney and Smith and Williamson LLP on 1 September 2020 there has been a recent change to our financial year-end and our charge-out rates. This has resulted in certain departments within the organisation adjusting their charge-out on 1 January 2021, these adjusted rates are included with our charge out rates schedule below.

In light of the guidance issued to clients and creditors prior to this report, we have elected to postpone our rate changes in line with issued documentation until 1 July 2022, with the intention to review this again on 1 January 2023, with a return to annual reviews thereafter. In common with many professional firms, our scale rates may rise to cover annual inflationary cost increases. It is anticipated that the rate of any increase on 1 January 2023 will take into account that only six months will have passed from the date of the last increase and so should not cause any prejudice to members.

The rates applicable to this appointment are set out below. Changes to the charge out rates during the period of this report were applied with effect from 1 July 2021.

Smith & Williamson LLP	1 July 2020	1 July 2021
Restructuring & Recovery Services	£/hr	£/hr
Charge out rates as at:		
Partner / Director	495-570	590-610
Associate Director	380-465	395-530
Managers	285-400	290-430
Other professional staff	125-465	130-280
Support & secretarial staff	105	100-120

Notes

1. Up to 31 July 2020 time is recorded in units representing 3 minutes or multiples thereof. From 1 August 2020 time is recorded in 1 minute units or multiples thereof.
2. It may be necessary to utilise staff from both regional and London offices, subject to the requirements of individual cases.
3. The firm's cashiering function is centralised and London rates apply. Up to 31 July 2020 the cashiering function time is incorporated within 'Other professional staff' rates. From 1 August 2020 the cashiering function time is split between 'Other professional staff', 'Managers' and 'Associate Director'.
4. Partner includes a Consultant acting as an office-holder or in an equivalent role.

Smith & Williamson LLP	1 July 2020	1 July 2021	1 January 2022
Corporate Tax	£/hr	£/hr	£/hr
Charge out rates as at:			
Partner / Director	625-740	550-890	590-950
Associate Director	500	400-500	430-535
Managers	270-430	215-430	230-460
Other professional staff	95-230	95-230	105-245
Support & secretarial staff	65	55-70	60-75

III A Member's Guide to Liquidators' Fees in a Members' Voluntary Liquidation

A SHAREHOLDERS' (a.k.a MEMBERS') GUIDE TO LIQUIDATORS FEES - ENGLAND AND WALES

1. Introduction

- 1.1. When a company goes into members' voluntary liquidation, unless the fees and costs are paid by a third party, the costs of the proceedings are paid out of its assets. The members (shareholders), who hope to recover some of their investment, therefore, have a direct interest in the level of costs and, in particular, the remuneration of the insolvency practitioner appointed to act as Liquidator.
- 1.2. The insolvency legislation recognises this interest by providing mechanisms for members to fix the basis of the Liquidator's fees. This guide is intended to help members be aware of their rights to approve and monitor fees, explains the basis on which fees are fixed and how members can seek information about expenses incurred by the Liquidator and challenge those they consider to be excessive.

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. A solvent, voluntary liquidation is called a members' voluntary liquidation (often abbreviated to 'MVL'). In this type of liquidation an insolvency practitioner acts as Liquidator throughout and the members vote on the appointment of the Liquidator at a meeting of members or by written resolution.

3. Fixing the Liquidator's remuneration

- 3.1. The basis for fixing the insolvency practitioner's remuneration is set out in Rules 18.15 - 18.38 of the Insolvency Rules 2016. The Rules state that the remuneration shall be fixed:
 - as a percentage of the value of the assets which are realised, distributed or both,
 - by reference to the time properly given by the Liquidator and his staff in attending to matters arising in the liquidation, or
 - as a set amount.

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the Liquidator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the Liquidator.

It is for the liquidation committee (if there is one) or the company in general meeting to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied. Rule 18.16 (9) says that in arriving at its decision the committee or company 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.

- 3.2. If there is no liquidation committee, (which is usually the case in an MVL) or the committee does not make the requisite determination, the Liquidator's remuneration will be fixed by a resolution of a meeting of members. The members take account of the same matters as apply in the case of the committee. A resolution specifying the terms on which the Liquidator is to be remunerated may be taken at the meeting appointing the Liquidator.

4. Review of remuneration

Where there has been a material and substantial change in circumstances since the basis of the Liquidator's remuneration was fixed, the Liquidator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

5. What information should be provided by the Liquidator?

5.1. When fixing bases of remuneration

- 5.1.1. When seeking agreement for the basis or bases of remuneration, the Liquidator should provide sufficient supporting information to enable the committee or the members to make an informed judgement as to whether the basis sought is appropriate having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought. The appendix to this guide sets out a suggested format for the provision of information.

When providing information about payments, fees and expenses to members, the Liquidator should do so in a way that facilitates clarity of understanding the key issues. Narrative explanations should be provided to support any numerical information supplied. Where it is practical to do so, the Liquidator should provide an indication of the likely return to members when seeking approval for the basis of his fees.

