

# 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

00501084

Name of Company

William Caple & Company Limited

I / We

Francis Graham Newton, 1 Bridgewater Place, Water Lane, Leeds, LS11 5RU

Mark Shaw, 1 Bridgewater Place, Water Lane, Leeds, LS11 5RU

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 09/05/2014 to 08/05/2015

Signed



Date

6 July 2015

BDO LLP  
1 Bridgewater Place  
Leeds  
LS11 5RU

Ref 00178545/FGN/MAS/PPH/PJ/SBU/DEW

TUESDAY



A09 07/07/2015 #360  
COMPANIES HOUSE



Tel +44 (0)113 244 3839 1 Bridgewater Place  
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www.bdo.co.uk Leeds  
LS11 5RU

TO ALL KNOWN MEMBERS AND CREDITORS

6 July 2015

Our Ref 016029/PH/A6

Please ask for Phillip Harding  
Direct Line 0113 204 1209  
Email Phillip.harding@bdo.co.uk

Dear Sirs

**William Caple & Company Limited - In Creditors' Voluntary Liquidation ("the Company")**  
**Registered Address:** c/o BDO LLP, 1 Bridgewater Place, Water Lane, Leeds, LS11 5RU  
**Registered number:** 00501084  
**Joint Liquidators:** Francis Graham Newton and Mark Shaw  
**Joint Liquidators' Address:** 1 Bridgewater Place, Water Lane, Leeds, LS11 5RU  
**Date of Appointment:** 9 May 2012

In order to comply with Section 104A of the Insolvency Act 1986 and Rule 4.49C of the Insolvency Rules 1986, we write to provide members and creditors with our annual progress report for the period 9 May 2014 to 8 May 2015 ("the Reporting Period").

Please note that we do not intend to report in detail on matters previously disclosed. This report should therefore be read in conjunction with our previous reports to creditors.

A copy of our receipts and payments account for the Reporting Period and the cumulative position as at 8 May 2015 is attached. Further information is as follows:

#### 1. Progress of the liquidation

As previously reported, the Company was part of the wider Adare Group that was subject to a debt and capital restructure during March 2012. The Liquidation of the Company formed part of this restructure.

In addition to our appointment as Liquidator of the Company on 9 May 2012, we were also appointed as Joint Liquidators of Adare Pillings Limited ("Pillings") on 9 May 2012. Pillings is also part of the wider Adare Group.

Following our appointment we sought repayment of the intercompany debt owed by Adare Group Limited and Adare Pressicion Limited, totalling £1.376m.

We also sought repayment of balances owed by the Adare Group to Pillings.

All settlement negotiations with the Adare Group were on the basis of agreeing a global settlement of balance due to both the Company and Pillings.



Since our last report we have undertaken extensive negotiations with the Adare Group in order to reach a settlement of the outstanding inter-company debt. Increased offers of £400,000 and £600,000 were rejected and a full and final settlement of £1m was agreed in October 2014.

The initial £1m settlement was to be paid on deferred terms over a five year period plus interest. An initial payment of £150,000 was paid on completion of the settlement agreement.

In order to protect creditors, we negotiated the inclusion of provisions within the settlement agreement. These provisions would result in further consideration being paid to the Company and Caple of up to £1m in the event that the Adare Group was sold, or distributions made to shareholders.

On 29 December 2014 we were advised that an offer had been accepted by the shareholders for the sale of the Adare Group. The sale completed in April 2015.

On completion of the sale additional consideration of £1m was received by the Company and Caple. Furthermore the Adare Group settled the outstanding deferred consideration of £850,000 plus interest of £22,705 on completion of the sale.

The total settlement received was £2,022,705 of which £723,359 relates to the Company with the balance being paid to Pillings to settle the Adare Group's inter-company liability in that company.

All settlement funds were received by Pillings with a transfer made to the Company from Pillings outside of the Reporting Period. We attach an up to date receipts and payments account reflecting the reallocation of the settlement.

