

# 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

00628491

Name of Company

Killby & Gayford Limited

**We**

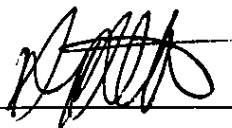
Danny Dartnall, Kings Wharf, 20-30 Kings Road, Reading, Berkshire RG1 3EX

Shay Bannon, Kings Wharf, 20-30 Kings Road, Reading, Berkshire RG1 3EX

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

The Progress Report covers the period from 24/04/2013 to 23/04/2014

Signed



Date

30/4/14

BDO LLP  
Kings Wharf  
20-30 Kings Road  
Reading  
Berkshire RG1 3EX

Ref 00185866/DAD/JJB/TCT/MKW/AM/L

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COMPANIES HOUSE

**Killby & Gayford Limited**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 24/04/2013 To 23/04/2014
	<b>ASSET REALISATIONS</b>	
262,862 50	Book Debts	197,340 01
	Mesothelioma	161,015 26
	VAT Refund	17,867 54
	Admin VAT Refund	64 57
	Bank Interest Gross	4,542 52
	Sundry Refunds	1,003 72
1,166,608 49	Transfer From Admin	1,166,608 49
		<u>1,548,442 11</u>
	<b>COST OF REALISATIONS</b>	
	Joint Administrators' Fees	125,000 00
	Joint Administrators' Disbs	2 00
	Agents/Valuers Fees (1)	42,368 70
	Agents (Mesothelioma)	24,152 28
	Corporation Tax	730 74
	VAT Paid	7,546 84
	Storage Costs	2,005 19
	Insurance of Assets	3,445 00
	Bank Charges	60 00
		<u>(205,310 75)</u>
	<b>PREFERENTIAL CREDITORS</b>	
	Preferential E P A	202,918 90
	Preferential Wages	23,592 50
	Preferential Hol Pay	49,113 36
		<u>(275,624 76)</u>
	<b>FLOATING CHARGE CREDS</b>	
	Floating Charge (1)	565,907 77
		<u>(565,907 77)</u>
<b>1,429,470.99</b>		<b>501,598.83</b>
	<b>REPRESENTED BY</b>	
	Vat Input	35,680 97
	Bank 2 Current	492,668 75
	Vat Output	(26,750 89)
		<u>501,598.83</u>



Danny Dartnaill  
Joint Liquidator



30 April 2014

Our Ref BR/DD/MW/00185866/A6

Please ask for  
Martin Woodhall  
0118 925 4436

Dear Sirs

**Killby & Gayford Limited - In Creditors' Voluntary Liquidation ("the Company")**  
**Registered Address: Kings Wharf, 20-30 Kings Road, Reading, RG1 3EX**  
**Registered number: 00628491**  
**Joint Liquidators: Danny Dartnaill and Shay Bannon**  
**Joint Liquidators' Address: BDO LLP, Kings Wharf, 20-30 Kings Road, Reading, RG1 3EX**  
**Date of Appointment: 24 April 2013**

I hereby provide an annual progress report in accordance with Section 104A of the Insolvency Act 1986 and Rule 4.49C of the Insolvency Rules 1986.

#### **RECEIPTS & PAYMENTS**

I enclose a summary of my Receipts and Payments for the first year of the Liquidation showing a balance in hand of £492,669.

The Receipts and Payments shown are largely self-explanatory, although I would comment specifically on the following

#### **Transfer from the Administration**

A cash balance of £1,166,608 was transferred from the Administration on 24 April 2013

#### **Book Debts & Retentions**

Independent agents, Driver Group, were instructed to assist with the book debt collection process

Collections during the Liquidation total £197,340, with collections since the commencement of the Administration therefore totalling £2,232,252.

Further collections are anticipated to be between £45,000 and £220,000. Due to the contractual nature of the debts it is likely to take a further 6-12 months to conclude the collection process.

#### **Inter-company Debtors**

There are debts due from group companies totalling £21,392,349.

There will be no recoveries from the insolvencies of Killby & Gayford Group Limited and Killby & Gayford (Consolidation) Limited in respect of debts of £8,143,151 and £11,070,457, respectively

Recoveries from the Liquidation of Killby & Gayford (Holdings) Limited are anticipated to be in the region of £2,000.

