

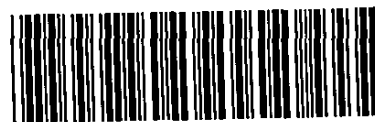
# LIQ03

## Notice of progress report in voluntary winding up



Companies House

SATURDAY



A11 \*A7LTSH3B\* #137  
29/12/2018  
COMPANIES HOUSE

### 1 Company details

Company number 0 2 2 6 1 1 3 5

Company name in full L3 GROUP LTD

→ Filling in this form  
Please complete in typescript or in  
bold black capitals.

### 2 Liquidator's name

Full forename(s) JONATHAN

Surname AMOR

### 3 Liquidator's address

Building name/number THE PORTERGATE

Street ECCLESALL ROAD

Post town SHEFFIELD

County/Region SOUTH YORKSHIRE

Postcode S 1 1 8 N X

Country ENGLAND

### 4 Liquidator's name ①

Full forename(s)

Surname

① Other liquidator  
Use this section to tell us about  
another liquidator.

### 5 Liquidator's address ②

Building name/number

Street

Post town

County/Region

Postcode

Country

② Other liquidator  
Use this section to tell us about  
another liquidator.

LIQ03

Notice of progress report in voluntary winding up

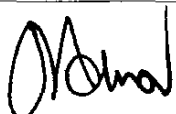
**6** Period of progress report

From date	d	0	d	1	m	1	m	1	y	2	y	0	y	1	y	7
To date	d	3	d	1	m	1	m	0	y	2	y	0	y	1	y	8

**7** Progress report

☒ The progress report is attached

**8** Sign and date

Liquidator's signature	Signature	
	X 	X

Signature date	d	2	d	8	m	1	m	2	y	2	y	0	y	1	y	8
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LIQ03

## Notice of progress report in voluntary winding up

**Presenter information**

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

Contact name **JONATHAN AMOR**

Company name **A.M. INSOLVENCY LIMITED**

Address **THE PORTERGATE**

**ECCLESALL ROAD**

Post town **SHEFFIELD**

County/Region **SOUTH YORKSHIRE**

Postcode 

S	1	1		8	N	X
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Country **ENGLAND**

DX

Telephone **01142096088**

**Checklist**

*We may return forms completed incorrectly or with information missing.*

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.

**Important information**

**All information on this form will appear on the public record.**

**Where to send**

**You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:**

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**Further information**

For further information please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)**

**PRIVATE & CONFIDENTIAL**



**TO ALL KNOWN CREDITORS**

Our Ref: L002/CVL/AR1/JA

27 December 2018

Dear Sir/Madam

**L3 Group Ltd formerly Eldonian Group Ltd (“the Company”) – In Creditors’ Voluntary Liquidation**

This is my report to members and creditors following the first anniversary of my appointment as Liquidator.

If creditors have any queries regarding the conduct of the Liquidation, or if they want hard copies of any of the documents made available on-line, they should contact me by email at [jonathan@aminsolvency.co.uk](mailto:jonathan@aminsolvency.co.uk) or by phone on 0114 209 6088.

Yours faithfully  
For and on behalf of  
L3 Group Ltd

A handwritten signature in black ink, appearing to read 'Jonathan Amor'.

Jonathan Amor  
**Liquidator**

Enc.



TR3

The Portergate,  
Ecclesall Road,  
Sheffield S11 8NX

Telephone 0114 209 6088  
[jonathan@aminsolvency.co.uk](mailto:jonathan@aminsolvency.co.uk)

**L3 Group Ltd – In Creditors' Voluntary Liquidation  
Formerly Eldonian Group Ltd**

**LIQUIDATOR'S PROGRESS REPORT TO CREDITORS AND MEMBERS**

***For the year ending 31 October 2018***

**STATUTORY INFORMATION**

Company name:	L3 Group Ltd
Registered office:	Enterprise House, Carlton Road, Worksop, S81 7QF
Former registered office:	Trinity House, Eldon Place, Liverpool, L3 6HE
Registered number:	02261135
Liquidator's name:	Jonathan Amor
Liquidator's address:	The Portergate, Ecclesall Road, Sheffield, S11 8NX
Liquidator's date of appointment:	1 November 2017

**LIQUIDATOR'S ACTIONS SINCE APPOINTMENT**

Since my appointment I have dealt with the few remaining assets as detailed in the Estimated Statement of Affairs (further details are in the asset section below). The Company had sold its main property assets before my appointment as liquidator and I have investigated these transactions (further details in my investigations section below). I have also liaised with the Redundancy Payments Office regarding claims from former employees that were subject to an Employment Tribunal.

