



THURSDAY



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09/05/2019 #34  
COMPANIES HOUSE

### 1 Company details

Company number 0 8 8 4 7 5 6 2  
Company name in full Newburgh Precision Limited

→ Filling in this form  
Please complete in typescript or in  
bold black capitals.

### 2 Administrator's name

Full forename(s) Joanne Louise  
Surname Hammond

### 3 Administrator's address

Building name/number 3rd Floor  
Street Westfield House  
Post town 60 Charter Row  
County/Region Sheffield  
Postcode S 1 3 F Z  
Country

### 4 Administrator's name ①

Full forename(s) Claire Elizabeth  
Surname Dowson

① Other administrator  
Use this section to tell us about  
another administrator.

### 5 Administrator's address ②

Building name/number 3rd Floor  
Street Westfield House  
Post town 60 Charter Row  
County/Region Sheffield  
Postcode S 1 3 F Z  
Country

② Other administrator  
Use this section to tell us about  
another administrator.

# AM10

## Notice of administrator's progress report

### 6 Period of progress report

|           |                   |                   |                   |                   |                   |                   |                   |                   |  |
|-----------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--|
| From date | <sup>d</sup><br>2 | <sup>d</sup><br>2 | <sup>m</sup><br>0 | <sup>m</sup><br>1 | <sup>y</sup><br>2 | <sup>y</sup><br>0 | <sup>y</sup><br>1 | <sup>y</sup><br>9 |  |
| To date   | <sup>d</sup><br>0 | <sup>d</sup><br>7 | <sup>m</sup><br>0 | <sup>m</sup><br>5 | <sup>y</sup><br>2 | <sup>y</sup><br>0 | <sup>y</sup><br>1 | <sup>y</sup><br>9 |  |

### 7 Progress report

☒ I attach a copy of the progress report

### 8 Sign and date

|                           |                                                    |                   |                   |                   |                   |                   |                   |                   |  |
|---------------------------|----------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--|
| Administrator's signature | <div>Signature</div> <div> X <i>James</i> X </div> |                   |                   |                   |                   |                   |                   |                   |  |
| Signature date            | <sup>d</sup><br>0                                  | <sup>d</sup><br>7 | <sup>m</sup><br>0 | <sup>m</sup><br>5 | <sup>y</sup><br>2 | <sup>y</sup><br>0 | <sup>y</sup><br>1 | <sup>y</sup><br>9 |  |

# AM10

## Notice of administrator's progress report



### Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **Oliver Adams**

Company name **Begbies Traynor (SY) LLP**

Address **3rd Floor**

**Westfield House**

Post town **60 Charter Row**

County/Region **Sheffield**

Postcode **S 1 3 F Z**

Country

DX

Telephone **0114 2755033**



### Checklist

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.



### Important information

**All information on this form will appear on the public record.**



### Where to send

**You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:**

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.



### Further information

For further information please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)**

Joanne Louise Hammond and Claire Elizabeth Dowson appointed joint administrators on 22 January 2019

The affairs, business and property of the Company are being managed by the joint administrators, who act as the Company's agents and without personal liability.

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## **Newburgh Precision Limited (In Administration)**

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### **Final Progress Report of the joint administrators**

**Period: 22 January 2019 to 7 May 2019**

## **Important Notice**

This final progress report has been produced by the administrators solely to comply with their statutory duty to report to creditors on the progress of the administration. The report is private and confidential and may not be relied upon, referred to, reproduced or quoted from, in whole or in part, by creditors for any purpose other than this report to them, or by any other person for any purpose whatsoever.

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# 1. INTERPRETATION

| <u>Expression</u>                           | <u>Meaning</u>                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "the Company"                               | Newburgh Precision Limited (In Administration)                                                                                                                                                                                                                                                                                                                                     |
| "the administration"                        | The appointment of administrators under Schedule B1 to the Insolvency Act 1986 on 22 January 2019                                                                                                                                                                                                                                                                                  |
| "the administrators", "we", "our", "us"     | Joanne Louise Hammond of Begbies Traynor (SY) LLP, 3rd Floor, Westfield House, 60 Charter Row, Sheffield, S1 3FZ, <a href="mailto:Sheffield.North@Begbies-Traynor.com">Sheffield.North@Begbies-Traynor.com</a><br>and<br>Claire Elizabeth Dowson of Begbies Traynor (SY) LLP, 3rd Floor, Westfield House, 60 Charter Row, Sheffield, S1 3FZ                                        |
| "the Act"                                   | The Insolvency Act 1986 (as amended)                                                                                                                                                                                                                                                                                                                                               |
| "the Rules"                                 | The Insolvency (England and Wales) Rules 2016 (as amended)                                                                                                                                                                                                                                                                                                                         |
| "secured creditor" and "unsecured creditor" | Secured creditor, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and "unsecured creditor" is to be read accordingly (Section 248(1)(a) of the Act)                                                                                                                                            |
| "security"                                  | (i) In relation to England and Wales, any mortgage, charge, lien or other security (Section 248(1)(b)(i) of the Act); and<br><br>(ii) In relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off) (Section 248(1)(b)(ii) of the Act) |
| "preferential creditor"                     | Any creditor of the Company whose claim is preferential within Sections 386, 387 and Schedule 6 to the Act.                                                                                                                                                                                                                                                                        |

# 2. STATUTORY INFORMATION

|                            |                                                                                                                                                                      |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name of Company            | Newburgh Precision Limited                                                                                                                                           |
| Trading name(s):           | N/A                                                                                                                                                                  |
| Date of Incorporation:     | 16 January 2014                                                                                                                                                      |
| Company registered number: | 08847562                                                                                                                                                             |
| Company registered office: | 3 <sup>rd</sup> Floor, Westfield House, 60 Charter Row, Sheffield S1 3FZ<br><br>Formerly: Centurion Business Park, Bessemer Way, Rotherham, South Yorkshire, S60 1FB |

### 3. DETAILS OF APPOINTMENT OF ADMINISTRATORS

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Names of administrators:                    | Joanne Louise Hammond, a Licensed Insolvency Practitioner of Begbies Traynor (SY) LLP, 3rd Floor, Westfield House, 60 Charter Row, Sheffield, S1 3FZ, <a href="mailto:Sheffield.North@Begbies-Traynor.com">Sheffield.North@Begbies-Traynor.com</a><br><br>and<br><br>Claire Elizabeth Dowson, a Licensed Insolvency Practitioner of Begbies Traynor (SY) LLP, 3rd Floor, Westfield House, 60 Charter Row, Sheffield, S1 3FZ |
| Date of appointment:                        | 22 January 2019                                                                                                                                                                                                                                                                                                                                                                                                             |
| Date of resignation:                        | N/A                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Court:                                      | High Court of Justice, Business & Property Courts in Leeds                                                                                                                                                                                                                                                                                                                                                                  |
| Court Case Number:                          | 2019-37                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Person(s) making appointment / application: | The Company's directors, Christopher John Staves, David Philip Greenan, Matthew Edward Jewitt and Lee Kevin David Townsend, c/o Centurion Business Park, Bessemer Way, Rotherham, South Yorkshire S60 1FB as directors of the Company.                                                                                                                                                                                      |
| Acts of the administrators:                 | The administrators act as officers of the court and as agents of the Company without personal liability. Any act required or authorised under any enactment to be done by an administrator may be done by any one or more persons holding the office of administrator from time to time.                                                                                                                                    |
| EU Regulation on Insolvency Proceedings:    | Regulation (EU) 2015/848 of the European Parliament and of the Council applies to these proceedings which are 'main proceedings' within the meaning of Article 3 of the Regulation.                                                                                                                                                                                                                                         |
| Extensions of the administration period     | There have been no extensions to the administration period.                                                                                                                                                                                                                                                                                                                                                                 |

Creditors will recall that having recognised that Newburgh Engineering Co. Limited ("NEC") hold the majority unsecured claim within the administration we engaged with NEC's joint liquidators, Matthew Gibson and Kerry Bailey of BDO LLP ("the NEC Liquidators"), prior to issuing our statement of proposals.

