

The Insolvency Act 1986

## Administrator's progress report

Name of Company Night Realisations plc (In Administration)	Company number 02189427
In the High Court of Justice, Chancery Division [full name of court]	Court case number 1638 of 2013

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

I / We (a) AM Hudson, CA Lewis and JM O'Connorc/o Ernst & Young LLP, 1 More London Place, London, SE1 2AF

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

from

to

(b) Insert date

(b) 5 March 2013(b) 4 September 2013

Signed

CA Lewis

Joint / Administrator(s)

Dated

4 OCTOBER 2013

### Contact Details:

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

Sacha Russell	
Ernst & Young LLP, 1 More London Place, London, SE1 2AF	
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DX Number	DX Exchange

SATURDAY



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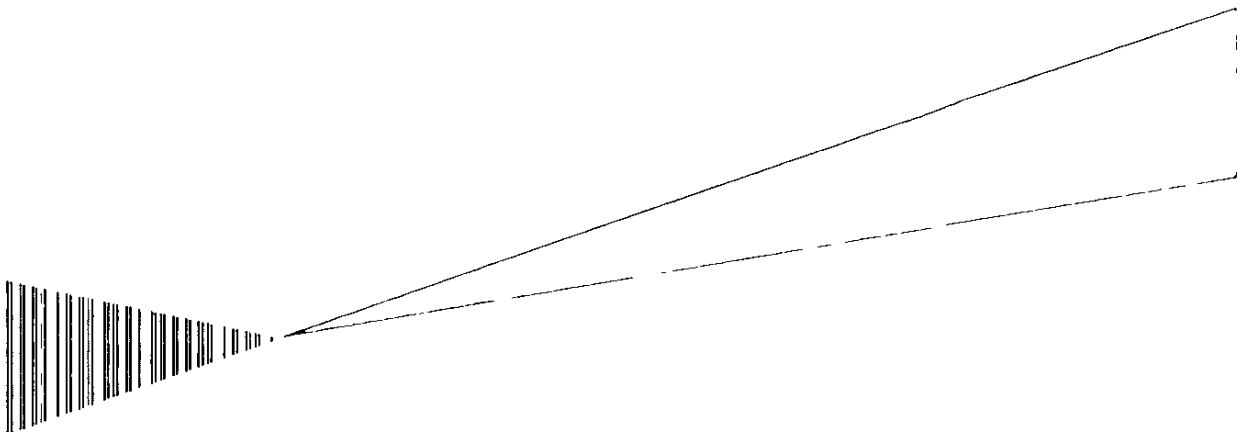
Companies House, Crown Way, Cardiff, CF14 3UZ

DX 33050 Cardiff

**Night Realisations plc (In Administration) formerly  
Dreams plc (In Administration) ("the Company")**

**Joint Administrators' six monthly progress report**

**4 October 2013**



**Building a better  
working world**

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## **1. Introduction**

I write, in accordance with Rule 2.47 of the Insolvency Rules 1986, to provide creditors with a report on the progress of the Administration. This report covers the period from 5 March 2013 to 4 September 2013 and should be read in conjunction with my letter of 12 March 2013 ("the SIP 16 letter") and the Joint Administrators' Proposals dated 26 April 2013 ("the Proposals"). Copies of both the SIP 16 letter and the Proposals are available at <http://www.nightrealisationsplcinadministration.co.uk>

### **1.1 Night Realisations plc (formerly Dreams plc)**

High Court of Justice, Chancery Division, Number 1638 of 2013

Registered office address c/o Ernst & Young LLP, 1 More London Place, London, SE1 2AF

Registered number 02189427

Night Realisations plc entered Administration on 5 March 2013 and AM Hudson, JM O'Connor and CA Lewis of Ernst & Young LLP, 1 More London Place, London, SE1 2AF were appointed as Joint Administrators ("the Administrators"). The appointment was made by The Royal Bank of Scotland plc as Security Trustee on behalf of the Company's lenders under the provisions of paragraph 14(1) of Schedule B1 to the Insolvency Act 1986. Under the terms of the appointment, any act required or authorised to be done by the Administrators can be done by any of them.

