

The Insolvency Act 1986

## Statement of administrator's proposals

Name of Company Ashpol plc	Company number. 00104394
In the High Court of Justice [full name of court]	Court case number 2756 of 2012

(a) Insert full name(s) and address(es) of administrator(s)

I / We, (a) Kirstie Jane Provan and Mark Robert Fry of Begbies Traynor (Central) LLP, 32 Cornhill, London, EC3V 3BT

attach a copy of \*my / our proposals in respect of the administration of the above company

\* Delete as applicable

A copy of these proposals was sent to all known creditors on

(b) 30 March 2012

(b) Insert date

Signed

Joint Administrator(s)

Dated

### 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.

Begbies Traynor (Central) LLP	
32 Cornhill, London, EC3V 3BT	
	Tel 020 7398 3800
Fax Number 020 7398 3799 (Fax)	DX Number

When you have completed and signed this form please send it to the Registrar of Companies at  
Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff



A14 31/03/2012 #499  
COMPANIES HOUSE

SATURDAY



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

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## Ashpol Plc (in Administration) ("the Company")

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Statement of proposals for achieving the purpose of the administration pursuant to Paragraph 49 of Schedule B1 to the Insolvency Act 1986 and Rule 2.33 of the Insolvency Rules 1986

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## **Important Notice**

This statement of proposals has been produced for the sole purpose of advising creditors pursuant to the provisions of the Insolvency Act 1986. 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. Any estimated outcomes for creditors included in these proposals are illustrative only and cannot be relied upon as guidance as to the actual outcomes for creditors.

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# 1 INTERPRETATION

<b><u>Expression</u></b>	<b><u>Meaning</u></b>
"the Company"	Ashpol plc (In Administration)
"the administration"	The appointment of administrators under Schedule B1 of the Act on 28 March 2012
"the administrators", "we", "our", "us"	Kirstie Jane Provan and Mark Robert Fry, both of Begbies Traynor (Central) LLP, 32 Cornhill, London, EC3V 3BT
"the Act"	The Insolvency Act 1986 (as amended)
"the Rules"	The Insolvency Rules 1986 (as amended)
"secured creditor" and "unsecured creditor"	Secured creditor, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and "unsecured creditor" is to be read accordingly (Section 248(1)(a) of the Act)
"security"	<ul style="list-style-type: none"><li>(i) In relation to England and Wales, any mortgage, charge, lien or other security (Section 248(1)(b)(i) of the Act), and</li><li>(ii) In relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off) (Section 248(1)(b)(ii) of the Act)</li></ul>
"preferential creditor"	Any creditor of the Company whose claim is preferential within Sections 386, 387 and Schedule 6 to the Act
"Stockholder"	The registered holders of the Company's stock (10 75% First Mortgage Debenture Stock 2025)
"Portfolio Buyers"	<ul style="list-style-type: none"><li>(i) Tiga Properties Limited, a company incorporated in Gibraltar with registered number 106829,</li><li>(ii) Huddersfield Properties Limited, a company incorporated in Guernsey with registered number 54211,</li><li>(iii) Wellshead Properties Limited, a company incorporated in Guernsey with registered number 54207, and</li><li>(iv) The Trustees of the Rachel Charitable Trust, a charity registered in England and Wales with registered number 638223865</li></ul>

## 2 STATUTORY INFORMATION

Name of Company	Ashpol Plc		
Trading names	Ashpol Plc		
Dates of Incorporation	31 July 1909		
Company registered number	00104394		
Company's registered office	3 <sup>rd</sup> Floor, 5 Wigmore Street, London, W1U 1PB		
Former registered office	N/a		
Trading address	3 <sup>rd</sup> Floor, 5 Wigmore Street, London, W1U 1PB		
Principal business activities	Development & sell real estate		
Directors and details of shares held in the Company (if any)	<u>Name</u>	<u>Shareholding</u>	
	Mr Maurice Moses Benady		Nil
	Trafalgar Officers Limited		Nil
	Christopher George White		Nil
	<u>Shareholding</u>	<u>Shareholding</u>	
Company Secretary and details of the shares held in Company (if any)	Name		
	F & C REIT (Corporate Services) Limited		Nil
Auditors	BDO LLP, 55 Baker Street, London W1U 7EU		
Share capital	73,783,745 - Ordinary 10p Shares 39,569,187 - 5 75% Convertible Cumulative Redeemable Shares and 1,061,600 – 100% Cumulative Preference Shares		
Shareholders	Unknown		

### 3. DETAILS OF APPOINTMENT OF ADMINISTRATORS

Date of appointment	28 March 2012
Date of resignation	N/a
Court	Royal Courts of Justice, Chancery Division, Companies Court
Court Case Number	2756 of 2012
Person(s) making appointment / application	The directors of the Company
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.
EC Regulation on Insolvency Proceedings	The EC Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000) applies to these proceedings which are 'main proceedings' within the meaning of Article 3 of the Regulation.

