

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

In The Matter Of BRILLIANT INDEPENDENT MEDIA SPECIALISTS LIMITED (In
Liquidation)
And
In The Matter Of THE INSOLVENCY ACT 1986

7 Rolls Buildings,
Fetter Lane,
London EC4A 1NL

Date: 23/09/2014

Before :
MR REGISTRAR JONES

Between:

(1) ROBERT MAXWELL
(2) ROBERT SADLER
(former joint administrators of
Brilliant Independent Media
Specialists Limited)

Applicants

-and-

(1) TERESA BROOKES
(2) ANDY JONES
(3) JOHN McDERMOTT
(4) GAVIN MOFFAT
(5) MICHAEL WYKES
(Creditors' Committee)

Respondents

Mr Mallalieu at the first hearing and Mr Robins at the second hearing (instructed by
Walker Morris) for the Applicants
Ms Walmisley (instructed by DLA Piper UK LLP) for the Respondents

Hearing dates: 19 November 2013, 10 July and 22 September 2014

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

MR REGISTRAR JONES

MR REGISTRAR JONES:

A) The Application

1. The former Joint Administrators ("the Administrators") of Brilliant Independent Media Specialists Limited (In Liquidation) ("the Company") (also appointed as administrators of other members of its Group) have applied pursuant to Rules 2.106 and 2.108 of the Insolvency Rules 1986 ("the Rules") for the court to fix their remuneration for the period 18 February to 12 August 2012 in the sum of £389,340.50 (reduced from £395,365.50). Rule 2.106 is the Rule relied upon at the hearing.
2. On 22 February 2012 the creditors approved the administration proposals as modified ("the Proposals") and fixed the basis of the remuneration by reference to time properly given. The creditors' committee previously approved fees from 1 December 2011, the date of the appointment by a floating charge holder, to 17 February 2012 in the sum of £180,173 and pre-administration costs of £32,806.91. The committee will not agree the further fees.

B) The Issues

3. The following issues arise from the arguments of the parties:-
 - 3.1 Whether and, if so, to what extent can the Administrators receive remuneration for work carried out if the creditors' committee always made clear that the Company was to move into liquidation as soon as practicable and that investigatory work in particular was to be carried out by the liquidators? ("Issue 1")
 - 3.2 Whether remuneration should be fixed for work which:-
 - (a) fell outside the parameters of the Proposals? ("Issue 2(a)") in particular (but not only)
 - (b) when it was carried out after 31 May 2012 notwithstanding the Proposals provided that *"the Company will move from administration to liquidation within 6 months of the commencement of the administration, or at such earlier time that in the opinion of the joint administrators the purpose of the administration has been achieved* ("the 6 Months Time Limit")? ("Issue 2(b)")

In any event

- 3.3 Whether remuneration can be fixed for work during the period after cessation of the Administrators' appointment on 12 August 2012 when the Company had been placed into creditors' voluntary liquidation and the liquidators requested those services? ("Issue 3")

And (subject to the issues above)

3.4 Whether the joint administrators can justify the remuneration claimed applying Rule 2.106 and "*The Practice Direction: Insolvency Proceedings*" [2012] BCC 265 ("the PD") including the costs incurred in respect of this application? ("Issue 4")

C) Commencement of the Administration

4. This is an administration which saw the Company's business sold in a pre-pack agreement upon the appointment of the administrators on 1 December 2011. The Administrators had been advising the Company on potential insolvency options and restructuring since about February 2011. A marketing exercise during early 2011 had produced only one offer from "*a non-trade related private investor*" (as described in the Proposals). Subsequent attempts to improve the Company's position were unsuccessful and matters worsened as a result of an increasing, potential tax liability relating to a tax avoidance scheme.
5. In late 2011 it was decided to approach a potential purchaser instead of trying a second marketing exercise, which it was thought would have a detrimental effect. Sale negotiations commenced on 21 November, the possibility of a share sale moved to a business and assets sale and the sale completed on 1 December 2011.
6. The subsequent proposals presented to the creditors by the Administrators identified the following creditors:-
 - 6.1. as secured creditors: WH 424 Limited owed £1,054,496; and PNC Business Credit Limited owed £892,362;
 - 6.2. estimated preferential creditors totalling £10,517.00; and
 - 6.3. unsecured creditors totalling £23,905,049.
7. Based upon the directors' statement of affairs the Administrators in their proposals estimated the value of the Company's net property to be £8,268,622 and the prescribed part £600,000. The proposals therefore anticipated the secured and preferential creditors being paid in full and a distribution of about 20p in the £ for the unsecured creditors.

D) The Proposals and The Administration

8. The proposals presented to the creditors on 8 February 2012 (i.e. before modification) envisaged that the Company would remain in administration for such period as the Administrators deemed necessary and appropriate. The one year statutory term would apply with the potential for an out of court 6 month extension and thereafter further extension with permission of the court (see paragraphs 76-78 of Schedule B1). It was anticipated that paragraph 83 of Schedule B1 ("Schedule B1") to the Insolvency Act 1986 ("the Act") (moving to creditors' voluntary liquidation) would be activated as soon as the Administrators were satisfied that they had fully discharged their duties. The Administrators would be the liquidators.

9. That approach proved to be unacceptable and the meeting was adjourned. The creditors wanted the administration to be concluded quickly and for the liquidation under new office holders to commence as soon as possible.
10. On 22 February 2012 the Proposals were approved for an administration with the objective ("the Objective") of achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up without first being in administration.
11. The Proposals to achieve the Objective were (in summary):-
 - 11.1 The 6 Months Time Limit applied (a modification).
 - 11.2 The Administrators would seek to agree creditors' claims generally (Section 8, paragraph 1 of the original proposal).
 - 11.3 The Administrators would fulfil their statutory obligation to report on the conduct of the directors (a statutory requirement and therefore implied and Section 10 of the original proposal) and carry out all other statutory duties (implied);
 - 11.4 Upon the expiry of the 6 Months Time Limit the Company would be placed in to creditors' voluntary liquidation in accordance with paragraph 83 of Schedule B1 and named office holders of PricewaterhouseCoopers would be appointed (a modification);
 - 11.5 There would be no distribution to unsecured creditors (a modification).
12. There was also provision at paragraph 13 of Section 8 of the Proposals for the Administrators:-

"to carry out all other acts that they may consider to be incidental to the proposals above in order to assist in their achievement of the stated purposes of the administration order or any variation thereto". This was expressed to be ((without prejudice to the provisions of Section 14 of the Insolvency Act 1986".

Although an obviously pre-Schedule B1 regime format had not been altered, this was plainly to be a sweep up power to add to the general statutory powers within Schedule 1 to the Act.

13. It is not unusual for proposals to include terms providing for the administrators to investigate and, if appropriate, pursue any claims the company may have in accordance with the powers provided by Schedule 1 to the Act. In this case this was not specified but the Proposals refer to investigations carried out to date. These were described (see Section 10) as:-

"initial assessment of possible actions in relation to the manner in which the business was conducted prior to the administration and potential recoveries for the estate in this respect".

There was also reference to

"discussions with some of the Group's largest creditors who have raised concerns about the conduct of the Directors and their accounting and tax advisers ...".

There followed:-

"This leads us to believe that there is a strong possibility of recovery action being commenced against these parties. At this stage, however, we have not included in our proposals any monetary estimate of a potential claim being pursued.

We are now in discussions with these creditors and our legal advisers about how best to pursue these potential claims."

14. During the course of the administration and the administration of other members of the group issues arose concerning the quantum of the secured debt of WH 424 Limited (see the witness statement of Mr Maxwell dated 7 August 2012). Legal advice was obtained (including from Leading Counsel) and an application for directions issued by the Administrators in this capacity and as administrators of other companies within the group on 10 May 2012.
15. It being obvious the application would not be determined before expiry of the 6 Months Time Limit, the Administrators convened a second creditors' meeting proposing a revision of the Proposals and in particular that the Company would move from administration to liquidation within 28 days after the conclusion of this issue. The revision was rejected by the creditors at that meeting on 29 May 2012.
16. The Administrators did not report the failure to approve the revision to the court under paragraph 55 of Schedule B1 (see *BTR (UK) Ltd, Lavin v Swindell* [2012] EWHC 2398 (Ch)). Nothing turns upon that.
17. The Administrators in their evidence explain they faced issues over concluding the administration. In particular whether their office should end because of the 6 Months Time Limit even though the secured creditors were unpaid and whether funds should be paid into a designated account or handed over to the liquidators upon their appointment. On 18 June 2012 the Administrators applied for directions.
18. On 12 July 2012 a creditor, News International Trading Limited, issued an application for their removal. Around this date the Administrators reached a settlement with WH 424 Limited and began concluding the steps needed in order to end the administration and commence the liquidation. The 18 June application was not pursued. The removal application was withdrawn. The Company was placed into liquidation on 12 August 2012.

