

## Section 94

Return of Final Meeting in a  
Members' Voluntary Winding UpPursuant to Section 94 of the  
Insolvency Act 1986

To the Registrar of Companies

**S.94**

Company Number

07097284

Name of Company

York Textiles Limited

 We

Tyrone Shaun Courtman, Sky View, Argosy Road, East Midlands Airport, Castle Donington, Derby, DE74 2SA

Note The copy account must be  
authenticated by the written  
signature(s) of the Liquidator(s)

give notice that a general meeting of the company was duly held on/summoned for 11 August 2016 pursuant to section 94 of the Insolvency Act 1986, for the purpose of having an account (of which a copy is attached) laid before it showing how the winding up of the company has been conducted, and the property of the company has been disposed of and that the same was done accordingly / no quorum was present at the meeting

The meeting was held at Sky View, Argosy Road, East Midlands Airport, Castle Donington, Derby, DE74 2SA

The winding up covers the period from 2 March 2015 (opening of winding up) to the final meeting (close of winding up) 11 AUGUST 16

The outcome of the meeting (including any resolutions passed at the meeting) was as follows

No resolutions were passed, however there were no objections to the Liquidator being released from office or that the books and records of the company be destroyed 15 months after the final meeting.

Signed

Date

11 August 2016

PKF Cooper Parry Group Limited  
Sky View  
Argosy Road  
East Midlands Airport  
Castle Donington  
Derby  
DE74 2SA  
Ref BH022/TSC/LB/SW



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COMPANIES HOUSE

**York Textiles Limited**  
**(In Liquidation)**  
**Liquidator's Abstract of Receipts & Payments**  
**From 2 March 2015 To 11 August 2016**

| <b>S of A £</b>     |                             | <b>£</b>     | <b>£</b>       |
|---------------------|-----------------------------|--------------|----------------|
|                     | <b>ASSET REALISATIONS</b>   |              |                |
| 1,563,871 00        | BHM Knitwear Limited        | 1,564,735 32 |                |
|                     | Tax Refund                  | 113 24       |                |
| 309,763 00          | Cash at Bank                | 309,748 04   |                |
|                     | Directors' Loan Accounts    | 2,133 60     |                |
|                     | Bank Service Charge Refund  | 9 19         |                |
|                     | Bank Interest Gross         | 177 17       |                |
|                     |                             |              | 1,876,916 56   |
|                     | <b>COST OF REALISATIONS</b> |              |                |
|                     | Liquidators Fees            | 6,000 00     |                |
|                     | Liquidators Expenses        | 694 18       |                |
|                     | Professional Fees           | 2,037 50     |                |
|                     | Statutory Advertising       | 70 00        |                |
|                     | Bank Charges                | 100 00       |                |
|                     |                             |              | (8,901 68)     |
|                     | <b>UNSECURED CREDITORS</b>  |              |                |
|                     | Trade & Expense Creditors   | 864 82       |                |
| (64,820 00)         | HM Revenue & Customs - CTax | 14,445 68    |                |
| (15,014 00)         | HM Revenue & Customs - VAT  | 15,014 50    |                |
|                     |                             |              | (30,325 00)    |
|                     | <b>DISTRIBUTIONS</b>        |              |                |
|                     | Ordinary Shareholders       | 1,837,689 88 |                |
|                     |                             |              | (1,837,689 88) |
| <b>1,793,800.00</b> |                             |              | <b>0.00</b>    |
|                     | <b>REPRESENTED BY</b>       |              |                |
|                     |                             |              | <b>NIL</b>     |

Discover the difference

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East Midlands Airport, Castle Donington  
Derby, DE74 2SA  
T 01332 411 163  
F 01332 418 074  
E leeb@pkfcooperparry.com  
W www.pkfcooperparry.com

The Registrar  
Companies Registration Office  
Crown Way  
Maindy  
Cardiff  
CF14 3UZ

