

**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

06880449

Name of Company

AAG SITE SERVICES LIMITED

I / We

Gareth David Peckett  
2 Rutland Park  
Sheffield  
S10 2PDGraham Leslie Stuart-Harris  
2 Rutland Park  
Sheffield  
S10 2PDthe 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 07/02/2012 to 06/02/2013

Signed

Date

07/02/13

Barber Harrison & Platt  
2 Rutland Park  
Sheffield  
S10 2PD

Ref INA006/GDP/OA

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08/02/2013

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COMPANIES HOUSE

**AAG SITE SERVICES LIMITED**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 07/02/2012 To 06/02/2013
	<b>ASSET REALISATIONS</b>	
2,000 00	Plant & Machinery	1,130 00
11,500 00	Book Debts	NIL
6,025 47	VAT Refund	NIL
837 60	Cash at Bank	837 60
	Bank Interest Gross	1 69
		<u>1,969 29</u>
	<b>COST OF REALISATIONS</b>	
	Preparation of S of A	1,166 67
	Office Holders Fees 5/10/2012	NIL
	Future OH Fees	NIL
	Agents/Valuers Fees	500 00
		<u>(1,666 67)</u>
	<b>UNSECURED CREDITORS</b>	
(75,317 85)	Trade & Expense Creditors	NIL
(1,766 98)	A A G Finance Limited	NIL
(175 00)	AAG Systems Limited	NIL
		<u>NIL</u>
	<b>DISTRIBUTIONS</b>	
(1,000 00)	Ordinary Shareholders	<u>NIL</u>
		<u>NIL</u>
<u>(57,896 76)</u>		<u><u>302.62</u></u>
	<b>REPRESENTED BY</b>	
	Vat Receivable	233 33
	Bank 1 Current	69 29
		<u>302.62</u>

Gareth David Peckett  
Joint Liquidator

**A.A.G. Site Services Limited**  
**Creditors Voluntary Liquidation**

**Strictly Private & Confidential**

**Joint Liquidators Report to Members & Creditors**  
**Pursuant to the Insolvency Rules 1986**  
**For the period 7 February 2012 to 6 February 2013**

**Barber Harrison & Platt**  
**Corporate Recovery & Insolvency**  
**2 Rutland Park Sheffield**  
**S10 2PD**  
**Tel: 0114 266 7171 Fax: 0114 266 9846**  
**[www.bhp.co.uk](http://www.bhp.co.uk)**

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Creditors Guide to Fees**

## **A.A.G. Site Services Limited – Creditors Voluntary Liquidation**

**The Joint Liquidators report to Members & Creditors pursuant to the Insolvency Rules 1986 from 7 February 2012 to 6 February 2013.**

### **1. Introduction**

I, Gareth David Peckett and Graham Leslie Stuart-Harris of Barber Harrison & Platt, Chartered Accountants were appointed Joint Liquidators of AAG Site Services Limited on 7 February 2012 and now present our progress report to members & creditors pursuant to the Insolvency Rules 1986.

### **2. Statutory Information**

Company Name:	A.A.G. Site Services Limited
Registered office:	2 Rutland Park, Sheffield, S10 2PD
Former registered office:	Westthorpe Innovation Centre, Block B Suite 22, Killamarsh, S21 1TZ
Registered number:	06880449
Liquidator's details:	Gareth David Peckett and Graham Leslie Stuart-Harris of Barber Harrison & Platt, Chartered Accountants, 2 Rutland Park, Sheffield, S10 2PD

### **3. Receipts and Payments Account**

I attach for your information at appendix 1 a copy of our summarised receipts and payments account for the period of this report. The figures under "S of A" are taken from the Company's statement of affairs.

### **4. Assets**

#### **4.1 Plant and Equipment**

The Plant & Machinery consisted of 27 Bespoke Wheel Pallets for transporting used wheel pans and 8 Stillages. These items were on site at a customer's premises. Our agents recovered and sold the items realising £1,130 plus VAT less costs for the benefit of the liquidation.

