

## 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

2087537

Name of Company

Merthyr And Rhondda Cynon Taff Groundwork Trust

*/* We

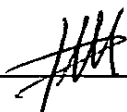
Ian J Gould, Two Snowhill, Birmingham, B4 6GA

Simon Edward Jex Girling, Two Snowhill, Birmingham, B4 6GA

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 21/04/2015 to 20/04/2016

Signed



Date

16/6/16

BDO LLP  
Two Snowhill  
Birmingham  
B4 6GA

Ref 00253091/IJG/SEJG/KR/LCF/JS/CB/RH/KB

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**Merthyr And Rhondda Cynon Taff Groundwork Trust**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs	From 21/04/2015 To 20/04/2016
<b>ASSET REALISATIONS</b>	
Transfer from Administration	313,901 12
Bank Interest Net of Tax	135 15
Licence to Occupy	300 00
	<u>314,336 27</u>
<b>COST OF REALISATIONS</b>	
Water Rates	2,083 33
Administrators Fees	100,000 00
Liquidator's Fees	10,000 00
Agents/Valuers Fees (1)	8,837 70
VAT Irrecoverable	536 67
Stationery & Postage	556 94
Electricity	8,625 78
Storage Costs	2,193 71
Utility Costs	7,071 78
Statutory Advertising	153 44
Rates	2 38
Other Property Expenses	1,015 00
Insurance of Assets	37,612 46
Bank Charges	18 70
	<u>(178,707 89)</u>
<b>PREFERENTIAL CREDITORS</b>	
Preferential E P A	25,262 73
Preferential Wages	9,219 06
	<u>(34,481 79)</u>
	<u><u><b>101,146.59</b></u></u>
<b>REPRESENTED BY</b>	
Trade Debtors	120 00
Vat Input	25 02
Bank 2 Current	100,833 27
Vat Control Account	168 30
	<u><u><b>101,146.59</b></u></u>

  
 Ian J Gould  
 Joint Liquidator

15 June 2016

Your Ref  
Our Ref 012576/KER/A6Please ask for Kim Richards  
Direct Line. 0121 352 6306

To All Known Members and Creditors

Dear Sirs

**Merthyr And Rhondda Cynon Taff Groundwork Trust - In Creditors' Voluntary Liquidation ("the Trust")****Registered Address: Two Snowhill, Birmingham, B4 6GA****Registered number: 2087537****Joint Liquidators: Ian James Gould and Simon Edward Jex Girling****Joint Liquidators' Address: Two Snowhill, Birmingham, B4 6GA****Date of Appointment: 21 April 2015**

I enclose for your information an annual progress report in accordance with Section 104A of the Insolvency Act 1986 and Rule 4.49C of the Insolvency Rules 1986 for the period from 21 April 2015 to 20 April 2016 ("the period").

I also enclose, for your information, a Receipts and Payments account showing a balance in hand of £101,026.59 representing a bank balance of £100,833.27 and VAT to recover of £25.02 and £168.30.

### **Receipts and Payments**

The receipts and payments shown in the Receipts and Payments account are largely self-explanatory, although I would comment specifically on the following:

#### **Receipts**

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

Following the Trust moving from Administration to Creditors' Voluntary Liquidation, the funds held in the Administration estate, amounting to £313,901.12, were transferred to the Liquidation estate.

The amount transferred is more than I advised would be transferred in my final progress report as Joint Administrator of the Trust, due to bank interest of £14.01 being received after the date of the Joint Administrators' final report.

##### **Licence to Occupy Agreement**

Groundwork Caerphilly was granted, during the Administration, a licence to occupy the freehold property owned by the Trust. Following the Trust's exit from Administration, rent totalling £300 was still outstanding.



I can confirm that £300 in this respect has been received during the period and there are no further amounts to be realised in this respect

#### Bank Interest

Bank interest of £135.15 has been earned on the balance of funds held during the period

#### Payments

Payments made during the period are detailed on the attached Receipts and Payments account, although I would comment specifically on the following:

#### Property Holding Costs

Costs relating to the freehold property accrued during the period of Administration up until the sale of the property on 2 April 2015. Final bills have now been received in this respect and the following amounts have been paid from the Liquidation estate

	£
Water Rates	2,083.33
Electricity	8,625.78
Utility Costs	7,071.78
Rates	2 38
Insurance of assets	37,612.46
Property Expenses	1,015.00
	<b>56,410.73</b>

#### Agents/Valuers' Fees

As previously advised MGR Appraisals Limited ("MGR") were instructed by the Joint Administrators to prepare an inventory and valuation of the tangible assets owned by the Trust. The majority of amounts owed to MGR in this respect were paid during the Administration; however a final balance due of £450 has been paid during the period

My property agents, Colliers International Property Consultants Limited, have been paid £8,387 70 for dealing with the valuation and sale of the freehold property

The choice of professional advisers is based upon their experience and ability to perform this type of work, the nature and complexity of the assignment and the basis of my fee arrangement with them.