Given the connection between the Company and NEC, the NEC Liquidators advised that, notwithstanding their appointment as liquidators of NEC, they were of the opinion that Licensed Insolvency Practitioners from BDO LLP acting as liquidators of both NEC and the Company would be in the interest of creditors of both companies. In particular, they indicated that they would expect overall costs to be reduced in these circumstances thereby enhancing the return to creditors.

*In view of our duty to act in the interests of all the Company's creditors, we decided against nominating our own appointment as liquidators in order to avoid the estate incurring additional costs within the administration.*

For the above reasons, it was proposed that the Company exits administration and proceeds into Creditors' Voluntary Liquidation with Kerry Bailey and Andrew Palmer of BDO LLP as joint liquidators. This proposal was approved by creditors via decision procedure on 20 February 2019.

## 4. PROGRESS DURING THE PERIOD

The business and assets of the Company were sold to Vector X-Cel Limited (formerly: Ledantech Limited) ("the Purchaser") immediately following our appointment on 22 January 2019. Full details of this transaction were included within our initial notification to creditors and our statement of proposals.

The total sales consideration was £1,275,001.00, a breakdown of which is provided below:-

| <b><u>Categories of Assets</u></b>           | <b><u>Sum realised £</u></b> |
|----------------------------------------------|------------------------------|
| Goodwill, IP & ancillaries                   | 1                            |
| Assets subject to Lombard Finance Agreements | 737,000                      |
| Chattel Assets                               | 488,000                      |
| Stock and WIP                                | 50,000                       |
| <b>Total</b>                                 | <b>1,275,001</b>             |

Under the terms of the sale agreement, a 10% deposit of £127,500 was paid upon completion, with the balance being due for payment 21 days thereafter. The sales consideration has now been received in full.

We retained title to all assets until the Purchaser settled the sales consideration in full thereby preserving the break-up value of all assets in the event payment was not received as agreed. Following receipt of the balance of the sales consideration, a Deed of Assignment was entered into to ensure that full title to the assets previously financed by Lombard North Central Plc ("Lombard") was passed on to the Purchaser.

We also obtained an anti-embarrassment provision as part of the sale agreement, whereby the Purchaser is to pay to the Company 50% of any profit made on the subsequent sale of the business and assets should it/they be sold on within six months of completion. We are advised that no such sale has taken place within the period of the administration.

In addition to the sale of the business and assets, the Purchaser was granted a six month licence to occupy the Company's trading premises whilst negotiations with the landlord to assign the lease were concluded. These negotiations took significantly less time than anticipated and the assignment of the lease to the Purchaser completed on 30 January 2019.

The Purchaser paid a licence fee equivalent to the anticipated rent for the period up to and including 28 February 2019 at completion. As a condition of the assignment, these funds have been remitted to the landlord with no further payments being due to the landlord from the Company.



With the exception of the assets subject to Lombard's security, all third party owned assets were excluded from the sale to the Purchaser. The Purchaser has advised that they have agreed to novate the relevant finance agreements in respect of a number of these assets and the remaining third party owned assets have now been returned to their owners.

We have received a small number of retention of title claims from the Company's suppliers. These have been assessed and, in accordance with the terms of the sale agreement, the Purchaser has reached commercial settlement with those parties where the claims were deemed to have merit.

As detailed in our statement of proposals, we worked with RBS Invoice Finance Limited ("RBS IF") throughout the pre-appointment period to maximise debtor receipts and minimise their exposure. As at the date of our appointment, the book debt ledger totalled £676,088.83 with £326,149.06 due to RBSIF. RBSIF have now been repaid in full.

During the course of the administration, total debtor receipts of £553,398.38 have been received. The sum of £168,755.46 has been paid into the administration bank account and is therefore shown on the enclosed Receipts & Payments Account.

RBS IF are currently holding surplus funds of £69,902.16 and the Company's former bankers, National Westminster Bank Plc ("Natwest") are holding £4,670 which is due to be transferred to the administration account imminently.

We are hopeful that further book debt realisations will be received in due course.

The Company's cash at bank balance of £37,024 has now been received.

### **Receipts and Payments**

Attached at Appendix 1 is our abstract of receipts and payments for the period from 22 January 2019 to 7 May 2019.

#### **Receipts**

As detailed above, the sales consideration of £1,275,001 has been received in full. The amount allocated to the chattel assets has been split between the value attributed to assets subject to Lombard's chattel mortgage and those which were wholly owned by the Company.

Book debts of £168,755.46 have been paid directly into the administration bank account. As explained above, Natwest have advised that a payment of £4,670 is in the process of being transferred to our account and will therefore be included in the administration surplus transferred to the liquidation in due course.

The licence fee of £33,723.43 paid by the Purchaser at completion was held within the administration for a short period before being remitted to the Company's landlord.

The cash at bank balance of £37,054 has been transferred into the administration account.

A vehicle licence refund of £83.33 has been received.

#### **Payments**

In accordance with the resolutions and fees estimate included within our statement of proposals, we have drawn £70,010.00 in respect of our pre-appointment costs, £89,232.00 in respect of our post appointment costs and disbursements totalling £740.91. A breakdown of these costs and disbursements is detailed later within this report.

Pre-appointment legal fees and disbursements of £23,506.70 have been paid together with total post appointment legal fees and disbursements in the sum of £18,995.00.

Agents' fees of £15,000.00 allocated to the sale of the fixed charge assets and £43,750.00 attributable to the unencumbered assets and their general advice have been paid.

Lombard have received two payments totalling £840,112.98 in respect of the sale of the financed assets and the outstanding chattel mortgage to cover the shortfall

A number of debtors remitted funds to the administration account prior to RBS IF being repaid in full. A payment of £16,518.28 was made from these funds to clear the balance of the debt due to RBS IF.

BTG Advisory LLP (an entity within the Begbies Traynor Group), has been paid £11,216.71 in relation to their assistance in collecting the outstanding book debts.

As detailed above, funds totalling £33,723.43 were transferred to the landlord following the conclusion of the agreement to assign the Company's lease.

Bank charges of £8.65 have been incurred during the period of the administration.

**What work has been done in the period of this report, why was that work necessary and what has been the financial benefit (if any) to creditors?**

Details of the types of work that generally fall into the headings mentioned below are available on our firm's website - <http://www.begbies-traynorgroup.com/work-details>. Under the following headings we have explained the specific work that has been undertaken on this case. Not every piece of work has been described, but we have sought to give a proportionate overview which provides sufficient detail to allow creditors to understand what has been done, why it was necessary and what financial benefit (if any) the work has provided to creditors.

The costs incurred in relation to each heading are set out in the Time Costs Analysis which is attached at Appendix 3.

General case administration and planning

We initially arranged for the Company's financial and regulatory information to be reviewed and updated onto our systems to enable the relevant statutory documentation to be issued. In addition, the statutory checklist was completed to ensure that the necessary documentation following our appointment was produced.

An estate bank account was opened shortly following our appointment and this has been regularly reconciled as and when payments have been made or received.

A case specific diary template has been prepared which has assisted in keeping all statutory matters up to date. Time has been spent updating internal systems to ensure that all information required to effectively manage the administration of the case, has been obtained and held.

We have formulated an appropriate strategy and monitored and reviewed that strategy; including meetings with internal and external parties to agree the same. We are required to maintain records to demonstrate how the case is administered and to document the reasons for any decisions that materially affect the case. This has included regular updates with staff, case management and reviewing of progress. Time spent also includes complying with internal filing and information recording practices.

Whilst this does not necessarily benefit creditors financially, it is necessary in accordance with insolvency legislation and best practice and has ensured that the case has been administered effectively.

