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The Insolvency Act 1986

Administrator's progress report

Name of Company Keep It Kool Shade Sails Limited
--

Company number 05635392

In the Birmingham District Registry <small>(full name of court)</small>
--

Court case number 8538 of 2011
--

(a) Insert full name(s) and address(es) of administrator(s)

I/We (a)
Simon Franklin Plant
S F P
9 Ensign House
Admirals Way
Marsh Wall
London
E14 9XQ

Daniel Plant
S F P
9 Ensign House
Admirals Way
Marsh Wall
London
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administrator(s) of the above company attach a progress report for the period

(b) Insert date

From (b) 28 April 2012

To (b) 15 October 2012

Signed

Joint Administrator(s)

Dated

22 / 10 / 12**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

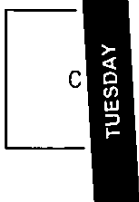
The contact information that you give will be visible to searchers of the public

SFP
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Number

020 7538 2222
DX Exchange

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



Strictly Private and Confidential

Keep It Kool Shade Sails Limited (In Administration)

Final Progress Report to Creditors

**Simon Franklin Plant
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COMPANIES HOUSE

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1. Introduction

- 1.1** This Report is prepared pursuant to Rule 2.117A of the Insolvency Rules 1986 (as amended) ("the Rules") in relation to Keep It Kool Shade Sails Limited (in Administration) (Co Number 05635392) ("the Company"). This provides that when the Joint Administrators of a company have sent notice of moving from Administration to a Creditors' Voluntary Liquidation, they shall send a final progress report as soon as reasonably practicable once it has been registered at the Registrar of Companies.
- 1.2** To date, creditors have received the Joint Administrators' Report and Proposals circulated to creditors on 9 November 2012 ("the First Report") and a six monthly update on 18 May 2012 ("the Second Report"). In the light of the information contained in these previous reports, this Report simply provides an additional update.
- 1.3** Following the First Report, the Joint Administrators' proposals were approved. The Joint Administrators are moving the Company from Administration to Liquidation as they are now of the view that the outstanding issues in relation to this matter can be better dealt with in that regime.

2. Asset Realisations / Miscellaneous

The Sale of the Business and Assets

- 2.1** As detailed in the First Report, it was established that it would not be possible to trade the business whilst in Administration given that the Company had already ceased to trade. Accordingly, the collective view of the Joint Administrators and valuation agents, Winterhill Asset Limited ("Winterhill") was that an expedient sale of the Company's business and assets to existing management or a third party would generate the most effective recovery.
- 2.2** Accordingly, enquiries were undertaken with the Company's directors to establish if they wished to make an offer. They explained that they did not have sufficient funding available to and accordingly, would not be able to. They did however advise that one of the Company's competitors, Broxap Limited ("Broxap") had previously expressed an interest in acquiring the business.
- 2.3** Once Winterhill had completed its valuation, discussions were entered into with Broxap. After establishing they wished to make an offer, a meeting was arranged to negotiate terms.
- 2.4** An initial offer of £35,000 was received from Broxap and subsequently rejected. After further negotiations, a final offer of £100,000 was elicited by the Joint Administrators, payable in one lump sum upon completion. The offer was discussed with Winterhill who advised that it represented a good realisation in the circumstances and should be accepted.
- 2.5** Accordingly, solicitors Clarke Willmott LLP ("Clarke Willmott") were instructed to draft a sale and purchase agreement. Following various amendments, a final draft was agreed upon and completion took place at 1.30pm on 4 November 2011. The sale consideration has been received in full.
-

Third Party Plant

- 2.6 Various items of hire purchase plant and equipment that were excluded from the sale to Broxap were collected by Lombard North Central Plc following the sale of the business and assets. These items were subsequently sold and a surplus of £9,715 has been received.

Debtors

- 2.7 As detailed in the First Report, as at the date of the placing of the Company into Administration, its ledger was £296,747 with Aldermore Invoice Finance Limited ("Aldermore") having an outstanding commitment of £204,849.
- 2.8 An entity associated with the Joint Administrators' firm, SFP Recoveries Limited ("SFP Recoveries") was instructed to monitor the progress of debtor collections and provide assistance to Aldermore, if required.
- 2.9 SFP Recoveries has advised that Aldermore has collected its liability in full and has reassigned the ledger to the Company. Further, that since reassignment, SFP Recoveries has exhausted the remaining ledger and collected £18,967 for the benefit of the Administration estate. Accordingly, SFP Recoveries has closed its file in this matter.

