

# Liquidator's Progress Report

# S.192

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

To the Registrar of Companies

Company Number

04714406

Name of Company

Community Energy Solutions CIC

I / ~~We~~

~~Martyn Pullin, 8 Park Place, Leeds, LS1 2RU~~

David Willis, 8 Park Place, Leeds, LS1 2RU

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

The Progress Report covers the period from 22/03/2016 to 21/03/2017

Signed



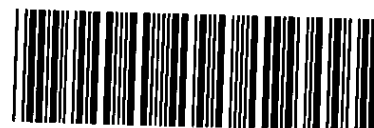
Date

21.3.17

BWC Business Solutions LLP  
8 Park Place  
Leeds  
LS1 2RU

Ref: C166/MP/DW/MXP/MM

SATURDAY



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20/05/2017

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COMPANIES HOUSE

**Community Energy Solutions CIC  
(In Liquidation)  
Joint Liquidators' Abstract of Receipts & Payments**

<b>Statement of Affairs</b>		<b>From 22/03/2016 To 21/03/2017</b>
	<b>ASSET REALISATIONS</b>	
9,150.00	Fixtures Fittings & Equipment	10,181.08
	Motor Vehicles	4,158.00
10,000.00	Goodwill	10,000.00
13,780.00	Work in Progress	17,560.00
117,791.00	Book Debts	41,754.54
3,239.00	Cash at Bank	9,188.66
60,223.00	Cash Held by BWC Business Solution	60,223.60
	Bank Interest Gross	16.74
3,120.00	Cash held by Agents	NIL
		<u>153,082.62</u>
	<b>COST OF REALISATIONS</b>	
	Specific Bond	316.80
	Preparation of S. of A.	6,000.00
	Accountants Fees	1,000.00
	Office Holders Fees	20,000.00
	Creditors' Meeting Costs	6,000.00
	Agents/Valuers Fees	5,892.89
	Agents/Valuers Disbursements	112.60
	Legal Fees	10,949.27
	Storage Costs	1,463.28
	Statutory Advertising	315.06
	Refund of Credit Paid in Error	5,975.00
	Other Property Expenses	562.66
	I.T. Services	480.00
		<u>(59,067.56)</u>
	<b>PREFERENTIAL CREDITORS</b>	
(13,147.00)	Arrears of Wages and Holiday Pay	16,800.61
		<u>(16,800.61)</u>
	<b>UNSECURED CREDITORS</b>	
(498,858.00)	Trade & Expense Creditors	27,570.88
(130,738.00)	Pay in Lieu of Notice & Redundancy P	4,689.62
(12,477.00)	Unsecured Arrears of Wages	623.85
(14,160.00)	Directors Loan Accounts	708.00
(75,510.00)	H M Revenue & Customs PAYE, NIC	5,677.46
(100,000.00)	British Telecommunications PLC	5,000.00
		<u>(44,269.81)</u>
<b>(627,587.00)</b>		<u><b>32,944.64</b></u>
	<b>REPRESENTED BY</b>	
	Bank 2 Current	25,879.84
	Vat Control Account	7,064.80
		<u><b>32,944.64</b></u>



DAVID WILLIS

Martyn Pullin  
Joint Liquidator

Our Ref: MJP/MXP/C166/89/7  
Your Ref:  
When Calling Please Ask For: Mark Pintar

Registrar of Companies  
Companies House  
Crown Way  
Maindy  
Cardiff  
CF14 3UZ

18 May 2017

Dear Sirs

**COMMUNITY ENERGY SOLUTIONS COMMUNITY INTEREST COMPANY T/A GO  
WARM ("the Company") - IN LIQUIDATION  
COMPANY REGISTRATION NUMBER: 04714406**

I refer to my appointment as Joint Liquidator of the Company on 22 March 2016 and have pleasure in submitting a copy of my annual progress report.

The Company's registered office was changed to 8 Park Place, Leeds, LS1 2RU following the appointment of the Joint Liquidator.

**RECEIPTS AND PAYMENTS ACCOUNT**

A copy of the Liquidators' receipts and payments account is attached at Appendix I.

The Liquidator banked company funds with an authorised clearing bank and therefore on this occasion there is no account held by the Secretary of State to reconcile his account with.

**ASSET REALISATIONS**

Following their appointment, the Joint Liquidators instructed Fox Lloyd Jones Limited, Chartered Surveyors based in Leeds and Lithgow Sons & Partners Chartered Surveyors based in Middlesbrough, ("the Agents") to value and realise the Company's assets.

The Company's assets have been realised as set out in the table overleaf.

*Dakota House, 25 Falcon Court, Preston Farm Business Park, Stockton on Tees, TS18 3TX  
t: 01642 608588 f: 01642 688063 [www.bwc-solutions.com](http://www.bwc-solutions.com) e: [bwc@bwc-solutions.com](mailto:bwc@bwc-solutions.com)*

BWC is the trading name of BWC Business Solutions LLP, ("the Partnership"). The Partnership is registered in England and Wales and the registered number is OC345372. The registered office of the Partnership is 8 Park Place, Leeds, LS1 2RU. The VAT Registration Number of the Partnership is GB 971 0156 36. Details of the insolvency licensing bodies of the Partnership's Members and Directors are available at [www.bwc-solutions.com](http://www.bwc-solutions.com). Members and Directors acting as Administrators contract as agents of the company over which they are appointed and without personal liability. Members and Directors acting as LPA or Fixed Charge Receivers do so as agents for the mortgagor and without personal liability.

Offices also at: Copthall Bridge House, Station Bridge, Harrogate, HG1 1SP t: 01423 790152 f: 01423 7902968 and 8 Park Place, Leeds, LS1 2RU t: 0113 243 3434 f: 0113 243 5049

<b>Asset Realisations</b>	<b>Estimated to Realise</b>	<b>Realised</b>
	£	£
Fixtures Fittings & Equipment	9,150	10,181
Motor Vehicles	-	1,558
Goodwill	10,000	10,000
Work in Progress	13,780	17,560
Book Debts	117,791	41,754
Cash at Bank	3,239	3,188
Cash Held by BWC Business Solutions	60,223	60,223
Cash Held by Agents	3,120	3,120
Bank Interest	-	17
<b>Totals</b>	<b>217,303</b>	<b>147,601</b>

### **Fixtures, Fittings & Equipment**

As disclosed in the initial report to creditors, a third party made an offer of £1,000 for certain items of equipment. This offer was accepted by the Agents, with the sale completing shortly after the Liquidators appointment.

An offer of £1,200 in respect of further items was received from another third party as detailed later in this report.

On the Agents recommendation the remaining items were sold at auction in order to maximise realisations.

### **Motor Vehicles**

Offers to purchase two of the Company's vehicles for £1,300 plus VAT each, were made by two of the Company's former employees prior to liquidation. On advice of the Agents these offers were accepted. The one remaining vehicle was sold at auction by the Agents.

### **Goodwill**

As disclosed in the initial report to creditors, the Company had a formal contract in place with a Gas Infrastructure Provider, to identify and approve households for gas connections. Prior to liquidation, an offer to purchase this contract was made by a non-connected party for a total of £24,980, encompassing Goodwill, Work in Progress and certain items of equipment. On advice of the Agents this offer was accepted. The sale was completed shortly after liquidation with payment made on agreed deferred terms between May 2016 and August 2016.

### **Work in Progress**

In addition to the WIP realised as detailed in the above paragraph, the Company also had a contract with a National Utility Supplier to provide energy efficient installation measures including energy efficient boiler installations.

As at the date of liquidation in excess of 100 boiler installations were in progress. The Company could not complete this work nor could it invoice part completed works.

The Agents marketed this part of the business for sale, however little interest was shown by those parties identified as being potential purchasers. In any event, legal advice taken by the Company stipulated that the WIP relating to this contract could not be sold to any party other than the NUS.

Following the Liquidators' appointment the NUS completed an audit of all the WIP, which resulted in an offer of £3,150 being made. For the reasons outlined above the Agents recommended acceptance of this offer.

### **Book Debts**

Two of the Company's book debts remain outstanding for payment. Both debtors are disputing that any sums are due, with one debtor advising they have a counter claim. The Company's former director is assisting with the collection of these debts, which involves a thorough review of the Company's electronic records as the primary reason for non-payment are claims that certain work have not been carried out to the requisite standard.

Whilst the Liquidators will continue to pursue these claims, at present the prospects of recovery are uncertain.

### **Cash at Bank**

The attached Receipts and Payments account discloses a receipt of £9,188. However, it was subsequently discovered that the sum of £6,000 was paid in error, as this was due to the company who purchased the goodwill and other assets. I confirm that the sum of £3,188 was the credit balance of the Company's bank account at the date of liquidation.

### **Cash Held by BWC Business Solutions LLP**

The sum of £60,223, representing book debt monies paid to the Company after the date of the board meeting resolving to place the Company into liquidation, was held in the client account of BWC pending the Liquidators' appointment.

### **Cash Held by Agents**

As detailed earlier in this report two of the Company's vehicles were sold to Company employees prior to liquidation. The sum of £3,120, being the sale proceeds was held by the Agents and subsequently paid to the Liquidators following their appointment.

The remaining asset realisations disclosed in the receipts and payments account are self explanatory.

## **INVESTIGATIONS**

The Liquidators' investigations into the Company's affairs have not revealed any potential recoveries that would be of benefit to creditors.

The Liquidators are required to submit a 'Report on the Conduct of Directors' to the Insolvency Service covering all directors who have served in the three years prior to their appointment. This report has been duly submitted. The contents of the report cannot be disclosed to creditors.

## SHARE OF ASSETS FOR UNSECURED CREDITORS ("PRESCRIBED PART")

In accordance with Section 176A of the Insolvency Act 1986 where the Company has granted a floating charge after 15 September 2003, a proportion of the funds subject to the floating charge are set aside for the benefit of the unsecured creditors.

This is calculated as being 50% of the first £10,000 of net property and 20% of net property thereafter subject to a maximum fund of £600,000. Net property is defined as being the realisations from assets subject to the floating charge after costs and after settlement of the preferential creditors' claims.

There is no floating charge over the property of the Company and accordingly there is no "Prescribed Part" payable to unsecured creditors pursuant to Section 176A(2) Insolvency Act 1986

## DIVIDEND DISTRIBUTION

### Summary

A summary of creditors' claims received in this matter is set out in the table below.

<b><i>Creditor Claims</i></b>	<b><i>Per Statement Of Affairs</i></b>	<b><i>Claims Received</i></b>
	<b>£</b>	<b>£</b>
Employee Claims – Preferential	13,147	16,801
Employee Claims – Unsecured	143,215	106,269
H M Revenue & Customs – VAT, PAYE & NIC	75,510	113,594
Director's Loan Accounts	14,160	14,160
Trade Creditors	498,858	551,418
British Telecommunications PLC	100,000	100,000
<b>Total</b>	<b>844,890</b>	<b>902,242</b>

### Preferential Creditors

Preferential claims against the Company were agreed at £16,801 and a dividend distribution of 100p in the £ was paid on 24 January 2017.

### Unsecured Creditors

Notice of an intended dividend distribution was sent to all known creditors on 26 October 2016, requesting that final claims be submitted to the Joint Liquidators by 23 November 2016. In addition, notification of the intended dividend was advertised in the London Gazette on 28 October 2016.

On 30 January 2017, a first interim dividend of 5 pence in the £ was declared and paid to all unsecured creditors.

The quantum and timing of any further dividend is uncertain at present.

## **LIQUIDATION COSTS**

### **Basis of Liquidators' Remuneration**

A Creditors' Guide to Liquidator's remuneration, together with a Statement of Creditors Rights, was sent to all creditors with the papers giving notice of the meetings to place the Company into liquidation.

The first meeting of creditors held on 22 March 2016, resolved that the Joint Liquidators be authorised to draw fees on account on a time cost basis according to the complexity of the work undertaken, at BWC's standard charging rates, in accordance with Statement of Insolvency Practice No 9.

In common with all professional firms, our scale rates increase from time to time over the period of the administration of each insolvency case. Our scale rates have not increased during the course of this administration. A further copy of the Creditors Guide to Fees and Statement of Creditors Rights is attached at Appendix III of this report.

The Liquidators' total time costs to 21 March 2017 in dealing with the liquidation amount to £35,617.50, which equates to 134.00 hours at an average charge out rate of £267.06

Liquidators' fees of £20,000 plus VAT have been drawn in respect of time spent in accordance with the resolution passed at the first meeting of creditors. The average recovery rate to 21 March 2017 has been £149.25 per hour.

A detailed time summary is attached at Appendix II to this report.

### **Statement of Expenses Incurred by the Convening Accountant**

Set fees of £6,000 and £6,000 plus VAT were drawn in respect of assisting the directors in the preparation of the Statement of Affairs and the report presented to the first meeting of creditors, and in convening the meeting of members and creditors respectively following approval of the same by the first meeting of creditors.

### **Statement of Expenses Incurred by the Liquidator**

Liquidators' disbursements in respect of statutory advertising in the London Gazette and insurance have been paid and are reflected in the Receipts & Payments Account attached at Appendix I.

No 'Category 2' disbursements have been drawn by the Joint Liquidator.

The Liquidators have been assisted in their duties by Fox Lloyd Jones, Chartered Surveyors ("FLJ") and Lithgow Sons & Partners, Chartered Surveyors (LSP") FLJ have been paid £4,000, LSP have been paid 1,893 for their fees in valuing the assets and assisting with the disposal of the assets. Their fees were paid on a time costs basis. In addition, FLJ were paid disbursements and expenses of £113.

The Liquidators have also been assisted by Ward Hadaway Solicitors, who have been paid £8,449 for their assistance in advising on the sale of part of the business and drafting the relevant sale & purchase agreement. In addition, the Liquidators were



assisted by Endeavour Partnership LLP who were paid £2,500 for advising on the recovery prospects of one of the Company's book debts. Their fees were paid on a time costs basis.

A fee of £1,000 plus VAT was paid to Read Milburn & Co Chartered Accountants for their assistance in providing payroll information to assist the Liquidators and for producing P45's and other related documents.

Norton Cleaning Services were paid £562 plus VAT in respect of their assistance in clearing the Company's trading premises in order that it could be returned to the landlord in a satisfactory condition.

The sum of £480 plus VAT has been paid to Cornerstone Business Solutions for retrieving relevant data from the Company's servers in order to assist with book debt collection and the provision of information required in respect of the Company's Work in Progress.

Restore plc have been paid £1,463 plus VAT in relation to removing Company records from the trading premises' and the storage thereof.

## **CONCLUSION**

I trust that this report is sufficient for your present purposes; however, should you require any further information, please do not hesitate to contact Mark Pintar.

Yours faithfully



**MARK PINTAR**

For an on behalf of

**MARTYN J PULLIN**

Joint Liquidator

Enc:

**Community Energy Solutions CIC**  
**(In Liquidation)**  
**Joint Liquidators' Summary of Receipts & Payments**

Statement of Affairs £		From 22/03/2016 To 21/03/2017 £	From 22/03/2016 To 21/03/2017 £
	<b>ASSET REALISATIONS</b>		
9,150.00	Fixtures Fittings & Equipment	10,181.08	10,181.08
	Motor Vehicles	1,558.00	1,558.00
10,000.00	Goodwill	10,000.00	10,000.00
13,780.00	Work in Progress	17,560.00	17,560.00
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3,120.00	Cash held by Agents	2,600.00	2,600.00
		<u>153,082.62</u>	<u>153,082.62</u>
	<b>COST OF REALISATIONS</b>		
	Specific Bond	316.80	316.80
	Preparation of S. of A.	6,000.00	6,000.00
	Accountants Fees	1,000.00	1,000.00
	Office Holders Fees	20,000.00	20,000.00
	Creditors' Meeting Costs	6,000.00	6,000.00
	Agents/Valuers Fees	5,892.89	5,892.89
	Agents/Valuers Disbursements	112.60	112.60
	Legal Fees	10,949.27	10,949.27
	Storage Costs	1,463.28	1,463.28
	Statutory Advertising	315.06	315.06
	Refund of Credit Paid in Error	5,975.00	5,975.00
	Other Property Expenses	562.66	562.66
	I.T. Services	480.00	480.00
		<u>(59,067.56)</u>	<u>(59,067.56)</u>
	<b>PREFERENTIAL CREDITORS</b>		
(13,147.00)	Arrears of Wages and Holiday Pay	16,800.61	16,800.61
		<u>(16,800.61)</u>	<u>(16,800.61)</u>
	<b>UNSECURED CREDITORS</b>		
(498,858.00)	Trade & Expense Creditors	27,570.88	27,570.88
(130,738.00)	Pay in Lieu of Notice & Redundancy P	4,689.62	4,689.62
(12,477.00)	Unsecured Arrears of Wages	623.85	623.85
(14,160.00)	Directors Loan Accounts	708.00	708.00
(75,510.00)	H M Revenue & Customs PAYE, NIC	5,677.46	5,677.46
(100,000.00)	British Telecommunications PLC	5,000.00	5,000.00
		<u>(44,269.81)</u>	<u>(44,269.81)</u>
<b>(627,587.00)</b>		<b><u>32,944.64</u></b>	<b><u>32,944.64</u></b>
	<b>REPRESENTED BY</b>		
	Bank 2 Current		25,879.84
	Vat Control Account		7,064.80
			<b><u>32,944.64</u></b>

**COMMUNITY ENERGY SOLUTIONS COMMUNITY INTEREST COMPANY T/A GO WARM  
IN LIQUIDATION**

**Timecosts 22 March 2016 to 21 March 2017**

<b>Note s</b>		<b>Partner Hours £340 - £310</b>	<b>Senior Manager/ Manager Hours £275-£200</b>	<b>Admin &amp; Clerical Hours £190-£75</b>	<b>Total Hours</b>	<b>Average Cost Per Hour</b>	<b>Total Cost</b>
						<b>£</b>	<b>£</b>
1	Admin & Compliance	9.80	25.80	15.10	50.70		11,394.50
2	Planning & Control	30.90			30.90		10,506.00
3	Fixed Charge Assets						
4	Floating Charge Assets	2.60	4.00		6.60		1,950.00
5	Trading						
6	Debt Collection	0.90	11.50		12.40		3,468.50
7	Creditors	3.00	4.00		7.00		2,077.50
8	Employees	0.30	8.00		8.30		1,919.50
9	Meetings & Statutory Duties		6.50		6.50		1,787.50
10	Reports & Statutory Returns		3.00	1.30	4.30		1,052.50
11	Investigations		4.50	2.80	7.30		1,461.50
	<b>Total</b>	<b>47.50</b>	<b>67.30</b>	<b>19.20</b>	<b>134.00</b>		<b>35,617.50</b>

1	Admin and Compliance	Maintenance of cash and estate records, general correspondence, compliance and case reviews, filing, etc.
2	Planning and Control	Case planning, strategy, trading strategy
3	Fixed Charge Assets	Dealing with various actions affecting the disposal of fixed charged assets (properties and goodwill) including sales pack and meetings with potential purchasers. This excludes book debt collection which should be coded as 6.
4	Floating Charge Assets	Dealing with various actions affecting the disposal of floating charged assets (motor vehicles, plant, machinery, office equipment, stock etc) including all correspondence, etc. issued in respect of realising such assets, but excluding book debt collection which should be coded as 6.
5	Trading	Disposal of work in progress, stock and general continuation of the business.
6	Debt Collection	Correspondence with debtors, lawyers, instructing lawyers, collection of outstanding debts, maintaining debtor records.
7	Creditors	Dealing with preferential and unsecured creditor claims.
8	Employees	Dealing with employee claims (preferential and unsecured) and pension matters.
9	Meetings and Statutory Duties	Post appointment formalities. Annual and final meeting of members and creditors
10	Reports and Statutory Returns	Preparation of annual reports, director conduct reports and statutory returns submitted to Companies House.
11	Investigations	Investigation of malpractice by directors before and during liquidation; penalisation of companies and company officers; investigations and prosecutions, investigation into preferences and transactions at an undervalue, wrongful trading etc

**LIQUIDATION - A CREDITORS' GUIDE TO FEES AND STATEMENT OF CREDITORS' RIGHTS****1 Introduction**

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

**2 Liquidation Procedure**

- 2.1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.
- 2.2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation, an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
- 2.3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and a member of The Insolvency Service, an executive agency within the Department of Trade and Industry. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by The Insolvency Service on behalf of the Secretary of State for Trade and Industry. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2.4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An Administrator may also subsequently act as liquidator in a CVL.

**3 The Liquidation Committee**

- 3.1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
- 3.2 The liquidator must call the first meeting of the committee within six weeks of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

**4 Fixing the Liquidator's Remuneration**

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rule 4.127 - 4.127B of the Insolvency Rules 1986. The Rule states that the remuneration shall be fixed either:
- as a percentage of the value of the assets which are realised or distributed or both, or
  - by reference to the time properly given by the liquidator and his staff in attending to matters arising in the insolvency, or
  - as a set amount

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

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

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

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

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

4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## 5 Review of Remuneration

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

## 6 What Information should be Provided by the Liquidator?

### 6.1 When Seeking Remuneration Approval

6.1.1 When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to make an informed judgement as to whether the basis sought is appropriate, having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought. Section 12 of this guide sets out a suggested format for the provision of information;

6.1.2 If any part of the remuneration is sought on a time costs basis, the liquidator should provide details of the minimum time units used and current charge out rates, split by grades of staff, of those people who have been or are likely to be involved in the time costs aspects of the case.

6.1.3 The liquidator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the liquidator or his staff.

6.1.4 If work has already been carried out, the liquidator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstance so the case. Where the proposed charge is calculated on a time costs basis, the liquidator should disclose the time spent and the average charge out rates, in larger cases split by grades of staff and analysed by appropriate activity. The liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the liquidator or his staff.

6.1.5 Details of the charge out rates of staff employed by BWC Business Solutions LLP with effect from 1 May 2012 and previous periods are as detailed over the page.

Staff Grade	1st November 2006 to 31st March 2009	1st April 2009 to 30th April 2012	1st May 2012 Onwards
	£/hr	£/hr	£/hr
Partner	285	310	340
Senior Manager	N/A	250	275
Manager	175	200	220
Assistant Manager	150	175	190
Senior Administrator	110	150	175
Case Administrator	110	150	165
Cashiering	110	150	175
Clerical	50	75	80

### 6.2 After the bases of Remuneration have been Fixed

The liquidator is required to send progress reports to creditors at specified intervals (see paragraph 7.1 below). When reporting periodically to creditors, in addition to the matters specified in paragraph 7.1, the liquidator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the liquidator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate). Where any remuneration is on a time costs basis, the liquidator should disclose the charge in respect of the period, the time spent and the average charge out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge out rates during the period under review, rates should be disclosed by grades of staff, split by the period applicable. The liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the liquidator or his staff.

### 6.3 Disbursements and Other Expenses

6.3.1 Costs met by and reimbursed to the liquidator in connection with the liquidation should be appropriate and reasonable. Such costs will fall into two categories:-

- Category 1 disbursements. These are costs where there is specific expenditure directly referable both to the liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses and equivalent costs reimbursed to the liquidator or his staff.
- Category 2 disbursements. These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the liquidation on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the Liquidator should be prepared to disclose information about them in the same way as any other expenses.

Category 2 disbursements may be drawn if they have been approved in the same manner as the Liquidator's remuneration. The following items of expenditure may be charged to the case (subject to creditors' approval):

- Internal meeting room usage for the purpose of statutory meetings is charged at the rate of £100 per meeting
- Car mileage is charged at the rate of 45 pence per mile.
- Printing/Photocopying is charged at the rate of 10 pence per page
- Storage of books and records (when not chargeable as a Category 1 expense) is charged at the rate of £5 per storage box per annum.
- Destruction of books and records (when not chargeable as a Category 1 expense) is charged at the rate of £3 per box.
- Postage will be charged at the rate of 50 pence for small envelopes and £1.00 for large envelopes (to cover the costs of postage and envelopes)

6.3.2 The following are not permissible:-

- A charge calculated as a percentage of remuneration
- An administration fee or charge additional to the liquidator's remuneration
- Recovery of basis overhead costs such as office and equipment rental, depreciation and finance charges.

#### 6.4 Realisations for Secured Creditors

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

### 7 Progress Reports and Requests for Further Information

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

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

7.2 Pursuant to Rule 4.49E Insolvency Rules 1986, within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expense set out in the report. A request must be in writing and may be made either by a secured creditor or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

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

- The time and cost involved in preparing the information would be excessive, or
- Disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- The liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

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

### 8 Provision of Information – Additional Requirements

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

The information which must be provided is:

- The total number of hours spent on the case by the liquidator or staff assigned to the case,
- For each grade of staff, the average hourly rate at which they are charged out,

- The number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office. The information must be provided within 28 days of receipt of the request by the liquidator, and requests must be made within two years from vacation of office.

## **9 What if a Creditor is Dissatisfied?**

- 9.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.
- 9.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive, he may, provided certain conditions are met, apply to the court
- 9.3 Pursuant to Rule 4 131 Insolvency Rules 1986, application may be made to the court by any secured creditor, or by any unsecured creditor, provided at least 10% in value of unsecured creditors (including himself) agree or he has the permission of the court. Any such application must be made within 8 weeks of the application receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown), the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.
- 9.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the insolvent company.

## **10 What if the Liquidator is Dissatisfied?**

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient, or that the basis used to fix it is inappropriate, he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court, he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. *The court may order the costs to be paid out of the assets.*

## **11 Other Matters relating to Remuneration**

- 11.1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with the scale laid down for the official receivers. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.
- 11.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.
- 11.3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.
- 11.4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator or until a further determination, resolution or court order is made.
- 11.5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.
- 11.6 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

## **12 Provision of Information**

- 12.1 Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases and will be subject to considerations of proportionality. In larger or more complex cases, the circumstances of each case may dictate the information provided and its format
- 12.2 In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are.
- The complexity of the case,

- Any exceptional responsibility falling on the liquidator,
- The liquidators effectiveness,
- The value and nature of the property in question

The information provided will depend upon the basis or bases being sought or reported upon and the stage at which it is being provided. An overview might include:

- An explanation of the nature and the liquidator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome, (if known),
- Initial views on how the assignment was to be handled, including decisions on staffing or sub-contracting and the appointment of advisers;
- any significant aspects of the case, particularly those that affect the remuneration and cost expended;
- the reasons for subsequent changes in strategy;
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting and fee drawing;
- any existing agreement about remuneration,
- details of how other professionals, including sub-contractors, were chosen, how they were contracted to be paid and what steps have been taken to review their fees;
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
- details of work undertaken during the period;
- any additional value brought to the estate during the period, for which the liquidator wishes to claim increased remuneration.

### 12.3 Where any part of the remuneration is or is proposed to be calculated on a time costs basis, request for and reports on remuneration should provide:

- An explanation of the liquidator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. Until 31 August 2013, it was the firm's policy to record time in units of not greater than 15 minutes. With effect from 1 September 2013, the firm's policy changed to record time in units of not less than 6 minutes
- A description of work carried out, which might include:
  - Details of work undertaken during the period, related to the table of time spent for the period,
  - An explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used,
  - Any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make.
- Time spent and charge out summaries, in an appropriate format.

It is useful to provide time spent and charge out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case

The following areas of activity are suggested as a basis for the analysis of time spent.

- |                               |                                   |
|-------------------------------|-----------------------------------|
| • Administration and planning | • Trading                         |
| • Investigations              | • Creditors                       |
| • Realisation of assets       | • Any other case-specific matters |

The following categories are suggested as a basis for analysis by grade of staff:

- |           |                                |
|-----------|--------------------------------|
| • Partner | • Other senior professionals   |
| • Manager | • Assistants and support staff |

The level of disclosure suggested above will not be appropriate in all cases and considerations of proportionality will apply:

- Where cumulative time costs are, and are expected to be, less than £10,000, the liquidator should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case;
- Where cumulative time costs are, and are expected to be, between £10,000 and £50,000, a time and charge out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features);
- Where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted

## 13 Effective Date

This guide applies where a company goes into liquidation on or after 1 November 2011.