

## The Insolvency Act 1986

Liquidator's Progress  
Report**S. 192**Pursuant to section 192 of the  
Insolvency Act 1986

To the Registrar of Companies

For official use

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Company Number

06821060

Name of Company

(a) Insert full  
name of  
company

(a) D&amp;A WITHEY LIMITED

(b) Insert full  
name(s) and  
address(es)

We (b)

Gary Steven Pettit and Gavin Geoffrey Bates of Marshman Price, 9-10  
Scirocco Close, Moulton Park, Northampton, NN3 6APthe liquidators of the company attach a copy of our Progress Report under  
section 192 of the Insolvency Act 1986

Signed



Date

17/6/14

Presenter's name,  
address and  
reference  
(if any) Gary Steven Pettit  
Marshman Price  
9-10 Scirocco Close  
Moulton Park  
Northampton  
NN3 6APLiquidation  
Section

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20/06/2014

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COMPANIES HOUSE

## **D&A Withey Ltd – In Liquidation**

### **Joint Liquidators' Annual Report to Members and Creditors For the year ending 21 May 2014**

#### **STATUTORY INFORMATION**

Company name	D&A Withey Limited – In Liquidation
Registered office	9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP (previously Suite 1 Meadow Court, 2-4 Meadow Close, Ise Valley Estate, Wellingborough, NN8 4BH – creditors should note this is due to the office at this firm dealing with the matter has now changed )
Former registered office	South Portway Close, Round Spinney, Northampton, NN3 8RH
Registered number	06821060
Joint Liquidators	Gary S Pettit and Gavin G Bates (see Special Notice below) The joint liquidators (Messrs Pettit and Price) had previously acted as joint administrators from 21 February 2013 to 22 May 2013. Creditors should read this report in conjunction with the administrators' reports to creditors (further copies of which can be downloaded from the document site or can be sent on request)
Liquidators' address	9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP
Date of appointment	22 May 2013

#### **SPECIAL NOTICE**

Due to the retirement of Mr Price from the practice and in accordance with an order of the High Court dated 22 May 2014 Mr Price was replaced as office holder by Mr Gavin Geoffrey Bates. A copy of the order is available on request.

#### **RECEIPTS AND PAYMENTS ACCOUNT**

I attach my receipts and payments account for the period from 22 May 2013 to 21 May 2014

Marshman Price, 9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP  
Tel 01604 926 070 Fax 01604 493 008

e-mail [info@marshmanprice.co.uk](mailto:info@marshmanprice.co.uk) [www.marshmanprice.co.uk](http://www.marshmanprice.co.uk)

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R Neil Marshman is licensed in the UK by the Insolvency Practitioners Association

Alan R Price is licensed in the UK by the Insolvency Practitioners Association

Marshman Price is the trading name of Marshman Price Ltd, company number 03869807, registered in England and Wales,  
Registered office 9/10, Scirocco Close, Moulton Park, Northampton, NN3 6AP

## **ASSETS**

### **Administration Surplus**

The administration surplus of £75,814 87 represents funds held in the administrators' account at the date of liquidation

### **VAT Refund**

I received a refund of £19,131 66 which represents the balance of VAT recoverable from the administration

### **Book Debts**

I passed the company's sales ledger to JP Associates for collection Realisations, which are complete, totalled £189,409 54

### **WIP**

As detailed in the joint administrators' report to creditors, the company's work in progress was sold to ITS Interiors Ltd as part of the sale of the chattel assets The company is due to receive 3% of the profit on completed WIP, but I am yet to receive any monies in this regard and enquiries are being made

### **Other Assets**

I have received bank interest of £38 31 during the year

## **LIABILITIES**

### **Secured Liabilities**

An examination of the company's mortgage register held by the Registrar of Companies, showed that the company granted a debenture in favour of Lloyds TSB Commercial Finance, who have been paid in full and forwarded surplus funds held to the joint administrators

### **Preferential Creditors**

The company's records anticipated £51,035 in preferential creditors Claims from the employees have been passed to the Redundancy Payments Office but I am yet to receive a final claim in this regard

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## **Crown Creditors**

The company's records indicated £635,716 owed to HMRC who have submitted a final claim of £530,504 68

