


The Insolvency Act 1986

**Notice of result of meeting
of creditors****2.23B**

Name of Company Fogarty Limited	Company Number 02524980
In the High Court of Justice, Chancery Division, Birmingham District Registry (full name of court)	Court case number 8581 of 2009

- (a) Insert full name(s) and address(es) of the administrator(s) We (a) Mr Stuart David Maddison and Mr Robert Jonathan Hunt of PricewaterhouseCoopers LLP, Donington Court, Pegasus Business Park, Castle Donington, East Midlands, DE74 2UZ
- *Delete as applicable (b) hereby report that the business of the meeting was conducted by correspondence pursuant to paragraph 58 of schedule B1 to the Insolvency Act 1986 and Rule 2.48 of the Insolvency Rules 1986
- (b) Insert place of meeting (c) Closing date specified in Form 2.25B of 26 November 2009 at which:
- (c) Insert date of meeting Proposals 1, 2 and 3 were accepted and proposal 4 was rejected.
- A creditors' committee was not formed.

*Delete as applicable

Signed 
Joint Administrator

(d) Give details of the modifications (if any)

(e) Insert time and date of adjourned meeting

Dated 26/11/2009

(f) Details of other resolutions passed

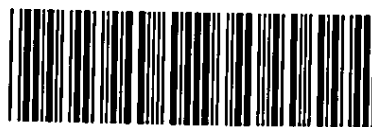
A copy of the original proposals is attached for those who did not receive such documents prior to the meeting.

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

Clare Davison	
PricewaterhouseCoopers LLP, Benson House, 33 Wellington Street, Leeds, LS1 4JP	
Tel 0113 289 4062	
DX Number	DX Exchange

FRIDAY



A27 *A164MF14* 04/12/2009 56
COMPANIES HOUSE

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

To all known creditors

9 November 2009

Our ref: CND.091109.FOGARTY.D420C

Dear Sirs

Fogarty Limited - In Administration ("the Company")

I wrote to all known creditors on 18 September 2009 to explain that the Company had entered into Administration and that my colleague Jonathan Robert Hunt and I had been appointed as joint administrators. I enclose the joint administrators' proposals for achieving the purpose of administration and a formal notice of conduct of business by correspondence (Form 2.25B).

As the meeting of creditors may be asked to approve the joint administrators' fees, I would like to draw to your attention the contents of Appendix B of the joint administrators' proposals, which includes a Guide to Administrators' Fees from Statement of Insolvency Practice 9 ("SIP 9") produced by the Association of Business Recovery Professionals.

What steps should you be taking now?

We have fixed 26 November 2009 as the date by which creditors must return the enclosed Form 2.25B to vote on the proposals. Please note that Form 2.25B must be accompanied by details of your claim on the attached statement of claim form. If you have already lodged your claim there is no need to resubmit it.

If the proposals are approved by the requisite majority of creditors you will be bound by them. It is important therefore that you read this document carefully.

If you require any further information, please do not hesitate to contact my colleague Clare Davison on 0113 289 4062.

Yours faithfully

For and on behalf of the Company



C L Harsley
S D Maddison
Joint Administrator

S D Maddison and R J Hunt have been appointed as joint administrators of the Company to manage its affairs, business and property as its agents and without personal liability. Both are licensed to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales.

Enclosures:

- 1) Joint administrators' proposals for achieving the purpose of the administration
- 2) Form 2.25B (Notice of conduct of business by correspondence)
- 3) Statement of claim form (D355E)



**Fogarty Limited – in Administration
High Court of Justice, Chancery Division, Birmingham District Registry
Case No. 8581 of 2009**

Joint Administrators' proposals for achieving the purpose of administration

9 November 2009

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1. The purpose of this document

I wrote to all creditors on 18 September 2009 to explain that Fogarty Limited ("the Company") had entered into Administration and that Robert Jonathan Hunt and I had been appointed as Joint Administrators ("the Administrators") on 17 September 2009.

We were appointed as Administrators to manage the affairs, business and property of the Company. We will act until such time as our proposals for achieving the purpose of Administration have been agreed by creditors and implemented, following which the Administration will be ended.

The purpose of administration is to achieve one of the following objectives: -

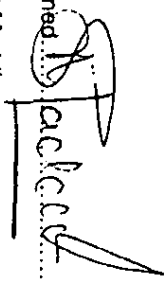
- (a) Primarily, rescuing the Company as a going concern, or failing that
- (b) Achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration), or finally
- (c) Realising property in order to make a distribution to one or more secured or preferential creditors.

For the reasons detailed in this document, objective (b) is being pursued as it was not reasonably practical to rescue the Company as a going concern.

This document and its appendices form the Administrators' statement of proposals for achieving the purpose of administration as required by Paragraph 49 Schedule B1 of the Insolvency Act 1986 ("Sch. B1 IA86").

You are requested to vote upon the Administrators' proposals and to fix the Administrators' remuneration by returning the enclosed Form 2.25B together with details of your claim on the enclosed claim form. We have set 25 November 2009 as the date by which these must be returned. Please note that you will be bound by the proposals if they are approved by the requisite majority of creditors. It is important therefore that you read this document carefully.

