

# 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

03089747

Name of Company

LKL Trading Limited

I,

Mark Elijah Thomas Bowen,  
Hillicairnie House,  
St Andrews Road,  
Droitwich,  
Worcestershire,  
WR9 8DJ

the liquidator of the company attach a copy of my Progress Report  
under section 192 of the Insolvency Act 1986

The Progress Report covers the period from 01/03/2014 to 28/02/2015

Signed



Date

18-3-15

MB Insolvency  
Hillicairnie House  
St Andrews Road  
Droitwich  
Worcestershire  
WR9 8DJ

Ref LKL01/METB/MH/SS/SM

WEDNESDAY



\*Q4IH7WL7\*

QIQ

21/10/2015

#32

COMPANIES HOUSE

Mark Bowen and Paul Harding appointed as joint liquidators on  
29 February 2012, Paul Harding resigned with effect from 16  
April 2013

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## **LKL Trading Limited (In Liquidation)**

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Progress report and account of the liquidator  
pursuant to Section 104A of the Insolvency Act  
1986

**Period: 1 March 2014 – 28 February 2015**

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### **Contents**

- ☐ Company and liquidator's details
- ☐ Receipts and payments account
- ☐ Investigations
- ☐ Creditor claims
- ☐ Conclusion
- ☐ Appendices
  - 1 Liquidators' account of receipts and payments for the period 1 March 2014 to 28 February 2015
  - 2 Liquidators' time costs, disbursements and expenses

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## 1. COMPANY AND LIQUIDATORS' DETAILS

Company registered number	03089747
Nature of business	Holding Company of a Trading Group Principal activity of trading entity was running a leisure and spa club.
Former trading address	Stratton Place, 42 Gloucester Road, Cirencester, GL7 2LA
Date winding up commenced:	09/02/2012
Names of Liquidators:	Mark Bowen/Paul Harding
Date of liquidators' appointment	29/02/2012
Changes in office holder (if any)	Paul Harding resigned 13 April 2013
Registered office address.	MB Insolvency, Hillcarmie House, St Andrews Road, Droitwich, Worcestershire, WR9 8DJ

This report, which is issued under the provisions of Section 104A of the Insolvency Act 1986, should be read in conjunction with the report of the initial meeting of creditors held on 29 February 2012 and subsequent annual reports.

## 2. RECEIPTS AND PAYMENTS ACCOUNT

Attached at Appendix 1 is our account of receipts and payments from the commencement of the winding-up to the end of the first anniversary showing asset realisations in the Liquidation to date and how they have been disbursed Our comments on items appearing in the account are as follows

### RECEIPTS

At the last report I advised that a potential action for mis-selling of an interest rate management product had been identified. This claim is on-going and the solicitors at the present time cannot estimate when this matter will be concluded.

A sale of Stratton Place was agreed by the chargeholder HSBC. Sale proceeds were insufficient to discharge the liability to the Bank

An amount of £5,000 00 was received from the Bank from the sales proceeds to cover the costs in dealing with the sale and VAT arrangements

## PAYMENTS

No payments have been made during this review period.

### *Liquidators' remuneration, disbursements and expenses*

#### Basis of remuneration and disbursements

At the initial meeting of creditors held pursuant to Section 98 of the Act on 29 February 2012 it was resolved that the Liquidators would be remunerated by reference to the time properly spent in dealing with the liquidation at his firm's standard charging rates, and that their disbursements would be drawn in accordance with his firm's standard tariff (see Appendix 2 ).

Since the approval of the basis of our remuneration on 29 February 2012 our charge out Rates were revised in February 2013 and our disbursement tariff has been necessarily revised to reflect supplier prices.

#### Remuneration and disbursements charged and drawn

Time spent in this review period amounts of £14,855.00 which represents 70.20 hours at an average rate of £211 61 Time spent dealing with the property amounted to 35 hours totalling £7200 00 An amount of £5,000 00 was contributed by the Bank from sale proceeds to cover these costs, the balance of these property associated costs of £2,200 00 has been written off. Therefore adjusted time costs for this period amounts to £7655.00 which represents 35 2 hours at an average rate of £217 47. Total time to the anniversary date on this assignment amounts to 132 9 hours at an average composite rate of £222 49 per hour resulting in total time costs to date of £29,569.00. Total fees drawn to date in accordance with the above approval have amounted to £10,000.00 leaving outstanding unbilled time costs of £11,914.00

I have attached a breakdown of time costs at Appendix 2 I am required to provide the information in this format by Statement of Insolvency Practice 9.