E) The Work Done

19. The work carried out during the administration involved (in summary):-

¹ I have been informed that the validity of the charge (upon which the Administrators' appointment depended) was not in issue.

- 19.1 The pre-pack sale for £1.00 but with the purchaser undertaking liabilities in excess of £2.1 million. This was intended not only to preserve the business and maintain employment but also to improve the likelihood of recovering book debts from the Company's debtors. Following sale the Company was left with: around £2.25 million in cash; about £6.6 million book debts; around £680,000 directors' loans; and licence fees of some £150,000.
 - 19.2 Compliance with requirements prescribed by the Act, the Rules and the Company Directors' Disqualification Act 1986 ("the CDDA") including record keeping, meetings, reports and investigations. The Administrators duly reported their CDDA investigations to the Department for Business Innovation and Skills who decided to take no further action against the directors.
 - 19.3 Investigation, litigation and negotiation of the claims of secured creditors.
 - 19.4 Debt collection realising some £6.6 million book debts and £214,000 in repayment of directors' loans.
 - 19.5 Dealing with matters arising from the pre-pack sale including minimising claims, pre-paid orders and employee and landlord claims totalling some £790,000.
 - 19.6 Investigating negligence claims against the Company's professional advisers ("the Negligence Investigations").
20. As stated, fees for their work have been approved: £32,806.91 for pre-administration costs; and £180,173 for time costs up to 17 February 2012. This included payment for work described in the relevant SIP 9 report as (amongst other items): (*Administration and Planning*" £57,266; *CDDA and investigations*" £23,724; *Debt collection*" £27,177.50; *Creditors- Secured*" £6,238.00; *Creditors Others*" £31,379.00; and *Meetings*" £30,334.00.

F) Meetings of the Creditors' Committee and Progress Reports

- 21. It is unnecessary to set out in any detail the matters discussed at the creditors' committee meetings with the Administrators. The minutes show the topics discussed included: distribution to secured creditors; updates concerning the Negligence Investigations; CDDA investigations and SIP 2 investigations into the conduct of the business prior to the administration; the collection of book-debts; recovery of the directors' loan account debt; and the liability owed to HMRC.
- 22. It is equally unnecessary to provide details of the interim progress reports sent to creditors. It is sufficient to observe these dealt with (amongst other matters): book-debts; directors' loans; secured creditors; debt collection and legal fees; CDDA and SIP 2 investigations; HMRC liability; remuneration and disbursements.

G) The Creditors' Committee's Perspective

23. From the perspective of the creditors' committee: the trading of the Company prior to the pre-pack sale and the sale itself needed to be investigated; those investigations should include enquiries into the conduct of the Administrators prior to their appointment as advisers to the Company; and therefore it was always and remains necessary for the investigations to be conducted by other insolvency practitioners. The 6 Months Time Limit was to ensure the Administrators took the practical and administrative steps required to exit the administration after the pre-pack sale as expeditiously as possible in order that the liquidation and those investigations could commence.
24. The creditors' committee therefore assert that it was never envisaged that the Administrators would carry out the vast amount of work for which remuneration is claimed. Their position remains that the Administrators' role should have been limited to the requirements of bringing their appointment to an end and achieving a liquidation in which matters would be fully investigated. They did not want that work duplicated. As a result and taking account of fees already paid totalling over £210,000 (including pre-administration costs), they have refused to agree the remuneration now claimed. This leads to Issue 1 but it is to be noted that the Administrators assert they faced unnecessary hostility from creditors, requiring further work and causing increased costs.

H) Issue 1

25. Issue 1 relies upon the alleged failure of the Administrators to comply with the wishes of the creditors' committee as summarised within paragraphs 23-24 above. I decide this issue in favour of the Administrators.
26. Whilst the views of a creditors' committee should be taken into account during an administration and will frequently be taken as reflecting the views of the creditors as a whole, it is not for the committee to determine how the administration should be conducted. That is a decision for the office holder in performance of the duties and powers Parliament has thought fit to entrust to administrators. The outcome of such decision making, which will be made from time to time on both macro and/or micro bases (as appropriate), will depend upon the office holder's assessment of how best to achieve the purpose of the administration in accordance with the powers conferred upon them by paragraph 59 of Schedule B1 and within Schedule 1 to the Act.
27. It follows that the Administrators may receive remuneration for work carried out even though the creditors' committee always made clear that the Company was to move into liquidation as soon as practicable and that investigatory work in particular was to be carried out by the liquidators. I turn to Issue 2 which asks whether that remains the case if the work fell outside the parameters of the Proposals.

I) Issue 2

11) The Law

28. As to the law that applies to Issue 2:-

28.1 Ms Walmisley for the creditors committee submits that remuneration should be fixed only if, and to the extent, that the work complied with the Objective and the other parameters of the Proposals or was required by other statutory obligations.

28.2 Insofar as it is argued for the creditors committee that the Court otherwise has no jurisdiction to fix remuneration, I accept Mr Robins's contrary submission on behalf of the Administrators.

28.3 The Court's jurisdiction is derived from Rule 2.106. Administrators are entitled to remuneration "*for their services [as administrators]*". Therefore the Administrators are entitled to ask and the court has jurisdiction to fix their remuneration for the whole of the term during which they hold office (see Rule 2.106(1)). That will be from the date of appointment until (subject to Issue 3 below) cessation. In this case that occurred on 12 August 2012 when the Company was placed into creditors' voluntary liquidation.

28.4 However I agree with the main argument relied upon by Ms Walmisley in support of her submission, namely that I should when fixing the remuneration consider and, if appropriate, take into account whether the work was for the purposes of the Objective and within the other parameters of the Proposals or otherwise formed part of the Administrators' duties and responsibilities. If not, I should consider refusing to fix remuneration for such work. That is because:-

- a) Although administrators can exercise statutory powers (including that of sale) at any stage of the administration (see *Re Transbus International Ltd* [2004] EWHC 932 (Ch), [2004] 2 All ER 911), they must prepare proposals which set out how the proposed statutory purpose is to be achieved (paragraph 49 of Schedule B1).
- b) The proposals require the approval of the creditors at an initial meeting to be held as soon as is reasonably practicable and in any event within 10 weeks of the company entering into administration (paragraphs 51, subject to 52, and 53 of Schedule B1).
- c) Once the proposals are approved under paragraph 53 of Schedule B1, paragraph 68(1) of Schedule B1 requires (using the mandatory language of "*shall*") the affairs, business and property of the company to be managed in accordance with the approved proposals. The Administrators' performance of their duties and functions was therefore prescribed by the scope of the Proposals together with any additional statutory duties.
- d) Accordingly the authorities are consistent in their approval of the general approach that the court should normally not override or

authorise administrators to do anything that is contrary to the proposals approved by the creditors².

e) That approach should equally apply when fixing the remuneration.

28.5 However, it follows that it is also relevant to consider and, if appropriate, take account of the jurisdiction that exists to vary the proposals. Plainly it will be relevant if work otherwise falling outside the Proposals could have been authorised under any of the following powers:-

a) Paragraph 68(1) of Schedule B1 permits an administrator to revise the proposals if he does not consider the revisions substantial;

b) Paragraph 68(2) empowers the court to give directions concerning any aspect of his management in the circumstances prescribed by paragraph 68(3) of Schedule B1;

c) Paragraph 55(2) of Schedule B1 pursuant to which the court may make orders in the event of the administrators' proposals being rejected at the original creditors' meeting or where the creditors have failed to approve a revision (see paragraph 55(1) of Schedule B1); and in exceptional cases

d) The inherent jurisdiction of the court to control the insolvency process, even (although obviously this will be extremely rarely) to permit actions or omissions in apparent conflict with the Act (see *Donaldson v O'Sullivan (Official Receiver intervening)* (2008) EWCA Civ 879, [2009] 1 WLR 924 per Lord Justice Lloyd at [41] with whom the other two Court of Appeal Judges agreed.

28.6 It is also right to take account of the fact that the statutory scheme of Schedule B1 requires administrators to perform their functions with the objective of achieving the relevant statutory purpose as quickly and efficiently as is reasonably practicable (see paragraphs 3 and 4 of Schedule B1).

29. I will approach Issues 2-4 accordingly.

12) Applying the Law -Issue 2(a)

30. The starting point is to identify the work authorised by the approved proposals in the context of the work carried out described at paragraph 19 above:-

² See for example the dicta of Mr Justice Knox in *Re Smallman Construction Limited* (1988) 4 BCC 784 and of Mr Justice Neuberger (as he then was) in *Dana (UK) Ltd* [1999] 2 BCLC 239, which continue to be relevant notwithstanding that these cases pre-date Schedule B1. The extant issue whether the court has a residual jurisdiction to give directions under paragraph 68 which depart from the approved proposals and would not be permitted under paragraph 68(3) of Schedule B1 does not affect the continued application of that approach.

