

The Insolvency Act 1986

Administrator's progress report

Pursuant to Rule 2.38 of the insolvency (Scotland) Rules 1986

Name of Company Earthy Foods & Goods Limited	Company number SC298867
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(a) Insert full name(s) and address(es) of administrator(s)

I/We (a)
Kenneth Wilson Pattullo
Begbies Traynor (Central) LLP
Second Floor
Excel House
30 Semple Street
Edinburgh
EH3 8BL

Adam Southard
Begbies Traynor (Central) LLP
Second Floor
Excel House
30 Semple Street
Edinburgh
EH3 8BL

administrator(s) of the above company attach a progress report for the period

(b) Insert date(s)	from (b) 9 July 2018	to (b) 3 December 2018
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Signed

ASKL
Joint / Administrator(s)

Dated

3 December 2018

Contact Details:

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form.

The contact information that you give will be visible to searchers of the public record

Kenneth Wilson Pattullo Begbies Traynor (Central) LLP Second Floor Excel House 30 Semple Street Edinburgh EH3 8BL	
DX Number	0131 222 9060 DX Exchange

FRIDAY



SCT 08/02/2019 #265
COMPANIES HOUSE

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Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, EH3 9FF
DX 235 Edinburgh / LP 4 Edinburgh-2

Kenneth Wilson Pattullo and Adam Southard were appointed Joint Administrators on 9 January 2018.

The affairs, business and property of the Company are being managed by the Joint Administrators, who act as the Company's agents and without personal liability.

Earthy Foods & Goods Limited (In Administration)

Progress report of the Joint Administrators pursuant to Rule 2.38 of The Insolvency (Scotland) Rules 1986 (as amended)

Period: 9 July 2018 to 3 December 2018

Important Notice

This progress report has been produced by the Joint Administrators solely to comply with their statutory duty to report to creditors on the progress of the Administration. The report is private and confidential and may not be relied upon, referred to, reproduced or quoted from, in whole or in part, by creditors for any purpose other than this report to them, or by any other person for any purpose whatsoever.

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1. STATUTORY INFORMATION

Name of Company	Earthy Foods & Goods Limited
Trading name(s):	Earthy
Date of Incorporation:	14 March 2006
Company registered number:	SC298867
Company registered office:	c/o Begbies Traynor, Second Floor, Excel House, 30 Semple Street, Edinburgh, EH3 8BL
Name of Court:	Court of Session

2. DETAILS OF APPOINTMENT OF ADMINISTRATORS

Names of the administrators:	Kenneth Wilson Pattullo, a Licensed Insolvency Practitioner of Begbies Traynor (Central) LLP, Second Floor, Excel House, 30 Semple Street, Edinburgh, EH3 8BL and Adam Southard, a Licensed Insolvency Practitioner of Begbies Traynor (Central) LLP, Second Floor, Excel House, 30 Semple Street, Edinburgh, EH3 8BL
Date of administrators' appointment:	9 January 2018
Date of administrators' resignation:	N/A
Person(s) making appointment / application:	Caledonian Heritable Limited – Floating Charge Holder
Acts of the administrators:	The administrators act as officers of the court and as agents of the Company without personal liability. Any act required or authorised under any enactment to be done by an administrator may be done by any one or more persons holding the office of administrator from time to time.
EU Regulation on Insolvency Proceedings:	Regulation (EU) 2015/848 of the European Parliament and of the Council applies to these proceedings which are main proceedings within the meaning of Article 3 of the Regulation.
Extensions of the administration period	There have been no previous extensions to the administration period

3. PROGRESS DURING THE PERIOD

Attached at Appendix 1 is our abstract of receipts and payments for the period from 9 January 2018 to 3 December 2018.

The Joint Administrators set out to achieve the following objectives:

- a) Rescue the company as a going concern or if not achievable;
- b) Achieve a better result for the company's creditors as a whole than would be likely if the company were wound up without being first being in administration or.
- c) Realise the company's assets in order to make a distribution to one or more secured or preferential creditors.