Details of disbursements incurred and drawn are set out in Appendix 2

The following further information as regards time costs is also set out at Appendix 2:

- ☐ MB INSOLVENCY policy for re-charging expenses
- ☐ MB Insolvency charge-out rates

#### Expenses charged and drawn

Details of the costs incurred and paid in relation to liquidation expenses [ *legal, agent's, accountancy fees etc* ] are summarised at Appendix 2. I comment specifically on the following matters

At the first meeting of creditors held on 29 February 2012 it was resolved that the fees and disbursements of MB Insolvency for assisting the directors in convening the statutory meetings to place the Company into liquidation, and for assistance in preparing the Statement of Affairs, would be a set fee of £5,000.0, be paid out of the assets of the Company

This fee has not yet been drawn

All other payments have been made in accordance with the rules and regulations generally as to the payment of costs and expenses in the liquidation.

Creditors' Guide to Fees and statement of creditors' rights

If you require further information relating to Liquidators' remuneration, expenses and disbursements please see Appendix 3. This also gives details of your rights as a creditor in this regard.

### 3 INVESTIGATIONS

We have submitted our statutory report to the Department of Business, Innovation and Skills on the conduct of the directors in accordance with the Insolvent Companies (Report on Conduct of Directors) Rules 1996 and the Company Directors Disqualification Act 1986. The content of this report is, however, strictly private and confidential.

We also have a duty to investigate the extent of the Company's assets, including potential claims against third parties including the directors, and to report our findings to creditors, subject to considerations of privilege and confidentiality and whether those investigations and/or any potential litigation might be compromised.

Our preliminary assessment of the conduct of the Company's affairs by the Directors prior to our appointment did not reveal any matters that it was in the interest of creditors for us to pursue. Accordingly, we are not currently conducting or proposing to conduct any further more detailed investigations however we will of course continue to monitor the Company's situation.

### CREDITOR CLAIMS

#### **Secured Creditors**

HSBC Bank Plc (HSBC) hold security over the Company's assets in the form of a debenture registered on 21 October 2005, which created fixed and floating charges over the entire assets of the Company.

The validity of the Bank's security has been confirmed.

The Bank has sold the property which was insufficient to discharge liabilities in full. We are awaiting a claim for the shortfall.

#### **Preferential Creditors**

There are no preferential creditors in this instance

### **Prescribed Part**

If a Company has granted security over its assets which includes a qualifying floating charge I am obliged to consider setting aside a proportion of net property, which would otherwise be available to the holder of floating charge security over the Company's assets, for the benefit of unsecured creditors (known as "the Prescribed Part").

The only further realisations will be compensation received for mis-selling claim. This is not certain or quantifiable at this stage

As such it is not known if there will be net property under the floating charge security after costs.

### **Unsecured Creditors**

As already advised, unless a payment is forthcoming from the mis-selling action sufficient to trigger the prescribed part there will be no dividend available for unsecured creditors

### **Notice of no dividend**

It is envisaged at this time that assets realised and prospective asset realisations will be utilised fully in contributing towards defraying the administrative costs of the liquidation and any funds remaining will be subject to the Bank's floating charge

Accordingly, formal notice is hereby given, in accordance with Rules 4 186 and Rule 11.7 and that no funds are expected to be available to enable any form of distribution to be made to unsecured creditors.

## **5. CONCLUSION**

### **Matters outstanding**

There is an on-going discussion with HSBC regarding a potential action over the terms of a cap and collar transaction entered into by the Company when it changed banks in 2008. This may result in an adjustment with regard to the liability to the Bank and potentially could result in some surplus from the sale transaction that would be payable to the Company. Currently this is with legal advisers.

In view of this, we do not anticipate concluding the liquidation before the next anniversary

If you require any further information, please do not hesitate to contact Margaret Carter at the above address

We will report again following the anniversary of the liquidation or at the conclusion of the winding up, whichever is the sooner



**M E T Bowen**  
Liquidator

Dated. 18 March 2015

**LKL Trading Limited**  
**(In Liquidation)**

**Liquidator's Abstract Of Receipts And Payments**

<b>RECEIPTS</b>	<b>Statement of Affairs (£)</b>	<b>From 29/02/2012 To 28/02/2014 (£)</b>	<b>From 01/03/2014 To 28/02/2015 (£)</b>	<b>Total (£)</b>
Assignment of Action		30,000 00	0 00	30,000 00
Bank Interest Gross		2 59	2 23	4 82
Bank Interest Net of Tax		0 00	0 34	0 34
Property Sale Costs	5,000 00	0 00	5,000 00	5,000 00
		<b>30,002 59</b>	<b>5,002 57</b>	<b>35,005 16</b>

**PAYMENTS**

Specific Bond		236 00	0 00	236 00
Office Holders Fees		10,000 00	5,000 00	15,000 00
Legal Fees (1)		12,478 00	0 00	12,478 00
Storage Costs		75 00	0 00	75 00
		<b>22,789 00</b>	<b>5,000 00</b>	<b>27,789.00</b>

<b>Net Receipts/(Payments)</b>		<b>7,213 59</b>	<b>2 57</b>	<b>7,216.16</b>
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**MADE UP AS FOLLOWS**

