

Rule 1 26A/1.54

The Insolvency Act 1986

Notice to Registrar of Companies of  
Supervisor's Progress Report

Pursuant to Rule 1 26A(4)(a) or  
Rule 1 54 of the  
Insolvency Rules 1986

**R.1.26A(4)(a)/****R.1.54**

For Official Use

To the Registrar of Companies

Company Number

02651168

Name of Company

Durham County Waste Management Company Limited

I / We

Mark Granville Firmin, KPMG LLP, 1 Sovereign Square, Sovereign Street, Leeds, LS1 4DA

Howard Smith, KPMG LLP, 1 Sovereign Square, Sovereign Street, Leeds, LS1 4DA

supervisor(s) of a voluntary arrangement taking effect on

12 February 2013

Attach my progress report for the period

12 February 2015

to

11 February 2016

Number of continuation sheets (if any) attached

Signed

*Howard Smith*

Date 7 April 2016

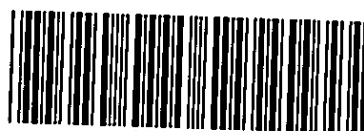
KPMG LLP  
1 Sovereign Square  
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Leeds  
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Insolvency Section

Post Room



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12/04/2016

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COMPANIES HOUSE

**Voluntary Arrangement of  
Durham County Waste Management Company Limited**

Statement of Affairs		From 12/02/2015 To 11/02/2016	From 12/02/2013 To 11/02/2016
	<b>ASSET REALISATIONS</b>		
53,040 00	Freehold land	NIL	30,000 00
	Shares and investments	NIL	244,273 46
	Inter company debtors	386,354 28	386,354 28
271,349 00	Cash at bank	NIL	111,815 96
	Insurance refund	NIL	3,415 50
		<u>386,354 28</u>	<u>775,859 20</u>
	<b>OTHER REALISATIONS</b>		
	Bank interest, gross	497 96	1,270 11
	Bank interest, net of tax	1,198 81	1,622 07
	Sundry refunds	NIL	174 06
	Funds held for employee compromise	NIL	130,000 00
		<u>1,696 77</u>	<u>133,066 24</u>
	<b>COST OF REALISATIONS</b>		
	Employee compromise - payment	NIL	130,000 00
	Supervisors' fees	92,806 50	150,000 00
	Agents'/Valuers' fees	NIL	2,000 00
	Agents'/Valuers' disbursements	NIL	720 00
	Legal fees	16,036 25	79,157 55
	Legal disbursements	3 00	11,519 00
	Insurance of assets	NIL	1,952 09
	Bank charges	NIL	75 00
		<u>(108,845 75)</u>	<u>(375,423 64)</u>
	<b>UNSECURED CREDITORS</b>		
(375,915 00)	Employees	NIL	NIL
(1,484,440 00)	Barclays Mercantile	NIL	NIL
(305,359 00)	Lease Prospect House	NIL	NIL
(378,367 00)	Lease Tursdale	NIL	NIL
(291,928 00)	Operating lease	NIL	NIL
(800,783 00)	DCC loan	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
	<b>DISTRIBUTIONS</b>		
(1,378,002 00)	Ordinary shareholders	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<u>(4,690,405 00)</u>		<u>279,205 30</u>	<u>533,501 80</u>
	<b>REPRESENTED BY</b>		
	Floating ch VAT rec'able		6,482 81
	Supervisors trust account		530,083 69
	Employee trust account		210 26
	Floating ch VAT payable		(6,000 00)
	Floating ch VAT control		2,725 04
			<u>533,501 80</u>



**Durham County Waste Management  
Company Limited under a Company  
Voluntary Arrangement (“the  
Company”)**

**Annual Report to creditors  
pursuant to Rule 1.26A(4) of  
the Insolvency Rules 1986**

KPMG LLP  
7 April 2016

HS/LF/CMC

## Notice: About this Report

This Report has been prepared by Mark Granville Firmin and Howard Smith, the Joint Supervisors of Durham County Waste Management Company Limited, solely to comply with their statutory duty to report to creditors under the Insolvency Rules 1986 on the progress of the voluntary arrangement, and for no other purpose. It is not suitable to be relied upon by any other person, or for any other purpose, or in any other context.

This Report has not been prepared in contemplation of it being used, and is not suitable to be used, to inform any investment decision in relation to the debt of or any financial interest in Durham County Waste Management Company Limited.