After an initial assessment the Joint Administrators considered objective (c) above to be achievable.

Debtors

There were sales made prior to the Administration which had not been received into the Company's bank account upon our appointment. A balance of £750 has now been received.

Cash at Bank and In Hand

We have received £23,217.17 from the Company's bank account.

Bank Interest

The sum of £15.84 has been received in bank interest during this period.

Short Term Trading Period

The Company traded until 13 January 2018 in order to make a short term gain whilst disposing of perishable items. Net sales of £11,935 were made, and after net purchases of £355 and employees' gross wages of £2,575, cash of £9,005 has been generated. There are some costs yet to be finalised which will be allocated against this gain, however a small profit is expected and Corporation Tax might become payable.

Sale of Business

An extensive marketing campaign was not undertaken as it was not deemed to be a cost effective exercise to instruct agents to carry this out, nor to incur additional time costs by the Joint Administrators, when compared to the value of the Company's assets.

The Company assets are as detailed below.

Our agents, Hilco Global, were instructed to value the Company's intellectual property. They identified the goodwill rights in the "Earthy" brand and reputation, the domain name "earthy.co.uk", copyright in the website content held at www.earthy.co.uk, copyright in marketing material, the customer mailing list, and rights in the social media accounts (Instagram/Facebook/Twitter). These items were valued at between £2,500 and £9,000.

The Equipment, Fixtures & Fittings were located at the two premises occupied by the Company. Our agents Sweeney Kincaid were instructed to value these assets. Ex-situ and In-situ values of £12,095 and £40,085 were provided. It is worth noting that the ex-situ valuation is a minimum expected on the basis an on-line auction is held with purchasers collecting items from the company's premises.

As there was no interest in the assets at Portobello, and as a result of the significant arrears due under the lease, in addition to the landlord's hypothec claim, the Joint Administrators had no ability to recover any sums from the assets located at this premises and therefore abandoned these assets. The Joint Administrators completed a lease Renunciation on the basis the landlord granted access to remove the company's books and records.

Our agents, Alba Stocktakers, were instructed to carry out a stock valuation of the remaining stock at both premises once trading had ceased. The stock was valued at a total of £18,643 (net of margins and VAT). We were contacted by two creditors with Retention of Title claims, both key suppliers to the business with significant debts. Both parties had valid claims and stock was collected prior to the stock valuation.

We received organic interest from 12 parties, however only one submitted a formal offer in respect of the Intellectual Property and assets located at the Ratcliffe Terrace premises. Further to negotiation the offer was increased to £12,501. My respective agents recommended acceptance of the offer and sale proceeds have been received.

The landlords at Ratcliffe Terrace and the interested party agreed on the terms of a new lease. As no lease assignation was viable, and in order to facilitate a new lease in conjunction with completing on the sale of assets, the Joint Administrators agreed to complete a lease Renunciation.

The company's books and records have been collected.

Other Matters

The Company held a premises licence for the Ratcliffe Terrace premises which enabled it to sell alcohol. This was transferred to the Floating Charge Holder, Caledonian Heritable Limited, pending the sale of assets. The purchaser of the assets has advised they will shortly make arrangements for the licence to be transferred to them.

4. ESTIMATED OUTCOME FOR CREDITORS

Preferential Creditors

There are sums owed to former employees of the Company in respect of unpaid wages and holiday pay. A claim has been received from the Redundancy Payments Office claiming a preferential amount totalling £26,574.58. It is currently anticipated that there will be insufficient funds to enable a distribution unless further realisations become available

Floating Charge Creditor

Caledonian Heritable Limited hold a Floating Charge over the Company's assets. The original Floating Charge was created on 3 March 2011 and registered on 5 March 2011, but was assigned to Caledonian Heritable Limited on 8 January 2018. The level of the debt assigned is in the region of £200,000. It is currently anticipated that there will be insufficient funds to enable a distribution unless further realisations become available.