Compliance with the Insolvency Act, Rules and best practice

The Insolvency Act, Rules and best practice require us to undertake various activities during the course of the Administration, which has included the following:

1. Filing all relevant documentation with the Registrar of Companies;
2. Advertising our appointment in the London Gazette;
3. Producing and circulating an initial notification of our appointment and disclosure to creditors in accordance with Statement of Insolvency Practice 16;
4. Preparing and circulating our statement of proposals;
5. Seeking a decision of creditors via a decision procedure on the approval of our proposals and notifying all relevant parties of the outcome of that decision; and
6. Producing this final report and dealing with the formalities of moving the Company into Creditors' Voluntary Liquidation.

Whilst creditors have not financially benefited from the above, this work is a statutory requirement and creditors may benefit generally from the reports and information that they have received

#### Investigations

A significant amount of time has been spent complying with our statutory duties to investigate the reasons for the Company's failure and the directors' conduct. Given the interconnected nature of the Company's dealings with the group of entities ultimately owned by The Isaac Middleton Settlement Trust, this investigation work has been more protracted than we would usually expect.

A summary of the key matters reviewed during the course of our investigatory work is set out below:

- The intercompany debts due to/from the Company to/from other entities within the 'Newburgh/Hope Valley' group;
- The arrangement between the Company and NEC which lead to £4,450,000 of the intercompany debt due to NEC being written off during the period March to November 2017;
- The creation of additional share capital in September 2018;
- The Company's bank statements and key transactions for the period from incorporation to our appointment;
- The terms of the Company's occupation of the trading premises at Bessemer Way, Rotherham and the sale of the property by other entities within the group in August 2017;
- The Company's filed accountants, auditors' advice and relevant management information;
- The transfer of plot of land to the Company from another group entity and its subsequent sale;
- The claims submitted by the Company's creditors and the period of time over which these claims accrued;
- The conduct of the Company's business in the period immediately prior to our appointment; and
- The Company's pension arrangements and any connection between the Company and the defined benefit pension scheme operated by NEC.

In accordance with the terms of the sale agreement, the Company's books and records have been retained by the Purchaser. However, the Purchaser has co-operated fully with our requirements to access this information when necessary and has provided copies of all relevant documentation.

Irwin Mitchell LLP have assisted with our investigation work where necessary, in particular they have undertaken a review of the Company's shareholding and the creation of additional share capital in September 2018.

We received documentation produced by Insolvency Practitioners acting in relation to other group entities which suggested that the Company, may have at some point, owned the trading premises at Bessemer Way, Rotherham. Therefore we instructed Freeths LLP to review the relevant Land Registry documentation on our behalf to enable us to confirm that the Company has never held title to this property.

Following the conclusion of our investigatory work, we submitted our confidential report on the directors' conduct to The Insolvency Service and will meet with representatives of BDO LLP to provide a handover of this work for them to continue within the liquidation.

Whilst this work has not been financially beneficial to creditors within the administration, we have a statutory duty to undertake these investigations and realisations may be achieved in due course should the Company's liquidators identify any claims that they consider have sufficient merit to pursue.

#### Realisation of assets

As detailed above, the sale of the Company's business and assets completed immediately following our appointment. During the course of the administration we have spent time dealing with a number of matters connected to the sale of the business including liaising with the Purchaser in relation to the payment of the deferred consideration, assisting with negotiations and drafting a Deed of Assignment following receipt of the sales monies, assisting with the assignment of the Company's lease to the Purchaser and agreeing the secured claims to be deducted from the sales consideration.

Following our appointment, we liaised with the Company's bankers to secure the transfer of the residual cash at bank balance.

We have also spent time liaising with RBS IF and BTG Advisory LLP (who are instructed to provide debt collection assistance) in relation to the collection of the outstanding debts, payments received in error and the repayment of RBS IF. Latterly, we have reviewed documentation RBS IF have requested we sign to release the surplus funds they are holding in conjunction with Freeths LLP.

This work has been financially beneficial to the Company's creditors as it has enabled us to maximise realisations which we anticipate will in due course result a dividend being paid to unsecured creditors.

#### Trading

The Company has not traded during the administration and therefore no time has been incurred which would fall within this heading.

#### Dealing with all creditors' claims (including employees), correspondence and distributions

We have received a large volume of creditor claims, correspondence and queries throughout the course of the administration. Creditor claims have been assessed for voting purposes and recorded onto our internal systems. All creditor queries and correspondence has been dealt with.

As detailed further in Section 5 below, the employees' pension contributions for December 2018 are unpaid and we have spent time reviewing and reconciling this information so the estate is in a position to make a preferential claim when the scheme has been formally closed.

The Company's secured creditors, Lombard and RBS IF have been repaid in full during the administration. Time has been spent liaising with both of the secured creditors particularly in relation to the realisations achieved, the sales documentation, the administration strategy and the redemption of their security.

Whilst there has been no direct financial benefit to the creditors from this work, engaging with creditors in general ensures they are kept apprised on the administration and the likely level of return they will receive. Collating creditor information and claims will be beneficial in due course as and when the liquidators are able to declare a dividend.

#### Other matters which includes meetings, tax, litigation, pensions and travel

During the course of the administration we have liaised with the relevant pension authorities and scheme administrator to notify them of our appointment and provide an update on the likely level of unpaid pension contributions and timeframe for being able to submit a preferential claim.

We have complied with all statutory requirements in relation to the Company's dealings with HM Revenue & Customs and have produced a summary of the VAT that will be available for reclaim within the liquidation.

A number of meetings with representatives of BDO LLP and the Company's former Finance Director have taken place.

Whilst this work is not directly of benefit to creditors, it is required to ensure we have complied with our statutory duties. The Company's employees (as preferential creditors in respect of the pension arrears) will benefit from this work shortly when a claim is submitted to The Insolvency Services.

## 5. OUTCOME FOR CREDITORS

### **Secured creditors**

#### Lombard

The Company granted a chattel mortgage to Lombard on 9 April 2014 which was delivered to the Registrar of Companies on 16 April 2014. This charge remained in place to cover any shortfall due to Lombard in respect of the live finance agreements.

The assets subject to the live finance agreements were sold as part of the transfer of the business for £737,000. Lombard's indebtedness at the date of our appointment was £840,112.98 and this therefore left a shortfall of £103,112.98.

Eddisons Commercial Limited ("Eddisons") advised that the assets subject to Lombard's outstanding chattel mortgage represented approximately 37% of the value in the residual chattel assets. These assets were sold to the Purchaser for £488,000 and therefore £180,560 of the consideration received was attributable to the charged assets. Lombard were therefore paid a fixed charge distribution of £103,112.98 to clear their indebtedness in full.

#### RBS IF

The Company had also granted a fixed and floating charge to RBSIF on 28 April 2014 which was delivered to the Registrar of Companies on 1 May 2014. Under the terms of this security, RBS IF held a fixed charge over the Company's book debts.

RBSIF were owed £326,149.06 at the date of our appointment and this has now been repaid in full following the collection of the book debts.

### **Preferential creditors**

The Director's Statement of Affairs (as circulated with our proposals) included a small element of preferential creditor claims in relation to unpaid pension contributions. As the Company's employees transferred to the Purchaser, we liaised with the Purchaser and the pension scheme administrator to determine whether or not they were intending to continue the pension scheme and discharge the arrears.

We are advised that the Purchaser is in the process of setting up a new pension scheme and the scheme previously operated by the Company will be closed leaving approximately £16,054 in unpaid contributions. We understand that the scheme administrator will have completed the closure of the scheme by the end of May 2019 and will then be seeking to make a preferential claim for the outstanding balance.

There are sufficient monies held within the administration estate to discharge this preferential claim in full. We will provide BDO LLP with a summary of outstanding contributions and anticipate that a preferential distribution will be made shortly after the pension administrator formally submits the claim.