### **1.2 Extensions to the initial period of Administration**

There have been no extensions to the initial period of appointment, which is due to end on 4 March 2014. This will be reviewed in three months time.

## **2. Summary of Progress since the Proposals**

The background and circumstances leading up to the appointment of the Administrators are detailed in the Proposals

### **2.1 Sale of the business**

As previously advised, the business and certain assets of the Company were sold to Dreams Limited ("the Purchaser") on 5 March 2013. Further details relating to the sale can be found in the SIP16 letter and the Proposals

#### **2.1.1 Premises transferred to the Purchaser**

The Administrators granted the Purchaser a licence to occupy 171 stores to facilitate the continuation of trade in these stores, pending discussions between the Purchaser and the landlords regarding ongoing occupation. As at 4 September 2013

- ▶ 28 of these stores have been formally assigned to the Purchaser,
- ▶ 8 of these stores were assigned between 4 September 2013 and the date of this report,
- ▶ 10 of these stores the Purchaser has served notice to terminate the licence to occupy, and
- ▶ 125 of these stores are being negotiated with landlords

The Administrators are continuing to pay rent, insurance and service charges for the stores which the Administrators have granted a licence to occupy but have not been formally assigned to, or vacated by, the Purchaser

Where the Purchaser has given notice to terminate the licence to occupy, the Administrators have notified the respective landlords and offered an informal surrender of the lease

#### **2.1.2 Premises not transferred**

As described in the Proposals, 95 stores which were excluded from the sale agreement remained open until 24 March 2013 to facilitate the clearance of stock on behalf of the Purchaser. This also gave the Administrators the opportunity to market the sites for sale, thereby reducing landlords and employees claims. The Administrators were unable to complete a sale or transfer of these 95 stores for the reasons set out in the Proposals, and therefore exited these stores prior to the rent quarter date on 25 March 2013

At the time of writing this report, 30 landlords have agreed a surrender of the leases held. If an agreement cannot be reached within the period of Administration, the leases are likely to be disclaimed if the Company enters Creditors Voluntary Liquidation ("CVL") at the end of the Administration

## **2.2 Other Assets**

### **2.2.1 Non domestic rates**

Rapleys LLP has been instructed on a success fee basis to appeal the rateable values across the entire portfolio. These appeals are ongoing and are likely to continue until the end of the Administration

The Administrators have contacted over 200 rating authorities seeking refunds for overpaid rates in the period to 5 March 2013. These refunds relate to both transferred and non transferred properties

In total for the period to 4 September 2013, £537k has been recovered from the various rating authorities for refunds and reductions in rateable values. This is considerably higher than the Director's estimate within the Statement of Affairs.

### **2.2.2 Book debts**

The Company has a £0.7m claim against Arrow Excel Limited (formerly Yodel XL Limited) for damaged stock which is currently held at their depot in Wigan. The Directors have estimated that £0.2m may be recoverable in this regard. The Administrators have contacted Arrow Excel Limited and discussions are ongoing regarding the recovery and realisation of this stock.

### **3. Receipts and Payments Account**

I enclose a receipts and payments account for the Company at Appendix A, covering the period from 5 March 2013 to 4 September 2013. Please note that this does not reflect future realisations or costs.

## **4. Outcome for creditors**

### **4.1 Secured creditors**

As outlined in the Proposals, the Company had secured borrowings of c£69.3m from a banking syndicate comprising

- ▶ The Royal Bank of Scotland plc,
- ▶ Barclays Bank plc,
- ▶ Portigon AG, and
- ▶ AXA Private Equity

(collectively the "Senior Lenders")

Approximately £51.9m was owed at the date of appointment in respect of the first ranking security. A further £17.4m was due to AXA Private Equity for a Mezzanine facility. The sale proceeds provided for full recovery of the Company's £3m revolving supplier finance facility and £2m letter of credit facility which reduced the debt due to the Senior Lenders accordingly.

An initial distribution of £28.0m was paid to the Senior Lenders on 12 March 2013.

