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# Mark Jones & Co.

CHARTERED ACCOUNTANTS

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Monday 14 December 2015



Our ref MPJ/st

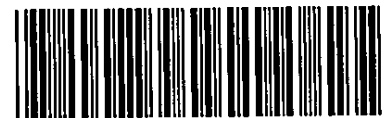
Your ref

## Third annual progress report from the liquidator Covering the period from 7 November 2014 to 6 November 2015

Dear Sir or Madam

**AGW Consultants Limited – in Compulsory Liquidation**  
**Kingston County Court number 5 of 2011**  
**Formerly High Court number 6988 of 2010**  
**Formerly trading in the provision of IT consultancy services**  
**From 6 Hornchurch Close, Kingston upon Thames KT2 5GH**

SATURDAY



QIQ \*Q4MKL6EG\* 19/12/2015 #22  
COMPANIES HOUSE

Registered address now at 9a Southside Common, London SW19 4TL

I refer to my report to creditors of 5 December 2012 in which I advised that I had been appointed as liquidator to the above company on 7 November 2012.

This had followed a winding up order made in the High Court more than two years beforehand on 27 October 2010, this as based upon the petition of 27 August 2010 from HM Revenue & Customs (HMRC) in respect of unpaid taxes.

### Annual progress reports

I am required by Rule 4 49(B) of the Insolvency Rules 1986 to provide annual progress reports. My last progress report was sent on 2 January 2015. Today's report is my third annual progress report for the year ended 6 November 2015.

I have an obligation to provide a further progress report either within two months of 6 November 2016, or prior to my conclusion of the liquidation if this can be achieved beforehand.

### The company's trade

AGW Consultants Limited was a personal service company for IT consultancy work performed by the sole director, Mr Andrew George Williams. Work was invoiced via two agencies at varying daily rates starting at £495, then at £600 and finally at £462.50.

### Estate assets

The Official Receiver provided an initial report to creditors on 21 December 2010, in which he made reference to the director's overdrawn loan account of £73,456, this as stated per the company's accounts to 31 December 2009.

When interviewed by the Official Receiver on 25 November 2010 Mr Williams acknowledged that such sum was indeed due from him. The Official Receiver then instructed a firm of solicitors, Moon Beever, to liaise with the director in relation to the recovery of any balance which was outstanding from him. Moon Beever confirmed to me that all correspondence sent to Mr Williams was ignored by him.

## **My contact with Mr Williams and his wife**

By way of re-cap, in my first annual progress report I commented upon my contact with Mr and Mrs Williams I had said:

### **"My actions as liquidator and my contact with Mr and Mrs Williams**

I wrote to Mr Williams on 28 November 2012 attaching a copy of the accounts to 31 December 2009 I asked that he provide me with details of movements on his loan account together with his proposals for repayment to the company of any final balance as may be due from him I also asked that he provide me with the company's books and records.

I also sent correspondence to his wife Mrs Elizabeth Ekua Williams (nee Zormelo) who acted as the company secretary

Unfortunately my correspondence to both Mr Williams and to Mrs Williams was largely ignored, this despite the fact that I continued to send chasing correspondence to each of them. On 5 February 2013 my correspondence referred to an application I had lodged with the court on 23 January 2013, this applying for court examinations under section 236 of the Insolvency Act 1986 of both Mr and Mrs Williams.

I attended the court for the examinations set for 14 May 2013, but neither party was in attendance. The court ordered that two arrest warrants be issued Whilst the court bailiff then made attempts to enforce the arrest warrants, neither Mr Williams nor Mrs Williams have yet been brought before the court.

### **Bankruptcy orders made against Mr Williams and Mrs Williams**

On 14 September 2013 I then became aware that bankruptcy orders had been made against both Mr and Mrs Williams on 27 August 2013. This was when I received twin IVA proposals from their nominee at McCambridge Duffy The bankruptcy petitioner had been a school in respect of unpaid tuition fees put at £28,800.

I considered that the IVA proposals submitted were unlikely to be in the best interests of the liquidation estate In particular, the proposals would have entailed a long delay in seeing monies received, the projected dividend being only a fraction more than was otherwise projected to be paid in circumstances of the bankruptcies continuing.

