

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

To the Registrar of Companies

Company Number

05875316

Name of Company

(a) Insert full name of  
company

(a) A &amp; D FABRICATIONS UK

Limited

(b) Insert full name(s)  
and address(es)~~we~~ (b) PHILIP MALACHI DALY, OF  
DALY & CO  
THE PORTER GATE  
ECCLESALL ROAD  
SHEFFIELD  
S11 8NXthe liquidator~~s~~ of the company attach a copy of my/~~our~~ Progress Report  
under section 192 of the Insolvency Act 1986The Progress Report covers the period from  
to 13/9/15

14/9/14

Signed

Date

13/11/15

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

SATURDAY



A08

\*A4K5XU1Z\*

14/11/2015

#261

COMPANIES HOUSE

**A & D Fabrications UK Limited**  
**Liquidator's Annual Report to Members and Creditors**  
**For the four year period ending 13 September 2015**

**STATUTORY INFORMATION**

Company name	A & D Fabrications UK Limited
Registered office	c/o Daly & Co, Enterprise Business Centre, Enterprise House, Carlton Road, Worksop, Nottinghamshire, S81 7QF
Former registered office	Crabtree Lane, Manchester, M11 4GU
Registered number	05875316
Liquidator's name	Philip Malachy Daly
Liquidator's address	Daly & Co, The Portergate, Ecclesall Road, Sheffield, S11 8NX

Liquidator's date of appointment 14 September 2011

**RECEIPTS AND PAYMENTS ACCOUNT**

My Receipts & Payments Account for the period from 14 September 2014 to 13 September 2015 is attached together with a summary from the three prior years

**ASSETS**

The statement of affairs of the company states that at the date of liquidation the company had no known realisable assets. The company's bank account had been brought down to a zero balance prior to my appointment. The company's former tangible assets had been sold to an associated company, IDL Trade Limited. That company is associated because its sole director and shareholder, a Mr Antony Done-Orrell, is a 50% shareholder of A & D Fabrications UK Limited and is also a former director of the company, having resigned his position on 11 August 2011. As I mentioned in previous annual progress reports as liquidator I pursued legal actions against Mr Done-Orrell and IDL Trade Limited and these legal actions were settled by the defendants before going to trial. The sum paid amounted to £150,000 inclusive of my legal costs and legal expenses insurance. Also during the course of 2013 and acting on information supplied by a third party I was notified of the whereabouts of some items of the company's machinery, which had in 2010 been despatched to Abu Dhabi as part of a failed joint venture with Arab businessmen. In 2013 I was advised that Mr Done-Orrell had possession of these items of machinery and they were located in the business premises of IDL Trade Limited, Mr Done-Orrell's company in Manchester. The machinery was collected by my agents and sold realising the sum of £9,000.

At the present time I am unaware of any further potential asset realisations or further claims which might bring additional monies into the liquidation estate account. If and when further information

comes to my attention regarding any other potential asset realisations I will give that further information my due consideration

## **LIABILITIES**

### **Secured Liabilities**

There appear to be no known secured liabilities

### **Preferential Creditors**

The statement of affairs anticipated no preferential creditors but the Redundancy Payments Service has submitted a preferential claim in the sum of £3,189 50 in respect of arrears of wages and holiday pay claims paid to former employees