Any estimated outcomes for creditors included in this Report are illustrative only and cannot be relied upon as guidance as to the actual outcomes for creditors. Any person choosing to rely on this Report for any purpose or in any context other than under the Insolvency Rules 1986 does so at his or her own risk.

To the fullest extent permitted by law, the Joint Supervisors do not assume any responsibility and will not accept any liability in respect of this Report to any such person.

Mark Granville Firmin is authorised to act as an insolvency practitioner by the Institute of Chartered Accountants in England & Wales.

Howard Smith is authorised to act as an insolvency practitioner by the Insolvency Practitioners Association.

The Joint Supervisors contract without personal liability. The appointments of the Joint Supervisors are personal to them and to the fullest extent permitted by law, KPMG LLP does not assume any responsibility and will not accept any liability to any person in respect of this Report.



## Glossary

the Company and/or DCWM	Durham County Waste Management Company Limited (Company registered number 02651168 )
CVA	Company Voluntary Arrangement
CVL	Creditors Voluntary Liquidation
the Proposal	the CVA Proposal approved by creditors on 12 February 2013
the Joint Supervisors	Mark Granville Firmin and Howard Smith of KPMG LLP, 1 Sovereign Square, Sovereign Street, Leeds, LS1 4DA
the Period	12 February 2015 to 11 February 2016
the Council	Durham County Council
PWM and/or Premier Waste	Premier Waste Management Limited (Company registered number 03616068)
Eversheds	Eversheds LLP
HMRC	HM Revenue & Customs



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**Appendix 1:** Receipts and payments account for the period 12 February 2015 to 11 February 2016

**Appendix 2:** Joint Supervisors' time costs and expenses 12 February 2015 to 11 February 2016

**Appendix 3:** Charge out rates for the period 12 February 2015 to 11 February 2016



## **1 Introduction**

Mark Firmin and Howard Smith were appointed as Joint Supervisors of the CVA of the Company on 12 February 2013

The Company was part of a group, with PWM being the main trading subsidiary of the Company ("the Group") PWM was also subject to a CVA, the CVAs were interlocking and conditional on the approval of one another

In accordance with Rule 1 26A(4) of the Insolvency Rules 1986, we attach as Appendix 1 a copy of the Joint Supervisors' annual summary of receipts and payments in the CVA for the period 12 February 2015 to 11 February 2016

The Joint Supervisors also provide a summary of the progress made to date and which should be read in conjunction with the Appendices to this Report

Please note that unless specifically stated, all amounts in this Report are net of VAT

## **2 Progress of the Arrangement**

The Group's activities primarily comprised its contract for the waste management services of the Council ("the Waste Contract") On 31 May 2011, the Council served two years' notice to terminate the Waste Contract

Following a consideration of alternative options, the directors believed that as a result of the termination of the Waste Contract, the Company could not avoid insolvent liquidation The directors were therefore unable to continue to trade outside of an insolvency process

The objective of the CVA Proposals was to allow the Group to continue to trade until the end of the Waste Contract on 31 May 2013 This would allow the Group to benefit from the profits generated by a further period of trading, whilst protecting the position of the Group's creditors

The CVA Proposals were further enhanced by a number of concessions which were made available by the Council

The CVA was duly implemented on 12 February 2013, and notices were sent to all known creditors and to court on 15 February 2013

The Proposal stated that the majority of the Company's assets would be held on trust by the Joint Supervisors and, following termination of the Waste Contract, the Company would be placed into CVL This would enable the liquidators to disclaim any onerous leases, licences or contracts and to realise any remaining assets that were not held on trust, for the benefit of the Company's unsecured creditors, which might accrue during the CVA trading period

The assets held on trust would be realised and distributed for the benefit of the CVA creditors despite the Company being placed into CVL



The distribution to creditors in the CVA, would be in full and final settlement of 80% of each CVA creditor's claim (i.e. 80% of its debt) allowing those CVA creditors to vote and prove for the remaining 20% in the subsequent liquidations

At the meeting of creditors convened for the purpose of accepting/ rejecting the Proposals, a creditor challenged the value of its claim admitted by the chairman of the meeting for voting purposes. This challenge was taken to Court and the Court ruled in favour of the Joint Supervisors awarding costs against the challenging creditor.