If you have any concerns or questions regarding the background to this case or what is being proposed, please do not hesitate to contact my colleague, Clare Davison, on 0113 289 4062.

Signed 

S D Maddison
Joint Administrator of Fogarty Limited

S D Maddison and R J Hunt have been appointed as joint administrators of the Company to manage its affairs, business and property as its agents and act without personal liability. Both are licensed to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales.

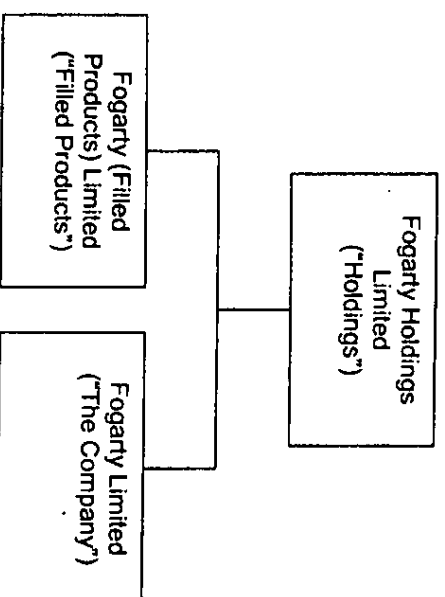
Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

2. The Administrators' statement of proposals

a. Brief history and summary of the Administrators' actions to date

Background

The Company is part of the Fogarty Group ("the Group"), which consists of a non trading holding company, Fogarty Holdings Ltd ("Holdings") and two wholly owned subsidiaries, Fogarty (Filled Products) Limited ("Filled Products") and the Company. The group structure is attached below for information. The Company was incorporated in 1990 and was acquired as part of a management buy out.



The Company manufactured pillows and duvets which were sold under the Fogarty brand or white label through Filled Products. The Company employed approximately 300 members of staff and traded from leasehold premises in Boston, Lincolnshire. Within the group, the Company acted as a manufacturing service provider to Filled Products by purchasing raw material from Filled Products and selling back finished goods. Sales of goods externally were made by Filled Products who owned all supplier and customer relationships

The circumstances giving rise to the Administrators' appointment

PricewaterhouseCoopers LLP were first engaged by the directors of the Group in early 2007 to carry out a review of the Group financial position and consider possible restructuring options to address the Company's pension scheme deficit. A further review was carried out in late 2008 following a downturn in trading and

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

2. The Administrators' statement of proposals

the latest triennial pension scheme valuation which indicated a significant increase in the monthly payments required for the Company to meet the pension scheme deficit.

Following the findings of the second review in late 2008, the directors concluded that they could no longer continue to trade the Company, primarily as a result of the current and forecast pension deficit payments and that a restructuring through an insolvency process involving the sale of the trade and assets of the Company would result in a better realisation for its creditors.

Accordingly, the directors resolved to place the Company into Administration and on 17 September 2009, Stuart Maddison and Robert Hunt were appointed as Joint Administrators of the Company.

The manner in which the Company's affairs and business have been managed and financed

As previously advised, a sale of the business and assets of the Company to Filled Products was achieved immediately following the Administrators' appointment on 17 September 2009. In accordance with Statement of Insolvency Practice 16 (Pre-packaged sales in administration), details of the sale were provided to creditors with the initial letter sent on 18 September 2009. There had previously been several attempts by the directors of the Company to sell the entire Group in the past without success as a result of the deficit on the pension scheme. In addition, the structure of the group made it very difficult for the Company to exist in isolation. The Company had only one customer and one supplier both of who were Filled Products, therefore, it was considered that Filled Products was the only realistic buyer for the business.

In addition, it was not considered commercially viable to continue to trade the business in administration whilst a buyer was sought as this would have severely impacted on the value of the business by damaging the Fogarty Brand and any trading would have relied on the continued financial and operational support of Filled Products which was not considered to be a viable option. The Administrators, therefore, considered that an immediate sale of the business and assets would result in higher realisations for the Company's creditors than would have been likely if the business had been traded in Administration and then sold. The sale to Filled Products also safeguarded the employment of the Company's c.300 employees as they were transferred to the purchaser under TUPE regulations and extinguished any potential preferential creditor claims in the administration.

The total consideration received for the sale is as follows:

Plant & machinery	£
Stock	400,000
Tax losses	368,624
Intellectual property	25,000
	<u>1</u>
	793,625

2. The Administrators' statement of proposals

Of the total consideration of £793,625, £175,000 was paid on completion, with the remaining £618,625 due 30 days following completion. In accordance with the terms of the agreement, payments of £182,868 in respect of arrears wages at the date of sale and £96,132 in respect of preferential claims that would have arisen in the administration have been deducted from the sale price; therefore, net realisations achieved total £514,625. In addition at the date of sale there was a credit balance on the Company's bank account of £1,051. As the sale of the business was to a connected party, in accordance with Statement of Insolvency Practice 13 (Acquisition of Assets of Insolvent Companies by Directors), further details of the sale are included at Appendix A.

The Administrators can confirm that all amounts have now been received and it is not anticipated that there will be any further realisations in the administration.