There is certain work that I am required by the insolvency legislation to undertake in connection with the liquidation that provides no financial benefit for the creditors. A description of the routine work undertaken since my appointment as Liquidator is contained in Appendix 1.

## **RECEIPTS AND PAYMENTS**

My Receipts & Payments Account for the period from 1 November 2017 to 31 October 2018 is attached at Appendix 2.

The balance of funds are held in an interest bearing estate bank account.

## **ASSETS**

### Leasehold Property

The Company owned a piece of land valued in the Director's Estimated Statement of Affairs at approximately £50,000. The Company had previously attempted to get planning permission for the site. The land has part of the Mersey Tunnel running underneath and due to concerns regarding weight the development opportunities of the site were limited. The land had also been used to deposit large quantities of soil and rubbish. The freeholder confirmed the cost of remediation of the site would be approximately £200,000 and following this my agent advised that the realisable value of the site was nil. I therefore disclaimed my interest in the leasehold land in July 2018.

### Debtors

A Debtor in the Estimated Statement of Affairs of £6,000 was collected in full after my appointment.

## **LIABILITIES**

### Secured Creditors

An examination of the Company's mortgage register held by the Registrar of Companies, showed that the Company has granted the following charges:

- Charge in favour of Esquiline Finance over shares of Chisenhale Limited;
- Fixed charge in favour of Esquiline Finance over Land of the north side of Carruthers Street and land at Chisenhale Street (title numbers MS448203 and MS428249); and
- Fixed and floating charge in favour of Esquiline Finance.

No payments have been made to the charge holder in the period.

### Preferential Creditors

The statement of affairs anticipated £2,000 in preferential creditors. A claim has not yet been received.

### Crown Creditors

The statement of affairs included £1 owed to HMRC. HMRC's final claim of £12,555.58 has been received.

### Non-preferential unsecured Creditors

The statement of affairs included 53 non-preferential unsecured creditors with an estimated total liability of £611,842.29. I have received claims from 19 creditors at a total of £927,940.34. I have not received claims from 40 creditors with original estimated claims in the statement of affairs of £393,118.69.

Included in the claims lodged by creditors are claims in Euros. I have converted those claims into sterling at the rate of €1.1412 to the £, being the Bank of England spot rate on the date the Company went into Liquidation.

## **DIVIDEND PROSPECTS**

Secured creditors – there have been no dividends to secured creditors.

Preferential creditors – there have been no dividends to preferential creditors.

Floating charge creditors – there have been no dividends to floating charge creditors.

Non-preferential unsecured creditors – there have been no dividends to non-preferential unsecured creditors.

Dividend prospects are currently unknown and will depend upon the outcome of my investigations as detailed in the next section of the report.

## **INVESTIGATION INTO THE AFFAIRS OF THE COMPANY**

I undertook an initial investigation into the Company's affairs to establish whether there were any potential asset recoveries or conduct matters that justified further investigation, taking account of the public interest, potential recoveries, the funds likely to be available to fund an investigation, and the costs involved. Specifically, I recovered, listed and reviewed the Company's accounting records; obtained and reviewed copy bank statements for the 12 months prior to the Company ceasing to trade from the Company's bankers; and compared the information in the Company's last set of accounts with that contained in the statement of affairs lodged in the liquidation and made enquiries about the reasons for the changes.

Prior to my appointment, the Company had sold two pieces of leasehold land and a freehold nursery. These were sold for £50,000, £150,000 and £250,000 respectively. I instructed my agent to value these assets to ensure these were sold for fair value as these had previously been on the Company balance sheet in excess of £1m. The initial advice from my agent is that the freehold nursery was sold for around market value however the two leasehold sites were possibly sold undervalued. I have raised my concerns with the former director who had benefitted from the sale and discussions are ongoing. Due to the nature of my concerns I will update creditors when my discussions are concluded.

The Company's former CEO was removed from his post on 31 December 2018 for gross misconduct. I have instructed the Company's former solicitor to continue the potential action against the former CEO and this matter is ongoing.

