

# CVA3

## Notice of supervisor's progress report in voluntary arrangement



Companies House

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refer to our guidance at  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

### 1 Company details

Company number 0 2 6 5 1 1 6 8

Company name in full Durham County Waste Management Company Limited

#### → Filling in this form

Please complete in typescript or in  
bold black capitals.

### 2 Supervisor's name

Full forename(s) Howard

Surname Smith

### 3 Supervisor's address

Building name/number KPMG LLP, 1 Sovereign Square

Street Sovereign Street

Post town Leeds

County/Region

Postcode L S 1 4 D A

Country

### 4 Supervisor's name<sup>①</sup>

Full forename(s) James Ronald Alexander

Surname Lumb

#### ① Other supervisor

Use this section to tell us about  
another supervisor.

### 5 Supervisor's address<sup>②</sup>

Building name/number KPMG LLP, 1 Sovereign Square

Street Sovereign Street

Post town Leeds

County/Region

Postcode L S 1 4 D A


Country

#### ② Other supervisor

Use this section to tell us about  
another supervisor.

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<b>6</b>	<b>Date of voluntary arrangement</b>																
Date	<sup>d</sup>	1	<sup>d</sup>	2	<sup>m</sup>	0	<sup>m</sup>	2	<sup>y</sup>	2	<sup>y</sup>	0	<sup>y</sup>	1	<sup>y</sup>	3	
<b>7</b>	<b>Period of progress report</b>																
Date from	<sup>d</sup>	1	<sup>d</sup>	2	<sup>m</sup>	0	<sup>m</sup>	2	<sup>y</sup>	2	<sup>y</sup>	0	<sup>y</sup>	2	<sup>y</sup>	0	
Date to	<sup>d</sup>	1	<sup>d</sup>	1	<sup>m</sup>	0	<sup>m</sup>	2	<sup>y</sup>	2	<sup>y</sup>	0	<sup>y</sup>	2	<sup>y</sup>	1	
<b>8</b>	<b>Progress report</b>																
<input checked="" type="checkbox"/> I attach a copy of the progress report																	
<b>9</b>	<b>Sign and date</b>																
Supervisor's signature	Signature																
																	
Signature date	<sup>d</sup>	2	<sup>d</sup>	6	<sup>m</sup>	0	<sup>m</sup>	3	<sup>y</sup>	2	<sup>y</sup>	0	<sup>y</sup>	2	<sup>y</sup>	1	

# CVA3

## Notice of supervisor's progress report in voluntary arrangement



### 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 **Clare McCain**

Company name **KPMG LLP**

Address **Quayside House**

**110 Quayside**

Post town **Newcastle upon Tyne**

County/Region

Postcode **N E 1 3 D X**

Country

DX

Telephone **Tel +44 (0) 191 401 3867**



### 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 and dated 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

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**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)**



# Supervisors' Annual Progress Report 12 February 2020 to 11 February 2021

Durham County Waste  
Management Company  
Limited – under a Voluntary  
Arrangement and in  
Liquidation

26 March 2021

# Glossary

<b>The Company and/or DCWM</b>	Durham County Waste Management Company Limited under a Company Voluntary Arrangement and in Liquidation (Company registered number 02651168)
<b>CVA</b>	Company Voluntary Arrangement
<b>CVL</b>	Creditors Voluntary Liquidation
<b>The Proposal</b>	The CVA Proposal approved by creditors on 12 February 2013
<b>The Joint Supervisors/Supervisors/we/our/us</b>	Howard Smith and James Ronald Alexander Lumb of KPMG LLP, 1 Sovereign Square, Sovereign Street, Leeds, LS1 4DA
<b>The Period</b>	12 February 2020 to 11 February 2021
<b>PWM and/or Premier Waste</b>	Premier Waste Management Limited under a Company Voluntary Arrangement and in Liquidation (Company registered number 03616068)
<b>HMRC</b>	HM Revenue and Customs
<b>FTT</b>	First Tier Tribunal (Tax)
<b>UT</b>	Upper Tribunal (Tax)
<b>CoA</b>	Court of Appeal

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In the High Court of Justice

Case No. 70 of 2013

Chancery Division

High Court of Justice Newcastle upon Tyne

District Registry

In the matter of Durham County Waste

Management Company Limited (the 'Company')

and in the matter of the Insolvency Act 1986

We attach as Appendix 1 a copy of the Supervisors' annual summary of receipts and payments in the above Voluntary Arrangement for the period 12 February 2020 to 11 February 2021 (the 'Period') and we report as follows:

## **1 Receipts**

### **1.1 Interest Received**

Bank interest of £215 has been received during the Period.

No other funds were received during the Period.

## **2 Payments**

No payments were made during the Period.

## **3 Progress of the Arrangement**

### **3.1 Unsecured Creditors**

As you are aware, the Proposal stated that the expected distribution to creditors, 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 liquidation.