Objective of the Administration

The purpose of an administration is to achieve one of the following objectives:

- (a) Primarily, rescuing the Company as a going concern, or failing that
- (b) Achieving a better result for the Company's creditors as a whole than would be likely if the Company was wound up (without first being in Administration), or finally
- (c) Realising property in order to make a distribution to one or more secured or preferential creditors.

The Administrators are pursuing objective (b) as they have concluded that it was not reasonably practicable to rescue the Company as a going concern.

The Administrators believe this will be achieved by the sale of the business and assets of the Company detailed above. The Administrators believe that the level of realisations achieved from the sale would not have been achieved had the Company been placed into liquidation and the assets sold on a break-up basis.

Dividend prospects

Preferential Creditors

Preferential claims arise in respect of employee claims for arrears of wages and outstanding holiday pay. The directors' statement of affairs estimates preferential claims of £279,000, however these liabilities have transferred to the purchaser of the business under TUPE regulations. Therefore, the Administrators do not anticipate any preferential claims in the Administration.

Unsecured Creditors

According to the directors' statement of affairs, unsecured, non-preferential claims total £8,907,874 which is mainly made up of the deficit against the Company's pension scheme. As the Company has no secured or preferential creditors, all realisations, after the costs of the Administration, will be available for distribution to this class of creditor.

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

2. The Administrators' statement of proposals

The final level of dividend available to unsecured creditors is dependent upon the quantum of claims received and the final costs of the administration. Creditors will be notified in due course of the anticipated level of dividend.

In addition, there will be no return to unsecured creditors by virtue of the Prescribed Part, as no floating charge has been created and therefore the Prescribed Part does not apply

Ending the Administration

The Administrators currently envisage that once the objective of the Administration has been achieved, the Company will be placed into creditors' voluntary liquidation or an application to court will be made for permission for the Administrators to distribute to the unsecured creditors. If permission is granted, following the distribution to unsecured creditors, the Administrators will file notice under Paragraph 84(1) Sch.B1 IA86 with the Registrar of Companies, following registration of which the Company will be dissolved three months later. If permission is not granted the Administrators will place the Company into creditors' voluntary liquidation or otherwise act in accordance with any order of the court.

2. The Administrators' statement of proposals

b. Proposals for achieving the purpose of the Administration

The Administrators make the following proposals for achieving the purpose of administration.

- i) The Administrators will continue to manage and finance the Company's business, affairs and property from asset realisations in such manner as they consider expedient with a view to achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration).
- ii) The Administrators may investigate and, if appropriate, pursue any claims that the Company may have under the Companies Act 1985 or IA86 or otherwise. In addition, the Administrators shall do all such other things and generally exercise all their powers as Administrators as they in their discretion consider desirable in order to achieve the purpose of the Administration or to protect and preserve the assets of the Company or to maximise their realisations or for any other purpose incidental to these proposals.
- iii) If the Administrators think that funds will become available for unsecured creditors, the Administrators may at their discretion establish in principle the claims of unsecured creditors for adjudication by a subsequent liquidator and that the costs of so doing be met as a cost of the Administration as part of the Administrators' remuneration where the Administrators think there will be sufficient funds for a distribution to unsecured creditors other than by virtue of the prescribed part.
- iv) If the Administrators think that funds will become available for unsecured creditors, the Administrators may at their discretion make an application to court for permission to make distributions to unsecured creditors under Paragraph 65(3) Sch.B1 IA86.
- v) The Administrators will consult with the creditors concerning the necessary steps to extend the Administration beyond the statutory duration of one year if an extension is considered advantageous. The Administrators shall either apply to the court or seek consent from the appropriate classes of creditors for an extension.
- vi) The Administrators may use any or a combination of "exit route" strategies in order to bring the Administration to an end, but in this particular instance the Administrators are likely to wish to pursue the following options as being the most cost effective and practical in the present circumstances: -
 - (a) Once asset disposals are complete, the Administrators will place the Company into creditors' voluntary liquidation. In these circumstances, it is proposed that S D Maddison and R J Hunt be appointed as Joint Liquidators and any act required or authorised to be done by the Joint Liquidators may be done by either or both of them, in accordance with Paragraph 83(7) Sch.B1 IA86 and Rule 2.117(3) IR86, creditors may nominate alternative liquidators, provided that the nomination is made after the receipt of these proposals and before they are approved.
 - (b) Once asset disposals are complete, the Administrators will apply to the Court to allow the Administrators to distribute surplus funds, if any, to unsecured non-preferential creditors. If such permission is given, the Administration will be brought to an end by notice to the Registrar of Companies under Paragraph 84 Sch. B1 IA86, following registration of which the Company will be dissolved three months later. If permission is not granted the Administrators will place the Company into creditors' voluntary liquidation or otherwise act in accordance with any order of the court.
- vii) The Administrators shall be discharged from liability pursuant to Paragraph 98(1) Sch.B1 IA86 in respect of any action of theirs as Administrators 14 days after they cease to be joint administrators of the Company or in any case at a time determined by the court.