The Company's Trading Premises

- 2.10 The Company traded informally from premises at Unit 1 Grove Close, Gayton, Eastcote, Northamptonshire, NN12 8NG and Bay Farm, Eastcote, Northamptonshire (collectively, "the Premises").
- 2.11 An entity associated with the Joint Administrators' firm, SFP Property Limited ("SFP Property") was instructed to review the position and confirm the Company had no formal interest in the Premises.
- 2.12 SFP Property has since obtained confirmation that the Company has no interest in the Premises. Accordingly, it has confirmed that all property related matters have been dealt with and has proceeded to close its file in this matter.

Estate Account Balance and VAT

- 2.13 The balance held on the Administration estate account of £1,271 shall be transferred to the Liquidation estate account once the Company has moved to Liquidation.
- 2.14 A VAT refund of £11,660 is presently being awaited. Once the refund is received from HM Revenue and Customs it shall be banked in the Liquidation estate account.

3. Investigations

- 3.1 In accordance with the Joint Administrators' duties, investigations are being made into the conduct of the Company's current directors by SFP Forensic Limited ("SFP Forensic"). The requisite D Form was submitted to the Insolvency Practitioners Compliance Unit ("IPCU") on 10 April 2012. All

information contained in the D form is strictly confidential and the Joint Administrators are not permitted to divulge details of their recommendations to the IPCU

4. Dividend Prospects / Payments

Secured Creditors

- 4.1 Following completion of the sale of the Company's business and assets to Broxap for £100,000, Winterhill was instructed to provide a split of the sale proceeds between fixed and floating charge realisations
- 4.2 It subsequently advised that it would be reasonable to apportion an amount of £1,000 to fixed charge realisations
- 4.3 Accordingly, the Joint Administrators are currently liaising with HSBC Bank PLC to arrange for the transfer of £1,000 to it, pursuant to its debenture

Preferential Creditors

- 4.4 Certain employees were made redundant by the Company prior to the Joint Administrators' appointment. Further, one additional employee was made redundant due to economic, technical and organisational reasons on 4 November 2011
- 4.5 Given that the Joint Administrators completed a sale of the Company's business and assets, all of its remaining employees were transferred to Broxap pursuant to Transfer of Undertakings (Protection of Employment) Regulations. Despite this, employees are entitled to submit claims to the Redundancy Payments Office ("RPO") in respect of wage arrears
- 4.6 The RPO has not yet submitted a claim although based upon current information, it is anticipated that the preferential element of its claim will be circa £5,671

Non-Preferential Claims

- 4.7 The non-preferential creditors' claims are summarised below

Creditor	Estimated Statement of Affairs £	Claims Received as at 15 October 2012 £
HM Revenue and Customs – VAT/PAYE/NIC	55,000 00	127,662 00
RPO / Employee Claims	Uncertain	15,222 00
Trade and Expense	316,945 00	295,410 00

- 4.8 The quantum of any dividend distribution to unsecured creditors is dependent upon realisations achieved from any recoveries made from SFP Forensic's investigations. These would also be subject to any further associated costs. It is anticipated that in the event that these recoveries are achieved, there will be funds available to make a dividend distribution to unsecured creditors
-