According to the Directors' Statement of Affairs, as at 30 November 2012 (schedule 8 of the Proposal), the estimated claims of unsecured creditors totalled £3,636,792. This was based on the November management accounts prepared by the Company and 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 could potentially be claimed in the CVA and subsequent liquidation. The updated balances were 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. Estimated claims in the CVA, and subsequent CVL, were £2,431,000.

According to the Company's records there were 21 unsecured creditors with potential claims in the CVA. As indicated in the Proposal, 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 to the CVA from a creditor, which was successfully defended. The Joint Supervisors have recovered certain costs incurred defending the challenge to the CVA. Agreement of this creditor's claim has also been disputed during the CVA, further increasing costs and delaying payment of a dividend to creditors.

As you are aware, due to the additional costs incurred, the return to creditors is lower than that anticipated in the Proposal.

On 12 September 2018 a dividend of 16.21 pence in the pound, totalling £389,626, was declared on the claims of unsecured creditors admitted in the Voluntary Arrangement of £3,004,617 (£2,403,694 at 80% of claim value).

As you are also aware, a key asset in the CVA is an intercompany balance due from Premier Waste. On 6 March 2015, the Joint Supervisors received an interim dividend payment of £381,202 from the CVA of Premier Waste, and £5,152 from the CVL of Premier Waste. A further dividend is expected from the Premier Waste CVA, although the timing and quantum of this is dependent on the outcome of the landfill tax claim, see section 3.2 for further information.

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

As previously reported, Premier Waste has an ongoing landfill tax claim against HMRC. The claim is valued at approximately £4.5 million and returns to the creditors of PWM, which includes DCWM, would increase if it is successful. As previously reported, PWM has joined an appeal against HMRC's decision on its treatment of landfill tax, together with a number of other parties, behind a lead appellant.

The claim is progressing but has not been resolved and, accordingly, the Joint Supervisors propose to extend the period of the CVA by a further three years, to 1 June 2024, to allow them to continue to pursue this claim. Please see the progress of the claim below.

- As creditors are aware, a hearing was held before the First Tier Tribunal (Tax). The FTT found in favour of HMRC in May 2018, however, permission was granted to appeal the FTT's decision to the Upper Tribunal. As required by the Upper Tribunal rules, a Notice of Appeal was served on 27 July 2018, which was formally acknowledged by the UT.
- Permission was granted to appeal to the UT; an appeal hearing took place in November 2019.
- In January 2020, the UT issued its decision which overturned the decision of the FTT, finding in favour of the appellants (which included PWM).
- Following this, HMRC has applied for permission to appeal the decision of the UT. The UT granted HMRC leave to appeal on two of the eight grounds for appeal it had raised. The remaining six grounds for appeal were dismissed.
- HMRC has since applied to the Court of Appeal ('CoA') in respect of the grounds on which it was refused permission. The CoA has allowed HMRC's application which means it can bring forward all of its arguments in the appeal.



- A hearing at the CoA is due to take place on or shortly after 22 March 2021. We will update creditors in our next report.

As mentioned above, DCWM is a creditor of PWM and so, should the claim be successful, a further distribution will be made to unsecured creditors, including DCWM, and the return to the creditors of the Company will also increase.

Given the interlocking nature of the CVAs the Joint Supervisors propose to extend the period of the DCWM CVA to 1 June 2024, consistent with the proposed PWM extension.

The extension is a material variation to the Proposal and, accordingly, a notice of a creditors' decision procedure, to consider the proposed extension, will be sent to creditors under separate cover.

## 4 Office Holders' Remuneration

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

Attached at Appendix 2 is a detailed analysis of time spent and charge out rates for each grade of staff for the various areas of work carried out in the Period (as required by the Association of Business Recovery Professionals' Statement of Insolvency Practice No.9) together with details of expenses incurred to date.

In the Period the Joint Supervisors incurred time costs of £20,769, representing 58 hours at an average rate of £361 per hour. This includes tax and VAT advice from KPMG LLP in-house specialists. The Joint Supervisors have not incurred any expenses during the Period.

The Proposal included an estimate of total Supervisors' fees of £55,000 plus outlays. The Joint Supervisors' time costs for the CVA to date are £325,054 and it is anticipated that these costs will increase to £400,000 by the time the CVA is concluded. These costs are higher than anticipated as a result of a challenge to the CVA from a creditor, agreeing the admitted value of the creditor's claim, and case administration and reporting for a further three years following its proposed extension.

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.

A creditors' guide to fees can be found at:

<https://www.r3.org.uk/technical-library/england-wales/technical-guidance/fees/more/29116/page/1/guide-to-voluntary-arrangement-fees/>


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

## 5 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:

- extending the CVA;
- receiving any further dividends from PWM;
- further distribution to unsecured creditors if PWM's landfill tax claim is successful; and
- any other functions which it may be necessary or expedient for the Supervisor to undertake in connection with the implementation of the Arrangement.