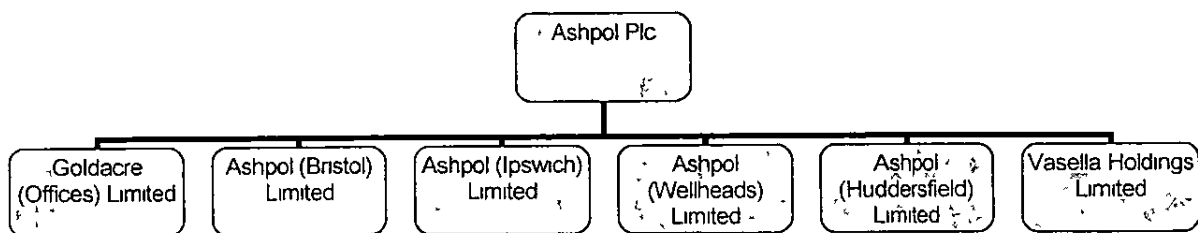
#### STATUTORY PURPOSE OF ADMINISTRATION

Paragraph 3 of Schedule B1 to the Act provides as follows

- "3 (1) The administrator of a company must perform his functions with the objective of-
- (a) rescuing the company as a going concern, or
  - (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
  - (c) realising property in order to make a distribution to one or more secured or preferential creditors
- (2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole
- (3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either-
- (a) that it is not reasonably practicable to achieve that objective, or
  - (b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole
- (4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if-
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
  - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole "

## 4. CIRCUMSTANCES GIVING RISE TO OUR APPOINTMENT

Ashpol Plc is the parent of six property owning companies (collectively the "Group") The ultimate parent of this Group is Trafalgar Overseas Limited ("Trafalgar") The Group structure is detailed below



On 6 December 1985, the Company issued £75 million of 10 75% first mortgage debenture stock which is constituted by a trust deed ("the Trust Deed") (as amended, supplemented, restated and modified from time to time), between, among others, the Company and its Trustee, Law Debenture Trustees Limited (formerly known as Eagle Star Trust Company) All stock has been issued and remains outstanding Accrued interest as at 31 December 2011 (being the last interest payment date under the terms of the Trust Deed) amounted to £12,426,147

On 24 June 2010, the Company, certain subsidiaries of the Company, Trafalgar and the Trustee (acting pursuant to an extraordinary resolution of the Stockholders) entered into a Standstill and Modification Deed ("the Standstill Agreement") Pursuant to the Standstill Agreement the Trustee was not (among other things) entitled to exercise its powers of enforcement under the Trust Deed in respect of certain breaches or potential breaches of the Trust Deed until the end of the Standstill Period, being 31 December 2009 until 30 June 2011

When the Standstill Period expired on 30 June 2011, Trafalgar, as ultimate parent company of the Company, became obliged to make certain payments to the Company The Company then became under an obligation, amongst other things, to make certain outstanding interest payments to the Stockholders

Following expiry of the Standstill Period, protracted negotiations took place between Trafalgar and the Stockholders regarding a sale of the properties held in the Company's six subsidiaries An agreement was eventually reached and is being effected by the Joint Administrators, subject to Stockholder approval No payments were made to the Stockholders after expiry of the Standstill Period

On 28 March 2012, the Company and all six of its subsidiaries entered administration with Kirstie Jane Provan and Mark Robert Fry of Begbies Traynor (Central) LLP ("Begbies Traynor") being appointed Joint Administrators of each Company

## 5. STATEMENT OF AFFAIRS

At present and due to the early issuance of the Joint Administrators' proposals, the directors have not yet provided their Statement of Affairs in respect of the Company

I attach as appendix 3 an updated balance sheet provided by the Company The Joint Administrators are unable to accept any responsibility on the accuracy of this information

## 6. THE ADMINISTRATION PERIOD

### ***Receipts and Payments***

There have been no receipts or payments made during the period

### ***North West side of London Road, Harlow, Essex ("the Harlow Site") and Nortel Administration***

One of the properties charged in favour of the Stockholders, the Harlow Site, is legally owned by Goldacre (Offices) Limited, a subsidiary of the Company

An independent desktop valuation of each of the Harlow Site and the Group's other five properties was carried out by DTZ Debenham Tie Leung Limited ("DTZ") on 27 July 2011, and updated on 29 November 2011. The Harlow Site was valued at £7,000,000 and considered to have a material importance to the aggregate value of the properties which are charged in favour of the Trustee

The main lessee of the Harlow Site, Nortel Networks UK, is in administration and has defaulted on two leases, both dated 5 July 2002. DTZ have advised that the majority of the buildings on the Harlow Site appear to have reached the end of their economic life and that there are only three buildings on the Harlow Site which are capable of continued occupation in their entirety without major capital expenditure (and two of those would require a degree of internal refurbishment)

One of the primary purposes of the Standstill Agreement was to provide a specified period of time for the Company to seek to achieve a solution for the Harlow Site. We are informed by the ABI Committee, which represents the majority of the Stockholders, that it has reached agreement with the Company that, in the light of the above factors affecting the Harlow Site, there are considerable merits in seeking to maximise the return for Stockholders from the sale of the Harlow Site and the other properties as soon as possible

### ***Sale Agreement of the Group's property portfolio including the Harlow Site***

The Company's loan stock is secured against properties legally owned by its subsidiaries, as detailed below

- Goldacre (Offices) Limited - North West side of London Road, Harlow, Essex
- Ashpol (Bristol) Limited - Union Business Park, Bristol
- Ashpol (Ipswich) Limited - Celsius House, Ipswich
- Ashpol (Wellheads) Limited - Wellheads Industrial Estate Aberdeen
- Ashpol (Huddersfield) Limited - Folly Hall, Huddersfield
- Vasella Holdings Limited - City Gate, Nottingham