5. The Joint Administrators' Costs

- 5.1** At **Appendix I** is the Company's Final Income and Expenditure Account as at 15 October 2012. This is in the main self explanatory.
- 5.2** At **Appendix II** is a breakdown of the time that has been incurred by the Joint Administrators' firm from 28 April 2012 to date, together with details of charge out rates / activity summaries. At **Appendix VIII** is a Guide to Administrators' Fees, being set out in Statement of Insolvency Practice 9. The Joint Administrators' fees have previously been authorised by the creditors.
- 5.3** Within 21 days of receipt of a progress report a creditor may request the Administrator to provide further information about the remuneration and expenses set out in the report. A request must be in writing and may be made by either a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors or the permission of the court.
- 5.4** In accordance with Rule 2.109 of the Rules, any secured creditor, or any unsecured creditor with the concurrence of at least 10% in value of the unsecured creditors, or with the permission of the Court, may apply to the Court on the grounds that the remuneration or other expenses are excessive. Any such application must be made no later than 8 weeks after receipt of this report.
- 5.5** At **Appendix III** is a breakdown of the time that has been incurred by SFP Forensic from 28 April 2012 to date.
- 5.6** At **Appendix IV** is a breakdown of the time that has been incurred by SFP Recoveries from 28 April 2012 to date.
- 5.7** At **Appendix V** is a breakdown of the time that has been incurred by SFP Property from 28 April 2012 to date.
- 5.8** At **Appendix VI** is a breakdown of the time that has been incurred by SFP Datastore Limited ("SFP Datastore") from 28 April 2012 to date. Details concerning SFP Datastore can be found at **paragraph 5.14**.
- 5.9** At **Appendix VII** is a breakdown of SFP and its associated entities' charge out rates.
- 5.10** The First Report detailed the position in relation to disbursements and certain types of expenditure. To ensure that creditors are aware of how this operates, this Report reiterates the position. Disbursements and specific expenditure relating to the administration of an insolvent estate and payable to an independent third party are recoverable without creditor approval. Such expenditure is made, if funds are available from the insolvent estate. If funds are not available the payment is made from the Joint Administrators' firm's office account which is reimbursed from the insolvent estate if and when funds become available.
- 5.11** Payments made out of a firm's office account and re-charged to an insolvent estate are defined as 'Category 1 Disbursements'. This disbursement is explained further under the Expenses and Disbursements heading in the Guide to Administrators' fees, at **Appendix VIII**. There have been Category 1 Disbursements incurred to date in respect of the following:
-

Expenses	£	1,054 99
Bordereau	£	330 00
Postage	£	54 45
Company Search	£	21 00

- 5.12 Expenditure incidental to the administration of the insolvent case, which by its nature includes an element of shared or allocated costs are recoverable with creditor approval. These payments are defined as 'Category 2 Disbursements' and, once again, this disbursement is explained further in the Guide to Administrators' fees, at **Appendix VIII**. There have been Category 2 Disbursements incurred to date in respect of the following:

Postage	£	542 55
Mileage	£	378 90

As detailed in the First Report, SFP Forensic, SFP Recoveries, SFP Property and SFP Datastore's remuneration will be treated as a Category 2 Disbursement. Creditors have previously provided sanction to recover disbursements of this type.

- 5.13 At **Appendix IX**, is a summary of Category 1 and Category 2 Disbursements, detailing the rates of the latter.
- 5.14 The fees incurred by Winterhill, SFP Recoveries, SFP Forensic, SFP Property and Clarke Willmott are calculated on a time cost basis. SFP Datastore has been employed by the Joint Administrators to store the Company's books and records as well as providing security services (where appropriate). Its fees for storage and security services are both on a fixed fee basis and on a time cost basis for any additional work carried out.

6. Additional Points and Conclusion

- 6.1 Creditors will recall that the Joint Administrators' approved proposals were to place the Company into creditors' voluntary liquidation. Further, for the Joint Administrators to take the appointment as Joint Liquidators without recourse to the creditors.
- 6.2 The requisite form is now in the process of being filed at Companies House to seek to place the Company into Liquidation. Following this, the Joint Liquidators will continue investigations into the Company's affairs.
- 6.3 Should any creditor have any questions or queries in relation to the above, please contact the Senior Administrator dealing with this matter, Richard Hunt on 020 7538 2222.

Dated this 15th day of October 2012



Simon Plant
Joint Administrator

Keep It Kool Shade Sails Limited (In Administration)

Report to Creditors

APPENDIX I

- **Income and Expenditure Account / Comparison to Estimated Statement of Affairs**

Keep It Kool Shade Sails Limited
(In Administration)