## **Unsecured Creditors**

The company's records included 246 unsecured creditors with an estimated total liability of £1 6 million I have received claims from 124 creditors at a total of £1,217,153 To date I have not received claims from approximately 130 creditors with original estimated claims of affairs of £500,000

## **INVESTIGATION INTO THE AFFAIRS OF THE COMPANY**

Within six months of my appointment as joint liquidator, I am required to submit a confidential report to the Secretary of State to include any matters which have come to my attention during the course of my work which may indicate that the conduct of any past or present director would make him unfit to be concerned with the management of the company I would confirm that my report has been submitted

I am currently undertaking an investigation into the affairs of the company (and the group of companies of which the company was a member (all of which are in liquidation with myself and Gavin Bates as joint liquidators)) These investigations are ongoing, I am unable to comment further as in doing so may prejudice any case I may have

## **PRE-APPOINTMENT REMUNERATION**

I have drawn the final administrators' remuneration of £6,014 36 during the period, along with the final expenses of £0 55

## **LIQUIDATOR'S REMUNERATION**

My remuneration was previously authorised by creditors at a meeting held in the administration on 2 May 2013, to be drawn on a time cost basis This resolution carries over to the liquidation under the provisions of Rule 4 127(5A) of the Insolvency Rules 1986

My total time costs to date amount to £33,211 98 and I have drawn £28,706 31 to date A schedule of my time costs incurred to date is attached to this report

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

### **1 Administration and Planning**

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Tel 01604 212150 Fax 01604 493008

e-mail [info@marshmanprice.co.uk](mailto:info@marshmanprice.co.uk) [www.marshmanprice.co.uk](http://www.marshmanprice.co.uk)

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- Preparing the documentation and dealing with the formalities of appointment
  - Statutory notifications and advertising
  - Preparing documentation required
  - Dealing with all routine correspondence
  - Maintaining physical case files and electronic case details
  - Review and storage
  - Case bordereau
  - Case planning and administration
  - Preparing reports to members and creditors
  - Convening and holding meetings of members and creditors
- 2     Cashiering
- Maintaining and managing the liquidator's cashbook and bank account
  - Ensuring statutory lodgements and tax lodgement obligations are met
- 3     Creditors
- Dealing with creditor correspondence and telephone conversations
  - Preparing reports to creditors
  - Maintaining creditor information
  - Reviewing and adjudicating on proofs of debt received from creditors
- 4     Investigations
- Review and storage of books and records
  - Prepare a return pursuant to the Company Directors Disqualification Act
  - Conduct investigations into suspicious transactions
  - Review books and records to identify any transactions or actions a liquidator may take against a third party in order to recover funds for the benefit of creditors
- 5     Realisation of Assets
- Corresponding with debtors and attempting to collect outstanding book debts
  - Liaising with purchaser regarding work in progress

**A copy of 'A Creditors Guide to Liquidators' Fees' published by the Association of Business Recovery Professionals together with an explanatory note which shows the Marshman Price fee policy are enclosed. Further copies are available upon request.**

## **LIQUIDATOR'S EXPENSES**

My expenses to date amount to £353 35 and I have drawn £352 80 to date. The following agents or professional advisors have been utilised in this matter (both the administration and liquidation

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Professional Advisor	Nature of Work	Fee Arrangement
JPA	Debt Collection	Percentage of realisations
Eddisons	Valuer/Auctioneer	Percentage of realisations
Shakespeares	Solicitors	Time costs
Clifford Roberts	Forensic analysis of accounting records	Time costs

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

### **FURTHER INFORMATION**

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

An unsecured creditor may, with the permission of the court or with the concurrence of 10% in value of the creditors (including the creditor in question), apply to court to challenge the amount and/or basis of the Liquidator's fees and the amount of any proposed expenses or expenses already incurred, within 8 weeks of receipt of this report. Any secured creditor may make a similar application to court within the same time limit.

### **DIVIDEND PROSPECTS**

#### **Preferential creditors**

I anticipate preferential creditors will be paid in full.

