

# Liquidator's Progress Report

# S.192

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

To the Registrar of Companies

Company Number

00800916

Name of Company

Engineering Services (Humber) Limited

~~By~~ We

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

Nicholas John Edwards, Sky View Argosy Road, East Midlands Airport Castle Donington, Derbyshire, DE74 2SA

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

The Progress Report covers the period from 01/11/2013 to 31/10/2014

Signed 

Date 19 December 2014

PKF Cooper Parry Group Limited  
Sky View  
Argosy Road  
East Midlands Airport  
Castle Donington  
Derby  
DE74 2SA  
Ref ZE023/TSC/NJE/LB/RJL

SATURDAY



A37 \*A3N3RMAZ\* 20/12/2014 #206  
COMPANIES HOUSE

**Engineering Services (Humber) Limited  
(In Liquidation)  
Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs	From 01/11/2013 To 31/10/2014	From 01/11/2012 To 31/10/2014
<b>ASSET REALISATIONS</b>		
Book Debts	7,290 00	16,290 00
Cash at Bank	NIL	126,139 86
Bank Interest Gross	94 91	272 03
Tfr of VAT from Administration	NIL	7,777 19
	<u>7,384 91</u>	<u>150,479 08</u>
<b>COST OF REALISATIONS</b>		
Liquidators Fees	6,000 00	20,500 00
Quantity Surveyors Fees	4,500 00	8,735 10
Legal Fees	5,197 00	7,373 26
Administrators' Fees	NIL	37,888 60
Statutory Advertising	NIL	153 00
	<u>(15,697 00)</u>	<u>(74,649 96)</u>
<b>PREFERENTIAL CREDITORS</b>		
Employees Wage Arrears	NIL	1,464 26
Employees Holiday Pay	NIL	4,007 20
RPO - Wage Arrears	NIL	9,779 61
RPO - Holiday Pay	NIL	11,664 22
HM Revenue & Customs	NIL	1,463 25
	<u>NIL</u>	<u>(28,378 54)</u>
<b>FLOATING CHARGE CREDITORS</b>		
Ainscough Vanguard Limited	42,268 82	42,268 82
	<u>(42,268 82)</u>	<u>(42,268 82)</u>
	<u><b>(50,580.91)</b></u>	<u><b>5,181.76</b></u>
<b>REPRESENTED BY</b>		
VAT on Payments		28,728 65
Bank 1 - Current		5,181 76
VAT on Receipts		(6,053 47)
Vat Control Account		(22,675 18)
		<u><b>5,181.76</b></u>



**PKF | Cooper Parry**

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**To All Known Creditors and Members**

Our ref TSC/RJL/ZE023/CV2012-B8 7

When telephoning please ask for  
Robert Lineham

18 December 2014

Dear Sir/Madam

**Engineering Services (Humber) Limited - In Liquidation**

**Registered in England No. 00800916 at Sky View, Argosy Road, East Midlands Airport, Castle Donington, Derbyshire, DE74 2SA**

I was appointed Joint Liquidator of the above company on 1 November 2012 and in accordance with Section 92A of the Insolvency Act 1986, I present my progress report in respect of the year ended 31 October 2014

I enclose for your information.-

**Appendix**

- The combined Joint Liquidators' Receipts and Payments Account and Estimated Outcome Statement at 31 October 2014 **I**
- Summary of work undertaken **II**
- Summary of current hourly rates and disbursements **III**
- Copy of rule 4.49E and rule 4 131, which sets out members' and creditors' right to request further information and to challenge remuneration and expenses **IV**
- A creditors' guide to Liquidators' fees **V**

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The firm's insolvency practitioners are licensed in the UK as follows  
T S Courtman by the Institute of Chartered Accountants in England and Wales  
N J Edwards by the Institute of Chartered Accountants in England and Wales  
and when acting as Receivers, Administrative Receivers or Administrators act as agents only, without personal liability and when acting as Administrators, the affairs, business and property of the company are being managed by them  
PKF Cooper Parry Group Limited is a company registered in England No 07795137 Registered Office:  
Sky View, Argosy Road, East Midlands Airport, Castle Donington, Derby DE74 2SA  
PKF Cooper Parry Group Limited is a member firm of the PKF International Limited network of legally independent firms and does not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms

Attached at appendix I is a copy of the Joint Liquidator's combined abstract of receipts and payments and estimated outcome statement as at 31 October 2014, showing a balance in hand of £5,182

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

## **1. REALISATION OF ASSETS**

### **1.1 Book debts**

Since my previous report, my Quantity Surveyors, Leslie Keats have collected a further £7,290 This is £2,710 lower than anticipated and is due to further remedy costs being applied to the outstanding accounts. My previous report also detailed that 8 retentions totalling £18,000 remained outstanding There have been no realisations during the year and none are anticipated due to additional costs incurred in finalising the contracts. There are no more anticipated realisations

### **1.2 Bank Interest**

Gross bank interest of £95 has been received to date and will be subject to a Corporation Tax charge to be agreed with HM Revenue & Customs.

### **1.3 Terminal Loss Relief**

I have submitted a terminal loss relief claim in the sum of £23,640 however this was rejected due to being submitted outside of the standard time limits. I have appealed this decision and am currently awaiting a response from HM Revenue & Customs

## **2. COSTS OF REALISATIONS**

### **2.1 Liquidators Fees and Disbursements**

At the first meeting of creditors in the Administration it was resolved that any subsequently appointed Liquidators' fees be calculated by reference to time costs incurred and drawn as and when funds permit.

The enclosed summary of work undertaken details the work carried out in the period and hours spent totalling £13,443, against which fees on account totalling £6,000 plus VAT This brings the total fees to date of £20,500 plus VAT against total time costs, leaving unrecovered costs to date of £29,694. The average hourly charge out rate for dealing with this case is £146 28

As the firm's charge out rates are reviewed on an annual basis, the revised rates are enclosed for your information

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## **2.2 Legal Fees**

£5,197 has been paid to my solicitors, Shakespeares LLP in relation to the continued advice received in respect to the review of a transaction that the Company entered into prior to my appointment, together with finalisation of the secured creditor position

## **2.3 Quantity Surveyor Fees**

£4,500 has been paid to my Quantity Surveyors Leslie Keats in relation to the on-going collection and negotiations of the outstanding contract debts. No more collections are expected.

## **3. SECURED CREDITORS**

As per my previous report, a Court application was made prior to the distribution of monies to the assigned debenture holder Ainscough Vanguard Limited due to uncertainty as to the validity of the debenture. The Court directed that the debenture was valid and that I may make a distribution under it. I confirm that on 17 April 2014 a first and final distribution of £42,269 was made to Ainscough Vanguard Limited

## **4. PREFERENTIAL CREDITORS**

I confirm that a dividend of 100p in the £ was made to preferential creditors on 12 June 2013 in respect of the employee arrears of pay and holiday pay. No further dividend is to be paid.

## **5. UNSECURED CREDITORS & PRESCRIBED PART**

Details of unsecured creditor claims have been received but not adjudicated on until it appears that there will be a distribution to this class of creditor

## **6. INVESTIGATIONS**

The investigation that has been carried out by the Joint Liquidators has been concluded in order to report on the conduct of the directors in accordance with the Company Directors Disqualification Act 1986. As the content of this report is confidential, I am not empowered to release any further information with regard to this aspect of my work

I have finalised a review of the transaction involving ScanTech GmbH and I confirm that there is no cause of action which has been identified.

## **7 CONCLUSION**

I am continuing to liaise with HM Revenue & Customs in relation to a potential Terminal Loss Relief claim in the sum of £23,640. Should this repayment be received in full then there is the potential for a dividend to unsecured creditors

Cont'd




**PKF | Cooper Parry**

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Engineering Services (Humber) Limited - In Liquidation  
18 December 2014

If you require any further information, then please do not hesitate to contact Robert Lineham at this office.