#### Preferential Dividend

On 3 November 2015 a distribution of 100p in the £ was declared to the preferential creditors of the Trust

The total amount paid to preferential creditors was £34,481.79.

#### Accrued Legal Fees

Legal fees of £3,000 have accrued during the period in relation to advice received from my legal advisors, Messrs. Squire Patton Boggs ("SPB") in respect of a claim received against the Trust

during the Administration, which could have had a significant impact on the amounts available to the unsecured creditors of the Trust

Other than the legal fees detailed above, the Joint Liquidators' remuneration and disbursements (further details below) no other costs have accrued during the period

### **Progress of the Liquidation**

During the period I have dealt with the statutory obligations of a Liquidator and have continued to maximise the realisations from the Trust's assets

### **Assets Remaining**

#### Tenant Occupation under Service Level Agreement ("SLA")

As you are aware at the date of my appointment as Joint Administrator of the Trust, BDM Technology ("BDM") and Janro Limited ("Janro") occupied part of the freehold property owned by the Trust under SLAs. All rent due was received from BDM during the Administration; however £1,194 00 was still outstanding from Janro following the Trust's exit from Administration.

Whilst the amount due has been pursued in the period, Janro entered into liquidation on 3 June 2015 and the Joint Liquidators have confirmed that there is no prospect of a distribution to the unsecured creditors in this matter. As a consequence this amount will not be recovered

#### Debtors

As the debtor realisation process is now complete I will consider the merits of preparing a VAT Bad Debt Relief Claim in respect of any irrecoverable amounts. I anticipate that any amount due to the Trust may, however, be subject to Crown set-off and, therefore, may not result in any realisation but would help in reducing the overall creditor claims. HM Revenue & Customs have currently made claims in the Liquidation totalling £22,139

### **Investigations**

I have completed my review of the Trust's affairs and assets to establish whether there are any actions that can be investigated for the benefit of the creditors and concluded there are no causes of action to be pursued.

### **Future Prospects**

#### **Secured Creditors**

According to office copy entries obtained from the Land Registry, the property owned by the Trust was the subject of a legal charge in favour of The Co-operative Bank ("the Co-op"). However, the legal charge had not been registered with the Registrar of Companies. SPB advised on the validity of the security charged against the property by the Co-op.

As the Legal Charge had not been registered at Companies House, under Section 874 of the Companies Act 2006 it is void (so far as any security on the Trust's property or undertaking is conferred by it). Irrespective of the terms of the charge, when a charge becomes void under Section 874, the money secured by it becomes immediately due and payable but only as an unsecured debt. Thus, Co-op is an unsecured creditor and its claim against the Trust will be an unsecured claim.

I can confirm that to enable the sale of the freehold property to proceed, the Co-op released their charge registered at the Land Registry and the property was accordingly sold free of the charge.

#### **Preferential Creditors**

As discussed earlier in this report, a distribution of 100p in the £ was declared to the preferential creditors of the Trust on 3 November 2015.

The total amount paid to preferential creditors was £34,481.79 and related to arrears of wages and holiday pay due to the former employees of the Trust.

#### **Prescribed Part**

Under Section 176A of the Act 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 Trust has not granted a floating charge to any creditor after the 15 September 2003 and as a consequence there was no prescribed part

#### **Unsecured Non-Preferential Creditors**

Based on a combination of the claims received from creditors and the amounts shown as being due in the Trust's books and records, the Trust would appear to have the following unsecured non-preferential claims:

	£
Trade & Expense Creditors	196,242
H M Revenue & Customs - PAYE/NI	19,043
H M Revenue & Customs - VAT	3,096
Employee Claims	529,582
Groundwork UK	35,800
The Co-operative Bank	264,695
<b>Total</b>	<b>1,048,458</b>

Based on current information, it is estimated that there will be a return to unsecured creditors of circa 5p in the £. However this is dependent upon further claims being received which may dilute the distribution to the unsecured creditors

Creditors' claims are currently being reviewed and a notice of intended dividend will shortly be sent to any creditors who have not made a claim

**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 cost basis at a meeting of creditors held on 13 January 2013.

The enclosed schedule shows the time costs and indicates the work undertaken in respect of the Liquidation during the period. For the period a total of 141.65 hours at a total cost of £22,864.65 have been spent administering the Liquidation, at an average hourly rate of £161.42.

To date, the Joint Liquidators have drawn £10,000, on account, in respect of remuneration as shown on the enclosed Receipts and Payments account.

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.

**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. All payments made in respect of category 1 disbursements are detailed on the attached Receipts and Payments account.

During the Administration and Liquidation the following category 1 disbursements have been paid by BDO LLP and will be paid as an expense of the Liquidation in due course.

