Neutral Citation Number: [2025] EWHC 135 (Ch)

Claim Nos: CR-2023-MAN-000819

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF WEJO LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Civil Justice Centre
1 Bridge Street West
Manchester M60 0DJ

Date: 27 January 2025

Before:

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

(1) ANDREW POXON
(2) HILARY PASCOE
(as the Joint Administrators of Wejo Limited)

Applicant

-

- and –

WEJO LIMITED (IN ADMINISTRATION)

Respondent

- -
- -

Asa Jack Tolson (instructed by **Hill Dickinson LLP**) for the **Applicant**
Ian Tucker (instructed by **Willkie Farr & Gallagher (UK) LLP**) for **Securis Investment Partners LLP and others**

Hearing date: 16 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ CAWSON KC:

Contents

Introduction

1. By an application dated 9 August 2024 ("**the Application**"), Andrew Poxon and Hilary Pascoe ("**the Joint Administrators**"), the joint administrators of Wejo Ltd ("**the Company**"), apply for an order that:

   i) Their remuneration and expenses as joint administrators of the Company, and those of Leonard Curtis Legal ("**LCL**"), the Joint Administrators' associate, be fixed by reference to time properly spent by them and their staff in attending to the administration of the Company pursuant to r.18.23 of the Insolvency (England and Wales) Rules 2016 ("**IR 2016**");

   ii) The unpaid pre-administration costs, totalling £361,651.20, be an expense of the administration of the Company and be paid out of the assets thereof pursuant to r. 3.52 IR 2016;

   iii) Each of them be discharged from liability in respect of any action as Joint Administrator immediately upon their appointment ceasing to have effect, pursuant to paragraph 98(2)(c) of Schedule B1 to the Insolvency Act 1986 ("**IA 1986**").

2. The Application was supported by the witness statement of Andrew Poxon ("**Mr Poxon**") dated 8 August 2024 ("**Poxon 1**").

3. At the first hearing of the Application before District Judge Obodai on 7 October 2024, a number of related creditors, namely(1) Securis Investment Partners LLP (2) Securis 1 Master Fund (3) Securis II Fund – SPC, Segregated Portfolio Eight – Non Life and Life and (4) Securis II Fund – SPC, Segregated Portfolio Eleven IST – ILS (together "**Securis**"), appeared by Counsel and opposed the making of the order sought, essentially on the ground that the Joint Administrators had provided insufficient information to enable the court to properly consider the entitlement of the Joint Administrators so far as the pre-administration and post-administration remuneration and expenses were concerned. In consequence, directions were given by

District Judge Obodai providing for the Joint Administrators to be at liberty to file and serve further evidence in support of the Application by 21 October 2024, for Securis to be at liberty to file and serve any evidence in reply by 4 November 2024, and for the Application to be listed to be heard on 16 January 2025.

4. Pursuant to these directions, Mr Poxon made a further witness statement dated 21 October 2024 ("**Poxon 2**"), Alexander Edward David Downer ("**Mr Downer**"), a partner at Securis's Solicitors, Willkie Farr & Gallagher (UK) LLP, made a witness statement dated 4 November 2024, and the Application came on for hearing before me on 16 January 2025.

5. At the hearing on 16 January 2025, as had been the case before District Judge Obodai on 7 October 2024, the Joint Administrators were represented by Asa Jack Tolson of Counsel, and Securis was represented by Ian Tucker of Counsel. I am grateful to them both for their helpful written and oral submissions.

6. At the hearing before me, Securis continued to oppose the making of the order sought by the Joint Administrators, save that the parties are now agreed as to the form of order so far as the Joint Administrators' discharge is concerned, there being common ground that any discharge order should reflect the common practice that *the trigger for discharge be 28 days after the filing of the final receipts and payment account with the Registrar of Companies and discharge should not operate in relation to claims made before that date*.

7. The case raises a seemingly undecided point as to the extent to which, if at all, the court ought to scrutinise the quantum of an administrator's fees estimate delivered to creditors pursuant to r. 18.16(4)(a) when it is asked to determine that the basis for remuneration ought to be fixed by reference to the time properly given by the office-holder and the office-holder's staff in attending to matters arising in the administration on an application brought pursuant to r. 18.23.

8. The case also raises issues as to the level of detail required more generally on applications bought pursuant to r. 3.52 and r. 18.23 IR 2016.

Background and context

9. The background and context to the Application is as follows.

10. The Company processed high-volume vehicle data and analytics, as part of a group of companies registered in various jurisdictions. It was a high-cost business, with the group spending of between US $5m to $10m per month.

11. The group was successful in obtaining funding in excess of $400m, but talks for further funding from a technology investment fund of up to $100m broke down, and a further potential investor pulled out in May 2023, causing cash flow difficulties and meaning that the Company was unable to make its payroll.

12. Notices of intention to appoint administrators were filed on 30 May 2023, 13 June 2023 and 27 June 2023, with the Joint Administrators ultimately being appointed by the directors of the Company pursuant to paragraph 22 of Schedule B1, IA 1986, on 10 July 2023.

13. As at the date of administration, the estimated sums owed to creditors were $104,541,133.50, including the following to secured creditors:

    i) $15.5m to Glas Americas LLC as security trustee for General Motors ('**Glas**');

    ii) Circa $39m to Securis.

14. An issue has arisen between the Joint Administrators and Securis with regard to Securis's priority as a secured creditor, and/or in relation to the assets of the Company to which Securis's security might attach.