Yours faithfully  
For and on behalf of  
Engineering Services (Humber) Limited - In Liquidation



Tyrone Courtman  
Joint Liquidator

Enclosures

Engineering Services (Number) Limited - In Liquidation  
Combined Receipts and Payments Account and Estimated Outcome Statement as at 31 October 2014

	Realised in the period 1 November 2012 - 31 October 2013	Realised in the period 1 November 2013 - 31 October 2014	Total realizations to date	Future realizations	Estimated outcome
	£	£	£	£	£
<b>Estimated final position in Administration</b>					
Assets subject to a floating charge					
Transfer from Administration	7,777	-	7,777	-	7,777
Book debts and retentions	22,147	7,290	16,290	-	16,290
Bank Interest Gross	177	95	272	25	297
Terminal loss relief reclaim	-	-	-	-	-
Cash at bank	126,140	-	126,140	-	126,140
<b>Estimated Assets Available</b>	<b>143,094</b>	<b>7,385</b>	<b>150,479</b>	<b>25</b>	<b>150,504</b>
Agents / Valuers fees	-	-	-	-	-
Solidors fees	(2,176)	(5,187)	(7,363)	-	(7,363)
Quantity Surveyor and debt collection fees	(4,317)	(4,500)	(8,817)	-	(8,817)
Administrators pre appointment costs	(25,000)	(37,889)	(62,889)	-	(62,889)
Liquidators fees and disbursements	(20,000)	(6,000)	(26,000)	(5,130)	(31,130)
Collection of books and records	-	-	-	-	-
Insurance of assets	-	-	-	-	-
Travel Expenses	-	-	-	-	-
Statutory Advertising	(153)	-	(153)	(76)	(229)
Specific bond	-	-	-	-	-
<b>Estimated Assets available to preferential creditors</b>	<b>84,141</b>	<b>(8,312)</b>	<b>75,829</b>	<b>(5,181)</b>	<b>70,648</b>
Employees	(6,935)	-	(6,935)	-	(6,935)
Redundancy Payments Office	(21,444)	-	(21,444)	-	(21,444)
<b>Estimated Assets available for Floating Charge Holder</b>	<b>55,762</b>	<b>(8,312)</b>	<b>47,450</b>	<b>(5,181)</b>	<b>42,269</b>
Alncoough Vanguard Limited	-	(42,269)	(42,269)	-	(42,269)
<b>Estimated Assets available to unsecured creditors</b>	<b>55,762</b>	<b>(80,581)</b>	<b>5,181</b>	<b>(5,181)</b>	<b>0</b>
Trade & Expense creditors	(614,864)	-	(614,864)	-	(614,864)
HM Revenue & Customs - VAT	(230,411)	-	(230,411)	-	(230,411)
HM Revenue & Customs - PAYE	(339,273)	-	(339,273)	-	(339,273)
Engineering Services (Holdings) Limited	(184,000)	-	(184,000)	-	(184,000)
S Thornebay - Directors loan account	(245,000)	-	(245,000)	-	(245,000)
RPO - Payment in Lieu of Notice	(107,127)	-	(107,127)	-	(107,127)
RPO - Redundancy pay	(189,887)	-	(189,887)	-	(189,887)
Employees - Payment in Lieu of Notice	(9,314)	-	(9,314)	-	(9,314)
<b>Estimated Deficiency as regards unsecured creditors</b>	<b>(1,777,831)</b>	<b>-</b>	<b>(1,777,831)</b>	<b>(5,181)</b>	<b>(1,783,012)</b>
Variance (adverse) between estimated final position at 31 October 2013 and estimated final position at 31 October 2014		18,316			
<b>Estimated assets available to unsecured creditors at 31 October 2013</b>					
Bank interest	95	-	95	-	95
Book debts and retentions	(2,710)	-	(2,710)	-	(2,710)
Solidors fees	(1,447)	-	(1,447)	-	(1,447)
Quantity Surveyor and debt collection fees	(3,000)	-	(3,000)	-	(3,000)
Liquidators fees	(5,630)	-	(5,630)	-	(5,630)
Alncoough Vanguard Limited	0	-	0	-	0