Within three months of my appointment as Liquidator, I am required to submit a confidential report to the Secretary of State to include any matters which have come to my attention during the course of my work which may indicate that the conduct of any past or present Director would make them unfit to be concerned with the management of the Company. I would confirm that my report has been submitted.

## **PRE-APPOINTMENT REMUNERATION**

The creditors previously authorised the payment of a fee of £7,000 for my assistance with preparing the statement of affairs and arranging the decision procedure for creditors to appoint a liquidator. The fee for preparing the statement of affairs and arranging the decision procedure for creditors to appoint a liquidator

was part paid from first realisations on appointment and is shown in the enclosed receipts and payments account.

## **LIQUIDATOR'S REMUNERATION**

My remuneration was approved on a time cost basis based on a fees estimate of £14,750. The fees estimate acts as a cap and I cannot draw remuneration in excess of that estimate without first seeking approval from the creditors. My total time costs to 31 October 2018 amount to £15,675, representing 62.7 hours work at a blended charge out rate of £250 per hour.

I have not been able to draw any remuneration in this matter.

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk/>. A copy of 'A Creditors Guide to Liquidators' Fees' also published by R3, together with an explanatory note which shows A.M. Insolvency Limited's fee policy are available as appendices to this report. Hard copies of any documents are available on request.

## **LIQUIDATOR'S EXPENSES**

I have incurred expenses to 31 October 2018 of £4,190.00.

I have drawn £1,110 to date.

I have incurred the following expenses in the period since my appointment as Liquidator:

Type of expense	Amount incurred/ accrued in the reporting period
Agent fees	£3,750.00
Statutory advertising	£210.00
Virtual meeting & online report hosting	£150.00
Insolvency bordereau	£80.00

I have used the following agents or professional advisors in the reporting period:

Professional Advisor	Nature of Work	Basis of Fees
Legat Owen	Valuer	Fixed fee
VDE Asset Management	Valuer	Fixed fee
McPartland & Gifford	Valuer	Fixed fee
JMW Solicitors LLP	Solciitors	Time costs
Taylor & Emmet LLP	Solicitors	Time costs

The choice of professionals was based on my perception of their experience and ability to perform this type of work and the complexity and nature of the assignment. I also considered that the basis on which they will charge their fees represented value for money. I have reviewed the charges they have made and am satisfied that they are reasonable in the circumstances of this case.

As at 31 October 2018 although total expenses have not yet been exceeded, I anticipate that the total expenses I will incur in this matter will exceed the total expenses I estimated I would incur when my remuneration was authorised by the creditors. The reasons I anticipate exceeding the expenses estimate are due to an increase in agent fees regarding the two leasehold sites sold.

### **FURTHER INFORMATION**

An unsecured creditor may, with the permission of the Court, or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question), request further details of the Liquidator's remuneration and expenses within 21 days of their receipt of this report. Any secured creditor may request the same details in the same time limit.

An unsecured creditor may, with the permission of the Court, or with the concurrence of 10% in value of the unsecured creditors (including the creditor in question), apply to Court to challenge the amount of remuneration charged by the Liquidator as being excessive, and/or the basis of the Liquidator's remuneration, and/or the amount of the expenses incurred as being excessive, within 8 weeks of their receipt of this report. Any secured creditor may make a similar application to court within the same time limit.

To comply with the Provision of Services Regulations, some general information about A.M. Insolvency Limited can be found in the attached summary sheet.

### **SUMMARY**

The Liquidation will remain open until I have concluded my investigations into the potential undervalue sale of assets and the alleged misfeasance by the former CEO. I estimate that this will take at least a further 12 months to resolve.

If creditors have any queries regarding the conduct of the Liquidation, or if they want hard copies of any of the documents made available on-line, they should contact me on 0114 209 6088 or by email at [jonathan@aminsolvency.co.uk](mailto:jonathan@aminsolvency.co.uk).



Jonathan Amor  
**Liquidator**

## **Appendix 1**

### **1. Administration**

- Case planning - devising an appropriate strategy for dealing with the case.
- Setting up physical & electronic case files.
- Issuing the statutory notifications to creditors and other required on appointment as office holder, including gazetting the office holder's appointment.
- Obtaining a specific penalty bond.
- Convening a decision procedure to seek a decision from creditors to approve the officeholders' remuneration.
- Dealing with all routine correspondence and emails relating to the case.
- Opening, maintaining and managing the office holder's estate bank account.
- Creating, maintaining and managing the office holder's cashbook.
- Undertaking regular bank reconciliations of the bank account containing estate funds.
- Reviewing the adequacy of the specific penalty bond on a quarterly basis.
- Undertaking periodic reviews of the progress of the case.
- Preparing, reviewing and issuing annual progress reports to creditors and members.
- Filing returns at Companies House.
- Preparing and filing returns with HMRC.