Prescribed Part for unsecured creditors pursuant to Section 176A of the Act

Section 176A of the Insolvency Act 1986 provides that, where the company has created a Floating Charge after 15 September 2003, an Administrator must make a *prescribed part* of the Company's *net property* available for the unsecured creditors and not distribute it to the Floating Charge holder except in so far as it exceeds the amount required for the satisfaction of unsecured claims. *Net property* means the amount which would, were it not for this provision, be available to Floating Charge holders out of Floating Charge assets (i.e. after accounting for preferential debts and the costs of realising the Floating Charge assets). The Floating Charge holder may not participate in the distribution of the prescribed part of the Company's net property.

As it is currently expected that a shortfall will be experienced by the preferential creditors, there will be no funds available to the Floating Charge creditor and therefore no ability to set aside funds in respect of the prescribed part.

Unsecured Creditors

The Company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a) of the Insolvency Act 1986. Claims from all unsecured creditors have not been received however the total debt due is in the region of £1,072,000. At the date of this report, it appears that there will be insufficient funds to pay a dividend to unsecured creditors in this case.

VAT Bad Debt Relief

Section 36 of the Value Added Tax Act 1994 incorporates provisions which enable the trader to claim VAT Bad Debt Relief after writing the debt off in their accounts six months after the supply. This procedure does not involve the Joint Administrators and claims should be made directly to HM Revenue and Customs.

Effect of administration on limitation periods under the Limitation Act 1980

The Limitation Act 1980 continues to apply to all debts due from the Company. Case law indicates that where a company is in Administration, time does not stop running for limitation purposes pursuant to the Limitation Act 1980. If you have any concerns in relation to your claim against the Company becoming time-barred during the course of the Administration, we strongly recommend that you seek independent legal advice on the options available to you to prevent this.

5. REMUNERATION AND DISBURSEMENTS

The Joint Administrators' remuneration is fixed by reference to the time properly given by us (as Administrators) and the various grades of staff calculated at the prevailing hourly rates of Begbies Traynor (Central) LLP in attending to matters arising in the Administration.

Our time costs for the period from 9 January 2018 to 8 July 2018 amount to £38,102, which represents 184.10 hours at an average hourly rate of £206.96.

Our time costs for the period from 9 July 2018 to 3 December 2018 amount to £7,583.00, which represents 39.70 hours at an average hourly rate of £191.01.

Further information in relation to our time costs and disbursements is set out at Appendix 3.

To date we have drawn interim remuneration of £25,000 and disbursements of £142.11 further to the approval of secured and preferential creditors.

Disbursements

In accordance with Statement of Insolvency Practice 9 (Scot) I am required to provide you with an analysis of the disbursements that have been charged on the above case over the period. Recoverable disbursements are split into two categories:

- Specific expenditure referable both to the appointment and a payment to a third party (referred to as Category one disbursements); and
- Expenditure in respect of the appointment which is not a payment to a third party (referred to as Category two disbursements).

Category one disbursements generally include advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the Liquidator or their staff.

Category two disbursements may incorporate an element of recovery of overhead costs.

A disbursement summary is below::

Disbursements – category one:	0.00
Disbursements – category two:	794.21
Storage, Travel & Postage	
Total disbursements claimed (£)	794.21

A copy of 'A Creditors Guide to Administrators' Remuneration Scotland' which provides guidance on creditors' rights on how to approve and monitor an Administrator's remuneration and on how the remuneration is set can be obtained online at www.begbies-traynor.com/creditorsguides. Alternatively, if you require a hard copy of the Guide, please contact our office and we will arrange to send you a copy.

6. ADMINISTRATORS' EXPENSES

A statement of the expenses incurred during the period of this progress report is attached at Appendix 3.

7. ASSETS THAT REMAIN TO BE REALISED AND WORK THAT REMAINS TO BE DONE

Further investigations into the historic affairs of the Company are required. The level of any realisations resulting from investigations is not yet known.