### **Prescribed Part for unsecured creditors pursuant to Section 176A of the Act**

Section 176A of the Act provides that, where the company has created a floating charge on or after 15 September 2003, the administrator must make a *prescribed part* of the Company's *net property* available for the unsecured creditors and not distribute it to the floating charge holder except in so far as it exceeds the amount required for the satisfaction of unsecured debts. *Net property* means the amount which would, were it not for this provision, be available to floating charge holders out of floating charge assets (i.e. after accounting for preferential debts and the costs of realising the floating charge assets). The floating charge holder may not participate in the distribution of the prescribed part of the Company's net property. The *prescribed part of the Company's net property* is calculated by reference to a sliding scale as follows:

- 50% of the first £10,000 of *net property*;
- 20% of *net property* thereafter;
- Up to a maximum amount to be made available of £600,000

An administrator will not be required to set aside the *prescribed part of net property* if:

- the *net property* is less than £10,000 and the administrator thinks that the cost of distributing the *prescribed part* would be disproportionate to the benefit; (Section 176A(3)) or
- the administrator applies to the court for an order on the grounds that the cost of distributing the *prescribed part* would be disproportionate to the benefit and the court orders that the provision shall not apply (Section 176A(5)).

Whilst RBSIF hold a post Enterprise Act debenture, which should therefore give rise to the Prescribed Part applying, RBSIF have been repaid in full under their fixed charge security. As such, the provisions of the Prescribed Part do not apply in this matter.

### **Unsecured creditors**

The Directors' Statement of Affairs indicated that they anticipated unsecured creditor claims would be in the region of £3,127,818.

Unsecured claims received to date total £2,036,609 and based on our projections we anticipate total claims of £3,074,194.41 will be received in due course.

As previously advised, these projections only include £1,362,214 in respect of NEC's claim and we understand that the NEC Liquidators are likely to seek to pursue a claim for the £4,450,000 which was purportedly written off in November 2017.

We continue to believe that sufficient realisations have been achieved to facilitate a distribution to unsecured creditors and it is therefore now appropriate for the Company to move into creditors' voluntary liquidation.

As detailed in our proposals, at the time we accepted the Purchaser's offer, we produced an Estimated Outcome Statement which showed an indicative return to unsecured creditors of 19p in the £. However, this remained subject to agreement of creditor claims, the level of NEC's claim and the costs of the liquidation.

Whilst the quantum of projected funds available for creditors has increased since the outset of the administration, the existence of the preferential claim and the increased value of unsecured creditor claims (our initial estimates were based on a value of approximately £2,300,000) means that our best estimate of the likely level of dividend available to unsecured creditors is now 14p in the £. This remains subject to the costs of the liquidation which are outside of our control.

#### **Exit from administration**

Once the notice of move from administration to creditors' voluntary liquidation (Form AM22) has been registered at Companies House (which we anticipate shortly), our appointment as administrators will cease to have effect and the Company will be deemed to be subject to *creditors' voluntary liquidation with Kerry Bailey and Andrew Palmer of BDO LLP acting in the capacity as joint liquidators of the Company.*

## **6. ADMINISTRATORS' PROPOSALS**

Attached at Appendix 2 is a summary of our proposals as approved by decision procedure on 20 February 2019.

## **7. SUMMARY OF STEPS TAKEN DURING THE ADMINISTRATION**

Full details of our progress in the administration and the work we have undertaken is set out at Section 4 above.

A summary of the key steps taken within the administration is as follows:

- Completion of the sale of the business and assets of the Company to the Purchaser;
- Collection of the outstanding sales consideration and assignment of title in the chattel assets to the Purchaser;
- Repayment of Lombard;
- Collection of the book debts and repayment of RBS IF;
- Dealing with third party owned assets including retention of title claims and the novation of key finance agreements;
- Collection of the cash at bank balance; and
- Collating the relevant information and conducting initial investigations into the directors' conduct and reasons for the Company's failure.

## **8. PRE-ADMINISTRATION COSTS**

On 20 February 2019 the following amounts in respect of unpaid pre-administration costs were approved via a decision procedure by correspondence.

| Description                                                                                                                                                                                                                        | Name of recipient           | Net amount £ | VAT £     | Gross amount £ |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------|-----------|----------------|
| Our fees in relation to the Work                                                                                                                                                                                                   | Begbies Traynor (SY) LLP    | 70,010.00    | 14,002.00 | 84,012.00      |
| Legal costs                                                                                                                                                                                                                        | Irwin Mitchell LLP          | 23,301.00    | 4,660.20  | 27,961.20      |
| Legal disbursements                                                                                                                                                                                                                | Irwin Mitchell LLP          | 205.70       | 41.14     | 246.84         |
| Agents fees:<br><i>Eddisons are a part of the Begbies Traynor Group and are therefore connected to Begbies Traynor (SY) LLP. Eddisons valued the company's assets and marketed the business for sale prior to our appointment.</i> | Eddisons Commercial Limited | 2,500.00     | 500.00    | 3,000.00       |
| <b>TOTAL PRE-ADMINISTRATION COSTS</b>                                                                                                                                                                                              |                             | 96,016.70    | 19,203.34 | 115,220.04     |

## 9. REMUNERATION & DISBURSEMENTS

Our remuneration has been fixed by approval of the creditors on 20 February 2019 obtained via a decision procedure by reference to the time properly given by us and the various grades of our staff calculated at the prevailing hourly charge out rates of Begbies Traynor (SY) LLP in attending to matters as set out in the fees estimate circulated with our proposals.

We are also authorised to draw disbursements, including disbursements for services provided by our firm (defined as category 2 disbursements in Statement of Insolvency Practice 9) in accordance with our firm's policy, details of which accompanied the Statement of proposals for achieving the purpose of administration and which are attached at Appendix 2 of this report.

Our time costs for the period from 22 January 2019 to 3 May 2019 amount to £98,045.50 which represents 282.4 hours at an average rate of £347.19 per hour.

The following further information in relation to our time costs and disbursements is set out at Appendix 3:

- Time Costs Analysis for the period 22 January 2019 to 7 May 2019
- Begbies Traynor (SY) LLP's charging policy

To date, we have drawn the total sum of £89,232.00 on account of our remuneration, against total time costs of £98,045.50 incurred since the date of our appointment.

As can be seen from the information above, we have exceeded the limit of our initial fees estimate of £89,232.00. For the avoidance of any doubt, we have not drawn any remuneration in excess of the level approved. The primary reasons why the estimate has been exceeded are as follows:

- In order to ensure that full title to the chattel assets passed to the Purchaser, a Deed of Assignment was drafted, negotiated and agreed. This work was not initially envisaged;
- Due to the volume of information collated in relation to our investigatory work, additional time was required to review this documentation and formulate our report to The Insolvency Service;
- Due to the interconnected nature of the group of entities under the control of The Isaac Middleton Settlement Trust, we have incurred some additional time in reviewing the



extent of the connection to the Company and the financial position of some of these entities where it was considered relevant;

- As some of the information we consider relevant to our enquiries (and those we anticipate the liquidators will want to conduct in due course) was not available at the Company's trading premises, we have liaised with external parties to try to secure this documentation;
- Additional time has been incurred reviewing the Company's pension arrangements, seeking to clarify the balance of the preferential claim and confirm the likely date of the scheme closure; and
- The complexity of the issues that have arisen within the administration (and particularly within our investigation work) has meant that a significant proportion of the work has been undertaken by a higher grade of staff than we would usually expect.

In light of the above, we are obliged to provide creditors with details of the additional work that has been undertaken along with details of the time and cost of that additional work. Full information in relation to the time costs incurred during the administration period is set out above at Section 4 and within the Time Costs Analysis at Appendix 3.