- 30.1 The powers of the Administrators conferred upon them by the Act and by the Proposals were to be exercised and therefore their work was to be carried out to achieve the Objective.
- 30.2 To a large extent the Objective had been achieved by the pre-pack sale. Whilst the Proposals included matters such as agreeing creditors' claims, in essence the Administrators were required to carry out a closure exercise to enable the Company to be placed into liquidation and to achieve that within the 6 Months Time Limit (see paragraphs 8-11 above). The scope of their work was limited accordingly and the exit route was to be via paragraph 83 of Schedule B1.
- 30.3 Plainly the work to agree creditors' claims would include work required to identify the sums due to the secured creditor(s). It therefore would involve investigations into the quantum of debt secured subject to the 6 Months Time Limit (dealt with specifically under Issue 2(b) below).
- 30.4 There was no express provision for litigation. However, the Administrators had the power to litigate (see paragraph 5 of Schedule 1 to the Act) provided it would achieve the Objective and subject to the 6 Months Time Limit.
- 30.5 In principle the litigation against WH 424 Limited (see paragraph 14 above) could equally have been pursued in a liquidation and its commencement in an administration would not therefore achieve a better result. However, in practice it is usually not only detrimental to leave such matters in abeyance pending a liquidation but also impractical. The Administrators were empowered to agree claims, the secured creditors wished payment and the dispute needed to be resolved.
- 30.6 There will always be grey areas when deciding whether work will result in a better return and therefore should be carried out. It will not be a black and white scenario with a plain dividing line. The decision will depend upon all the circumstances and involve commercial judgment calls by the office holder in the exercise of his powers.
- 30.7 The court will normally not question the commercial judgments of an administrator. Usually a misunderstanding of law or apparent unfairness or a breach of duty will be required before the court will review such judgments. This approach recognises the intentions of Parliament within the context of an office that often requires commercial judgments to be made in difficult circumstances and often at speed.
- 30.8 It means (subject to considering the application of the 6 Month Time Limit within Issue 2(b) below) it cannot be concluded that the litigation against WH 424 Limited necessarily fell outside the Proposals. No decision can be reached without considering the specific facts applicable to that work within the context of Issue 4 below.
- 30.9 That approach and conclusion equally applies to the Negligence Investigations (see paragraph 19.6 above). Section 10 of the proposals envisaged that some further investigatory work would be carried out, albeit this was not specified in either Section 8 or the modifications. Whilst that left the position unclear,

this (whether intentionally or not) reflects the grey area. In practice it may well have been damaging to recovery for a negligence claim to be left in abeyance for up to 6 months. It cannot be concluded that the litigation necessarily fell outside the Proposals. No such decision can be reached without looking at the specific facts within Issue 4.

- 30.10 Whilst the Proposals do not expressly refer to debt recovery, plainly delays in debt recovery usually lead to a reduced recovery and this work cannot seriously be challenged subject to Issue 2(b) and in any event to the proviso that this should be considered further under Issue 4 if facts arise from which it might be concluded that work could/should have been left to a liquidator.
- 30.11 It is obvious that the work included the normal work required to commence, continue and terminate by liquidation the administration process. It is also rightly accepted that this included the statutory investigatory and reporting obligations. Examples of such work relevant to this application include the duties to: report to creditors; meet with the creditors' committee; keep accounting records; and report under section 7(3) of the CDDA forthwith to the Secretary of State if it appears that the conduct of any director makes him unfit to be concerned in the management of the company. That obligation is supplemented by the Insolvent Companies (Reports on Conduct of Directors) Rules 1996 (SI 1996 No 1909) which also requires a return to the Secretary of State to be made within 6 months of the administration in the prescribed form with respect to (in summary) every director within the 3 years preceding the administration.
31. In my judgment, therefore, applying the law set out at paragraphs 28.4- 28.6 above, the answer to Issue 2(a) is that (subject to Issue 2(b) below) none of the categories of work for which remuneration is sought can be said to necessarily fall outside the Proposals. Any challenge to that effect must be specific and therefore be considered under Issue 4 below.
32. I add for completeness that there has been argument on behalf of the creditors' committee that nothing should have been done during the administration except to move to liquidation because the pre-pack sale had already achieved a better realisation. It was put that the Objective had been achieved even if an even better result could have been achieved because all that was required was a "better" result. This argument falls within the late Professor Dworkin's category of "Humpty Dumpty Arguments". It cannot stand with the terms of the Proposals. It does not address or adequately address the purpose of the proposals as modified which produce the judgment at paragraph 31 above. It therefore need not be considered further.

J) Issue 2(b)

33. The 6 Months Time Limit ended at midnight on 31 May 2012. Ms Walmesley (with particular reliance upon the first witness statement of Teresa Brookes on behalf of the creditors' committee) submits:-

- 33.1 Throughout the administration the creditors' committee reiterated that the creditors wanted the 6 Months Time Limit to be kept. This would enable independent liquidators to investigate: the conduct of the directors including possible wrongful trading; the role and involvement of the Administrators and the secured creditors during 2011; the validity of the security and the amount secured; the role of third party advisers to the Company, in particular its accountants; the pre-pack sale; and the allocation of asset realisations amongst the Company's group.
- 33.2 The Administrators should have foreseen that the dispute with the secured creditor, WH 424 Limited, would not be resolved before the expiry of the 6 Months Time Limit and should not have issued an application for directions on 10 May 2012 (with a first hearing date of 29 May 2012) rather than place the Company into creditors' voluntary liquidation.
- 33.3 The Administrators must or should have appreciated that the creditors would never agree to any revision of the Proposals that extended the 6 Months Time Limit.
- 33.4 The Administrators should not have issued an application to seek the extension of the 6 Months Time Limit after the revision had been rejected. Alternatively they should not have delayed its hearing but applied as a matter of urgency before the applications Judge. This was required of them in the circumstances of the 6 Months Time Limit and also because of the requirement under paragraph 55 of Schedule B1 following that failure to obtain approval of the revision (see *Re BTR (UK) Limited, Lavin v Swindell* [2012] EWHC 2398).
- 33.5 No work should have been carried out after 31 May, the Company should have been placed into liquidation and the Administrators should not be remunerated from that date except to the limited extent that their work was necessary for the purpose of the transformation into liquidation.
34. In my judgment this is an incorrect approach to an application to fix remuneration. A decision that no work should be remunerated after the 6 Months Time Limit purely because it fell outside the terms of that modification would be contrary to the fact that there is jurisdiction to fix remuneration for the whole period of the term of office. The law (as set out at paragraph 28 above) leads to the conclusion that the mere fact that work was carried out after the expiry of the 6 Months Time Limit does not mean the court has no jurisdiction to fix the Administrators' remuneration for that work.
35. Therefore the answer to Issue 2(a) is the same for Issue 2(b). The court needs to look at the specific work and decide in that context whether to fix remuneration taking account, if applicable and to the extent it is relevant, the expiry of the 6 Months Time Limit within the context of the law identified within paragraph 28 above. This is for Issue 4.
36. In reaching that decision I reject the submission that the Administrators should not have: issued the application against WH 424 Limited; or the application for directions to seek the extension of the 6 Months Time Limit after the revision had been rejected;

and that no work should have been carried out after 31 May because the Company should have been placed into liquidation. I do so for the following reasons:-

- 36.1 Mr Robins's submissions justifying the position of the Administrators may be summarised as follows
- a) The Administrators were required to settle claims including those of the secured creditors. By May 2012 the dispute with WH 424 Limited needed to be resolved not only in respect of the Company but also for the other members of the group in administration.
 - b) The Administrators issued the application for directions on 10 May for the group including the Company acting in reliance upon the advice of Leading Counsel. It would have been bizarre for the Company to be excluded from those applying for directions pending its liquidation.
 - c) Furthermore delay was extremely disadvantageous because of the high interest rate terms applicable to the debt.
 - d) The creditors' committee (at the least) did not object to this process at a meeting on 24 May 2012.
 - e) It was reasonable to anticipate that the creditors would approve the revision when the application might be determined substantively by the end of July and the revision included provision for an interim dividend to ensure they were not prejudiced by the inevitable but necessary delay.
- 36.2 It is plain that those submissions and the submissions of Ms Walmesley (see paragraph 33 above) address matters which required the Administrators to exercise a commercial judgment of (see paragraph 30.8 above). During the beginning of May 2012 they had to decide whether to include the Company's dispute with WH 424 Limited within the application for directions made in respect of other members of the group. They chose to do so and to call a meeting to ask for a variation of the proposals.
- 36.3 In reaching that decision they properly acted upon legal advice but it was a commercial decision. Mr Robins is right to stress the disadvantages of continuing interest, the fact that the group companies were taking the same step and the advice of leading counsel.
- 36.4 In my judgment the decision cannot be described as "perverse" and in the context of an application to fix remuneration is one in my judgment which fell within the parameters of their commercial decision making powers.
- 36.5 Whether that justifies the steps taken after 31 May 2012 for the purpose of fixing remuneration will depend upon what those steps were and the circumstances in which they arose when deciding Issue 4.