The key issues of concern to the members will commonly be:

- (a) the work the Liquidator anticipates will be done and why that work is necessary;
 - (b) the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
 - (c) whether it is anticipated that the work will provide a financial benefit to members and, if so, what anticipated benefit (or if the work provides no direct, financial benefit but is required by statute);
 - (d) the work actually done and why that work was necessary;
 - (e) the actual costs of the work, including any expenses incurred in connection with it, as against any estimate provided; and
 - (f) whether the work has provided a financial benefit to members and, if so, what benefit (or if the work provided no direct financial benefit but was required by statute).
- 5.1.2. If any part of the remuneration is sought on a time costs basis, the Liquidator should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.
- 5.1.3. The Liquidator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.
- 5.1.4. If work has already been carried out, the Liquidator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case.
- 5.1.5. If approval for a fixed amount of a percentage basis is sought, the office holder should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the office holder anticipates will be undertaken.

Where the proposed charge is calculated on a time costs basis, the Liquidator should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by

appropriate activity. The Liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.

5.2. After the bases of remuneration have been fixed

The Liquidator is required to send progress reports to members at specified intervals (see paragraph 6.1 below). When reporting periodically to members, in addition to the matters specified in paragraph 6.1, the Liquidator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed.

Members should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the Liquidator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate).

Where any remuneration is on a time costs basis, the Liquidator should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The Liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.

5.3. Disbursements and other expenses

5.3.1. Costs met by and reimbursed to the Liquidator in connection with the liquidation should be appropriate and reasonable. Such costs will fall into two categories:

- Category 1 disbursements: These are costs where there is specific expenditure directly referable both to the liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the Liquidator or his or her staff.
- Category 2 disbursements: These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the liquidation on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the Liquidator should be prepared to disclose information about them in the same way as any other expenses. Category 2 disbursements may be drawn if they have been approved in the same manner as the Liquidator's remuneration. When seeking approval, the Liquidator should explain, for each category of expense, the basis on which the charge is being made.

5.3.2. The following are not permissible:

- a charge calculated as a percentage of remuneration;
- an administration fee or charge additional to the Liquidator's remuneration;
- recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

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 11.1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of members convened for the purpose of determining his fees, and in any reports he sends to members.

6. Progress reports and requests for further information

6.1. The Liquidator is required to send annual progress reports to members. The reports must include:

- details of the basis fixed for the remuneration of the Liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);

- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
 - a statement of the expenses incurred by the Liquidator during the period of the report, irrespective of whether payment was actually made during that period;
 - a statement of the members' rights to request further information, as explained in paragraph 6.2, and their right to challenge the Liquidator's remuneration and expenses.
- 6.2. Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the Liquidator's resignation) a member may request the Liquidator to provide further information about the remuneration and expenses set out in the report.
- 6.3. The Liquidator must provide the requested information within 14 days, unless he considers that:
- the time and cost involved in preparing the information would be excessive, or
 - disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
 - the Liquidator is subject to an obligation of confidentiality in relation to the information requested, in which case he must give the reasons for not providing the information.

Any member may apply to the court within 21 days of the Liquidator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

7. Provision of information - additional requirements

The Liquidator 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.

8. What if a member is dissatisfied?

- 8.1. Except in cases where there is a liquidation committee, it is the members 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 members' meeting. In order to do this at least ten per cent in value of the members must concur with the request, which must be made to the Liquidator in writing.
- 8.2. If a member believes that the Liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the Liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

9. What if the Liquidator is dissatisfied?

If he considers that the remuneration fixed by the liquidation committee, or by the members is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed.

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

shareholders 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.

10. Other matters relating to remuneration

- 10.1. 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.
- 10.2. 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.
- 10.3. 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 members or the court.
- 10.4. If a new Liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new Liquidator until a further determination, resolution or court order is made.
- 10.5. Where the basis of the remuneration is a set amount, and the Liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing Liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing Liquidator and the incoming Liquidator are from the same firm, they will usually agree the apportionment between them.

Appendix

Suggested format for the provision of information

Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases, and will be subject to considerations of proportionality. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.

Narrative overview of the case

In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:

- the complexity of the case;
- any exceptional responsibility falling on the Liquidator;
- the Liquidator's effectiveness;
- the value and nature of the property in question

The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:

- an explanation of the nature, and the Liquidator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known);
- initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
- any significant aspects of the case, particularly those that affect the remuneration and cost expended;
- the reasons for subsequent changes in strategy;
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing;
- any existing agreement about remuneration;
- 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;
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
- details of work undertaken during the period;
- any additional value brought to the estate during the period, for which the Liquidator wishes to claim increased remuneration.

Time cost basis

Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:

- an explanation of the Liquidator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
- a description of work carried out, which might include:
- details of work undertaken during the period, related to the table of time spent for the period;
- an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used;
- any comments on any figures in the summary of time spent accompanying the request the Liquidator wishes to make.
- time spent and charge-out summaries, in an appropriate format.

It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case

The following areas of activity are suggested 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 level of disclosure suggested above will not be appropriate in all cases, and considerations of proportionality will apply:

- where cumulative time costs are, and are expected to be, less than £10,000 the Liquidator should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case;
- where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features);
- where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted.

www.smithandwilliamson.com

Principal offices: London, Belfast, Birmingham, Bristol, Cheltenham, Dublin, Glasgow, Guildford, Jersey, Salisbury and Southampton.

Smith & Williamson LLP is regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. A member of Nexia International. Registered in England at 25 Moorgate, London EC2R 6AY No OC369871.

Nexia Smith & Williamson Audit Limited is registered to carry on audit work and regulated by the Institute of Chartered Accountants in England and Wales for a range of Investment business activities. A member of Nexia International.



Smith & Williamson is a member of Nexia International, a worldwide network of independent accounting and consulting firms.