Collectively, with the exception of the Harlow Site, these properties are referred to as the "Portfolio Properties"

On 28 March 2012, following the appointment of the Joint Administrators, two separate conditional property sale agreements, the Harlow Sale Agreement and the Portfolio Properties Sale Agreement, were entered into in relation to the proposed sale of the Harlow Site to Harlow Properties Limited and the proposed sale of the Portfolio Properties to the Portfolio Buyers respectively

An independent valuation of the Portfolio Properties was carried out by DTZ on 27 July 2011, and updated on 29 November 2011, and valued the Portfolio Properties at £29,315,000. Together with the Harlow Site's valuation of £7,000,000, the aggregate valuation of the Group's properties was £36,315,000



It should be noted that that neither DTZ nor the Joint Administrators have marketed the Harlow Site or Portfolio Properties. DTZ's valuation was performed on a "market value" basis, which means "the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion"

The consideration which is payable by Harlow Properties Limited and the Portfolio Properties' Buyers under the agreements is £50 million in aggregate. Accordingly, the aggregate consideration which is payable under the Harlow Sale Agreement and the Portfolio Properties Sale Agreement represents a premium of 38% above the aggregate valuation of the Harlow Site and Portfolio Properties as set out in the DTZ Valuation.

We summarise the key terms of the Portfolio Properties Sale Agreement and the Harlow Sale Agreement as follows

1) Summary of key terms of the Portfolio Properties Sale Agreement

The consideration payable by the Portfolio Buyers for the purchase of the Portfolio Properties is £30 million in aggregate.

On exchange of the Company's Portfolio Properties Sale Agreement, a deposit of £6 million was paid by the Portfolio Buyers to the Joint Administrators' Solicitors, Clyde & Co LLP ("Clyde & Co"), in respect of the Portfolio Sale.

The completion of the Portfolio Sale Agreement is conditional upon

- (i) the consent of Stockholders being obtained pursuant to an Extraordinary Resolution being presented at the meeting of Stockholders on 2 May 2012,
- (ii) the Trustee executing and delivering the Portfolio Deed of Release, a Land Registry Form DS1 and a discharge of standard security in respect of each of the Portfolio Properties (as applicable), and
- (iii) the Joint Administrators' Solicitors executing and delivering Scottish Land Registry Forms 2 and 4 in respect of the Portfolio Property owned by Ashpol (Wellheads) Limited (in administration) and situated in Aberdeen, Scotland.

Subject to satisfaction of these conditions, completion of the Portfolio Properties Sale is due to take place by 4 May 2012.

2) Summary of the key terms of the Harlow Sale Agreement

The consideration payable by the Harlow Buyer for the purchase of the Harlow Site is £20 million.

On exchange of the Harlow Sale Agreement, a deposit of £4 million was paid by the Harlow Buyer to the Joint Administrators' Solicitors as stakeholder in respect of the Harlow Sale.

Completion of the Harlow Sale under the Harlow Sale Agreement is conditional on

- (i) the consent of Stockholders being obtained pursuant to an Extraordinary Resolution being presented at the meeting of Stockholders on 2 May 2012,
- (ii) the Trustee executing and delivering an undated Harlow Deed of Release and a Land Registry Form DS1 in respect of the Harlow Site.

Subject to satisfaction of these conditions, completion of the Harlow Sale is due to take place by 4 May 2012, an extended completion date of 4 June 2012 has been pre-agreed in the event that the sale is unable to complete by 4 May 2012

If completion of the Harlow Sale does not take place by 4 May 2012, then a further deposit of £2 million is payable by the Harlow Buyer to the Joint Administrators Solicitors on that date to secure the extended completion date

### 3) The Nortel Claims

As stated above, Nortel Networks UK have defaulted on two leases in relation to the Harlow Site. Consequently, Goldacre has a claim in the administration of Nortel Networks UK and Nortel Networks ("the Nortel Claims")

Pursuant to the terms of the Harlow Sale Agreement, the Harlow Buyer must, for a period of 12 months following the date of the Harlow Sale Agreement, maintain the Nortel Claims on Goldacre's behalf, and use reasonable endeavours to obtain a surrender of the Nortel Leases. Any payment of arrears or surrender premium shall be accepted on behalf of Goldacre and an equivalent amount will be paid to Goldacre within 10 working days of receipt of such funds (less any reasonable costs and expenses and proper payments of tax incurred by the Harlow Buyer in relation to the process). Goldacre will remit such funds received to the Trustee, to hold on trust for the Stockholders.

There is currently no certainty whether any amounts will be received by the Harlow Buyer in respect of the Nortel Claims or the Nortel Leases and therefore there can be no certainty that there will be any such amount payable by the Harlow Buyer pursuant to the Harlow Sale Agreement, nor can there be any certainty as to a likely time of receipt of any such payment. In any event, the Harlow Buyer is not obliged to complete any surrender of the Nortel Leases until the later of (i) one month after completion and (ii) the day after the next rent payment date following completion.

It should also be noted that the prospects of success of the Nortel Claims or any distribution from any administrator or liquidator of Nortel Networks UK and of the surrender premium or arrears in respect of the Nortel Leases becoming payable are unclear and, even if successful, it is unclear what dividend, surrender premium, distribution or arrears (if any) will be payable in respect of the Nortel Claims, as Nortel Networks UK is in administration and is currently subject to legal proceedings involving the Pensions Regulator.

