

# Liquidator's Progress Report

# S.192

Pursuant to Sections 92A and 104A and 192  
of the Insolvency Act 1986

To the Registrar of Companies

Company Number

06707504

Name of Company

Abel Contracts Limited

I / We  
William Paxton  
Fernwood House  
Fernwood Road  
Jesmond  
Newcastle upon Tyne  
NE2 1TJ

the liquidator(s) of the company attach a copy of my/our Progress Report  
under section 192 of the Insolvency Act 1986

The Progress Report covers the period from 21/10/2012 to 20/10/2013

Signed



Date

28/10/2013

Robson Laidler LLP  
Fernwood House  
Fernwood Road  
Jesmond  
Newcastle upon Tyne  
NE2 1TJ

Ref A302/WP/RSG/SB/CA

TUESDAY



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29/10/2013

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COMPANIES HOUSE

**Abel Contracts Limited (In Liquidation)**  
**Liquidator's Abstract of Receipts and Payments**  
**For the year ended 20 October 2013**

Statement of Affairs £		From 21/10/2012 To 20/10/2013 £	From 21/10/2011 To 20/10/2013 £
	<b>Receipts</b>		
250 00	Fixtures & Fittings	-	450 00
24,217 50	WIP & Retention Balances	4,773 46	19,830 07
37,228 00	Directors Loan	9,250 97	9,250 97
-	Insurance Refund	-	250 00
-	Output VAT	-	90 00
-	Liquidators VAT refund	5,228 00	5,228 00
<u>61,695 50</u>		<u>19,252 43</u>	<u>35,099 04</u>
	<b>Payments</b>		
-	Statement of Affairs fee	-	5,000 00
-	Liquidators' remuneration	14,576 00	17,740 00
-	Legal Fees	2,500 00	3,850 00
-	Input VAT	3,415 20	5,318 00
4,013 75	Preferential creditors	-	-
744,843 58	Unsecured creditors	-	-
100 00	Share capital	-	-
<u>748,957 33</u>		<u>20,491 20</u>	<u>31,908 00</u>
<u>(687,261 83)</u>		<u>(1,238 77)</u>	<u>3,191 04</u>
	<b>Represented by</b>		
	Cash at Bank		<u>3,191 04</u>

  
 \_\_\_\_\_  
 William Paxton  
 Liquidator

**ABEL CONTRACTS LIMITED  
(IN CREDITORS VOLUNTARY LIQUIDATION)**

**PROGRESS REPORT OF THE LIQUIDATOR  
PURSUANT TO RULE 4.49C OF THE INSOLVENCY RULES 1986**

**28 OCTOBER 2013**

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**ABEL CONTRACTS LIMITED  
(IN CREDITORS VOLUNTARY LIQUIDATION)  
("the Company")**

**PROGRESS REPORT OF THE LIQUIDATOR  
PURSUANT TO RULE 4.49C OF THE INSOLVENCY RULES 1986**

**1. INTRODUCTION**

As you are aware I was appointed Liquidator of the Company on 21 October 2011 following the failure of the Company Voluntary Arrangement that the Company had previously entered into on 28 March 2011 and of which Martin Daley and I had been appointed as Joint Supervisors

Pursuant to Rule 4.49C of the Insolvency Rules 1986 I am required to prepare a progress report to cover the period of one year commencing on the date on which I was appointed Liquidator and for every subsequent period of one year, ending on the date which I cease to act as Liquidator. A copy of this report must be sent within two months of the end of the period covered by it, to the registrar of companies, the members and the creditors

Consequently, I am pleased to provide my progress report for the second year of my appointment, being 21 October 2012 to 20 October 2013