INCOME AND EXPENDITURE ACCOUNT

	Statement of affairs	From 28/10/2011 To 27/04/2012	From 28/04/2012 To 15/10/2012	From 28/10/2011 To 15/10/2012
	£	£	£	£
RECEIPTS				
Sale of Business & Assets	100,000 00	100,000 00	0 00	100,000 00
Furniture & Equipment		9,714 99	0 00	9,714 99
Book Debts		8,640 00	10,326 80	18,966 80
Utilities Refund		129 57	0 00	129 57
VAT Refund		-	9,346 73	9,346 73
Bank Interest Gross		14 20	6 21	20 41
TOTAL RECEIPTS		118,498 76	19,679 74	138,178 50
PAYMENTS				
SFP Datastore Fees		-	150 00	150 00
SFP Datastore Disbursements		-	1,384 17	1,384 17
SFP Property Fees		850 00	0 00	850 00
SFP Recovery Fees		5,000 00	0 00	5,000 00
Joint Administrator's Remuneration		74,900 00	9,900 00	84,800 00
Joint Administrator's CAT 1 Disb		1,457 44	3 00	1,460 44
Joint Administrator's CAT 2 Disb		793 65	127 80	921 45
Agents/Valuers Fees		7,500 00	0 00	7,500 00
Agents/Valuers Disbursements		712 00	0 00	712 00
Legal Fees		19,180 00	0 00	19,180 00
Legal Disbursements		40 00	0 00	40 00
Re-Direction of Mail		-	120 00	120 00
Statutory Advertising		177 10	0 00	177 10
Other Property Expenses		2,368 00	0 00	2,368 00
Insurance of Assets		572 40	0 00	572 40
Bank Charges		12 00	0 00	12 00
TOTAL PAYMENTS		113,562 59	11,684 97	125,247 56
BALANCE AT HAND		4,936 17	7,994 77	12,930 94
REPRESENTED BY				
Cash at Bank		4,936 17	-3,664 96	1,271 21
VAT Control Account		0 00	11,659 73	11,659 73
BALANCE AT HAND		4,936.17	7,994 77	12,930 94

Keep It Kool Shade Sails Limited (In Administration)

Report to Creditors

APPENDIX II

- **Breakdown of Joint Administrators' Fees / Activity Codes**

KEEP IT KOOL SHADE SAILS LIMITED (IN ADMINISTRATION)

SUMMARY OF TIME AND CHARGE OUT RATES FOR THE PERIOD 28 APRIL 2012 TO 15 OCTOBER 2012

CLASSIFICATION OF WORK FUNCTION	Managing Partner	Partner	Senior Manager	Manager	Senior Administrator	Administrator	Assistant	Total	
Administration and Planning	-	-	-	4 80	2 50	-	18 90	5 80	46 60
Investigation	-	-	-	-	-	-	-	-	0 00
Realisation of assets	-	-	-	-	-	-	-	-	0 00
Trading	-	-	-	-	-	-	-	-	0 00
Creditors	-	-	-	0 60	2 60	1 00	1 20	6 90	15 80
Total hours	-	-	-	5 40	5 10	1 00	20 10	12 70	62 40
Average rate £ per hour	-	-	-	300 00	275 00	250 00	225 00	150 00	194 79
Total costs £	-	-	-	1 620 00	1 402 50	250 00	4 522 50	1 905 00	12 155 00
Total costs from 28 October 2011 to 27 April 2012									81 387 50
Total costs from 28 October 2011 to 15 October 2012									93 542 50
Remuneration drawn on account									84 800 00

See Appendix for Summary Charge Out Rates for staff

SIP 9 STANDARD ACTIVITY SUMMARIES

Standard Activity	Examples of Work
Administration and Planning	Case Planning Administrative set up Appointment and notification Maintenance of records Statutory reporting Estate accounting Schedule company books and records
Investigation	SIP 2 CDDA report Investigating antecedent transactions
Realisation of assets	Identifying, securing, insuring assets Retention of title Debt collection – pre and post appointment Property, business and asset sales Communication and negotiations with secured creditors
Trading	Planning Management of operation Communication/negotiation with suppliers Communication/negotiation with landlord Communication/negotiation with third parties Monitor goods outward/inwards Stock take On-going employee issues Travel
Creditors	Communication with creditors Creditor claims (including employees and other preferential creditors)

Keep It Kool Shade Sails Limited (in Administration)

Report to Creditors

APPENDIX III

- **Breakdown of SFP Forensic Limited Fees**

SFP



FORENSIC



KEEP IT KOOL SHADE SAILS LIMITED (IN ADMINISTRATION)