15. In the course of the administration, the Joint Administrators sold some of the Company's intellectual property to Jacobs Engineering Group Inc. ("**Jacobs**") for $14m. It is the Joint Administrators' case, relying upon legal advice from two separate firms of Solicitors, that Securis has no claim as a secured creditor on the proceeds of sale from the sale to Jacobs, and the Joint Administrators have used the same in order to make an initial distribution to Glas (as security trustee for GM) of $10,650,000. Further, it is the Joint Administrators' position that realisations and/or likely future realisations are such that no distribution is expected to be made to Securis, either as secured creditor or unsecured creditor.

16. The entitlement of the Joint Administrators to proceed in this way has been challenged by Securis, and Securis has sought further information, yet to be provided by the Joint Administrators, with regard to the subject matter of the sale to Jacobs. However, Securis has yet to commence any form of proceedings, whether for pre-action disclosure or otherwise.

17. Securis has intervened in relation to the entitlement of the Joint Administrators to remuneration and expenses on the basis that it is a secured and unsecured creditor that will be "in the money" so far as any distribution is concerned. As I have identified, this is not accepted by the Joint Administrators. Nevertheless, for the purposes of the determination of the Application it is recognised by both the Joint Administrators and Securis that the issues raised as between them with regard to the entitlement of Securis as secured creditor are not issues that are capable of being determined on the Application, and will require separate further determination if required.

18. Subject to the stand taken by Securis, the only other party with any prospect of any distribution in the administration of the Company is Glas. Glas does not oppose the Application. The Joint Administrators' formal position has been that I should give weight to the view adopted by Glas, and very limited weight to the views of Securis on the basis that it has no tangible interest in the administration of the Company. However, in view of the fact that I cannot, and I am not invited to determine Securis's entitlement, I must, as is accepted by the Joint Administrators, proceed on the basis that Securis *may* have a real interest in the administration, and therefore that the position that it takes cannot be ignored and must be taken into account.

19. The Administrators' period of office initially ran to 9 July 2024. By order dated 13 June 2024, His Honour Judge KC, sitting as a Judge of the High Court, extended the term of office to 9 July 2025.

The Joint Administrators' position in respect of remuneration and expenses

20. The Joint Administrators provided details of their pre-administration costs in their Report and Statement of Proposals dated 1 September 2023. This provided a breakdown of the £361,651.20 now sought, comprising £239,703.20 charged by the Joint Administrators' firm, Leonard Curtis, £1,000 charged by CAM in respect of a review of the Company's physical assets, £95,948 charged by LCL, and £25,000 charged by Hilco in respect of a valuation report of the Company's intangible assets, including intellectual property.

21. A more detailed description of the work carried out by each of the latter was provided at paragraph 9.4 et seq of the report. A more detailed analysis of the Joint Administrators' own costs was provided at Appendix D of the report, showing the major item as being "strategy and purpose of valuation" to which 3,454 units were allotted, and an hourly rate of £657.70 identified. A further breakdown was then provided within Appendix D listing the various tasks in respect of which time recorded had been allotted, but without providing a breakdown as to how much time had been allotted to each task identified therein.

22. So far as post-administration remuneration is concerned, the report dated 1 September 2023 identified, at paragraph 10.5 thereof, that time costs of £205,413.60 had been incurred to 25 August 2023, representing 408 hours at an average hourly rate of £503.46. It was further stated that time costs would continue to be incurred prior to "the seeking of fee approval". Appendix H of this report provided generic information with regard to hourly rates charged by various categories of individual.

23. The Joint Administrators subsequently prepared and circulated to creditors a report dated 9 February 2024 in respect of the period 10 July 2023 to 9 January 2024, described as the Joint Administrators' First Progress Report and Request for Approval of Fees Estimate. Appendix K thereto sought a decision of the creditors that:

    i) "In the absence of a creditors' committee, the remuneration of the Joint Administrators be fixed by reference to time properly spent by them and their staff in attending to matters as set out in the Fees Estimate (for an amount not exceeding £857,984.80)"; and

    ii) "That the unpaid pre-administration costs as detailed in the Joint Administrators' Statement of Proposals totalling £361,651.20 be approved for payment as an expense of the Administration."

24. A breakdown of the fees estimate was provided at Appendix D to the report dated 9 February 2024, identifying as separate categories of work: Statutory and Review; Receipts and Payments; Insurance, Bonding and Pensions; Assets; Liabilities; Landlords; Debenture Holder; General Administration; Appointment; Planning and Strategy; Post Appointment Creditors' Decisions; Investigations; Case Specific; and Pensions Review. Appendix D assigned to each category a number of units, without any further breakdown, a fees estimate total, and an average hourly rate, the total fees estimate total being £857,984.80. Again, generic information was provided with regard to hourly rates charged in respect of particular categories of individual.

25. The report dated 9 February 2024 further identified that time charged by the Joint Administrators for the period of the report amounted to £444,045.60, representing 8,398 units at an average hourly rate of £528.75. A summary of time costs incurred in the period was provided at Appendix C. This listed the number of units incurred, average hourly rate and cost in respect of each of the various categories of work identified in the previous paragraph above. There was then a description of time spent by reference to each category of work, providing a breakdown of the various tasks.

26. At paragraph 7.13 of the report dated 9 February 2024, it was identified that time charged by the Joint Administrators subsequent to the period of the report (10 July 2023 to 9 January 2024) to 4 February 2024 amounted to £43,966.20, bringing total time costs to 4 February 2024 to £488,011.80.

27. The Joint Administrators were unable to obtain the approval sought in respect of both pre-administration and post-administration remuneration and expenses, as had been sought from creditors by the report dated 9 February 2024. It is in these circumstances that the Joint Administrators have had to come to court seeking relief pursuant to r. 3.52 and r. 18.23 IR 2016.