Our ref TSC/NJE/LB/SW/BH022/MV2015-R10

11 August 2016

When telephoning please ask for  
Samantha Wetwood

Dear Sirs

**York Textiles Limited – In Members Voluntary Liquidation**  
**Registered in England No 07097284 at Sky View, Argosy Road, East Midlands Airport, Castle Donington, Derby, DE74 2SA**

I was appointed Joint Liquidator of the above Company on 2 March 2015 and pursuant to rule 4 126A I summarise the conduct of the Liquidation and provide you with a final report which should be read in conjunction with my previous reports. I confirm that in accordance with Section 94 of the Insolvency Act 1986, this report was presented in the final meetings of members which was held at our offices on 11 August 2016

I enclose for your information -

**Appendix**

- |  |   |
|--|---|
| • Liquidators' Combined Abstract of Receipts and Payments Account and Estimated Outcome Statement showing the amounts received and paid during the period ended 11 August 2016 | A |
| • Remuneration Notification including a summary of work undertaken to 11 August 2016 and a summary of current hourly rates and disbursements                                   | B |
| • Creditors' guide to Liquidators' fees  | C |
| • Copy of rules 4 49E and 4 148C, which sets out members' rights to request further information and to challenge remuneration and expenses                                     | D |

Cont'd

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11 August 2016

I confirm that a change in his circumstances made it impracticable for Nicholas Edwards to continue to act as Joint Liquidator and his resignation was passed on 22 December 2015. Please note that this did not have a direct impact on the management of this case. I continued to act as a sole Liquidator from that date.

**Liquidators' Combined Abstract of Receipts and Payments Account and Estimated Outcome Statement as at 11 August 2016**

Attached at Appendix A is a copy of the Liquidators' combined abstract of receipts and payments account and estimated outcome statement as at 11 August 2016, showing a nil balance.

The principal items of income received and expenditure incurred in the Liquidation are discussed in more detail below.

**1. ASSET REALISATIONS**

**1.1 BHM Knitwear Limited**

On 26 February 2015, BHM Knitwear Limited ("BHM") purchased the Company's assets for a consideration of £1,564,735.

As at the date of Liquidation, being 2 March 2015, the debt of £1,564,735 owed to the Company remained outstanding along with BHM holding a creditor balance of £865. An Assignment of Debt agreement was entered into on 13 April 2015 which assigned the outstanding debt to the shareholders of the Company by way of a distribution in specie, together with BHM's creditor balance being set off within this assignment.

**1.2 Cash at bank**

As per the Declaration of Solvency the balance in the Company's former bank account held with National Westminster Bank Plc was £309,763. A payment of £15 was made to HM Revenue and Customs for VAT liability.

Upon appointment the Company had a credit balance in the Company's bank account in the sum of £309,748. I confirm this was received into the Liquidation account on 13 April 2015.

**1.3 Directors' Loan Accounts**

Prior to the Liquidation of the Company, it was originally believed that both of Mr Anstee and Mr Wittings' Director Loan Accounts ("DLA") were in credit in the sum of £533 each, totalling £1,067, which was therefore paid to the Directors.

Upon further investigation once the Company was in Liquidation, it transpires that the DLAs were overdrawn at that value rather than in credit. To rectify this issue, a distribution in specie has since been declared which has repaid the overdrawn DLAs along with a cash equivalent to the other shareholders.

**1.4 Bank interest gross**

Bank interest totalling £177 was received in the Liquidation account.

**1.5 Pre-Liquidation corporation tax refund**

A corporation tax refund was received in the sum of £113 for the pre-Liquidation period.

Cont'd

## **1.6 Bank service charge refund**

A service charge refund in the sum of £9 was received in the period in relation to incorrectly calculated gross interest that the Company was charged prior to my appointment

## **2. COSTS OF REALISATIONS**

### **2.1 Liquidators' remuneration and expenses**

At the meeting of members held on 2 March 2015, members approved that the Liquidators' remuneration be calculated by reference to the time costs incurred by the Liquidators and their staff, plus VAT and disbursements

Attached at Appendix B for your information is the Liquidators' remuneration notification, which provides an explanation of my firm's charging and disbursements policies, a description of the work conducted, a summary of the time spend and disbursements paid, together with a schedule of my firm's hourly charge out rates

My time costs for the period from 28 November 2015 to 11 August 2016 amount to £7,579 and since appointment total £17,900. I anticipate that a further £500 will be spent to proceed with closing the case, bringing the total estimated time costs to £18,400. Against this amount, total fees of £6,000 plus VAT have been drawn, leaving a balance of £12,400 which will not be recoverable. Disbursements totalling £694 have been incurred by PKF Cooper Parry Group Limited of which all have been paid.