SUMMARY OF TIME AND CHARGE OUT RATES FOR THE PERIOD 28 APRIL 2012 TO 15 OCTOBER 2012

CLASSIFICATION OF WORK FUNCTION

	Managing Director	Senior Manager	Manager	Senior Administrator	Administrator	Assistant	Total
Investigation	12 40	-	0 10	-	0 80	0 90	3 30
							24 00
Total hours	12 40	-	0 10	-	0 80	0 90	3 30
Average rate £ per hour	500 00	-	325 00	-	275 00	250 00	100 00
Total costs £	6 200 00	-	32 50	-	220 00	225 00	330 00
							7 982 50
Total costs from 28 October 2011 to 27 April 2012							17 565 00
Total costs from 28 October 2011 to 15 October 2012							25 547 50

Remuneration drawn on account

See Appendix for Summary Charge Out Rates for staff

Keep It Kool Shade Sails Limited (in Administration)

Report to Creditors

APPENDIX IV

- **Breakdown of SFP Recoveries Limited Fees**

SFP



RECOVERIES



KEEP IT KOOL SHADE SAILS LIMITED (IN ADMINISTRATION)

SUMMARY OF TIME AND CHARGE OUT RATES FOR THE PERIOD 28 APRIL 2012 TO 15 OCTOBER 2012

CLASSIFICATION OF WORK FUNCTION

	Managing Director	Senior Manager	Manager	Senior Administrator	Administrator	Assistant	Total
Debt Collection	-	-	-	3 10	0 40	2 20	50 00
<hr/>							
Total hours	-	-	-	3 10	0 40	2 20	50 00
Average rate £ per hour	-	-	-	275 00	225 00	150 00	186 05
Total costs £	-	-	-	852 50	925 00	330 00	9,302 50

Total costs from 28 October 2011 to 27 April 2012

Total costs from 28 October 2011 to 15 October 2012

13,970 00

23,272 50

Remuneration drawn on account

See Appendix for Summary Charge Out Rates for staff

5,000 00

Keep It Kool Shade Sails Limited (In Administration)

Report to Creditors

APPENDIX V

- **Breakdown of SFP Property Limited Fees**

KEEP IT KOOL SHADE SAILS LIMITED (IN ADMINISTRATION)

SUMMARY OF TIME AND CHARGE OUT RATES FOR THE PERIOD 28 APRIL 2012 TO 15 OCTOBER 2012

CLASSIFICATION OF WORK FUNCTION	Managing Director	Senior Manager	Manager	Senior Administrator	Administrator	Assistant	Total
Property Issues	0 30	-	-	-	-	1 10	2 30
Total hours	0 30	-	-	-	-	1 10	2 30
Average rate £ per hour	350 00	-	-	-	-	100 00	142 17
Total costs £	105 00	-	-	-	-	110 00	327 00
Total costs from 28 October 2011 to 27 April 2012							3,097 00
Total costs from 28 October 2011 to 15 October 2012							<u>3,424 00</u>
Remuneration drawn on account							<u>850 00</u>

See Appendix for Summary Charge Out Rates for staff

Keep It Kool Shade Sails Limited (in Administration)

Report to Creditors

APPENDIX VI

- **Breakdown of SFP Datastore Limited Fees / Disbursements**

SFP



DATASTORE

KEEP IT KOOL SHADE SAILS LIMITED (IN ADMINISTRATION)

SUMMARY OF TIME AND CHARGE OUT RATES FOR THE PERIOD 28 APRIL 2012 TO 15 OCTOBER 2012

CLASSIFICATION OF WORK FUNCTION

	Storage Tasks Staff Costs	Hire of Security Personnel	Inventorising Staff Costs	Total
Boxing Up / Collection / Inventorising of Records	-	-	2 50	2 50
Security Services	-	2 60	-	2 60
<hr/>				
Total hours		2 60	2 50	5 10
Average rate £ per hour	25 00	18 50	75 00	46 20
Total costs £	-	48 10	187 50	235 60
Total costs from 28 October 2011 to 27 April 2012				2,285 20
Total costs from 28 October 2011 to 15 October 2012				<u>2,520 80</u>
Remuneration drawn on account				<u>150 00</u>

See Appendix for Summary Charge Out Rates for staff

	Disbursements Incurred	£
178 2 miles @ £1 10 per mile		196 02
Retrieval costs		140 00
21 boxes @ £5 per box		105 00
Expenses		361 03
Storage costs		393 12
Destruction costs		189 00
Disbursements Incurred		<u>1,384 17</u>
Disbursements drawn on account		<u>1,384 17</u>

Keep It Kool Shade Sails Limited (In Administration)

Report to Creditors

APPENDIX VII

- **SFP and Associated Entity Charge Out Rates**

SFP



Charge out Rates for SFP main practice and associated entities

SFP and the Associated Entities remuneration is calculated on an hourly time cost basis, divided into 6 minute units calculated as follows.