28. The Joint Administrators prepared and circulated a Second Progress Report dated 2 August 2024 in respect of the period from 10 January 2024 to 9 July 2024. The need to make an application pursuant to r. 18.23 IR 2016 was noted at paragraph 7.4 thereof. At paragraph 7.5 thereof it was identified that time charged by the Joint Administrators for the period of the report amounted to £198,008.40, representing 432.9 hours at an average rate of £457.40 per hour. A summary of time costs incurred in the period was, again, set out at Appendix C, together with a more detailed description similar to that provided in the 9 February 2024 report. It was identified that due to what were said to be exceptional complexities of the administration, complex charge out rates were being utilised in line with those set out in Appendix F to the report. Appendix D to the report identified that the total costs incurred to 9 July 2024 were £642,320.30, as against the proposed fees estimate of £857,984.80.

29. The Application was issued on 9 August 2024, shortly after the date of the report dated 2 August 2024.

30. In Poxon 1, at 75 and 76, Mr Poxon stated the Joint Administrators have endeavoured to ensure that all work was undertaken by individuals of appropriate seniority relative to the nature of the work, and that the rates charged by Leonard Curtis are in line with those of its competitors.

31. So far as pre-administration expenses are concerned, over and above the Joint Administrators' previous reports, Mr Poxon provided a more detailed explanation in relation to the work carried out by LCL, albeit not providing any more detail as to individuals involved, or time incurred.

32. So far as post-appointment costs are concerned, at paragraph 82 et seq, Mr Poxon went through each of the categories of work identified above setting out what, as at 4 August 2024, had been incurred in time costs and the percentage of that work carried out by the respective grades of fee earner.

33. Taking by way of example, the category of work described as "Assets", it was stated at paragraph 91 that:

> "As at 4 August 2024, we had incurred £213,108 in time costs. Of this work, 87.60% of the work (287.6 hours) was carried out by those at Director grade, 0.58% (1.9 hours) at Manager grade, 11.42% (37.5 hours) at Senior Administrator grade and 0.4% (1.3 hours) at Administrator grade".

34. The work carried out in respect of this category was then described in 13 sub-paragraphs of descriptions of different items of work. Mr Poxon then stated that the fees estimate anticipated that a further £160,713.70 would be incurred in relation to this category of work, but based on assets likely to be realised, it was anticipated that actual future time costs would be significantly reduced, albeit that additional time costs would be incurred. No particulars were provided as to the extent it was said that it was then anticipated that future time costs would be significantly reduced.

35. Poxon 1 containing a further section, at paragraph 126 et seq, dealing with LCL's costs, Mr Poxon describing LCL as a "separate legal entity which is connected to Leonard Curtis". It was noted, amongst other things, that as at 9 January 2024, LCL had incurred post-appointment costs of £120,000, which exceeded the estimate provided in the report dated 1 September 2023 as a result of a significant number of unexpected matters arising, including issues in relation to the sale to Jacobs. Further, it was stated that, as at 11 July 2024, LCL's costs were £148,152.50, and that it was anticipated that a further £10,000 would be incurred prior to the closure of the administration.

36. In paragraphs 131-134 of Poxon 1, it was asserted that the remuneration and expenses sought to be recovered were fair, reasonable and proportionate.

37. In Poxon 2, Mr Poxon sought to address a number of the issues that had been taken on behalf of Securis leading up to, and at the first hearing of the Application on 7 October 2024.

38. Thus, Mr Poxon exhibited to Poxon 2 an extract of the timesheets for the various fee earners who had carried out work in relation to the administration so as to supplement the information already provided. At paragraph 10, Mr Poxon asserted that: "whilst these timesheet narratives have been necessarily redacted in order to remove reference to any confidential and/or privileged communications, they clearly demonstrate, the categories of work undertaken by the relevant fee earner is identified and the nature of the work undertaken in respect of the entries posted."

39. The format of the timesheets document has been produced is to list in chronological order items of work carried out, identifying the name of the individual carrying out the work, the work type, the work sub-type, the number of units involved, the value thereof, and a short narrative. An example from the first page is: "10-Jul-23 Andrew Poxon Liabilities Secured Creditors 5 344.00 Call with General Motors".

40. In addition, in relation to LCL's costs, Mr Poxon provided details of each of the individuals at LCL who had been concerned in relation to the matter, stating their hourly charge out rate, and their post-qualification experience in years. Mr Poxon

submitted that the charge out rates were commensurate with what was expected to be charged "in such a complex case". At paragraph 13, Mr Poxon sought to correct the observation in Poxon 1 that LCL's costs were £148,152.50 to 11 July 2024, stating that the correct figure was £136,155, the difference being "as a result of a since identified system error." It was stated that LCL's costs as at 7 October 2024 were £139,205. A timesheets document was exhibited, that provided a list of items identifying the date of the item of work carried out, the fee earner, the work type, e.g. "Drafting docs", the units involved and the amount charged. No further narrative was provided. Pre-administration timesheets were erroneously omitted from the exhibit to Poxon 2, but have been subsequently produced, and no complaint has been made in respect of the late production thereof.

41. It is on the basis of the evidence that I have described, which the Joint Administrators maintain is sufficiently detailed, that the Joint Administrators submit that the court should approve the pre-administration costs in the amount of £361,651.20 pursuant to r. 3.52 IR 2016.