As at 27 March 2012, a total of £80,124,105.06 was owed to Goldacre by Nortel Networks UK.

### 4) Deed of Subordination

If the Stockholders approve the resolutions sought, subject to any and all rights of set off whether statutory or otherwise, Trafalgar, together with its directors and any affiliates of Trafalgar (other than the Harlow Buyer, the Portfolio Properties Buyers and any affiliates subject to insolvency proceedings), will agree (amongst other things) via the Deed of Subordination that if it recovers or receives a payment or distribution from the Company or any of the Charging Subsidiaries, any proceeds from such a recovery, payment or distribution shall be held on trust for the Trustee and paid within three business days of demand to the Trustee to be applied in accordance with the terms of the Trust Deed.

If monies are recovered from third parties or other sources outside the Trafalgar group (including the Nortel Claims), any proceeds from such a recovery would be distributable to the unsecured creditors of the Company which would include the Stockholders. However, there is no certainty that any such amounts will be recovered nor is it possible to quantify the proceeds that might be distributed to Stockholders pursuant to such a recovery.

It should be noted that the Association of British Insurers Committee ("ABI") has examined the proposed sale agreements and finds them acceptable. The members of the ABI Committee (who represent £48,839,800 in nominal amount of the issued Stock, which is equivalent to approximately 65.1 percent of the outstanding nominal value of the Stock) have considered the proposals addressed to the Stockholders (and not to be confused with these Joint Administrators' proposals) and intend to lodge their proxies in favour of the extraordinary resolution in respect of their holdings at the Stockholder meeting on 2 May 2012. The ABI Committee is recommending that other Stockholders consider a similar course of action at the meeting.

## 7 ESTIMATED OUTCOME FOR CREDITORS

The sums owed to creditors at the date of appointment are believed to be as follows:

### **Secured creditors**

#### *Law Debenture Trustees Limited*

On 6 December 1985, the Company issued £75 million of 10.75% first mortgage debenture stock which is constituted by the Trust Deed between, among others, the Company and its Trustee, Law Debenture Trustees Limited (formerly known as Eagle Star Trust Company).

It is proposed that following the completion of the Sales and the release of both the Portfolio Properties and the Harlow Site, the proceeds receivable by the relevant sellers from the Sales will be paid to the Trustee to hold on trust for the Stockholders and shall thereafter be applied by the Trustee as an initial and partial repayment for the Stock in accordance with the provisions of the Trust Deed.

Assuming that the Sales complete on the same date and no further amount is payable pursuant to the Harlow Sale Agreement, it is anticipated that this will result in a payment of an amount of approximately £0.66 (less any applicable costs and expenses of the Trustee) for each £1.00 in nominal value of the Stock. If the Sales complete by 4 May 2012, the Trustee shall make such partial repayment to the Stockholders on or about 4 June 2012.

To the extent that the aggregate amount paid to Stockholders upon completion of the Sales (inclusive of any additional amount payable in respect of the Nortel Claims pursuant to the Harlow Sale Agreement) is less than the total amount due to Stockholders from the Company, the Stockholders will have a claim as unsecured creditors for the outstanding amounts owed to them from the Group.

Following the Sales, the Group will not have any material assets and, save to the extent that there are other as yet unidentified material assets which are subject to the Trust Deed, the Stockholders shall (subject to the terms of the Deed of Subordination) rank *par passu* with other unsecured creditors in respect of any outstanding amounts owed by the Company to Stockholders.

### **Preferential creditors**

We are not aware that the Company had any employees and therefore, there are no known preferential creditors.

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

Section 176A of the Act provides that, where the company has created a floating charge on or after 15 September 2003, the 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 debts. *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. The *prescribed part of the Company's net property* is calculated by reference to a sliding scale as follows

- ☐ 50% of the first £10,000 of *net property*;
- ☐ 20% of *net property* thereafter;
- ☐ Up to a maximum amount to be made available of £600,000

An administrator will not be required to set aside the *prescribed part of net property* if

- ☐ the *net property* is less than £10,000 and the administrator thinks that the cost of distributing the *prescribed part* would be disproportionate to the benefit, (Section 176A(3)) or
- ☐ the administrator applies to the court for an order on the grounds that the cost of distributing the *prescribed part* would be disproportionate to the benefit and the court orders that the provision shall not apply (Section 176A(5))

To the best of our knowledge and belief, there are no unsatisfied floating charges created or registered on or after 15 September 2003 and, consequently, there is no net property as defined in Section 176A(6) of the Act and, therefore, no prescribed part of net property is available for distribution to the unsecured creditors

#### **Unsecured creditors**

As stated above, should there be a shortfall to the Stockholders upon completion of the Sales (inclusive of any additional amount payable in respect of the Nortel Claims pursuant to the Harlow Sale Agreement), the Stockholders will have a claim as unsecured creditors for the outstanding amounts owed to them from the Company and the Charging Subsidiaries. Based upon present information, this seems likely. Consequently, we are unable to determine the quantum of unsecured claims against the Company at this juncture.