Following the rejection of the proposals the Official Receiver then appointed Mr John Paylor of Guardian Business Recovery as act as trustee to both Mr Williams and to Mrs Williams

### **Claims against the bankruptcy estates**

Whilst Mr Williams acknowledged to the Official Receiver that he owed the company £73,456 in respect of his overdrawn director's loan account as at 31 December 2009, I consider that this understates the obligation. I have yet to agree the claims with the trustee "

I had also indicated that given that at such point the bankruptcy orders had only been made a little over four months previously, it was too early to tell what dividends the liquidation estate might expect to receive from the bankruptcy estates, or when such monies might be received

The trustee has in the meantime provided me with further details as to the progress he has made in dealing with the bankruptcy estates. Income Payments Agreements (IPAs) were set up with both Mr William and Mrs Williams. The sums due from Mrs Williams were relatively modest and I understand that the trustee intends that his administration of her estate will shortly be concluded. He has advised that it will not be possible for a dividend to be paid from her estate.

The trustee has further advised that contributions due from Mr Williams under his IPA remain in arrears, with the trustee having obtained an order of the court to the effect that Mr Williams' automatic discharge from bankruptcy be suspended until he complies with his obligations in this respect.

The trustee last year submitted an application to the court for an order for possession and sale of the Hornchurch Close property and the court order was duly obtained, this to the effect that the entire beneficial interest in the property was attributable to the estate of Mr Williams. The trustee has since accepted an offer for the property, for which contracts have still to be exchanged. It is anticipated that once the sale completes the trustee will formally advertise for claims, this then enabling him to pay a dividend to the creditors of the bankruptcy estate.

The largest claim against Mr Williams's estate is understood to be in favour of AGW Consultants Limited, this having been agreed by the trustee earlier in the year in the sum of £217,202.00.

In my last annual report I indicated that my expectation was that sizeable monies would in due course be received from the trustee and that I therefore anticipated that this would then enable me to pay a dividend to creditors of the liquidation estate. Until I hear further from the trustee with his confirmation that a sale of the property has completed, I am at present uncertain as to the likely level of dividend which will be paid from the liquidation estate.

#### **Receipts and payments accounts**

Attached are two receipts and payments accounts, comprising the following

- An account to 6 November 2015, reflecting the first three years of my having acted as liquidator, this divided as between movements in my first two years of office and any movements in the third year.
- An account shown up to date, this divided as between movements in my first three years of office and any possible movements on the account from 7 November 2015 onwards, with there being on this occasion no further movements. This shows a negative balance of £1,493.77.

The only receipt into the estate of £5.23 comprises the final balance held on the company bank account which had been held with Cater Allen Bank.

I have previously reported that the balance brought forward on the Insolvency Services Account from the time when the Official Receiver was liquidator of the company was an overdrawn sum of £1,235.00. This comprised the petitioning creditor's deposit of £1,000.00, from which the Official Receiver deducted an administration fee of £2,235.00.

The only other payments from the estate account comprise quarterly bank charges for maintaining the account held with the Insolvency Service. These are applied at £22, with total charges to date amounting to £264.00.

## **Other expenses to be paid when funds are available**

### **Petitioning creditor's costs**

Such costs have been agreed at £1,515 00, though no funds are yet available in order to discharge this obligation

### **My disbursements**

I need to disclose those amounts I have paid from my own office account on behalf of the liquidation estate in respect of disbursements. The only disbursements to be recovered by my firm are what are known as "category 1" disbursements, these where I have paid out monies on behalf of the estate from my own account. As a matter of policy, no other disbursements such as postage, copying, motoring and so on are billed by my firm

Only limited further disbursements have been incurred since the date of my last report to creditors. These reflect a further premium in respect of my statutory bond, this amounting to £364 00 and the costs of public transport, this at £22.10

Stated inclusive of the disbursements upon which I have reported previously, the following sums, exclusive of VAT, have to date been incurred on behalf of the estate

	£
Liquidator's bond	553 00
Statutory advertising	76.50
Court fee	70.00
Parking and public transport	29.01
Search fees	<u>170.33</u>
<b>Total</b>	<b><u>898.84</u></b>

## **Claims against the liquidation estate and the prospects of dividends being paid**

On my appointment as liquidator I was advised that the only two known claims against the estate comprised sums due to the petitioner, HMRC. These were said to amount to £59,102.05, comprising £24,472.35 re VAT and £34,629 70 re other taxes. I have to date only received a claim in respect of the other taxes amounting to £34,908 02

I have though agreed with HMRC that I shall defer formal consideration of their claim, this primarily on the basis that I consider that their claims are likely to have been understated, this particularly so in the case of the claim for "other taxes" of £34,908.02. The trial balance which was attached to the accounts to 31 December 2009 showed the following liabilities:

- Corporation tax of £47,837.47, representing the corporation tax payable for 2008 of £25,130 and for 2009 of £22,708.
- VAT of £26,278 96
- PAYE/NI of £816 76
- This totalling £74,933 19