The average hourly charge overall for dealing with this case is £156

Members may request further information under the provisions of Rule 4.49E. Members are also entitled to challenge the Liquidator's remuneration and expenses under the provisions of Rule 4.148C. Copies of these rules are enclosed at Appendix D for your information.

### **2.2 Professional Fees**

PKF Cooper Parry Group Limited were paid a total of £2,038 plus VAT in the period for their assistance in preparing the Company's management accounts for the quarter ending 31 March 2015 and tax compliance for the period ending 2 March 2015.

### **2.3 Bank Charges**

Bank charges totalling £100 have been incurred in relation to the electronic transfer of funds.

### **2.4 Statutory Advertising**

Costs of £70 plus VAT have been paid in relation to advertising the final meeting of members.

## **3 SECURED CREDITORS**

I have not been made aware of any secured creditors of the Company since my appointment as Liquidator.

## **4 PREFERENTIAL CREDITORS**

I have not been made aware of any preferential creditors of the Company since my appointment as Liquidator.

## 5 UNSECURED CREDITORS

### 5.1 HM Revenue & Customs (Corporation Tax)

Prior to the date of insolvency, it was estimated that HM Revenue & Customs ("HMRC") was due £64,820 in outstanding Corporation Tax. Following the submission of final pre-liquidation tax returns, HMRC confirmed that the sum of £14,446 was outstanding and as such was paid on 26 September 2015.

### 5.2 HM Revenue & Customs (VAT)

In accordance with the Declaration of Solvency, HMRC was paid £15,015 on 27 April 2015 in respect of the Company's outstanding VAT.

### 5.3 Trade & Expense Creditors

As discussed in section 1.1, BHM were owed £865 at the date of Liquidation. This amount was set off within the agreed consideration for the purchase of the Company's assets.

## 6 DISTRIBUTIONS TO SHAREHOLDERS

I have made two capital distributions from the funds received into the Liquidation totalling £273,819.38, on 20 March 2015 and 15 December 2015, which equates to a distribution of £805.35 per ordinary share.

| Shareholder             | Total Ordinary Shares | Distribution per Share<br>£ | Total Distribution<br>£  |
|-------------------------|-----------------------|-----------------------------|--------------------------|
| Richard Thomas Witting  | 89                    | 805.35                      | 71,676.25                |
| Steven Anstee           | 89                    | 805.35                      | 71,676.25                |
| Marie Elizabeth Witting | 81                    | 805.35                      | 65,233.44                |
| Alison Moira Anstee     | 81                    | 805.35                      | 65,233.44                |
| <b>Total</b>            |                       |                             | <b><u>273,819.38</u></b> |

As discussed in section 1.1 of this report, the shareholders of the Company were assigned the outstanding debt due from BHM by way of a distribution in specie on 13 April 2015 as follows:

| Shareholder             | Total Ordinary Shares | Distribution per Share<br>£ | Total Distribution<br>£    |
|-------------------------|-----------------------|-----------------------------|----------------------------|
| Richard Thomas Witting  | 89                    | 4,599.62                    | 409,366.10                 |
| Steven Anstee           | 89                    | 4,599.62                    | 409,366.10                 |
| Marie Elizabeth Witting | 81                    | 4,599.62                    | 372,569.15                 |
| Alison Moira Anstee     | 81                    | 4,599.62                    | 372,569.15                 |
| <b>Total</b>            |                       |                             | <b><u>1,563,870.50</u></b> |