42. So far as post-administration remuneration is concerned, it is submitted on behalf of the Joint Administrators that the court should, pursuant to r. 18.23 determine that the Joint Administrators' remuneration be fixed by reference to time properly spent by them and their staff in attending to the administration of the Company, and it is their primary submission that, for this purpose, the court need not, and indeed ought not to scrutinise the fees estimate provided in the report dated 1 September 2023, and the further evidence relating to the same, on the basis that the court is only concerned with the basis for determining remuneration rather than its quantification. Alternatively, in so far as it is necessary to scrutinise the fees estimate, it is submitted on behalf of the Joint Administrators that the evidence provided in support of the Application is sufficient to justify the same.

Securis' position

43. It is Securis's position that when the court is asked, pursuant to r 18.23 IR 2016, to determine whether remuneration should be fixed by reference to time properly given by the office-holder and the office-holder's staff, it will, generally speaking, be required to be satisfied that the fees estimate required pursuant to r 18.16(4)(b) is justified before being able to be satisfied that the renumeration should be so fixed, in particular in circumstances where a significant part of the time costs have already been incurred at the time the court is required to determine the question.

44. Further, it is Securis's position that, in respect of both pre-administration and post-administration costs, the evidence provided by the Joint Administrators is insufficient to enable the court to be so satisfied that the amounts of remuneration and expenses claimed or estimated are justified. The essence of the complaint is that there is no sufficient granularity to allow the detailed consideration necessary for a remuneration application of the magnitude, in terms of the sums claimed, presently before the court. In particular, the point is made that there is no analysis of how and when the relevant work claimed to have been performed, was performed, by whom and at what level. Thus, for example, there is no narrative addressing which particular individuals performed the particular work carried out.

45. Although the timesheet extracts documents that I have referred to have been produced, Securis complains that there is an absence of an evidential nexus between the latter and the work said to have been performed as set out in Poxon 1. Thus, it is said that Securis has been unable, and that the court is now unable to reconcile the fee earners, time units and narrative (to the extent not redacted) referred to in the timesheet documents with the general categories of work and assigned "grade" for that work as referred to in Poxon 1. In short, it is submitted that the timesheet documents simply do not allow a link to be made between the time spent by individuals and the narratives provided.

46. As to LSL's legal fees, it is again submitted that the level of detail is wholly lacking. It is pointed out that the timesheets provided in respect of the work carried out by LSL do not, in any way, comment on the works actually performed, the narratives having been deliberately removed. It is noted that the reason given by the Joint Administrators for this reduction is that advice given to the Joint Administrators is confidential and privileged. However, Securis maintains that this cannot rationally provide a reason for wholly excluding any narrative. Securis complains that the court is, in essence, being asked to assess £235,151 of solicitor costs with, essentially, no information.

47. On this basis, it is Securis' submission that the court should decline to make any order on the Application, at least until sufficient information is provided to properly justify the pre-administration costs sought, and the fees estimate behind the Joint Administrators' contention that the basis of remuneration should be fixed by reference to the time properly given by the Joint Administrators and their staff.

Legal principles

General principles from case law

48. I consider that the starting point to any consideration of the entitlement of the Joint Administrators to remuneration is that as an office-holder, such as an administrator, is a fiduciary, the onus is fairly and squarely on them to justify their entitlement to remuneration and to provide a sufficient and proportionate level of information to explain the remuneration that is sought. In *Brook v Reed* (Practice Note) [2012] 1 WLR 419, the Court of Appeal considered, at some length, the principles to be applied by the court when fixing or approving the remuneration of an office-holder, in that case of a trustee in bankruptcy, and how the relevant principles had developed historically. At [52]-[53], David Richards J (as he then was) said this, under the heading *"Fiduciary status"*:

> "52. The ground of appeal refers also to the fiduciary status of a trustee in bankruptcy. This underpins the proper approach to the remuneration of a trustee or other office-holder. They have no entitlement to any remuneration or other benefit from their position as office-holder, save to the extent expressly permitted by law. This right to remuneration is governed by the Insolvency Rules. In seeking remuneration or claiming it on the basis allowed to them they are under a duty to be frank with the court and creditors and not to advance a claim for any payment beyond that to which they conscientiously consider themselves entitled. It is part of their duty

> to avoid the incurring of unreasonable costs, whether by reference to the task undertaken or the grade of employee who undertakes it.
>
> "53 It is because of their fiduciary position that the onus lies on them to justify their claim: see [*Mirror Group Newspapers PLC v*] *Maxwell* [1998] 1 BCLC 638, 648D-H. Even where the issue comes before the court on a challenge to remuneration drawn on a previously approved basis, it will be for the office-holder to provide a sufficient and proportionate level of information to explain the remuneration and to enable the objector to identify with reasonable precision his points of dispute."

49. Mr Tucker referred to the following further authorities concerning the extent of the requirement on office-holders to justify their remuneration:

i) In *Mirror Group Newspapers PLC v Maxwell & Ors* (supra) at 648F-H, and 649C-D, Ferris J held (emphasis added):

> "Certain more particular consequences follow from what I have said so far. First, officeholders must expect to give full particulars in order to justify the amount of any claim for remuneration. If they seek to be remunerated upon, or partly upon, the basis of time spent in the performance of their duties, they must do significantly more than list the total number of hours spent by them, or other fee-earning members of their staff, and multiply this total by a sum claimed to be the charging rate of the individual whose time was spent. They must explain the nature of each main task undertaken, the considerations which led them to embark upon that task and if the task proved more difficult, or expensive, to perform than to be first expected, to persevere in it. <u>The time spent needs to be linked to this explanation so that it can be seen what time was devoted to each task. The amount of detail which needs to be provided will, however, be proportionate to the case</u>.
>
> …. the test of whether office holders have acted properly in undertaking particular tasks, at a particular cost and expenses and time spent, must be whether a reasonably prudent man, faced with the same circumstances in relation to his own affairs, would lay out or hazard his own money in doing what the office holders have done. It is not sufficient, in my view, for office holders to say that what they have done is within the scope of the duties or powers conferred upon them. They are expected to deploy commercial judgment, not to act regardless of expense. That is not to say that a transaction carried out at a high cost, in relation to the benefit received or even an expensive failure, will automatically result in the disallowance of expenses or remuneration. But it is to be expected that transactions having these characteristics will be subject to close scrutiny."