#### **Unsecured creditors**

I expect there will be a return to unsecured creditors, although the timing and amount of any dividend is dependent on the outcome of my investigations.

### **SUMMARY**

The liquidation will remain open until asset realisations and my investigations are complete. Once these issues have been dealt with the liquidation will be finalised and our files will be closed.

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Should you have any queries regarding this matter please contact Jamie Cochrane at the office for which the details are on the front page of this report



**GARY S PETTIT**

Joint Liquidator

Marshman Price, 9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP

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**D&A Withey Limited - In Creditors Voluntary Liquidation  
Joint Liquidators' Abstract of Receipts & Payments**

**From 22 May 2013 To 21 May 2014**

<b>S of A £</b>	<b>As Previously Reported</b>	<b>22/05/13 to 21/05/14</b>	<b>Total £</b>
<b>RECEIPTS</b>			
NIL Book Debts	NIL	189,409 54	189,409 54
NIL Bank Interest Gross	NIL	38 31	38 31
NIL Transfer of Funds from Administration Account to Liquidation	NIL	75,814 87	75,814 87
NIL VAT Refund (From Administration)	NIL	19,131 66	19,131 66
NIL	NIL	284,394 38	284,394 38
<b>PAYMENTS</b>			
Sundry Expenses	NIL	40 00	40 00
Administrators' Expenses	NIL	0 55	0 55
Debt Collection Fees	NIL	46,727 39	46,727 39
Liquidators' Fees	NIL	28,706 32	28,706 32
Liquidators' Expenses	NIL	352 80	352 80
Agents/Valuers Fees (1)	NIL	8,025 00	8,025 00
Legal Fees	NIL	444 50	444 50
Storage Costs	NIL	344 28	344 28
Statutory Advertising	NIL	241 94	241 94
Rents Payable	NIL	33,987 90	33,987 90
Rates	NIL	1,252 91	1,252 91
Wages & Salaries	NIL	750 00	750 00
Professional Fees	NIL	3,610 00	3,610 00
Employee Entitlements	NIL	163 80	163 80
Property Expenses	NIL	1,380 48	1,380 48
Administrators Fees	NIL	6,014 36	6,014 36
Room Hire	NIL	158 33	158 33
Vat Receivable	NIL	116 04	116 04
Specific Bond	NIL	840 00	840 00
	NIL	133,156 60	133,156 60
<b>CASH IN HAND</b>	NIL	151,237 78	151,237 78

**Joint Liquidators' Remuneration Schedule**  
**D&A Withey Limited**  
**Between 22 May 2013 and 21 May 2014**

Classification of work function	Partner/ Director	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost	Average Hourly Rate
Administration & Planning	4 10	5 70	31 40	11 30	52 50	8,018 34	152 73
Investigations	6 80	0 30	14 90	0 00	22 00	4,974 01	226 09
Realisations	4 20	1 00	7 90	0 20	13 30	3,088 76	232 24
Trading	0 10	0 00	0 00	0 00	0 10	37 65	376 48
Creditors	8 90	1 20	17 40	4 90	32 40	6,349 42	195 97
Case Specific Matters	4 70	1 50	41 80	24 00	72 00	10,743 80	149 22
<b>Total hours</b>	<b>28 80</b>	<b>9 70</b>	<b>113 40</b>	<b>40 40</b>	<b>192 30</b>		
<b>Time costs</b>	<b>10,823 80</b>	<b>2,622 88</b>	<b>16,936 40</b>	<b>2,828 90</b>	<b>33,211 98</b>		
<b>Average hourly rate</b>	<b>375 83</b>	<b>270 40</b>	<b>149 35</b>	<b>70 02</b>	<b>172 71</b>		

Description	Total Incurred £	Total Recovered £
Mileage	3 85	3 30
Cheque fee	14 00	14 00
Postage/Stamps/Copying/Stationery	223 50	223 50
Companies House Services	2 00	2 00
Insolv Case Administration Fee	110 00	110 00
<b>Totals</b>	<b>353 35</b>	<b>352.80</b>

**Summary of Fees**

Time spent in administering the Assignment	Hours	192 30
Total value of time spent to 21 May 2014	£	33,211 98
Total Joint Liquidators' fees charged to 21 May 2014	£	28,706 31