	£
Statutory Bonding	160
Site Security	2,415
Media Assistance	615
Postage	207
Legal Fees	600
Employee Costs/Salary	6,311
	10,308

Some Liquidators recharge expenses for example postage, stationery, photocopying charges, telephone and fax costs, which cannot economically be recorded in respect of a specific case. Such expenses, which are apportioned to cases, require the approval of the creditors, before they can be drawn and these are known as category 2 disbursements.

For the avoidance of doubt, I do not propose to charge internal disbursements, known as category 2 disbursements to the Liquidation estate

#### 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

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

Creditors may access information setting out creditors' rights in respect of the approval of the Joint Liquidators' remuneration at

<https://www.r3.org.uk/what-we-do/publications/professional/fees>

If you require any further information please do not hesitate to contact Kim Richards of my office

Yours faithfully  
for and on behalf of  
Merthyr and Rhondda Cynon Taff Groundwork Trust



Ian J Gould  
Joint Liquidator

*Ian J Gould is authorised by the Institute of Chartered Accountants in England & Wales in the UK to act as an Insolvency Practitioner*

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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

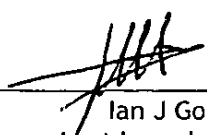
- (3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it
- (4) If the court considers the application to be well-founded, it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

**Merthyr And Rhondda Cynon Taff Groundwork Trust**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs	From 21/04/2015 To 20/04/2016	From 06/11/2013 To 20/04/2016
<b>ASSET REALISATIONS</b>		
Transfer from Administration	313,901.12	313,901.12
Bank Interest Net of Tax	135.15	135.15
Licence to Occupy	300.00	300.00
	<u>314,336.27</u>	<u>314,336.27</u>
<b>COST OF REALISATIONS</b>		
Water Rates	2,083.33	2,083.33
Administrators Fees	100,000.00	100,000.00
Liquidator's Fees	10,000.00	10,000.00
Agents/Valuers Fees (1)	8,837.70	8,837.70
VAT Irrecoverable	536.67	536.67
Stationery & Postage	556.94	556.94
Electricity	8,625.78	8,625.78
Storage Costs	2,193.71	2,193.71
Utility Costs	7,071.78	7,071.78
Statutory Advertising	153.44	153.44
Rates	2.38	2.38
Other Property Expenses	1,015.00	1,015.00
Insurance of Assets	37,612.46	37,612.46
Bank Charges	18.70	18.70
	<u>(178,707.89)</u>	<u>(178,707.89)</u>
<b>PREFERENTIAL CREDITORS</b>		
Preferential E P.A	25,262.73	25,262.73
Preferential Wages	9,219.06	9,219.06
	<u>(34,481.79)</u>	<u>(34,481.79)</u>
	<u><b>101,146.59</b></u>	<u><b>101,146.59</b></u>
<b>REPRESENTED BY</b>		
Trade Debtors		120.00
Vat Input		25.02
Bank 2 Current		100,833.27
Vat Control Account		168.30
		<u><b>101,146.59</b></u>

  
 Ian J Gould  
 Joint Liquidator

[\[66\] J. P. D. Gois, L. O. S. Martins, A. P. P. de Sá, and V. A. M. de C.](#)



## **1 Introduction**

- 1.1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees, explains the basis on which fees are fixed and how creditors can seek information about expenses incurred by the liquidator and challenge those they consider to be excessive.

## **2 Liquidation procedure**

- 2.1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.
- 2.2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
- 2.3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and an official belonging to The Insolvency Service. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by The Insolvency Service on behalf of the Secretary of State. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2.4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An administrator may also subsequently act as liquidator in a CVL.

## **3 The liquidation committee**

- 3.1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
- 3.2 The liquidator must call the first meeting of the committee within 6 weeks of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

## **4 Fixing the liquidator's remuneration**

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 - 4.127B of the Insolvency Rules 1986.

The Rules state that the remuneration shall be fixed

- as a percentage of the value of the assets which are realised or distributed or both,
- by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation, or
- as a set amount

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the liquidator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the liquidator.

It is for the liquidation committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied. Rule 4.127 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case;
  - any responsibility of an exceptional kind or degree which falls on the liquidator in connection with the insolvency;
  - the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties;
  - the value and nature of the assets which the liquidator has to deal with.
- 4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as apply in the case of the committee. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.
- 4.3 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.
- 4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## **5 Review of remuneration**

Where there has been a material and substantial change in circumstances since the basis of the liquidator's remuneration was fixed, the liquidator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

## **6 What information should be provided by the liquidator?**

### **6.1 When fixing bases of remuneration**

- 6.1.1 When seeking agreement for the basis or bases of remuneration, the liquidator should provide sufficient supporting information to enable the committee or the creditors to make an informed judgement as to whether the basis sought is appropriate having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought. The appendix to this guide sets out a suggested format for the provision of information.
- 6.1.2 If any part of the remuneration is sought on a time costs basis, the liquidator should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.
- 6.1.3 The liquidator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the liquidator or his or her staff.
- 6.1.4 If work has already been carried out, the liquidator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the liquidator should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. The liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the liquidator or his or her staff.