ii) In *Hunt v Yearwood-Grazette* [2009] EWHC 2112 (Ch), Proudman J emphasised the importance of having proper materials in order to assess the appropriateness of a particular fee, saying at [19]:

> "… Proportionality of information is to be assessed, amongst other things, by reference to the nature and complexity of the extent of the work to be done by the appointee and the value and nature of the assets and liabilities which the appointee will have to deal with or has to deal with."

iii) In *Maxwell v Brookes* [2015] BCC 113 at [46] and [47], ICCJ Jones, when addressing the issue of whether administrators could justify their remuneration on a contested application, expressed matters as follows:

> "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.
>
> 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."

50. The authorities demonstrate that where the required information is not available, the remuneration application is liable to be disallowed, although, adopting a proportionate approach, a broad brush reduction may be appropriate if the court can be satisfied on the evidence before it as to a 'base' or irreducible minimum level of remuneration – see e.g. *Re Friar and another (as joint administrators of Martin Groundland & Co Ltd)* [2011] CSOH 14, per Lord Glennie at [11], applied in *MTA Personal Injury Solicitors LLP* [2023] EWHC 3521 (Ch) at [38]-[39].

Practice Direction

51. Guidance for remuneration applications is found at Paragraph 21 of the Practice Direction: Insolvency Proceedings [2020] BCC 698 ("**the IPD**"):

i) Paragraph 21.1 thereof provides, so far as is relevant, as follows:

> "The objective in any remuneration application is to ensure that the amount and/or basis of any remuneration fixed by the court is fair, reasonable and commensurate with the nature and extent of the work

> properly undertaken or to be undertaken by the office-holder in any given case and is fixed and approved by a process which is consistent and predictable."

ii) Paragraph 21.2 thereof sets out nine '*guiding principles'* including:

a) Justification – "It is for the office-holder who seeks to be remunerated at a particular level and / or in a particular manner to justify their claim. They are responsible for preparing and providing full particulars of the basis for, and the nature of, their claim for remuneration."

b) Benefit of the doubt – this is resolved against the office-holder.

c) Professional integrity – however, the court should have regard to the fact that the office-holder is a member of a regulated profession and an officer of the court.

d) Value of the service rendered – remuneration should reflect the value of the service rendered, not simply reimbursement of an office-holder's time expended and cost incurred.

e) Fair and reasonable – the amount of remuneration should represent fair and reasonable remuneration for the work properly undertaken.

f) Proportionality of information – "In considering the nature and extent of the information which should be provided by an office-holder in respect of a remuneration application to the court, the office-holder and any other parties to the application shall have regard to what is proportionate by reference to the amount of remuneration to be fixed, the nature, complexity and extent of the work to be completed (where the application relates to future remuneration) or that has been completed by the office-holder and the value and nature of the assets and liabilities with which the office-holder will have to deal or has had to deal."

g) Proportionality of remuneration - "The amount and basis of remuneration to be fixed should be proportionate to the nature, complexity and extent of the work to be completed (where the application relates to future renumeration) or that has been completed by the office-holder and the value and nature of the assets and/or potential assets and the liabilities and/or potential liabilities with which the office-holder will have to deal or has to deal, the nature and degree of responsibility to which the office-holder has been subject in any given case, the nature and extent of the risk (if any) assumed by the office-holder and the efficiency (in respect of both time and cost) with which the office-holder has completed the work undertaken."

iii) Paragraph 21.4 sets out what an office-holder is required to provide so far as information is concerned on any remuneration application. Whilst it is necessary to consider paragraph 21.4 in full, it is be noted, in particular, that the applicant is required to provide a narrative description and explanation of:

a) "… the work undertaken or to be undertaken in respect of the appointment; the description should be divided, insofar as possible, into individual tasks or categories of task (general descriptions of work, tasks, or categories of task should (insofar as possible) be avoided)" (paragraph 21.4.1(b)); and

b) "… the reasons why it is or was considered reasonable and/or necessary and/or beneficial for such work to be done, giving details of why particular tasks or categories of task were undertaken and why such tasks or categories of task are to be undertaken or have been undertaken by particular individuals and in a particular manner." (paragraph 21.4.1(c))

IR 2016

52. As to pre-appointment costs, the position is essentially covered by rr. 3.35(10)(a) and 3.36 IR 2016 providing for a statement of pre-appointment costs and expenses to be included in the document containing the proposals put to creditors. Then r. 3.52(1) allows the creditors' committee, and in default creditors, to determine whether and to what extent the unpaid pre-appointment costs set out in the statement of pre-appointment costs should be approved for payment. Rule 3.52(5) allows the administrator to make an application to the court "for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment" where the administrator and the committee (or creditors) do not agree.