### **Crown Creditors**

The statement of affairs anticipated no claims relating to Crown departments. This was because the company had been given professional tax and legal advice that monies paid to director Anthony McCarthy and former director David Hall via tax avoidance EBT schemes would bear no PAYE/NIC liability and would also enable the company to utilise payments made to employee-directors as a tax deductible expense for Corporation Tax purposes. This advice included that provided by Queens Counsel. However, HM Revenue & Customs has rejected the company's EBT schemes as a legally justifiable tax avoidance mechanism and has recently submitted an amended claim in the liquidation for £852,306 70. This sum comprises a mixture of corporation tax, PAYE/NIC and penalties. I have acknowledged receipt of this claim but have not accepted it at the present time. HM Revenue & Customs issued proceedings earlier this year against the company in respect of part of the PAYE/NIC liability relating to the first (smaller) EBT scheme and these proceedings have been defended. HMRC then applied for the proceedings to be adjourned generally whilst they await the outcome of proceedings the Revenue is taking in the Murray Holdings Plc case. Within the last twelve months HMRC have issued proceedings against the company in relation to the second EBT scheme and again these proceedings, like the first ones, have been adjourned pending the outcome in the Murray Holdings case. The Revenue has failed to win judgment in both the lower and upper tier Tax Tribunals against Murray Holdings and I understand that proceedings have now been transferred to the Inner House of the Court of Session in Scotland. It is expected that whatever the outcome of these proceedings the loser will appeal and so this will continue until judgment is pronounced in the Court of last resort, ie the Supreme Court of the House of Lords. It is estimated that judgment in that Court will be handed down in about 5 to 7 years from now. Pending that judgment the law relating to the type of pre-funded EBT schemes taken out by the company will remain unclear. HMRC has I understand considered the possibility of pursuing former director David Hall and also existing director Anthony McCarthy although any such proceedings would not involve the company and therefore I will not be privy to any such proceedings which are issued. The Revenue has, however, requested that I keep the liquidation case open until matters are clearer regarding HMRC's potential for successfully pursuing both the company and the said director and former director. I have agreed to their request for the time being although in the long run I am not under any compulsion to keep the liquidation open indefinitely.

HMRC has also submitted a claim for £23,857 41 for outstanding VAT. The Redundancy Payments Service has also submitted a non preferential claim totalling £8,250 84, in addition to its claim mentioned above, for redundancy and notice payments made to former employees.

### **Unsecured non preferential Creditors**

The statement of affairs included just 3 creditors with total potential claims of £310,428 35. These potential claimants were (1) Mr A C McCarthy, the company's remaining director, with a potential claim of £266,740 00, (2) IDL Trade Limited, the company 100% owned by former director Mr Done-Orrell, with a potential claim of £18,958 93 and (3) a trade creditor with a known claim of £24,729 42. Since the date of my appointment the list of potential claimants has risen to 13 including the three Crown bodies mentioned above. IDL Trade Limited is now in administration and the Administrators are Baker Tilly in Manchester. The IDL Trade claim had risen from £18,958 93 to £104,602 28 but this claim has not yet been agreed. In total the claims received from unsecured non preferential claimants amount to £1,333,686 46 including the sizeable HMRC claim mentioned above. In a prior annual progress report I stated that it appeared that there would probably be a small distribution of monies to creditors but this has changed due to significant costs I have incurred since the end of the second year both in dealing with the situation relating to HM Revenue & Customs and in relation to detailed investigations of certain matters (see below in the section "Investigations into the affairs of the company"). I must therefore advise creditors that there will not be a distribution in this case in relation to either preferential or non-preferential claims.

### **LIQUIDATOR'S ACTIONS SINCE APPOINTMENT AND INVESTIGATION INTO THE AFFAIRS OF THE COMPANY**

I have in previous annual progress reports set out the standard work which has been carried out and therefore I will not repeat it here. In my last annual report I brought to creditors attention a challenge I received to my position as liquidator of the company from Mr Done-Orrell, the 50% shareholder and former director of the company. Mr Done-Orrell filed a formal complaint with my licensing officer and also threatened me with an application for my removal as liquidator. I resisted and defended myself in relation to both the threat of legal action and the formal complaint. I explained fully why this was the case in my last annual report. Since then I can advise creditors that no application was made to have me removed as liquidator and also the formal complaint issued against me was rejected by my licensing officer.

### **PRE-APPOINTMENT REMUNERATION**

The board members and creditors previously authorised the payment of a fee of £3,000 for assistance with the statement of affairs and producing and circulating the notices for the meetings of members and creditors prior to my appointment at a meeting held on 14 September 2011. The fee for the statement of affairs and meetings was to be paid from first realisations on appointment. The fee has now been charged and paid.

