

## Liquidator's Progress Report

# S.192

Pursuant to Sections 92A and 104A and 192  
of the Insolvency Act 1986

To the Registrar of Companies

Company Number

03616068

Name of Company

Premier Waste Management Limited

I / We

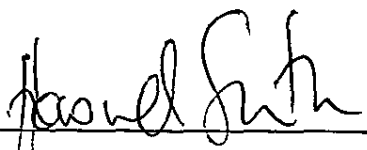
Mark Granville Firmin, KPMG LLP, 1 The Embankment, Neville Street, Leeds, LS1 4DW

Howard Smith, KPMG LLP, 1 The Embankment, Neville Street, Leeds, LS1 4DW

the liquidator(s) of the company attach a copy of my/our Progress Report  
under section 192 of the Insolvency Act 1986

The Progress Report covers the period from 01/07/2013 to 30/06/2014

Signed



Date

28/8/14

KPMG LLP  
1 The Embankment  
Neville St  
Leeds  
LS1 4DW

Ref PD626D4156/CMC/LR/SR

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**Premier Waste Management Limited**  
**(In Liquidation)**  
**Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 01/07/2013 To 30/06/2014
	<b>ASSET REALISATIONS</b>	
	Accrued income	74,224 90
	Funds due to third parties	1,949 45
	Funds due to Supervisor	366 77
231,542 00	Book debts	190,102 16
19,955 00	Cash at bank	29,782 13
		<u>296,425 41</u>
	<b>OTHER REALISATIONS</b>	
	Bank interest, gross	926 93
	Sundry refunds	574 68
		<u>1,501 61</u>
	<b>COST OF REALISATIONS</b>	
	Legal fees	7,250 00
	Legal disbursements	77 40
	Storage costs	663 02
	Re-direction of mail	195 00
	Statutory advertising	547 33
	Funds paid to third parties	593 30
		<u>(9,326 05)</u>
	<b>UNSECURED CREDITORS</b>	
(331,101 00)	Trade & expense	NIL
(39,929 00)	Employees	NIL
(339,377 00)	HMRC Landfill tax	NIL
(653 00)	Finance lease	NIL
(296,888 00)	Barclays Mercantile	NIL
(185,531 00)	Connected companies	NIL
(9,394 00)	Corp tax etc/nonpref PAYE	NIL
(97,314 00)	Other creditors	NIL
(158,478 00)	Operating lease liabilities	NIL
(2,500,000 00)	Pension Scheme liability	NIL
		<u>NIL</u>
	<b>DISTRIBUTIONS</b>	
(500,000 00)	Ordinary shareholders	NIL
		<u>NIL</u>
<b>(4,207,168.00)</b>		<u><b>288,600 97</b></u>
	<b>REPRESENTED BY</b>	
	VAT receivable	1,707 56
	Current account	288,468 36
	VAT payable	(14,844 96)
	Floating ch VAT control	13,270 01
		<u><b>288,600.97</b></u>



**Premier Waste Management Limited  
in creditors voluntary liquidation  
("the Company")**

**Annual Report  
to creditors pursuant to Section 104A of  
the Insolvency Act 1986**

KPMG LLP

29 August 2014

*This report contains 16 pages*



*Annual Report*  
*KPMG LLP*  
*29 August 2014*

## **Glossary**

the Company	Premier Waste Management Limited (Company registered number 03616068)
the Council	Durham County Council
CVA	Company Voluntary Arrangement
CVL	Creditors Voluntary Liquidation
DCWM	Durham County Waste Management Company Limited (Company registered number 02651168)
the Joint Liquidators or Liquidators	Mark Granville Firmin and Howard Smith of KPMG LLP, 1 The Embankment, Neville Street, Leeds, LS1 4DW
the Period	1 July 2013 to 30 June 2014
the Proposal	the CVA Proposal approved by creditors on 12 February 2013

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KPMG LLP  
29 August 2014

## About this report

This progress report has been prepared by Mark Granville Firmin and Howard Smith of KPMG LLP, the Liquidators of this company, solely to comply with their statutory duty under the Insolvency Act and Rules 1986 to provide members and creditors with an update on the progress of the liquidation of the estate, and for no other purpose

This report is not suitable to be relied upon by any other person, or for any other purpose, or in any other context including any investment decision in relation to the debt of or any financial interest in this company. Any person that chooses to rely on this report for any purpose or in any context other than under the Insolvency Act and Rules 1986 (as amended) does so at their own risk.