The prospect of a distribution to unsecured creditors is wholly dependent upon the level of realisations achieved from any recoveries made through the Company's outstanding book debts and the Nortel Claims, subject to the prior claims of the Trustee under the terms of the Trust Deed. The Joint Administrators' investigations into prior acts and dealings of the Company may result in funds for unsecured creditors but this is uncertain at this time.

Creditors should note that they might be eligible to obtain VAT bad debt relief on their debt six months after the date of supply or payment date if later, providing they have written the debt off in their accounts. The procedure does not involve the Joint Administrators and claims should be made directly to HM Revenue and Customs.

## **8. OUR PROPOSALS FOR ACHIEVING THE PURPOSE OF THE ADMINISTRATION**

### ***Purpose of the Administration***

We are required to set out our proposals for achieving the purpose of the administration which in this context means one of the objectives specified in paragraph 3 of Schedule B1 to the Act as set out at section 3 of this report above.

For the reasons set out in this report, we presently consider that it is not reasonably practicable to achieve the objectives specified in sub-paragraph 3(1)(a), and consequently the most appropriate objective to pursue

in this case is that specified in sub-paragraph 3(1)(b), namely achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration)

### Details of proposals

In order that the purpose of the administration may be fully achieved, we propose to remain in office as Joint Administrators in order to conclude the realisation of the Company's business. The principal matters to deal with in this respect are

- The Joint Administrators proceed with the sale completion of the Group's Property Portfolio
- The Joint Administrators will carry out an investigation of the conduct of the directors prior to the Company entering into administration and make a submission to the Department of Business, Innovation & Skills
- The Joint Administrators investigate potential transactions made to related parties of the Company in the period prior to the administration. If the findings of these investigations are considered to have merit for the benefit of the Company's creditors, the Joint Administrators propose to pursue these claims for recovery

The Joint Administrators also propose that

- The Joint Administrators may make a distribution to the Trustee or preferential creditors (if any) in accordance with the requirements of the Act and, if the Joint Administrators deem it appropriate, may make an application to the Court for payments to unsecured creditors
- That the Joint Administrators be discharged from liability under Paragraph 98 of Schedule B1 to the Act on ceasing to be Joint Administrators of the Company
- These proposals shall be subject to such modifications or conditions as the Court may approve or impose, or any modification approved by creditors
- That, if no Creditors' Committee is formed, fees be fixed in accordance with Rule 2.106 of the Rules by reference to time properly given by the Joint Administrators and their staff in attending to matters arising during the Administration and that they may draw their remuneration on account as and when funds permit. (Further detail is outlined later in this respect.)
- That the Joint Administrators be authorised to draw disbursements in accordance with the explanatory note on the subject, which accompanies this report
- The Joint Administrators exit the Administration by way of either dissolution or a Creditors' Voluntary Liquidation at such time as the Joint Administrators consider that one or more of the purposes of the administration as set out in paragraph 3 above have been achieved. If the exit route is by way of a Creditors' Voluntary Liquidation, it is proposed that Kirstie Jane Provan and Mark Robert Fry be appointed as Joint Liquidators of the Company
- Should the Company later enter into Creditors' Voluntary Liquidation that the Joint Liquidators perform their duties jointly and severally
- Should the Company later enter into Creditors' Voluntary Liquidation that the Joint Liquidators' fees be based on time costs
- That, if necessary, the Joint Administrators may apply to creditors or to Court for an extension of the Administration

### ***Exit from Administration***

On present information it is uncertain whether the Company will have sufficient property to enable a distribution to be made to unsecured creditors. Consequently, as soon as we are satisfied that we have fully discharged our duties as Joint Administrators and that the purpose of the administration has been fully achieved, we propose to implement the provisions of Paragraph 84 of Schedule B1 to the Act. Under these provisions, on the registration of a notice sent by us to the Registrar of Companies, our appointment as Joint Administrators ceases to have effect, and at the end of three months the Company will automatically be dissolved.

Where an administrator sends such a notice of dissolution to the Registrar of Companies, he must also file a copy of the notice with the court and send a copy to each creditor of the Company, and on application by any interested party the court may suspend or disapply the automatic dissolution of the company.

However, it may transpire that it is not possible to finalise the administration as envisaged within one year of the date of our appointment. Yet Paragraph 76 of Schedule B1 to the Act 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, 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 six months. It may therefore become necessary at some future time for us to seek creditor consent to extending the period of the administration for up to a further six months following the anniversary of our appointment in order to ensure that the objective of the administration can be fully achieved.

Joint Administrators do not have a general power to make a distribution to unsecured creditors and may only do so if the court gives permission. It is considered that the court will only grant such permission in exceptional circumstances where the normal course for making distributions to unsecured creditors in a voluntary liquidation is inappropriate. Additionally there may be matters for enquiry concerning a company's affairs which are not within the scope of an administrator's powers and which can only be properly dealt with by a liquidator. As is noted above, the Joint Administrators intend to make a court application in the event that there are funds with which to pay a dividend to unsecured creditors as we consider this will be the most cost effective route and will not require the Company go to into liquidation, unless matters come to light that require the powers of a liquidator to pursue. If the court refuses to make an order confirming that the Joint Administrators may make a distribution to unsecured creditors in the administration, then we intend to implement the provisions of Paragraph 83 of Schedule B1 to the Act whereby on the registration of a notice sent to the Registrar of Companies, our appointment as Joint Administrators shall cease to have effect and the Company will automatically be placed into creditors' voluntary liquidation. Paragraph 83(7) provides:

The Joint Liquidators for the purpose of the winding up shall be-

- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
- (b) if no person is nominated under paragraph (a), the administrator

The Joint Administrators confirm that as part of their proposals they propose that they act as Joint Liquidators in any subsequent winding up of the Company. Creditors may nominate a different person as the proposed liquidator provided that the nomination is made after the receipt of the proposals and before the proposals are approved. The appointment of a person nominated as liquidator takes effect by the creditors approval, with or without modification, of the Joint Administrators' proposals.

