



FIXING LIQUIDATORS' FEES: **PRIVY COUNCIL** **BALANCES DETAIL AND PRACTICALITY**

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Background

This case arose from one of the largest insolvencies in the Caribbean in recent decades. CL Financial Ltd, incorporated in Trinidad and Tobago, was the parent company of a sprawling corporate group with interests in insurance, real estate, and spirits, supported by more than 40 subsidiaries across several jurisdictions. Following the global financial crisis in 2008, the group faced mounting financial instability, particularly within its insurance and banking arms. To prevent the group's collapse, the Government of Trinidad and Tobago injected more than TT\$23 billion in financial support. By July 2017, however, the Company still owed the Government over TT\$15.5 billion, prompting the presentation of a winding-up petition.

Provisional liquidators with significant international insolvency experience were appointed in July 2017, and later confirmed as official liquidators in September 2017. In 2018, the High Court fixed their remuneration on a time-cost basis at prescribed hourly rates under an order which allowed them to draw monthly

fees "on the basis of the reasonable time expended" subject to the court's approval.

In July 2020, the Company applied for approval of the liquidators' remuneration for the 2019 calendar year, amounting to over US\$3.1 million plus associated expenses. The Attorney General, acting on behalf of the Government as the Company's largest creditor, opposed the application. The Government argued that the liquidation was being conducted in a manner that had the effect of incurring unnecessary fees, that costs incurred by the liquidators were excessive compared with those incurred by pre-liquidation management, and that insufficient information had been provided to justify the amounts claimed.

The High Court approved the liquidators' application. However, the Court of Appeal reversed that decision on the principal grounds that the Judge had failed to provide adequate reasoning and that the remuneration should have been subject to a more detailed examination. The matter then came before the Privy Council.

The judgment

The Board found that the Court of Appeal had failed to take account of the detailed written judgment in fact handed down by the High Court, meaning the principal ground for the Court of Appeal's decision was wrong and it could not be upheld on that basis. The Board also identified several questions of law and practice that are of wider interest to litigators and insolvency practitioners.

Government as creditor

The Board rejected the Court of Appeal's view that the Government's role as the largest creditor, and as custodian of public funds, entitled it to special treatment. The correct position is, instead, that all creditors must be treated equally unless statute provides otherwise. A government creditor is to be treated as any other large private creditor might be.

Level of detail required to support an application for remuneration

The Board reaffirmed established common law principles following an analysis of English, Irish, Australian, New Zealand, Singaporean and Hong Kong authorities. Liquidators occupy a fiduciary role; the onus is on them to justify their remuneration; and doubts must be resolved against them. Courts may assume integrity on the part of insolvency practitioners, but this does not relieve them from the duty to show that hours spent were both necessary and reasonable.

These principles are entirely consistent with those applicable in other Caribbean jurisdictions, such as the Cayman Islands.¹ It is settled law in the Cayman Islands that upon an application for approval of liquidators' remuneration, the *"established practice is for the officeholder to provide a narrative of the work done together with the evidence of the underlying costs by reference to time sheets, invoices etc."*² and where an application for fee approval is made, the fees must be *"commensurate with the nature and extent of the tasks which they have properly undertaken, and that the work for which they have charged has resulted in significant and proportionate benefits to the estate"*.³

In this case, the Court of Appeal had demanded a near line-by-line analysis. The Board rejected that approach, holding instead that:

- While a line-by-line analysis of the officeholder's claim is not necessary, the court must have enough information to understand what was done, why it was necessary, and whether the work was carried out at the right level of seniority.
- Proportionality is the governing principle. A mega-insolvency will justify a more elaborate narrative than a small domestic liquidation. But even in large cases, the over-zealous recording of minutiae will waste estate resources.
- A narrative description of workstreams, broken down by task categories and staff grades, with justification for why the tasks were undertaken, is generally sufficient. Contemporaneous records should be available if the court wishes to probe further.

The Board emphasised that hours recorded are not enough. The "reasonable time expended" standard set out in the relevant order of the court required demonstration that the time was necessary and proportionate, and that the work was performed at an appropriate level.

Expenses

The Board disagreed with the Government's argument that all expenses, including third-party professional fees, must be subject to court approval. Only remuneration and expenses payable to related entities of the liquidators require prior approval. Independent third-party expenses (such as external counsel fees) do not, although they remain open to challenge if excessive or unreasonable.

For officeholders, the message is straightforward: provide structured, narrative evidence that demonstrates necessity and efficiency, avoid unnecessary detail that drives up costs, and expect the court to support governance measures such as the appointment of directors or administrative staff where these measures can reasonably be expected to add value.