## **PRACTICE FEE RECOVERY POLICY FOR MARSHMAN PRICE**

### **Introduction**

The insolvency legislation was changed in April 2010 for insolvency appointments commenced from that time in order to allow more flexibility on how an office holder's fees are charged to a case. This sheet explains how we may apply the alternative fee bases. The 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 by the creditors, failing which the creditors in general meeting, or the court. Further details about how an office holder's fees are approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9). A hard copy may be requested from Marshman Price, Suite 1, Meadow Court, 2-4, Meadow Close, Ise Valley Estate, Wellingborough, NN8 4BH or 9/10, Scirocco Close, Moulton Park, Northampton, NN3 6AP.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. 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.

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

### **Time cost basis**

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

### **Charge-out Rates**

<b>Grade of staff</b>	<b>Charge-out rates per hour, (w.e.f 31 March 2013) £</b>	<b>Previous charge our rate per hour £</b>
Partner – appointment taker	250 - 377	250-362
Senior Manager	271	260
Manager	176	176
Supervisor/Senior Administrator	82 - 125	75-125
Case Administrator	55 - 120	55-120
Other clerical/administrative staff	44	42

These charge-out rates charged are reviewed on 31 March each year and are adjusted to take account of inflation and the firm's overheads.

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

- Administration and Planning
- Investigations
- Realisation of Assets

- Employee matters
- Creditors
- Trading

### **Percentage basis**

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

### **Fixed fee**

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

### **All bases**

The officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate. However, following the "Paymex" court decision, all fees charged on voluntary arrangements are zero-rated for VAT purposes.

### **Agents' Costs**

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

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

### **Disbursements**

In accordance with Statement of Insolvency Practice 9 (SIP9) the basis of disbursement allocation in respect of disbursements incurred by the Office Holder in connection with the administration of the estate must be fully disclosed to creditors. Disbursements are categorised as either Category 1 or Category 2.

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

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

We charge for the following Category 2 disbursements

Room Hire	40 00	Per formal meeting at firm's offices
Case File Storage & Destruction	20 00	Storage of case files for 6 years after case closure and final shredding – per case (Min up to 4 case files) Additional files charged at £5 each
Mileage	0 55	Per mile travelled
Cash usage fee	7 00/17 00	Use of office account funds to meet direct estate liability when estate funds not available, the higher amount will be charged if the cash paid is above £750
Card printing	0 17	Per sheet
Digital photographs	0 50	High Resolution digital photographs - each
Electoral Database Search	1 00	Use of commercial database of electoral rolls
Archive boxes	5 00	Per box
Files & dividers	3 50	Per file
Labels	0 50	Per sheet used
Photocopying	0 15	Per sheet used

## **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 fixing bases of remuneration**

- 6.1.1** When seeking agreement for the basis or bases of remuneration, the liquidator should provide sufficient supporting information to enable the committee or the creditors to make an informed judgement as to whether the basis sought is appropriate having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought. The appendix to this guide sets out a suggested format for the provision of information.
- 6.1.2** If any part of the remuneration is sought on a time costs basis, the liquidator should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.
- 6.1.3** The liquidator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the liquidator or his or her staff.
- 6.1.4** If work has already been carried out, the liquidator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the liquidator should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. The liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the liquidator or his or her staff.

### **6.2 After the bases of remuneration have been fixed**

The liquidator is required to send progress reports to creditors at specified intervals (see paragraph 7.1 below). When reporting periodically to creditors, in addition to the matters specified in paragraph 7.1, the liquidator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the liquidator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate). Where any remuneration is on a time costs basis, the liquidator should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the liquidator or his or her staff.

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

- 6.3.1** Costs met by and reimbursed to the liquidator in connection with the liquidation should be appropriate and reasonable. Such costs will fall into two categories:
- **Category 1 disbursements** These are costs where there is specific expenditure directly referable both to the liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the liquidator or his or her staff.

- **Category 2 disbursements** These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the liquidation on a proper and reasonable basis, for example, business mileage.

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

**6.3.2 The following are not permissible**

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

**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 or after 1 November 2011.