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 individual creditors.

Mark Granville Firmin is authorised to act as an insolvency practitioner by the Institute of Chartered Accountants in England and Wales. Howard Smith is authorised to act as an insolvency practitioner by the Insolvency Practitioners Association.

The appointments of the Joint Liquidators 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 or the conduct of the liquidation.

Please note that unless stated otherwise, all amounts in this report and appendices are stated net of VAT.

## 1 Executive Summary

I was appointed Joint Liquidator of the Company together with Mark Firmin at the meetings of the Company's members and creditors held on 1 July 2013.

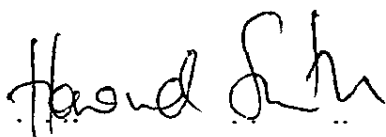
The Company was part of a group, with DCWM being its parent company (together "the Group") I was also appointed Joint Liquidator of DCWM together with Mark Firmin on 1 July 2013. Prior to the CVLs, both companies were subject to CVAs which were interlocking and conditional on the approval of one another.

In accordance with Section 104A of the Insolvency Act 1986, I set out below my first annual report on the progress of the liquidation. This report covers the 12 month period from 1 July 2013 to 30 June 2014.

To date, realisations in the liquidation total £297,927.

Full details of the progress of the liquidation are detailed below with all the relevant statutory information included by way of Appendices (see Sections 3 - Comments on the Appendices).

### 1.1 Office Holders



Joint Liquidator – Howard Smith

Joint Liquidator – Mark Granville Firmin

## 2 Progress to Date

### 2.1 Background information

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 with, Howard Smith and Mark Firmin of KPMG LLP being appointed Joint Supervisors of the Company and DCWM.

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 Waste Contract terminated on 31 May 2013 and, in line with the Proposal, the Joint Liquidators were duly appointed on 1 July 2013.

The assets held on trust are in the process of being realised and distributed for the benefit of the CVA creditors despite the Company being placed into CVL.

The distribution to creditors in the CVA, 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 CVL.

### 2.2 Communication

The Joint Liquidators wrote to all known creditors on 22 July 2013 advising them of their appointment and circulated the Directors' Report, which had been presented at the Section 98 Meeting held on 1 July 2013.



## 2.3 Assets

### 2.3.1 Accrued income

At the date of the Joint Liquidators appointment, income relating to landfill gas collection had not been invoiced. The Joint Liquidators have invoiced this income and have received £74,225. No further realisations are expected.

### 2.3.2 Book debts

The Directors Statement of Affairs estimated book debts in the sum of £231,542.

Total debtor realisations to date are £190,102. The Joint Liquidators are pursuing the outstanding balances.

### 2.3.3 Cash at bank

The Joint Liquidators have received £29,782, being funds held in the Company's pre-appointment bank account.

## 2.4 Liabilities

### 2.4.1 Unsecured creditors

The CVA Proposal stated that the distribution to creditors in the CVA will be in full and final settlement of 80% of each creditor's claim allowing the creditors of the CVA to vote and prove for the remaining 20% in the liquidation.

The Director's Statement of Affairs estimated that unsecured creditors totalled £3,958,665.

The Joint Liquidators are in the process of reviewing unsecured claims and settling the costs of the liquidation and anticipate that a dividend will be payable to unsecured creditors.

The quantum and timing of any dividend payable is unknown at this stage and will be communicated to creditors in due course.

## 2.5 Expenses for the Period

The receipts and payments for the Period are set out in the attached Receipts and Payments Account (see Appendix 2).

The office holders' time costs for the period of this report are also attached (see Appendix 3).

The statutory provisions relating to remuneration are set out in Rule 4.127 of the Insolvency Rules 1986. A creditors' guide to fees can be found at

[http://www.r3.org.uk/media/documents/publications/professional/Guide\\_to\\_Liquidators\\_Fees\\_Nov2011.pdf](http://www.r3.org.uk/media/documents/publications/professional/Guide_to_Liquidators_Fees_Nov2011.pdf)

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

For the period from 1 July 2013 to 30 June 2014, we have incurred time costs of £122,684, representing 364 hours at an average rate of £337 per hour. This includes the Tax, VAT, Employee, Health and Safety and Pensions advice from KPMG LLP in-house specialists.