#### **4.2 Cash in client account**

An amount of £837.60 from a customer of the Company was realised pre appointment and was paid in a Barber Harrison and Platt client account. This has now been transferred into the liquidation bank account.

### **4.3 VAT refund**

From reviewing the books and records it would appear that the Company is due a refund in respect of VAT payable from HM Revenue and Customs for the quarter ended 31 December 2011. Correspondence has been entered into with HM Revenue & Customs who are in the process of making enquiries with other Government Departments in relation to potential Crown Set off claims against the VAT.

### **4.4 Book debts**

Upon appointment the company records showed debtors with a book value of £11,500 which related to one disputed debt. Correspondence has been entered into with the debtor however we have not received any payment. The joint liquidators will review the debt and make a decision regarding whether it is commercially viable to instruct solicitors to pursue the debt.

### **4.5 Miscellaneous Receipts**

An amount of £1.69 has been received in respect of Gross Bank interest.

## **5. Investigations**

Within six months of my appointment as 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.

## **6. Creditors**

### **6.1 Secured Creditors**

There are no secured creditors.

### **6.2 Preferential Creditors**

The joint liquidators are not aware of any preferential creditors.

### **6.3 Unsecured Creditor**

Unsecured creditors, as estimated in the director's statement of affairs, totalled £77,259.83. To date we have received claims of £79,597.54 in respect of unsecured creditors.

### **6.4 Section 176A (2)a of the Insolvency Act 1986**

Section 176A(2)a of the Insolvency Act 1986 provides that where a qualifying floating charge has been created on or after 15 September 2003, the Liquidator

must make a prescribed part of the company's net property available for the satisfaction of the unsecured debt.

There is no floating charge so the prescribed part does not apply.

## **7. Dividend Prospects**

It is currently uncertain if there will be a dividend to any class of creditor. Any dividend payable will be dependent upon the realisation of assets which are not currently known to the Joint liquidator.

## **8. E.C. Regulations**

The E.C. Regulations applies to this case, and these proceedings are main proceedings as defined in Article 3 of the E.C. Regulations

## **9. Bordereau**

The case was bonded for £25,000 on 7 March 2012.

## **10. Payments & Expenses**

Details of payments made during the period of this report as shown on the enclosed receipts and payment abstract and detailed Time charge-out and disbursement summary. Should you require any explanations over and above those given below, please contact my colleague, Oliver Adams in the first instance.

### **10.1 Joint Liquidators Remuneration**

At the meeting of creditors held on 7 February 2012, it was agreed that the Statement of Affairs fee of £5,000, plus VAT and disbursements in respect of work undertaken up to and including the Section 98 meeting be approved by the creditors and that the Joint Liquidators remuneration will be fixed by reference to the time properly given by them and their staff in attending to matters arising in the winding up. I have taken fees of £1,166.67 plus VAT against the statement of affairs fee to date, the balance of £3,833.33 remains outstanding.

It was resolved that in respect of disbursements, the joint liquidators be authorised to draw disbursements, including disbursements for services provided by their firm (defined as Category 2 disbursements in Statement of Insolvency Practice 9), in accordance with their firms' policies, details of which accompanied the information presented to the creditors meeting.

Time charged by Barber Harrison & Platt for the period of this report amounts to 52.80 hours totalling £8,126.50 which is an average hourly rate of £148.29 per hour. I have not drawn any fees against my time costs in this period.

Attached to this report at appendix 2 is a charge out summary detailing the time charged in the period.

## **Explanatory notes to the summary of time costs**

### **Administration and Planning**

Work performed includes: Preparing the documentation and dealing with the formalities of appointment, statutory notifications and advertising, preparing documentation required, dealing with all routine correspondence, maintaining physical case files and electronic case details on IPS, review and storage, case bordereau, case planning and administration, preparing reports to members and creditors, convening and holding meetings of members and creditors.

### **Realisation of Assets**

Work performed includes identifying, securing and insuring the assets, dealing with any sale of the business, dealing with any retention of title claims over the assets, transition of contracts, property issues, collecting the debts and disposal of the stock and other assets.