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

2. The Administrators' statement of proposals

viii) It is proposed that the Administrators' fees be fixed under Rule 2.106 of the Insolvency Rules 1986 by reference to the time properly given by the Administrators and the various grades of their staff according to their firm's usual charge out rates for work of this nature and that disbursements for services provided by the Administrators' own firm (defined as Category 2 disbursements in Statement of Insolvency Practice No.9) be charged in accordance with the Administrators' firm's policy as set out in Appendix D. It will be for the general body of creditors to fix the basis and level of the Administrators' fees and Category 2 disbursements.

Creditors are asked to vote upon the following matters: -

- The approval of the Administrators' proposals for achieving the purpose of administration;
- The basis and level of the Administrators' fees and Category 2 disbursements; and
- The timing of the Administrators' discharge from liability pursuant to Paragraph 98(1) Sch.B1 IA86.

2. The Administrators' statement of proposals

c. Statement of affairs

A statement of affairs of the Company was delivered to the Administrators on 12 October 2009. The statement was signed by Stewart MacDonald and statements of concurrence have been provided by the other directors.

The Administrators make the following comments on the statement of affairs: -

- In accordance with the standard format of the statement of affairs, no provision has been made for the costs of realising the Company's assets or the costs of the Administration.
- The Administrators have not carried out anything in the nature of an audit on the information.

The statement of affairs is copied at Appendix B and, as is required by statute, includes details of the names, addresses and debts of creditors (including details of any security held).

2. The Administrators' statement of proposals

d. Statutory and other information

Court details for the Administration:

High Court of Justice, Chancery Division, Birmingham District Registry, Case Number 8581 of 2009

Full name:

Fogarty Limited

Trading name:

Fogarty Limited

Registered number:

02524980

Registered address:

Havenside, Fishtoft Road, Boston, Lincolnshire, PE21 0AH

Company directors:

Stewart George MacDonald, Barry Stephen Roe, Donald Graeme Strachan, John Szymkiv

Company secretary:

Gerald John Tawton

Shareholdings held by the directors and secretary:

None

Date of the Administration appointment:

17 September 2009

Administrators' names and addresses:

Stuart David Maddison and Robert Jonathan Hunt of PricewaterhouseCoopers LLP, Donington Court, Pegasus Business Park, Castle Donington, East Midlands, DE74 2UZ

Appointor's / applicant's name and address:

The Directors of the Company, Havenside, Fishtoft Road, Boston, Lincolnshire, PE21 0AH

Objective being pursued by the Administrators:

Objective (b) achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration).

Division of the Administrators' responsibilities:

In relation to paragraph 100(2) Sch.B1 IA86, during the period for which the Administration is in force, any function to be exercised by the persons appointed to act as Administrators may be done by any or all of the persons appointed or any of the persons for the time being holding that office. Creditors' voluntary liquidation or dissolution

Proposed end of the Administration:

Estimated dividend for unsecured creditors:

Currently unknown

Estimated values of the prescribed part and the company's net property:

Not applicable

Whether and why the Administrators intend to apply to court under Section 176A(5) IA86:

Not applicable

The European Regulation on Insolvency Proceedings (Council Regulation(EC) No. 1346/2000 of 29 May 2000):

The European Regulation on Insolvency Proceedings applies to this Administration and the proceedings are main proceedings.

Any other information which the Administrators think necessary to enable creditors to decide whether or not to vote for adoption of the proposals:

None

3. Receipts and payments account

The following table summarises the Administrators' receipts and payments to 9 November 2009:

Receipts	Received to date	Director's statement of affairs
	£	£
Plant and machinery	400,000	400,000
Stock	368,624	368,624
Tax losses	25,000	25,000
Intellectual property	1	1
Cash	1,051	1,051
Total receipts	<u>794,676</u>	<u>794,676</u>
Payments		
Gross wages and salaries	182,868	
Preferential creditors	96,132	
Legal cost (including VAT)	17,270	
Total payments	<u>296,270</u>	
Balance held in High Interest Current Account	<u>498,406</u>	

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

Appendix A Acquisitions of Assets of Insolvent Companies by Directors

Company Name	Fogarty Limited
Date of the transaction	17 September 2009
Assets acquired	The business and assets of Fogarty Limited
Consideration	£425,001 plus a payment for stock at book value less amounts relating to employee arrears of wages/salaries and holiday pay. £175,000 to be paid on completion the remainder to be paid 30 days after completion following determination of the stock value and employee arrears.
Counterparty/ Purchaser	Fogarty (Filled Products) Limited
Counterparty's relationship with the Companies	The following are directors of Fogarty (Filled Products) Limited and Fogarty Limited: Barry Roe Donald Strachan John Szymkiv
Advice received	Independent legal advice received by both parties

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

Statement of affairs

Name of company Fogarty Limited	Company number 02524980
In the High Court of Justice, Chancery Division, Birmingham District Registry (full name of court)	Court case number 8581 of 2009

(a) Insert name and address of
registered office of the company

Statement as to the affairs of (a) Fogarty Limited, Havenside, Boston, Lincolnshire, PE21 0AH

on the (b) 17 September 2009, the date that the company entered administration.

(b) Insert date

Statement of Truth

I believe that the facts stated in this statement of affairs are a full, true and complete statement of the affairs of the above named company as at (b) 17 September 2009 the date that the company entered administration.