**2. BACKGROUND**

Name of Company	Abel Contracts Limited
Nature of business	Contractors
Company registered number	06707504
Company registered office	c/o Robson Laidler LLP, Fernwood House, Fernwood Road, Jesmond, Newcastle-upon-Tyne, NE2 1TJ
Former registered office	Amtech House, Samson Close, Killingworth, Newcastle-upon-Tyne, NE12 6DX
Former trading address	Amtech House, Samson Close, Killingworth, Newcastle-upon-Tyne, NE12 6DX
Name of Liquidator	William Paxton (IP No 8825) of Robson Laidler LLP, Fernwood House, Fernwood Road, Jesmond, Newcastle upon Tyne, NE2 1TJ
Date of winding up	21 October 2011
Date of appointment	21 October 2011
Changes in Liquidator (if any)	None
Basis of remuneration	Fixed by reference to the time properly spent by the Liquidator and his staff in the administration of the Liquidation and that the Liquidator be authorised to draw remuneration on account from time to time (discussed further below)
Previous report	23 October 2012
Dividend prospects	None Notice of no dividend was given on 23 October 2012

The Company's principal activity was as contractors mainly carrying out the supply and fitting of plastering and dry lining. The main causes of failure cited by the Company directors' was the decreasing profit margins within

the industry, an accumulation of bad debts, and the declining market due to economic factors and the resulting impact on cash flow

### 3. PROGRESS DURING THE PERIOD COVERED BY THIS REPORT

Attached at Appendix 1 is my Abstract of Receipts and Payments for the second annual period from 21 October 2012 to 20 October 2013 and for the full period of the Liquidation from 21 October 2011 (being the date of commencement) to 20 October 2013

This report should be read in conjunction with my previous report dated 23 October 2012

#### Statement of funds held

I can confirm that my Abstract of Receipts and Payments reconciles with the account maintained by the Bank. All funds are held in a single non-interest bearing account, held in the name of the Company, and maintained by the Yorkshire Bank. The Yorkshire Bank does not levy any bank charges in this instance.

#### Assets realisations

According to the directors statement of affairs the following assets were estimated to be realisable

	Estimated to realise £	Realised In period £	Cumulative Realisations £
Fixtures & fittings	250 00	-	450 00
WIP & retention balances	24,217 50	4,773 46	19,830 07
Directors' loan	37,228 00	9,250 97	9,250 97
Insurance refund	-	-	250 00
Output VAT	-	-	90 00
Liquidators VAT refund	-	5 228 00	5,228 00
	<u>61,695 50</u>	<u>19,252 43</u>	<u>35,099 04</u>

Each category is discussed in more detail below

#### Fixtures & fittings

No further realisations are anticipated from this source

#### WIP and retention balances

As you are aware Ward Hadaway Solicitors were instructed to assist in the realisation of the debts due to the Company. During the period of this report debts totalling £4,773 46 have been realised. All remaining debts have been abandoned as irrecoverable.

I am presently attempting to recover CIS refunds due to the Company totalling £ 2,045 40

#### Directors' loan

The statement of affairs disclosed a director's loan account which had a book value of £37,228 00 and was estimated to realise £37,228 00

Immediately following my appointment the directors entered into Individual Voluntary Arrangements. A claim for the full amount of the director's loan account was made to the supervisor of the arrangement. This claim was rejected as the director had disputed the loan and had enlisted an independent firm of accountants to provide an independent report on the directors' loan account.

This report has ultimately seen the claim in the Individual Voluntary Arrangements reduce to £9,250 97. This sum was realised during the period of this report.

No further realisations are anticipated from this source

#### **Insurance refund**

No further realisations are anticipated from this source

#### **Investigation and the Company Directors Disqualification Act 1986**

As previously reported, following my initial assessment, no detailed investigations were considered necessary I can confirm that nothing further has been brought to my attention in the period of this report

### **4. CREDITORS' CLAIMS**

#### **Preferential creditors**

The directors' statement of affairs estimated that these claims would total £4,013 75 arising from the claims of employees for arrears of pay and accrued holiday pay

I have not yet agreed these claims as on the basis of current information no dividend will be paid to this class of creditor