37. Mr Robins has also submitted that there can be no issue over the 6 Months Time Limit because the Proposals required the Company to be placed into liquidation pursuant to paragraph 83 of Schedule B1 and this could not be done. I disagree.
38. Paragraph 83 provides a procedure which transforms an administration into a liquidation upon the filing and registration of a notice with/by the registrar of companies. This can only occur (see paragraph 83(1)):-
- "(1) ... where the administrator of a company thinks-*
- (a) that the total amount which each secured creditor is likely to receive has been paid to him or set aside for him, and*
- (b) that a distribution will be made to unsecured creditors ..." .*
39. In this case there were always more than enough funds to enable the Administrators to set aside *"the total amount which [the Administrators thought] each secured creditor is likely to receive"* (see paragraph 19.1 above) even if that was to be the maximum sum with future interest. There may have been reason for not doing so (see for example paragraph 110 of the 2nd witness statement of Mr Maxwell) but in principle and practice the Administrators could have achieved the exit strategy required within the 6 Months Time Limit. I therefore do not accept that submission.

K) Issue 3

40. This issue arises because the Administrators carried out work in response to requests from the liquidators to: answer specific enquiries following the handover of files, records and assets; assist in the recovery of the final instalment owed by a director for his loan account debt and in the collection of debt from a trade creditor; assist in identifying overpayments requiring refunds and final reconciliations of the trade debtor position; provide information concerning the settlement with WH424 limited; discuss the intercompany balances; and deal with questions asked by the creditors' committee (see Mr Maxwell's 6th witness statement).
41. Mr Robins submits that this work falls within Rule 2.106. Ms Walmisley submits that this is not "work" but the provision of information in accordance with the former office holders' duties under section 235 of the Act.
42. In my judgment:-
- 42.1 Rule 2.106 applies to remuneration for the services of the administrator *«as such"*. On the face of this wording and taking account of the wording of paragraph (1) as a whole, this is to be construed as referring to services carried out whilst appointed under Schedule B1 to manage the company's affairs, business and property. It should not include services provided after those duties ceased to the company in liquidation.
- 42.2 That construction is consistent with the general thrust of the wording of the Rule as a whole which is aimed at matters arising during and concerning the term of appointment. It is consistent with the underlying intention that matters

of remuneration should be decided by the creditors' committee where possible. That will only occur during the term of appointment of the administrator.

42.3 It is consistent with the statutory scheme that provides for the *"former administrator's"* remuneration and other expenses to be charged upon the assets passed to (in this case) the liquidator (see paragraph 99(3) of Schedule B1). There is no suggestion within paragraph 99 of Schedule B1 that the charge will include remuneration and other expenses incurred after cessation of the appointment.

42.4 The submission of Mr Robins must depend upon paragraph 111 of Schedule B1 applying. It provides:-

"administrator' has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator".

Paragraph 1 of Schedule B1 provides:-

"For the purposes of this Act 'administrator' of a company means a person appointed under this Schedule to manage the company's affairs, business and property".

42.5 The Rules do not define terms concerning the administrators already defined in the Act and plainly paragraph 111 may apply. However, the simple answer to the submission of Mr Robins is that the context of Rule 2.106 (as opposed to the context of his submission) does not require the meaning of administrator to include a former administrator.

42.6 In addition, an extension of Rule 2.106 to events after the cessation of office is sufficiently significantly to require and therefore expect express wording to that effect. That is particularly so both because the Rule on its face is limited to the period of appointment and because there is no express provision for this possibility within the statutory charge provisions. It may also be noted from paragraph 99(3) of Schedule B1 that Parliament is not slow to refer expressly to "former" when that is considered appropriate.

42.7 There is also the point that it is reasonable to conclude that Parliament would have provided express wording if it had been intended to alter the expected position that a liquidator will decide whether to retain and therefore remunerate former administrators for their services and in doing so continue to control the assets available for distribution to creditors.

43. I therefore decide that remuneration cannot be fixed for work during the period after termination of the Administrators' appointment on 12 August 2012 when the Company was placed into creditors' voluntary liquidation and the liquidators requested their services. That is a matter between the Administrators and the liquidators. I turn to Issue 4.

L) Issue 4

L1) Generally

44. The specific points concerning remuneration drawn to the attention of the court by the creditors' committee (which I will bear in mind throughout but which do not restrict my jurisdiction) may be summarised as follows:-
- 44.1 The value of the work carried out was limited in the context of realisations to recoveries from a directors' loan account and book debts.
- 44.2 The Administrators had a conflict of interest when investigating the secured debt which is work that could and should have been carried out by the liquidator.
- 44.3 The time spent upon statutory investigations costing £91,361 was grossly excessive. A short report could have been provided leaving the liquidator to carry out such further investigations as necessary.
- 44.4 The use of a third party debt collection agency should have reduced the Administrators' involvement but does not appear to have done so.
- 44.5 Unsecured creditor claims did not have to be agreed because there would be no distribution to them.
- 44.6 The information provided is an insufficient narrative.
- 44.7 There could and should have been better delegation.
45. In reaching my decision I will apply sub-paragraph (4) of Rule 2.106 which requires me to have regard to: the complexity (or otherwise) of the case; responsibilities of an exceptional kind or degree; effectiveness; and the value and the nature of the property dealt with. It is impractical to refer to these elements when considering each item of work and therefore it is to be taken as read that these matters form a background for my decisions. Overall such regard is to be had on the bases that this is a significant administration in which difficult issues arose and reasonably large sums of money were involved. I will not repeat the summary of value that appears in the evidence in particular at paragraph 16 of the second and 4 of the fourth witness statements of Mr Maxwell. It is sufficient to conclude that the outcome appears to have been a good one financially subject to issues concerning the pre-pack sale and other claims which I obviously do not determine.
46. I will bear in mind and apply the PD and its objective throughout even though it is impractical to set out all its content or continually refer to it. In particular I will approach the information provided by the Administrators from the bases that: the onus is upon them and they must provide full but proportionate particulars; weight is to be given to their professional integrity; but they are not to be given the benefit of the doubt. I will also take into account the fact that the remuneration of an appointee should reflect the value of the service rendered. An appointee is not simply reimbursed for the time expended and cost incurred.

47. I recognise that the task of deciding the proportionality of the information to be provided is not an exact science. As a result during the hearing I allowed further information to be provided upon instructions. However, I observe that it should not be difficult to appreciate when additional information in the form of a narrative is required to provide justification for particular work. For example some activities will be standard, the length of time spent apparently reasonable and little need be narrated. In contrast tasks taking many hours or requiring high cost need to be explained, for example by briefly describing what was involved, why it was necessary and why it took the time it did.
48. The Practice Direction provides plain guidance at paragraph 20.4. A succinct narrative analogous to the narrative within a solicitor's bill should not be expensive or require a disproportionate amount of work. It should be available from attendance sheets kept whilst the work was carried out. I refer to this now because a lack of narrative causes difficulties on a number of occasions in this case.
49. The Administrators rely upon a spreadsheet identifying: the tasks carried out within the relevant phases of the administration; the time the work was carried out, the people involved; the hours each person spent; and the total hours and costs. The spreadsheet does not provide a narrative description or explanation as required by the PD (see in particular paragraph 20.4.2). Insofar as this is provided, it is within the witness statements, the interim progress reports and a vacation of office check list [D/283]. I asked Counsel to ensure that any other exhibited documentation providing a narrative was identified during or by a note after the adjourned hearing. None has been.

L2) Period- [18] 23 February to Midnight on 31May 2012

50. The spreadsheet includes columns for 26 January - 22 February and 23 February - 4 April 2012. There is nothing to identify any work specifically carried out during 18 – 22 February 2012 and the application has proceeded on the basis that the relevant work is in the period from 23 February to midnight on 31 May 2012. Taking the matters summarised under (L1) above into account and addressing the issue of the amount of remuneration which is appropriate and which represents fair and reasonable remuneration which is proportionate for the value of the work properly undertaken in my judgment subject to a final, global overview based upon value is as follows:-

Hourly Rates

- 50.1 The creditors on 29 February 2012 agreed that the remuneration should be calculated at the prevailing hourly rates of Begbies Traynor (Central) LLP. The rates are not challenged and are consistent with the fees previously agreed for the period 1 December 2011 to 17 February 2012. I therefore accept those rates but observe it means that work should have been performed in accordance with the diligence, efficiency and speed that those rates justify. I will bear this in mind throughout.

