

# LIQ03

## Notice of progress report in voluntary winding up



Companies House

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13/05/2017

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COMPANIES HOUSE

### 1 Company details

Company number 0 7 9 0 3 9 9 9

Company name in full 2M Automotive Limited

→ Filling in this form  
Please complete in typescript or in  
bold black capitals.

### 2 Liquidator's name

Full forename(s) Mark Elijah Thomas

Surname Bowen

### 3 Liquidator's address

Building name/number 11 Roman Way Business Centre

Street Berry Hill

Post town Droitwich

County/Region Worcestershire

Postcode W R 9 9 A J

Country

### 4 Liquidator's name ①

Full forename(s)

Surname

① Other liquidator  
Use this section to tell us about  
another liquidator.

### 5 Liquidator's address ①

Building name/number

Street

Post town

County/Region

Postcode

Country

② Other liquidator  
Use this section to tell us about  
another liquidator.

## LIQ03

## Notice of progress report in voluntary winding up

**6** Period of progress report

From date	<sup>d</sup> 0	<sup>d</sup> 5	<sup>m</sup> 0	<sup>m</sup> 5	<sup>y</sup> 2	<sup>y</sup> 0	<sup>y</sup> 1	<sup>y</sup> 6
To date	<sup>d</sup> 0	<sup>d</sup> 4	<sup>m</sup> 0	<sup>m</sup> 5	<sup>y</sup> 2	<sup>y</sup> 0	<sup>y</sup> 1	<sup>y</sup> 7

**7** Progress report☒ The progress report is attached**8** Sign and date

Liquidator's signature

Signature

X 

X

Signature date

<sup>d</sup> 0	<sup>d</sup> 9	<sup>m</sup> 0	<sup>m</sup> 5	<sup>y</sup> 2	<sup>y</sup> 0	<sup>y</sup> 1	<sup>y</sup> 7
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LIQ03

## Notice of progress report in voluntary winding up

**Presenter information**

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **Sam Shepherd**

Company name **MB Insolvency**

Address **11 Roman Way Business Centre  
Berry Hill**

Post town **Droitwich**

County/Region **Worcestershire**

Postcode **W R 9 9 A J**

Country

DX

Telephone **01905 776771**

**Checklist**

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.

**Important information**

**All information on this form will appear on the public record.**

**Where to send**

**You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:**

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**Further information**

For further information please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)**

## **ANNUAL PROGRESS REPORT**

### **2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION**

# **ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION**

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- Trading
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- Fees and Expenses
- Creditors' Rights
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- Conclusion

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- Appendix III - Estimated Outcome Statement
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- Appendix VI - Time costs summary for period, cumulative & comparison with estimate
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# ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION

## EXECUTIVE SUMMARY

A summary of key information in this report is detailed below.

### Assets

Asset	Estimated to realise per Statement of Affairs	Realisations to date	Anticipated future realisations	Total anticipated realisations
Book Debts	8,400.00	6,600.00	1,800.00	8,400.00
Cash at Bank	23.00	0.00	0.00	0.00
Bank Interest	0.00	1.88	0.00	1.88

### Expenses

Expense	Expense incurred to date	Anticipated expense to closure	Total anticipated expense
Pre-Appointment Fees	5,000.00	0.00	5,000.00
Liquidator's fees	8,610.00	3,500.00	12,110.00
Solicitors' fees	0.00	0.00	0.00
Agents' fees	100.00	0.00	100.00
All other expenses	150.00	0.00	150.00

### Dividend prospects

Creditor class	Distribution / dividend paid to date	Anticipated distribution / dividend, based upon the above
Secured creditor	0.00	0.00
Preferential creditors	0.00	0.00
Unsecured creditors	0.00	0.00

### Summary of key issues outstanding

- Collecting of the remaining monies outstanding from the book debt

### Closure

Based on current information, it is anticipated that the liquidation will be concluded by the next anniversary.

## **ADMINISTRATION AND PLANNING**

### **Statutory information**

Statutory information may be found at Appendix I.

The Liquidator is required to meet a considerable number of statutory and regulatory obligations. Whilst many of these tasks do not have a direct benefit in enhancing realisations for the insolvent estate, they assist in the efficient and compliant progressing of the administration of the case, which ensures that work is carried out to high professional standards. A detailed list of these tasks may be found in Appendix IV.