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11 August 2016

**7. CONCLUSION**

Should you have any queries, or require further information, please do not hesitate to contact Samantha Wetwood at this office

Yours faithfully  
For and on behalf of  
York Textiles Limited – In Members Voluntary Liquidation

Tyrone Courtman  
Liquidator

Enclosures





**REMUNERATION NOTIFICATION  
FOR THE PERIOD 2 MARCH 2015 TO 11 AUGUST 2016**

|                     |   |
|---------------------|---|
| Case Name           | York Textiles Limited   |
| Office Holders      | Tyrone Courtman   |
| Firm                | PKF Cooper Parry Group Limited  |
| Address             | Sky View<br>Argosy Road<br>East Midlands Airport<br>Castle Donington<br>Derby<br>DE74 2SA |
| Telephone           | 01332 411163  |
| Reference           | BH022   |
| Type of Appointment | Members' Voluntary Liquidation  |
| Date of Appointment | 2 March 2015  |

## CONTENTS

Case overview

Description of work carried out

Summary of time costs for the period 28 November 2015 to 11 August 2016

Summary of total time costs incurred to 11 August 2016

Summary of category 2 Disbursements paid

## CASE OVERVIEW

At the meeting of members on 2 March 2015 it was resolved that the office holders' remuneration be calculated by reference to the time costs incurred by the Liquidators and their staff, plus VAT and disbursements

The office holders' report dated 11 August 2016 outlines the case strategy and conduct of the case. In particular, the following matters have had an impact on the time spent -

### Statutory

- Setting initial case strategy other than trading strategy
- Periodic review and update of case strategy
- Conducting file reviews to ensure compliance and identify any other matters requiring attention
- Dealing with accounting set up and case set up to ensure ability to comply with statutory reporting requirements
- Obtaining specific penalty for the appropriate sum and reviewing
- Posting of initial appointment letters including to the Registrar of Companies and to creditors
- Advertise the appointment in the appropriate papers
- Liaising with any joint or subsequent appointee
- Post appointment VAT return completion
- Post appointment Corporation Tax completion
- Statutory reporting including reports to creditors and convening and holding any meetings required
- Dealing with statutory requirements under the appropriate Statements of Insolvency Practice
- Cashiering including processing receipts & payments

### Asset Realisations

- Identifying, securing and insuring assets
- Instructing and meeting agents and discussing strategy
- Identifying and segregating assets potentially subject to reservation of title clauses, issuing questionnaire to creditors for completion and reviewing the contents of received questionnaires to assess validity of reservation of title claims
- Seeking legal advice where appropriate
- Arranging for the return of assets subject to valid reservation of title clauses
- Reconciliation of asset proceeds

### Creditors/Other Matters

- Preparation and submission of pre-appointment tax returns for the purposes of the Crown claims to be agreed
- Corresponding with the HMRC with regard to pre-appointment taxation matters that may result in refunds
- Corresponding with Crown departments to obtain clearances
- Confirming amounts outstanding to each class of creditor
- General creditor liaison
- Distributing funds to creditors/members in accordance with legislation

**Work Undertaken**  
**For the period from 28 November 2015 to 11 August 2016**

[illegible]



## SUMMARY OF CATEGORY 2 DISBURSEMENTS PAID

| Type and Purpose: | £            |
|-------------------|--------------|
| Photocopying      | 5 15         |
| Telephone & Faxes | NIL          |
| Mileage           | NIL          |
| Meeting Rooms     | 27 27        |
| <b>Total</b>      | <b>32 42</b> |

**PKF COOPER PARRY GROUP LIMITED – BUSINESS RECOVERY AND INSOLVENCY  
CHARGING AND DISBURSEMENT RATES AND POLICIES**

**1.1 Standard Hourly Rates**

|                            | <b>Rate effected from<br/>1 May 2014</b> | <b>Rate effected from<br/>1 May 2015</b> | <b>Rate effected from<br/>1 May 2016</b> |
|----------------------------|--|--|--|
| Partners/ Directors        | 400-450                                  | 400-450                                  | 375-475                                  |
| Senior Manager/Consultant  | 335-350                                  | 350                                      | 350-400                                  |
| Manager/Assistant Manager  | 200-250                                  | 200-250                                  | 200-250                                  |
| Insolvency Administrator   | 150                                      | 100-150                                  | 100-175                                  |
| Cashier                    | 90-110                                   | 110                                      | 125                                      |
| Administrative and Support | 65-80                                    | 80                                       | 45-80                                    |
| Tax & Compliance           | 242-289                                  | 138-475                                  | 160-581                                  |