### **Mesothelioma Claims**

Following a review of the Company's files dating back to the 1970s it became apparent that the Company had made historic payments to employees in respect of industrial claims including mesothelioma.

A recent decision in the UK Supreme Court held that companies with qualifying insurance policies may recover 95% of payments made in respect of mesothelioma claims from the Financial Services Compensation Scheme ("FSCS")

The Company had a qualifying insurance policy and as a result I was successful in recovering £161,015 from the FSCS for payments made by the Company in respect of mesothelioma claims

### **Costs of the Liquidation**

Independent agents, Driver Group, were retained to assist with the book debt collection process and are being paid by reference to the book debt collections in which they have assisted. Driver Group have received a further payment totalling £42,369 during the Liquidation

MPW Insurance Brokers Limited were instructed on a 'no win, no fee' basis to prepare and submit the mesothelioma claim to the FSCS. MPW charged fees as a percentage of any successful recovery and were paid £24,152.

Indemnity insurance costing £3,445 was obtained in respect of the Company's potential liability for an unauthorised or invalid discharge of the mesothelioma monies.

Storage costs totalling £2,005 have been paid in respect of the Company's accounting records which I am obliged to retain

### **PROGRESS OF THE LIQUIDATION**

I am continuing to realise the book debts and inter-company debts, mentioned above.

Unfortunately, I will not be in a position to make a dividend payment to unsecured creditors by virtue of the prescribed part until the remaining assets have been realised.

### **PROSPECTS FOR CREDITORS**

#### **Secured Creditors**

The Company's secured creditor is the Company's Bank, The Bank of Scotland ("BoS"), which at the date of the Administration, being 18 April 2012, was owed £1,675,641 from the Killby & Gayford group of companies ("the Group") BoS holds a debenture dated 14 September 2007, conferring a fixed and floating charge over the assets and undertaking of the Group

In addition, Growth Capital Partners ("GCP") is owed £6,075,000 from the Group, which is secured by a debenture also dated 14 September 2007 GCP's security ranks behind that held by BoS.

During the Administration BoS received distributions of £282,046 from floating charge realisations I have made further distributions on account to BoS during the Liquidation totalling £465,908 from floating charge realisations.

I have also made distributions on account to GCP totalling £100,000 from floating charge realisations.

It is anticipated that BoS should be paid in full from the Group, however, GCP will suffer a significant shortfall under its security

#### **Preferential Creditors**

Preferential claims are those of employees in respect of wages, capped at £800 per employee, and any accrued holiday pay.

A preferential distribution of 100p in the £ totalling £154,516 was made to former employees during the Administration

Additional preferential claims totalling £275,625 have been paid in full during the Liquidation

#### **Unsecured Creditors**

Under Section 176A of the Insolvency Act 1986 where after 15 September 2003 a company has granted to a creditor a floating charge a proportion of the net property of the company must be made available purely for the unsecured creditors.

The Company has granted a floating charge to a creditor after 15 September 2003. Based on present information the Joint Liquidators estimate that after allowing for costs, the value of the Company's net property will be circa £1,348,170. This means that the prescribed part would be £272,634.

To date, I have received claims totalling £30,351,401 and therefore the dividend is estimated to be in the region of 0.8p in the £.

#### **JOINT ADMINISTRATORS' FEES**

In accordance with Rule 2.106(5A)(a) of the Insolvency Rules 1986 I sought and obtained the approval of the secured creditors during the Administration for my remuneration on a time costs basis totalling £275,000 plus VAT.

To date I have drawn Joint Administrators' fees totalling £125,000 plus VAT. The balance of the Joint Administrators' fees will be drawn in due course, subject to sufficient asset realisations.

Time costs totalling £56,822 were written-off during the Administration.

#### **JOINT LIQUIDATORS' REMUNERATION**

Pursuant to the Insolvency Rules 1986, the Joint Liquidators are obliged to fix their remuneration in accordance with Rule 4.127(2) of the Insolvency Rules 1986. This permits remuneration to be fixed either

- (1) as a percentage of the assets realised and distributed, and/or
- (2) by reference to the time the Joint Liquidators and the staff have spent attending to matters in the liquidation; and/or
- (3) as a set amount; and/or

(4) as a combination of the above

The creditors have already approved the Joint Liquidators' remuneration on a time costs basis.