### **2. Creditors**

- Obtaining information from the case records about employee claims.
- Completing documentation for submission to the Redundancy Payments Office.
- Corresponding with employees regarding their claims.
- Liaising with the Redundancy Payments Office regarding employee claims.
- Dealing with creditor correspondence, emails and telephone conversations regarding their claims.
- Maintaining up to date creditor information.

### **3. Investigations**

- Preparing a report or return on the conduct of the directors as required by the Company Directors Disqualification Act.

**L3 Group Ltd - In Liquidation**  
**Liquidator's Receipts and Payments**  
**1 November 2017 to 31 October 2018**

**Appendix 2**

	01/11/2017 to 31/10/2018 £	Cumulative 01/11/2017 to 31/10/2018 £	Statement of Affairs £
<b>Receipts</b>			
Director contribution to costs	1,000.00	1,000.00	
Book debt	6,000.00	6,000.00	6,000
Cash at bank	95.05	95.05	
Interest received	1.93	1.93	
<i>Total receipts</i>	<u>7,096.98</u>	<u>7,096.98</u>	<u>6,000.00</u>
<b>Payments</b>			
Statement of Affairs fees	(5,000.00)	(5,000.00)	
Agent fees	(750.00)	(750.00)	
Statutory advertising	(210.00)	(210.00)	
Virtual meeting & online report hosting	(150.00)	(150.00)	
<i>Total payments</i>	<u>(6,110.00)</u>	<u>(6,110.00)</u>	
<b>Balance in hand</b>		<u>986.98</u>	

**L3 Group Ltd - In Liquidation**

**Appendix 3**

**Time Incurred for the Period 1 November 2017 to 31 October 2018**

	Insolvency Practitioner	Total Hours	Total Time Costs	Fees Estimate	
				Total Hours	Total Time Costs
ADMINISTRATION	16.0	16.0	4,000.00	20.0	5,000.00
CREDITORS	10.4	10.4	2,600.00	5.0	1,250.00
INVESTIGATIONS	21.3	21.3	5,325.00	20.0	5,000.00
REALISATION OF ASSETS	12.5	12.5	3,125.00	10.0	2,500.00
CASE SPECIFIC MATTERS	2.5	2.5	625.00	4.0	1,000.00
	<b>62.7</b>	<b>62.7</b>	<b>15,675.00</b>	<b>59.0</b>	<b>14,750.00</b>

## **PROVISION OF SERVICES REGULATIONS SUMMARY SHEET FOR A.M. INSOLVENCY LIMITED**

The following information is designed to draw the attention of interested parties to the information required to be disclosed by the Provision of Services Regulations 2009.

### **Licensing Body**

Jonathan Amor is licensed to act as Insolvency Practitioners in the United Kingdom by the Association of Chartered Certified Accountants (ACCA).

Jonathan Amor is a member of ACCA.

### **Rules Governing Actions**

All IPs are bound by the rules of their professional body, including any that relate specifically to insolvency. The rules of the professional body that licences Jonathan Amor can be found at <http://www.accaglobal.com>. In addition, IPs are bound by the Statements of Insolvency Practice (SIPs), details of which can be found at <https://www.r3.org.uk/what-we-do/publications/professional/statements-of-insolvency-practice>.

### **Ethics**

All IPs are required to comply with the Insolvency Code of Ethics and a copy of the Code can be found at [http://www.accaglobal.com/content/dam/acca/global/PDF-members/2012/2012e/ethical\\_code.pdf](http://www.accaglobal.com/content/dam/acca/global/PDF-members/2012/2012e/ethical_code.pdf).

### **Complaints**

At A.M. Insolvency Limited we always strive to provide a professional and efficient service. However, we recognise that it is in the nature of insolvency proceedings for disputes to arise from time to time. As such, should you have any comments or complaints regarding the administration of a particular case then in the first instance you should contact the IP acting as office holder.

If you consider that the IP has not dealt with your comments or complaint appropriately you should then put details of your concerns in writing to our complaints officer, Thomas Morgan of A.M. Insolvency Limited, The Portergate, Ecclesall Road, Sheffield, S11 8NX. This will formally invoke our complaints procedure and we will endeavour to deal with your complaint under the supervision of a senior partner unconnected with the appointment.