### **Reporting (NOTE: if you charge time incurred in reporting to creditors under Creditors, rather than Admin & Planning, re-position this section to the Creditors section in this report)**

The Liquidator has met his statutory and regulatory duties to report to creditors, as listed below. In consideration of the need for transparency and engagement with creditors, care has been taken to ensure that reports and other communications with creditors have provided useful details of the strategies pursued and the outcomes anticipated.

During the Review Period, the following key documents have been issued:

- The report presented to the S98 meeting of creditors;
- This progress report.

### **Other administration tasks**

During the Review Period, the following material tasks in this category were carried out:

- Case reviews etc.
- Collecting monies in respect of the book debts
- Investigations into the director's conduct

## **ENQUIRES AND INVESTIGATIONS**

During the Review Period, the Liquidator carried out an initial review of the Company's affairs in the period prior to appointment. This included seeking information and explanations from the director by means of questionnaires; making enquiries of the Company's accountants; reviewing information received from creditors; and collecting and examining the Company's bank statements, accounts and other records.

The directors provided the books and records and a completed questionnaire as well as a Statement of Affairs.

The information gleaned from this process enabled the Liquidator to meet their statutory duty to submit a confidential report on the conduct of the directors (past and present) to the Insolvency Service.

This work was also carried out with the objective of making an initial assessment of whether there were any matters that may lead to any recoveries for the benefit of creditors. This would typically include any potential claims which may be brought against parties either connected to or who have past dealings with the Company.

This initial assessment has been completed and Liquidator did not identify any further assets or actions which might lead to a recovery for creditors.

## **ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION**

### **REALISATION OF ASSETS**

#### **Book Debts**

The director advised that the assets of the company were sold to T L Automotive Services Limited prior to instructing MB Insolvency. The sale was completed on 22 March 2016 at a time when the assets' book value was £6,882.00 when taking depreciation into account. Deeley Matthews Asset Appraisals were instructed following my appointment to value the assets that had previously been sold. Deeley Matthews were happy that the sale of the assets for £8,400.00 was consistent with the value of the assets.

To date £6,600.00 has been paid. It was expected that the full balance would have been received at this stage. If the remaining £1,800.00 is not received imminently, legal advice will then be sought.

#### **Bank Interest**

During the period £1.88 has been received.

### **CREDITORS**

Irrespective of whether sufficient realisations are achieved to pay a dividend to creditors, the Liquidator has had to carry out key tasks which are detailed in the list at Appendix III. The following sections explain the anticipated outcomes to creditors and any distributions paid.

#### **Secured creditors**

The Company has not granted any charges over its assets.

#### **Preferential creditors**

There are no preferential creditors. All employees were transferred to T L Automotive Services Limited.

#### **Unsecured creditors**

HMRC was shown to be owed £ £22,726.42. A claim of £2,681.00 has been received to date.

The trade and expense creditors (including director claims) as per the statement of affairs totalled £58,013.00. Please be advised that proofs of debt are still being received and therefore the total value of unsecured claims is not known at present.

#### **Dividend prospects**

It is not anticipated that a dividend will be available to any class of creditor.

Where a floating charge is created after 15 September 2003 a prescribed part of the company's net property shall be made available to unsecured creditors.

The Company has not granted a floating charge to any creditor after 15 September 2003 and consequently there will be no prescribed part in this Liquidation.



## **FEES AND EXPENSES**

### **Pre-Appointment Costs**

**Fixed fee agreed with the Directors and ratified by members and creditors.**

The creditors authorised the fee of £5,000.00 for assisting the directors in calling the relevant meetings and with preparing the Statement of Affairs on 5 May 2016.

The fee for assisting with the Statement of Affairs and meetings has not yet been paid.

### **The Liquidator's fees**

It is the firm's practice to ensure that work is conducted by the appropriate staff member at the appropriate level of experience. Junior members of staff deal with the day to day administration on cases and a manager and (director/partner) then oversees the work undertaken. Where the issues are complex and litigious, the work will be closely supervised or undertaken by a (senior) manager or (director/partner).

The basis of the Liquidator's fees was approved by creditors on 5 May 2016 in accordance with the following resolution:

**"That the remuneration of the liquidator be fixed by reference to the time properly given by the liquidator and his staff in attendin to matters arising in the winding up in accordance with Rule 4.127(2)(b) of the insolvency Rules 1986 at MB Insolvency's standard charging rates"**

The time costs for the period 5 May 2016 to 4 May 2017 total £8,610.00, representing 40.3 hours at an average hourly rate of £213.65. No monies have been drawn in respect of time costs to date. The time costs for the period are detailed at Appendix V.