KPMG LLP  
29 August 2014

A detailed breakdown of the charge out rates for the duration of the liquidation is included in Appendix 3 to this report

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. The cost of staff employed in central administration functions is not charged directly to this assignment but is reflected in the general level of the charge out rates

At the meeting of creditors held on 1 July 2013, the following resolutions were passed in relation to the Joint Liquidators' remuneration

"That the remuneration of the Joint Liquidators be fixed on the basis of time properly spent by the Joint Liquidators and their staff in attending to matters arising in the liquidation at KPMG LLP standard charge out rates which may vary. To be drawn from time to time "

"That the Joint Liquidators be able to draw category 2 disbursements, which are to be charged in accordance with the firms policy", and

"That the charge out rates applied during the liquidation be the KPMG LLP standard charge out rates with a 20% reduction applied "

Please note that with the 20% reduction being applied to the KPMG LLP standard charge out rates, the Joint Liquidators time costs for the period 1 July 2013 to 30 June 2014 are £98,147

The Joint Liquidators have not drawn any fees during the period of this report

In addition, time costs of £7,791 were incurred in connection with convening the meeting of members and creditors to place the Company into liquidation, and £2,862 for fees incurred in preparing the statement of affairs. These fees were approved at the meeting of creditors held on 1 July 2013. Please note that the reduction to KPMG LLP standard charge out rates will also be applied to these time costs, therefore, fees will be drawn in the sum of £6,232 and £2,290 respectively

The Joint Liquidators have incurred disbursements totalling £447 in the Period, of which none have been drawn

Expenses for this period total £127,760 including amounts not yet paid (see Appendix 4 for details)

Additional information about the expenses charged in the period is available from the office holder upon request by any secured creditor, and any other creditor or creditors owed 5% or more in value of the unsecured liabilities listed. Full details of the process to obtain more information under Rule 4.49E Insolvency Rules 1986 and to challenge the Joint Liquidator's remuneration and expenses under Rule 4.131 Insolvency Rules 1986 are included in Appendix 4 should creditors wish to do so

### **3 Comments on the Appendices**

#### **3.1 Appendix 1: Statutory Information**

Please see Appendix 1 for a summary of the Company's statutory information

#### **3.2 Appendix 2: Receipts & payments account for the period**

##### **3.2.1 Receipts**

Please see Section 2.3 for comments on the receipts during the period

##### **3.2.1.1 *Bank interest***

During the Period gross interest has been received in the sum of £927

##### **3.2.1.2 *Sundry refunds***

Sundry refunds of £575 have been received during the Period

##### **3.2.1.3 *Funds due to third parties***

During the Period, funds totalling £1,949 due to third parties have been received by the Joint Liquidators, £593 has been paid to the relevant third party, the remaining £1,356 will be paid shortly.

##### **3.2.1.4 *Funds due to Supervisors***

The Joint Liquidators have received £367 in respect of a debtor balance which was held on trust for the benefit of the creditors of the CVA. This will be paid to the Joint Supervisors shortly.

##### **3.2.2 Payments**

##### **3.2.2.1 *Legal fees and disbursements***

During the Period Squire Sanders (UK) LLP have been paid £7,250 and £77 in respect of legal fees and disbursements respectively, for advising the Joint Liquidators on appointment related matters.

In addition, legal fees and disbursements of £12,273 and £281 respectively, have been accrued in the Period. These costs are payable to Eversheds LLP in respect of, preparing disclaimer documentation, advising on voting rights of creditors in the liquidation and providing general advice on the conduct of the liquidation.

##### **3.2.2.2 *Other costs***

During the Period other costs of £1,045 have been incurred which include, £663 in relation to storage costs, £195 for mail redirection and £547 in relation to statutory advertising.

### **3.3 Analysis of office holders' time costs**

#### **3 3 1 Appointment and related formalities**

Following the Joint Liquidators' appointment on 1 July 2013, time costs of £14,788 (47 hours) have been spent in relation to statutory duties. This includes, but is not limited to, notifying all known creditors of their appointment.