Main Practice		SFP Forensic Limited		SFP Property Limited		SFP Recoveries Limited	
Grade	Rate p/hr	Grade	Rate p/hr	Grade	Rate p/hr	Grade	Rate p/hr
Managing Partner	500	Managing Director	500	Managing Director	350	Managing Director	500
Partner 2	450	Senior Manager 2	350	Senior Manager 2	275	Senior Manager 2	350
Partner 1	400	Senior Manager 1	325	Senior Manager 1	250	Senior Manager 1	325
Senior Manager 2	350	Manager 2	300	Manager 2	225	Manager 2	300
Senior Manager 1	325	Manager 1	275	Manager 1	200	Manager 1	275
Manager 2	300	Senior Administrator 2	250	Senior Administrator 2	175	Senior Administrator 2	250
Manager 1	275	Senior Administrator 1	225	Senior Administrator 1	155	Senior Administrator 1	225
Senior Administrator 2	250	Administrator 2	175	Administrator 2	135	Administrator 2	175
Senior Administrator 1	225	Administrator 1	150	Administrator 1	115	Administrator 1	150
Administrator 2	175	Assistant	100	Assistant	100	Assistant	100
Administrator 1	150						
Assistant	100						

SFP Datastore Limited			
Grade	Rate p/hr	Retrieval Rates Guide	Supporting Services
Storage Tasks (Retrieval and collection)		Box Storage	Hire of Security
Staff costs	25	A4	Personnel
		A3	Mileage
		Transit Cases	Chauffeur Services
		Retrieval costs from site	
		Same Day Delivery (up to 10 items / £1 50 per item thereafter)	
		Next Day Delivery (up to 10 items / £1 50 per item thereafter)	
Inventorising and Additional	75	Delivery to third party offices (up to 10 items / £1 50 per item thereafter)	
Staff Costs		Provision of archive boxes	
			£18 50 per hour
			£1 10 per mile
			£1 35 per mile (£50 minimum)

Keep It Kool Shade Salls Limited (In Administration)

Report to Creditors

APPENDIX VIII

- **Guide to Administrators Fees / Liquidators Fees**
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A CREDITORS' GUIDE TO ADMINISTRATORS' FEES

ENGLAND AND WALES

1 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 the 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, explain the basis on which fees are fixed and how creditors can seek information about expenses incurred by the administrator and challenge those they consider to be excessive.

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 remuneration

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:

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

Any combination of these bases may be used to fix the remuneration and different bases may be used for different things done by the administrator. Where the remuneration is fixed as a percentage different percentages may be used for different things done by the administrator.

It is for the creditors' committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied, and where it is a set amount, to determine that amount. Rule 2.106 says that in arriving at its decision the committee shall have regard to the following matters:

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April 2010



paragraph 4.3 apply, the determination may be made by the same creditors as approve the administrator's remuneration.

6.3 The administrator must convene a meeting of the committee or the creditors for the purpose of approving the payment of pre-administration costs if requested to do so by another insolvency practitioner who has incurred such costs. If there is no determination under these provisions, or if there is but the administrator or other insolvency practitioner considers the amount agreed to be insufficient, the administrator may apply to the court for a determination.

7 What information should be provided by the administrator?

7.1 When seeking remuneration approval

7.1.1 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.

7.1.2 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.

7.1.3 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

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:

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- 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 (and provided the circumstances described in paragraph 4.3 do not apply) the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as apply in the case of the committee. If the remuneration is not fixed in any of these ways it will be fixed by the court on application by the administrator, but the administrator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment.

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 the 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 requested 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

5 Review of remuneration

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

6 Approval of pre-administration costs

6.1 Sometimes the administrator may need to seek approval for the payment of costs in connection with preparatory work incurred before the company went into administration but which remain unpaid. Such costs may relate to work done either by the administrator or by another insolvency practitioner. Details of such costs must be included in the administrator's proposals.