### **Disbursements**

To date we have also drawn disbursements in the sum of £740.91.

### **Why have subcontractors been used?**

Our colleagues within BTG Advisory LLP have assisted with the collection of the debtors' ledger due to their experience in dealing with similar assignments and their ongoing relationship with RBS IF. BTG Advisory LLP provided their services free of charge until such point in time as RBS IF were repaid in full. Thereafter, they have received a fee equivalent to 5% of the realisations achieved. We believe the overall costs incurred in collecting the outstanding debts will be lower (and therefore the benefit to creditors greater) than if BTG Advisory LLP had not undertaken this work.

### **Category 2 Disbursements**

Details of the Category 2 disbursements and also disbursements that should be treated as Category 2 disbursements that have been drawn during the period of this report in accordance with the approval obtained in the total sum of £70,707.62 are set out below:

| <b>Other amounts paid or payable to the office holder's firm</b> |                 |
|------------------------------------------------------------------|-----------------|
| <b>Type and purpose</b>                                          | <b>Amount £</b> |
| Mileage                                                          | 6.30            |
| Postage                                                          | 239.61          |
| Statutory Bond                                                   | 420.00          |
| Statutory Advertising                                            | 75.00           |
| <b>TOTAL</b>                                                     | <b>740.91</b>   |

The payments made in relation to our statutory bond and advertising have been included in the above summary for completeness. Whilst these payments are applied by third parties on a case by case basis, the usual practice of this firm is to discharge these costs centrally and then recharge the fee paid to the administration estate.

### Disbursements treated as Category 2 disbursements

| Other amounts paid or payable to any party in which the office holder or his firm or any associated person has an interest                                                                                                   |                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| Type and purpose                                                                                                                                                                                                             | Amount £                                |
| Eddisons Commercial Limited, which is a member of the Begbies Traynor Group have provided a valuation of the Company's business and assets and assisted in negotiating the sale of the business and assets to the Purchaser. | 56,250.00                               |
| Eddisons Insurance Services Limited ("EIS"), which is a member of the Begbies Traynor group, has provided insurance brokerage services, having arranged open cover insurance in relation to the Company's assets.            | Estimated to be in the region of £2,500 |
| BTG Advisory LLP, which is a member of the Begbies Traynor Group, has provided debt collection assistance.                                                                                                                   | 11,216.71                               |
| <b>TOTAL</b>                                                                                                                                                                                                                 | <b>69,966.71</b>                        |

We are awaiting a final invoice in respect of the insurance cover provided during the administration period. Upon receipt, this invoice will be passed on to BDO LLP to discharge as an administration expense.

A copy of 'A Creditors Guide to Administrators' Fees (E&W) 2017' which provides guidance on creditors' rights on how to approve and monitor an Administrator's remuneration and on how the remuneration is set can be obtained online at [www.begbies-traynor.com/creditorsguides](http://www.begbies-traynor.com/creditorsguides). Alternatively, if you require a hard copy of the Guide, please contact our office and we will arrange to send you a copy.

## 10. EXPENSES

A statement of the expenses incurred and discharged by us during the period of this progress report is attached at Appendix 4. Unfortunately, the expenses that we have incurred within the administration have exceeded the estimate provided within our statement of proposals. The reasons why the estimate has been exceeded are as follows;

- Following receipt of the final balance of the sales consideration, it became apparent that further documentation was required to ensure that full title to all assets passed the Purchaser. We were not able to discharge Lombard's secured claim until this documentation was agreed. Irwin Mitchell LLP therefore incurred additional costs drafting and negotiating this documentation;
- As detailed above, we had to engage Freeths LLP to assist with some investigatory issues where Irwin Mitchell LLP were not able to provide advice due to their prior relationship with the Company; and
- Freeths LLP have also provided advice on documentation we have received from RBS IF in relation to the assignment of the book debt surplus.

## 11. CREDITORS' RIGHTS

### **Right to request further information**

Pursuant to Rule 18.9 of the Rules, within 21 days of the receipt of this report a secured creditor, or an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors including that creditor (or an unsecured creditor with less than 5% in value of the unsecured creditors, but with the permission of the court) may request in writing that we provide further information about our remuneration or expenses (other than pre-administration costs) which have been incurred during the period of this progress report.

### **Right to make an application to court**

Pursuant to Rule 18.34 of the Rules, any secured creditor or an unsecured creditor with the concurrence of at least 10% in value of the unsecured creditors including that creditor, (or any unsecured creditors with less than 10% in value of the unsecured creditors, but with the permission of the court) may within 8 weeks of receipt of this progress report make an application to court on the grounds that the remuneration charged or the expenses incurred by us during the period of this progress report are excessive or, in relation to the basis fixed for our remuneration, inappropriate.

## 12. ASSETS THAT REMAIN TO BE REALISED

To the best of our knowledge, the only assets still to realise relate to the outstanding books debts and the book debt surplus currently held by RBS IF.

RBS IF have requested an indemnity from the administrators before releasing the surplus funds. We have sought legal advice on the terms of the proposed indemnity and have been advised that this matter cannot be concluded before the deadline to move the Company into liquidation. We will provide BDO LLP with copies of all relevant documentation and legal advice so they can pursue the debtor surplus within the liquidation.

BTG Advisory LLP have advised that the remaining book debt ledger totals £123,500 and they consider that minimum further realisations of £35,600 will be achieved in due course. They continue to pursue all outstanding balances and will liaise with BDO LLP when the Company moves into liquidation to agree how best to conclude the collection of these debts.

## 13. OTHER RELEVANT INFORMATION

### **Report on Directors' conduct**

As detailed in our statement of proposals, we have a duty to submit a report to the Department for Business, Energy and Industrial Strategy on the conduct of the directors. We have complied with our duties in this respect.

### **Investigations completed and action taken**

As explained in our proposals we have been investigating the manner in which the business was conducted prior to the administration of the Company and potential recoveries for the estate in this respect. Full details of the work undertaken are set out at Section 4 above.

We have handed over the result of our investigatory work to BDO LLP who will decide in due course whether or not any further investigations are necessary and/or pursue any claims they identify on the Company's behalf.

### Connected party transactions

Statement of Insolvency Practice 13 requires us to notify creditors of any material transactions with connected parties within a period of 12 months of our appointment.

During the course of our investigatory work, we noticed an inconsistency in the information provided within the company history produced by the Company's directors and the information circulated by NEC's administrators.

The Company directors advised that NEC had agreed to write off £4,450,000 from the balance of the intercompany loan account in or around November 2017. However, NEC's administrators' proposals indicated that this debt reduction had been in exchange for the Company issuing NEC with a 'golden share' whereby NEC would receive a percentage of any further profit generated.

In conjunction with our solicitors, we have reviewed the information available at Companies House and can confirm that immediately prior to 19 September 2018, the Company's sole registered shareholder, holding one ordinary share, was The Isaac Middleton Settlement Trust. On 19 September 2018, the directors of the Company passed a resolution and an allotment which issued one 'B Capital' share. From the documentation available at present, it is not clear who the holder of this share is but we assume it is NEC.

As this change in share capital took place approximately a year after the debt write off, it falls within the period of notification stipulated by Statement of Insolvency Practice 13 and we are therefore providing creditors with the information set out below:

| Date of transaction | Asset sold and nature of transaction             | Consideration paid and date                                                                 | Name of Connected Party          | Relationship with the Company                                                                                                                        |
|---------------------|--------------------------------------------------|---------------------------------------------------------------------------------------------|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 19 September 2018   | Additional share capital created and transferred | We cannot locate details of any consideration being paid at the time the share was created. | Newburgh Engineering Co. Limited | Group subsidiary with same ultimate controlling party.<br><br>Common directors at the time of the transaction (Vincent Middleton and Daniel Gibbons) |

Full details of the sale of the business and assets to the Purchaser (and the connections to the Company) were provided in our initial notification to creditors and our proposals.