The net realisations from the Company's assets will be insufficient to enable the secured creditors to be repaid in full.

### **4.2 Preferential creditors**

We currently estimate preferential creditors of c£173,000 in respect of claims for employees' salaries and holiday pay. This is stated after the payment of arrears of wages of c£40,000 as part of the trading expenses in dealing with the premises not transferred.

It is still anticipated that preferential claims will be paid in full once these claims have been agreed.

### **4.3 Unsecured creditors**

Non-preferential claims continue to be submitted and a proof of debt form can be found at <http://www.nightrealisationsplcinadministration.co.uk> for unsecured creditors to complete and return to the Administrators. Any completed forms will be passed to a subsequently appointed Liquidator if and when one is appointed, or used by the Administrators should an application to court be made and granted to pay the prescribed part while the Company is in Administration.

The Directors' Statement of Affairs estimate that the non-preferential claims for the Company will be in the region of £72.4m. Final claims may be higher due to contingent claims (such as landlord claims) and other non-preferential creditors not included in the Statement of Affairs.

It is not anticipated that there will be sufficient realisations to enable a distribution to the unsecured creditors of the Company other than by virtue of the Prescribed Part, as set out below.

#### **4.3.1 The Prescribed Part**

The prescribed part is a proportion of floating charge assets set aside for unsecured creditors pursuant to section 176A of the Insolvency Act 1986. The prescribed part applies to floating charges created on or after 15 September 2003.



The Administrators estimate, to the best of their knowledge and belief, that the value of the Company's net property may be in the region of c£33m, which would equate to the value of the prescribed part being the maximum of £0.6m (before the costs of dealing with the prescribed part). For your information, our latest estimates indicate that any dividend to unsecured creditors of the Company is unlikely to be greater than 1p in the pound.

The Administrators do not currently intend to make an application to the court under section 176A(5) of the Insolvency Act 1986 for an order not to distribute the prescribed part. However, depending upon the final quantification of all unsecured claims, the payment of a dividend in respect of the prescribed part may be uneconomical. The Administrators therefore reserve the right to make such an application to the court in this circumstance.

#### **4.4 Distributions to Creditors**

As stated above, £28.0m has been distributed to the secured creditors. Whilst we anticipate a further distribution to be made in due course, once the asset realisation process and the outstanding costs and expenses have been finalised, we continue to anticipate that there will be a substantial shortfall to the secured creditors based on their indebtedness of £69.3m at the date of our appointment.

There have been no distributions to preferential or unsecured creditors to date. However, payment of c£40,000 was made in respect of arrears of pay as stated above.

As stated in the Proposals, the Administrators may elect to apply to court for permission to distribute the Prescribed Part under Paragraph 65 of Schedule B1 to the Insolvency Act 1986. Costs of doing so will be deducted from the proceeds of the prescribed part. Alternatively, if the court does not grant permission to distribute the Prescribed Part in Administration or if the Administrators consider it no more advantageous to apply to court for permission, then any distribution to unsecured creditors will take place following the Company's move into liquidation.

## 5. The Administrators' Remuneration and Expenses

The statutory provisions relating to remuneration are set out in Rule 2.106 of the Insolvency Rules 1986. Further information is given in the Association of Business Recovery Professionals' publication 'A Creditors' Guide to Administrators' Fees', a copy of which may be accessed from the web site of the Insolvency Practitioners Association at <http://www.insolvency-practitioners.org.uk> (follow 'Regulation and Guidance' then 'Creditors Guide to Fees'), or is available in hard copy upon written request to the Administrators.

In accordance with Rule 2.106(5A) of the Rules, as a creditors' meeting was not requisitioned following receipt of the Proposals, the Administrators' remuneration has been fixed by the secured and preferential creditors on the basis of time properly given by them and their staff in dealing with matters arising in the Administration.

To date, the Administrators have incurred time costs of £1,068,485 against which fees of £600,000 have been drawn. An analysis of the time spent can be found at Appendix B. Appendix C provides a statement of the Administrators' policy in relation to charging time.