Phase D -Immediately After Appointment

50.2 I do not understand from the evidence before me why *Task A of Phase D* needed to be carried out during this period when on the basis of the description provided in the schedule the work should have been completed by 18 February. This has not been explained and the benefit of the doubt must not be given to the Administrators. It is an obvious issue for which it would have been proportionate to provide information and integrity does not cure this defect. I do not allow £758.50.

Phase F- Within the First Week

50.3 I accept the fee for the work incurred from 23 February 2012 in respect of *Task C under Phase F* even though it is not work carried out "*within the first week*". I consider it right to accept information provided upon instructions at the hearing explaining this was time for additional investigation and updating including meetings and written submissions. In reaching that decision I rely upon the professional integrity of those concerned (as I will throughout without needing to repeat this) which includes recording the time spent accurately. I allow £1,788.50 and £620.50.

Phase H • Holding The Initial and Adjourned Creditors' Meeting

50.4 When considering *Phase H, Task D* from 23 February 2012 1 question in the context of fair and reasonable remuneration and proportionality the involvement of 3 partners, 1 manager and 1 administrator.

50.5 I understand from information provided during the hearing that different partners dealt with different issues and faced a group of creditors who were very concerned by the circumstances of the insolvency and the pre-pack sale.

50.6 In my judgment, however, it should have been sufficient to brief 2 partners taking into account the attendance of a senior manager. This otherwise ends up as a very expensive meeting. True it is a reasonably large insolvency but the remuneration claimed is disproportionate for the nature of the task.

50.7 Whilst appreciating that the charges include preparation time, I do not consider £13,951 fair and reasonable or proportionate. In reaching that decision I have taken account of paragraph 134 of Mr Maxwell's 2^d witness statement which refers to difficulties with proxies but I do not have issue with there being 2 partners present to deal with that problem. I do not consider it right to justify a 3rd partner on the basis that Mr Mawer is the best person to deal with matters quickly and efficiently because of his forensic experience as the statement seeks to do. If the other partners could not do that, one of them should have been absent. I will reduce it to £10,000 for that reason.

50.8 In reaching my decision I take account of the fact that the Administrators have to justify their remuneration. They have not provided sufficient particulars to do so and the burden of doubt should be held against them. As a result even £10,000 leaves too high a sum because it leaves (say) 13 hours of partner's time and some 9 hours for a senior manager. In the absence of an explanation, that is too much time to be fair reasonable and proportionate. On the basis of the limited information available I award **£8,000** applying the tests identified.

Phase I - Statutory Requirements

50.9 *Task A of Phase I* refers to the preparation and sending of interim progress reports to creditors. There are 2 before me. The first being one sent for the purposes of the meeting held on 29 May and the other being the first 6 month report sent on 18 June 2012. I assume that the costs for this period (i.e. to 31 May 2012) are attributable to the first. I agree that it was reasonable to send it. It is in effect an early first 6 month period ending on 11 not 31 May 2012 but in the circumstances that was appropriate.

50.10 In my judgment the time spent on the preparation of the interim report has not been justified. Mr Boyce, the manager, spent in total 37.7 hours (i.e. excluding the time spent after 31 May). This represents about 1 full week of work based upon a 7 hour day. I understand that the time includes consultation and (apparently) a barrage of telephone calls but that does not explain or justify this amount of time.

50.11 The original proposals (including distribution) took 31.8 hours in total at a cost of £10,738.50 (as agreed and paid). This is in contrast with an interim report *costing* nearly £19,000. Of course they involve different work but the differential is to be noted as a potential reference point. The original proposals included: the standard company information; details of appointment; information explaining the sale of the business and assets; an estimated outcome for creditors; details of remuneration and disbursement charges. To the extent these are referred to in the interim progress report, the additional updating work should not have taken long.

50.12 The main work for the interim report involved (in summary) an explanation of what had occurred, details of remaining assets, a description of what was required to be done and the need for an extension of the period of office. The work required is not to be under-estimated but there was nothing complex, novel or requiring opinion.

50.13 The information should have been collated as the administration was progressing (including for the creditors' committee meetings) for a document that is in template form. There are up dated SIP analyses and narratives which will have taken time but nevertheless I cannot see from the information before me how 1 week can be justified.

³ I do so in the context of fees already agreed for meetings of £30,334.00. I assume there is no duplication.

- 50.14 The time has not been justified, the benefit of the doubt is decided against the Administrators and the conclusion is that the sum sought is not fair, reasonable or proportionate. Doing the best I can with the information available and having read the document, in my judgment 3-4 days at most is fair, reasonable and proportionate.
- 50.15 I will limit the amounts charged for Mr Boyce to £182.50, £620.50 and £8,957.50. I have reached those figures taking into account the involvement of the partners for 10.3 hours. The latter time may be generous but within the margin it is reasonable to allow. I therefore allow **£182.50, £620.50 and £14,077.50.**
- 50.16 *Task B of Phase I*, involved holding subsequent creditors' committee meetings including subsequent correspondence. I was informed during the first hearing that this relates to 3 creditors meetings of 203 hours each with preparation of 10/11 hours each. I have only found minutes for meetings held on 24 April and 24 May 2012 (by telephone). They record that the Administrators attended on both occasions with solicitors. There is no record of a manager or administrator attending.
- 50.17 Having read those minutes, it is apparent the Administrators needed to report on a reasonable number of matters, some of which were not straight forward. In particular Mr Maxwell in his first statement refers to issues over remuneration on both occasions and to subsequent correspondence (paragraphs 4.5 – 4.6⁴).
- 50.18 Nevertheless a total of £25,596.50 needs further justification by narrative. On its face it is not fair and reasonable remuneration which is proportionate to the nature, complexity and extent of this work. Absent that information, taking account of integrity but applying the burden of justification within the context of what I have read, I cannot award that total and applying the tests reduce the remuneration to: **£5,500 and £12,500.** That conclusion is reached taking into account inclusion of subsequent correspondence but without particularisation. If this reduction appears harsh to the Administrators, I draw attention again to paragraph 20.4.2 of the PD and in particular sub-paragraph (1).
- 50.19 *Task C of Phase I* concerns the meeting on 29 May 2012. The fact that the meeting rejected the proposed amendments cannot mean remuneration should not be awarded. The revised proposals and the holding of the meeting required commercial decisions for the Administrators and were not unreasonable steps.
- 50.20 It is with quantum that I raise issue. In my judgment the amount charged sustains my judgment to date that too much time and therefore cost has been incurred in respect of meetings even allowing for the preparation required. 22.1 hours for the senior manager, for example, represents 3 full days (at 7 hours a day) and that is not fair, reasonable or proportionate. A total remuneration of £13,143 has not been justified. In my judgment taking account of the fact that the benefit of the doubt is to be decided against the

⁴ The correspondence referred to under section 6, "*Relationship with the Committee*" does not fall within this category generally and no specific letter has been referred to or relied upon.

Administrators, that cost is far too high to be proportionate, fair and reasonable.

50.21 In the absence of further information, I can only reach a bottom line figure assessment applying the tests. I reduce the sums of £495.00 and £12,648.00 to **£5,000.00**.

Phase J - At the End of the Administration

50.22 In my judgment *Task A of Phase J* should be accepted insofar as it applies to the period currently being addressed. I accept **£878.50** and **£16.00** applying the tests identified.

"CDDA/SIP 2 Investigations"

50.23 The investigations for which remuneration is claimed as described within *Tasks A-D* are CDDA matters rather than falling within the wider scope of SIP 2. Nevertheless the principle that investigations should be proportionate in the circumstances will apply. Mr Maxwell in his second statement emphasises the statutory duty and observes that the CDDA report was filed within 6 months "*despite the complexity of the case*".

50.24 I accept *Task B* - **£513.00** and **£217.00** applying the tests identified.

50.25 *Task C of the "CDDA/SIP 2 Investigations", "Prepare and Submit Report to the Department for Business Innovation and Skills"* involves a total of 79.3 hours at a total cost of £26,820.50 with £1,237.50 being attributable to work before 23 February 2012. This is in addition to £23,724 already approved (see paragraph 20 above).

50.26 The totals are to be contrasted with the SIP 9 report annexed to the 6 month interim report. The time cost for 1 December 2011 to 31 May 2012 is £78,919.00 for "*CDDA and Investigations*" representing 198.50 hours. The reduction from about £79,000 to just over £51,000 has not been explained.

50.27 In any event nor has the 79.3 hours (some 11 days work, albeit involving a number of people). There is no suitable or adequate narrative. I refer again to the PD. At best the final progress report describes the work as "*extensive, wide-ranging and thorough*". I appreciate the confidential nature of the work but if such a large amount of time is used, it has to be justified.

50.28 The hours spent are neither sufficiently nor adequately explained. For example, paragraph 123 of the 2nd witness statement of Mr Maxwell provides no real assistance. It should have been apparent to the Administrators that further information is required and that it would be proportionate to provide it. In the absence of any such information I cannot allow the remuneration asked. It has not been justified and the benefit of doubt lies against the Administrators. Acceptance of the Administrators' professional integrity is not sufficient.