Bank 1 Current	7,213 59	(7,213 59)	0.00
Bank 2 Current	0 00	558,216 16	558,216 16
VAT Receivable / (Payable)	0 00	(551,000 00)	(551,000 00)
	<b>7,213.59</b>	<b>2 57</b>	<b>7,216.16</b>



# **LKL TRADING LIMITED (In LIQUIDATION)**

## **Summary of remuneration for Period 01/03/2014 – 28/02/2015**

<b>Classification of work</b>	<b>Partner</b>	<b>Senior Manager</b>	<b>Manager</b>	<b>Administrator</b>	<b>Support</b>	<b>Total Units</b>	<b>Time Cost £</b>	<b>Average Rate £/h</b>
<b>Stat Compliance / Admin &amp; Planning</b>			40	27		67	1205 00	179 85
<b>Investigation</b>								
<b>Realisation of Assets</b>	75		205			280	6350 00	226 79
<b>Creditors</b>			5			5	100 00	200 00
<b>Case Specific Matters</b>								
<b>Total for period</b>						352	7655 00	217 47
<b>Total to date</b>						1329	29569.00	222 49
<b>Fees Drawn</b>							10000 00	

**All time is recorded in units of six minutes Therefore 1 unit equates to 6 minutes of time recorded.**

### **Charge out Rates**

**Partner**  
**Managers**  
**Assistant Manager**  
**Senior Administrator**  
**Administrator**  
**Senior Assistant/Cashier**  
**Support Staff**

From 13 February 2013  
 Rates depend on complexity of the case  
 £300  
 £225-250  
 £200  
 £175  
 £150  
 £150  
 £90

### **Standard activity**

#### **Administration and planning**

Statutory reporting and compliance  
 Compliance with other regulatory requirements  
 Case planning  
 Administrative set up  
 Appointment notification  
 Maintenance of records

#### **Investigations**

SIP 2 review  
 CDDA reports  
 Investigating antecedent transactions

#### **Realisation of assets**

Identifying, securing, insuring assets  
 Retention of title  
 Debt collection  
 Property, business and asset sales

#### **Trading**

Management of operations  
 Accounting for trading  
 On-going employee issues

#### **Creditors**

Communication with creditors  
 Creditors' claims (including employees' and other preferential creditors)

#### **Case Specific**

**LKL Trading Limited (In Liquidation )**  
**Summary of Category 2 Disbursements for Period 01/03/2014 – 28/02/2015**

**Category 1 disbursements**

	Incurred	Paid	Unpaid
	£	£	£
Bond	236 00	236 00	
Advertising	153 00		153 00
Postage	72 51		72 51
Telephone			
Car Mileage			
Travel			
Subsistence			
External Room Hire	60 00		60 00
External Photocopying			
External Records Removal	75 00	75 00	
Mail Re-direction			
Swear Fee			
Company Search			
Professional Fees			
Other			

**Category 2 disbursements**

	Incurred	Paid	Unpaid
	£	£	£
Photocopying / Printing	153 68		153 68
Registered Office Fee	125 00		125 00
The Admin System Charge	125 00		125 00
Mileage			
Room Hire			
Case Specific			

**Category 2 disbursement rates**

Photocopying / Printing	£0 17 per sheet
Registered office fee	£125 per annum
Admin System charge	£125 per case
Mileage	£0 45 per mile
Room hire	£60 per hour where held at MBI offices

**LKL Trading Limited (In Liquidation)**  
**Summary of Administration expenses for period 01/03/2014 -28/02/2015**

**Nature of expense**

	Provider	Basis of remuneration
Legal	Harrison Clark Rickerbys LLP	Time costs and disbursements

**Expenses incurred and paid**

	Incurred	Paid	Unpaid
	£	£	£
Harrison Clark Rickerbys LLP	12478 00	12478 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 detail 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 subject to Value Added Tax (VAT) at the applicable rate.

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

The Liquidator'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 Liquidator's charge out rate schedule below provides details of all grades of staff.

With regard to support staff, the Liquidator 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£

### 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

Charge out rates per hour effective from May 2010

Grade	Hourly Rate (£)	Grade	Hourly Rate (£)
Partner	300	Partner	275-350
Managers	225-250	Senior Manager	225-250
Assistant Managers	200	Manager/Administrator	70-160
Senior Administrator	175	Support Staff	50-100
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 officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

#### **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

Quantity Surveyors

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Estate Agents

MB Insolvency [www mb-i co uk](http://www.mb-i.co.uk)

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	45p per mile
Insolvency Practitioners System	£125 per case

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### **Professional advisors**

On this assignment the Liquidator has used the professional advisers listed below. The Liquidator 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
Harrison Clark Rickerbys LLP	Time costs and disbursements

The Liquidator'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** 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.

## **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