Full name STEVEN G. WILSON

Signed

[Signature]

Dated

12/10/9

A – Summary of Assets

Assets

Assets subject to fixed charge:

Leased plant & machinery

Book Value £	Estimated to Realise £
14,907	-

Assets subject to floating charge:

Uncharged assets:

Plant & machinery

Work in progress

Tax losses

Intellectual Property

Cash

163,001	400,000
368,624	368,624
-	25,000
-	1
2,254	1,051

Estimated total assets available for preferential creditors

548,786	794,676
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Signature



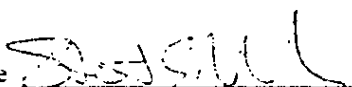
Date

12/10/9

A1 – Summary of Liabilities

to realise		Estimated £
Estimated total assets available for preferential creditors (carried from page A)		£ 794,676
Liabilities		
Preferential creditors		
Employee claims: -		
Arrears of wages	£182,868	
Holiday pay	£ 96,132	£ (279,000)
Estimated deficiency/surplus as regards preferential creditors		£ 515,676
Estimated prescribed part of net property where applicable (to carry forward)		£
Estimated total assets available for floating charge holders		£ 515,676
Debts secured by floating charges		£
Estimated deficiency/surplus of assets after floating charges		£ 515,676
Estimated prescribed part of net property where applicable (brought down)		£
Total assets available to unsecured creditors		£ 515,676
Unsecured non-preferential claims (excluding any shortfall to floating charge holders)		£(8,907,874)
Estimated deficiency/surplus as regards non-preferential creditors (excluding any shortfall to floating charge holders)		£(8,392,198)
Shortfall to floating charge holders (brought down)		
Estimated deficiency/surplus as regards creditors		£(8,392,198)
Issued and called up capital		£ (2,383,333)
Estimated total deficiency/surplus as regards members		£(10,775,531)

Signature



Date

12/10/13

COMPANY CREDITORS

Note: You must include all creditors under hire-purchase, chattel leasing or conditional sale agreements *and* customers claiming amounts paid in advance of the supply of goods or services *and* creditors claiming retention of title over property in the company's possession.

[illegible]

Signature

Date 12/10/9

Name of Shareholder	Address (with postcode)	No. of shares held	Nominal Value	Details of Shares held
Fogarty Holdings Limited	Havenside, Boston, Lincolnshire PE21 0AH	66,665	£33,332.50	Ordinary shares
Fogarty Holdings Limited	Havenside, Boston, Lincolnshire PE21 0AH	1,300,000	£650,000.00	Ordinary A shares
Fogarty Holdings Limited	Havenside, Boston, Lincolnshire PE21 0AH	1,700,000	£1,700,000.00	Preferred Ordinary shares
TOTALS		3,066,665	£2,383,332.50	

Date _____

12/2/21

Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

I The initial meeting of creditors and the creditors' committee

Am I obliged to vote at the meeting that is being conducted by correspondence - “postal meeting”

You are not obliged to vote, and if you do not wish to vote there is no need to return the Form 2.25B to register your vote. You will not prejudice your claim and entitlement to dividend if you do not do so.

How do I ensure that my vote counts?

In order to be counted, a creditors' vote must be received by the Administrators by 12.00 hours on the closing date specified on Form 2.25B and must be accompanied by written details of the creditor's claim (Rule 2.48(2)).

If any vote is received without written details of the creditor's claim, or the Administrators decide that the creditor is not entitled to vote according to Rules 2.38 and 2.39, that creditor's vote shall be disregarded (Rule 2.48(3)).

The closing date shall be set at the discretion of the Administrators. In any event, it must not be set less than 14 days from the date of issue of the Form 2.25B (Rule 2.48(4)).

Who decides whether my claim ranks for voting purposes?

The Administrator has the power to accept or reject the whole or any part of your claim (Rule 2.39(1)). If he is in doubt whether your claim should be admitted, he should mark it as objected to and allow you to vote. If however, the objection is sustained, then your vote will be declared invalid (Rule 2.39(3)). If your vote was critical to the outcome of the meeting, this could change the resolutions that were passed and/or result in a further meeting (Rule 2.39(4)).

What happens if I disagree with the Administrator's decision?

You are entitled to appeal to the court for an order reversing the chairman's / Administrator's decision on your claim provided you do so within 14 days of the Administrator reporting the result of the postal meeting to the court, the Registrar of Companies and the creditors (Rule 2.39(5)). If the court does reverse the Administrator's decision it can order that another meeting be held or make such other order as it thinks just (Rule 2.39(4)).

Creditors also have the right to appeal to the court if they believe that the administration unfairly harms their interests (Paragraph 74(1) Sch.B1 IA86).

We recommend that you seek legal advice about the merits of taking these steps in any particular circumstances.

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

Appendix C Common questions and answers (references to "Rules" are to the Insolvency Rules 1986)

How do I calculate my claim for voting purposes?

Votes are calculated according to the amount of a creditor's claim as at the date on which the Company entered Administration, less any payments that have been made to him after that date in respect of his claim and any adjustments by way of set-off in accordance with Rule 2.85 as if that Rule were applied on the date that the votes were counted (Rule 2.38(4)).

What majorities are needed to approve resolutions?