### Use of personal information

Please note that although the administration is being concluded, in discharging our remaining duties as joint administrators, we may need to access and use personal data, being information from which a living person can be identified. Where this is necessary, we are required to comply with data protection legislation. If you are an individual and you would like further information about your rights in relation to our use of your personal data, you can access the same at <https://www.begbies-traynorgroup.com/privacy-notice>. If you require a hard copy of the information, please do not hesitate to contact us.

## 14. CONCLUSION

Creditors have previously approved our discharge from office as administrators which will take effect upon the filing of the notification to move the Company into creditors' voluntary liquidation.

Whilst we are happy to answer any queries or concerns creditors may have in relation to the content of this report or the conduct of the administration, all ongoing correspondence should be addressed to Kerry Bailey and Andrew Palmer of BDO LLP, 3 Hardman Street, Spinningfields, Manchester, M3 3AT.



**Joanne Hammond**  
Joint Administrator

Date: 7 May 2019

## ACCOUNT OF RECEIPTS AND PAYMENTS

Period: 22 January 2019 to 7 May 2019

## ADMINISTRATORS' PROPOSALS

### Proposals approved by creditors via a decision procedure

#### *Purpose of the Administration*

We are required to set out our proposals for achieving the purpose of the Administration which in this context means one of the objectives specified in paragraph 3 of Schedule B1 to the Act as set out at section 3 of this report above.

For the reasons set out in this report, we presently consider that it is not reasonably practicable to achieve the objective specified in sub-paragraph 3(1)(a), of rescuing the company as a going concern. This is due to the extent of the Company's insolvency.

It is however anticipated that the objective of sub-paragraph 3(1)(b), of achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without being in Administration) will be achieved. Due to the value of the sale of the business, which has been completed, it is anticipated that there will be sufficient funds to make a distribution to the Company's unsecured creditors and therefore, objective 3(1)(b) is the objective of the Administration.

Notwithstanding the above, it is anticipated that the objective specified in sub-paragraph 3(1)(c), of realising property in order to make a distribution to one or more secured or preferential creditors, will also be achieved as RBSIF will be repaid via the collection of the debtor ledger and Lombard will be repaid following the sale of assets subject to their chattel mortgage. Should a preferential claim be received, this will also be paid from the assets of the Company.

As previously stated, the business and assets were sold to the Purchaser shortly after the appointment of joint administrators. This sale was undertaken to maximise realisations for the assets which we believe would have otherwise been unrealisable. Furthermore, the sale of the business to the Purchaser has saved 66 jobs and prevented the need for substantial redundancy claims to be made from the National Insurance Fund.

It is anticipated that the level of realisations will allow for a distribution to be made to the Company's creditors and such realisations will be higher than had the Company been wound-up. Such actions are therefore synonymous with the objective of the Administration being achieved.

The joint administrators will oversee the works necessary but will, where appropriate, utilise members of their team to ensure that the works are completed by the appropriate level of staff.

In order for the purpose of the Administration to be fully achieved, we propose to remain in office as administrators in order to conclude the realisation of the Company's property and to undertake our statutory duties as administrators. In addition to our statutory duties, the principle matters to deal with in this respect are as follows:

- Monitoring realisations from the sale of the business and assets to the Purchaser;
- Implementing a break up sale strategy in the event that payment is not received from the Purchaser within the agreed 21 days;
- Monitoring the collection of the Company's book debts to secure the repayment of RBSIF;
- Liaising with Lombard in relation to their final claim in the administration and arranging for their indebtedness to be discharged;
- Liaising with the pension provider to determine whether or not a preferential claim is to be made in respect of the unpaid pension contributions;
- Liaising with creditors who purport to retain title to goods supplied to the Company and adjudicating on these claims;

- Liaising with the other finance companies and the Purchaser in relation to the novation of any residual finance agreements;
- Reviewing and responding to all creditor claims;
- Seeking and obtaining approval of the Proposals and connected resolutions; and
- Undertaking investigations into the Company's failure and the directors' conduct.

Following these events we propose to move the Company into Creditors' Voluntary Liquidation to facilitate the payment of a dividend to unsecured creditors.

### ***Exit from Administration***

We are of the opinion that the total amount which each secured creditor of the Company is likely to receive will repay them in full and we do not currently anticipate receiving any preferential claims. As such, it is anticipated that a distribution will be made to the unsecured creditors of the Company which is not a distribution of the prescribed part<sup>[1]</sup>. Additionally, there may be matters for enquiry concerning a company's affairs which are not within the scope of an administrator's powers and which can only be properly dealt with by a liquidator.

When considering the most appropriate exit strategy, the Act and Rules specifically require us to provide the following information when an exit into Creditors' Voluntary Liquidation (CVL) is deemed to be most appropriate option:

- Details of the proposed liquidator(s);
- If applicable, where more than one liquidator is to be appointed, confirmation that the liquidators may act jointly and severally; and
- A statement confirming that the creditors may, before the Proposals are approved, nominate a different person(s) to act as liquidators.

Providing this information ensures that creditors are aware of the identity of the proposed liquidators and their ability to nominate their own alternative choice of liquidator should they wish to do so.

Ordinarily, we would propose our own appointment as joint liquidators. It is common practice for the same Licensed Insolvency Practitioners to act initially as administrators and subsequently as liquidators in circumstances such as these and we confirm that, having considered the particular circumstances of this case, we are satisfied that acting as joint liquidators would not result in our having a conflict of interest or would otherwise contravene the provisions of The Code of Ethics for Insolvency Practitioners.

However, having recognised that NECL hold the majority unsecured claim within the administration, we engaged with NECL's joint liquidators, Matthew Gibson and Kerry Bailey of BDO LLP ("the NECL Liquidators"), prior to issuing these proposals. Given the connection between the Company and NECL, the NECL Liquidators advised that, notwithstanding their appointment as liquidators of NECL, they were of the opinion that Licensed Insolvency Practitioners from BDO LLP acting as liquidators of both NECL and the Company would be in the interest of creditors of both companies. In particular, they indicated that they would expect overall costs to be reduced in these circumstances thereby enhancing the return to creditors.

Although we are entitled to propose our own appointment as joint liquidators, in view of our duty to act in the interests of all the Company's creditors, we have decided against doing so in order to avoid the estate incurring the costs associated with the convening and holding of a physical meeting of creditors, which would inevitably be sought by the NECL Liquidators where we proposed our own appointment. Recognising that NECL are the majority creditor within the administration, we have acceded to the NECL Liquidators' request that Kerry Bailey and Andrew Palmer be nominated to act as joint liquidators.

For the above reasons, it is proposed that the Company exits administration and proceeds into CVL with Kerry Bailey and Andrew Palmer of BDO LLP as joint liquidators.



In accordance with the Act and Rules, the move from administration to CVL can only take place when sufficient funds have been realised to either repay (or set aside to repay) the liabilities due to the Company's secured creditors in full (and also where the administrators think that a distribution will be made to the unsecured creditors of the Company, other than a distribution of the prescribed part). Creditors will note from our proposals (as detailed above) that unless and until the balance of the sales consideration is received in full, there will not be sufficient funds held within the administration to achieve this. We are therefore proposing two alternative timeframes for the Company moving into CVL:

1. In the event that the sales consideration is received as anticipated (within 21 days of completion of the sale), the Company will move into CVL within four months of our appointment (on or before 21 May 2019). This will allow sufficient time for us to definitively conclude that RBSIF will be repaid in full through the collection of the book debts, to agree and discharge the claim of Lombard and to comply with our statutory duty to investigate the directors' conduct and submit our report to The Insolvency Service.