I attach a schedule that summarises the time costs which have been incurred administering this Liquidation up to 23 April 2014. This shows that a total of 494 hours have been spent at an average hourly charge out rate of approximately £191, totalling £94,189. Fees in relation to the Liquidation and distribution of the prescribed part will be drawn in due course.

For guidance, I enclose "A Creditors' Guide to Liquidators' Fees", together with a document that outlines the policy of BDO LLP in respect of fees and disbursements.

#### **JOINT LIQUIDATORS' DISBURSEMENTS**

Where disbursements are recovered in respect of precise sums expended to third parties there is no necessity for these costs to be authorised. These are known as category 1 disbursements.

I therefore report that during the Liquidation I have incurred category 1 disbursements totalling £605 in respect of statutory advertising, courier charges, subsistence and travel. These will be drawn in due course.

#### **CREDITORS' RIGHTS**

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

Under Rule 4.63A of the Insolvency Rules 1986, if at least 10% of creditors whose debt from the company amounts to at least 10% of the company's total debts, may within 5 business days request that we summon a meeting to consider the resolutions. Notification must be in writing and must be received by no later than 9 May 2014.

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

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

Yours faithfully  
For and on behalf of  
Killby & Gayford Limited



Danny Dartnaill  
Joint Liquidator  
Authorised by the Institute of Chartered Accountants in England & Wales

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**Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Liquidators' fees and expenses:****Rule 4.49E Creditors' and members' request for further information**

(1) If-

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

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter[s] in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108

(2) The period referred to in paragraph (1)(a) and (b) is-

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
- (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case

(3) The liquidator complies with this paragraph by either-

- (a) providing all of the information asked for, or
- (b) so far as the liquidator considers that-
  - (i) the time or cost of preparation of the information would be excessive, or
  - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
  - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information

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

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

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

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

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

- (1B) The application must, subject to any order of the court under Rule 4 49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4 108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4 49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")

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

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

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

- (4) If the court considers the application to be well-founded, it must make one or more of the following orders-

- (a) an order reducing the amount of remuneration which the liquidator was entitled to charge,
- (b) an order fixing the basis of remuneration at a reduced rate or amount,
- (c) an order changing the basis of remuneration,
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation,
- (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report

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



**KILLBY & GAYFORD LIMITED**  
**- In Creditors' Voluntary Liquidation -**  
**Summary of the Joint Liquidators' Receipts and Payments**  
**For the period from 24 April 2013 to 23 April 2014**

	Estimated to Realise	Total
	£	£
<b>RECEIPTS</b>		
Transfer from Administration	1,166,608	1,166,608
Book Debts		197,340
Mesothelioma Claim	-	161,015
VAT Refund	-	17,868
Bank Interest	-	4,543
Sundry Refunds	-	1,004
VAT Refund (Administration)	-	65
VAT on Receipts	-	26,751
	<hr/>	<hr/>
	1,166,608	1,575,194
	<hr/>	<hr/>
<b>PAYMENTS</b>		
Joint Administrators' Fees		125,000
Agent's Fees Contractual Book Debts		42,369
Agent's Fees Mesothelioma Claim		24,152
VAT Paid		7,547
Insurance		3,445
Storage Costs		2,005
Corporation Tax		731
Bank Charges		60
Joint Administrators' Disbursements		2
VAT on Payments		35,681
		<hr/>
		240,992
<b>Distribution to Secured Creditors</b>		
Lloyds Bank Plc		465,908
Growth Capital Partners		100,000
<b>Distribution to Preferential Creditors - 100p in the £</b>		
Redundancy Payments Office		202,919
Employees		72,706
<b>Balance in Hand</b>		492,669
		<hr/>
		1,575,194
		<hr/>
<b>BDO LLP</b>		<b>Danny Dartnail</b>
<b>Kings Wharf</b>		<b>Joint Liquidator</b>
<b>20-30 Kings Road</b>		<b>30 April 2014</b>
<b>Reading</b>		
<b>Berkshire</b>		
<b>RG1 3EX</b>		

# Killby & Gayford Limited - In Creditors' Voluntary Liquidation

Summary of Time Charged and Rates Applicable for the Period From 24/04/2013 to 23/04/14