53. With regard to post-administration remuneration, the following provisions of the IR 2016 are of relevance:

i) R. 18.16(1) provides that an office-holder is entitled to receive remuneration, and Rules 18.16(2) and (3) provide that the basis of remuneration be fixed on one or more of the following bases:

a) as a percentage of the value of realisations and/or distributions;

b) by reference to the time properly given by the office-holder and the office-holder's staff in attending to matters arising in the administration; or

c) as a set amount.

ii) R. 18.16(4) provides that where the office-holder proposes to take all or part of the remuneration by reference to the time properly given by the office-holder and the office-holder's staff, then the office-holder must prior to the determination of which of the bases set out in r. 18.16(2) are to be fixed, deliver to the creditors a fees estimate, and details of the expenses the office-holder considers will be, or are likely to be, incurred.

iii) Rs. 18.16(8) and (9) then provide as follows:

"(8) The matters to be determined in fixing the basis of remuneration are—

> (a) which of the bases set out in paragraph (2) is or are to be fixed and (where appropriate) in what combination;
>
> (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3);
>
> (c) the amount (if any) to be set under paragraph (2)(c).
>
> (9) In arriving at that determination, regard must be had to the following—
>
> (a) the complexity (or otherwise) of the case;
>
> (b) any respects in which, in connection with the company's or bankrupt's affairs, there falls on the office-holder, any responsibility of an exceptional kind or degree;
>
> (c) the effectiveness with which the office-holder appears to be carrying out, or to have carried out, the office-holder's duties; and
>
> (d) the value and nature of the property with which the office-holder has to deal."

iv) R. 18.18(2) states that it is for the creditors' committee to determine the basis of remuneration. Rule 18.18(3) then provides that if the committee fails to determine the basis for remuneration, then the basis is to be fixed by a decision of creditors.

v) R. 18.23 provides that the administrator must apply to the court if the basis of remuneration is not fixed in accordance with r.18.18, there being a requirement that the administrator must attempt to fix the basis in accordance with rr. 18.18 to 18.20 before applying to the court. Further, an application under r. 18.23 may not be made more than 18 months after the date of the administrator's appointment.

vi) R. 18.30 provides that an administrator must not draw remuneration in excess of the total amount set out in the fees estimate without approval. Where the court has fixed the basis for the payment of remuneration, then the application for approval to exceed the amount provided for by the fees estimate must be made to the court. R. 18.30(3) sets out what the application for approval must specify, including the reasons why the administrator has exceeded, or is likely to exceed the fees estimate.

vii) R. 18.34 allows creditors to challenge remuneration charged or the basis fixed for remuneration, but r.18.34(3) provides that such a challenge:

> "… must be made no later than eight weeks after receipt by the applicant of the progress report under rule 18.3, or final report or account under rule 18.14 which first reports the charging of the remuneration or the incurring of the expenses in question …."

54. Although there are a number of authorities which I will return to in relation to the application of r.18.23, there is no case law as such on the court's approach to Rule 3.52(5) in respect of pre-appointment costs. However, I understand it to be common ground between the parties that, essentially, the same approach is required.

Consideration of the fees estimate in determining the basis for remuneration

55. Mr Tolson's essential submission on behalf of the Joint Administrators is that r. 18.16(2)(b) talks simply in terms of fixing the "basis" of remuneration by reference to time properly given etc., without saying anything with regard to the quantification thereof in contrast to r. 18.16(2)(c) where the remuneration is to be fixed as a set amount. It is on this basis that it is submitted that the court, if required to fix the "basis" of remuneration pursuant to r.18.23 upon the failure of the creditors committee/creditors to do so, need not be concerned to scrutinise the fees estimate provided for by r.18.16(4), but merely with considering whether it is appropriate that the "basis" for remuneration be fixed by reference to time properly given etc.. The point is made by Mr Tolson that if creditors have concerns with regard to the amount of remuneration sought to be recovered, on the basis upon which remuneration is to be fixed, then there is a remedy under r. 18.34.

56. Mr Tolson referred to Mr Tucker's reliance on behalf of Securis upon what was said by Ferris J in *Engel v Peri* [2002] BPIR 961 at [24] –[36] in respect of the apparent absence of express provision within the IR 2016 with regard to the ability of creditors to challenge the quantum of remuneration at this stage absent an application under the then equivalent of r. 18.34, and where Ferris J had referred to the ability of the court, whether under the statutory power to control trustees, or under its inherent jurisdiction, to control remuneration outwith an application under the predecessor to r.18.34. However, Mr Tolson submitted that that was a bankruptcy case where Ferris J had, at [33], specifically identified that a jurisdiction to scrutinise the quantum of remuneration existed under s. 363 of the IA 1986.

57. Further, Mr Tolson referred to the other cases relied upon by Mr Tucker as supporting what he contends ought to be the correct approach to the scrutiny by the court of an administrator's remuneration application, in particular *Re Future Route Limited* [2017] EWHC 3677 (Ch) [24-26], *MTA Personal Injury Solicitors LLP* (supra) and *Maxwell v Brookes* (supra). Mr Tolson made the point that none of these cases are specifically concerned with the question as to whether the court ought to fix renumeration on the basis of time properly given etc., but were each concerned with a different context in which the court was required to scrutinise remuneration, and in particular where the court was being specifically asked to fix remuneration in a particular amount.

58. Notwithstanding Mr Tolson's forceful submissions, I am satisfied that, certainly in the circumstances of the present case, a determination of whether or not the basis of remuneration should be fixed by reference to time properly given etc., cannot properly

be determined without the court scrutinising the remuneration that the Joint Administrators are seeking to recover by reference to their "fees estimate".