## **6.2 After the bases of remuneration have been fixed**

The liquidator is required to send progress reports to creditors at specified intervals (see paragraph 7.1 below). When reporting periodically to creditors, in addition to the matters specified in paragraph 7.1, the liquidator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the liquidator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate). Where any remuneration is on a time costs basis, the liquidator should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the liquidator or his or her staff.

## **6.3 Disbursements and other expenses**

**6.3.1** Costs met by and reimbursed to the liquidator in connection with the liquidation should be appropriate and reasonable. Such costs will fall into two categories:

- **Category 1 disbursements** These are costs where there is specific expenditure directly referable both to the liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the liquidator or his or her staff.
- **Category 2 disbursements** These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the liquidation on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the liquidator should be prepared to disclose information about them in the same way as any other expenses. Category 2 disbursements may be drawn if they have been approved in the same manner as the liquidator's remuneration. When seeking approval, the liquidator should explain, for each category of expense, the basis on which the charge is being made.

**6.3.2** The following are not permissible:

- a charge calculated as a percentage of remuneration;
- an administration fee or charge additional to the liquidator's remuneration;
- recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

## **6.4 Realisations for secured creditors**

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

## **7 Progress reports and requests for further information**

**7.1** The liquidator is required to send annual progress reports to creditors. The reports must include:

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of



- whether payment was actually made during the period of the report,
- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses

7.2 Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

7.3 The liquidator must provide the requested information within 14 days, unless he considers that

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- the liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information

Any creditor may apply to the court within 21 days of the liquidator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

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

The liquidator must provide certain information about the time spent on the case, free of charge, upon request by any creditor, director or shareholder of the company. The information which must be provided is -

- the total number of hours spent on the case by the liquidator or staff assigned to the case,
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the liquidator, and requests must be made within two years from vacation of office.

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

- 9.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.
- 9.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.
- 9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.
- 9.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the insolvent company.

**10 What if the liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

**11 Other matters relating to remuneration**

- 11 1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.
- 11 2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.
- 11 3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.
- 11 4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.
- 11 5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.
- 11 6 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

**12 Effective date**

This guide applies where a company goes into liquidation on or after 1 November 2011

**Appendix**

Suggested format for the provision of information Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases, and will be subject to considerations of proportionality. In larger or more complex cases the circumstances of each case may dictate the information provided and its format. Narrative overview of the case. In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:

- the complexity of the case,
- any exceptional responsibility falling on the liquidator,
- the liquidator's effectiveness,
- the value and nature of the property in question

The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:

- an explanation of the nature, and the liquidator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known),
- initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
- any significant aspects of the case, particularly those that affect the remuneration and cost expended,
- the reasons for subsequent changes in strategy;
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing,
- any existing agreement about remuneration,
- details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees,
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
- details of work undertaken during the period,
- any additional value brought to the estate during the period, for which the liquidator wishes to claim increased remuneration.

**Time cost basis**

Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:

- An explanation of the liquidator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
- A description of work carried out, which might include:
  - details of work undertaken during the period, related to the table of time spent for the period,
  - an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used,
  - any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make.
- Time spent and charge-out summaries, in an appropriate format.

It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case.

The following areas of activity are suggested as a basis for the analysis of time spent:

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

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

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

The level of disclosure suggested above will not be appropriate in all cases, and considerations of proportionality will apply

- where cumulative time costs are, and are expected to be, less than £10,000 the liquidator should, as a minimum, state the number of hours and average rate per hour and 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



## Merthyr And Rhondda Cynon Taff Groundwork Trust - In Liquidation

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.

### GRADE £

Partner	484
Director	335
Senior Manager	285-310
Manager	213-242
Executive	119-181
Junior Executive	66-82
Cashier	181-192
Support Staff	66

The rates charged by BDO LLP, TWO SNOWHILL, Birmingham, B4 6GA, UNITED KINGDOM are reviewed in December and July each year and are adjusted to take account of inflation and the firm's overheads

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

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

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

Where an 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 two categories



## 2) Category 1

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

## 3) Category 2

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

In respect of the Liquidation of Merthyr And Rhondda Cynon Taff Groundwork Trust we propose to charge £5.00 (plus VAT) per year per creditor. This will cover the disbursement costs of for postage and stationery for all reports and letters, together with all copying charges and telephone and email costs. Creditors will be invited to approve a resolution to this effect.

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

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

BDO LLP  
15 June 2016