With continued trading into 2010, the 2009 trial balance obligations of just short of £75,000 will have further increased

### **Liquidator's remuneration**

I would remind creditors that it was agreed at the first meeting held on 16 January 2013 that my remuneration as liquidator would be based upon my time costs, the hourly rate then being £345. In my first annual report I advised that up until 5 January 2014, I had spent a total of 239.9 hours. In my report I had commented

"As a result of Mr and Mrs Williams having largely ignored me it was necessary for me to entirely reconstruct the bank position from duplicate statements I obtained from the bank. This proved to be quite an extensive task. In addition, the exercise of seeking to have Mr and Mrs Williams examined in court is one which I would ordinarily conduct with the benefit of legal assistance. Given that the estate is without funds I conducted all such work myself, including the service of all necessary documents."

Since my first annual progress report, the amount of time it has been necessary to allocate to the liquidation estate has reduced significantly, with the progress of the liquidation effectively being primarily dependent upon the progression of the bankruptcy estates.

In my report of 2 January 2015 I advised that total time spent up until the preceding day amounted to 268.7 hours, an analysis of which was provided. I now attach a summary showing an analysis of how further time has been spent. This shows the brought forward time of 268.7 hours spent up to 1 January 2015, the total time spent in the three years to 6 November 2015 of 310.3 hours and the total time spent up until yesterday of 323.7 hours. All such time has been recorded in units of 6 minutes.

Whilst my hourly rate increased in early 2014, the summary simply reflects the rate as prevailed as at the date of my appointment as liquidator.

Given that aside from the small final bank balance of £5 odd no further sums have yet been realised into the estate, no remuneration has to date been paid.

To my last report I attached a guide to creditors in respect of fees charged by liquidators and a further copy of the earlier guide is attached, this relating to cases commencing prior to 1 October 2015, as indeed applies to this estate. The guide has recently been updated for appointments from 1 October 2015 onwards and for the sake of completeness I have also attached a copy of the revised guide applicable to new cases.

### **The Insolvency Code of Ethics**

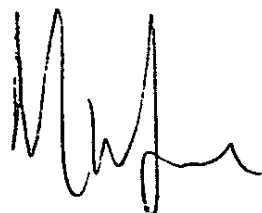
Since the time of my having last reported to creditors, a further requirement has been introduced in that I need to make clear the position re professional ethics. For the avoidance of doubt, when carrying out professional work relating to an insolvency appointment, I can confirm that I am of course bound by the Insolvency Code of Ethics.

### **Further information**

Should any creditor require any further explanations, then please let me know and I shall try to assist.

Yours faithfully  
for and on behalf of  
**AGW Consultants Limited**

**Mark Jones, Liquidator**



### **Summary of attachments to the report**

- My receipts and payments account to the third anniversary of my appointment
- My receipts and payments account to date
- A breakdown of the manner in which time has to date been spent
- A guide to creditors in respect of fees charged by trustees
- A revised guide as applies to new cases from 1 October 2015 onwards

**AGW Consultants Limited - in Compulsory Liquidation**  
**Liquidator's Receipts and Payments Account**  
**For the period 7 November 2012 to 6 November 2015**

		These receipts & payments then analysed as follows			
		In the year to 6 November 2015		In the two years to 6 November 2014	
	Realised to date	Paid	Realised	Paid	Realised
	£	£	£	£	£
<b>Receipts</b>					
Director's overdrawn loan account	-		-		-
Cash at bank	5 23		-		5 23
VAT refund	-		-		-
Interest received	-		-		-
	<u>5 23</u>		<u>-</u>		<u>5 23</u>
<b>Payments</b>					
Balance b/f from Official Receiver	1,235.00	-		1,235.00	
Quarterly Bank charge	264 00	88 00		176 00	
Cheque fees	-	-		-	
Secretary of State fees	-	-		-	
Petitioning creditor's costs	-	-		-	
Dividend to non-preferential creditors at a rate of	-	-		-	
aaa% on agreed non-preferential claims of £bbbb	-	-		-	
Searches	-	-		-	
Liquidator's bond	-	-		-	
Statutory Advertising	-	-		-	
Corporation tax on interest received	-	-		-	
Liquidator's remuneration as agreed by creditors	-	-		-	
VAT thereon	-	-		-	
	<u>1,499 00</u>		<u>88 00</u>		<u>1,411 00</u>
	<u>(1,493 77)</u>		<u>(88 00)</u>		<u>(1,405 77)</u>
<b>Cash at bank as at 6 November 2015</b>					