#### **3 3 2 Checklists and reviews**

Time costs of £15,567 (47 hours) have been incurred in reviewing files and ensuring all statutory obligations are being complied with.

#### **3 3 3 D Form drafting and submission**

Time costs of £15,894 (44 hours) have been incurred in relation to the drafting and submission of the Joint Liquidators' statutory report on the conduct of the Directors to the Insolvency Service. In relation to this, time costs of £5,417 (21 hours) have been incurred for the review of pre-appointment transactions.

#### **3 3 4 Post appointment corporation tax**

Time costs of £20,023 (48 hours) have been incurred in dealing with the complex tax affairs of the Company.

#### **3.3.5 General correspondence**

Time costs of £10,843 (35 hours) have been incurred in dealing with general correspondence and enquiries from creditors.

### **3.4 Expenses for the Period**

Expenses for the Period are summarised in Appendix 4 which include the time costs as analysed in Appendix 3.

## Appendix 1 - Statutory Information

<b>Appointment</b>	
For period	1 July 2013 to 30 June 2014
Company name	Premier Waste Management Limited
Nature of business	Waste Management
Date of appointment	1 July 2013
	<p>Mark Granville Firmin was appointed on 1 July 2013 as Joint Liquidator by the Company's members and creditors and is authorised to act as an insolvency practitioner by the Institute of Chartered Accountants in England &amp; Wales</p> <p>Howard Smith was appointed on 1 July 2013 as Joint Liquidator by the Company's members and creditors and is authorised to act as an insolvency practitioner by the Insolvency Practitioners Association</p>
Registered number	03616068
Date of incorporation	14 August 1998
Present registered office	<p>KPMG LLP Quayside House 110 Quayside Newcastle upon Tyne NE1 3DX</p>
Previous registered office	<p>Prospect House Aykely Heads Business Centre Aykely Heads Durham DH1 5TS</p>
Basis of remuneration	Time costs
Application of EC Regulations	EC Regulations apply and these proceedings will be the Main Proceedings as defined in Article 3 of the EC Regulations



KPMG LLP  
29 August 2014

## Appendix 2 - Office holders' receipts and payments account for the period 1 July 2013 to 30 June 2014

### Premier Waste Management Limited (In Liquidation) Liquidators' Abstract of Receipts & Payments

Statement of Affairs		From 01/07/2013 To 30/06/2014
	<b>ASSET REALISATIONS</b>	
	Accrued income	74,224 90
	Funds due to third parties	1,949 45
	Funds due to Supervisor	366 77
231,542 00	Book debts	190,102 16
19,955 00	Cash at bank	29,782 13
		<u>296,425 41</u>
	<b>OTHER REALISATIONS</b>	
	Bank interest, gross	926 93
	Sundry refunds	574 68
		<u>1,501 61</u>
	<b>COST OF REALISATIONS</b>	
	Legal fees	7,250 00
	Legal disbursements	77 40
	Storage costs	663 02
	Re-direction of mail	195 00
	Statutory advertising	547 33
	Funds paid to third parties	593 30
		<u>(9,326 05)</u>
	<b>UNSECURED CREDITORS</b>	
(331,101 00)	Trade & expense	NIL
(39,929 00)	Employees	NIL
(339,377 00)	HMRC Landfill tax	NIL
(653 00)	Finance lease	NIL
(296,888 00)	Barclays Mercantile	NIL
(185,531 00)	Connected companies	NIL
(9,394 00)	Corp tax etc/nonpref PAYE	NIL
(97,314 00)	Other creditors	NIL
(158,478 00)	Operating lease liabilities	NIL
(2,500,000.00)	Pension Scheme liability	NIL
		<u>NIL</u>
	<b>DISTRIBUTIONS</b>	
(500,000 00)	Ordinary shareholders	NIL
		<u>NIL</u>
<u>(4,207,168 00)</u>		<u>288,600 97</u>
	<b>REPRESENTED BY</b>	
	VAT receivable	1,707 56
	Current account	288,468 36
	VAT payable	(14,844 96)
	Floating ch VAT control	13,270 01
		<u>288,600 97</u>