### **Disbursements**

The disbursements that have been incurred and not yet paid during the period are detailed on Appendix VI.

Information about this insolvency process may be found on the R3 website at <http://www.creditorinsolvencyguide.co.uk/>. A copy of 'A Creditors' Guide to Fees' together with the firm's charge-out rate and disbursement policy is also attached.

### **Other professional costs**

#### **Other Agents**

Asset Storage Limited were instructed to collect, inventory and store the company records. The cost has been agreed on a fixed fee. The total costs during the period amount to £150.00 and they have been paid in full.

**ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION**

**CREDITORS' RIGHTS**

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 **(insert officeholder)**'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.

**EC REGULATIONS (WHETHER PROCEEDINGS ARE MAIN PROCEEDINGS OR TERRITORIAL)**

The Company's centre of main interest was in Gloucester and therefore it is considered that the EC Regulations will apply. These proceedings are main proceedings as defined in Article 3 of the EC Regulation.

**CONCLUSION**

The administration of the case will be continuing to finalise the following outstanding matters that are preventing this case from being closed:

- **Collection of outstanding balance of the book debt**

If you require any further information, please contact this office.

Signed   
Mark Elijah Thomas Bowen  
09 May 2017

**ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION**

**Appendix I**

**Statutory Information**

Company Name	<b>2M Automotive Limited</b>
Former Trading Name	<b>N/A</b>
Company Number	<b>07903999</b>
Registered Office	<b>11 Roman Way, Berry Hill, Droitwich, Worcs, WR9 9AJ</b>
Former Registered Office	<b>Llanthony Industrial Estate, Llanthony Road, Gloucester, GL2 4JB</b>
Officeholders	<b>Mark Elijah Thomas Bowen</b>
Officeholders address	<b>11 Roman Way, Berry Hill, Droitwich, Worcs, WR9 9AJ</b>
Date of appointment	<b>5 May 2016</b>

ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION

Appendix II

Receipts and Payments account for the period 5 May 2016 to 4 May 2017

**2M Automotive Ltd  
(In Liquidation)**

**LIQUIDATOR'S RECEIPTS AND PAYMENTS ACCOUNT**

	<b>Statement of affairs £</b>	<b>From 05/05/2016 To 04/05/2017 £</b>
<b>RECEIPTS</b>		
Book Debts	8,400.00	6,600.00
Cash at Bank	23.00	0.00
Bank Interest	0.00	1.88
		6,601.88
<b>PAYMENTS</b>		
Storage Costs		150.00
		(150.00)
<b>BALANCE – 4 May 2017</b>		<b>6,451.88</b>

# ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION

## Appendix IV

### Detailed list of work undertaken for 2M Automotive Limited in Creditors' Voluntary Liquidation for the review period 5 May 2016 to 4 May 2017

Below is detailed information about the tasks undertaken by the Liquidator.

	<b>Filing of documents to meet statutory requirements including annual receipts and payments accounts</b> <b>Annual corporation tax returns</b> <b>Quarterly VAT returns</b> Advertising in accordance with statutory requirements Bonding the case for the value of the assets
	Filing of documents Periodic file reviews documenting strategy Periodic reviews of the application of ethical, anti-money laundering and anti-bribery safeguards Maintenance of statutory and case progression task lists/diaries Updating checklists
	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers Maintenance of the estate cash book Banking remittances and issuing cheques/BACS payments
	Discussions regarding strategies to be pursued Meetings with team members and independent advisers to consider practical, technical and legal aspects of the case Dealing with records in storage
	<b>Identifying whether there is a pension scheme.</b>
	<b>Circulating initial report to creditors upon appointment</b> Preparing annual progress report, investigation, meeting and general reports to creditors
	Preparation of meeting notices, proxies/voting forms and advertisements notice of meeting to all known creditors Collate and examine proofs and proxies/votes to decide on resolutions Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Responding to queries and questions following meeting
	Collection and making an inventory of company books and records Reviewing questionnaires submitted by creditors and directors Reconstruction of financial affairs of the company Reviewing company's books and records Preparation of deficiency statement Review of specific transactions and liaising with directors regarding certain transactions
	Preparing statutory investigation reports Liaising with Insolvency Service Submission of report with the Insolvency Service Preparation and submission of supplementary report if required Assisting the Insolvency Service with its investigations
	Requesting an inventory of assets sold Instructing agents to provide valuation Organising and monitoring collection of monies
	Receive and follow up creditor enquiries via telephone Review and prepare correspondence to creditors and their representatives via facsimile, email and post

# ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION

## Current Charge-out Rates for the firm

### Time charging policy

Support staff include cashier, secretarial and administration support.  
The minimum unit of time recorded is 6 minutes.