Howard Smith and Mark Firmin of KPMG LLP were appointed Joint Liquidators of the Company and PWM on 1 July 2013.

## **2.1 Extension to the period of the CVA**

As previously reported, Premier Waste has an ongoing landfill tax claim with HMRC which relates to landfill tax incurred from January 2007 to June 2009 on materials used in the construction of a regulating layer ("fluff layer") which is required prior to capping the full cells at the Group's landfill sites. If successful, the claim is valued at £4.5 million and further dividends would become payable to the creditors of PWM.

DCWM is a creditor of PWM and therefore, if the claims are successful funds will be distributed to DCWM and returns to the creditors of DCWM will also increase. The claims have not been resolved during the period of the CVA and, as such, the Joint Supervisors of PWM have extended the period of the CVA to 1 June 2018 to allow them to continue to pursue the claims.

Given the interlocking nature of the CVAs and the funds that will flow to DCWM, if the claims are successful, the Joint Supervisors have extended the period of the CVA to 1 June 2018.

This extension is considered to be a material variation to the CVA proposal and as such a meeting of creditors was convened on 5 May 2015 whereby the creditors considered and granted the extension.

## **3 Receipts**

Realisations during the Period are set out in the attached receipts and payments account (Appendix 1). Summaries of the realisations during the Period are provided below.

### **3.1 Interest received**

Bank interest of £1,697 has been received during the Period in relation to funds held.

### **3.2 Intercompany Debtor**

A dividend of £386,354 has been received from the CVA of PWM on the Company's intercompany claim.





## **4 Payments**

Payments during the Period are set out in the attached receipts and payments account (Appendix 1) Summaries of the most significant payments during the Period are provided below

### **4.1 Legal fees**

During the Period legal fees of £16,036 have been paid to Eversheds LLP in relation to defending a further challenge and assisting the Joint Supervisors with the agreement of unsecured creditor claims, along with the general conduct of the Voluntary Arrangement

The Joint Supervisors are seeking to recover the costs associated with the initial challenge from the challenging creditor in line with a costs order awarded by the Court

## **5 Joint Supervisors' remuneration and disbursements**

### **5.1 Joint Supervisors' remuneration**

In accordance with the terms of the Proposal, the Joint Supervisors' remuneration is fixed on the basis of time properly spent by them and their staff in dealing with matters arising in the CVA

Attached at Appendices 2 and 3 are detailed analyses of time spent and charge out rates for each grade of staff for work carried out during the Period as required by the Association of Business Recovery Professionals' 'Statement of Insolvency Practice 9', together with details of expenses incurred to date

In the Period, the Joint Supervisors incurred time costs of £24,238 representing 73 hours at an average rate of £334 per hour This includes tax and VAT advice from KPMG LLP in-house specialists

During the Period, the Joint Supervisors' have drawn fees of £92,807

The CVA Proposal anticipated that total Joint Supervisors fees would be £55,000 The Joint Supervisors time costs for the CVA to date are £151,402 and it is anticipated that these costs will increase to £190,000 by the time the CVA is concluded These costs are higher than initially anticipated as a result of the Joint Supervisors dealing with challenges to the CVA from a creditor of the Company and the resulting complexities in agreeing the claim of that creditor in the CVA

Please note that all staff who have worked on this assignment, including cashiers and secretarial staff, have charged time directly to the assignment and are included in the analysis of time spent However, the cost of staff employed in central administration functions is not charged directly to this assignment but is reflected in the general level of charge out rates



Further information is given in the Association of Business Recovery Professionals' Publication, A Creditors' Guide to Fees in a Voluntary Arrangement, which can be obtained from

[http://www.r3.org.uk/media/documents/publications/professional/Guide\\_to\\_Voluntary\\_Arrangement\\_Fees\\_Nov20111.pdf](http://www.r3.org.uk/media/documents/publications/professional/Guide_to_Voluntary_Arrangement_Fees_Nov20111.pdf)

However, if you are unable to access this guide and would like a copy please contact Clare McCain on 0191 401 3867

## 5.2 Joint Supervisors' disbursements

During the Period, no expenses have been incurred by the Supervisors

No disbursements have been drawn during the Period

## 6 Estimated Outcome for Creditors

### 6.1 Unsecured creditors

The Proposal stated that the expected distribution to creditors, will be in full and final settlement of 80% of each CVA creditor's claim (i.e. 80% of its debt) allowing those CVA creditors to vote and prove for the remaining 20% in the subsequent liquidation