Most disputes can be resolved amicably either through the provision of further information or following negotiations. However, in the event that you have exhausted our complaints procedure and you are not satisfied that your complaint has been resolved or dealt with appropriately, you may complain to the regulatory body that licences the insolvency practitioner concerned. Any such complaints should be addressed to The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds, LS11 9DA, and you can make a submission using an on-line form available at [www.gov.uk/complain-about-insolvency-practitioner](http://www.gov.uk/complain-about-insolvency-practitioner); or you can email [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk); or you may phone 0300 678 0015 - calls are charged at up to 12p per minute from a land line, or for mobiles, between 3p and 45p per minute if you're calling from the UK.

### **Professional Indemnity Insurance**

A.M. Insolvency Limited's Professional Indemnity Insurance is provided by QBE Insurance (Europe) Limited, of Plantation Place, 30 Fenchurch Street, London, EC3M 3BD. This professional indemnity insurance provides worldwide coverage excluding professional business carried out from an office in the United States of America or Canada, and any action for a claim bought in any court in the United States of America or Canada.

### **VAT**

A.M. Insolvency Limited is registered for VAT under registration no. 228 8414 91.

## **PRACTICE FEE RECOVERY POLICY FOR A.M. INSOLVENCY LIMITED**

### **Introduction**

The insolvency legislation was changed in October 2015, with one or two exceptions, for insolvency appointments made from that time. This sheet explains how we intend to apply the alternative fee bases allowed by the legislation when acting as office holder in insolvency appointments. The legislation allows different fee bases to be used for different tasks within the same appointment. The fee basis, or combination of bases, set for a particular appointment is/are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the Court.

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk/>. Details about how an office holder's fees may be approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) and can be accessed at <https://www.r3.org.uk/what-we-do/publications/professional/statements-of-insolvency-practice/e-and-w/sip-9-list>. Alternatively a hard copy may be requested from Jonathan Amor of A.M. Insolvency Limited. Please note that we have provided further details in this policy document.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. The report will provide a breakdown of the remuneration drawn. If approval has been obtained for remuneration on a time costs basis, i.e. by reference to time properly spent by members of staff of the practice at our standard charge out rates, the time incurred will also be disclosed, whether drawn or not, together with the average, or "blended" rates of such costs. Under the legislation, any such report must disclose how creditors can seek further information and challenge the basis on which the fees are calculated and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

Under some old legislation, which still applies for insolvency appointments commenced before 6 April 2010, there is no equivalent mechanism for fees to be challenged.

### **Time cost basis**

When charging fees on a time costs basis we use charge out rates appropriate to the skills and experience of a member of staff and the work that they perform. This is combined with the amount of time that they work on each case, recorded in 6 minute units with supporting narrative to explain the work undertaken.

### **Chargeout Rates**

<b>Grade of staff</b>	<b>Current charge-out rate per hour, effective from 1 January 2015 to date £</b>
Insolvency Practitioner	250
Manager	175
Case Administrator	100
Support Staff	50

These charge-out rates charged are reviewed on 1 January 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. The work is generally recorded under the following categories:

- Administration and Planning
- Investigations
- Realisation of Assets
- Creditors
- Trading
- Case specific matters

In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. Although the legislation changed on 1 October 2015, on the majority of our new appointments we still seek time costs for the following categories:

- Administration and Planning
- Investigations
- Realisation of Assets
- Creditors
- Distributions
- Trading
- Case specific matters

When we seek time costs approval we have to set out a fees estimate. That estimate acts as a cap on our time costs so that we cannot draw fees of more than the estimated time costs without further approval from those who approved our fees. When seeking approval for our fees, we will disclose the work that we intend to undertake, the hourly rates we intend to charge for each part of the work, and the time that we think each part of the work will take. We will summarise that information in an average or "blended" rate for all of the work being carried out within the estimate. We will also say whether we anticipate needing to seek approval to exceed the estimate and, if so, the reasons that we think that may be necessary.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any *responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal.*

If we subsequently need to seek authority to draw fees in excess of the estimate, we will say why we have exceeded, or are likely to exceed the estimate; any additional work undertaken, or proposed to be undertaken; the hourly rates proposed for each part of the work; and the time that the additional work is expected to take. As with the original estimate, we will say whether we anticipate needing further approval and, if so, why we think it may be necessary to seek further approval.

