



OUTER HOUSE, COURT OF SESSION

[2019] CSOH 83

P92/19

NOTE OF LORD BANNATYNE

In the note

THOMAS AULD & SONS LIMITED (IN LIQUIDATION)

for Remuneration

Noters: Ower; Harper Macleod LLP

22 October 2019

Introduction

[1] This matter came before the court in respect to the question of whether the noters' remuneration should be approved in terms of Rule 4.5 of the Insolvency (Scotland) Rules 1986 ("the Rules").

Background

[2] The noters are the joint interim liquidators of Thomas Auld & Sons Ltd ("the company"). By interlocutor of 30 January 2018 a reporter was appointed to examine and audit the accounts of the noters for the period from (1) 2 August 2018 to 4 September 2018 during which time the noters acted as joint provisional liquidator; and (2) 5 September 2018 to 9 October 2018, during which time the noters acted as joint interim liquidators.

[3] In the course of examination of the noters' accounts, the reporter raised a number of queries with the noters. Thereafter he issued a draft report. The draft report made certain criticisms of the work undertaken by the noters. The noters having considered the terms of the reporter's draft report, made representations to the reporter. The reporter in turn commented on these representations.

[4] The reporter's report was subsequently submitted to the auditor, who issued a report on 24 April 2019, reporting that, in his opinion a fee of £93,600 inclusive of VAT represented fair and reasonable remuneration *ad interim* to the noters for their whole work and responsibility for the period from 2 August 2018 until 9 October 2018. He further reported that, to that sum there fell to be added outlays totalling £1,200 inclusive of VAT. This figure is substantially below that claimed by the noters and was in line with the figure finally reported upon by the reporter.

[5] The noters in these circumstances enrolled a motion requesting that the court review the reports of the reporter and the auditors.

Submissions for the noters

[6] The position put forward by Ms Ower in summary was this: the criticisms made by the reporter are unfounded; and that in taking the approach that the reporter had taken in these proceedings he had exceeded his remit as reporter.

[7] Ms Ower first turned in her submissions to the role of a court reporter.

[8] The regulatory framework which governs the role is to be found in the Rules. In particular Rule 4.5 makes provision for the remuneration of a provisional liquidator. The remuneration of a liquidator including an interim liquidator is provided for in Rule 4.32 of the Rules.

[9] In the absence of a liquidation committee, or where dealing with a provisional appointment, the task of fixing remuneration for the liquidator falls to the court.

[10] She submitted that in considering the level of remuneration to which a liquidator is entitled for a particular period, the court is to have regard to the actual work done by the liquidator and the appropriate remuneration for that work. The position was considered by the First Division in the case of *Hyndman v Readman* 2004 SLT 959. That was a case in which a shareholder of the insolvent company challenged a claim for remuneration by the liquidator. One of the complaints made by the shareholder was that the sheriff had erred in excluding from consideration the question of the liquidator's professional competence and an alleged failure to pursue a number of matters. In rejecting this criticism the court observed:

“In any event it became clear during the course of the discussion that the appellant was concerned with a series of complaints that the respondent had failed to pursue a number of matters. However, it has to be borne in mind that the remuneration to which the respondent was found entitled related to the work which had been done by him or on his behalf. It was not concerned with any further work which he might have done. Accordingly these complaints had no bearing on the remuneration which was determined by the sheriff. Whether and to what extent any of these allegations would found a claim, and in particular a claim at the instance of the appellant, is not a matter with which this court is concerned in dealing with the present appeal.”
(See: paragraph 12).

[11] As a matter of practice she submitted the court will usually remit to a reporter and to the auditor for them to report on a suitable figure for such remuneration. However, it is ultimately for the court to be satisfied of the appropriate level of remuneration. As

Lord Glennie observed in *Dempster, petitioner* 2011 SC 243:

“The existing practice is there for a good reason. Often the court holds the balance between the interests of secured and unsecured creditors. The level of fees claimed by liquidators can give rise to concerns, and the court will be astute to guard against the liquidators being rewarded at the expense of unsecured creditors. It will generally wish to examine the claim for outlays and remuneration critically to ensure that liquidators, as officers of the court, are properly remunerated. It cannot

usually do so without some assistance from those used to dealing with questions as to the reasonableness of legal and accountancy fees.”

[12] On the basis of the above authorities Ms Ower submitted: that the purpose of the remit to the court reporter is to provide the court with guidance as to whether or not the fees charged for the work done are appropriate. The court reporter is required to consider whether the work done was necessary and appropriate. He must also consider whether the work was done at an appropriate level. This enables a view to be given on what is an appropriate level of remuneration for the liquidator.