It is proposed that for the purpose of the winding up, any act required or authorised under any enactment to be done by the Joint Liquidators is to be done by all or any one or more of the persons for the time being holding office.

## 9. REMUNERATION AND DISBURSEMENTS

### *Pre-administration costs*

In the period before the Company entered administration, on 6 December 2010, Begbies Traynor (Central) LLP ("Begbies Traynor") was engaged to undertake an Independent Business Review of the Company, with a duty of care to its directors. Fees totalling £15,000 plus VAT were paid by the Company in respect of this review.

Negotiations between the Group and the Trustee for the disposal of the Group's Property Portfolio continued during 2011, following the expiry of the Standstill Period. Begbies Traynor continued to be party to these negotiations.

In the weeks prior to administration, Begbies Traynor have liaised with their appointed solicitors, Clyde & Co, in respect of the preparation of the sale documentation for the disposal of the Group's Property Portfolio. Begbies Traynor have also been liaising with the ABI Committee and Trafalgar in relation to the negotiation of the sale. This work was necessitated to ensure that a higher return to the Stockholders was achieved by the sale of the Group's Property Portfolio.

The pre-administration time costs incurred in relation to this matter total £130,130. At present, £95,000 plus VAT has been paid in settlement of these costs. The Joint Administrators are seeking that the balance of these costs (£35,130) be paid as an expense of the administration.

In addition, the pre-administration disbursements for this matter totalled £75,896.85 plus VAT. This amount is comprised of Clyde & Co's fees and has been settled in full by the Company.

Clyde & Co have unbilled pre-administration time costs of £33,990.50 plus VAT and unbilled disbursements of £40.45 plus VAT. In addition, HBJ Gateley (solicitors specialising in Scottish property law) have outstanding time costs of £1,320 plus VAT. The Joint Administrators are seeking that these costs will be paid as an expense of the administration.

### *Remuneration*

We propose that the basis of our remuneration be fixed under Rule 2.106 of the Rules by reference to the time properly given by us (as administrators) and the various grades of our staff calculated at the prevailing hourly rates of Begbies Traynor in attending to matters arising in the administration.

It is for the creditors' committee to approve the basis of our remuneration under Rule 2.106 of the Rules, but if no such committee is appointed it will be for the creditors to determine.

Appendix 2 sets out the Joint Administrators' firm's hourly charge out rates and the time that they and their staff have spent in attending to matters arising in the administration.

### *Disbursements*

We propose that disbursements, including disbursements for services provided by our firm (defined as Category 2 disbursements in Statement of Insolvency Practice 9) be charged in accordance with our firm's policy, details of which are set out at Appendix 2. These disbursements will be identified by us and subject to the approval of those responsible for determining the basis of our remuneration.

#### ***Expenditure incurred to date***

#### ***Solicitors***

Clyde & Co are acting on behalf of the Joint Administrators in relation to the sale of the Group's Properties. They have been instructed on a time cost basis. To date, no fees have been paid during the administration.

## **10. OTHER INFORMATION TO ASSIST CREDITORS**

#### **Report on the conduct of directors**

We have a statutory duty to investigate the conduct of the directors and any person we consider to be or have been a shadow or de facto director during the period of three years before the date of our appointment, in relation to their management of the affairs of the Company and the causes of its failure. We are obliged to make confidential submissions to the Department for Business, Innovation and Skills.

As administrators of the Company we are required by best practice guidance to make enquires of creditors as to whether they wish to raise any concerns regarding the way in which the Company's business was conducted prior to the commencement of the administration, or wish to bring to our attention any potential recoveries for the estate. If you would like to bring any such issues to our attention please do so in writing to the address detailed at Section 3 of this report. This request for information is standard practice and does not imply any criticism or cause of action against any person concerned in the management of the Company's affairs.

#### **Investigations carried out to date**

We have undertaken an initial assessment of possible actions in relation to the manner in which the business was conducted prior to the administration of the Company and potential recoveries for the estate in this respect. Due to the sensitivity of these investigations, we are unable to provide any further information at this juncture.

## **11. CONCLUSION**

Pursuant to paragraph 51 of Schedule B1 to the Act, our proposals will be considered at an initial meeting of the Company's creditors summoned in accordance with the Notice of meeting (Form 2.20B) accompanying this document.

Subject to the approval of our proposals at the initial creditors' meeting we will report on progress again approximately six months after the commencement of the administration, or at the conclusion of the administration, whichever is the sooner.