Insolvency Practitioner/Partners	300
Senior Manager	250
Manager	225-250
Assistant Manager	200
Senior Administrator	175
Administrator	150
Junior Administrator	90
Secretarial/Administration support staff	90

ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION

**Appendix V**

Time cost information for period 5 May 2016 to 4 May 2016

Classification of work	Partner	Senior Manager	Manager	Administrator	Support	Total Units	Time Cost £	Average Rate £/h
Stat Compliance / Admin & Planning	56.00			161.00		217.00	4,095.00	188.71
Investigation	38.00	27.00		32.00		97.00	2,295.00	236.60
Realisation of Assets	50.00			24.00		74.00	1,860.00	251.35
Creditors	9.00			6.00		15.00	360.00	240.00
<b>Total</b>	<b>153.00</b>	<b>27.00</b>		<b>223.00</b>		<b>403.00</b>	<b>8,610.00</b>	<b>213.65</b>
Fees Drawn							(0)	

ANNUAL PROGRESS REPORT OF 2M AUTOMOTIVE LIMITED - IN CREDITORS' VOLUNTARY LIQUIDATION

**Appendix VI**

Below are details of the Liquidator's expenses for the total to date.

**Category 1 disbursements**

	Incurred	Paid	Unpaid
	£	£	£
Bond	60.00	-	0.00
Advertising	204.00	-	204.00
Postage	16.64	-	16.64
External Meeting Room	-	-	-
Company Search	10.00	-	10.00

**Category 2 disbursements**

	Incurred	Paid	Unpaid
	£	£	£
Photocopying / Printing	37.40	-	37.40
Registered Office Fee	125.00	-	125.00
The IPS Charge	125.00	-	125.00

**Category 2 disbursement rates**

Photocopying / Printing	£0.17 per sheet
Registered office fee	£125 per annum
IPS charge	£125 per case
Mileage	£0.45 per mile
Room hire	£60 per hour where held at MBI offices

**Nature of expense**

	Provider	Basis of remuneration
Storage Agents	Asset Storage Limited	Set fee

**Expenses incurred and paid**

	Incurred	Paid	Unpaid
	£	£	£
Asset Storage Limited	150.00	150.00	0.00





## **Practice fee and disbursement recovery policy**

### **Introduction**

The insolvency legislation was changed in April 2010 for insolvency appointments commenced from that time in order to allow more flexibility on how an office holder's fees are charged to a case. This sheet explains how we may apply the alternative fee bases. The new legislation allows different fee bases to be used for different tasks within the same appointment. The basis or combination of bases set for a particular appointment are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the court. Further details about how an office holder's fees are approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP9). A copy of the relevant circulation listed in reports to creditors and is also available upon request.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. The report will provide a breakdown of the remuneration drawn and time costs incurred and will also enable the recipients to see the average rates of such costs. Under the new legislation, any such report must disclose how creditors can seek further information and challenge the basis on which the fees are calculated and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

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

### **Time cost basis**

This is the basis that we use in the majority of cases using charge out rates appropriate to the skills and experience of each member of staff and the work that they perform. This is combined with the amount of time that they work on each case, recorded in 6 minute units with supporting narrative to explain the work undertaken. Cashiers, secretarial and support staff charge all the time they work as such work has not been allowed for in calculating the hourly rates charged by the partners and other staff. If such time were not charged our charge out rates for Partners and other staff would be approximately 20% higher. Time billed is normally subject to Value Added Tax (VAT) at the applicable rate (see below).

### **Staff allocation and the use of sub-contractors**

The office holder's general approach to resourcing assignments is to allocate staff with the skills and experience to meet the specific requirements of the case.



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The case team will usually consist of partner, senior manager/manager and administrator. The exact case team will depend on the anticipated size and complexity of the assignment. On larger, more complex cases, several staff at all grades may be allocated to meet the demands of the case. The Office holder's charge out rate schedule below provides details of all grades of staff.

With regard to support staff, the Office Holder advises that time spent by our Treasury department in relation to specific tasks on an assignment is charged.

The following services are being provided on this assignment by external sub-contractors:

Service Type	Service Provider	Basis of fee arrangement	Cost to date£
n/a			

### Charge out rates

Our charge out rates are reviewed periodically, our charge out rates are summarised below.