[13] The extent of a court reporter’s remit in cases of this type was considered recently by Lord Bannatyne in the case of *Liquidator of Exchange Trading Ltd*, *Noter* 2018 SLT 710.

Ms Ower submitted that the facts of the case are similar to the present. The court held:

- (1) that the reporter’s remit was not limited to merely checking whether there was documentary evidence supporting the work claimed for; he was required in terms of Rules 4.5(2)(a) and 4.32(8) of the Rules to consider whether the work was reasonably undertaken, and might properly report to the court that work had been unnecessary or inappropriate (see: paragraphs 23 and 24);
- (2) that it was for the reporter to consider issues of technical difficulty and complexity faced by the liquidator, and to advise the court using his experience and expertise that the appropriate level of staff seniority had been applied to various tasks (see: paragraph 25);
- (3) that the reporter was entitled to raise with the court wider concerns regarding the conduct of the liquidation (see: paragraph 29);

- (4) that the court would expect certain matters to be reported as concerns, which, if not reported, would render the court unable to fix a liquidator's remuneration (see: paragraph 31);
- (5) that a liquidator had to be able to exercise his judgment and discretion, and the ambit of the reporter's remit was not such that mere disagreements between reporter and liquidator in respect of a liquidator's course of action should be raised as concerns (see: paragraph 33);

[14] It was Ms Ower's position that the court should follow the approach of Lord Bannatyne and to approve the noter's remuneration at the level sought.

[15] Ms Ower made the following further submissions regarding the task of the reporter: it is not to oversee the conduct of the liquidation in general. He is entitled to bring any concerns that he has regarding the conduct of the liquidation to the attention of the court, to enable the court to consider the reporter's views and consider what the effect, if any, the issues raised ought to have on the level of remuneration sought by the noter.

[16] The reporter's remit is to audit the accounts of the liquidator with a view to determining whether the work undertaken has been properly done. It is not part of his remit to examine, and opine on, the strategy adopted by the liquidator or the commercial decisions made by the liquidator in the exercise of his or her professional judgment. Further, the costs associated with that sort of investigation are significant and ought not to be unnecessarily incurred to the detriment of the creditors of the company in liquidation.

[17] Lastly, Ms Ower submitted that where a reporter raises a concern regarding the conduct of the liquidation it is for the court to determine whether it wishes to be addressed in further detail. The court retains a power, in an appropriate case, to take into account any failings of a liquidator when fixing his remuneration. However, this power should only be

exercised in circumstances where the liquidator's conduct is deserving of strong criticism.

In most circumstances, the appropriate forum for raising any complaint would be in proceedings for misfeasance under section 212 of the Insolvency Act 1986.

[18] Having considered the role of the reporter Ms Ower then turned to the liquidation of the company itself and to highlight certain matters which she submitted were of relevance to the issues before the court.

[19] She reminded the court that the noters were seeking approval of their remuneration and outlays for periods when they acted as joint provisional and interim liquidators. In considering the work undertaken by them during these periods it was important to bear in mind the role undertaken by the provisional and interim liquidators.

[20] First, a provisional liquidator may be appointed where the court considers that it is necessary to maintain and safeguard the assets of the company and maintain the status quo pending a decision being made on whether or not the company should be wound up. The specific functions of the provisional liquidator ought to be set out in the interlocutor appointing him or her. St Clair and Drummond Young *The Law of Corporate Insolvency in Scotland* 4th Edition paragraphs 4-20 describe the position of the provisional liquidator in the following terms:

“His main duty, however, stated above, is to preserve the status quo and to avoid prejudice to the parties. He is therefore not really there to ‘liquidate’ the company as a liquidator proper, and perhaps would be better named a ‘caretaker’. One could not, after all, talk about a ‘provisional executioner’.”

[21] Accordingly a provisional liquidator is expected to safeguard the assets of the company to which he or she is appointed and to avoid prejudice to third parties. There may be circumstances in which a provisional liquidator requires to sell assets of the company, for example if the company continues to trade or if there are perishable items which require to

be dealt with. Nonetheless, he or she acts to preserve the status quo and is not expected to commence the winding up process itself. She then contrasted the position of the provisional liquidator with that of a liquidator: the liquidator's functions are to ensure that the assets of the company are ingathered, realised and distributed in accordance with the provisions of the liquidation. Where the court makes a winding up order the liquidator appointed by the court is the interim liquidator. He is required to call meetings of creditors and contributories within 42 days in order that those parties can vote on the identity of the liquidator. A report is prepared by the interim liquidator and presented to the meeting of the creditors. That report will set out the background to the liquidation, the steps taken by the interim liquidator during his time in office and the further works which he proposes to undertake if he is appointed liquidator.