To date, the Administrators have incurred disbursements of £8,008.05. There is an analysis of Category 1 and 2 disbursements at Appendix B and a statement of the Administrators' policy in relation to charging disbursements at Appendix C.

In certain circumstances, creditors are entitled to request further information regarding the Administrators' remuneration or expenses, or to apply to court on the grounds that the costs are considered to be excessive. Further information is provided in Appendix D.

### 5.1 Pre Administration Costs

Under the terms of engagement agreements dated 2 November 2012 and 16 November 2012 (with an extension of scope on 18 December 2012), Ernst & Young LLP was instructed by the Board of Directors of the Company, together with the Senior Lenders, to undertake contingency planning, preparatory sales planning, marketing of the business for sale and subsequent deal execution.

The fees in relation to the above engagements were paid by the Senior Lenders from the proceeds of sale and not as an expense of the Administration. Subsequently, the Administrators are not seeking approval for the payment of unpaid pre-administration costs per Rule 2.67A.

## **6. Other matters**

### **6.1 Future conduct of the Administration**

The Administrators will continue to act in accordance with the Proposals. This work will include inter alia

- ▶ Dealing with landlords for the leasehold properties, including the surrender of leases or the assignment of leases,
- ▶ Facilitating the payment of rent and service charges for sites transferred to the Purchaser,
- ▶ Facilitating the assignment of leases to the Purchaser for sites transferred,
- ▶ Distributing the realisations to the secured and preferential creditors,
- ▶ Dealing with preferential and unsecured creditor enquiries,
- ▶ If appropriate, agreeing unsecured creditor claims and distributing the Prescribed Part,
- ▶ Realising any remaining assets such as rate refunds and book debts,
- ▶ Complying with the Administrators' reporting obligations to the Lenders,
- ▶ Dealing with statutory reporting and compliance obligations, and
- ▶ Finalising the Administration including payment of all Administration liabilities

### **6.2 Exit from Administration**

In the event that the purpose of the Administration cannot be completed by 4 March 2014, the Administrators may seek an extension of time to complete the Administration

In accordance with the Proposals, the Administration will end either through a liquidation process or through dissolution

If there are funds available for non-preferential creditors under the prescribed part and the court does not grant permission to distribute these in the Administration, or if the Administrators consider it no more advantageous to apply to court for permission, then the exit route may be by CVL. It is proposed that, if this is the case, the Company will move straight into CVL at the end of the Administration, upon the filing with the registrar of companies of a notice pursuant to paragraph 83 of Schedule B1 to the Insolvency Act 1986

If there is property available at the end of the Administration but the Administrators believe it to be insufficient to enable a distribution to be made in a CVL, the Administrators propose to petition the Court, pursuant to paragraph 79 of Schedule B1 of the Insolvency Act 1986, for an order to bring the Administration to an end with a consequential order for the compulsory winding up of the Company

If at the end of the Administration the Company has no property which might permit a distribution to its creditors, the Administrators will send a notice to that effect to the registrar of companies. On registration of the notice the Administrators' appointment will come to an end. In accordance with the provisions of paragraph 84(6) of Schedule B1 to the Insolvency Act 1986 the Company will be deemed to be dissolved three months after the registration of the notice

### 6.3 Future reports

I will report to you again at the conclusion of the Administration or in six months' time, whichever is the sooner

Should you have any queries please contact my colleague, Sacha Russell, on 0207 951 1002

Yours faithfully  
for the Company



CA Lewis  
Joint Administrator

AM Hudson is licensed in the United Kingdom to act as an insolvency practitioner by The Association of Chartered Certified Accountants and CA Lewis and JM O'Connor are licensed in the United Kingdom to act as insolvency practitioners by The Institute of Chartered Accountants in England and Wales

The affairs, business and property of the Company are being managed by the Joint Administrators, AM Hudson, CA Lewis and JM O'Connor, who act as agents of the Company only and without personal liability

We may collect, use, transfer, store or otherwise process (collectively, "Process") information that can be linked to specific individuals ("Personal Data") We may Process Personal Data in various jurisdictions in accordance with applicable law and professional regulations including (without limitation) the Data Protection Act 1998