### **Investigations**

Work performed includes investigation of the company's affairs in accordance with Statement of Insolvency Practice 2 and the submission of a report to the Insolvency Service in accordance with the Company Directors Disqualification Act 1986

### **Creditors**

Work Performed includes setting up of our creditor records for secured, preferential and non-preferential creditors and for the employees, communication with the creditors/employees after our appointment by telephone, e-mail and letter, as required, dealing with creditors/employee correspondence and telephone calls and, where appropriate, agreeing creditors/employees claims in the insolvency proceedings and distribution of funds. Work also includes providing reports to Banks/secured creditors as necessary.

A copy of 'A Creditors Guide to Liquidators' Fees' published by the Association of Business Recovery Professionals and 'A Statement of Insolvency Practice 9 (Revised)' together with an explanatory note which shows Barber Harrison & Platt's fee policy are attached to this report at appendix 3.

## **10.2 Liquidators Disbursements**

Liquidators' disbursements of £346 have been incurred in respect of disbursements relating to the Creditors Voluntary Liquidation. A breakdown of the disbursements incurred can be seen on the attached charge out schedule at appendix 2.

## **10.3 Solicitors Fees**

No solicitors have been instructed in relation to the liquidation.

#### **10.4 Agents Fees**

Commercial Vehicle Auctions Limited of Doncaster were instructed with regards to the valuation and sale of the Plant & Machinery. They have been instructed based upon their normal charge out rates and have received £500 plus VAT to date which is detailed on the attached receipts and payments account.

It is not expected that any further fees will be paid to Commercial Vehicle Auctions Limited.

#### **10.5 Request for further Information & Creditors Right of Challenge**

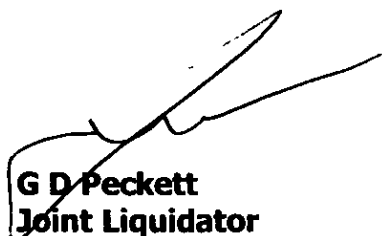
An unsecured creditor may, with the permission of the court or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question) request further details of the Liquidator's remuneration and expenses, within 21 days of receipt of this report. Any secured creditor may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

#### **11. Conclusion**

I can advise that the liquidation cannot yet be brought to a close as collection of the book debt ledger and recovery of VAT from HM Revenue & customs is still ongoing. A further report will be sent to all known creditors at the second anniversary of my appointment, or upon completion of the liquidation.

I hope that the above information is of value to you as members & creditors. Should you require any further information or explanation regarding this report then please do not hesitate to contact me in writing.



**G D Peckett**  
**Joint Liquidator**

**7 February 2013**

## **APPENDIX 1**

### **JOINT LIQUIDATORS' RECEIPTS AND PAYMENTS ACCOUNT FOR THE PERIOD 7 FEBRUARY 2012 TO 6 FEBRUARY 2013**

**AAG SITE SERVICES LIMITED**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**  
**To 06/02/2013**

<b>S of A £</b>		<b>£</b>	<b>£</b>
	<b>ASSET REALISATIONS</b>		
2,000 00	Plant & Machinery	1,130 00	
11,500 00	Book Debts	NIL	
6,025 47	VAT Refund	NIL	
837 60	Cash at Bank	837 60	
	Bank Interest Gross	1 69	
			1,969 29
	<b>COST OF REALISATIONS</b>		
	Preparation of S of A	1,166 67	
	Agents/Valuers Fees	500 00	
			(1,666 67)
	<b>UNSECURED CREDITORS</b>		
(75,317 85)	Trade & Expense Creditors	NIL	
(1,766 98)	A A G Finance Limited	NIL	
(175 00)	AAG Systems Limited	NIL	
			NIL
	<b>DISTRIBUTIONS</b>		
(1,000 00)	Ordinary Shareholders	NIL	
			NIL
<b>(57,896.76)</b>			<b>302.62</b>
	<b>REPRESENTED BY</b>		
	Vat Receivable		233 33
	Bank 1 Current		69 29
			<b>302.62</b>