The Directors Statement of Affairs as at 30 November 2012 (schedule 8 of the Proposal) estimated that the claims of unsecured creditors would total £3,636,792. This was based on the November management accounts prepared by the Company and was prepared on the assumption that the Company would enter liquidation immediately

Since the date of the Statement of Affairs, the Company updated its ledgers to reflect all balances which would be claimed in the CVA and subsequent liquidation. The updated balances will be taken into account by the Joint Supervisors when agreeing claims

The Estimated Outcome Statement (schedule 7 of the Proposal) was prepared as at 12 February 2013 on two assumptions: a CVA followed by a CVL, and an immediate liquidation. The estimated outcome statement anticipated that claims in the CVA and subsequent CVL would total £2,431,000

The Company's records indicated that there were 21 unsecured creditors with potential claims in the CVA. As indicated in the Proposals, the return to creditors through the CVA and subsequent CVL was estimated by the Company's directors to be 27 pence in the pound. The costs of the CVA have been higher than anticipated following a challenge from a creditor which was successfully defended. The Joint Supervisors are looking to recover the costs of dealing with the challenge from the challenging creditor, however, it is estimated that the return to creditors will be lower than that anticipated in the Proposals as a result of the additional costs incurred

The payment of a dividend to the unsecured creditors has been delayed due to the Joint Supervisors dealing with the challenge and the resulting complexities in agreeing a significant claim in the CVA



*Durham County Waste Management Company Limited under a Company Voluntary  
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*Annual Report to creditors pursuant to Rule 1 26A(4) of the Insolvency Rules 1986*

*KPMG LLP*

*7 April 2016*

As previously reported, a key asset in the CVA is an intercompany balance due from Premier Waste. During the Period, the Joint Supervisors received an interim dividend payment of £386,354 following a distribution from the CVA of Premier Waste.

The Joint Supervisors anticipate that an interim dividend will be declared shortly.

## 7 Future conduct of the Arrangement

The CVA cannot be concluded at present. The Joint Supervisors will continue to perform their duties as set out in the Proposal. This will include, but is not limited to:

- the agreement of remaining creditors' claims,
- distribution to unsecured creditors, and
- any other functions which it may be necessary or expedient for the Supervisor to undertake in connection with the implementation of the Arrangement.

Any further queries in relation to the above should be directed to Clare McCain on 0191 401 3867.

Signed \_\_\_\_\_

Dated 7 April 2016

H Smith  
Joint Supervisor

## **Appendix 1 – Receipts and payments account for the period 12 February 2015 to 11 February 2016**

Statement of affairs (£)		From 12/02/2015 To 11/02/2016 (£)	From 12/02/2013 To 11/02/2016 (£)
<b>ASSET REALISATIONS</b>			
53,040 00	Freehold land	NIL	30,000 00
	Shares and investments	NIL	244,273 46
	Inter company debtors	386,354 28	386,354 28
271,349 00	Cash at bank	NIL	111,815 96
	Insurance refund	NIL	3,415 50
		386,354 28	775,859 20
<b>OTHER REALISATIONS</b>			
	Bank interest, gross	497 96	1,270 11
	Bank interest, net of tax	1,198 81	1,622 07
	Sundry refunds	NIL	174 06
	Funds held for employee compromise	NIL	130,000 00
		1,696 77	133,066 24
<b>COST OF REALISATIONS</b>			
	Employee compromise - payment	NIL	(130,000 00)
	Supervisors' fees	(92,806 50)	(150,000 00)
	Agents'/Valuers' fees	NIL	(2,000 00)
	Agents'/Valuers' disbursements	NIL	(720 00)
	Legal fees	(16,036 25)	(79,157 55)
	Legal disbursements	(3 00)	(11,519 00)
	Insurance of assets	NIL	(1,952 09)
	Bank charges	NIL	(75 00)
		(108,845 75)	(375,423 64)
<b>UNSECURED CREDITORS</b>			
(375,915 00)	Employees	NIL	NIL
(1,484,440 00)	Barclays Mercantile	NIL	NIL
(305,359 00)	Lease Prospect House	NIL	NIL
(378,367 00)	Lease Tursdale	NIL	NIL
(291,928 00)	Operating lease	NIL	NIL
(800,783 00)	DCC loan	NIL	NIL