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

In accordance with the Enterprise Act 2002, the prescribed part is an element of net realisations due to the floating charge holder, which is made available to the unsecured creditors Section 176A of the Insolvency Act 1986 provides that unsecured creditors are entitled to a dividend out of the prescribed part of the Company's "net property" Net property is the amount that would otherwise be payable to the floating charge holder (if the floating charge was created on or after 15 September 2003) The prescribed part is calculated as follows

- 50% of the first £10,000 of the net property of the Company,
- 20% of the net property thereafter, subject to a maximum limit of £600,000

There are no known unsatisfied floating charges created after 15 September 2003 and consequently the prescribed part will not apply in this instance

#### **Unsecured creditors**

The directors' statement of affairs estimated the unsecured claims against the Company at £744,843 58 I am yet to agree these claims as, on the basis of current information there is no prospect of a dividend being made

In accordance with Rule 11.7 of the Insolvency Rules 1986 I am unable to declare a dividend as the funds realised have already been used for defraying the expenses of administration

### **5. COSTS OF THE LIQUIDATION**

I now set out below a detailed appraisal of the costs of the Liquidation to-date

**Statement of Affairs fee** – At the first meeting of creditors held on 21 October 2011 it was resolved that costs in the sum of £5,000 00 plus VAT and disbursements be paid to Robson Laidler LLP with regards the preparation of the statement of affairs and the convening of the statutory meetings This sum has subsequently been paid

**Other professional costs** – On this assignment I have used the professional advisors listed below I have also indicated alongside the basis of my fee arrangement with them

<b>Name of Advisor</b>	<b>Nature of Work</b>	<b>Basis of Arrangement</b>	<b>Fee Paid £</b>
Ward Hadaway solicitors	Debt collection	Time cost basis	3,850 00

My choice 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. I have reviewed the fees charged to date and I am satisfied that they are reasonable in the circumstances of this case.

## 6. LIQUIDATORS' REMUNERATION

At the meeting of creditors held on 21 October 2011 it was resolved that the remuneration of the Liquidator should be fixed by reference to the time properly spent by the Liquidator and his staff in the administration of the Liquidation and that the Liquidator be authorised to draw remuneration on account from time to time.

Time costs incurred for the Liquidation are summarised below:

	Hours No	Rate/hr £	Total value of time £
Time previously reported	52.3	173.60	9,079.20
Time recorded since previous report	83.0	178.78	14,839.00
	<u>135.3</u>	<u>176.78</u>	<u>23,918.20</u>

During the period of this report remuneration in the sum of £14,576.00 has been drawn. Cumulatively the sum of £17,740.00 has been drawn against my time costs and the balance of my outstanding costs will be drawn as and when funds allow. No further remuneration has been drawn since the second anniversary of my appointment. Any balance of my time costs outstanding once realisations are complete and distributions made will be written off as irrecoverable.

My time costs are further analysed at Appendix 2 by reference to the grade of staff involved and the function of work undertaken.

## 7. LIQUIDATORS' DISBURSEMENTS

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

Category 1 disbursements can be summarised as follows:

Nature of expense	By whom provided	Amount incurred this period £	Total amount incurred to date £	Amount paid £	Amount unpaid £
Statutory Bond	IRS	0.00	180.00	0.00	180.00
Statutory Advertising	Legal & Public	0.00	127.50	0.00	127.50
Travel Expenses	Staff	0.00	6.30	0.00	6.30
		<u>0.00</u>	<u>313.80</u>	<u>0.00</u>	<u>313.80</u>

There are no category 2 disbursements, which do require the approval by creditors.

## 8. CREDITORS' RIGHTS

### Right to request further information

Pursuant to Rule 4.49E of the Insolvency Rules 1986, within 21 days of receipt of a progress report such as this a secured creditor or an unsecured creditor, with the concurrence of at least 5% in value of the unsecured creditors (or if less than 5% with the permission of the court), may request the office holder to provide further information about the remuneration and expenses set out in his report. The office holder must within 14 days of receipt of this request provide the requested information or give reasons for not providing it.

