

# S.192

**Liquidator's Progress Report  
Pursuant to Sections 92A, 104A and 192 of  
The Insolvency Act 1986**

For Official Use

To the Registrar of Companies

Company Number

05260732

Name of Company

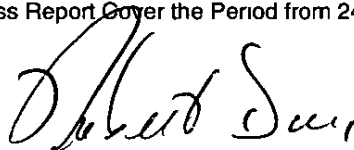
Valley Building and Construction Services Limited

I / ~~We~~  
Robert Day  
Robert Day and Company Limited  
The Old Library, The Walk  
Winslow  
Buckingham MK18 3AJ

the liquidator(s) of the company attach a copy of my progress report  
under section 192 of the Insolvency Act 1986

The Progress Report Cover the Period from 24/11/14 to 23/11/15

Signed



Date 07/12/2015

Robert Day and Company Limited  
The Old Library  
The Walk  
Winslow  
Buckingham MK18 3AJ

For Official Use

Insolvency Sect Post Room

WEDNESDAY



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09/12/2015

#165

COMPANIES HOUSE

**Valley Building and Construction Services Limited – In Liquidation ('the company')**

**Company Number:** 05260732

**Current Registered Office:** c/o Robert Day and Company Limited, The Old Library, The Walk, Winslow, Buckingham MK18 3AJ

**Previous Registered Office:** 11 Lime Tree Mews, 2 Lime Walk, Headington OX3 7DZ

**Trading Address:** Unit 114, Culham No 1 Site, Station Road, Abingdon OX14 3DA

**Basis of Remuneration:** Time Cost

**Office Holder Details** Robert Day of Robert Day and Company Limited, The Old Library, The Walk, Winslow, Buckingham MK18 3AJ

**Date of Appointment** 24 November 2014

**1. Introduction**

This report sets out an account of my acts and dealings and the conduct of the liquidation during the period 24 November 2014 to 23 November 2015

**2 Receipts and Payments Account**

A copy of my receipts and payments account for the period 24 November 2014 to 23 November 2015 is attached to this report

**3 Planning**

I planned to discharge my obligations to creditors by seeking to maximise asset realisations, minimise the input required from me, compatible with complying with the various statutory and professional regulatory requirements which flowed from my appointment and consequently to maximise any return to the creditors

**4. Administration**

Details of my appointment were advertised, as required, in the London Gazette, and submitted to Companies House with accompanying documents. I also provided information on my appointment to the insurers who have given me a bond

The necessary records have been maintained, on behalf of the company, to enable me to file the relevant returns at Companies House made necessary by Section 192 of the Insolvency Act 1986

**5 Asset Realisations**

The directors' estimated statement of affairs dated 24 November 2014 detailed the company's assets as being as follows -

Debtors subject to a factoring agreement with Lloyds Bank Commercial Finance Limited with a book value of £67,337 and an estimated to realise value of £47,535. It was estimated that a similar amount was due to Lloyds Bank Commercial Finance Limited and as such no surplus was anticipated for the benefit of the liquidation,

Tangible Assets with a book value of £30,063 and an estimated to realise value of £500,

Debtors / Retentions with a book value of £268,653 and an uncertain estimated to realise value and

Cash at Bank and In Hand with a book value of £14,221 and an uncertain estimated to realise value

On 8 December 2014 Lloyds Bank Commercial Finance Limited informed me that they considered the factoring agreement to cover all of the company's outstanding debtors and retentions and as such their agents would look to collect all of the company's outstanding debtors and retentions

To date no surplus funds have been forwarded to me by Lloyds Bank Commercial Finance Limited and all outstanding debtors and retentions have now been passed to specialist agents for collection. The finalisation of the debtor collection is the only matter delaying the conclusion of the liquidation.

The majority of the company's tangible assets were subject to various finance agreements. These assets have now been returned to the finance companies in question and I have received claims totalling £6,617.76 in respect of the various shortfalls.

Upon taking into account the nature and low value of the residual tangible assets (office and computer equipment) and the costs that would be incurred in instructing agents to market and sell said assets (£750+) a commercial decision was taken not to pursue their realisation.

The sum of £14,271.66 has been realised in respect of cash at bank and in hand. This is comprised of £14,220.74 in respect of a tax refund due to the company and £50.92 in respect of the closing balance on the company's bank account.

Additional realisations have occurred in the form of bank interest gross totalling £3.99 and an insurance refund of £155.19.

I have also received VAT reclaims totalling £2,620.00 in respect of VAT receivable incurred since the company entered into liquidation and was deregistered for VAT purposes.

## **6 Liabilities**

I have received one preferential claim in the sum of £1,055.59 in this matter. This is in respect of amounts paid to the former employees of the company by the Insolvency Service Redundancy Payments Office.

I have also received 70 claims from unsecured non-preferential creditors totalling £568,008.46.

As I do not anticipate distributing funds to preferential or unsecured non-preferential creditors in this matter the above claims have not been and will not be agreed or admitted.

## **7. Investigations**

The professional rules under which Insolvency Practitioners operate require me to conduct a review of the company's pre-liquidation activities with a view to forming an opinion as to whether there is a possibility of recoveries being made for creditors. This review has been completed and no tangible rights of recovery have been identified.

I have submitted a report to the Department for Business, Innovation and Skills with regard to the conduct of the company's directors. However, this is a matter that will remain confidential between the DBIS and me and no further information will be supplied.