### **Percentage basis**

The legislation allows fees to be charged on a percentage of the value of the property with which the office holder has to deal (realisations and/or distributions). Different percentages can be used for different assets or types of assets. In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and we now seek remuneration on a percentage basis more often. A report accompanying any fee request will set out the potential assets in the case, the remuneration percentage proposed for any realisations and the work covered by that remuneration, as well as the expenses that will be, or are

likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context.

The percentage approved in respect of realisations will be charged against the assets realised, and where approval is obtained on a mixture of bases, any fixed fee and time costs will then be charged against the funds remaining in the liquidation after the realisation percentage has been deducted.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal.

If the basis of remuneration has been approved on a percentage basis then an increase in the amount of the percentage applied can only be approved by the committee or creditors (depending upon who approved the basis of remuneration) in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the percentage applied. If there has not been a material and substantial change in the circumstances then an increase *can only be approved by the Court*.

### **Fixed fee**

The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and we now seek remuneration on a fixed fee basis more often. A report accompanying any fee request will set out the set fee that we proposed to charge and the work covered by that remuneration, as well as the expenses that will be, or are likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal.

If the basis of remuneration has been approved on a fixed fee basis then an increase in the amount of *the fixed fee can only be approved by the committee or creditors (depending upon who approved the basis of remuneration)* in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the fixed fee. If there has not been a material and substantial change in the circumstances then an increase can only be approved by the Court.

### **Members' voluntary liquidations and Voluntary Arrangements**

The legislation changes that took effect from 1 October 2015 did not apply to members' voluntary liquidations (MVL), Company Voluntary Arrangements (CVA) or Individual Voluntary Arrangements (IVA). In MVLs, the company's members set the fee basis, often as a fixed fee. In CVAs and IVAs, the fee basis is set out in the proposals and creditors approve the fee basis when they approve the arrangement.

### **All bases**

With the exception of Individual Voluntary Arrangements and Company Voluntary Arrangements which are VAT exempt, the officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate.

### **Agent's Costs**

Charged at cost based upon the charge made by the Agent instructed, the term Agent includes:

- Solicitors/Legal Advisors
- Auctioneers/Valuers
- Accountants
- Quantity Surveyors
- Estate Agents
- Other Specialist Advisors

In new appointments made after 1 October 2015, the office holder will provide details of expenses to be incurred, or likely to be incurred, when seeking fee approval. When reporting to the committee and creditors during the course of the insolvency appointment the actual expenses incurred will be compared with the original estimate provided.

### **Disbursements**

In accordance with SiP 9 the basis of disbursement allocation in respect of disbursements incurred by the Office Holder in connection with the administration of the estate must be fully disclosed to creditors. Disbursements are categorised as either Category 1 or Category 2.

Category 1 expenses are directly referable to an invoice from a third party, which is either in the name of the estate or A.M. Insolvency Limited; in the case of the latter, the invoice makes reference to, and therefore can be directly attributed to, the estate. These disbursements are recoverable in full from the estate without the prior approval of creditors either by a direct payment from the estate or, where the firm has made payment on behalf of the estate, by a recharge of the amount invoiced by the third party. Examples of category 1 disbursements are statutory advertising, external meeting room hire, external storage, specific bond insurance and Company search fees.

Category 2 expenses are incurred by the firm and recharged to the estate; they are not attributed to the estate by a third party invoice and/or they may include a profit element. These disbursements are recoverable in full from the estate, subject to the basis of the disbursement charge being approved by creditors in advance. Examples of category 2 disbursements are photocopying, internal room hire, internal storage and mileage.

It is proposed that the following Category 2 disbursements are recovered:

Room Hire	£50
Mileage	65p per mile
Storage	£5 per box per annum
Photocopying	15p per sheet

## LIQUIDATIONS - A CREDITORS' GUIDE TO INSOLVENCY PRACTITIONERS' FEES

### ENGLAND AND WALES

#### 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 (also referred to in this guide as 'remuneration'). 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 participate in the appointment of the liquidator. A solvent liquidation is called a members' voluntary liquidation. It should be noted that this guide does not extend to members' voluntary liquidations as the fees in these cases are not determined by the creditors.
- 2.3 In a compulsory liquidation, the function of the 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 the specialist skills of an insolvency practitioner are required or the majority of creditors request the appointment of an insolvency practitioner, an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver. Where an insolvency practitioner is not appointed the official receiver remains as 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. An invitation to decide on whether a committee is to be established will be sent to creditors at the same time as a decision is sought on the appointment of a liquidator. 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 *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 fees**