### **Right to make an application to court**


Pursuant to Rule 4.131 of the Insolvency Rules 1986, within 8 weeks of receipt of a progress report such as this a secured creditor or an unsecured creditor, with the concurrence of at least 10% in value of the unsecured creditors (or if less than 10% with the permission of the court), may make an application to court on the grounds that the office holders remuneration or expenses are, in the circumstances, excessive, or the basis is inappropriate. If the court considers the application is well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be reduced or disallowed. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the Company.

### **9. CONCLUSION OF THE LIQUIDATION**

Once the CIS refund has been collected it would be my intention to take steps to bring this matter to a close. A further report will be sent to all known creditors at the third anniversary of my appointment, or sooner should I be in a position to formally conclude my administration in this matter.

Should you have any queries regarding the contents of this report then please contact my colleague Simon Blakey at this office.

Yours faithfully  
For and on behalf of  
Abel Contracts Limited (In Creditors Voluntary Liquidation)




William Paxton  
Liquidator

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**Abel Contracts Limited (In Liquidation)**  
**Liquidator's Abstract of Receipts and Payments**  
**For the year ended 20 October 2013**

Statement of Affairs £		From 21/10/2012 To 20/10/2013 £	From 21/10/2011 To 20/10/2013 £
	<b>Receipts</b>		
250 00	Fixtures & Fittings	-	450 00
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-	Statement of Affairs fee	-	5,000 00
-	Liquidators' remuneration	14,576 00	17,740 00
-	Legal Fees	2,500 00	3,850 00
-	Input VAT	3,415 20	5,318 00
4,013 75	Preferential creditors	-	-
744,843 58	Unsecured creditors	-	-
100 00	Share capital	-	-
<u>748,957 33</u>		<u>20,491 20</u>	<u>31,908 00</u>
<u>(687,261 83)</u>		<u>(1,238 77)</u>	<u>3,191 04</u>
	<b>Represented by</b>		
	Cash at Bank		<u>3,191 04</u>

  
 William Paxton  
 Liquidator

**Abel Contracts Limited (In Liquidation)**  
**Liquidators' time and charge out summary for the period**  
**21 October 2012 to 20 October 2013 (Period of the report)**

Classification of Work function	Hours					Time Cost £	Average hourly rate £
	Partner	Manager	Admini- strator	Support Staff	Total Hours		
Administration, Planning, Statutory	3 3	2 9	56 0		62 2	11,109 40	178 61
Cashiering			2 1	1 1	3 2	399 00	124 69
Investigations			0 4		0 4	67 80	169 50
Realisation of Assets		10 4	3 7		14 1	2,709 00	192 13
Tax					0 0	0 00	0 00
Creditors			3 1		3 1	553 80	178 65
Total Hours	3 3	13 3	65 3	1 1	83 0		0 00
Total time charged	990 00	2,660 00	11,112 00	77 00		14,839 00	

**Abel Contracts Limited (In Liquidation)****Liquidators' time and charge out summary for the period  
21 October 2011 to 20 October 2013 (Cumulative)**

Hours						Time Cost £	Average hourly rate £
Classification of Work function	Partner	Manager	Admini- strator	Support Staff	Total Hours		
Administration, Planning, Statutory	5 8	3 9	94 4	0 4	104 5	18,592 20	177 92
Cashiering			2 1	2 1	4 2	469 60	111 81
Investigations			2 0		2 0	339 80	169 90
Realisation of Assets		13 9	3 7		17 6	3,409 00	193 69
Tax					0 0	0 00	0 00
Creditors		1 1	5 0	0 9	7 0	1,107 60	158 23
Total Hours	5 8	18 9	107 2	3 4	135 3		176 78
Total time charged	1,740 00	3,780 00	18,235 00	163 20		23,918 20	

**Abel Contracts Limited (In Liquidation)**  
**Summary of payments to office holder and associated parties**  
**For the year ended 20 October 2013**