Charge out rates per hour effective from February 2013

Grade	Hourly Rate (£)
Insolvency Practitioner	300
Managers	225-250
Assistant Managers	200
Senior Administrator	175
Administrator	150
Senior Assistant/Cashier	150
Support Staff/Secretary	90

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

Administration and planning - which includes work such as planning how the case will be administered and progressed; the administrative set up of the case; notifying creditors and others of the appointment; keeping the records relating to the case up to date; case review; case progression meetings; and reporting on progress of the case to creditors and others.



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**Investigations** - which includes work such as undertaking an initial review of the financial affairs of the company and bankrupt; undertaking a detailed investigation with a view to making recoveries for the benefit of creditors where matters such as preferences or wrongful trading come to light as a result of the initial review; and reporting to the Insolvency Service on the conduct of the directors.

**Realisation of assets** - which includes work such as identifying, securing and insuring assets; dealing with retention of title claims; collecting debts; and selling assets.

**Employee matters** - which includes work such as dealing with employees; and liaising with the redundancy payments office.

**Creditors** - which includes work such as communicating with creditors; dealing with creditors' claims; and where funds permit, paying dividends to creditors.

**Trading** - which includes work such as managing and controlling all aspects of the business; and maintaining financial records and information relating to that trading.

#### **Percentage basis**

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

#### **Fixed fee**

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

#### **Value Added Tax**

The office holder's remuneration invoiced to the insolvent estate will normally be subject to VAT at the prevailing rate. The only exception to this is for services rendered in relation to Voluntary Arrangement assignments where a VAT Tribunal has ruled that such services are exempt supplies.

#### **Agent's costs**

Charged at cost based on the amount billed by the Agent instructed, the term Agent includes:

Solicitors, Legal Advisors, Debtor recovery specialists

Auctioneers, Valuers, Accountants



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Quantity Surveyors

Estate Agents

Document Storage Agents

Other Specialist Advisors

### **Disbursements**

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

**Category 1** expenses are directly referable to an invoice from a third party, which is either in the name of the estate or MB Insolvency; in the case of the latter, the invoice makes reference to, and therefore can be directly attributed to, the estate. These disbursements are recoverable in full from the estate without the prior approval of creditors either by a direct payment from the estate or, where the firm has made payment on behalf of the estate, by a recharge of the amount invoiced by the third party. Examples of category 1 disbursements are postage, mail redirection, travel, swear fee, company searches, land registry searches, statutory advertising, external meeting room hire, external storage, specific bond insurance and subsistence,.

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

The category 2 disbursements that MB Insolvency apply, when seeking recovery, are as follows;

<u>Type</u>	<u>Rate</u>
Photocopying	17p per sheet
Room Hire (where MB insolvency room is used for formal meetings with external parties)	£60 per hour
Registered Office Fee	£125 per annum
Mileage	60p per mile
Insolvency Practitioners System	£125 per case



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### Professional advisors

On this assignment the office holder has used the professional advisers listed below. The Office holder has also indicated the basis of their fee arrangement with them, which is subject to review on a regular basis.

Name of professional advisor	Basis of fee arrangement
n/a	

The office holder's choice was based on his perception of the professional adviser's experience and ability to perform this type of work, the complexity and nature of the assignment and the basis of his fee arrangement with them.

## **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 Basis**

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.

##### **4.2 Advance information where remuneration not based on time costs**

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

##### **4.3 Fees estimates where remuneration to be based on time costs**

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

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

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

##### **4.4 Who fixes the remuneration**

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

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

- the value and nature of the assets which the liquidator has to deal with.
- 4.5 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of the creditors. The creditors take account of the same matters as apply in the case of the committee. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.
- 4.6 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.
- 4.7 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## **5. Review of remuneration**

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

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

### **6.1 General principles**

6.1.1 The liquidator should provide those responsible for approving his remuneration with sufficient information to enable them to make an informed judgement about the reasonableness of the liquidator's request. The information should be presented in a manner which is transparent, consistent throughout the life of the case and useful to creditors, while being proportionate to the circumstances of the case.

6.1.2 The liquidator should disclose:

- payments, remuneration and expenses arising from the administration paid to the liquidator or his or her associates;
- any business or personal relationships with parties responsible for approving the liquidator's remuneration or who provide services to the liquidator in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.

The liquidator should inform creditors of their rights under insolvency legislation, and should advise them how they may access suitable information setting out their rights within the first communication with them and in each subsequent report.

6.1.3 Where the liquidator sub-contracts out work that could otherwise be carried out by the liquidator or his or her staff, this should be drawn to the attention of creditors with an explanation of why it is being done.