Variance (adverse) between estimated final position at 31 October 2013 and estimated final position at 31 October 2014

Estimated assets available to unsecured creditors at 31 October 2013

Bank interest	95
Book debts and retentions	(2,710)
Solidors fees	(1,447)
Quantity Surveyor and debt collection fees	(3,000)
Liquidators fees	(5,630)
Alncoough Vanguard Limited	0
<b>Total</b>	<b>(12,682)</b>

**REMUNERATION NOTIFICATION  
FOR THE PERIOD 1 NOVEMBER 2012 TO 31 OCTOBER 2014**

Case Name:	Engineering Services (Humber) Limited
Office Holders:	Tyrone Shaun Courtman Nicholas John Edwards
Firm:	Cooper Parry Group Limited
Address:	Sky View Argosy Road Castle Donington Derbyshire DE74 2SA
Telephone:	01332 411163
Reference:	ZE023
Type of Appointment:	Joint Liquidators
Date of Appointment:	1 November 2012

**CONTENTS**

Case overview

Description of work carried out

Summary of total time costs incurred in the period 1 November 2012 to 31 October 2014

Summary of total time costs incurred to 31 October 2014

Summary of category 2 Disbursements paid



## **CASE OVERVIEW**

### **DESCRIPTION OF WORK CARRIED OUT**

#### **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
- Considering requirement for solicitors and assessing the appropriate firm to be instructed and giving instructions for legal advice to be sought
- 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
- Post appointment VAT return 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
- Reporting to creditors in accordance with any agreement or legislation including compliance with SIPs 7 and 9
- Cashiering including processing receipts & payments
- Dealing with statutory obligations regarding pensions

#### **Investigations**

- Sending questionnaires to apparent directors and shadow directors
- Review of company records and requests to creditors for information to identify any matters requiring further detailed examination
- Completion of report on directors conduct to BIS

#### **Asset Realisations**

- Identifying, securing and insuring assets
- Collating information and supporting documents regarding book debt collections
- Negotiating with debtors regarding disputed accounts
- Instructing other advisors including but not necessarily limited to lawyers
- Liaising with advisors regarding on going collection and disputed accounts
- Monitoring and accounting for proceeds received
- Payment of approved debt collection expenses
- Liaising with HM Revenue & Customs regarding Terminal Loss Relief claim

#### **Creditors/Other Matters**

- Preparation and submission of pre-appointment tax returns for the purposes of the Crown claims to be agreed.
- Scheduling claims received from creditors
- Corresponding with the Redundancy Payments Office with respect to its claim
- Confirming amounts outstanding to each class of creditor
- Liaising with landlords/hire purchase/lease companies etc
- General creditor liaison



- Liaising with solicitors regarding Court application in respect of directions required for validity of Debenture
- Report to Preferential creditors as regards administrators remuneration and providing substantiating documentation
- Agreement and payment of Preferential creditors

**Employment**

- General employee liaison

**SUMMARY OF CATEGORY 2 DISBURSEMENTS PAID**

<b>Type and Purpose:</b>	<b>£:</b>
Photocopying	-
Telephone & Faxes	-
Mileage	-
Meeting Rooms	-
<b>Total</b>	<b>£-</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 1 May 2013</b>	<b>Rate effected from 1 May 2014</b>
Partners/ Directors	395-425	400-450
Senior Manager/Consultant	325	335-350
Manager/Assistant Manager	225-275	200-250
Insolvency Administrator	80-165	150
Cashier	85-100	90-110
Administrative and Support	50-75	65-80
Tax Compliance	72-233	242
Vat Compliance	275	289

**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.

**Statement of the Provisions of Rule 4.49E & 4.131**

**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

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

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

(1A) Application may be made on the grounds that -

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

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

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

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

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

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

(4) 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"

(5) Unless the Court orders otherwise, the costs of the application shall be paid by the applicant and are not payable as an expense of the Liquidation

## **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