### **4.1 Basis**

4.1.1 The basis for fixing the liquidator's fees is set out in Rules 18.16, 18.17, 18.19 and 18.20 of the Insolvency (England and Wales) Rules 2016. The Rules state that the basis of fees must be fixed:

- as a percentage of the value of the assets which are realised, distributed or both, by the liquidator
- 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.

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

### **4.2 Advance information where fees are not based on time costs**

4.2.1 Prior to the determination of the basis of fees, the liquidator must give the creditors details of the work the liquidator proposes to undertake, and the expenses he considers will be, or are likely to be, incurred.

### **4.3 Fees estimates where fees are to be based on time costs**

4.3.1 Where the liquidator proposes to take fees based on time costs, he must first provide the creditors with detailed information in the form of a 'fees estimate'. A fees estimate is a written estimate that specifies –

- details of the work the liquidator and his staff propose to undertake;
- the hourly rate or rates the liquidator and his staff propose to charge for each part of that work;
- the time the liquidator anticipates each part of that work will take; whether the liquidator anticipates it will be necessary to seek approval or further
- approval under the Rules; and
- the reasons it will be necessary to seek such approval.

4.3.2 In addition, the liquidator must give the creditors details of the expenses he considers will be, or are likely to be, incurred.

### **4.4 Who fixes the fees?**

4.4.1 It is for the liquidation committee (if there is one) to determine on which of these bases, or combination of bases, the fees are to be fixed. Where it is fixed as a set amount or a percentage, it is for the committee to determine the amount, percentage or percentages to be applied. Rule 18.16 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 property with which the liquidator has to deal.

4.4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's fees may be fixed by a decision of the creditors by a decision procedure. The creditors take account of the same matters as apply in the case of the committee.

4.4.3 If the fees are 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 fees 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 calculated in accordance with a scale set out in the Rules.

4.4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of fees fixed in the administration continues to apply in the liquidation).

## **5. Review of fees**

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

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

### **6.1 General principles**

6.1.1 The liquidator should provide those responsible for approving his fees with sufficient information to enable them to make an informed judgement about the reasonableness of the liquidator's request. The information should be presented in a manner which is transparent, consistent throughout the life of the case and useful to creditors, while being proportionate to the circumstances of the case.

6.1.2 A proposed liquidator may issue a fees estimate to creditors prior to being appointed liquidator.

6.1.3 The liquidator should disclose:

- payments, fees and expenses arising from the administration paid to the liquidator or his or her associates;
- any business or personal relationships with parties responsible for approving the liquidator's fees or who provide services to the liquidator in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.

6.1.4 The liquidator should inform creditors and other interested parties of their rights under insolvency legislation, and should advise them how they may access suitable information setting out their rights within the first communication with them and in each subsequent report.

6.1.5 Where the liquidator sub-contracts out work that could otherwise be carried out by the liquidator or his staff, this should be drawn to the attention of creditors with an explanation of why it is being done.

### **6.2 Key issues**

6.2.1 The key issues of concern to those with a financial interest in the level of payments from the insolvency estate will commonly be:

- the work the liquidator anticipates will be done, and why that work is necessary; and the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
- whether it is anticipated that the work will provide a financial benefit to creditors, and if so what anticipated benefit (or if the work provided no direct financial benefit, but was required by statute);
- the work actually done and why that work was necessary;
- the actual costs of the work, including any expenses incurred in connection with it, as against any estimate provided;
- whether the work has provided a financial benefit to creditors, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute).

6.2.2 When providing information about payments, fees and expenses, the liquidator should do so in a way which facilitates clarity of understanding of these key issues. Narrative explanations should be provided to support any numerical information supplied. Where it is practical to do so, the liquidator should provide an indication of the likely return to creditors when seeking approval for the basis of his fees.

6.2.3 When approval for a fixed amount or a percentage basis is sought, the liquidator should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the liquidator anticipates will be undertaken.

### **6.3 Fee estimates and subsequent reports**

6.3.1 When providing a fees estimate, the liquidator should supply that information in sufficient time to facilitate those with the authority to approve fees making an informed judgement about the reasonableness of the liquidator's requests. The estimate should clearly describe what activities are anticipated to be conducted in respect of the estimated fee.