## **2 Payments**

We instructed Squire Patton Boggs (UK) LLP ("SPB") to provide legal advice throughout the Liquidation predominantly relating to the negotiations with the Adare Group and preparing the settlement agreement.

SPB's fees are being paid on a time costs basis and they have been paid £21,100 during the Reporting Period in respect of time costs incurred.

Furthermore the Company was not registered for VAT, consequently, VAT totalling £4,236 that was paid in the Reporting Period in respect of legal fees and disbursements cannot be recovered.

## **3 Future Prospects for Creditors**

Following receipt of funds to settle the inter-company debts there are no further assets to realise in the liquidation.

Once the costs and expenses of the liquidation have been provided for there will be a dividend to unsecured creditors in due course.

#### 4 Joint Liquidators' remuneration and disbursements

##### *Joint Liquidators' remuneration for the period 9 May 2012 to 8 May 2015*

The Joint Liquidators' have incurred time costs totalling £50,396 for the period. This represents 177 hours at an average hourly rate of £285.

##### *Joint Liquidators' remuneration for the period 9 May 2014 to 8 May 2015*

The Joint Liquidators' have incurred time costs totalling £34,246 for the Reporting Period. This represents 107 hours at an average hourly rate of £320.

These amounts are derived by reference to BDO LLP's normal rates for time properly spent by the Joint Liquidators and their staff in attending to matters arising in the Liquidation. Where members of the Joint Liquidators' staff have been employed on this insolvency they have been so based on their experience and abilities in dealing with a case of this nature. Where appropriate, certain staff have dealt with a specific area of the Liquidation due to their specialist skills in that area.

All staff who have worked on this assignment, including cashiers and secretarial staff, have charged time directly to the assignment and are included in the analysis of time spent. The cost of staff employed in central administration functions is not charged directly to the assignment but is reflected in the general level of charge out rates. The Joint Liquidators advise that the scale rates may vary from time to time over the period of the Liquidation.

A copy of our detailed time cost summaries for the above periods are attached to this report together with 'A Creditors' Guide to Liquidators' Fees'.

The Joint Liquidators' remuneration was fixed by reference to the time properly spent by the Joint Liquidators and their staff in attending to matters arising in the Liquidation at a meeting of creditors held on 9 May 2012, pursuant to Rule 4.127(2)(b) of Insolvency Rules 1986.

No remuneration has been drawn to date.

#### 5 Disbursements

Where disbursements are recovered in respect of precise sums expended to third parties there is no necessity for these costs to be authorised. These are known as category 1 disbursements. We therefore report that the sum of £220 has been incurred in respect of category 1 disbursements. No category 2 disbursements have been incurred to date.

Total disbursements incurred relating to the Liquidation are detailed as follows:

Narrative	Category 1 (£)
Statutory Bonding	80
Statutory Advertising	140
<b>Total</b>	<b>220</b>

6 July 2015

No disbursements have been paid to date

Please find attached a document that outlines the policy of BDO LLP in respect of fees and disbursements.

## **6 Creditors' rights**

We provide at the end of this report an extract from the Insolvency Rules 1986 setting out the rights of creditors to request further information and/or challenge the remuneration or expenses within the liquidation

The Insolvency Service has established a central gateway for considering complaints in respect of Insolvency practitioners. In the event that you make a complaint to me but are not satisfied with the response from me then you should visit <https://www.gov.uk/complain-about-insolvency-practitioner> where you will find further information on how you may pursue the complaint

If you require any further information please do not hesitate to contact Philip Jordan of my office.