Gareth David Peckett  
Joint Liquidator

## **APPENDIX 2**

### **SIP 9 TIME CHARGE OUT AND DISBURSEMENT SUMMARY FOR THE PERIOD 7 FEBRUARY 2012 TO 6 FEBRUARY 2013**

## Time analysis from 7 February 2012 to 6 February 2013

**Disbursements analysis (including SIP 9 category 2 disbursements) from 7 February 2012 to 6 February 2013**

Date	Description	Amount
31/01/2012	Statutory advertising	76 50
15/02/2012	Statutory advertising	76 50
15/02/2012	Statutory advertising	76 50
12/02/2012	Statutory advertising	76 50
07/03/2012	Bordereau	40 00
	Total	346 00

## **APPENDIX 3**

### **BARBER HARRISON & PLATT CHARGE-OUT RATES AND DISBURSEMENTS CREDITORS GUIDE TO FEES**

## CHARGE-OUT RATES AND DISBURSEMENTS 2012

In accordance with the Joint Insolvency Committee Statement of Insolvency Practice Number 9 ("SIP 9") we would confirm that this firm's policy as regards charging for time costs and disbursements incurred is as follows:

### CHARGE-OUT RATES

Grade	Standard Rate per hour
Insolvency Consultant	£250
Insolvency Senior Manager	£200
Insolvency Manager	£145
Insolvency Case Manager	£135
Cashier / Other administrators	£85

In cases that require a significant amount of investigation or where the ability to pay fees is dependent on realising assets that are considered irrecoverable at the outset, an uplift of 50% may be applied to the above rates. This will be referred to as the Premium Rate and will be requested where our costs would otherwise be at risk. Creditors will be advised on a case by case basis when approval for these higher rates is being sought and such Premium Rates will only be payable out of the enhanced recovery. The department charges in minimum time units of 6 minutes.

In certain cases specialist in-house advice may be appropriate and the following hourly rates will apply:

Tax Partner	£250
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It is not this firm's policy to charge separately for secretarial or most administrative staff.

We would point out that charge-out rates do change from time to time. We will advise any material changes to charge-out rates either when seeking approval of creditors or the creditors committee to draw fees, or with the next annual meeting report if a resolution based on time costs has already been passed.

### DISBURSEMENTS

This firm recharges Category 1 disbursements in accordance with SIP 9 as and when they are incurred. These charges do not require specific authorisation but details can be provided on request. However, other disbursements are classed as Category 2 and require specific approval by creditors or any creditors' committee. This firm does not attempt to recover all such disbursements from the individual case but does seek approval to the recharges on the following page:

Disbursement	Rate	Basis of charge
<b>Staff Mileage</b>	£0.40 per mile	This is charged regardless of fuel type and engine size on journeys made outside of the boundaries of the City of Sheffield. Journeys within the city boundaries are not recharged.
<b>Room Hire</b>	£50	This charge is for the use of a meeting room and is levied per meeting. Where a room has to be hired elsewhere, this will be a Category 1 charge and is likely to be well in excess of the internal charge.
<b>Storage</b>	£4.00 per box plus £0.125 per box per wk	Books and records have to be stored for a certain period of time. Off site storage is recharged by an independent storage company and will be recovered under Category 1. A charge is however levied for internal storage and the provision of storage boxes at: <ul style="list-style-type: none"> <li>• Boxes - £4.00 per box;</li> <li>• Storage - £0.125 per box per week.</li> </ul>
<b>Company Searches</b>		
<ul style="list-style-type: none"> <li>• Insolvency department standard pack:</li> <li>• Company Report</li> <li>• Accounts</li> <li>• Annual Return</li> </ul>	£25	These charges are levied to all clients of the firm and are based on the direct cost plus an uplift to cover administration costs of collating the information. We believe the rates to be comparable to outside agencies.
<ul style="list-style-type: none"> <li>• Accounts</li> <li>• Annual Return</li> <li>• Mortgage summary</li> <li>• Company Report</li> <li>• Memo and arts</li> <li>• Insolvency Status</li> </ul>	£10 £5 £5 £10 £36 N/C	
<b>BHP Financial Planning Limited ("BHP FP")</b>		Insurance and pension costs would usually be referred to the Alexander Forbes Group, or another independent insurance company, and such costs would be chargeable under Category 1. However, very occasionally the firm's financial advisor company, BHP FP, is instructed to assist with, for example, disposing of endowment policies. BHP FS usually takes its fees from the commissions arising at market rates, as is normal practice in the Insurance and pensions market.