**AGW Consultants Limited - in Compulsory Liquidation**  
**Liquidator's Receipts and Payments Account**  
**For the period 7 November 2012 to 14 December 2015**

These receipts & payments then analysed as follows

	Subsequent to 6 November 2015				In the three years to 6 November 2015			
	Realised to date		Paid		Realised		Paid	
	£	£	£	£	£	£	£	£
<b>Receipts</b>								
Director's overdrawn loan account	-	-	-	-	-	-	-	-
Cash at bank	5 23	5 23	-	-	-	-	-	5 23
VAT refund	-	-	-	-	-	-	-	-
Interest received	-	-	-	-	-	-	-	-
		5 23						5 23
<b>Payments</b>								
Balance b/f from Official Receiver	1,235 00	-	-	-	-	-	1,235 00	-
Quarterly Bank charge	264 00	-	-	-	-	-	264 00	-
Cheque fees	-	-	-	-	-	-	-	-
Secretary of State fees	-	-	-	-	-	-	-	-
Petitioning creditor's costs	-	-	-	-	-	-	-	-
Dividend to non-preferential creditors at a rate of	-	-	-	-	-	-	-	-
aaaa% on agreed non-preferential claims of £bbbbb	-	-	-	-	-	-	-	-
Searches	-	-	-	-	-	-	-	-
Liquidator's bond	-	-	-	-	-	-	-	-
Statutory Advertising	-	-	-	-	-	-	-	-
Corporation tax on interest received	-	-	-	-	-	-	-	-
Liquidator's remuneration as agreed by creditors	-	-	-	-	-	-	-	-
VAT thereon	-	-	-	-	-	-	-	-
		1,499 00						1,499 00
		(1,493 77)						(1,493 77)
<b>Cash at bank as at 14 December 2015</b>								



**AGW Consultants Limited - in Compulsory Liquidation**  
**Summary and analysis of time spent by the liquidator, together with the associated cost**  
**Reflecting time spent up to 13 December 2015**  
**As appended to the liquidator's report of 14 December 2015**

Time spent in hours	In the two plus years to 1 January 2015	In the balance of the third year to 6 November 2015	In the three years to 6 November 2015	From 7 November 2015 to 13 December 2015	From commencement to 13 December 2015
	hours	hours	hours	hours	hours
Administration & statutory obligations	23 7	6 0	29 7	4 1	33 8
Case investigation, accounts reconstruction & ascertaining claims	125 1	-	125 1	-	125 1
Bankruptcies & IVAs	44 3	32 9	77 2	4 7	81 9
Court proceedings	41 4	-	41 4	-	41 4
Creditors	25 3	1 1	26 4	3 4	29 8
Taxation	3 2	0 1	3 3	0 9	4 2
Banking and accounts	5 7	1 5	7 2	0 3	7 5
	<u>268 7</u>	<u>41 6</u>	<u>310 3</u>	<u>13 4</u>	<u>323 7</u>

Timecost in Pounds	£	£	£	£	£
Administration & statutory obligations	8,176 50	2,070 00	10,246 50	1,414 50	11,661 00
Case investigation, accounts reconstruction & ascertaining claims	43,159 50	-	43,159 50	-	43,159 50
Bankruptcies & IVAs	15,283 50	11,350 50	26,634 00	1,621 50	28,255 50
Court proceedings	14,283 00	-	14,283 00	-	14,283 00
Creditors	8,728 50	379 50	9,108 00	1,173 00	10,281 00
Taxation	1,104 00	34 50	1,138 50	310 50	1,449 00
Banking and accounts	1,966 50	517 50	2,484 00	103 50	2,587 50
	<u>92,701 50</u>	<u>14,352 00</u>	<u>107,053 50</u>	<u>4,623 00</u>	<u>111,676 50</u>

## 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

## 5 1 3 – continued

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.

## A CREDITORS' GUIDE TO LIQUIDATORS' FEES IN 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 Basis

The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.128 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.

#### 4 2 Advance information where remuneration not based on time costs

Prior to the determination of the basis of remuneration, the liquidator must give the creditors details of the work the liquidator proposes to undertake, and the expenses he considers will be, or are likely to be, incurred. However, where the liquidator proposes to take any part or all of his remuneration on a time cost basis, he must provide more detailed information in the form of a 'fees estimate', as explained below.

#### 4 3 Fees estimates where remuneration to be based on time costs

Where the liquidator proposes to take remuneration based on time costs, he must first provide the creditors with detailed information in the form of a 'fees estimate'. A fees estimate is a written estimate that specifies –

- details of the work the liquidator and his staff propose to undertake,
- the hourly rate or rates the liquidator and his staff propose to charge for each part of that work,
- the time the liquidator anticipates each part of that work will take,
- whether the liquidator anticipates it will be necessary to seek approval or further approval under the Rules, and
- the reasons it will be necessary to seek such approval.