**KJ Provan**  
Joint Administrator

Date 30 March 2012



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## **ACCOUNT OF RECEIPTS AND PAYMENTS**

**28 March 2012 to 30 March 2012**

**Ashpol plc**  
**(In Administration)**

**Joint Administrators' Abstract Of Receipts And Payments**  
**To 30 March 2012**

RECEIPTS	Total (£)
	<hr/>
	0 00
	<hr/>
PAYMENTS	
	<hr/>
	0 00
Balances in Hand	0 00
	<hr/>
	0 00
	<hr/>

Note - VAT is not recoverable

## TIME COSTS AND EXPENSES

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Remuneration drawn will be notified to any creditors' committee appointed under paragraph 57 of Schedule B1 to the Act. In the absence of a creditors' committee, details of time incurred and disbursements drawn will be reported to creditors in accordance with *Statement of Insolvency Practice 9* issued by the Joint Insolvency Committee on behalf of our licensing bodies.

Total time spent to 29 March 2012 on this assignment amounts to 16.5 hours at an average composite rate of £365.12 per hour resulting in total time costs to 30 March 2012 of £6,024.50.

To assist creditors in determining this matter, the following further information on time costs and expenses are set out:

- ☐ Begbies Traynor (Central) LLP's policy for re-charging expenses
- ☐ Begbies Traynor (Central) LLP's charge-out rates
- ☐ Narrative summary of time costs incurred
- ☐ Table of time spent and charge-out value

In addition, a copy of *A Creditors' Guide to Administrators' Fees* is available on request. Alternatively, the guide can be downloaded from our website [www.begbies-traynor.com](http://www.begbies-traynor.com) via the "Corporate Recovery and Insolvency" link in the "Quick Links" box on the left hand side of the homepage. From there please follow the "Creditor" link which will take you to the appropriate page where the Guide can be found at the end.

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## **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 guidance<sup>1</sup> 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 guidance<sup>2</sup> 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 HOLDERS' 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):

- Internal meeting room usage for the purpose of statutory meetings of creditors is charged at the rate of £150 per meeting.
- Car mileage is charged at the rate of 45 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.

<sup>1</sup> Statement of Insolvency Practice 9 (SIP 9) – Remuneration of insolvency office holders in England & Wales

<sup>2</sup> Ibid 1

(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

#### **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 London office as at the date of this report are as follows

<b>Grade of staff</b>	<b>£</b>
Partner	495
Director	395
Senior Manager	365
Manager	315
Assistant Manager	270
Senior Administrator	235
Administrator	185
Trainee Administrator	160
Support	160

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

## SUMMARY OF OFFICE HOLDERS' TIME COSTS

CASE NAME	Ashpol plc
CASE TYPE	Administration
OFFICE HOLDERS	Mark Robert Fry and Kirstie Jane Provan
DATE OF APPOINTMENT	28 March 2012

### 1 CASE OVERVIEW

- 1 1 This overview and the time costs analysis attached is intended to provide sufficient information to enable the body responsible for the approval of the office holders' fees to consider the level of those fees in the context of the case

1 2 **Complexity of the case**

The Company's loan stock is secured against six properties legally owned by its subsidiaries, as detailed in the report. Matters have proved complicated due to the ongoing negotiations with the Trustee on behalf of its Stockholders, for the sale of the Property Portfolios

1 3 **Exceptional responsibilities**

Due to the nature of the assignment it has been necessary for the Joint Administrators to instruct solicitors, Clyde & Co, to assist with the sale agreements of the Group's Property Portfolio

1 4 **The office holders' effectiveness**

On 28 March 2012, following the appointment of the Joint Administrators, two separate conditional property sale agreements, the Harlow Sale Agreement and the Portfolio Properties Sale Agreement, were entered into in relation to the proposed sale of the Harlow Site to Harlow Properties Limited and the proposed sale of the Portfolio Properties to the Portfolio Buyers respectively

The consideration which is payable by Harlow Properties Limited and the Portfolio Properties' Buyers under the agreements is £50 million in aggregate. Accordingly, the aggregate consideration which is payable under the Harlow Sale Agreement and the Portfolio Properties Sale Agreement represents a premium of 38% above the aggregate valuation of the Harlow Site and Portfolio Properties as set out in a valuation undertaken prior to the administration by DTZ Debenham Tie Leung Limited

1 5 **Nature and value of property dealt with by the office holders**

The Company's loan stock is secured against properties legally owned by its subsidiaries, as detailed below

- Goldacre (Offices) Limited - North West side of London Road, Harlow, Essex
- Ashpol (Bristol) Limited - Union Business Park, Bristol
- Ashpol (Ipswich) Limited - Celsius House, Ipswich
- Ashpol (Wellheads) Limited - Wellheads Industrial Estate Aberdeen
- Ashpol (Huddersfield) Limited - Folly Hall, Huddersfield
- Vasella Holdings Limited - City Gate, Nottingham

Subject to the approval of the Company's Stockholders, these properties are to be disposed of for an aggregate consideration of £50 million, as detailed within the report

There is also a claim against Nortel Networks UK for £12,092,278 Pursuant to the terms of the Harlow Sale Agreement, the Harlow Buyer must, for a period of 12 months following the date of the Harlow Sale Agreement, maintain the Nortel Claims on Goldacre's behalf, and use reasonable endeavours to obtain a surrender of the Nortel Leases Any payment of arrears or surrender premium shall be accepted on behalf of Goldacre and an equivalent amount will be paid to Goldacre within 10 working days of receipt of such funds (less any reasonable costs and expenses and proper payments of tax incurred by the Harlow Buyer in relation to the process) Goldacre will pay on such funds received to the Trustee to hold on trust for the Stockholders