This firm does not attempt to recover the cost of telephone calls/faxes or emails.

## **BEGBIES TRAYNOR CHARGING POLICY**

### **INTRODUCTION**

This note applies where a licensed insolvency practitioner in the firm is acting as an office holder of an insolvent estate and seeks creditor approval to draw remuneration on the basis of the time properly spent in dealing with the case. It also applies where further information is to be provided to creditors regarding the office holder's fees following the passing of a resolution for the office holder to be remunerated on a time cost basis. Best practice guidance<sup>1</sup> requires that such information should be disclosed to those who are responsible for approving remuneration.

In addition, this note applies where creditor approval is sought to make a separate charge by way of expenses or disbursements to recover the cost of facilities provided by the firm and also where payments are to be made to outside parties in which the office holder or his firm or any associate has an interest. Best practice guidance<sup>2</sup> requires that such charges should be disclosed to those who are responsible for approving the office holder's remuneration, together with an explanation of how those charges are calculated.

### **OFFICE HOLDER'S FEES IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES**

The office holder has overall responsibility for the administration of the estate. He/she will delegate tasks to members of staff. Such delegation assists the office holder as it allows him/her to deal with the more complex aspects of the case and ensures that work is being carried out at the appropriate level. There are various levels of staff that are employed by the office holder and these appear below.

The firm operates a time recording system which allows staff working on the case along with the office holder to allocate their time to the case. The time is recorded at the individual's hourly rate in force at that time which is detailed below.

### **EXPENSES INCURRED BY OFFICE HOLDERS IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES**

Best practice guidance classifies expenses into two broad categories.

- *Category 1 disbursements (approval not required)* - specific expenditure that is directly related to the case usually referable to an independent external supplier's invoice. All such items are charged to the case as they are incurred.
- *Category 2 disbursements (approval required)* - items of incidental expenditure directly incurred on the case which include an element of shared or allocated cost and which are based on a reasonable method of calculation.

(A) The following items of expenditure are charged to the case (subject to approval)

- Internal meeting room usage for the purpose of statutory meetings of creditors is charged at the rate of £100 per meeting,
- Car mileage is charged at the rate of 40 pence per mile,
- Storage is provided by a connected storage company in which D F Wilson and J N R Pitts have an interest. Boxes are supplied at a cost of £4 each and boxes are stored at a cost of £12.00 per box per annum. Destruction charges are £5 per box. Van hire/transportation costs are charged at 75p per mile.
- Asset Appraisal and Disposal services are provided by BTG Asset Consulting, a division of BTG Consulting LLP, which is part of Begbies Traynor Group plc. Asset Appraisal and Disposal costs are charged at £125 per hour and are reclaimed from asset realisations of the company.

<sup>1</sup> Statement of Insolvency Practice 9 (SIP 9) – Remuneration of insolvency office holders in England & Wales

<sup>2</sup> *Ibid* 1

- The location of assets or individuals, surveillance and other investigative services are provided by BTG Intelligence, which is part of the Begbies Traynor Group plc. Costs are charged from £250 per hour
- (B) The following items of expenditure will normally be treated as general office overheads and will not be charged to the case although a charge may be made where the precise cost to the case can be determined because the item satisfies the test of a *Category 1 disbursement*.
- Telephone and facsimile
  - Printing and photocopying
  - Stationery

#### BEGBIES TRAYNOR CHARGE-OUT RATES

Begbies Traynor is a national firm. The rates charged by the various grades of staff that may work on a case are set nationally, but vary to suit local market conditions.