- 50.29 The result is that I can either award nothing or do my best to reach a figure which "feels" right based upon the court's knowledge and experience and the knowledge that the report led to the conclusion that no action should be taken. Awarding nothing would be unfair.
- 50.30 Doing the best I can, allowing for the fact that a large amount of information would have been available from other tasks carried out and taking into account the previous payment and the result (no action being taken), I award £10,000 for this period for preparing and submitting the report. This means total costs of just under £37,000 in the context of some £26,820 having been approved by the creditors previously.

"Directors' Loan Recovery"

- 50.31 Although the Proposals do not specifically refer to recovery of the directors' loan, plainly this is within the powers of the Administrators and pursues the Objective. £27,177.50 was approved by the creditors' committee for earlier work (see paragraph 20 above).
- 50.32 The time spent under *Task A of Directors' Loan Recovery* has not been justified. The work is described as a "*review of supporting Company documents for Directors, loans,*". The need for some 8 hours for partners and some 76 hours for the manager is unexplained.
- 50.33 During the first hearing I was informed this work involved the exercise of deciding whether expenditure incurred by the directors over a 3 year period was genuinely for the purpose of the Company. However, this does not make up for the lack of information concerning the nature and number of the supporting documents and why it took so long to review them.
- 50.34 I was also informed during the first hearing that the directors were difficult to deal with. This moves to Task B, "*meetings with Mr S. Lane and correspondence with Mr S. Price*" for which a total of £9,783 is sought. Even here the information which it is reasonable and proportionate to expect to be provided by way of narrative is absent.
- 50.35 The 6 month interim report refers to recovery of £14,000 from Mr Price without apparent difficulty. The major recovery referred to is £325,000 from Mr Lane. Issues arose and litigation produced a defence and counterclaim. There was obviously significant work carried out under these Tasks and a valuable return. Plainly it would be unfair to make no award for want of information.
- 50.36 I am prepared to accept that this explains the 8 hours spent by the partners for Task A. I cannot accept the 76 hours for the manager without a description of the work undertaken explaining how and why that time was incurred. Proportionality might lead that information to be limited to 1 or possibly 1 1/2 side of A4 paper but this would at least have allowed me to understand the length of time spent.

50.37 The absence of narrative means I can only take a rough and ready approach and will do so combined with my decision in respect of Task B. For that task nearly 20 hours was spent by the partners concerned. The same points concerning the absence of a narrative apply. I will award **£30,000** for this period 2. In my judgment it is a proportionate figure which represents value. I consider it fair, reasonable and proportionate.

PFK/BDO Review

50.38 Task A of the PFK/BDO Review is described as "*internal Meetings to discuss Strategy*". Task B as "*correspondence with PKF/BDO*". The total sought for Task A is £23,473 and for Task B £639.50. This arises in the context of the Administrators having "*engaged the services of BTG Global Risk Partners to carry out a thorough forensic investigation, which included a review of both PFK's and BDO's working papers and files, into the advice the Company received from these organisations. In addition [they] engaged the services of Clarion Solicitors LLP to provide independent legal advice regarding the same and Smith & Williamson Tax LLP*" (see the interim report to 31 May 2012). Those disbursements are not a matter for me but suggest a substantial delegation of work.

50.39 I refer to sub-paragraph 30.10 in which I consider whether this work came within the Proposals (see also paragraph 13 above). I concluded that it may do subject to it being in accordance with the Objective, recognising that this is not a black and white issue and that commercial judgment will be involved. I therefore look for a narrative as to what was done and why it was thought it would produce a better return.

50.40 In his 2nd witness statement Mr Maxwell states that "*potential claims such as this have to be investigated quickly if they are to have the best chance of success, whilst memories are relatively fresh and all documents can be secured. We therefore pressed on with this work and completed the bulk of it by the end of April 2012*" (paragraph 37). This is wholly unspecific. There is no narrative describing and explaining the work, whether as to what it was or specifically as to why it was justified under the Objective. There is a statement that "*the rapid conclusion of investigations that could lead to claims against PKF and BDO in relation to all Group companies produced a better and more efficient outcome for creditors ...*" (paragraph 118 of the 2nd statement) but without any descent to particularity.

50.41 In his 2nd witness statement Mr Maxwell states that steps were taken "*After the creditors' meeting on 22 February we took steps to conclude [investigations into the Company's professional advisers] as quickly as possible so that we could hand over a meaningful work product, in the form of our report, rather than simply stopping work in mid-stream ...*" (paragraph 104).

50.42 This does not explain why the remuneration for 29 December 2011 – 22 February 2012 was in the region of £10,000 and the remuneration from 23 February to 4 April doubled to £20,344.00 with just over £3,000 from 5 April

to 30 May. The information is inadequate and does not justify the remuneration claimed.

50.43 Later in that paragraph Mr Maxwell says *"it would have been damaging to that process for it to be discontinued in a more abrupt manner and then recommenced by a liquidator"*. However, again there is no narrative providing particulars and the doubling of the remuneration is not addressed.

50.44 The Administrators knew this was a contentious area and have chosen not to provide the information plainly required to justify this as work required to achieve the Objective. There is no information to establish and justify that the work was carried out would produce a better return than if left to the liquidators. Nor have they provided information to justify the length of time spent and the amounts consequentially charged. Combining those inadequacies, I will not award remuneration in those circumstances.

50.45 This may be "harsh" in the sense that work might have been handed over to the liquidators which is of value and should produce a better return. However, there is no evidence from which I can conclude this is the case. The claim has to be justified and it has not been.

"Debtor Collections"

50.46 Mr Maxwell in his second statement explains that *"the preservation and collection of debts was a crucial factor in maximising the return to creditors"*. Whilst agents were instructed, he says *"our staff continued to have a significant role to play familiarising themselves with the company's books and records, terms of trading and other matters relevant to debt collection, so they could liaise with the debt recovery agents"*. It also states that it would have been *"extremely disruptive to terminate our role in debt recovery part way through ... in order to hand over to a liquidator and ... would have resulted in duplicated cost and delay"*. Further detail of the work appears at paragraph 126 of Mr Maxwell's second statement.

50.47 I accept that evidence to establish the work achieved a better result during the period with which I am current]y concerned.

50.48 *Task "A"* involved dealings with the third party debt collection agency whose own fees totalled over £300,000. It is to be accepted that their retainer should have reduced the administrators' involvement. For the period in question the amounts charged are: £18,289.50; £3,885.00; £2,823.50; and £3,486.00.

50.49 Information is provided in paragraph 126 of the 2nd witness statement of Mr Maxwell. However it does not explain or justify the hours spent.

50.50 I would have expected a partner to have relatively limited hourly involvement based upon reports received from the agency which would have been reviewed and stream-lined for partnership purposes by a manager. I would not have expected the manager to have had to be involved for so many hours as Mr Boyce was (either generally or taking account the hours spent by the others including the partners).

- 50.51 In those circumstances and in the absence of further information and therefore justification, I award £17,500. That is a realistic, albeit possibly bottom line figure.
- 50.52 As to *Task B*, this relates to a specific debtor for a sum in the region of £750,000. Although there is a paucity of evidence, it is right in this context (and as a balancing exercise taking account of Task A) to assume this raises specific difficulties requiring attention by the Administrators. In those circumstances I will accept their figures and award £4,253.50, £4,927.50 and £1,247.00.

"General Creditors' Correspondence"

- 50.53 *Task A* is "general creditors' correspondence" and the total remuneration up to 31 May 2012 is in the region of just under £60,000. Mr Maxwell spent 36.3 hours, Mr Boyce 72.5 hours and Mr Battye 71.2 hours overall. The total for the period in issue is nearly half, £28,365.
- 50.54 I have no idea from the information available why such a large number of hours had to be spent. I need to know in order to decide whether the correspondence was dealt with proportionately. Reading the Interim Progress Report to 31 May 2012 some of the hours may be attributable to issues arising in respect of Her Majesty's Revenue and Customs and Euler Hermes. A narrative describing the work may have informed the court but there is none.
- 50.55 The sums claimed for the period in question have not been justified. In the absence of explanatory information it cannot be concluded that they are fair, reasonable or proportionate. I will reduce the amount by some 50% to £15,000. This would be a proportionate, fair and reasonable figure in the circumstances of this administration.
- 50.56 *Task C* refers to Google correspondence and Mr Maxwell in his second statement refers to additional investigation work. It was explained to me that there were "*wide requests*" for information by Google Ireland Limited. I have read the correspondence to which I was referred (see paragraph 22 of Mr Maxwell's 2nd statement) but this appears to be pre-proposal correspondence which (in round terms) sets out little more than the information generally known and available. The material provided does not justify the charges of £2,814 and £1,237.50. I will reduce it to £1250.