## Appendix 3 - Analysis of office holders' time costs for the period 1 July 2013 to 30 June 2014

	Partner / Director	Manager	Administrator	Support	Total hours	Time cost	Average hourly rate
<b>Administration &amp; planning</b>							
<b>Bankrupt/Director/Member</b>							
Notification of appointment			0 50		0 50	£125 00	£250 00
<b>Cashiering</b>							
General (Cashiering)	3 50		11 80		15 30	£4,698 00	£307 06
Reconciliations (& IPS accounting reviews)			1 50		1 50	£393 00	£262 00
<b>General</b>							
Books and records			1 00		1 00	£250 00	£250 00
Fees and WIP	0 50				0 50	£242 50	£485 00
<b>Statutory and compliance</b>							
Appointment and related formalities	5 50	15 50	25 85		46 85	£14 787 50	£315 64
Checklist & reviews	4 10	20 80	21 90		46 80	£15,567 00	£332 63
Pre-appointment checks			3 90		3 90	£721 50	£185 00
Statutory advertising			0 50		0 50	£125 00	£250 00
Strategy documents	11 50	5 50			17 00	£8 145 00	£479 12
<b>Tax</b>							
Initial reviews - CT and VAT		11 65	1 25		12 90	£4 725 50	£366 32
Post appointment corporation tax	1 00	46 65			47 65	£20 023 25	£420 22
Post appointment VAT	1 50	5 20	6 50		13 20	£4 382 00	£331 97
<b>Creditors</b>							
<b>Creditors and claims</b>							
Agreement of unsecured claims			6 00		6 00	£1 110 00	£185 00
General correspondence	4 00	7 00	24 20		35 20	£10 843 00	£308 04
Notification of appointment		7 50	0 80		8 30	£2 937 50	£353 92
Pre-appointment VAT / PAYE / CT		0 50			0 50	£182 50	£365 00
Statutory reports	2 50				2 50	£1 252 50	£501 00
<b>Employees</b>							
Correspondence		0 50	1 30		1 80	£446 00	£247 78
Pension funds	2 00				2 00	£970 00	£485 00
Pensions reviews	1 80	0 30	19 80		21 90	£4 695 50	£214 41
<b>Investigation</b>							
<b>Directors</b>							
Correspondence with directors	0 70	2 00			2 70	£1 069 50	£396 11
D form drafting and submission	6 00	22 00	15 60		43 60	£15 894 00	£364 54
Directors' questionnaire / checklist		0 50	1 80		2 30	£655 00	£284 78
Statement of affairs	1 50				1 50	£727 50	£485 00
<b>Investigations</b>							
Correspondence re investigations			2 25		2 25	£438 75	£195 00
Review of pre-appt transactions			21 10		21 10	£5 416 50	£256 71
<b>Realisation of assets</b>							
<b>Asset Realisation</b>							
Cash and investments			0 30		0 30	£75 00	£250 00
Debtors	1 30	1 00			2 30	£1,015 50	£441 52
Other assets		2 00			2 00	£770 00	£385 00
<b>Total in period</b>					<b>363 85</b>	<b>£122 684 00</b>	<b>£337 18</b>
<b>Fees</b>							
B/f			0 00		0 00	£0 00	£0 00
In the period			0 00		363 85	£122,684 00	£337 18
C/f			0 00		363 85	£122 684 00	£337 18



KPMG LLP  
29 August 2014

## Charge out rates for the period 1 July 2013 to 30 June 2014

	Hourly rate from 1 October 2012 onwards (£)	Hourly rate from 1 October 2013 onwards (£)
<b>Partner</b>	565	565
<b>Director</b>	485	485
<b>Senior Manager</b>	450	475
<b>Manager</b>	365	385
<b>Senior Administrator</b>	250	265
<b>Administrator</b>	185	195
<b>Support</b>	115	120

Please note, as stated in Section 2.5 the charge out rates applied during the liquidation will be the KPMG LLP standard charge out rates shown above with a 20% reduction applied



## Category 1 expenses

Expenses	£
Print Services	36 40
Room Hire	135 00
Bordereau	250 00
<b>Total expenses</b>	<b>421.40</b>

## Category 2 expenses

Expenses	£
Mileage	26 00
<b>Total expenses</b>	<b>26.00</b>

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 – 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.