### **LIQUIDATOR'S REMUNERATION**

My remuneration was previously authorised by creditors at a meeting held on 14 September 2011 to be drawn on a time cost basis. My unpaid time costs to date amount to £1,833 75 as shown on the attached work in progress summary. My hourly rate is £225 which is in line with the standard rates of charge made by other members of my profession. My hourly rate is subject to change from time to time although has not in fact changed for 8 years. I have now charged liquidator's fees of £56,351 50 as shown in the receipts and payments summary representing 250 45 hours work. The work in progress schedule attached to this report provides a breakdown of this figure.

A description of the routine work undertaken in the liquidation to date is as follows

1 Administration and Planning

- Preparing the documentation and dealing with the formalities of appointment
- Statutory notifications and advertising
- Preparing documentation required
- Dealing with all routine correspondence
- Maintaining physical case files and electronic case details on IPS
- Review and storage
- Case bordereau
- Case planning and administration
- Preparing reports to members and creditors
- Convening and holding meetings of members and creditors

2 Cashiering

- Maintaining and managing the liquidator's cashbook and bank account
- Ensuring statutory lodgements and tax lodgement obligations are met

3 Creditors

- Dealing with creditor correspondence and telephone conversations
- Preparing reports to creditors
- Maintaining creditor information on a database
- Reviewing and adjudicating on proofs of debt received from creditors
- Preparing a schedule of agreed claims for distribution

4 Investigations

- Review and storage of books and records
- Prepare a return pursuant to the Company Directors Disqualification Act
- Conduct investigations into suspicious transactions
- Review books and records to identify any transactions or actions a liquidator may take against a third party in order to recover funds for the benefit of creditors
- Investigations into any other potential pre liquidation financial transactions in order to ascertain what, if any, civil remedies could be sought

5 Realisation of Assets

- Corresponding with debtors/third parties and attempting to collect outstanding book debts and other realisations
- Pursuing litigation claims

A copy of 'A Creditors Guide to Liquidators' Fees' published by the Institute of Chartered Accountants and Daly & Co's fees recovery policy are both available for download from the Creditor Gateway website where you accessed this report. A hard copy is available is requested. I can also supply you if required with a full copy of 'A Statement of Insolvency Practice 9 (Revised)'.

## LIQUIDATOR'S EXPENSES

There are no accrued and unpaid expenses as at 13 November 2015. The attached receipts and payments summary provides full details of all paid disbursements and expenses.

The following agents or professional advisors have been utilised in this matter:

Professional Advisor	Nature of Work	Fee Arrangement
Courts Advertising	Legal notices	Fixed fee
Harrison Clark Rickerbys	Solicitors	Time costs
VDE Asset Management Ltd	Chattel agents	Fixed fee
Russell Payne & Co	Accountancy/tax advice	Time costs
Guildhall Chambers	Advice from Counsel	Time costs

The choice of professionals was based on my perception of their experience and ability to perform this type of work, the complexity and nature of the assignment and the basis of my fee arrangement with them. The fees charged have been reviewed and I am satisfied that they are reasonable in the circumstances of this case.

## FURTHER INFORMATION

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

An unsecured creditor may, with the permission of the court or with the concurrence of 10% in value of the potential unsecured creditors (using figures available at this time and 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.

## DIVIDEND PROSPECTS

*Secured creditors* – none

*Preferential creditors* – No dividends anticipated

*Floating charge creditors* - None

*Ordinary unsecured creditors* – No dividends anticipated

## SUMMARY

The liquidation will remain open until all current, proposed and future investigations and possible civil remedies have been completed and/or discarded.

Should you have any queries regarding this matter please contact Philip Daly on 0114 2096262

Yours faithfully,  
For and on behalf of  
A & D Fabrications Limited

P M Daly  
Liquidator

A handwritten signature in black ink, appearing to read 'P M Daly', followed by a long, sweeping horizontal stroke that ends in a small upward flick.