59. I reach this conclusion essentially for the following reasons:

i) It strikes me that it would be odd that r. 18.16(4) should, as it does, provide for a fees estimate to be delivered to creditors only in the case where the administrator proposes to take remuneration on the basis set out in r. 18.16(2)(b), if it were not intended that the fees estimate should play some part in the creditors' committee/creditors' decision-making process, and, in default of a decision on the part of the creditors' committee/creditors, in the decision-making process of the court. Consequently, it seems to me that the creditors' committee/creditors would be entitled to scrutinise the fees estimate in deciding whether to agree with the administrator and fix the basis for remuneration on a time costs basis, if asked to do so, and in default of agreement on the part of the creditors' committee/creditors, it would be incumbent upon the court to consider the fees estimate in a proportionate way with a view to protecting the interests of creditors.

ii) The fees estimate has real significance given that the administrator is not entitled to draw remuneration in excess of the total amount set out therein without approval of the creditors' committee/creditors or the court – r. 18.30(1) and (2).

iii) There is no provision providing for creditors or others to subsequently challenge the fees estimate once the basis for remuneration has been fixed, either by the creditors' committee/creditors or the court. R. 18.34 does not seem to me to provide an adequate remedy in circumstances such as the present where the court is required to fix the basis for remuneration. In these circumstances, the time periods provided for by 18.34(3) do not make a great deal of sense, and I note that the ability to challenge the basis for remuneration fixed under 18.34(1)(b) does not extend to the situation where the basis for remuneration is fixed by the court under r. 18.23.

iv) In fixing the basis for remuneration, including as to whether the basis ought to be that provided for by r 18.18(2)(b), r. 18.18(9) provides that regard is to be had to matters such as the complexity of the case, responsibilities of an exceptional kind or degree, and the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties. It seems to me that, certainly in a case such as the present, regard could not properly be had to such matters without scrutiny of the fees estimate, in particular in a case such as the present where the majority of the work has already been done.

v) In *Engel v Peri* (supra), Ferris J, at [24], spoke in terms of the assumption behind the forerunner to r. 18.18(2) appearing to be that the only decision which needed to be made by creditors was to choose between a percentage basis and a time spent basis, and that the rules did not appear to give creditors a voice in matters such as appropriate charging rate and how much time it was reasonable for the trustee and members of his staff to spend in attending to relevant matters, except by application for the remuneration to be reduced under the forerunner to r. 18.34. It was in these circumstances that Ferris J had

to consider whether there might be some other jurisdiction under which the remuneration charged might be challenged. However, in circumstances where an administrator is required to provide a fees estimate, the creditors' committee/creditors, and in default the court, does, it seems to me, have a voice in that, if dissatisfied with the fees estimate, it is open to them to decline to approve the basis of remuneration to be fixed on a time costs basis unless and until satisfied as to the detail to support the fees estimate. Likewise, if there is no decision of the creditors' committee or the creditors, and the court is required to consider the basis upon which remuneration is to be fixed.

vi) The ability to scrutinise the fees estimate, in particular in circumstances in which the majority of the work that had formed the subject matter of the fees estimate has actually been done, is consistent, as I see it, with the proper application of the general principles that I have identified in paragraph 48 et seq above.

vii) It is not without significance that in seeking a decision from creditors that remuneration be fixed by reference to time properly spent, in their report dated 9 February 2024, the Joint Administrators formulated the question in terms of their remuneration being fixed "by reference to the time properly spent by them and their staff in attending to matters as set out in the Fees Estimate (for an amount not exceeding £857,184.80)" [my emphasis].

60. In the circumstances, I am satisfied that before determining whether the basis for remuneration ought to be fixed as contended by the Joint Administrators on the basis of time properly spent by them and their staff, I am required to be satisfied that the fees estimate, in particular in so far as it relates to matters where the work has now actually been carried out, is "reasonable and commensurate with the nature and extent of the work properly undertaken or to be undertaken" by the Joint Administrators as provided for by paragraph 21.1 of the IPD, and that there is sufficient information before the court to enable me to come to such a conclusion having regard to all relevant matters, including the effectiveness with which the Joint Administrators appear to be carrying out, or to have carried out, their duties (cf. r 18.16(9)(c) IR 2016).

Post-administration remuneration

61. I shall first deal with the Application so far as it seeks an order that the basis of post-administration be fixed by reference to the time properly given by the Joint Administrators and their staff in attending to matters arising in the administration, before the considering the Application so far as seeks approval in respect of pre-administration costs.

62. It is contended by Mr Tolson that all the necessary information is now before the court, at least since the timesheet documents have been provided giving a breakdown of each item of work carried out by reference to date, individual, work type, work subtype, units, value and narrative. It is on the basis thereof that it is said on behalf of the Joint Administrators that, to the extent that the court should have regard to the fees estimate and the evidence to support it, then the court can be satisfied therefrom that it should determine that the basis for fixing the Joint Administrators remuneration be by reference to time properly given by the Joint Administrators and their staff.

63. In a broad sense, there has been compliance with paragraph 21.4.3 and 21.4.4 of the IPD in the sense that there is provided by the timesheet documents a breakdown of the total number of hours of work undertaken, together with a breakdown of such hours by individual member of staff and individual task or categories of task to be performed or that have been performed, as well as a breakdown of the total amount to be or likely to be charged for the work undertaken in respect of which remuneration is sought. However, I agree with the argument advanced by Mr Tucker on behalf of Securis that what has been presented is deficient in that it does not provide a link or narrative to the information that had already been provided in Poxon 1.

64. Thus, for example, in considering what Mr Poxon said in Poxon 1 at paragraph 91 et seq with regard to "Assets", whilst a breakdown might be provided of the figures in paragraph 91, there is no link or narrative tying the information that can be extracted from the timesheets to the various categories of work identified in paragraph 92. In the circumstances, I consider it difficult to properly suggest that what has been produced is a "statement" of the kind anticipated by paragraphs 21.4.3 and 21.4.4 of the IPD.