A resolution to approve the proposals or any modification to them is passed at the creditors' postal meeting if supported by a majority in excess of 50% in value of the creditors voting on the resolution (Rule 2.43(1)).

Any resolution is invalid if those voting against it include more than 50% in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the Administrator's belief, connected with the Company (Rule 2.43(2)).

What happens if I cannot yet quantify my claim with certainty?

A creditor cannot vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained, unless the chairman / Administrator agrees to put on the debt an estimated minimum value for voting purposes (Rule 2.38(5)).

What happens if my debt is wholly or partly secured?

A secured creditor whose debt is wholly or partly secured is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him. However, if the Administrators have made a statement under Paragraph 52(1)(b) Sch.B1 IA86 and an initial creditors' meeting has been requisitioned by creditors under Paragraph 52(2) Sch.B1 IA86, a secured creditor is entitled to vote in respect of the full value of this debt without any deduction for the value of his security (Rule 2.40).

What happens if I hold a negotiable instrument?

A creditor shall not vote in respect of a debt on or secured by a current bill of exchange or promissory note unless he is willing: -

a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the Company and against whom a bankruptcy order has not been made (or in the case of a company, which has not gone into liquidation) as security in his hands; and

b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim (Rule 2.41).

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Appendix C Common questions and answers (references to "Rules" are to the Insolvency Rules 1986)

What happens if I am a creditor under a hire-purchase, conditional sale agreement or leasing agreement?

An owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement is entitled to vote in respect of the amount of the debt due and payable to him by the Company on the date the Company entered Administration. In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of:-

- the making of an administration application
- a notice of intention to appoint an administrator or any matter arising as a consequence, or
- of the Company entering administration (Rule 2.42).

Am I bound by the Administrators' proposals if they are approved at the meeting?

The Administrators' proposals, when approved by the creditors' meeting, will dictate how the Company's affairs will be conducted in future and how creditors' claims will be addressed.

Once approved the proposals are binding on all creditors, including those who did not vote at the postal meeting. For this reason, it is important that creditors properly consider the proposals and decide whether and how they wish to vote.

What are the functions of the creditors' committee?

The creditors' committee shall assist the Administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time (Rule 2.52(1)).

In particular, it has the duty to agree the basis of the Administrator's remuneration (Rule 2.106(3)).

How is the creditors' committee formed?

The creditors' committee is established at a creditors' meeting. It is not obligatory but the creditors decide whether they wish to have one (Paragraph 57(1) Sch.B1 IA86).

The committee must consist of at least three and not more than five creditors of the company elected at the meeting (Rule 2.50(1)).

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Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote (Rule 2.50(2)). A body corporate may be a member of the committee, but it can only act as such through a properly appointed representative (Rule 2.50(3)).

No person may act as a member of the committee unless and until he has agreed to do so (Rule 2.51(2)). Unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by the creditor's proxy-holder or representative under Section 375 of the Companies Act 1985 present at the meeting establishing the committee (Rule 2.51(2)).

A person acting as a committee member's representative must hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member (Rule 2.55(2)).

No member may be represented by a body corporate, or by a person who is an undischarged bankrupt, a disqualified director or a person who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking or interim bankruptcy restrictions order or is subject to a composition or arrangement with his creditors (Rule 2.55(4)).

No person shall on the same committee act at one and the same time as representative of more than one committee-member (Rule 2.55(5)).

The creditors' committee does not come into being, and accordingly cannot act, until the Administrator has issued a certificate of its due constitution (Rule 2.51(1)).

Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

II A creditor’s guide to administrators’ fees (in accordance with Statement of Insolvency Practice No.9)

The following information about the Administrators’ fees is from Statement of Insolvency Practice No.9 (“SIP 9”) produced by the Association of Business Recovery Professionals, Appendix C: A Creditors’ Guide to Administrators’ Fees (England and Wales) (Revised with effect from 1 April 2007).

Introduction

1.1 When a company goes into administration the costs of the proceedings are paid out of its assets. The creditors, who hope eventually 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 administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator’s fees. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor fees and explains the basis on which fees are fixed.

2 The nature of administration

2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the following objective:

- rescuing the company as a going concern, or
- achieving a better result for the creditors as a whole than would be likely if the company were wound up without first being in administration, or if the administrator thinks neither of these objectives is reasonably practicable
- realising property in order to make a distribution to secured or preferential creditors.

3 The creditors’ committee

3.1 The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator’s remuneration. The committee is normally established at the meeting of creditors which the administrator is required to hold within a maximum of 10 weeks from the beginning of the administration to consider his proposals. The administrator 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 a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide information about the exercise of his functions.

4 Fixing the administrator’s fees

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Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.106 of the Insolvency Rules 1986, which states that it shall be fixed either:

- as a percentage of the value of the property which the administrator has to deal with, or
- by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration.

It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is fixed as a percentage fix the percentage to be applied. Rule 2.106 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 administrator;
- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the property which the administrator has to deal with.

4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as the committee would. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.

4.3 There are special rules about creditors' resolutions in cases where the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the reserved fund which may have to be set aside out of floating charge assets. In this case, if there is no creditors' committee, or the committee does not make the requisite determination, the remuneration may be fixed by the approval of:

- each secured creditor of the company; or
- if the administrator has made or intends to make a distribution to preferential creditors –
 - each secured creditor of the company; and
 - preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval, having regard to the same matters as the committee would.