Yours faithfully  
For and on behalf of  
William Caple & Company Limited



F G Newton  
Joint Liquidator  
Authorised by the Insolvency Practitioners Association in the UK

Enc

**Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Liquidators' fees and expenses:**

**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 creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
    - (iii) members of the company in a members voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
  - (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)-
    - (i) any unsecured creditor, or
    - (ii) any member of the company in a members voluntary winding up,
- makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(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 matter[s] 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, giving reasons for not providing all of the information

**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

**William Caple & Company Limited**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 09/05/2014 To 08/05/2015	From 09/05/2012 To 08/05/2015
ASSET REALISATIONS			
26,500 00	Intercompany liability Settlement	75,000 00	75,000.00
	Bank Interest Gross	17.28	17 28
		<u>75,017 28</u>	<u>75,017 28</u>
COST OF REALISATIONS			
	Specific Bond	20.00	20.00
	Legal Fees	21,100.00	21,100 00
	Legal Disbursements	77 80	77 80
	Irrecoverable VAT	4,235 56	4,235 56
		<u>(25,433.36)</u>	<u>(25,433.36)</u>
<u>26,500.00</u>		<u>49,583.92</u>	<u>49,583.92</u>
REPRESENTED BY			
	Current Account		49,583 92
			<u>49,583.92</u>

Note



Francis Graham Newton  
Joint Liquidator



**William Caple & Company Limited**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**  
**To 24/06/2015**

S of A £		£	£
	<b>ASSET REALISATIONS</b>		
26,500.00	Intercompany liability Settlement	357,619.56	
	Bank Interest Gross	17 28	
	Treasury Bills Gains	357,619 56	
	Sundry Refunds	8,119 92	
			723,376.32
	<b>COST OF REALISATIONS</b>		
	Specific Bond	20 00	
	Legal Fees	21,100 00	
	Legal Disbursements	77 80	
	Irrecoverable VAT	4,235 56	
			(25,433 36)
<b>26,500.00</b>			<b>697,942.96</b>
	<b>REPRESENTED BY</b>		
	Current Account		697,942 96
			<b>697,942.96</b>

Note:

  
 Francis Graham Newton  
 Joint Liquidator

# William Caple & Company Limited - In Creditors' Voluntary Liquidation

## Detail of Time Charged and Rates Applicable for the Period From 09/05/2012 to 08/05/2015

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		GRAND TOTAL	
	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
		£		£		£		£		£		£		£
<b>C Planning and Strategy</b>														
07 Strategy Planning	1 00	461 00	1 25	338 75					4 75	1,102 00			7 00	1,901 75
99 Other Matters			0 40	108 40									0 40	108 40
sub total -														
<b>C Planning and Strategy</b>	1 00	461 00	1 65	447 15					4 75	1,102 00			7 40	2,010 15
<b>D General Administration</b>														
01 Insurance Matters					0 15	27 45							0 15	27 45
03 Taxation			0 45	91 35	1 25	230 25							1 70	321 60
07 Receipts/Payments					0 25	46 25			1 50	188 70			1 75	234 95
08 Remuneration Issues			0 30	60 90									0 30	60 90
09 Statutory Matters					19 00	3,515 00							19 00	3,515 00
13 General Meetings			2 35	636 85									2 35	636 85
14 General Discussions			0 20	54 20									0 20	54 20
15 Gen	4 25	1,936 75	1 70	395 00	0 50	92 50			5 10	684 25			11 55	3,108 50
16 Maintain Internal Files			1 65	334 95	1 20	221 70							2 85	556 65
sub total -	4 25	1,936.75	6 65	1,573 25	22 35	4,133 15			6 60	872 95			39 85	8,516 10
<b>D General Administration</b>														

# William Caple & Company Limited - In Creditors' Voluntary Liquidation

## Detail of Time Charged and Rates Applicable for the Period From 09/05/2012 to 08/05/2015

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		GRAND TOTAL	
	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
	£	£	£	£	£	£	£	£	£	£	£	£	£	£
<b>E Assets</b>														
07 Debt Collection	18 25	8,323 25	8 60	2,501 00	2 85	527 25							29 70	11,351 50
09 Dealing with other Assets	1 00	461 00	58 45	15,872 35					0 40	92 80			59 85	16,426 15
99 Other Matters	4 50	2,074 50	0 25	73 75									4 75	2,148 25
sub total - E Assets	23 75	10,858 75	67.30	18,447 10	2 85	527 25			0.40	92 80			94 30	29,925 90
<b>G. Employee Matters</b>														
04 Pension Issues	0 75	345 75	1 50	348 00	4 60	850 00							6 85	1,543 75
99 Other Matters					0 25	45 75							0 25	45 75
sub total - G Employee Matters	0 75	345 75	1 50	348 00	4 85	895 75							7 10	1,589 50
<b>H Creditor Claims</b>														
06 Other Creditors			0 50	135 50									0 50	135 50
sub total - H Creditor Claims			0 50	135 50									0 50	135 50
<b>I Reporting</b>														
01 Statutory Reporting			3 00	609 00	2 90	455 30			3 00	696 00			8 90	1,760 30
04 Reporting to Creditors	7 25	3,309 25	10 00	2,686 60					1 00	232 00			18 25	6,227 85