8. OTHER RELEVANT INFORMATION

Report on Directors conduct

As detailed in our statement of proposals, we have a duty to submit a report to the Department for Business, Energy and Industrial Strategy on the conduct of the directors. We have complied with our duties in this respect.

Investigations completed and action taken

We have undertaken an initial assessment of the manner in which the business was conducted prior to the Administration of the Company. Potential recoveries for the estate in this respect are currently being investigated.

Use of personal information

Please note that in the course of discharging our statutory duties as Administrators, we may need to access and use personal data, being information from which a living person can be identified. Where this is necessary, we are required to comply with data protection legislation. If you are an individual and you would like further information about your rights in relation to our use of your personal data, you can access the same at <https://www.begbies-traynorgroup.com/privacy-notice>. If you require a hard copy of the information, please do not hesitate to contact us.

9. CONCLUSION

Paragraph 76(1) of Schedule B1 to the Insolvency Act 1986 provides that the appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect. However, Paragraph 76(2) provides that the administrator's term of office may be extended either by court order for a specified period or by consent of the creditors for a specified period not exceeding twelve months.

In order to ensure that the objective of the administration is achieved and that I have fully discharged my duties as Joint Administrator it is necessary to extend the period of the Administration. I therefore seek the consent of the creditors by written resolution to extend the administration to 8 January 2020 by consent of the creditors. Should you have any objection to this, please write to my office within 14 days of this correspondence. Should it be necessary to further extend the administration then an application to Court will be made.

We will report again at the end of the next 6 month period or at the conclusion of the Administration, whichever is the sooner.



Adam Southard
Joint Administrator

Dated: 3 December 2018

ACCOUNT OF RECEIPTS AND PAYMENTS

Period: 9 July 2018 to 3 December 2018

**Earthy Foods & Goods Limited
(In Administration)
Administrators' Trading Account**

Statement of Affairs £	From 09/07/2018 To 03/12/2018 £	From 09/01/2018 To 03/12/2018 £
POST APPOINTMENT SALES		
Sales	NIL	11,935.14
	NIL	11,935.14
PURCHASES		
Purchases (2)	NIL	355.52
	NIL	(355.52)
TRADING EXPENDITURE		
Wages & Salaries	(177.00)	2,291.54
PAYE & NI	NIL	276.73
Pension Contributions	NIL	6.56
	177.00	(2,574.83)
TRADING SURPLUS/(DEFICIT)	177.00	9,004.79

Earthy Foods & Goods Limited
(In Administration)
Administrators' Summary of Receipts & Payments

Statement of Affairs £	From 09/07/2018 To 03/12/2018 £	From 09/01/2018 To 03/12/2018 £
ASSET REALISATIONS		
Book Debts	NIL	750.00
Cash at Bank	NIL	23,217.17
License Transfer	NIL	NIL
Bank Interest Net of Tax	15.84	37.82
Trading Surplus/(Deficit)	177.00	9,004.79
Sale of Business	NIL	12,501.00
	<u>192.84</u>	<u>45,510.78</u>
COST OF REALISATIONS		
Specific Bond	NIL	147.50
Office Holders Fees	25,000.00	25,000.00
Office Holders Expenses	142.11	142.11
HMRC Charges	338.70	338.70
License Transfer	NIL	290.00
Agents/Valuers Fees (1)	NIL	2,719.00
Legal Fees (1)	NIL	1,481.13
Re-Direction of Mail	NIL	408.00
Statutory Advertising	NIL	169.92
Other Property Expenses	NIL	NIL
Sundry Expenses	NIL	182.25
Wages & Salaries	NIL	NIL
PAYE & NI	NIL	NIL
Bank Charges	NIL	3.50
Registers of Scotland	NIL	15.00
	<u>(25,480.81)</u>	<u>(30,897.11)</u>
PREFERENTIAL CREDITORS		
Pension Contributions	NIL	NIL
	NIL	NIL
	<u>(25,287.97)</u>	<u>14,613.67</u>
REPRESENTED BY		
Vat Receivable		5,028.43
Bank 2 Current		9,558.24
Vat Payable		27.00
		<u>14,613.67</u>

TIME COSTS AND DISBURSEMENTS

- a. Begbies Traynor (Central) LLP's charging policy; and
- b. Time Costs Analysis for the period from 9 July 2018 to 3 December 2018.