6.2 Where there is a creditors' committee, it is for the committee to determine whether, and to what extent, such costs should be approved for payment. If there is no committee or the committee does not make the necessary determination, or if it does but the administrator or other insolvency practitioner who has incurred pre-administration costs considers the amount agreed to be insufficient, approval may be given by a meeting of creditors. Where the circumstances described in

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- 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.

7.1.4 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.

7.2 After remuneration 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 (see further paragraph 8.1 below). 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 additional information as may be required in accordance with the principles set out in paragraph 7.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 7.1.4 above regarding work which has been sub-contracted out.

7.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them as described below. 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.

8 Progress reports and requests for further information

8.1 The administrator is required to send a progress report to creditors at 6-monthly intervals. The report must include:

- details of the basis fixed for the remuneration of the administrator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it)
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report)
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report
- a statement of the expenses incurred by the administrator during the period of the report, irrespective of whether payment was actually made during that period

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- the date of approval of any pre-administration costs and the amount approved
 - a statement of the creditors' rights to request further information, as explained in paragraph 6.2 and their right to challenge the administrator's remuneration and expenses
- 8.2 Within 21 days of receipt of a progress report a creditor may request the administrator to provide further information about the remuneration and expenses (other than pre-administration costs) set out in the report. A request must be in writing and may be made either by a secured creditor or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.
- 8.3 The administrator must provide the requested information within 14 days unless he considers that
- the time and cost involved in preparing the information would be excessive or
 - disclosure would be prejudicial to the conduct of the administration or might be expected to lead to violence against any person or
 - the administrator is subject to an obligation of confidentiality in relation to the information requested
- In which case he must give the reasons for not providing the information.
- Any creditor may apply to the court within 21 days of the administrator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.
- 9 Provision of information – additional requirements
- The administrator 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.
- 10 What if a creditor is dissatisfied?
- 10.1 If a creditor believes that the administrator's remuneration is too high the basis is inappropriate or the expenses incurred by the administrator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.
- 10.2 Application may be made to the court by any secured creditor or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree or he has the permission of the court. Any such application must be made within 6 weeks of the applicant receiving the administrator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 8.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing.
- 10.3 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise the costs of the application must be paid by the applicant and not as an expense of the administration.



- 11 What if the administrator is dissatisfied?
- 11.1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors'. If he considers that the remuneration fixed by the committee or the creditors is insufficient or that the basis used to fix it is inappropriate he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the 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.
- 12 Other matters relating to remuneration
- 12.1 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.
- 12.2 If the administrator is a solicitor and employs his own firm to act on behalf of the company profits costs may not be paid unless authorised by the creditors' committee, the creditors or the court.
- 12.3 If a new administrator is appointed in place of another any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new administrator until a further determination, resolution or court order is made.
- 12.4 Where the basis of the remuneration is a set amount, and the administrator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing administrator. The application must be made to the same body as approved the remuneration. Where the outgoing administrator and the incoming administrator are from the same firm they will usually agree the apportionment between them.
- 13 Effective date
- This guide applies where a company enters administration on or after 6 April 2010 except where
- the application for an administration order was made before that date or
 - where the administration was preceded by a liquidation which commenced before that date



A CREDITORS' GUIDE TO LIQUIDATORS' FEES

ENGLAND AND WALES

1 Introduction

1.1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope to recover some of their debts out of the assets, therefore have a direct interest in the level of costs. When in practice the remuneration of the insolvency practitioner appointed to act as liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the base of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees, explain the basis on which fees are fixed and how creditors can seek information about expenses incurred by the liquidator and challenge those they consider to be excessive.

2 Liquidation procedure

2.1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs, entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary when it is instituted by resolution of the shareholders, or compulsory when it is instituted by order of the court.

2.2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.

2.3 In a compulsory liquidation on the other hand the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and an official belonging to The Insolvency Service. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by The Insolvency Service on behalf of the Secretary of State. Where an insolvency practitioner is not appointed the official receiver remains liquidator.

2.4 Where a compulsory liquidation follows immediately on an administration, the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An administrator may also subsequently act as liquidator in a CVL.

3 The liquidation committee

3.1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.

3.2 The liquidator must call the first meeting of the committee within 6 weeks of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

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- the size and complexity of the case

6.1.2 Where, at any creditors' or committee meeting, the liquidator 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.