## 16 Anticipated return to creditors

### ***Secured creditors***

#### ***Law Debenture Trustees Limited***

On 6 December 1985, the Company issued £75 million of 10 75% first mortgage debenture stock which is constituted by the Trust Deed between, among others, the Company and its Trustee, Law Debenture Trustees Limited (formerly known as Eagle Star Trust Company)

It is proposed that following the completion of the Sales and the release of both the Portfolio Properties and the Harlow Site, the proceeds receivable by the relevant sellers from the Sales will be paid to the Trustee to hold on trust for the Stockholders and shall thereafter be applied by the Trustee as an initial and partial repayment for the Stock in accordance with the provisions of the Trust Deed

Assuming that the Sales complete on the same date, it is anticipated that this will result in a payment of an amount of approximately £0 66 (less any applicable costs and expenses of the Trustee) for each £1 00 in nominal value of the Stock If the Sales complete on 4 May 2012, the Trustee shall make such partial repayment to the Stockholders on or about 4 June 2012

To the extent that the aggregate amount paid to Stockholders upon completion of the Sales (inclusive of any additional amount payable in respect of the Nortel Claims pursuant to the Harlow Sale Agreement) is less than the total amount due to Stockholders from the Company, the Stockholders will have a claim as unsecured creditors for the outstanding amounts owed to them from the Group

Following the Sales, the Group will not have any material assets and, save to the extent that there are other as yet unidentified material assets which are subject to the Trust Deed, the Stockholders shall (subject to the terms of the Deed of Subordination) rank *par passu* with other unsecured creditors in respect of any outstanding amounts owed by the Company to Stockholders

### ***Preferential creditors***

We are not aware that the Company had any employees and therefore, there are no known preferential creditors



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

To the best of our knowledge and belief, there are no unsatisfied floating charges created or registered on or after 15 September 2003 and, consequently, there is no net property as defined in Section 176A(6) of the Act and, therefore, no prescribed part of net property is available for distribution to the unsecured creditors

**Unsecured creditors**

As stated above, should there be a shortfall to the Stockholders upon completion of the Sales (inclusive of any additional amount payable in respect of the Nortel Claims pursuant to the Harlow Sale Agreement), the Company's Stockholders will have an unsecured claim for the outstanding amounts owed to them from the Company and the Charging Subsidiaries. Based upon present information, this seems likely. Consequently, we are unable to determine the quantum of unsecured claims against the Company at this juncture

The Joint Administrators are currently uncertain as to whether there will be any funds available to make a distribution to unsecured creditors

**1 7 Time costs analysis**

An analysis of time costs incurred between 28 March 2012 and 29 March 2012 prepared in accordance with Statement of Insolvency Practice 9 is attached showing the number of hours spent by each grade of staff on the different types of work involved in the case, and giving the average hourly rate charged for each work type

**1 8 The views of the creditors**

The Joint Administrators have notified all creditors and Stockholders of the administration. A meeting of creditors has been convened for 2 May 2012, following an EGM of the Company's Stockholders

**1 9 Approval of fees**

The Joint Administrators propose that the basis of our remuneration be fixed under Rule 2.106 of the Rules by reference to the time properly given by us (as administrators) and the various grades of our staff calculated at the prevailing hourly rates of Begbies Traynor in attending to matters arising in the administration. These proposals will be considered at the upcoming creditors meeting on 2 May 2012

**1 10 Approval of Expenses and Disbursements**

The Joint Administrators propose that disbursements, including disbursements for services provided by their firm (defined as Category 2 disbursements in Statement of Insolvency Practice 9) be charged in accordance with our firm's policy. This will also be considered at the creditors meeting on 2 May 2012

**1 11 Other professionals employed & their costs**

The Joint Administrator's Solicitors are acting on behalf of the Joint Administrators in relation to the sale of the Group's Properties. They have been instructed on a time cost basis. To date, no fees have been paid during the administration

### **3 SUMMARY OF WORK CARRIED OUT SINCE OUR LAST REPORT**

The following work has been carried out during the administration to date

- Internal case strategy meetings,
- Preparation of the Joint Administrators' proposals,
- Finalisation of the circular to be issued to the Company's Stockholders,
- Entering two separate conditional property sale agreements in relation to the proposed sale of the Harlow Site to Harlow Properties Limited and the proposed sale of the Portfolio Properties to the Portfolio Buyers respectively
- Conducting initial review into the Company's pre-administration book debts

Ashpol Plc - Assets and Liabilities as at 24/03/12 = DRAFT

Debtors - Ashpol Plc

Bank	22,715
Clyde Escrow (rent)	793,900
HMRC VAT Qtr End Feb 12	93,000
Intercompany debtors	56,665,657
	<u>57,575,271</u>

Creditors - Ashpol Plc

Debenture	75,000,000
Debenture - interest accrued	13,769,897
Finch Limited	2,015,532
Lava Limited	6,690,989
HMRC Enquiries - Ashpol Plc - Per March 11 Accounts	837,000
HMRC Enquiries - Ashpol Plc - Potential liabilities arising from HMRC enquiries	2,163,000

HMRC - Late VAT QE 11/11

	2,019
Equiniti - Registrar Fee	3,008
Intercompany creditors	399,237
Total Creditors	<u>100,880,681</u>