The rates applying to the York office as at the date of this report are as follows:

Grade of staff	Standard charge-out rate from 1 May 2011 until further notice (£ per hour)
Partner	395
Director	345
Senior Manager	310
Manager	265
Assistant Manager	205
Senior Administrator	175
Administrator	135
Trainee Administrator	110
Support	110

Prior to 1 May 2011, the following rates applied:

Grade of staff	Charge-out rate (£ per hour)
Partner	350
Director	325
Senior Manager	295
Manager	250
Assistant Manager	195
Senior Administrator	160
Administrator	130
Trainee Administrator	100
Support	100

Time spent by support staff for carrying out shorter tasks, such as typing or dealing with post, is not charged to cases but is carried as an overhead. Only where a significant amount of time is spent at one time on a case is a charge made for support staff.

Time is recorded in units of 6 minute units.

## **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 5 below).

#### **5. Review of remuneration**

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

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

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

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

- the nature of the approval being sought;

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

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

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

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

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

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

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

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

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

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

- 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:

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

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

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

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

## **6.2 After remuneration approval**

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

## **6.3 Disbursements and other expenses**

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

## **6.4 Realisations for secured creditors**

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

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

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

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

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

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

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

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

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

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

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

The information which must be provided is –

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

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

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

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

9.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing

9.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.

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

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

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

considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

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

- 11.1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.
- 11.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.
- 11.3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.
- 11.4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.
- 11.5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.
- 11.6 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

## **12. Effective date**

This guide applies where a company –

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

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### **4.49E Creditors' and Members' request for further information**

#### **4.49E(1) [Duty of Liquidator re remuneration or expenses] If-**

- (a) within the period mentioned in paragraph (2)-
  - (i) a secured Creditor, or
  - (ii) an unsecured Creditor with the concurrence of at least 5% in value of the unsecured Creditors (including the Creditor in question), or
  - (iii) Members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
- (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)-
  - (i) any unsecured creditor, or
  - (ii) any member of the company in a members' voluntary winding up.

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49(B)(1) (a) or (i) (including by virtue of Rule 4.49C(5)) or in a draft report under rule 4.49D, the Liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108.

#### **4.49E(2) [Period for compliance with r.4.49E(1)] The period referred to in paragraph (1)(a) and (b) is-**

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
- (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case.

#### **4.49E(3) [How liquidator to comply] The liquidator complies with this paragraph by either-**

- (a) providing all of the information asked for, or
- (b) so far as the liquidator considers that-
  - (i) the time or cost of preparation of the information would be excessive, or
  - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or

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(II) the Liquidator is subject to an obligation of confidentiality in respect of the information

giving reasons for not providing all of the information.

**4.48E(4)** [Application to court by creditors and members] Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the court within 21 days of-

(a) the giving by the Liquidator of reasons for not providing all of the information asked for, or

(b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just.

**4.48E(5)** [Court may extend period in rr.4.131(1B), 4.148C(2)] Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4.131(1B) or 4.148C(2) by such further period as the court thinks just.

**4.48E(6)** [Non-application to official receiver] This Rule does not apply where the Liquidator is the official receiver.

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**4.131 Creditors' claim that remuneration or other expenses are excessive**

**4.131(1)** [Secured or certain unsecured creditors may apply to court] Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4)

**4.131(1A)** [Grounds for application] Application may be made on the grounds that—

- (a) the remuneration charged by the Liquidator,
- (b) the basis fixed for the Liquidator's remuneration under Rule 4.127, or
- (c) expenses incurred by the Liquidator,

is or are, in all circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

**4.131(1B)** [Time limit for application] The application must, subject to any order of the court under Rule 4.48E(5), be made no later than 8 weeks (or, in a case falling within Rule 4.108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4.49D, which first reports the charging of the remuneration or the incurring of the expenses in question ('the relevant report').

**4.131(2)** [Power of court to dismiss etc.] The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least 5 business days' notice but which is without notice to any other party.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

**4.131(3)** [Notice to Liquidator] The applicant shall, at least 14 days before the hearing, send to the Liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

**4.131(4)** [Court order] If the court considers the application to be well-founded, it must make one or more of the following orders —

- (a) an order reducing the amount of remuneration which the Liquidator was entitled to charge;
- (b) an order fixing the basis of remuneration at a reduced rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation;
- (e) an order that the Liquidator or Liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

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and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

4.131(5) [Costs of application] Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the liquidation.