6.3.2 When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each activity should be provided for comparison.

### **6.4 Disbursements**

6.4.1 Costs met by and reimbursed to the liquidator in connection with the liquidation will fall into two categories:

- Category 1 disbursements: These are payments to independent third parties where there is specific expenditure directly referable to the liquidation. 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: 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 may be incurred by the liquidator or their firm, and that can be allocated to the liquidation on a proper and reasonable basis. Category 2 disbursements require approval in the same manner as a liquidator's fees.

6.4.2 When seeking approval, the liquidator should explain, for each category of cost, the basis on which the charge is being made. If the liquidator has obtained approval for the basis of Category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the liquidator is replaced.

6.4.3 The following are not permissible as disbursements:

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

## **6.5 Payment of pre-appointment expenses**

6.5.1 The following categories of expenses may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding up:

- *any reasonable and necessary expenses of preparing the statement of affairs*
- *any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of liquidator*

6.5.2 If payment has not been made pre-commencement of the liquidation, payment may not be made to the liquidator or any associate of the liquidator, otherwise than with the approval of the liquidation committee, creditors or the court.

6.5.3 Disclosure should be made of amounts already paid to the liquidator in respect of pre-appointment costs, giving the amounts paid, the name of the payer, and its relationship to the estate and the nature of the payment.

6.5.4 Disclosure should follow the principles and standards as set out in this Guidance.

## **6.6 Realisations for secured creditors**

6.6.1 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 in any reports he sends to creditors.

## **7. Exceeding the amount set out in the fees estimate**

7.1 Fees cannot be drawn in excess of the fees estimate without approval by the body which fixed the original basis of the fee. The request for approval must specify –

- the reason why the liquidator has exceeded, or is likely to exceed, the fees estimate;
- the additional work the liquidator has undertaken or proposes to undertake;
- the hourly rate or rates the liquidator proposes to charge for each part of that additional work;
- the time that additional work has taken or the liquidator anticipates that work will take;
- whether the liquidator anticipates that it will be necessary to seek further approval; and
- the reasons it will be necessary to seek further approval.

## **8. Progress reports and requests for further information**

8.1 The liquidator is required to send annual progress reports to creditors. In addition to the items described above and especially those in paragraph 6.2.1, the reports must include:

- details of the basis fixed for the fee 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 fee 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 fee charged during the periods covered by the previous reports, together with a description of the things 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;
- details of progress during the period of the report, including a summary of the

receipts and payments during the period:

- details of what needs to be done;
- where appropriate, a statement setting out whether, at the date of the report –
  - the fee expected to be charged is likely to exceed the fees estimate or any approval given;
  - the expenses incurred or expected to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of fees; and
  - the reason for that excess.
- a statement of the creditors' rights to request further information, as explained in paragraph 8.2, and their right to challenge the liquidator's fees and expenses.

8.2 Within 21 days of receipt of a progress report a creditor may request the liquidator to provide further information about the fees 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.

8.3 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 some or all of the information.

8.4 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.

## **9. Provision of information – additional requirements**

9.1 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.

9.2 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.

9.3 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.

9.4 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.

## **10. What if a creditor is dissatisfied?**

10.1 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.

10.2 If a creditor believes that the liquidator's fees are excessive, 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.

- 10.3 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 fees or incurring of the expenses in question is first reported (see paragraph 8.1 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.
- 10.4 If the court considers the application well founded, it may order that the fees 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.
- 10.5 On receipt of the liquidator's final account creditors have 8 weeks in which they may challenge the liquidator's fees and expenses as set out above.

#### **11. What if the liquidator is dissatisfied?**

- 11.1 If the liquidator considers that the fees 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 decision of the creditors. If he considers that the fees 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.

#### **12 Other matters relating to fees**

- 12.1 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.
- 12.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the fee payable should be apportioned. Any dispute between them may be referred to the court, the committee or the creditors.
- 12.3 If a new liquidator is appointed in place of another, any determination, decision 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, decision or court order is made.
- 12.4 Where the basis of the fees 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 fees. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.
- 12.5 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.

**13. Effective date**

This guide applies where a liquidator is appointed on or after 1 October 2015, or where information is provided by the liquidator about fees, expenses or other payments after 6 April 2017.