[22] An interim liquidator will take steps to ingather the assets of the company and will also commence investigations in respect of any challengeable transactions. In every case an interim liquidator will make an initial assessment as to whether there could be any matters that might lead to recoveries for the estate and what further investigations may be appropriate. However, in determining what further investigations are to be undertaken the interim liquidator will bear in mind the requirements that any investigation be proportionate. An interim liquidator would risk criticism if he incurred significant costs investigating matters which resulted in no return to the creditors.

[23] Ultimately the approach taken in any case will be a matter of judgment for an insolvency practitioner. The court will not interfere with the decisions of a liquidator unless the decision is one which no reasonable liquidator properly instructed and advised could have reached (see: *R Edenote Ltd* 1996 BCC 718 at page 722 and *Re Greenhaven Motors Ltd* 1997 BCC 463 at page 469G).

[24] Having looked at the role of the reporter and the nature of the task of the noters she then addressed the criticisms of the reporter.

[25] She began by saying this regarding the noters and their general response to the criticism of the reporter: the reporter's report contains a number of criticisms of the noters' conduct of the liquidation. These are addressed in detail by the noters, first in the document entitled "noters representations on reporter's report and reporter's comments thereon" and in the affidavit of Mr Dounis one of the noters.

[26] She explained that the noters are officers of the court and experienced, respected insolvency practitioners. They have taken very seriously the criticisms made of their conduct and the liquidation of the company.

[27] Moving on Ms Ower made these general observations regarding the reporter's criticisms: in the main they arise out of the reporter's view as to the steps he might have taken, in the event that he had conducted the liquidation of the company. He makes those criticisms on the basis of a "paper exercise", or solely by reference to the noters' file. He has not had the benefit of meeting with the directors of the company. He has not seen the assets, nor dealt with the trading of the business of the company. In considering the strategy most appropriate to the conduct of the liquidation, he is plainly at a disadvantage to the noters.

[28] Beyond that she said this: in any event, the role of the reporter is to provide the court with guidance in respect of the appropriateness of the liquidator's proposed remuneration and outlays. Where, in the course of undertaking that role, the reporter identifies any issue which he considers ought to be brought to the attention of the court, he is entitled, and indeed ought, to bring that issue to the attention of the court. His remit, however, is not to base his consideration of the appropriateness, or otherwise, of the remuneration sought by

the liquidator by reference to the strategy which the reporter would have implemented, had he been appointed the liquidator.

[29] Ms Ower then took the court through the affidavit of Mr Dounis and submitted: on the basis of Mr Dounis' response the reporter's criticisms are ill-founded and that the noters' remuneration should be approved at the sum sought.

Discussion

[30] In respect to the issue of the court reporter's remit I followed the guidance given in my decision in *Liquidator of Exchange Trading Ltd Noter*.

[31] In respect to the specific criticisms of the noter the first detailed one is set out at paragraph 1.2.2A of the reporter's report and relates to valuations.

[32] The first detailed issue raised in this section of the report relates to the noters relying on a valuation prepared for the company prior to the liquidation.

[33] It was accepted by Ms Ower in the course of her oral submissions to the court that in hindsight it may have been better to obtain another valuation and the noters would not follow this course again.

[34] I note the above concession. However, in any event I observe as follows regarding the appropriateness of the use of the above valuation. From paragraph 28 of his affidavit Mr Dounis deals with this issue. I believe having regard to what he says in this section of his affidavit that the use of this valuation could not be described as unreasonable. In particular I note that an independent firm of valuers had been used to prepare the valuation and the valuation had been carried out only shortly prior to the liquidation. Further, I note Mr Dounis' explanation that the sums achieved by the noters on sale were not radically different from any sum which would have been achieved had the course suggested by the

reporter been followed. So far as the issue regarding whether an offer at going concern value should have been obtained or whether break-up value was the relevant valuation I note the explanation of Mr Dounis at paragraph 34 and having regard to this it seems to me that the difference between the reporter and the noters is properly understood a difference of opinion in respect of which two insolvency practitioners could have reasonably come to different views and is no more than that.