65. Further, I note:

    i) Ferris J's observation in *Mirror Group Newspapers PLC v Maxwell & Ors* (supra) at 648G-H that: "They must explain the nature of each main task undertaken, the considerations which led them to embark upon that task and if the task proved more difficult, or expensive, to perform than to be first expected, to persevere in it. The time spent needs to be linked to this explanation so that it can be seen what time was devoted to each task. The amount of detail which needs to be provided will, however, be proportionate to the case."; and

    ii) The requirement of paragraph 21.4.1(c) of the IPD that there should be a narrative description and explanation of the reasons why it is or was considered reasonable and/or necessary and/or beneficial for the relevant work to be done, giving details of why particular tasks or categories of task were undertaken and why such tasks or categories of task were to be undertaken or have been undertaken by particular individuals and in a particular manner.

66. What has been produced does not, to my mind, satisfy the latter requirement.

67. Further, I note the granularity with which ICCJ Jones considered the remuneration claimed in *Maxwell v Brooks* (supra), where the liquidator sought fees of £389,340.50, and where the amount was reduced to £233,147.25, namely about 16% of the sum sought in the present case. I accept that this was in a different context where ICCJ Jones was fixing the level of remuneration, but the information presently to hand does not allow anything approaching the sort of analysis carried out in that case. I regard it as significant that the sums claimed in the present case are very large indeed, and having regard to the "proportionality of information" principle, I do not consider that the information provided is a proportionate response providing the granularity required given the amount of remuneration sought.

68. It is possible that Securis might have been able to carry out some form of forensic analysis of the timesheet to, effectively, do what the Joint Administrators ought to have done, and relate the contents thereof to the information provided in Poxon 1 in some way. In this respect, it is perhaps unfortunate that the Joint Administrators did not accede to Securis' request for the information from the timesheets in native or Excel format. However, the court can only consider the evidence before the court the onus of which is on the Joint Administrators to produce, and this does not sufficiently at least assist the court in considering the reasonableness of the amount claimed, and whether what is claimed is commensurate with the nature and extent of the work properly undertaken or to be undertaken having regard to the guiding principles set out in paragraph 21.2 of the IPD.

69. So far as the amounts charged by LCL are concerned, it is true that this is, technically, a third party expense that would ordinarily require rather less detail. However, the Joint Administrators have accepted that LCL is associated with their firm, and that a rather different standard is therefore required. Hence the Application, in paragraph 1 thereof, equates LCL's charges with the Joint Administrators own remuneration in seeking relief pursuant to r. 18.23 IR 2016.

70. As I have identified, the timesheet documents produced in respect of the work carried out by LCL, whilst providing a breakdown by reference to date, individual, work type, number of units and cost, provide no narrative at all. In the circumstances, I consider that there is force in the point made by Mr Tucker that the Joint Administrators have elected to provide narrative records that do not, in any way, comment on the works actually performed, with the result that no sensible analysis of the legal work performed can be undertaken, and that the court is, in essence, being asked to assess £235,151 of solicitor costs, with, essentially, no information.

71. I take the point in relation to the undesirability of waving privilege in respect of what is truly privileged material. However, I consider that it ought to be possible to provide some form of sufficiently detailed narrative linked to the work actually carried out without creating any real issue in this regard.

72. In the circumstances, and on the evidence before the court, given my inability to form any sensible view with regard to the reasonableness of the fees estimate, in particular to the extent that it now represents work actually carried out, and as to whether the remuneration sought is commensurate with the nature and extent of the work properly undertaken or to be undertaken, I consider that there is insufficient material before the court to enable it properly to conclude that, in the present case, the basis of remuneration ought to be fixed, whether in relation to the Joint Administrators' own remuneration of LCL's charges, by reference to time properly given by the Joint Administrators or their staff.

73. The position might have been different had I felt able to conclude that there was some irreducible minimum in respect of reasonable remuneration, in which case I consider that I could have concluded that the remuneration ought to be fixed by reference to time properly given by reference to such lesser amount. However, I was not invited to proceed on this basis by either party have not, therefore, done so. In any event, on the evidence before the court, I would have had considerable difficulty in being satisfied as to an irreducible minimum

74. Work of considerable value has clearly been carried out for which the Joint Administrators will be entitled to remuneration. In the circumstances, I do not consider that the appropriate course would be to simply dismiss the application so far as it concerns post-administration remuneration. Rather, I consider that the appropriate course is to stand the Application over for further consideration period of, say, 2 to 3 months, and to permit the Joint Administrators, if so advised, to supplement the evidence before the court with further evidence addressing the issues that I have identified.

Pre-administration costs

75. I consider that precisely the same issues arise concerning pre-administration costs, both in respect of the Joint Administrators' own time costs, and the costs of LCL.

76. I do, however, see no reason why I should not approve the CAM cost of £1000, and the Hilco cost of £25,000 so as to enable these expenses to be defrayed.

77. However, in respect of the Joint Administrators' own time costs, and LCL's costs, I consider that the appropriate course is, again, to adjourn consideration thereof so as to enable the Joint Administrators, if so advised, to file further evidence.

Conclusion

78. For the reasons set out above, I do not feel able, on the evidence presently before the court, to accede to the Joint Administrators' Application for the court to approve pre-administration costs, or to determine the basis by reference to which post-administration remuneration is to be fixed. However, rather than simply dismissing the Application, I consider that the appropriate course is to stand it over for 2 to 3 months or so, and to permit the Joint Administrators (if so advised) to file supplemental evidence seeking to address the issues that I have identified.

79. I would invite the parties to seek to agree a form of order dealing with matters on the above basis. My preliminary view is that the appropriate course would be to reserve costs to the further hearing. If the parties can agree an order along these lines, then it ought to be possible to avoid a consequentials hearing at this stage unless either party wishes to seek permission to appeal.