6.1.3 Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up-to-date receipts and payments account. Where the proposed fee is based on time costs the liquidator 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 liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator 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 the assessment to be carried out it may be necessary for the liquidator 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

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 liquidator'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 liquidator 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.

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

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4 Fixing the liquidator's remuneration

4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed:

- as a percentage of the value of the assets which are realised or distributed or both;
- by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation; or
- as a set amount.

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

It is for the liquidation committee (if there is one) to determine on which of these bases or combination of bases the remuneration is to be fixed. Where it is fixed as a percentage it is for the committee to determine the percentage or percentages to be applied. Rule 4.127 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the liquidator in connection with the insolvency;
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the assets which the liquidator has to deal with.

4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as apply in the case of the committee. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.

4.3 If the remuneration is not fixed as above it will be fixed in one of the following ways. In a CVL it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.

4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 6 below).

5 Review of remuneration

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

6 What information should be provided by the liquidator?

6.1 When seeking remuneration approval

6.1.1 When seeking agreement to his fees the liquidator 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

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6.2 After remuneration approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution (see further paragraph 7.1 below). 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 additional information as may be required in accordance with the principles set out in paragraph 6.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

6.3 Disbursements and other expenses

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. Professional guidance issued to insolvency practitioners requires that, where the liquidator 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 liquidator'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.

6.4 Realisations for secured creditors

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 below) he should disclose the amount of that remuneration to the committee (if there is one) or any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

7 Progress reports and requests for further information

7.1 The liquidator is required to send annual progress reports to creditors. The reports must include:

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses.

7.2 Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

7.3 The liquidator must provide the requested information within 14 days, unless he considers that:

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- the time and cost involved in preparing the information would be excessive or
 - disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person or
 - the liquidator is subject to an obligation of confidentiality in relation to the information requested,
- in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the liquidator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

8 Provision of information – additional requirements

The liquidator must provide certain information about the time spent on the case free of charge upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- the total number of hours spent on the case by the liquidator or staff assigned to the case
- for each grade of staff, the average hourly rate at which they are charged out
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the liquidator and requests must be made within two years from vacation of office.

9 What if a creditor is dissatisfied?

- 8.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.

- 8.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

- 8.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 6 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.

- 8.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the insolvent company.

10. What if the liquidator is dissatisfied?

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court.



hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

11 Other matters relating to remuneration

- 11.1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

- 11.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.

- 11.3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.

- 11.4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.

- 11.5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.

- 11.6 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

12 Effective date

This guide applies where a company –

- goes into liquidation on a winding-up resolution passed on or after 6 April 2010
 - goes into voluntary liquidation immediately following an administration on or after 6 April 2010 except where the preceding administration began before that date
- goes into compulsory liquidation as the result of a petition presented on or after 6 April 2010, except where the liquidation was preceded by –
- an administration which began before that date
 - a voluntary liquidation in which the winding-up resolution was passed before that date

Keep It Kool Shade Sails Limited (in Administration)

Report to Creditors

APPENDIX IX

- **Category 1 and 2 Disbursement Summary Charge Sheet**

SFP



DIRECT EXPENSES (Category 1 Disbursements)

Category 1 Disbursements as defined by SIP 9, which can be specifically identified as relating to the administration of the case, will be charged to the estate as cost, with no uplift. These include, but are not limited, to such items as advertising, bonding and other insurance premiums and properly reimbursed expenses.

INDIRECT EXPENSES (Category 2 Disbursements)

It is normal practice to also charge the following indirect disbursements (Category 2 Disbursements, as defined by SIP 9) to the case, where appropriate. These costs are as follows:

Stationery / Photocopying

Cost Per Page / Envelope

* 1 page of headed paper	0 12
* 1 page of continuation paper	0 10
* 1 page of photocopying paper	0 02
* Envelopes (all sizes)	0 10

Postage

Postage Rate

Postage – 1 st class (small)	0 32
Postage – 1 st class (large)	0 44
Postage – 2 nd class (small)	0 22
Postage – 2 nd class (large)	0 36

Travel

Mileage incurred as a result of necessary travel is charged at the H M Revenue & Customs approved rate of 40p per mile.

Please note that sanction has been obtained to treat the fees of SFP Forensic Limited, SFP Property Limited, SFP Recoveries Limited and SFP Datastore Limited as Category 2 Disbursements.