### Detail of Time Charged and Rates Applicable for the Period From 09/05/2012 to 08/05/2015

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# William Caple & Company Limited - In Creditors' Voluntary Liquidation

## Detail of Time Charged and Rates Applicable for the Period From 09/05/2014 to 08/05/2015

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		GRAND TOTAL	
	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
		£		£		£		£		£		£		£
<b>C. Planning and Strategy</b>														
07 Strategy Planning			0 25	67 75									0 25	67 75
99 Other Matters			0 40	108 40									0 40	108 40
sub total -			0 65	176 15									0 65	176 15
<b>C Planning and Strategy</b>														
<b>D General Administration</b>														
01 Insurance Matters					0 15	27 45							0 15	27 45
03 Taxation			0 45	91 35									0 45	91 35
07 Receipts/Payments									1 50	188 70			1 50	188 70
08 Remuneration Issues			0 30	60 90									0 30	60 90
15 Gen	3 75	1,728 75							2 40	372 00			6 15	2,100 75
16 Maintain Internal Files			1 15	233 45									1 15	233 45
sub total -			1 90	385 70	0 15	27 45			3 90	560 70			9 70	2,702 60
<b>D General Administration</b>														
<b>E Assets</b>														
07 Debt Collection	13 50	6,223 50	8 60	2,501 00									22 10	8,724 50
09 Dealing with other Assets	1 00	461 00	53 75	14,598 65									54 75	15,059 65
99 Other Matters	4 50	2,074 50	0 25	73 75									4 75	2,148 25

Wilham Caple & Company Limited - In Creditors' Voluntary Liquidation

Detail of Time Charged and Rates Applicable for the Period From 09/05/2014 to 08/05/2015

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		GRAND TOTAL	
	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
sub total - E. Assets	19 00	8,759 00	62 60	17,173 40									81 60	25,932 40
H Creditor Claims														
06 Other Creditors			0 50	135 50									0 50	135 50
sub total - H Creditor Claims			0 50	135 50									0 50	135 50
I Reporting														
01 Statutory Reporting			3 00	609 00									3 00	609 00
04 Reporting to Creditors	6 75	3,111 75	4 65	1,347 75									11 40	4,459 50
sub total - I Reporting	6 75	3,111 75	7 65	1,956 75									14 40	5,068 50
K. Work Work	0 50	230 50											0 50	230 50
sub total - K Work	0 50	230 50		0 00									0 50	230 50
Net Total														107 35
Other Disbursements														5 48
Grand Total														107 35
34,251 13														34,251 13

## BDO LLP

### Schedule of Office Holders' Normal Charge-Out Rates and Disbursements

#### Normal Charge-Out Rates

The table detailed below sets out the hourly charge-out rates utilised by BDO LLP in the North Region for charging staff time.

Job Title	Hourly Rates £
	As from 11 May 2013
Partner	461
Director	319-356
Senior Manager	271-295
Manager	203-230
Senior Administrator/Administrator/Assistant Administrator	64-183
Secretarial	63

It should be noted that the above rates change from time to time over the period of the administration of each insolvency case.