**1.2 Uplifts on Standard Hourly Rates**

In some instances where there is undue risk to the firm in recovering its standard hourly rates in full, typically as a consequence of the pursuit of causes of action where the outcomes are far from certain, or where there are considered to be undue risks associated with the conduct of an assignment, then approval for a % uplift on standard hourly rates may be sought. The % uplift sought will vary depending upon the circumstances of each case.

**1.3 Charging Policies**

Time is recorded and charged to the case in units of not less than 6 minutes.

Where possible work is delegated to staff with the appropriate experience and charge out rate.

Time spent by all grades of staff are charged to the case.

It is the firm's policy to revise its charge out rates periodically. Details of revised rates are available on request and will be circulated with statutory reports to creditors and to the Creditors' Committee (if constituted).

**2.1 Category One Disbursements (payable at cost)**

External record storage, retrieval, destruction and archive boxes

Postage, stationery and files

Advertising

Legal and professional fees

Specific penalty bond

Insurances

External room hire

**2 2 Category Two Disbursements (rates chargeable)**

|                           |                                 |
|---------------------------|---------------------------------|
| Photocopying              | 10p per sheet                   |
| Telephone and faxes       | £1 per each debtor and creditor |
| Mileage                   | 45p per mile                    |
| Use of small meeting room | £50 per half day                |
| Use of large meeting room | £100 per half day               |

**2 3 Disbursement policies**

Category one disbursements represent payments made to PKF Cooper Parry Group Limited in respect of the specific costs incurred attributable to the case

Category two disbursements are paid to PKF Cooper Parry Group Limited calculated on the rates set out above which are reviewed periodically. Details of revised rates are available on request and will be circulated with statutory reports to creditors and to the Creditors' Committee (if constituted)

**3 0 Legal and professional fees**

Proposed fees are reviewed to consider work undertaken and its effectiveness

Where proposed fees are considered to be excessive, a reduction in the fee payable is negotiated

## 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.

**Statement of the Provisions of Rules 4 49E & 4 148C**

**Rule 4.49E Creditors' and members' request for further information**

(1) If -

(a) within the period mentioned in paragraph (2) -

- i a secured creditor, or
- ii an unsecured creditors 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 49B(1) (e) or (f) (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 a 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

(2) 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

(3) 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
- iii the liquidator is subject to an obligation of confidentiality in respect of the information,

given reasons for not providing all of the information

(4) 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

(5) 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

(6) This Rule does not apply where the liquidator is the official receiver

#### **4.148C Members' claim that remuneration is excessive**

(1) Members of the company with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the company, or any member with the permission of the court, may apply to the court for one or more of the orders in paragraph (6) on the grounds that—

- (a) the remuneration charged by the liquidator,
- (b) the basis fixed for the liquidator's remuneration under Rule 4 148A,
- (c) expenses incurred by the liquidator,

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

(2) Application must, subject to any order of the court under Rule 4 49E(5), be made no later than 8 weeks (or 4 weeks when the liquidator has resigned in accordance with Rule 4 142) after receipt by the applicant of the report or account which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")

(3) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application, but it must not do so unless the applicant has had the opportunity to attend the court for a hearing of which the applicant has been given at least 5 business days' notice but which is without notice to any other party

(4) If the application is not dismissed under paragraph (3), the court must fix a venue for it to be heard and give notice to the applicant accordingly

(5) The applicant must 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

(6) 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 the 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,

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

(7) Unless the court orders otherwise, the costs of the application must be paid by the applicant and are not payable as an expense of the liquidation