Note that there is no requirement to hold a creditors' meeting in such cases unless a meeting is requisitioned by creditors whose debts amount to at least 10 per cent of the total debts of the company.

4.4 A resolution of creditors may be obtained by correspondence.

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Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

5 What information should be provided by the administrator?

5.1 When seeking fee approval

5.1.1 When seeking agreement to his fees the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought;
- the stage during the administration of the case at which it is being sought; and
- the size and complexity of the case.

5.1.2 Where, at any creditors’ or committee meeting, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

5.1.3 Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

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

Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

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

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

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- 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.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

5.1.4 Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff.

5.2 After fee approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such

Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

additional information as may be required in accordance with the principles set out in paragraph 5.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 5.1.4 above regarding work which has been sub-contracted out.

5.3 Expenses and disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

6 What if a creditor is dissatisfied?

6.1 If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

7 What if the administrator is dissatisfied?

7.1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's 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 as an expense of the administration.

8 Other matters relating to fees

8.1 Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.

8.2 If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.

Appendix C Common questions and answers (references to “Rules” are to the Insolvency Rules 1986)

9. Provision of information – additional requirements

In any case where the administrator is appointed on or after 1 April 2005 he must provide certain information about time spent on a 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 administrator 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 administrator'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 administrator, and requests must be made within two years from vacation of office. (SIP 9 VERSION 5 – APRIL 2007)

Appendix D The Administrators' charging and disbursements recovery policy

Overview of the Administrators' strategy and objectives

S D Maddison and R J Hunt were appointed Administrators of the Company on 17 September 2009 with the objective of:

- (a) Primarily, rescuing the Company as a going concern, or failing that
- (b) Achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration), or finally
- (c) Realising property in order to make a distribution to one or more secured or preferential creditors.

As stated earlier in the proposals, following the Administrators' appointment, on 17 September 2009 all of the business and assets of the Company were sold to Fogarty (Filed Products) Limited on a going concern basis. The Administrators are therefore pursuing objective (b) as it was not reasonably practicable to rescue the Company as a going concern and the immediate sale of the business and assets resulted in higher realisations than would have been expected to be received on a break up basis had the Company been wound up.

Summary of legal and other professional firms

The Administrators have instructed the following professionals: -

Service provided	Name of firm / organisation	Reason selected	Basis of fees
Legal advice	Shoosmiths	Relevant experience	Time costs
Chattel agents and valuers	Go Industry	Relevant experience	Percentage of realisations

All third party professionals are required to submit time costs analyses and narrative or a schedule of realisations achieved in support of invoices rendered. The Administrators have reviewed these documents and are satisfied that the fees charged are reasonable in the circumstances of the case.

Office holder's charging and disbursement policy

The time charged to the Administration is by reference to the time properly given by the Administrators and their staff in attending to matters arising.

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Appendix D The Administrators' charging and disbursements recovery policy

It is the Administrators' policy to delegate tasks in the Administration to appropriate members of staff considering their level of experience and any requisite specialist knowledge, supervised accordingly, so as to maximise the cost effectiveness of the work performed. Matters of particular complexity or significance requiring more exceptional responsibility are dealt with by senior staff or the Administrators themselves.

Set out below are the relevant charge-out rates per hour worked for the grades of the Administrators' staff actually or likely to be involved on this assignment. Time is charged by reference to actual work carried out on the assignment. There has been no allocation of any general costs or overhead costs.

Grade	Relevant maximum charge out rate per hour £
Partner	450
Director	340
Senior Manager	300
Manager	250
Senior associate / Associate	170
Support staff	70

Specialist departments within the Administrators' firm such as Tax, VAT, Property and Pensions may charge a small number of hours if and when the Administrators require their expert advice. Such specialists' rates do vary but the figures below provide an indication of the maximum rate per hour.

Grade	Relevant maximum charge out rate per hour £
Partner	830
Director	660
Senior Manager	570
Manager	470
Senior associate	260
Associate	165

Appendix D The Administrators' charging and disbursements recovery policy

In common with all professional firms, the scale rates used by the Administrators from PricewaterhouseCoopers LLP may periodically rise (for example to cover annual inflationary cost increases) over the period of the Administration. Any material amendments to these rates will be advised to the creditors in the next statutory report.

The Administrators' firm's expenses policy allows for all properly incurred expenses to be recharged to the case. Disbursements are charged to the assignment as follows: -

Disbursements for services provided by the Administrators' own firm(s) (Category 2 disbursements)

Photocopying	At 5 pence per sheet copied, only charged for circulars to creditors and other bulk copying.
Mileage	At a maximum of 62 pence per mile (up to 2,000cc) or 81 pence per mile (over 2,000cc).

Narrative of work carried out for the period 17 September 2009 to 30 October 2009

The key areas of work have been:

- Strategy and planning issues;
- Negotiations for a sale of the business;
- Compliance and statutory matters;
- Tax/VAT matters; and
- Employee matters.