[35] The next observation of the reporter is an alleged failure to comply with SIP 13. This SIP addresses the issue of sale of assets to connected parties. In the present case there was such a sale. So far as criticisms of transparency it is accepted by the reporter at page 3 of his report that the noters in their report to creditors stated that there was a sale to a connected party and the basis of that sale, namely: an "asset only offer". This appears to me to be an appropriate degree of transparency. There is then criticism in respect to there being no valuation of stock or other tangible assets. Mr Dounis explains that the stock was perishable and was spread over a significant number of shops. In these circumstances the stock was sold during trading and no valuation of it was undertaken given the cost of carrying out such a valuation. It formed sales and the cash therefrom was secured for the benefit of the estate. This I consider an appropriate approach. So far as other tangible assets Mr Dounis explains at paragraph 35 in respect of the criticism regarding crockery that it belonged to another company. This appears to provide an answer to the point made by the reporter. He also in paragraph 35 gives what I consider to be an appropriate response to the supply of stock by a connected company during the trading period. This was supplied free of charge.

[36] So far as the other criticisms in terms of SIP 13 made by the reporter I would refer to the detailed response of Mr Dounis in his affidavit at paragraphs 40-48 which I believe provide a full and proper answer to the criticisms of the reporter. I believe the points made

by Mr Dounis show broad compliance with the terms of SIP 13. I also particularly note in respect of the reporter's criticisms under this head that the noters placed the sale to the connected party before their firm's internal risk board and sought its approval of the course to be followed. This I think supports the view that the noters were appropriately seeking to ensure that the deal was in the interests of the creditors as a whole and that no proper criticism can be made of them in respect to this issue.

[37] In respect to the question raised by the reporter of how the pension liability was dealt with, there is a detailed discussion of this at paragraph 48 of Mr Dounis' affidavit. It seems to me that this issue was dealt with appropriately by the noters in that the said liability was, as part of the overall deal with the connected party, transferred from the company to one of the group entities, although it was for the reasons explained by Mr Dounis unnecessary for this matter to feature as a condition of sale. I also note the observations of Mr Dounis at paragraphs 122 and 123.

[38] The next detailed chapter in the reporter's report related to the decision of the noters to continue to trade.

[39] The reporter's position in respect of this is set out at paragraph 1.2.3 of his report. In particular the reporter makes the following comment within the said section of his report:

"I wholly appreciate that it is not the role of a reporter generally to comment on strategy however where the implementation of that strategy is demonstrably not in the best interests of the general body of creditors and has not been documented and as far as possible costed in advance, it is appropriate, in my opinion, simply to bring the matter to the attention of the court and this I have done."

[40] I would repeat and seek to emphasise what I previously said in the liquidator of *Exchange Trading Ltd*, *Noter*: that a liquidator has to be able to exercise his judgment and discretion, and the ambit of the reporter's remit is not such that mere disagreements between him and the liquidator in respect of a liquidator's course of action should be raised

as concerns (see: paragraph 33). A question of the strategy followed by a liquidator should only be raised by a reporter where: the reporter is contending that no reasonable insolvency practitioner, properly advised, would have followed that course. A reporter should remember that as observed by Ms Ower in her submissions when commenting on strategy, a reporter by the nature of his task is doing so on the basis of a paper exercise and by reference to the noter's file. He has not had the benefit of meeting with the directors of the company. He has not seen the assets, nor dealt with the trading of the business of the company. In considering the strategy most appropriate to the conduct of the liquidation, he is therefore at a plain disadvantage to the insolvency practitioner.

[41] Having regard to the terms of the reporter's report and the explanation given by Mr Dounis I am satisfied the decision to continue to trade was one which a reasonable insolvency practitioner, properly advised, could have made.

[42] In reaching that conclusion I have in particular had regard to the following:

- In order to protect the creditors against trading losses of which they were aware the noters had an indemnity from Aulds Holdings Ltd in respect of any potential losses together with an undertaking to provide the stock free during the period of trading. This was on file.
- "The trading period provided a period of time to explore and identify potential purchasers for the company as a going concern. This was in order to maximise and secure the best recovery for the creditors." (See: the affidavit of Mr Dounis at paragraph 50).

[43] It seems to me extremely difficult to dispute the statement of Mr Dounis at paragraph 50.

[44] Mr Dounis goes on to say this at paragraph 61 of his affidavit:

"Trading and testing the market allowed the noters to establish the true market value of the business."

[45] Once more I cannot see how the above statement can reasonably be disputed.

[46] Mr Dounis goes on further to explain at paragraph 62 of his affidavit:

“The noters are of a view that a better return was achieved and circa 80 employees were reemployed within the Aulds group. Following the consultation process fewer protective award claims could be submitted against the company.”