<b>Amounts paid or payable to the office holders' firms</b>	<b>£</b>
Statement of affairs fees	5,000.00
Liquidators' fees (paid)	17 740 00
Liquidators' fees (unpaid)	6,178 20
Liquidators' disbursements (paid):      None	0 00
Liquidators' disbursements (unpaid):    Statutory Bond	180.00
Statutory Advertising	127 50
Travel Expenses	6 30
<b>TOTAL</b>	<b>29,232 00</b>

<b>Amounts paid or payable to associated parties of office holders</b>	<b>£</b>
None	0 00
<b>TOTAL</b>	<b>0 00</b>

<b>Amounts paid or payable to the office holders' solicitor</b>	<b>£</b>
Ward Hadaway solicitors	3,850 00
<b>TOTAL</b>	<b>3,850.00</b>

<b>Amounts paid or payable to the office holders' agents</b>	<b>£</b>
None	0 00
<b>TOTAL</b>	<b>0 00</b>

## **ROBSON LAIDLER LLP – STATEMENT ON REMUNERATION AND EXPENSES IN INSOLVENCY PROCEEDINGS**

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### **INTRODUCTION**

The insolvency legislation was changed in April 2010 for insolvency appointments commenced on or after 6 April 2010 in order to allow more flexibility on how an office holder's fees are charged to a case. This fact sheet explains how we may apply the alternative fee bases. The new legislation 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, the creditors in general meeting, or the court.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also each creditor. 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 new legislation, any such report must disclose how creditors 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.

### **POLICY**

In order to maximise the cost effectiveness of the work performed it is Robson Laidler LLP's normal policy to delegate certain tasks within the case to members of staff subject to their qualifications, experience and specialist skills with the provision of supervision as deemed appropriate. Matters deemed to be complex or significant will be dealt with by senior members of staff or the office holder.

#### **Time cost basis**

This is the basis that is used in the majority of cases whereby charge out rates are applied. These rates are appropriate to the skills, qualifications and experience of the relevant staff member and the work they perform. This is combined with the amount of time that they work on each case, recorded in six minute units with supporting narrative to explain the work being undertaken. All staff who work on an assignment, including support staff, charge time directly to that assignment and are included within any analysis of time. The costs of any central administration or general overheads are not charged directly to the assignment but are reflected in the level of charge out rates.

The charge out rates vary between individuals of each grade based on their skills, qualifications and experience. The maximum charge out rates typically utilised per grade of staff are currently:

<b>Staff Grade</b>	<b>Rate per hour (£) effective from 1 April 2009</b>
Partner	300 00
Partner 2	220 00
Senior Manager 1	205 00
Senior Manager 2	200 00
Manager	170 00
Administrator/Cashier	160 00
Clerical Support	70 00

Charge out rates may be revised periodically, when rates are adjusted to reflect such matters as inflation, increases in direct wage costs and changes to other indirect costs.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and is generally recorded under the following categories: Administration, Planning and Statutory, Cashiering, Investigations, Realisation of Assets, Tax, Creditors, and Other case specific matter.

#### **Percentage basis**

The new legislation allows fees to be charged as 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. If this basis is considered appropriate we will provide further information explaining why, and ask the committee if one is appointed, the creditors in general meeting, or the court, to approve this basis.

#### **Fixed fee basis**

Again the new legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. If this basis is considered appropriate we will provide further information explaining why, and ask the committee if one is appointed, the creditors in general meeting, or the court, to approve this basis.