Costs against the liquidators

The Court of Appeal had made a non-party costs order against the liquidators personally. The Board overturned that decision, finding that liquidators are proper parties to remuneration applications and that their costs should ordinarily be treated as liquidation expenses, unless they have acted unreasonably. In this case, the challenge before the lower courts concerned the adequacy of the information supplied in support of the liquidators' fee approval application. The Board agreed that the information supplied by the liquidators was inadequate and considered it difficult to see why the creditors should in effect pay for the liquidators' opposition to the Government's challenge in those circumstances. Notwithstanding the liquidators' success before the Privy Council, the Board directed that only half of the liquidators' costs of the first instance application and the appeals be paid as liquidation expenses.

Corporate directors and administrative staff

The Board endorsed the liquidators' approach in terms of appointing corporate directors to the boards of the Company's subsidiaries. In the context of a complex cross-border group, with no unified governance and many subsidiaries left unmanaged, appointing independent corporate directors was prudent and in the best interests of the estate.

Similarly, the Board accepted that administrative staff could properly be engaged and charged at agreed hourly rates. The relevant order expressly contemplated such appointments, and the court confirmed that this was consistent with reasonable liquidation practice.

Key takeaways

Although the case arose in Trinidad and Tobago, the Privy Council's reasoning draws heavily on common law authorities applied in other jurisdictions. It provides helpful guidance for practitioners by reinforcing a proportionality approach, which reflect a balance between creditor protection and the need to compensate insolvency professionals fairly.

¹ See for example, *Re Direct Lending Income Feeder Fund (in Official Liquidation)* FSD 108 of 2019 (NSJ), unreported, Segal J, 3 February 2022, which sets out the Cayman Court's approach to sanction applications.
² *Re OneTradex Ltd (in Official Liquidation)* FSD 166 of 2020 (MRHJ), unreported, 17 June 2022 at [46]
³ *Re World Properties Ltd (in Official Liquidation)* FSD 49 OF 2018 (IKJ), unreported, 3 October 2022 at [18], citing *Direct Lending* with approval.

- **Equal treatment of creditors:** Government creditors cannot rely on their status to demand special scrutiny of fees. Creditors may object, but they do so on the same footing as any other interested party. Winding up is a class remedy.
- **Evidence required for remuneration:** Liquidators should provide proportionate and structured information concerning the cost of their work, including a narrative description of the main categories of work, allocation of hours by staff grade and justification for why tasks were undertaken and at what level.
- **“Reasonable time”:** Liquidators must show that work was necessary, proportionate, and conducted at the right level of seniority. Simply spending the time does not justify remuneration. This echoes Cayman decisions in which courts have emphasised proportionality and commercial judgment in the deployment of estate resources.⁴
- **Distinction between expenses:** Liquidators should distinguish between (i) their own remuneration and expenses involving related entities, which require approval, and (ii) independent third-party expenses, which do not require prior approval but can still be challenged. This avoids unnecessary judicial burden while at the same time protecting estates from unreasonable charges.
- **Appointment of corporate directors:** The Board endorsed the use of corporate directors for subsidiaries in this liquidation. Internationally, liquidators often install directors in group subsidiaries to safeguard governance, preserve value, and ensure continuity across the corporate structure. The confirmation of the propriety of such steps will be useful in future cases, if creditors challenge the associated cost.
- **Appointment of administrative staff:** The Board accepted that engaging administrative staff and charging them at agreed rates was consistent with liquidation practice. This is subject to appointments being authorised by the original appointment order or falling within the court’s general power to approve liquidation expenses.
- **Costs orders:** Liquidators should expect the costs of remuneration applications to be treated as liquidation expenses. Non-party costs orders will be exceptional and limited to cases where liquidators act unreasonably.

Comment

The Privy Council’s decision in *CL Financial* provides a reminder that the court’s role is to protect estates from the unreasonable depletion of their resources, while ensuring liquidators are fairly compensated for their work. The guidance on proportionality, creditor equality, and the treatment of expenses resonates strongly in other jurisdictions, where similar questions inevitably arise. For officeholders, the message is straightforward: provide structured, narrative evidence that demonstrates necessity and efficiency, avoid unnecessary detail that drives up costs, and expect the court to support governance measures such as the appointment of directors or administrative staff where these measures can reasonably be expected to add value. For creditors, objections will be heard on an equal footing, without preference or special legal status, even when public funds are at stake.

⁴ See for example, *Direct Lending Income Feeder Fund (In Official Liquidation)*, unreported, Segal J, 3 February 2022, at [40], [44]. See also *Re SPhinX*, unreported, Smellie CJ, 13 Nov 2012 at [18], whereby the Court adopts the test of a “reasonably prudent man” who is “expected to deploy commercial judgment not to act regardless of expense.” The reasonably prudent man test was followed in *Re Caledonian Securities Ltd (In Official Liquidation)* [2016] (1) CILR 309 at [77] to [81], setting the standard for fee approval and emphasising the need for commercial judgment, which Cayman courts then apply when testing proportionality and necessity.



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