2. In circumstances where the sales consideration is not received within 21 days of our appointment and where we therefore have to proceed with a sale of the assets on a break-up basis, the Company will move into CVL within eight months of our appointment (on or before 21 September 2019). Creditors will note from our SIP 16 disclosure that all three firms of professional valuers involved in the transaction have indicated that, given the size and nature of the plant and machinery held on site, a 180 day period would be required to ensure the marketing, sale and removal of all assets in a break-up scenario. The proposed period of administration would allow sufficient time to conclude the sale of the assets, discharge the secured creditor's claim and agree removal costs with the Company's landlord.

It is proposed that for the purpose of the winding up, any act required or authorised under any enactment to be done by the joint liquidators is to be done by all or any one or more of the persons for the time being holding office.

As soon as we are satisfied that we have fully discharged our duties as joint administrators and that the purpose of the Administration has been fully achieved, we propose to deliver a notice of moving from administration to creditors' voluntary liquidation to the Registrar of Companies. Upon the registration of such notice, our appointment as joint administrators shall cease to have effect and the Company will automatically be placed into Liquidation.

In circumstances where we consider that the conditions set out in Paragraph 83 of Schedule B1 to the Act cannot be satisfied, and a move to CVL is no longer appropriate, we will apply to court in accordance with Paragraph 79 of Schedule B1 to the Act to bring the administration to an end and to seek the compulsory winding up of the Company. Given the stance of the NECL Liquidators, we would not seek our own appointment as liquidators in such circumstances.

## TIME COSTS AND DISBURSEMENTS

- a. Begbies Traynor (SY) LLP's charging policy;
- b. Time Costs Analysis for the period from 22 January 2019 to 7 May 2019

## **BEGBIES TRAYNOR CHARGING POLICY**

### **INTRODUCTION**

This note applies where a licensed insolvency practitioner in the firm is acting as an office holder of an insolvent estate and seeks creditor approval to draw remuneration on the basis of the time properly spent in dealing with the case. It also applies where further information is to be provided to creditors regarding the office holder's fees following the passing of a resolution for the office holder to be remunerated on a time cost basis. Best practice guidance<sup>1</sup> requires that such information should be disclosed to those who are responsible for approving remuneration.

In addition, this note applies where creditor approval is sought to make a separate charge by way of expenses or disbursements to recover the cost of facilities provided by the firm. It also applies where payments are to be made to parties other than the firm, but in relation to which the office holder, the firm or any associate has an interest. Best practice guidance<sup>2</sup> indicates that such charges should be disclosed to those who are responsible for approving the office holder's remuneration, together with an explanation of how those charges are calculated.

### **OFFICE HOLDER'S FEES IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES**

The office holder has overall responsibility for the administration of the estate. He/she will delegate tasks to members of staff. Such delegation assists the office holder as it allows him/her to deal with the more complex aspects of the case and ensures that work is being carried out at the appropriate level. There are various levels of staff that are employed by the office holder and these appear below.

The firm operates a time recording system which allows staff working on the case along with the office holder to allocate their time to the case. The time is recorded at the individual's hourly rate in force at that time which is detailed below.

### **EXPENSES INCURRED BY OFFICE HOLDERS IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES**

Best practice guidance classifies expenses into two broad categories:

- ❑ *Category 1 disbursements (approval not required)* - specific expenditure that is directly related to the case and referable to an independent external supplier's invoice. All such items are charged to the case as they are incurred.
- ❑ *Category 2 disbursements (approval required)* - items of expenditure that are directly related to the case which include an element of shared or allocated cost and are based on a reasonable method of calculation, but which are not payable to an independent third party.

(A) The following items of expenditure are charged to the case (subject to approval):

- Internal meeting room usage for the purpose of physical meetings of creditors is charged at the rate of £100 (London £150) per meeting;
- Car mileage is charged at the rate of 45 pence per mile;
- Storage of books and records (when not chargeable as a *Category 1 disbursement*) is charged on the basis that the number of standard archive boxes held in storage for a particular case bears to the total of all archive boxes for all cases in respect of the period for which the storage charge relates;
- Postage at the actual rate incurred.

<sup>1</sup> Statement of Insolvency Practice 9 (SIP 9) – Remuneration of insolvency office holders in England & Wales

<sup>2</sup> Ibid 1

*Expenses which should be treated as Category 2 disbursements (approval required)* – in addition to the two categories referred to above, best practice guidance indicates that where payments are to be made to outside parties in which the office holder or his firm or any associate has an interest, these should be treated as Category 2 disbursements.

***Services provided by other entities within the Begbies Traynor group***

The following items of expenditure which relate to services provided by entities within the Begbies Traynor group, of which the office holder's firm is a member, are also to be charged to the case (subject to approval):

Instruction of Eddisons Commercial Limited to provide valuations of the Company's assets. Their charges will be calculated on a time costs basis at the prevailing hourly rates for their various grades of staff which are currently as follows:

| <b>Grade of staff</b> | <b>Charge-out rate (£ per hour)</b> |
|-----------------------|-------------------------------------|
| Director              | £275                                |
| Associate             | £180                                |
| Surveyor              | £120                                |
| Graduate              | £100                                |
| Administration        | £80                                 |
| Porters               | £35                                 |

Eddisons Commercial Limited estimate that their valuation fee will be £2,500 plus VAT.

In addition, Eddisons Commercial Limited will charge a fixed fee of £15,000 in relation to the sale of the Company's fixed charge assets, and a further 10% of realisations achieved in relation to the sale of all other assets.

Instruction of BTG Corporate Solutions to provide assistance with the collection of the Company's debtor ledger once this has been assigned from RBS Invoice Finance Limited. Their charges will be equivalent to 5% of realisations.

In addition to the services detailed above, it may become necessary to instruct Eddisons Commercial Limited to provide additional services, not currently anticipated, during the course of the case. In such circumstances and to avoid the costs associated with seeking further approval, the charges for such services will be calculated on a time costs basis at the prevailing hourly rates for their various grades of staff which are currently as follows:

| <b>Grade of staff</b> | <b>Charge-out rate (£ per hour)</b> |
|-----------------------|-------------------------------------|
| Director              | £275                                |
| Associate             | £180                                |
| Surveyor              | £120                                |
| Graduate              | £100                                |
| Administration        | £80                                 |
| Porters               | £35                                 |

Instruction of Eddisons Insurance Services Limited ("EIS") to provide insurance broking services and specifically open cover insurance for the insurable risks relating to the case. The cost of open cover insurance will vary during the course of the case depending upon the value of the assets and liability risks. The forecasted cost of insurance for the 3 month period immediately following appointment is £616 inclusive of Insurance Premium Tax. The costs of insurance cover for subsequent quarter periods will be dependent upon prevailing insurance market conditions and the ongoing insurable risks on the case.

In accordance with standard insurance industry practice, EIS will receive payment of commission for the services it provides from the insurer. The commission is calculated as a percentage of the insurance premiums payable and such percentage will depend upon the class or classes of assets being insured.

EIS will invoice the insolvent estate for the premium(s) due on the insurer's behalf and receive payment from the estate. EIS will in turn, account to the insurer for the premium(s) payable after deducting any commission payable by the insurer.

(B) The following items of expenditure will normally be treated as general office overheads and will not be charged to the case although a charge may be made where the precise cost to the case can be determined because the item satisfies the test of a *Category 1 disbursement*:

- Telephone and facsimile
- Printing and photocopying
- Stationery

#### **BEGBIES TRAYNOR CHARGE-OUT RATES**

Begbies Traynor is a national firm. The rates charged by the various grades of staff that may work on a case are set nationally, but vary to suit local market conditions. The rates applying to the Sheffield office as at the date of this report are as follows:

| <b>Grade of staff</b> | <b>Charge-out rate (£ per hour)<br/>1 December 2018 –<br/>until further notice</b> |
|-----------------------|------------------------------------------------------------------------------------|
| Partner               | 495                                                                                |
| Director              | 445                                                                                |
| Senior Manager        | 395                                                                                |
| Manager               | 345                                                                                |
| Assistant Manager     | 250                                                                                |
| Senior Administrator  | 225                                                                                |
| Administrator         | 175                                                                                |
| Junior Administrator  | 140                                                                                |
| Support               | 140                                                                                |
| Manager               | 265                                                                                |
| Assistant Manager     | 205                                                                                |
| Senior Administrator  | 175                                                                                |
| Administrator         | 135                                                                                |
| Junior Administrator  | 110                                                                                |
| Support               | 60 - 110                                                                           |

Time spent by support staff such as secretarial, administrative and cashiering staff is charged directly to cases. It is not carried as an overhead.