[47] Lastly, Mr Dounis comments as follows:

“... the strategy adopted by the noters was in the best interests of the creditors and achieved a better outcome than opposed to a shutdown liquidation.

In particular an enhanced recovery for creditors was achieved rather than the alternative approach which would have been to have closed the business on the date of appointment and sell the assets piecemeal. The reporter is suggesting that the noters acted like no other liquidator would have. This is untrue. The noters as officers of the court acted on information available to them at the time. The strategy adopted was adopted with the intention of securing the best recovery for all creditors.” (See: paragraphs 52 and 53).”

[48] I believe that any criticisms of the noters strategy are unjustified. The noters made a commercial decision and it appears to me that they had clear and appropriate reasons for following this strategic course. The course adopted by them was a reasonable one.

[49] The next detailed chapter of the reporter’s report commences at paragraph 1.2.4 and comments on the lack of paper vouching of sales figures.

[50] Any such lack is explained by Mr Dounis in his affidavit by the use of an instore EPOS system which provided figures directly to the noters and thus paper till receipts were not used. This seems an acceptable explanation for any absence commented on by the reporter.

[51] There was a related complaint in the above section in respect of lack of vouching of payroll figures and unexplained discrepancies between payroll entries and anticipated

payroll figures. Additionally there was an observation made about the use of head office staff.

[52] At paragraph 69 of his affidavit Mr Dounis sets out in detail a reconciliation between the payroll records and the actual sum paid by the noters to staff. The total sum paid from the liquidation account was £197,720.85 and the payroll record show payments of £196,254.22. Mr Dounis explained that the difference between the two may, be explained, by the result of manual adjustments on the payroll records due to issues with timesheets. First, I would observe that the difference in figures does not appear to be substantial and secondly, the explanation given by Mr Dounis for the difference appears entirely plausible. I am of the view that there is nothing of any significance in the criticism put forward by the reporter in respect to this matter.

[53] So far as the lack of records, once more the explanation given by Mr Dounis is that an electronic system (SAGE payroll) was used and electronic summaries were provided to the noters' staff. Beyond that it is explained that a reconciliation was carried out by the noters' staff of employees being paid on each payroll run. I am persuaded that this is an adequate explanation in relation to the reporter's observations and the approach taken to the issue by the noters appears appropriate.

[54] In respect to head office issues Mr Dounis says this: a pro rata sharing was agreed between Aulds Holding Ltd and the company and this was included in the trading account provided to the noters. This seems to me an appropriate approach and an adequate answer to the points raised by the reporter.

[55] The next point raised by the reporter related to a failure by the noters to respond to a telephone call by the reporter. Mr Dounis gives an explanation for this at paragraph 71 of

his affidavit. The failure appears to have resulted from a misunderstanding and requires no further comment on my part.

[56] There appears to have been a wider issue regarding communication between the noters and their staff and the reporter and I will comment on this later in my note.

[57] I now turn to the observations by the reporter regarding financial management and control by the noters. This chapter commences at 1.2.5 of the report: the core of the criticism appears to be this, the noters were not as they put forward in their account involved on a day to day basis in financial management and control.

[58] The noters' response is given in particular at paragraph 82 of Mr Dounis' affidavit where the following is said:

"The noters' staff either attended the head office site or were in daily contact with the head office staff who remained on the company payroll. The staff reported to the noters' staff on a daily basis so as to ensure continuity of the business whilst a purchaser was sought and to allow a cost efficient operation of the business during the period of trade."

[59] This is a fairly short response, however, it appears to me to be an adequate response when looked at in the context of the noters explanation of what was being done in respect of the company as explained throughout Mr Dounis' affidavit.

[60] The next section of criticism relates to realisation of the assets of the company (see: 1.3.2). The first point made relates to the sale of the business and I have already dealt with this issue. There is however a further point made about the recording of these matters.

[61] In their response the noters explain (see: paragraph 84 of Mr Dounis' affidavit) that certain recording issues within the noters firm arose from a change in a system used within the firm (CCH to IPS) and certain mispostings occurred due to this change. These are in the course of being rectified. I believe this provides a proper explanation regarding this matter.

[62] There is a specific criticism made by the reporter regarding how cash at bank was treated by the noters. I accept the noters' response, which is given at paragraph 85 of Mr Dounis' affidavit. This explains how the difference of £50 occurred and how the £50 was in any event included in trade for the day and was thus not missed.. This seems to me an acceptable answer to the point made by the reporter.