Description	PARTNER		DIRECTOR		MANAGER		ASSISTANT MANAGER		EXECUTIVE		OTHER STAFF		GRAND TOTAL		AV RATE	
	Hours	£	Hours	£	Hours	£	Hours	£	Hours	£	Hours	£	Hours	£	Hours	£
B. Steps on Appointment			0 75	274 50	3 25	861 25							4 00	1 135 75	283 94	
C. Planning and Strategy					4 00	1 116 00							4 00	1 116 00	279 00	
D. General Administration			3 75	1 417 25	23 35	6 407 20			35 15	4 218 85	16 40	1 253 30	78 65	13 296 60	169 06	
E. Assets Realisation/Realising			11 25	4 257 00	22 50	6 223 00			1 25	113 75			35 00	10 393 75	302 68	
G. Employee Matters			1 75	677 25	14 50	4 128 00			20 80	2 153 35			37 05	6 938 60	187 82	
H. Creditor Claims			31 50	12 167 50	56 25	15 530 75			223 15	27 575 75	5 20	400 40	316 10	55 674 40	176 13	
I. Reporting			1 50	580 50	10 50	2 893 00			2 30	259 90			14 30	3 733 40	261 08	
J. Distribution and Closure			2 00	774 00	3 25	906 75							5 25	1 680 75	320 14	
			52 50	20 148 00	137 60	38 065 95			282 65	34 321 60	21 60	1 453 70	494 35	94 189 25	190 53	

The current charge out rates per hour of staff within my firm who may have been involved in working on the insolvency are as follows

GRADE	£
Partner	658
Director	366
Manager	265
Assistant Manager	210
Senior Executive	197
Executive	71 158
Other Staff	71

Net Total	494 35	94 189 25	190 53
Other Disbursements		1 321 80	
Billed			
Grand Total		95 711 05	

## **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 71, 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 explaining 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

## **Killby & Gayford Limited - In Creditors' Voluntary Liquidation**

Danny Dartnail and Shay Bannon of BDO LLP, Kings Wharf, 20-30 Kings Road, Reading, Berkshire, RG1 3EX were appointed Joint Liquidators on 16 April 2013.

Attached is information on the work undertaken in respect of this appointment together with the policies of BDO LLP in respect of fees and disbursements for such work. This is submitted in support of the request for approval of remuneration.

### **BDO LLP Remuneration and Disbursements Policy**

In accordance with best practice I provide below details of policies of BDO LLP in respect of fees and expenses for work in relation to the above insolvency

The current charge out rates per hour of staff within my firm who may be involved in working on the insolvency follows. This in no way implies that staff at all such grades will work on the case

<b>GRADE</b>	<b>£</b>
Partner	658
Director	366
Manager	265
Assistant Manager	210
Senior Executive	197
Executive	71-158
Support staff/Secretary	71

The rates charged by BDO LLP, Kings Wharf, 20-30 Kings Road, Reading, Berkshire, RG1 3EX are reviewed in December and July each year and are adjusted to take account of inflation and the firm's overheads

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

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

Under each of the above categories the work is recorded in greater detail in sub categories. Please note that the 11 categories provide greater detail than the 6 categories recommended by the Recognised Professional Bodies who are responsible for licensing and monitoring insolvency practitioners.

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

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



### 1) Other Costs

Where expenses are incurred in respect of the insolvent estate they will be recharged. Such expenses can be divided into 2 categories.

### 2) Category 1

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

A further disbursement under this heading is the cost of travel where staff use either their own vehicles or company cars in travelling connected with the insolvency. In these cases a charge of 40p per mile is raised which is in line with the Inland Revenue Approved Mileage Rates (median - less than 10,000 miles per annum) which is the amount the firm pays to staff.

### 3) Category 2

Insolvency practice additionally provides for the recharge of expenses such as postage, stationery, photocopying charges, telephone, fax and other electronic communications, which cannot be economically recorded in respect of each specific case. Such expenses, which are apportioned to cases, must be approved by the creditors in accordance with the Insolvency Rules 1986, before they can be drawn, and these are known as category 2 disbursements. The policy of BDO LLP, in respect of this appointment is not to recharge any expense which is not a specific cost to the case, therefore there will be no category 2 disbursements charged.

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