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*KPMG LLP*  
*7 April 2016*

Statement of affairs (£)	From 12/02/2015 To 11/02/2016 (£)	From 12/02/2013 To 11/02/2016 (£)
	NIL	NIL
DISTRIBUTIONS		
(1,378,002 00) Ordinary shareholders	NIL	NIL
	NIL	NIL
<b>(4,690,405 00)</b>	<b>279,205 30</b>	<b>533,501 80</b>
REPRESENTED BY		
Floating ch VAT rec'able		6,482 81
Supervisors trust account		530,083 69
Employee trust account		210 26
Floating ch VAT payable		(6,000 00)
Floating ch VAT control		2,725 04
		<b>533,501 80</b>

## **Appendix 2 – Joint Supervisors' time costs and expenses** **12 February 2015 to 11 February 2016**

	Hours	Time Cost (£)	Average Hourly Rate (£)
<b>Administration &amp; planning</b>			
Cashiering			
General (Cashiering)	2 20	826 00	375 45
Reconciliations (& IPS accounting reviews)	3 90	1,092 00	280 00
General			
Fees and WIP	1 30	451 50	347 31
Statutory and compliance			
Appointment and related formalities	0 75	401 25	535 00
Checklist & reviews	5 30	1,801 50	339 91
Pre-appointment checks	0 75	93 75	125 00
Statutory receipts and payments accounts	6 40	1,544 50	241 33
Strategy documents	1 00	485 00	485 00
Tax			
Post appointment corporation tax	0 20	56 00	280 00
Post appointment VAT	0 10	28 00	280 00
<b>Creditors</b>			
Creditors and claims			
Agreement of unsecured claims	19 00	7,955 00	418 68
General correspondence	3 20	1,351 00	422 19
Statutory reports	27.50	7,747 50	281 73
<b>Realisation of assets</b>			
Asset Realisation			
Other assets	1 00	405 00	405 00
<b>Total in period</b>	<b>72 60</b>	<b>24,238 00</b>	<b>333 86</b>

Brought forward time (appointment date to SIP 9 period start date)	350 40	127,163 75
SIP 9 period time (SIP 9 period start date to SIP 9 period end date)	72 60	24,238 00
Carry forward time (appointment date to SIP 9 period end date)	423 00	151,401 75

All staff who have worked on this assignment, including cashiers and secretarial staff, have charged time directly to the assignment and are included in the analysis of time spent. The cost of staff employed in central administration functions is not charged directly to the assignment but is reflected in the general level of charge out rates.

All time shown in the above analysis is charged in units of six minutes.



*Durham County Waste Management Company Limited under a Company Voluntary Arrangement ("the Company")*

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*KPMG LLP*

*7 April 2016*

## Joint Supervisors' disbursements

The Joint Supervisors have not incurred any expenses during the Period

Disbursements	Category 1		Category 2		Totals (£)
	Paid (£)	Unpaid (£)	Paid (£)	Unpaid (£)	
<b>Total</b>	<b>NIL</b>		<b>NIL</b>		<b>NIL</b>

### KPMG Restructuring Policy for the recovery of disbursements

Where funds permit the officeholder will look to recover both Category 1 and Category 2 disbursements from the estate. For the avoidance of doubt, such expenses are defined within SIP 9 as follows

**Category 1 disbursements** These are costs where there is specific expenditure directly referable both to the appointment in question and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the officeholder or his or her staff.

**Category 2 disbursements** These are costs that are directly referable to the appointment in question but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis, for example, business mileage.

Any disbursements to be paid from the estate are disclosed within the summary of disbursements above.

The only Category 2 disbursement that KPMG Restructuring currently charges is mileage. Mileage claims fall into three categories:

- use of privately-owned vehicle or car cash alternative – 40 pence per mile,
- use of company car – 60 pence per mile, and
- use of partner's car – 60 pence per mile

For all of the above car types, when carrying passengers an additional 5 pence per mile per passenger will also be charged where appropriate.



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*KPMG LLP*

*7 April 2016*

## **Appendix 3 - Charge out rates for the period 12 February 2015 to 11 February 2016**

Grade	From 01 Oct 2014 £/hr	From 01 Oct 2015 £/hr
Partner	595	595
Director	535	535
Senior Manager	485	485
Manager	405	405
Senior Administrator	280	280
Administrator	205	205
Support	125	125