## Appendix A Administrators' receipts and payments from 5 March 2013 to 4 September 2013

<i>Statement of Affairs Estimated to Realise Values (£)</i>			Total (£)	Notes
	<b>RECEIPTS</b>			
174 00	Leasehold property		174 00	
3 000 000 00	Freehold property		3,000,000 00	
1 00	Goodwill		1 00	
1 00	Customer list		1 00	
1 00	Business intellectual property		1 00	
7,900,000 00	Fixtures fittings equipment & vehicles		8 007,910 46	
20 500 000 00	Stock/ WIP		20 500 000 00	
4,525,000 00	Cash at bank in transit at completion		4 525 000 00	
-	Sale of shares		100 00	
-	Rates refunds		536,591 38	
-	Utilities refund		2 478 61	
-	Sundry income		771 30	
-	Bank interest		12 700 47	
-	Irrecoverable VAT		190 460 95	1
-	Bank charges		59 08	
-	Landlord control a/c		559 278 61	2
-	Monies held on a/c for Dreams Ltd		30 911 91	3
-	VAT Payable		608 927 33	
			<b>37,975,367 10</b>	
	<b>PAYMENTS</b>			
69 275 716 00	Distribution to secured creditors		28,000 000 00	
-	Pre-appointment fees paid to various parties on behalf of the secured creditors		3 693 874 66	
-	Rates agents' fees		3,295 09	
-	Other professional fees		9 926 24	
-	Administrators' fees		600 000 00	
-	Administrators disbursements		6,583 12	
-	Storage charges		1,368 94	
-	Insurance		5 920 10	
-	Wage arrears - employees		40,176 83	
-	VAT Receivable		907,454 41	
			<b>33,268,599 39</b>	
	<b>Balance In Hand</b>			
-	Fixed account		100 20	
-	Floating account		4 706 667 51	
			<b>4,706,767 71</b>	

### Notes

- 1 Funds received from the Purchaser to cover VAT paid on invoices which cannot be recovered by the Administrators
- 2 Funds received from the Purchaser to meet ongoing lease obligations
- 3 Funds due to the Purchaser following receipt of valid VAT invoices

## Appendix B Administrators' time costs from 5 March 2013 to 4 September 2013

Activity	Partner/ Director	Manager	Other Senior Professionals	Assistants & Support	Total hours this reporting period	Average Hourly Rate	Time Costs for period 05/03/2013 to 04/09/2013
Accounting and Administration	30.0	113.8	166.3	219.4	529.5	311.57	164,976.50
Bank & Statutory Reporting	32.0	82.0	9.7	2.0	125.7	497.47	62,532.00
Creditors	35.8	20.1	166.2	23.5	245.6	347.94	85,455.00
Debtors	1.5	0.5	0.5	2.5	5.0	408.00	2,040.00
Employee Matters	6.1	61.2	238.4	4.0	309.7	337.65	104,570.00
Immediate Tasks	86.8	73.0	179.8	117.5	457.1	340.62	155,696.00
Investigation / CDDA	4.7	6.0	54.2	0.0	64.9	342.18	22,206.00
Job Acceptance & Strategy	17.6	0.0	3.0	0.4	21.0	701.95	14,741.00
Legal Issues	0.0	29.0	1.2	0.0	30.2	419.60	12,672.00
Other Assets	2.0	26.4	102.1	109.0	239.5	298.30	71,443.50
Other Matters	0.0	12.1	8.0	3.0	23.1	359.83	8,312.00
Out of Scope	15.0	0.0	0.0	0.0	15.0	788.33	11,825.00
Property	51.1	183.3	285.0	151.5	670.9	347.11	232,875.00
Sale of Business	49.0	69.0	0.0	0.0	118.0	569.34	67,182.50
Statutory Duties	17.5	18.2	113.1	9.7	158.5	327.81	51,958.00
<b>Grand total</b>	<b>349.1</b>	<b>694.6</b>	<b>1,327.5</b>	<b>642.5</b>	<b>3,013.7</b>	<b>£354.54</b>	<b>£1,068,484.50</b>

N B The Administrators are seeking time costs from the Purchaser for the short term period of trading and ongoing property support. These time costs have been excluded from the above analysis because they will not be paid out of assets of the Company and consequently will not impact the return to the creditors.