BEGBIES TRAYNOR CHARGING POLICY

INTRODUCTION

This note applies where a licensed insolvency practitioner in the firm is acting as an office holder of an insolvent estate and seeks creditor approval to draw remuneration on the basis of the time properly spent in dealing with the case. It also applies where further information is to be provided to creditors regarding the office holder's fees following the passing of a resolution for the office holder to be remunerated on a time cost basis. Best practice guidance¹ requires that such information should be disclosed to those who are responsible for approving remuneration.

In addition, this note applies where creditor approval is sought to make a separate charge by way of expenses or disbursements to recover the cost of facilities provided by the firm. Best practice guidance² requires that such charges should be disclosed to those who are responsible for approving the office holder's remuneration, together with an explanation of how those charges are calculated.

OFFICE HOLDER'S FEES IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES

The office holder has overall responsibility for the administration of the estate. He/she will delegate tasks to members of staff. Such delegation assists the office holder as it allows him/her to deal with the more complex aspects of the case and ensures that work is being carried out at the appropriate level. There are various levels of staff that are employed by the office holder and these appear below.

The firm operates a time recording system which allows staff working on the case along with the office holder to allocate their time to the case. The time is recorded at the individual's hourly rate in force at that time which is detailed below.

EXPENSES INCURRED BY OFFICE HOLDERS IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES

Best practice guidance classifies expenses into two broad categories:

- *Category 1 disbursements (approval not required)* - specific expenditure that is directly related to the case usually referable to an independent external supplier's invoice. All such items are charged to the case as they are incurred.
- *Category 2 disbursements (approval required)* - items of incidental expenditure directly incurred on the case which include an element of shared or allocated cost and which are based on a reasonable method of calculation.

(A) The following items of expenditure are charged to the case (subject to approval):

- Car mileage is charged at the rate of 40 pence per mile;
- Storage of books and records (when not chargeable as a *Category 1 disbursement*) is charged on the basis that the number of standard archive boxes held in storage for a particular case bears to the total of all archive boxes for all cases in respect of the period for which the storage charge relates

(B) The following items of expenditure will normally be treated as general office overheads and will not be charged to the case although a charge may be made where the precise cost to the case can be determined because the item satisfies the test of a *Category 1 disbursement*:

- Telephone and facsimile
- Printing and photocopying
- Stationery

¹ Statement of Insolvency Practice 9 (SIP 9) – Remuneration of insolvency office holders in Scotland (Effective 1 February 2010)

BEGBIES TRAYNOR CHARGE-OUT RATES

Begbies Traynor is a national firm. The rates charged by the various grades of staff that may work on a case are set nationally, but vary to suit local market conditions. The rates applying to the Scottish offices as at the date of this report are as follows:

	Rate (£)
Partner 1	395
Director	345
Senior Manager	310
Manager	265
Assistant Manager	205
Senior Administrator	175
Administrator	135
Junior Administrator	110
Cashier & Secretarial	110

Time spent by support staff for carrying out shorter tasks, such as typing or dealing with post, is not charged to cases but is carried as an overhead. Only where a significant amount of time is spent at one time on a case is a charge made for support staff.

Time is recorded in 6 minute units.

STATEMENT OF ADMINISTRATORS' EXPENSES

Type of expense	Name of party with whom expense incurred	Amount incurred £	Amount discharged £	Balance (to be discharged) £
Expenses incurred with entities not within the Begbies Traynor Group				
HMRC	Charges	338.70	338.70	