Signed



Dated

26 March 2021

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Howard Smith

Joint Supervisor

## Appendix 1      Receipts and payments account for the Period

Abstract of receipts & payments			
Statement of affairs (£)		From 12/02/2020 To 11/02/2021 (£)	From 12/02/2013 To 11/02/2021 (£)
ASSET REALISATIONS			
53,040.00	Freehold land	NIL	30,000.00
	Shares and investments	NIL	244,273.46
	Inter-company debtors	NIL	386,354.28
	Receipt of funds per costs order	NIL	62,858.71
271,349.00	Cash at bank	NIL	111,815.96
	Insurance refund	NIL	3,415.50
		NIL	838,717.91
OTHER REALISATIONS			
	Bank interest, gross	215.41	7,205.05
	Bank interest, net of tax	NIL	2,090.50
	Third party funds	NIL	9,142.47
	Sundry refunds	NIL	706.36
	Funds held for employee compromise	NIL	130,000.00
		215.41	149,144.38
COST OF REALISATIONS			
	Employee compromise - payment	NIL	(130,000.00)
	Supervisors' fees	NIL	(150,000.00)
	Return of Third-Party Funds	NIL	(9,142.47)
	Agents'/Valuers' fees	NIL	(7,786.58)
	Agents'/Valuers' disbursements	NIL	(720.00)
	Legal fees	NIL	(84,753.25)
	Legal disbursements	NIL	(11,519.00)
	Sundry expenses	NIL	(7.18)
	Insurance of assets	NIL	(1,952.09)
	Bank charges	NIL	(75.00)
		NIL	(395,955.57)
UNSECURED CREDITORS			
	Trade & expense	NIL	(2,281.92)
(375,915.00)	Employees	NIL	NIL
(1,484,440.00)	Barclays Mercantile	NIL	(207,427.51)
(305,359.00)	Lease: Prospect House	NIL	(39,597.66)
(378,367.00)	Lease: Tursdale	NIL	(105,771.46)
(291,928.00)	Operating lease	NIL	(34,547.41)
(800,783.00)	DCC loan	NIL	NIL

**Abstract of receipts & payments**

Statement of affairs (£)		From 12/02/2020 To 11/02/2021 (£)	From 12/02/2013 To 11/02/2021 (£)
		NIL	(389,625.96)
DISTRIBUTIONS			
(1,378,002.00)	Ordinary shareholders	NIL	NIL
		NIL	NIL
<b>(4,690,405.00)</b>		<b>215.41</b>	<b>202,280.76</b>
REPRESENTED BY			
	Floating ch. VAT rec'able		8,759.27
	Supervisors trust account		202,280.76
	Floating ch. VAT payable		(6,000.00)
	Floating ch. VAT control		(2,759.27)
			<b>202,280.76</b>

## Appendix 2 Time cost analysis for the Period

### SIP 9 –Time costs analysis (12/02/2020 to 11/02/2021)

	Hours	Time Cost (£)	Average Hourly Rate (£)
<b>Administration &amp; planning</b>			
Cashiering			
General (Cashiering)	2.00	655.30	327.65
Reconciliations (& IPS accounting reviews)	1.70	952.00	560.00
General			
Fees and WIP	1.00	325.00	325.00
Statutory and compliance			
Checklist & reviews	13.95	5,152.85	369.38
Closure and related formalities	0.30	97.50	325.00
Statutory receipts and payments accounts	0.60	195.00	325.00
Strategy documents	1.20	744.00	620.00
Tax			
Post appointment corporation tax	7.65	3,578.65	467.80
<b>Creditors</b>			
Creditors and claims			
General correspondence	0.35	113.75	325.00
Statutory reports	28.75	8,954.75	311.47
<b>Total in period</b>	<b>57.50</b>	<b>20,768.80</b>	<b>361.20</b>
Brought forward time (appointment date to SIP 9 period start date)	848.30	304,285.40	
SIP 9 period time (SIP 9 period start date to SIP 9 period end date)	57.50	20,768.80	
Carry forward time (appointment date to SIP 9 period end date)	905.80	325,054.20	

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.

## Joint Supervisors' Disbursements

The Joint Supervisors have not incurred any disbursements during the Period.

Disbursements	Category 1		Category 2		Totals (£)
	Paid (£)	Unpaid (£)	Paid (£)	Unpaid (£)	
Total	NIL		NIL		NIL

## KPMG Restructuring Policy for the recovery of disbursements

Where funds permit the officeholders will seek 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 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.

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

- use of privately-owned vehicle or car cash alternative – 45 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.

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

## Appendix 3      Charge out rates for the Period

<b>Charge-out rates (£) for: Restructuring</b>			
<b>Grade</b>	<b>From 01 Jan 2020 £/hr</b>	<b>From 01 Oct 2020 £/hr</b>	<b>From 01 Jan 2021 £/hr</b>
Partner	690	690	690
Director	620	620	620
Senior Manager	560	560	560
Manager	467	467	467
Senior Administrator	325	325	325
Administrator	236	236	236
Support	147	147	147

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