### Category 1 expenses (£)

Travel	2,735.55
Accommodation	526.50
Subsistence	80.61
Sundry	1,841.05
	<u>5,183.71</u>

### Category 2 expenses (£)

Mileage	965.43
Postage & Stationary	1,858.91
	<u>2,824.34</u>

## Appendix C Statement of Administrators' charging policy for remuneration and disbursements

### Office Holders' Charging Policy for Fees

The Administrators have engaged a manager and other staff to work on the case. The work required is delegated to the most appropriate level of staff taking account of the nature of the work and the individual's experience. Additional assistance is provided by accounting and treasury executives dealing with the Company's bank accounts and statutory compliance diaries. Work carried out by all staff is subject to the overall supervision of the Administrators.

All time spent by staff working directly on case-related matters is charged to a separate time code established for each case. Time is charged in units of six minutes. Each member of staff has a specific hourly rate, which is subject to change over time. The hourly rate for each category of staff over the period is shown below:

Grade description	Hourly rate (£/hour)	Tax/VAT rate (£/hour)
<b>Partner</b>	810 - 850	1090 - 1170
<b>Directors</b>		
Executive Director	775 - 815	-
Director	735	915 - 965
<b>Managers</b>		
Assistant Director	610 - 695	850 - 945
Senior Executive	420 - 440	670 - 705
<b>Other Senior Professionals</b>		
Executive	310 - 325	475 - 520
Analyst Level 3	280 - 295	280 - 315
<b>Assistants and support</b>		
Assistant Executive	235 - 295	250 - 280
Cashiers	225 - 235	225 - 235
Analyst Level 2	220 - 230	220 - 230
Analyst Level 1	200 - 210	200 - 210

### Office Holders' Charging Policy for Disbursements

Statement of Insolvency Practice No. 9 ("SIP 9") published by R3 (The Association of Business Recovery Professionals) divides disbursements into two categories:

Category 1 disbursements comprise payments made by the office holders' firm, which comprise specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party. These disbursements can be paid from the insolvent's assets without approval from the Creditors' Committee or the general body of creditors. In line with SIP 9, it is our policy to disclose such disbursements drawn but not to seek approval for their payment.

Category 2 disbursements comprise payments made by the office holders' firm which include elements of shared or overhead costs. Such disbursements are subject to approval as if they were remuneration. It is our policy, in line with SIP 9, to seek approval for this category of disbursement before they are drawn.

## **Appendix D Creditors' request for further information regarding an administrators' remuneration or expenses**

### **Rule 2.48A, Insolvency Rules 1986:**

1) If-

(a) within 21 days of receipt of a progress report under Rule 2 47-

(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

(b) with the permission of the court upon an application made within that period of 21 days, any unsecured creditor,

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by Rule 2 47(1)(db) or (dc), the administrator must, within 14 days of receipt of the request, comply with paragraph (2)

(2) The administrator complies with this paragraph by either-

(a) providing all of the information asked for, or

(b) so far as the administrator 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 administration or might reasonably be expected to lead to violence against any person, or

(iii) the administrator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information

(3) Any creditor, who need not be the same as the creditor who requested further information under paragraph (1), may apply to the court within 21 days of-

(a) the giving by the administrator of reasons for not providing all of the information asked for, or

(b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of 8 weeks provided for in Rule 2 109(1B) by such further period as the court thinks just



**Creditors' claim that remuneration is excessive – extract from Rule 2.109 of the Insolvency Rules 1986:**

(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the unsecured 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 administrator,

(b) the basis fixed for the administrator's remuneration under Rule 2.106, or

(c) expenses incurred by the administrator,

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

(1B) The application must, subject to any order of the court under Rule 2.48A(4), be made no later than 8 weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")