## Appendix 4 - Schedule of expenses for the period 1 July 2013 to 30 June 2014

Section	Account	Accrued (£)	Paid (£)	Total (£)
Cost of realisations				
	Joint Liquidators' fees	98,147	-	98,147
	Joint Liquidators' expenses	447	-	447
	Legal fees	12,273	7,250	19,523
	Legal disbursements	281	77	358
	Storage	100	663	763
	Costs of preparation of Statement of Affairs	2,290	-	2,290
	Costs of convening Section 98 meeting	6,232	-	6,232
<b>TOTAL</b>		119,770	7,990	127,760

Please note that the Joint Liquidators' fees and disbursements shown above have been accrued at KPMG LLP's standard charge out rates with a 20% reduction applied, as agreed by the majority of creditors at the Section 98 Meeting held on 1 July 2013

To determine if the quantum of the fees to be taken is reasonable the analysis included at Appendix 3 should be reviewed and any additional information can be requested by any secured creditor or any unsecured creditor(s) with at least 5% in value of the unsecured debt in accordance with rule 4 49E Insolvency Rules 1986 This request must be made within 21 days receipt of the report The full text of that rule can be provided on request

In addition creditors are reminded that the quantum can be challenged by unsecured creditor(s) with at least 10% in value excluding that creditors claim by making an application to court in accordance with rule 4 131 Insolvency Rules 1986 The full text of this rule can also be provided on request

## Extract from the Insolvency Rules 1986

### Insolvency Rules 1986

#### **4.49E Creditors' and members' request for further information**

- (1) If-
- (a) within the period mentioned in paragraph (2)-
    - (i) a secured creditor, or
    - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
    - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
  - (b) with the permission of the court upon an application made within that period mentioned in paragraph (2)-
    - (i) any unsecured creditor, or
    - (ii) any member of the company in a members' voluntary winding up, makes a request in writing to the liquidator for further information about remuneration or expenses set out in the progress report in accordance with Rule 4 49B(1)(e) or (f) (including by virtue of Rule 4 49C(5)) or in a draft report under Rule 4 49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4 49D or a progress report required by Rule 4 108 which (in either case) was previously included in a progress report not required by Rule 4 108
- (2) The period referred to in paragraph 1(a) and (b) is –
- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4 108, and
  - (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft in any other case
- (3) The liquidator complies with this paragraph by either –

- (a) providing all of the information asked for, or
- (b) so far as the liquidator considers that –
  - (i) the time or cost of preparation of the information would be excessive, or
  - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
  - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information,
 giving reasons for not providing all of the information

(4) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the court within 21 days of –

- (a) the giving by the liquidator of reasons for not providing all the information asked for, or
- (b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just

(5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4 131(1B) or 4 148C(2) by such further period as the court thinks just

(6) This Rule does not apply where the liquidator is the official receiver

#### **4.131 Creditors' claim that remuneration is [or other expenses are] excessive**

(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4)

(1A) Application may be made on the grounds that-

- (a) the remuneration charged by the liquidator,
- (b) the basis fixed for the liquidator's remuneration under Rule 4 127, or
- (c) expenses incurred by the liquidator,

is or are, in all the circumstances, excessive or, in the case of application under sub-

paragraph (b), inappropriate

(1B) The application must, subject to any order of the court under Rule 4 49E(5), be made no later than 8 weeks (or, in a case failing within Rule 4 108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4 49D, which first reports the charging of the remuneration or the incurring of the expenses in question (‘the relevant report’)

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application, but it shall not do so unless the applicant has had opportunity to attend the court for a hearing, of which he has been given at least 5 business days’ notice but which is without notice to any other party

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it

(4) If the court considers the application to be well-founded, it must make one or more of the following orders –

(a) an order reducing the amount of remuneration which the liquidator was entitled to charge,

(b) an order fixing the basis of remuneration at a reduced rate or amount,

(c) an order changing the basis of remuneration,

(d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation,

(e) an order that the liquidator or the liquidator’s personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant and are not payable as an expense of the liquidation