## **8 Liquidator's Remuneration**

The time costs in dealing with the liquidation to 23 November 2015 amount to £12,478 50. This represents 80.3 hours at an average charge out rate of £155.40 per hour. The sum of £11,200.00 has been drawn in respect of these costs in accordance with the resolution passed at the meeting of the company's creditors held on 24 November 2014.

A breakdown of the Liquidator's Time and Charge Out Rates is attached to this report.

I have also drawn the sum of £3,000.00 including disbursements plus VAT in settlement of my agreed fee of the same amount for convening the meetings of directors, shareholders and creditors of the company held on 24 November 2014 and assisting the directors in the preparation of the report and statement of affairs presented at said meetings. This fee has also been drawn in accordance with the resolution passed at the meeting of the company's creditors held on 24 November 2014.

I attach copies of Rules 4.49E and 4.131 of the Insolvency Rules 1986 for your information.

I also attach a further copy of 'A Creditors' Guide to Liquidator's Fees' for your information.

## **9. Conclusion**

If you require any further information or clarification on any matter please contact me.

A handwritten signature in black ink, appearing to read 'Robert Day', is written over the printed name.

**Robert Day**  
**Liquidator**

**Valley Building and Construction Services Limited**  
**(In Liquidation)**  
**Liquidator's Abstract of Receipts & Payments**

**Statement  
of Affairs**

**From 24/11/14  
To 23/11/15**

**SECURED ASSETS**

0 00

**ASSET REALISATIONS**

14,221

Bank Interest Gross  
Cash at Bank and In Hand  
Insurance Refund  
VAT Reclaimed

3 99  
14,271 66  
155 19  
2,620 00

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17,050 84

**COST OF REALISATIONS**

Liquidator's Fees  
Statement of Affairs Fee  
VAT Receivable

11,200 00  
3,000 00  
2,840 00

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17,040 00

**PREFERENTIAL CREDITORS**

0 00

**UNSECURED CREDITORS**

0 00

**DISTRIBUTIONS**

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0 00

Balance in Hand

10 84

**REPRESENTED BY**

Bank 1 Current

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10 84

10 84



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Robert Day  
Liquidator

**Valley Building and Construction Services Limited - In Liquidation**

**Liquidator's Time and Charge Out Summary from 24 November 2014 to 23 November 2015**

Hours				Time Cost £	Average Hourly Rate £
Classification of work function	Liquidator	Manager	Total Hours		
Administration and Planning	4 4	17 4	21 8	3,252 00	149 17
Investigations	13 9	20 9	34 8	5,949 00	170 95
Realisation of Assets	0 5	3 8	4 3	610 50	141 98
Trading	-	-	-	-	-
Creditors	0 8	17 7	18 5	2,545 50	137 59
Case Specific Matters	-	0 9	0 9	121 50	135 00
Total Hours	19 6	60 7	80 3	12,478 50	155 40
Total Fees Claimed (£)	4,284 00	8,194 50	-	-	-

**Charge Out Rate Summary**

Description	Hourly Rate (£)	Dates
Liquidator	195	24/11/14 - 31/12/14
Liquidator	225	01/01/15 - 23/11/15
Manager	135	24/11/14 - 23/11/15

Note - Time costs are calculated at 6 minute units

**Post Appointment Disbursements**

No Post Appointment Disbursements have been charged

#### 4 Statement of creditors' rights

##### Rule 4 49E - Creditors' and members' request for further information

4 49E(1) 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 4 491), 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 4913 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) 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 40(3) The liquidator complies with this paragraph by either (a) providing all of 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 of the information

4 49E(4) 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 of 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) 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 maybe, 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) This Rule does not apply where the liquidator is the official receiver

##### Rule 4.131 - Creditors' claim that remuneration is or other expenses are excessive

4 131(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)

4 131(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

4 131(113) 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 4 491), which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")

4 131(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 hearing, of which he has been given at least 5 business days' notice but which is without notice to any other party. 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

4 131(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

4 131(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

4 131(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

## **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, explains the basis on which fees are fixed and how creditors 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. 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 an official belonging to The Insolvency Service. 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 Insolvency Service on behalf of the Secretary of State. 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 6 weeks 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 remuneration**

- 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

- as a percentage of the value of the assets which are realised or 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) 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 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 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 which appoints the liquidator.
- 4 3 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.
- 4 4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## **5. 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.

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

### **6.1 When seeking remuneration approval**

**6.1.1** 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

**6.1.2** 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.

**6.1.3** 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.

- 6.1.4 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

## **6.2 After remuneration 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 (see further paragraph 7.1 below). 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 6.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

### **6.3 Disbursements and other expenses**

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. 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.

### **6.4 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 creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

## **7. Progress reports and requests for further information**

**7.1** The liquidator is required to send annual progress reports to creditors. 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 creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses.

**7.2** 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 creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

**7.3** 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 creditor 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

## **8. 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

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

9 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

9 2 If a creditor 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 3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7 1 above). 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

9 4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the insolvent company

## **10. What if the liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale 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 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.

## **11 Other matters relating to remuneration**

- 11 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.
- 11 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.
- 11 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.
- 11 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.
- 11 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.
- 11 6 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.

## **12. Effective date**

This guide applies where a company –

- goes into liquidation on a winding-up resolution passed on or after 6 April 2010,
- goes into voluntary liquidation immediately following an administration on or after 6 April 2010, except where the preceding administration began before that date,
- goes into compulsory liquidation as the result of a petition presented on or after 6 April 2010, except where the liquidation was preceded by
  - an administration which began before that date,
  - a voluntary liquidation in which the winding-up resolution was passed before that date