"Secured Creditors' Claim"

- 50.57 *Task A* is described as: "*Resolution of WH 424 Limited's Secured Claim*". Mr Maxwell in his first statement (paragraphs 5.4- 5.6) states that issues over the validity of a floating charge resulted in the application for directions following failed negotiations, indications the secured creditor would start proceedings and general support from the creditors' committee (see section 5 of his first witness statement). Settlement was eventually achieved and (see paragraph 96 of his 2nd witness statement) payment of £550,000 was agreed by WH 424 Limited in full and final settlement. He attributes the main reason for the

administration not concluding within the 6 Month Time Limit to this dispute (see paragraph 50 of his second statement).

50.58 This work came within the obligation to agree creditors' claims. The total remuneration claimed for the period under consideration is £14,926.50. Here too there is a lack of narrative but I can understand why time and cost would be incurred to that extent, taking into account the amount involved and the settlement achieved. I will allow the sum of £14,926.50 also taking into account the previous agreed work of £6,238.00 (see paragraph 20 above).

"Property Matters"

50.59 *Task A* involves issues concerning leasehold premises. A narrative can be found (I assume) at paragraphs 49 and 79 of Mr Maxwell's second witness statement. The hours spent are modest and I am prepared to accept £1,602.00 and £647.50.

L3) Period - 1 June - 12 August 2012

51. My judgment in respect of Issue 2(b) is that any claim that the work should not be remunerated because it fell outside the Objective and/or proposals (including the 6 Months Time Limit) must be considered with reference to the specific facts. It is convenient to record at this stage that in doing so I take account of: the Proposals (including obviously the Objective); the law identified above; and the rejection by the creditors at the meeting on 29 May 2012 of the proposal that the Company would move from administration to liquidation within 28 days following conclusion of the application for directions in respect of the floating charge created in favour of WH24.
52. Turning to the items claimed:-

Phase 1-Statutory Requirements

52.1 *Task A* is categorised as the preparation and sending of interim progress reports to creditors. I assume from the dates (although this is not expressly stated in evidence) that this refers to the 6 months interim progress report from 1 December 2011 – 31 May 2012 sent after the interim progress report for 1 December 2011 – 11 May 2012. Any difference is therefore attributable to the information for period from 12 to 30 May 2012.

52.2 It might be said this could have been left to the final report had the term of office terminated before 31 July. However, in practice this information would have been included in the final report in any event and insofar as additional costs arose from duplication, as a matter of proportionality this should be ignored.

52.3 The remuneration sought totals £6,716. This represents 15.1 hours of work by Mr Boyce and some additional hours by a partner and by an administrator. The work was plainly required even though it occurred after 31 May 2012 and therefore the 6 Months Time Limit.

- 52.4 I do not have evidence to explain why 15.1 hours of work was required in the circumstances of an existing report up to 11 May 2012. Having read the reports, I cannot accept that the burden is discharged. An explanation is required to justify some 2 full days' work it. I will award **£4,000** as fair, reasonable and proportionate remuneration.
- 52.5 *Task B* refers to holding subsequent creditors' committee meetings (including subsequent correspondence). The total sought is £25,945.50 (£19,078.50 between 31 May and 27 June, £6,093 between 28 June and 25 July and £774 after 26 July) to add to the £25,596.50 sought for the (L2) period which I reduced to £18,000.
- 52.6 The issue whether it is right to grant remuneration when the work was carried out after the expiry of the 6 months time limit falls to be considered in more detail in the light of the work carried out and the resulting cost.
- 52.7 At paragraph 36 above I decided that the Administrators should not be criticised for the application issued on 10 May 2012 and for the subsequent proposed revision to the Proposals. It follows that I should approach this work from the basis that there will have had to be work carried out after the rejection of those proposals despite the 6 Months Time Limit. Nevertheless I will always bear in mind that the creditors rejected the proposed revision and wanted the liquidation to commence.
- 52.8 In his first witness statement Mr Maxwell refers to "*a barrage of correspondence from DLA, first on behalf of the prospective liquidators and latterly on behalf of creditors, coupled with threats of proceedings*".
- 52.9 I have read that correspondence and find myself generally critical of it when the position was relatively straight forward: the Administrators needed to place the Company into liquidation; they were able to do so subject to the issue of the extant dispute with the secured creditor; plainly they could not continue in office if that would take a significant time to resolve but equally plainly they should resolve that dispute if that could be achieved reasonably quickly and without adverse consequences for the liquidation.
- 52.10 In this case the issue was settled and the term of office ceased within 2 months. Subject to considering the specific work, in my judgment it is right to fix remuneration in those circumstances notwithstanding the expiry of the 6 Months Time Limit. I consider that approach to be consistent with the existence of the court's jurisdiction under paragraph 55(2) of Schedule B1 (see paragraph 28.5(c) above). I envisage that the court would have taken a similar approach had directions been obtained by ensuring that orders were made to enable the extant litigation with the secured creditor to be resolved without unduly delaying liquidation.
- 52.11 The solution ought to have unfolded in the context of a dialogue between the Administrators, creditors' committee and proposed liquidators working together. An argumentative and ultimately litigious approach was adopted instead. This caused expensive legal correspondence and litigation was

commenced by one creditor. The difficult issue is whether and, if so, how that should affect the fixing of the remuneration.

- 52.12 Reading in particular pages (by reference to their bundle pagination) B251-266, 295-297, C304-326, 337-345 [346-357 being the same form of letter sent to different parties] and 358-386, my overall conclusion is that the dispute became lawyer led and the majority of expense resulting from the approach I have criticised will have been sustained by disbursements with which I am not concerned.
- 52.13 Nevertheless instructions will have been required and of course the Administrators needed to spend time formulating a strategy. In addition there were direct communications with the creditors' committee (including two telephone meetings) and with other creditors (noting this category does not purport to include the litigation with News International Trading Limited). Those tasks were necessary in the circumstances that existed, not least because the position had to be explained to creditors in reasonable detail by reference to the settlement negotiations that were taking place.
- 52.14 Therefore I will not reduce the remuneration as a result of the criticisms made and indeed am not in a position to do so from the information before me.
- 52.15 In reaching that decision I note from the correspondence that payment of the Administrators' fees was a central issue and raised as a condition of cessation of their appointment. That was unfortunate but I do not consider it significantly affected the length of time before liquidation was achieved or the time spent by the Administrators.
- 52.16 Also unfortunate was an apparent lack of urgency to achieve the winding-up of the Company evident from the solicitor's letter 22 June 2012 (C321) which seems to miss the point that the urgency arises in order to fulfil the terms of the Proposals. However, again it is difficult to find that this added significantly to the Administrators' work or that it materially extended the period of their appointment when settlement was being reached *with* the secured creditor (see C-337, 340, 360 to show this was the case).
- 52.17 I therefore return to the usual tests. The work should be viewed on the basis that further time was used to settle the secured creditors' debt and to carry out other work required to produce a better result than an immediate liquidation in the context of the requirements of the 6 Months Time Limit maintained by the creditors upon their rejection of the revised proposals.
- 52.18 However, I cannot understand from what I have read how the time spent could have amounted to a total period resulting in charges of £25,945.50 for 2 telephone meetings (21 June and 16 July 2012) and correspondence. I have read the evidence in support, the correspondence exhibited, the final progress report and even evidence exhibited which was filed in the News International Trading Limited proceedings (including paragraphs 4.2(1), (12), (17), (20) and 21 of the 1st statement of Mr Maxwell). Nothing there provides any justification for such hours being fair, reasonable or proportionate.

- 52.19 I appreciate that a strategy had to be formulated and presented to the creditors' committee and to specific creditors in correspondence. I also appreciate that insofar as the correspondence came from the solicitors, instructions had to be given. I also appreciate that the situation became contentious (whoever was ultimately to blame). In addition the work under this description became inextricably entwined with settlement proceedings and it may be that work that may have been attributed to the latter falls within this category. Nevertheless from what I have read the Administrators' position was quite straightforward, albeit disputed.
- 52.20 Subject to certain side issues concerning, for example, payment of remuneration, the Administrators' strategy was to complete the settlement negotiations (they were in the best position to know whether and when this could be achieved and it soon became apparent it could be achieved in sufficient time to allow them to cease their office by the end of July) and then place the Company into liquidation. The relevance of this is that whilst that strategy led to long and complicated letters between the lawyers, it is difficult to see why this should have caused the Administrators to spend large amounts of time either upon the meetings or the subsequent correspondence.
- 52.21 Doing the best I can on the limited specific information available but taking into account my understanding of the situation resulting from the general information made available to me, I have in mind a figure of between £10 – 15,000). Based upon integrity and my general experience gathered from the remuneration claimed for the other items, I will award **£15,000**.
- 52.22 As to *task C*, I allow **£92.50** for the preparation of the minutes for the 29 May meeting.