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

Appendix D The Administrators' charging and disbursements recovery policy

Analysis of time costs for the period 17 September 2009 to 30 October 2009

Aspect of Administration	Partner	Director	Senior Manager	Manager	Senior Associate	Associate	Secretarial	Total hours	Time costs £	Average hourly rate £
1. Strategy & Planning	4.00		9.15					13.15	4,545.00	345.63
2. Trading								-	-	-
3. Assets								-	-	-
4. Investigations								-	-	-
5. Sale of Business			9.50					9.50	2,850.00	300.00
6. Creditor claims/distributions/enquiries						1.50	1.15	2.65	420.50	158.68
7. Accounting and treasury						1.00	0.60	1.60	705.00	440.63
7. Statutory and compliance	1.00		0.15	4.10		23.45		28.70	6,968.50	242.80
8. Employees/Pensions			1.60	5.00		0.90		7.50	1,883.00	251.07
8. Tax/VAT			1.05	1.50		2.00		4.55	2,194.50	482.31
Total for period to 30 October 2009	5.00	0.00	21.45	10.60	0.00	28.85	1.75	67.65	19,566.50	289.23

Fogarty Limited (in Administration) – Joint Administrators' proposals for achieving the purpose of administration

Notice of conduct of business by correspondence

Name of Company Fogarty Limited	Company Number 02524980
In the High Court of Justice, Chancery Division, Birmingham District Registry (full name of court)	Court case number 8581 of 2009

(a) Insert full name(s) and address(es) of the administrator(s)
Notice is hereby given by (a) Stuart David Maddison and Robert Jonathan Hunt of PricewaterhouseCoopers LLP, Donington Court, Pegasus Business Park, Castle Donington, East Midlands, DE74 2UZ

to the creditors of (b) Fogarty Limited of Havenside, Fishtoft Road, Boston, Lincolnshire, PE21 0AH

(b) Insert full name and address of registered office of the company
that, pursuant to paragraph 58 of Schedule B1 to the Insolvency Act 1986, enclosed are (c) four resolutions for your consideration. Please indicate below whether you are in favour or against each resolution.

(c) Insert number of resolutions enclosed
This form must be received at (d) PricewaterhouseCoopers LLP, Benson House, 33 Wellington Street, Leeds, LS1 4JP

(d) Insert address to which form is to be delivered
by 12.00 hours on (e) 26 November 2009 in order to be counted. It must be accompanied by details in writing of your claim. Failure to do so will lead to your vote(s) being disregarded.

(e) Insert closing date
Resolution (1) Approval of the Administrators' proposals for achieving the purpose of the Administration
I am *in Favour / Against

Repeat as necessary for the number of resolutions attached
Resolution (2) That the Administrators' fees be fixed under Rule 2.106 of the Insolvency Rules 1986 by reference to time properly given by the Administrators and the various grades of their staff according to their firm's usual charge out rates for work of this nature, as set out in Appendix C of the proposals, and that the Administrators be authorised to draw their fees on account from time to time.

I am *in Favour / Against

Resolution (3) That the Administrators be authorised to draw disbursements, including Category 2 disbursements, in accordance with their firm's policy as circulated on account from time to time.

I am *in Favour / Against

Resolution (4) That the Administrators shall be discharged from liability in respect of any action taken as Administrators, two weeks after submitting the final progress report of the Administration to the Registrar of Companies.

I am *in Favour / Against

TO BE COMPLETED BY CREDITOR WHEN RETURNING FORM:

Name of creditor: _____

Signature of creditor: _____

(If signing on behalf of creditor, state capacity e.g. director/solicitor)

If you require any further details or clarification prior to returning your votes, please contact Clare Davison at the address above.

Signed:  _____

Joint Administrator

Dated 10 November 2009

Fogarty Limited - in Administration – statement of claim

Creditor's name and address.	
Total amount of your claim, including any VAT at the date the administration commenced.	£
Please provide details of any documents that substantiate your claim including where applicable, details of any reservation of title in respect of goods to which the debt relates. If relevant, please attach a statement of account.	
What goods or services did you provide?	
Is all or part of your claim preferential as defined in the Insolvency Act 1986? (see footnote) If so, please provide details where indicated, otherwise leave this section blank.	<p>Category</p> <p>Amount (s) claimed as preferential £</p>
If you have security for your debt, please provide details of the type and value of the security, the date it was given, and provide details of how you have valued your security. If no security held, leave this section blank.	
We have a duty as administrators to consider the conduct of the directors prior to our appointment. Are there any particular matters relating to the purchase of goods and services from yourselves, or any other matters that you feel should be reviewed? If so, please provide brief details on this form, or on a separate sheet if there is insufficient room.	
Signature of creditor or person authorised to act on behalf of the creditor.	Date
Name in block capitals.	
Position with or relation to the creditor (e.g. director, company secretary, solicitor).	

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Categories of preferential creditors are defined in section 386 of the Insolvency Act 1986 (amended by the provisions of section 251 of the Enterprise Act 2002) as contributions to occupational pension schemes; remuneration and accrued holiday pay of employees; amounts due in respect of monies advanced to pay remuneration and accrued holiday pay; amounts ordered to be paid under the Reserve Forces (Safeguard of Employment) Act 1985 and levies on coal and steel production