Time is recorded in 6 minute units.

IP9 Newburgh Precision Limited - Administration - 91NE300.ADM - Time Costs Analysis From 22/01/2019 to 07/05/2019

| Job Grade                                                                                            | Consultant/Partner | Director  | Senior Manager | Manager  | Assistant Manager | Admin | Jr Admin | Support  | Total Hours | Time Cost £ | Average hourly rate £ |
|------------------------------------------------------------------------------------------------------|--------------------|-----------|----------------|----------|-------------------|-------|----------|----------|-------------|-------------|-----------------------|
| General Case Administration                                                                          |                    |           |                |          |                   |       |          |          |             |             |                       |
| Case planning                                                                                        | 3.8                | 0.9       |                | 0.6      |                   |       |          |          | 5.3         | 2,488.50    | 469.53                |
| Administration                                                                                       | 9.0                | 6.3       |                | 0.3      |                   |       | 6.7      | 1.9      | 50.4        | 14,481.00   | 286.92                |
| Total for General Case Administration and Planning                                                   | 12.8               | 7.2       |                | 0.9      |                   |       | 6.7      | 1.9      | 55.7        | 16,969.50   | 304.30                |
| Compliance with the Insolvency Act, Rules and best practice                                          |                    |           |                |          |                   |       |          |          |             |             |                       |
| Appointment                                                                                          |                    |           |                |          |                   |       |          |          |             |             |                       |
| Banking and Bonding                                                                                  | 0.2                | 3.2       |                | 0.7      |                   |       |          |          | 12.6        | 2,835.00    | 225.00                |
| Case Closure                                                                                         |                    | 1.2       |                |          |                   |       | 1.1      | 6.1      | 11.3        | 2,772.50    | 245.35                |
| Statutory reporting and statement of affairs                                                         | 7.6                | 41.2      |                |          |                   |       |          |          | 1.2         | 534.00      | 445.00                |
| Total for Compliance with the Insolvency Act, Rules and best practice                                | 7.8                | 45.6      |                | 0.7      |                   |       |          | 7.1      | 78.4        | 28,152.50   | 359.09                |
| COA and investigations                                                                               |                    | 43.6      |                |          |                   |       | 1.1      | 13.2     | 103.5       | 34,284.00   | 331.34                |
| Total for investigations:                                                                            |                    | 43.6      |                |          |                   |       |          | 13.4     | 57.7        | 21,435.50   | 371.50                |
| Realisation of assets                                                                                |                    |           |                |          |                   |       |          |          |             |             |                       |
| Debt collection                                                                                      | 1.9                | 4.5       |                |          |                   |       |          | 13.4     | 57.7        | 21,435.50   | 371.50                |
| Property, business and asset sales                                                                   |                    | 17.0      |                | 0.2      |                   |       |          |          | 8.4         | 2,943.00    | 459.84                |
| Retention of Third Party Assets                                                                      |                    | 5.6       |                | 2.9      |                   |       |          |          | 17.2        | 7,634.00    | 443.84                |
| Total for Realisation of assets:                                                                     | 1.9                | 27.3      |                | 3.1      |                   |       |          |          | 8.7         | 3,581.50    | 411.67                |
| Trading                                                                                              |                    |           |                |          |                   |       |          |          | 32.3        | 14,138.50   | 438.34                |
| Total for Trading:                                                                                   |                    |           |                |          |                   |       |          |          |             |             | 0.00                  |
| Secured                                                                                              |                    |           |                |          |                   |       |          |          |             |             | 0.00                  |
| Others                                                                                               | 0.3                | 14.6      |                | 3.7      |                   |       | 4.2      |          | 31.8        | 10,535.00   | 331.29                |
| Creditors committee                                                                                  |                    |           |                |          |                   |       |          |          |             |             | 0.00                  |
| Total for Dealing with all creditors claims (including employees), correspondence and distributions: | 0.3                | 14.6      |                | 3.7      |                   |       | 4.2      |          | 31.8        | 10,535.00   | 331.29                |
| Seeking decisions of creditors                                                                       |                    |           |                |          |                   |       |          |          |             |             | 0.00                  |
| Meetings                                                                                             | 1.0                |           |                |          |                   |       |          |          | 1.0         | 495.00      | 495.00                |
| Other:                                                                                               |                    |           |                |          |                   |       |          |          |             |             | 0.00                  |
| Tax                                                                                                  |                    | 0.4       |                |          |                   |       |          |          | 0.4         | 178.00      | 445.00                |
| Litigation                                                                                           |                    |           |                |          |                   |       |          |          |             |             | 0.00                  |
| Total for Other matters:                                                                             | 1.0                | 6.4       |                |          |                   |       |          |          | 1.4         | 673.00      | 480.71                |
| Total hours by staff grade:                                                                          | 23.8               | 138.7     |                | 8.4      |                   |       | 12.0     | 28.5     | 282.4       |             |                       |
| Total time cost by staff grade:                                                                      | 11,781.00          | 61,721.50 |                | 2,895.00 |                   |       | 1,680.00 | 3,960.00 |             | 98,045.50   |                       |
| Average hourly rate £:                                                                               | 495.00             | 445.00    | 0.00           | 345.00   | 0.00              |       | 140.00   | 140.00   |             |             | 347.19                |
| Total fees drawn to date £:                                                                          |                    |           |                |          |                   |       |          |          |             | 89,232.00   |                       |

## STATEMENT OF EXPENSES FOR THE PERIOD

| Type of expense                                                                                                            | Name of party with whom expense incurred | Amount incurred<br>£                   | Amount discharged<br>£ | Balance to be discharged<br>£               |
|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------|------------------------|---------------------------------------------|
| Expenses incurred with entities not within the Begbies Traynor Group                                                       |                                          |                                        |                        |                                             |
| Legal fees                                                                                                                 | Irwin Mitchell LLP                       | 17,585.00                              | 17,585.00              | Nil                                         |
| Legal disbursements                                                                                                        | Irwin Mitchell LLP                       | 33.00                                  | 33.00                  | Nil                                         |
| Legal fees                                                                                                                 | Freeths LLP                              | 1,362.00                               | 1,362.00               | Nil                                         |
| Legal disbursements                                                                                                        | Freeths LLP                              | 15.00                                  | 15.00                  | Nil                                         |
| Expenses incurred with entities within the Begbies Traynor Group (for further details see Begbies Traynor Charging Policy) |                                          |                                        |                        |                                             |
| Agent's fees                                                                                                               | Eddisons Commercial Limited              | 56,250.00                              | 56,250.00              | Nil                                         |
| Insurance premium                                                                                                          | Eddisons Insurance Limited               | Estimated to be in the region of 2,500 | Nil                    | To be paid within liquidation as an expense |
| Debt Collection                                                                                                            | BTG Advisory LLP                         | 11,216.71                              | 11,216.71              | Nil                                         |

Expenses incurred that have been discharged centrally by Begbies Traynor (SY) LLP

|                       |             |        |        |     |
|-----------------------|-------------|--------|--------|-----|
| Statutory advertising | TMP Reynell | 75.00  | 75.00  | Nil |
| Bond                  | Aon         | 420.00 | 420.00 | Nil |