In addition, the liquidator must give the creditors details of the expenses he considers will be, or are likely to be, incurred.

#### 4 4 Who fixes the remuneration

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 5 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 the 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 6 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 7 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 **General principles**
- 6 1 1 The liquidator should provide those responsible for approving his remuneration with sufficient information to enable them to make an informed judgement about the reasonableness of the liquidator's request. The information should be presented in a manner which is transparent, consistent throughout the life of the case and useful to creditors, while being proportionate to the circumstances of the case
- 6 1 2 The liquidator should disclose
- payments, remuneration and expenses arising from the administration paid to the liquidator or his or her associates,
  - any business or personal relationships with parties responsible for approving the liquidator's remuneration or who provide services to the liquidator in respect of the insolvency appointment where the relationship could give rise to a conflict of interest
- The liquidator should inform creditors of their rights under insolvency legislation, and should advise them how they may access suitable information setting out their rights within the first communication with them and in each subsequent report
- 6 1 3 Where the liquidator sub-contracts out work that could otherwise be carried out by the liquidator or his or her staff, this should be drawn to the attention of creditors with an explanation of why it is being done
- 6 2 **Key issues**
- 6 2 1 The key issues of concern to those with a financial interest in the level of payments from the insolvency estate will commonly be
- the work the liquidator anticipates will be done, and why that work is necessary,
  - the anticipated cost of that work, including any expenses expected to be incurred in connection with it
  - whether it is anticipated that the work will provide a financial benefit to creditors, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute),
  - the work actually done and why that work was necessary,
  - the actual costs of the work including any expenses incurred in connection with it as against any estimate provided,
  - whether the work has provided a financial benefit to creditors, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute)
- When providing information about payments, fees and expenses, the liquidator should do so in a way which facilitates clarity of understanding of these 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 creditors when seeking approval for the basis of his remuneration
- 6 2 2 When approval for a fixed amount or a percentage basis is sought, the liquidator should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the liquidator anticipates will be undertaken
- 6 3 **Fee estimates and subsequent reports**
- 6 3 1 When providing a fee estimate, the liquidator should supply that information in sufficient time to facilitate that body making an informed judgement about the reasonableness of the liquidator's requests. The estimate should clearly describe what activities are anticipated to be conducted in respect of the estimated fee. When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each activity should be provided for comparison
- 6 4 **Disbursements**
- 6 4 1 Costs met by and reimbursed to the liquidator in connection with the liquidation will fall into two categories
- Category 1 disbursements. These are payments to independent third parties where there is specific expenditure directly referable to the liquidation. 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. 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 may be incurred by the liquidator or their firm and that can be allocated to the liquidation on a proper and reasonable basis
- When seeking approval, the liquidator should explain, for each category of cost, the basis on which the charge is being made. If the liquidator has obtained approval for the basis of Category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the liquidator is replaced
- 6 4 2 The following are not permissible as disbursements
- 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
- 6 5 **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 **Exceeding the amount set out in the fees estimate**
- Remuneration must not exceed the fees estimate without approval by the body which fixed the original basis of the remuneration. The request for approval must specify –
- the reason why the liquidator has exceeded, or is likely to exceed, the fees estimate,
  - the additional work the liquidator has undertaken or proposes to undertake,
  - the hourly rate or rates the liquidator proposes to charge for each part of that additional work,
  - the time that additional work has taken or the liquidator anticipates that work will take
  - whether the liquidator anticipates that it will be necessary to seek further approval, and
  - the reasons it will be necessary to seek further approval

## **8 Progress reports and requests for further information**

**8 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,
- where appropriate, a statement –
  - that the remuneration anticipated to be charged is likely to exceed the fees estimate or any approval given for remuneration exceeding the estimate,
  - that expenses incurred or anticipated to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration, and
  - the reason for that excess
- a statement of the creditors' rights to request further information, as explained in paragraph 8 2, and their right to challenge the liquidator's remuneration and expenses

**8 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.

**8 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.

## **9 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.

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

**10 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.

**10 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.

**10 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 8 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.

**10 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.

## **11 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.

## **12 Other matters relating to remuneration**

**12 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.

**12 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.

**12 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.

- 12 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
- 12 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
- 12 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
- 13 **Effective date**
- This guide applies where a company goes into liquidation on or after 1 October 2015

## 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