### **TASKS TYPICAL UNDERTAKEN**

Matters typically dealt with during an appointment may include, but are not limited to, the following:

## **ROBSON LAIDLER LLP – STATEMENT ON REMUNERATION AND EXPENSES IN INSOLVENCY PROCEEDINGS**

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### **Administration, Planning and Statutory**

This will include case planning and strategy, appointment notification, file set up and on-going maintenance, obtaining specific bond and on-going maintenance, uplift and maintenance of company books and records, case filing, periodic case reviews, statutory compliance and returns, general administrative matters and general correspondence excluding specific correspondence relating to any other categories

### **Cashiering**

This will include general cashiering activities including banking, maintenance of cash book, recording of receipts and payments, bank reconciliations and related filing and correspondence

### **Investigations**

To include such matters as reviewing directors questionnaires, considering the directors conduct, reviewing creditor concerns and reporting to the Secretary of State in accordance with the Company Directors Disqualification Act 1986

Additional investigation may also be undertaken to identify any assets or antecedent transactions to include preference, transaction at undervalue, misfeasance and wrongful trading etc

### **Realisation of Assets**

The realisation of assets will include, but is not limited to the following intangible assets, freehold and leasehold property, fixtures and fittings, plant and machinery, furniture, equipment, motor vehicles, debtors, stock, work in progress, cash at bank and in hand

The work undertaken will be concerned with the preservation and realisation of such assets to include site visits, compliance with relevant regulations, insurance matters, retention of title, general correspondence, debtor correspondence, instructing solicitors, arranging collections, liaising with agents, negotiating offers, reviewing sales contracts etc

### **Tax**

This will include the processing of any and all returns to HM Revenue & Customs in respect of, but not limited to, VAT, PAYE, NIC and Corporation Tax, and all associated correspondence

### **Creditors**

This will include dealing with the claims of all creditors and associated correspondence

Secured confirming the validity of the security, reporting, general correspondence, and making distributions

Preferential identifying preferential creditors, notifying, agreeing claims, general correspondence, and making distributions

Unsecured identifying unsecured creditors, notifying, agreeing claims, general correspondence, and making distributions

### **Trading**

This will include assessing the viability of on-going trade, preparing forecasts, securing funding, managing operations, trading supervision and monitoring, dealing with employees, reporting, and ensuring statutory compliance e.g health and safety

### **Case specific matters**

Any other matter not falling into any of the above categories

### **SUBCONTRACTORS**

Details and the costs of any work which has been or is intended to be sub-contracted out that could otherwise be carried out by the office holder or his or her staff will be provided in any report which incorporates a request for approval of the basis upon which remuneration may be charged. However, generally it is not the policy of Robson Laidler LLP to sub-contract out any work that could otherwise be carried out by the office holder or his or her staff

### **AGENT'S COSTS**

Agent's costs are charged direct to the case and the basis of the fee arrangement will be disclosed. Agents are instructed based on our perception of their experience and ability to perform the type of work, the complexity

## **ROBSON LAIDLER LLP – STATEMENT ON REMUNERATION AND EXPENSES IN INSOLVENCY PROCEEDINGS**

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and nature of the assignment and the basis of the fee arrangement with them. We will review the fees charged to ensure they are proper and reasonable in the circumstances of the case.

The term Agent will include, but is not limited to

- Solicitors and legal advisors
- Auctioneers and valuers
- Accountants and auditors
- Estate agents
- Quantity surveyors
- Consultants
- Any other specialist advisors

### **DISBURSEMENTS**

As part of our disclosure requirements the basis of disbursement allocation in respect of disbursements incurred by the office holder in connection with the administration of a case must be fully disclosed to creditors. Disbursements are categorised as either Category 1 or Category 2.

**Category 1 disbursements** These are costs where there is specific expenditure directly referable to the case and a payment is made to an independent third party. Category 1 disbursements can be drawn without prior approval. These disbursements are recoverable in full from the case either by a direct payment from the case or, where Robson Laidler LLP has made payment on behalf of the case, by a recharge of the amount invoiced. These expenses may include, but are not limited to advertising, room hire, storage, postage, telephone charges, invoiced travel, company search fees, specific penalty bond, and the properly reimbursed expenses incurred by Robson Laidler LLP and its employees in connection with the case.