### **6.2 Key issues**

6.2.1 The key issues of concern to those with a financial interest in the level of payments from the insolvency estate will commonly be:

- the work the liquidator anticipates will be done, and why that work is necessary;



- the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
- whether it is anticipated that the work will provide a financial benefit to creditors, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute);
- the work actually done and why that work was necessary;
- the actual costs of the work, including any expenses incurred in connection with it, as against any estimate provided;
- whether the work has provided a financial benefit to creditors, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute).

When providing information about payments, fees and expenses, the liquidator should do so in a way which facilitates clarity of understanding of these key issues. . Narrative explanations should be provided to support any numerical information supplied. Where it is practical to do so, the liquidator should provide an indication of the likely return to creditors when seeking approval for the basis of his remuneration.

- 6.2.2 When approval for a fixed amount or a percentage basis is sought, the liquidator should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the liquidator anticipates will be undertaken.

### **6.3 Fee estimates and subsequent reports**

- 6.3.1 When providing a fee estimate, the liquidator should supply that information in sufficient time to facilitate that body making an informed judgement about the reasonableness of the liquidator's requests. The estimate should clearly describe what activities are anticipated to be conducted in respect of the estimated fee. When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each activity should be provided for comparison.

### **6.4 Disbursements**

- 6.4.1 Costs met by and reimbursed to the liquidator in connection with the liquidation will fall into two categories:

- **Category 1 disbursements:** These are payments to independent third parties where there is specific expenditure directly referable to the liquidation. Category 1 disbursements can be drawn without prior approval, although the liquidator should be prepared to disclose information about them in the same way as any other expenses. **Category 2 disbursements:** These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that may be incurred by the liquidator or their firm, and that can be allocated to the liquidation on a proper and reasonable basis.

When seeking approval, the liquidator should explain, for each category of cost, the basis on which the charge is being made. If the liquidator has obtained approval for the basis of Category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the liquidator is replaced.

- 6.4.2 The following are not permissible as disbursements:

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

## **6.5 Realisations for secured creditors**

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

## **7. Exceeding the amount set out in the fees estimate**

Remuneration must not exceed the fees estimate without approval by the body which fixed the original basis of the remuneration. The request for approval must specify –

- the reason why the liquidator has exceeded, or is likely to exceed, the fees estimate;
- the additional work the liquidator has undertaken or proposes to undertake;
- the hourly rate or rates the liquidator proposes to charge for each part of that additional work;
- the time that additional work has taken or the liquidator anticipates that work will take;
- whether the liquidator anticipates that it will be necessary to seek further approval; and
- the reasons it will be necessary to seek further approval.

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

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

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- where appropriate, a statement –
  - that the remuneration anticipated to be charged is likely to exceed the fees estimate or any approval given for remuneration exceeding the estimate;
  - that expenses incurred or anticipated to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration; and
  - the reason for that excess.
- a statement of the creditors' rights to request further information, as explained in paragraph 8.2, and their right to challenge the liquidator's remuneration and expenses.

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

concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

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

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

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

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

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

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

The information which must be provided is –

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

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

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

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

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

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

**10.3** Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 8.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.

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

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

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

**12 Other matters relating to remuneration**

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

## **Appendix**

### **Suggested format for the provision of information**

Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases, and will be subject to considerations of proportionality. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.

#### **Narrative overview of the case**

In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:

- the complexity of the case;
- any exceptional responsibility falling on the liquidator;
- the liquidator's effectiveness;
- the value and nature of the property in question.

The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:

- an explanation of the nature, and the liquidator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known);
- initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
- any significant aspects of the case, particularly those that affect the remuneration and cost expended;
- the reasons for subsequent changes in strategy;
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing;
- any existing agreement about remuneration;
- details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees;
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
- details of work undertaken during the period;
- any additional value brought to the estate during the period, for which the liquidator wishes to claim increased remuneration.

#### **Time cost basis**

Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:

- An explanation of the liquidator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
- A description of work carried out, which might include:
  - details of work undertaken during the period, related to the table of time spent for the period;
  - an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used;
  - any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make.
- Time spent and charge-out summaries, in an appropriate format.

It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case

The following areas of activity are suggested as a basis for the analysis of time spent:

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

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

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

The level of disclosure suggested above will not be appropriate in all cases, and considerations of proportionality will apply:

- where cumulative time costs are, and are expected to be, less than £10,000 the liquidator should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case;
- where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features);
- where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted.