

INFORMATION SHEET TO CREDITORS OF A LIQUIDATION REGARDING REMUNERATION

4.49E Creditors' and members' request for further information

- (1) If—
- (a) within the period mentioned in paragraph (2)—
 - (i) a secured creditor, or
 - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
 - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
 - (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)—
 - (i) any unsecured creditor, or
 - (ii) any member of the company in a members' voluntary winding up, makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108.
- (2) The period referred to in paragraph (1)(a) and (b) is—
- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
 - (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case.
- (3) The liquidator complies with this paragraph by either—
- (a) providing all of the information asked for, or
 - (b) so far as the liquidator considers that—
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
 - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information.
- (4) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the court within 21 days of—
- (a) the giving by the liquidator of reasons for not providing all of the information asked for, or
 - (b) the expiry of the 14 days provided for in paragraph (1), and the court may make such order as it thinks just.
- (5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4.131(1B) or 4.148C(2) by such further period as the court thinks just.
- (6) This Rule does not apply where the liquidator is the official receiver.

4.131.— Creditors' claim that remuneration is or other expenses are excessive

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

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

(a) the remuneration charged by the liquidator,

(b) the basis fixed for the liquidator's remuneration under Rule 4.127, or

(c) expenses incurred by the liquidator, is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(1B) The application must, subject to any order of the court under Rule 4.49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4.108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4.49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for hearing, of which he has been given at least 5 business days' notice but which is without notice to any other party. If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

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

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

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

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

(c) an order changing the basis of remuneration;

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

(e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify; and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

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

4.148C Members' claim that remuneration is excessive

(1) Members of the company with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the company, or any member with the permission of the court, may apply to the court for one or more of the orders in paragraph (6) on the grounds that—

(a) the remuneration charged by the liquidator,

(b) the basis fixed for the liquidator's remuneration under Rule 4.148A, or

(c) expenses incurred by the liquidator, is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(2) Application must, subject to any order of the court under Rule 4.49E(5), be made no later than 8 weeks (or 4 weeks when the liquidator has resigned in accordance with Rule 4.142) after receipt by the applicant of the report or account which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

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

(4) If the application is not dismissed under paragraph (3), the court must fix a venue for it to be heard and give notice to the applicant accordingly.

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

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

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

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

(c) an order changing the basis of remuneration;

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

(e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify; and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

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