**Category 2 disbursements** These are costs that are directly referable to a case but payment is not made to an independent third party. These may include shared or allocated costs that can be allocated to the case on a proper and reasonable basis. These disbursements are recoverable in full from the case, subject to the basis of the disbursement being approved in advance. Examples of category 2 disbursements are photocopying, internal room hire, internal storage costs and business mileage. With the exception of business mileage Robson Laidler LLP does not typically recharge category 2 expenses, although it reserves the right to do so.

Depending upon the circumstances of the case it may be appropriate to raise the Category 2 disbursements charges:

Mileage	at HM Revenue & Customs advisory fuel rate
Room Hire	£30.00 per room
Storage	£3 per box per quarter
Photocopying	15p per sheet

### **VAT**

Remuneration and expenses invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

### **FURTHER INFORMATION**

Further details about how an office holder's fees are approved for each case type are available in a series of guides issued with Statements of Insolvency Practice 9 (SIP 9). A copy of these guides can be downloaded from <http://www.insolvency-practitioners.org.uk/regulation-and-guidance/guides-to-fees>. Alternatively a hard copy may be requested, free of charge, from Robson Laidler LLP by post to Robson Laidler LLP at Fernwood House, Fernwood Road, Jesmond, Newcastle upon Tyne, NE2 1TJ, by telephone on 0191 2818191, or by email at [information@robson-laidler.co.uk](mailto:information@robson-laidler.co.uk).

## **A CREDITORS' GUIDE TO LIQUIDATORS' FEES ENGLAND AND WALES**

### **1 Introduction**

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

### **2 Liquidation procedure**

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

### **3 The liquidation committee**

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

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

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed
- as a percentage of the value of the assets which are realised or distributed or both,
  - by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation, or
  - as a set amount.

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



It is for the liquidation committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied. Rule 4.127 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case,
- any responsibility of an exceptional kind or degree which falls on the liquidator in connection with the insolvency,
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties,
- the value and nature of the assets which the liquidator has to deal with

4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as apply in the case of the committee. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.

4.3 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.

4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## **5 Review of remuneration**

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

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

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

6.1.1 When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought,
- the stage during the administration of the case at which it is being sought, and
- the size and complexity of the case.

6.1.2 Where, at any creditors' or committee meeting, the liquidator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

6.1.3 Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the liquidator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets

- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the liquidator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain

- Any significant aspects of the case, particularly those that affect the amount of time spent
- The reasons for subsequent changes in strategy
- Any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement
- Any existing agreement about fees
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

Details of the charge out rates of staff employed by Robson Laidler LLP are as follows

Staff Grade	Charge Out Rate Per Hour £
Partner	300 00
Partner 2	220 00
Senior Manager 1	205 00
Senior Manager 2	200 00
Manager	170 00
Administrator/Cashier	160 00
Clerical Support	12 00

- 6.1.4 Where the fee is charged on a percentage basis the liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator or his staff

## 6.2 After remuneration approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution (see further paragraph 7.1 below). Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 6.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

## 6.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. Professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be

authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

#### **6.4 Realisations for secured creditors**

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

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

**7.1** The liquidator is required to send annual progress reports to creditors. The reports must include

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it),
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report),
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report,
- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period,
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses.

**7.2** Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

**7.3** The liquidator must provide the requested information within 14 days, unless he considers that

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- the liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

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

### **8. Provision of information – additional requirements**

The liquidator must provide certain information about the time spent on the case, free of charge, upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- the total number of hours spent on the case by the liquidator or staff assigned to the case,
- for each grade of staff, the average hourly rate at which they are charged out,
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office.

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

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

- 9 1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.
- 9 2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.
- 9 3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7 1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.
- 9 4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the insolvent company.
- 10 What if the liquidator is dissatisfied?**
- If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.
- 11 Other matters relating to remuneration**
- 11 1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.
- 11 2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.
- 11 3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.
- 11 4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.
- 11 5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.
- 11 6 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.
- 12 Effective date**

This guide applies where a company –

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