**A & D Fabrications UK Limited in liquidation**  
**Liquidator's Receipts and Payments**  
**14 September 2011 to 13 September 2015**

	14/09/2011 to 13/09/2014 £	14/09/2014 to 13/09/2015 £	Cumulative £	Statement of Affairs £
<b>Receipts</b>				
Out of Court settlement	150,000 00		150,000 00	0 00
Plant and machinery	9,000 00		9,000 00	0 00
Rent deposit refund	3,103 88		3,103 88	0 00
Funds introduced by director towards liquidation costs	4,800 00		4,800 00	0 00
Bank interest (gross)	48 17	19 93	68 10	0 00
<b>Total receipts</b>	<u>166 952 05</u>	<u>19 93</u>	<u>166,971 98</u>	<u>0 00</u>
<b>Payments</b>				
Solicitors' Fees	(51,400 00)	(17,078 67)	(68,478 67)	
Barrister's fees	(1,140 00)		(1,140 00)	
Court fees	(260 00)		(260 00)	
ATE insurance premium	(26,235 00)		(26,235 00)	
Statement of affairs fees	(3,000 00)		(3,000 00)	
Liquidator's fees	(36,672 75)	(19,678 75)	(56,351 50)	
Bordereau insolvency insurance bond	(600 00)	(79 20)	(679 20)	
Chattel asset agents' fees	(3,000 00)		(3,000 00)	
Legal notices	(229 50)		(229 50)	
Meeting expenses	(196 93)		(196 93)	
Rax advisory fees		(937 50)	(937 50)	
Other professional fees (investigator)	(250 00)		(250 00)	
Postage	(31 20)		(31 20)	
Motor and travel	(116 50)	(247 10)	(363 60)	
Company searches	(6 00)	(3 00)	(9 00)	
Creditor Gateway - document uploads	(11 00)	(7 00)	(18 00)	
<b>Total payments</b>	<u>(123,148 88)</u>	<u>(38,031 22)</u>	<u>(161,180 10)</u>	
<b>Balance in hand</b>	<u>43,803 17</u>	<u>(38,011 29)</u>	<u>5,791 88</u>	



## WIP Report Listing (Summary Level)

Sorted By Partner, Client (Ref), Work Type

### Report Filters

WIP Up To 13/11/2015 Partner List PMD Client List A035  
Work Type List All Accounting Year All Holding Company All  
Client Type All Disbursements Include Client Balances >= -9,999,999 99

### Philip Daly 145

A035

A & D Fabrications UK Limited

Code	Description	Units	WIP	Budget
ADM	Admin planning and reviews	71 10	15,997 50	
ASSETS	Realisation of assets	35 48	7,983 00	
BILLS	Bills	0 00	-56,351 50	
CREDITOR	Creditors and employees	24 89	5,600 25	
DIVIDEND	Dividend reviews and payments	2 50	250 00	
INVESTIG	Investigations	108 07	24,315 75	
MEETINGS	Formal and client meetings	4 90	1,102 50	
REPORTS	Annual reports and gen compliance	13 05	2,936 25	
Total for A & D Fabrications UK Limited		259 99	1,833 75	0 00
Total For Philip Daly 145		259 99	1,833 75	0 00
Grand Total		259 99	1,833 75	0 00



THE INSTITUTE  
OF CHARTERED  
ACCOUNTANTS  
IN ENGLAND AND WALES

## 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.

## PRACTICE FEE RECOVERY POLICY FOR DALY & CO

### Introduction

The insolvency legislation was changed in April 2010 for insolvency appointments commenced from that time in order to allow more flexibility on how an office holder's fees are charged to a case. This sheet explains how we may apply the alternative fee bases. The legislation now allows different fee bases to be used for different tasks within the same appointment. The basis or combination of bases set for a particular appointment are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the Court. Further details about how an office holder's fees are approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) of which a copy may be requested from Daly & Co, The Portergate, Ecclesall Road, Sheffield, S11 8NX.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor/member. The report will provide a breakdown of the remuneration drawn and time costs incurred and will also enable the recipients to see the average rates of such costs. Under the legislation, any such report must disclose how creditors/members can seek further information and challenge the basis on which the fees are calculated and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

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

### Time cost basis

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

### Chargeout Rates

Grade of staff	Current charge-out rate per hour, effective from 1 February 2007 to date £
Insolvency Practitioner	225
Case Administrator – grade 2	100
Case Administrator – grade 1	75
Support Staff	45