[63] Issues are raised by the reporter in respect of two other sums. Mr Dounis comments at paragraph 86 and 87 as to how these issues are being dealt with and I consider that the action being taken by the noters as set out at paragraph 87 is appropriate and how these have been recorded as explained by Mr Dounis is also appropriate. I believe the points raised by the reporter are answered properly.

[64] The next observation of the reporter relates to how "debtors pre-appointment" were dealt with by the noters. Mr Dounis' explanation at paragraph 88 appears to me to answer the points raised by the reporter and I do not intend to further comment on this issue.

[65] There is then an issue raised regarding the debtors control account. A response to this is given at paragraph 89 of Mr Dounis' affidavit. The issue raised by the reporter is one which the noters are aware of and they explain that the matter is in hand and ongoing. I regard this as an adequate response to the points raised.

[66] I now turn to the comments of the reporter as to how sundry realisations have been dealt with by the noters. The noters accept that there have been what are described as "teething allocation" problems arising from the change of system used by their firm to which I earlier referred and these will be resolved during the progress of the liquidation. Once more this appears to be an adequate response to the concerns of the noter.

[67] The next series of comments of the reporter relate to the amount of work done by the noters in respect to creditors.

[68] The noters explain that a large number of employees of the company required to be dealt with and considerable consultation was necessary in order among other things to seek to reduce claims for protective awards which would have increased creditor claims. This together with the other factors referred to in Mr Dounis' affidavit were the reasons for the amount of the time spent on creditors. This I consider is a proper and sufficient answer to the concerns raised by the noter.

[69] The next heading under which comments are made by the noter is: Administration and Planning (see: 1.3.4).

[70] The noters' response to these matters is at paragraphs 93 to 95 of Mr Dounis' affidavit and concentrate on the amount of time required to be spent on this aspect of their work given the key strategic decision to continue trading and thereafter the marketing and sale of the business of the company. Given that that was the strategy which was adopted by the noters I consider that the explanation supports the amount of work undertaken. Overall I consider this as an adequate response to the points raised by the reporter.

Conclusion

[71] The reporter has in the course of his report made a considerable number of criticisms of the noters.

[72] I have considered those criticisms and the full and very detailed response by the noters.

[73] For the reasons I have given, when dealing with the individual criticisms, I believe the noters' explanations satisfactorily answer the observations made by the reporter. I would make three specific points:

- I am persuaded that none of the matters raised by the reporter has resulted in prejudice to any creditors of the company.
- I am satisfied that the noters have carried out the work for which they have claimed remuneration.
- The choice of strategy of the noters I believe could not properly be the subject to criticism by the reporter. It could not be said that it was a strategy no reasonable liquidator, properly instructed and advised would have followed.

[74] It does appear to me that to some extent there has been a breakdown in communication between the noters and the reporter. The noters describe the level of requests by the reporter in relation to the preparation of his report as in their considerable experience “unprecedented”. On the other hand the reporter says that he simply did not get the required level of co-operation from the noters and their staff. This breakdown is very unfortunate. It is not possible for the court to adjudicate on this matter without hearing evidence and that I consider would not be an appropriate course to follow.

[75] The reporter recommends a deduction in the remuneration claimed of approximately £43,000. I am not entirely sure how this has been calculated. To some extent it is based on the criticisms I have gone through in detail above.

[76] Having regard to the views which I have expressed in respect of the criticisms I do not believe that it is appropriate that I should make any deduction arising from these criticisms. Beyond that it appears that the deduction is based to some extent on a disagreement as to the seniority of persons who have dealt with various aspects of the case. There is a very detailed response to these points made between paragraphs 99 and 113 of Mr Dounis’ affidavit. I would make the following observations: it does appear to me that this was a reasonably complicated liquidation (see Mr Dounis’ response at paragraph 127);

having regard to the complexity of the liquidation it appears to me that the level of seniority of employees used in relation to the various aspects of the liquidation was a reasonable one; as regards the rates at which they were charged out, of which there is also criticism, it is correct that these are perhaps at the higher end of market rates. However, having regard to the nature of the noters' firm it appears to me that it cannot be said that these are not appropriate rates and I in particular note that the reporter does not say that they are excessive.

[77] Relative to the approach to the SIP 9 grid I am satisfied that having regard to Mr Dounis' comments at paragraphs 114 to 121 the approach was appropriate.

[78] In light of the above I can see no reason why I am not able to approve the remuneration of the noters as sought without abatement.