Phase J -At the End of the Administration

- 52.23 Although outside the 6 Months Time Limit, these are items of work that had to be undertaken at some stage in any event. In those circumstances it is right to fix this remuneration.
- 52.24 *Task A* involves VAT and tax completion and I accept **£641.50** and **£774.00**.
- 52.25 *Task B*, is for (*final file reviews - Handover to liquidators*) and totals £28,794. This takes up the substantial majority of the hours recorded of 22.5 hours for a partner, 44 hours for supervising managers, 41.3 hours for administrators and a senior administrator, 1 hour for an assistant manager and 11.2 hours for a junior administrator.
- 52.26 That length of time needs to be justified. The witness statements (for example paragraph 101 of the second witness statement of Mr Maxwell) do not do so. The vacation of office check list [D/283] merely states: "*Review all files to ensure no outstanding matters*". This obviously means the files should be completed and the review is required as a precautionary check. That also follows from the fact that the files will have been kept properly and up to date throughout the administration. It is appreciated that partners should be involved but the review does not require reading each file from cover to cover

and I assume there are lists kept for each file identifying work needed to be done and work done accordingly. I also assume that the files will have been monitored from time to time by the partners during the administration in order to supervise the work carried out.

52.27 I was told there are some 40 boxes of documents but that does not help to identify how much work was reasonably and proportionately required. Applying the tests and following the principle that any element of doubt should be resolved against the appointee (including from a lack of particularity), I award £7500.00 to represent the work required to review up to date files properly kept.

52.28 The total figure for Task C, preparing and sending the final progress reports to creditors, is £11,072. I bear in mind this requires additional work to the interim reports but I have compared the final report with the interim progress report to 31 May 2012. I can find no justification for £11,072. In my judgment the amount of work required to update the information and amend the interim report accordingly should have been about half of the hours charged for. I reduce this to £5,500.

Phase K- Vacating Office

52.29 *Task A* is the final checklist review. This is work that had to be undertaken whether the 6 Months Time Limit was met or not. Taking account of the vacation of office check list (D/283], I allow £2,210.50.

CDDA/SIP 2 Investigation

52.30 *Task C* refers to the preparation and submission of reports to the Department for Business Innovation and Skills. An additional £1,372.00 is sought on top of the sums previously considered. I do not know why and no particulars are provided. In those circumstances it has not been justified and taking into account my judgment in respect of the work between 23 February and 31 May 2012 and the fact it falls outside the 6 Months Time Limit. I reject this claim. The benefit of the doubt is decided against the Administrators.

52.31 *Task D* concerns correspondence with DBIS. The total remuneration sought is £3,863.50. Although the absence of narrative or other particulars is marked (only a sentence or two would have been needed), plainly such correspondence must have been required to answer queries raised. Therefore a figure should be provided. Taking into account integrity but weighed against the need for justification and bearing in mind the consistent concerns over the length of time spent identified above, I will allow £2,000. Although outside the 6 Months Time Limit, it is necessary work.

Directors' Loan Recovery

52.32 *Task A*, a review of supporting Company documents for directors' loans, suffers from a lack of explanation. I do not know why a review was still needed and will therefore not allow the remuneration.

52.33 *Task B*, meetings and correspondence with the directors, totals £1,485. I have already identified a proportionate figure (see paragraph 50.37 above) and that overview required in the circumstances of an absence of justification should include this work. I will not allow the additional remuneration.

Debtor Collections

52.34 Although the 6 Months Time Limit had expired and although it might be said that a liquidation should have been achieved earlier, the reality is that debt collection had to continue. Therefore it is right to fix this remuneration.

52.35 The observations and findings for this task for the period 23 February - 31 May must equally apply. I will therefore take the same approach and reduce *Task A*, for which £3,486, £3,680 and £749.50 is sought, whilst accepting *Task B*.

52.36 I award £5,000 for *Task A* and £1,422.50, £182.50 and £518.00 for *Task B*.

General Creditors' Correspondence

52.37 In my judgment the same approach taken for "*Debtor Collections*" should apply for the same reasons so that remuneration is fixed but subject to the points made for the earlier period.

52.38 In those circumstances I award £5,032.25 for *Task A*.

Secured Creditors' Claims

52.39 A further total sum of £16,906.50 is sought in respect of *Task A* for the resolution of WH424 Limited's secured claim. A lack of narrative is again apparent. However, a total for the period from 29 December 2011 to cessation of just over £31,000 satisfies the tests. Accordingly I accept this claim of £16,906.50 on the basis that it is work that was reasonably required notwithstanding the 6 Months Time Limit. It is a sum I would expect taking into account the general information provided and the result.

Property Matters

52.40 I allowed the sums sought for the period 23 February – 31 May 2012 (£1,602.00 and £647.50) despite the absence of narrative on the basis that the hours spent were modest. A further £2,080.50, £365 and £148 are sought. I know not why but based principally upon proportionality, I will adopt the same approach and fix £2,080.50, £365 and £148.

Litigation Issues

52.41 During the hearing it was explained that the item of work within *Task A*, described as (*Exit from Administration (Court Directions)*) concerned the filing of the application notice for directions. It totals £4,952.50 involving 3 hours for a partner and 9.5 hours for a senior manager.

52.42 I am prepared to accept this sum of **£4,952.50** applying the tests and taking account of the work likely to have been needed as outlined within the Final Progress Report.

L4) Remuneration Application

53. The total amount sought as remuneration for work spent upon this application is £89,637. There is no narrative to justify it. It is plainly disproportionate.
54. In reaching my decision upon a fair, reasonable and proportionate sum for the work incurred I will take account of the following:-
- 54.1 The fact that remuneration needs to be fixed (whether by the creditors' committee, creditors or court) means there should be a software system in place for the purpose of time recording and this should include provision for an appropriate narrative. It should be used as the work is undertaken subject to emergency work making this impractical. No such exception is relied upon here. The time spent on time recording should add little to a day's work proportionately
- 54.2 When remuneration needs to be fixed by the court, that information can be exhibited in the form of a schedule or spreadsheet and/or will form the basis for a witness statement. Whilst time may be required to formulate a narrative to add to or summarise the record, the main information should already be to hand and the time required should be relatively short.
- 54.3 In this case the information provided in the spreadsheet will or should have been generated from the record. In this case no narrative was attached. Although there should have been one as I have explained, its absence means an absence of time spent preparing it.
- 54.4 I do not know if the hours spent include time attributable to the absence of any contemporaneous narrative and the resulting need to identify how time was spent for the purposes of the witness statements. If it they do, then that absence is the fault of the Administrators and such time should not be remunerated.
- 54.5 I accept there will be further work dealing with issues raised in opposition (whether by drafting directly or by giving instructions). Whilst I accept it is not always easy to avoid dealing with each and every matter raised in opposition, I observe that the evidence in this case appears to have spent a lot of time answering matters irrelevant to the application. Indeed that is even recognised in one of the statements but without leading to the decision not to provide the irrelevant answering information. In any event I have no information justifying the hours spent and the evidence frequently did not provide the narrative required (which was also missing from the spreadsheet and other exhibited documents).
55. Looking at this application as a whole and taking account what I have read and the points made above, I would expect a fair reasonable and proportionate figure to be between £5-10,000, no more. In the absence of further information and justification, I

will award **£7,500** subject to hearing any submissions concerning the costs of the application between the parties.

M) Conclusion

56. The total sum fixed above is **£233,147.25**. I have considered whether this sum should be reduced or increased to reflect value on a global approach. The total remuneration will be £413,686.75 excluding £32,806.91 for pre-administration costs. Mr Maxwell in his fourth witness statement draws attention to the liquidators' first progress report and to the facts that they received £6,813,861.98 from the Administrators and themselves incurred time costs of £500,288.
57. In his second witness statement he explains that the total realisations achieved were £9.269 million and that the surplus delivered to the liquidators is likely to provide a dividend of some 30p in the £ for unsecured creditors. He says that over 90% of the outstanding book debts were collected (£6.6 million) and £214,000 obtained from the directors for their loan accounts. In addition he refers to the facts that the Company benefited from the reduction of the secured creditors' claims and other claims against the Company were minimised. These included £612,000 of pre-paid orders and more than £790,000 in respect of employees and landlords.
58. It is also to be remembered, however, that there were significant disbursements. There were fees of over £300,000 for the third party debt collection agencies and I anticipate that the legal fees and the fees for the Negligence Investigations will have been extremely high. Whilst I am not concerned with disbursements as such, they should not be ignored in this context when assessing remuneration against value. The element of value should take account of those disbursements which will have been relevant to recovery.
59. Taking into account the outcome of the administration, the benefit achieved and the decisions above, I conclude that **£233,147.25** is a fair, reasonable and proportionate sum.

Order Accordingly