The rates charged by BDO LLP are reviewed in December and July each year and are adjusted to take account of inflation and the firm's overheads.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. Units of time can be as small as 3 minutes. BDO LLP records work in respect of insolvency work under the following categories:-

Pre Appointment  
Steps upon Appointment  
Planning and Strategy  
General Administration  
Asset Realisation/Management  
Trading Related Matters  
Employee Matters  
Creditor Claims  
Reporting  
Distribution and Closure  
Other Issues

Under each of the above categories the work is recorded in greater detail in sub categories. Please note that the 11 categories provide greater detail than the six categories recommended by the Recognised Professional Bodies who are responsible for licensing and monitoring insolvency practitioners.

Where an officeholders' remuneration is approved on a time cost basis the time invoiced to the case will be subject to VAT at the prevailing rate.

Where remuneration has been approved on a time costs basis a periodic report will be provided to any committee appointed by the creditors or in the absence of a committee to the creditors. The report will provide a breakdown of the remuneration drawn and will enable the recipients to see the average rates of such costs.

### **1) Other Costs**

Where expenses are incurred in respect of the insolvent estate they will be recharged. Such expenses can be divided into two categories.

### **2) Category 1**

This heading covers expenses where BDO LLP has met a specific cost in respect of the insolvent estate where payment has been made to a third party. Such expenses may include items such as advertising, couriers, travel (by public transport), land registry searches, fees in respect of swearing legal documents etc. In each case the recharge will be reimbursement of a specific expense incurred.

### **3) Category 2**

Insolvency practice additionally provides for the recharge of expenses such as postage, stationery, photocopying charges, telephone, fax and other electronic communications, which cannot be economically recorded in respect of each specific case. Such expenses, which are apportioned to cases, must be approved by the creditors in accordance with the Insolvency Rules 1986, before they can be drawn, and these are known as category 2 disbursements. The current policy of BDO LLP is to recharge this expense on the basis of a figure based upon the number of creditors with whom we have to communicate and report during the insolvency. This is the method of calculation that was historically provided under statutory orders for the Official Receiver.

A further disbursement under this heading is the cost of travel where staff use either their own vehicles or company cars in travelling connected with the insolvency. In these cases a charge of 45p per mile is raised which is in line with the Inland Revenue Approved Mileage Rates (median - less than 10,000 miles per annum) which is the amount the firm pays to staff. Where costs are incurred in respect of mileage, approval will be sought in accordance with the Insolvency Rules 1986 to recover this disbursement.

Where applicable, all disbursements will be subject to VAT at the prevailing rate.



# 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 and explains the basis on which fees are fixed.

### 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 a member of The Insolvency Service, an executive agency within the Department of Trade and Industry. 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 Secretary of State for Trade and Industry. 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 3 months 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 fees

- 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 either
- a) as a percentage of the value of the assets which are realised or distributed or both, or
  - b) by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation.
- 4.2 It is for the liquidation committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage 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
- 4.3 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 the committee would. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the remuneration is not fixed in any of these ways, it will be in accordance with a scale set out in the Rules.

### 5 What information should be provided by the liquidator?

#### 5.1 When seeking fee approval

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

- the nature of the approval being sought,
- the stage during the administration of the case at which it is being sought, and
- the size and complexity of the case

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

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

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

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

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

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

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

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

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

## 5.2 After fee approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 5.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 5.1.4 above regarding work which has been sub-contracted out.

## 5.3 Expenses and disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs

(such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

#### **5 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 8 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

#### **5 5 Reporting in compulsory liquidations**

It should be borne in mind that in compulsory liquidations there is no statutory requirement for the liquidator to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the liquidation unless they specifically request it

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

**6 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

**6 2** If a creditor believes that the liquidator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. 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. Unless the court orders otherwise, the costs must be paid by the applicant and not out of the assets of the insolvent company

#### **7 What if the liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors or in accordance with the statutory scale is insufficient, he may apply to the court for it to be increased. 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

#### **8 Other matters relating to fees**

**8 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

**8 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.

**8 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.

**8.4** 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.

#### **9 Provision of information - additional requirements**

In any case where the liquidator is appointed on or after 1 April 2005 he 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

**Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Liquidators' fees and expenses:**

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

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(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 matter[s] 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, giving reasons for not providing all of the information

**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