Philip Malachy Daly is the Licensed Insolvency Practitioner at Daly & Co. His hourly charge-out rate is £225. This rate has not been increased for 7 years and falls well below the average hourly charge rate for Licensed Insolvency Practitioners. One of the reasons why the hourly rate is lower than those of other Licensed Insolvency Practitioners is because in this case Mr Daly carries out some work which is highly complex and also other work which is more routine. The complex work would normally carry an hourly charge of at least £300 and the more routine work, which might for example be carried out by an insolvency professional of assistant manager grade through to senior manager grade, would carry hourly rates of no less than £150. Thus a composite or average hourly rate of £225 has been calculated and is proposed for Mr Daly to charge in this case.

These charge-out rates charged are reviewed on 1 January each year and are adjusted to take account of inflation and the firm's overheads.



Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. Each unit of time is 6 minutes. The work is recorded under the following categories:

- Administration and Planning – which includes work such as planning how the case will be administered and progressed, the administrative set up of the case, notifying creditors and others of the appointment, keeping the records relating to the case up to date, and reporting on progress of the case to creditors and others
- Investigations – which includes work such as undertaking an initial review of the financial affairs of the Company and bankrupt, undertaking a detailed investigation with a view to making recoveries for the benefit of creditors where matters such as preferences or wrongful trading come to light as a result of the initial review, and reporting to the Insolvency Service on the conduct of the Directors
- Realisation of Assets – which includes work such as identifying, securing and insuring assets, dealing with retention of title claims, collecting debts owed, and selling assets
- Creditors and employee matters – which includes work such as communicating with creditors, dealing with creditors' claims, and where funds realised allow, paying dividends to creditors plus dealing with employees, and liaising with the redundancy payments office
- Reports - which includes work such as preparing and circulating annual and final reports to members and creditors
- Meetings – which includes preparing for and attendance at formal Board, members and creditors meetings and also significant case meetings
- Trading – which includes work such as managing and controlling all aspects of the business, and preparing financial records and information relating to that trading

#### Percentage basis

The legislation now allows fees to be charged on a percentage of the value of the property with which the office holder has to deal. Different percentages can be used for different assets or types of assets. Where we would like to realise any asset or type of assets on a percentage basis we will provide further information explaining why we think that this basis is appropriate and ask creditors to approve the basis.

#### Fixed fee

The legislation now allows fees to be charged at a set amount. Different set amounts can be used for different tasks. Where we would like to charge a set amount for a task or different set amounts for different tasks we will provide further information explaining why we think that this basis is appropriate and ask creditors to approve the basis.

#### All bases

With the exception of Individual Voluntary Arrangements and Company Voluntary Arrangements which are VAT exempt, the officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate

#### Agent's Costs

Charged at cost based upon the charge made by the Agent instructed, the term Agent includes.

- Solicitors/Legal Advisors
- Auctioneers/Valuers
- Accountants
- Quantity Surveyors
- Estate Agents
- Other Specialist Advisors

#### Disbursements

In accordance with SIP 9 the basis of disbursement allocation in respect of disbursements incurred by the Office Holder in connection with the administration of the estate must be fully disclosed to creditors. Disbursements are categorised as either Category 1 or Category 2

Category 1 expenses are directly referable to an invoice from a third party, which is either in the name of the estate or Daly & Co, in the case of the latter, the invoice makes reference to, and therefore can be directly attributed to, the estate. These disbursements are recoverable in full from the estate without the prior approval of creditors either by a direct payment from the estate or, where the firm has made payment on behalf of the estate, by a recharge of the amount invoiced by the third party. Examples of category 1 disbursements are statutory advertising, external meeting room hire, external storage, specific bond insurance and Company search fees

Category 2 expenses are incurred by the firm and recharged to the estate, they are not attributed to the estate by a third party invoice and/or they may include a profit element. These disbursements are recoverable in full from the estate, subject to the basis of the disbursement charge being approved by creditors in advance. Examples of category 2 disbursements are photocopying, internal room hire, internal storage and mileage

It is proposed that the following Category 2 disbursements are recovered

Mileage	65p per mile
Storage	£5.00 per box per month/annum
Photocopying	15p per sheet