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9<sup>th</sup> March 2008

To:

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Chief Executive  
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Gentlemen,

**Complaints against  
Royal Bank of Scotland,  
KPMG llp, Begbies Traynor, Eversheds llp  
and  
Four Licensed Insolvency Practitioners  
numbered 2748, 6418, 8719 and 8977 at the Insolvency Service  
(Jamie Taylor, Michael V. McLoughlin, Allan W. Graham and David P. Hudson)**

**BREACH OF TRUST, FRAUD, THEFT, FALSE ACCOUNTING, UNMERITED FEES  
GROSS PROFESSIONAL NEGLIGENCE AND CHEATING THE PUBLIC REVENUE  
in the matter of  
JUST Group plc and a Creditors Voluntary Arrangement (“CVA”)**

I write to make formal complaint against the above entities and Licensed Insolvency Practitioners and set out the basic facts and allegations in the attached documents.

I fully appreciate that the allegations are extremely serious and please be assured that they have only been made after careful verification to what I consider represents the criminal burden of proof – i.e. “beyond all reasonable doubt” - and the accused have been considerable time to consider the matters and provide explanations but none have been forthcoming.

As the CVA was filed in the High Court on 17<sup>th</sup> June 2002, there is a pressing need to address any 6 year limitation rules and accordingly I have caused Claims to be issued in the High Court in relation to some of the matters, whilst KPMG trundle on with their confused application for directions in relation to another matter, and I therefore can no longer delay filing these complaints. It is of course trite law that litigation does not delay or prejudice regulatory investigation.

Given that there are so many different regulatory authorities covering the same facts (albeit in the case of RBS the sole allegation is Breach of Trust as they must surely be presumed to have had no knowledge of KPMG and Evershed's subsequent actions, even though nearly 20% of the RBS Directors are retired partners or otherwise publicly connected with those firms), it seems sensible for me not to burden you with too much paperwork until you can advise me whether you wish to take a "joined-up" approach to the initial investigations you must now make or whether each of you requires only the papers related to your particular role.

Many of the documents can in any event be downloaded from the website that I use to communicate with as many of the 55,000+ shareholders as I can. It is at [www.thinkentertainmentplc.blogspot.com](http://www.thinkentertainmentplc.blogspot.com)

I look forward to hearing from you as soon as possible.

Regards

Mark Hardy

enc: Copy of the CVA

## THE BACKGROUND

- JUST and 15 of its subsidiaries were made the subject of Administration Orders on 9<sup>th</sup> January 2002 and McLoughlin and Graham – partners in KPMG and Insolvency Practitioners licensed by the ICAEW – were appointed Administrators.
- NATWEST had lent money to JUST and its subsidiaries secured by Fixed and Floating charges with Group wide cross guarantees and indemnities. (NB Royal Bank of Scotland replaced NatWest for purposes of the CVA)
- KPMG set about realising assets with the outcome being forecast that there would be no dividend for unsecured creditors, and there would be a shortfall to RBS and/or the Preferred Creditors of the Group.
- Prior to the grant of the Administration orders, a shareholder action group had been created (“JAG”) to investigate what had caused the collapse of JUST and whether shareholders could obtain any legal redress for their losses.
- Discussions between JAG and KPMG eventually led to suggestions of the CVA on the basis that JAG had to prove that shareholders would contribute to a new share issue by JUST. JAG solicited money from shareholders based on representations that it would be securely held by Mishcon de Reya and returned in full if the CVA did not proceed.
- More than £1,850,000 was raised and KPMG were then able to propose the CVA to the Creditors and the High Court on 17<sup>th</sup> June 2002 with Hudson and Taylor – partners of BEGBIES and Insolvency Practitioners licensed by the IPA - as the Nominees to act as Supervisors of the CVA.
- Creditors and Shareholders approved the CVA on 2<sup>nd</sup> August 2002
- A total of £5,694,000 was raised by the JUST share issue and monies conditionally held by Mishcon de Reya became wholly vested in JUST.
- JUST experienced some delays in opening accounts at Barclays and accordingly on 23<sup>rd</sup> August 2002 at KPMG and BEGBIES's direction instructed Mishcon to remit to KPMG £1,850,000 from the funds Mishcons were still holding in their client account, in order to speedily implement the CVA.
- The CVA document makes clear that the sum of £1,850,000 represented:
  - £322,000 to be held in Escrow in an account at a clearing bank under the control of BEGBIES for the sole benefit, and at the sole direction, of RBS in the event that there was a shortfall in repayment to RBS caused by the existence of a priority preference claim of HM Revenue & Customs in the JUST subsidiary – EDI Realisations Ltd for unpaid PAYE estimated at £322,000.

- RBS had sole control over the utilisation of the Escrow and were required to ensure its repayment to JUST if there was no shortfall in repayment of the loans.
  - £1,528,000 to be held on trust in an account a clearing bank under the control of BEGBIES and to be utilised solely to meet any shortfall to the Bank and upto £1,300,000 for any fees properly payable to KPMG (and KPMG only) for acting as Administrators to the various JUST companies when all asset realisations had been made
  - None of these monies were to be used for payment to any other parties for any services whatsoever.
- RBS having determined that the Escrow was not needed, directed KPMG to repay its loans in full at a date sometime in late August or early September 2002.

### THE COMPLAINTS

1. BEGBIES failed to ensure that the CVA monies were held in accounts under their control and were disbursed solely in accordance with the terms of the CVA
2. RBS failed to direct that the Escrow monies were repaid to JUST
3. KPMG falsely accounted for the receipt of £1,850,000 in filings with the Registrar of Companies that they made as Administrators of JUST Group plc and not as Administrators of any other companies.
4. Without any authority whatsoever, and in breach of contract and trust, KPMG transferred monies to various subsidiaries of JUST and then rendered false accounts to creditors and the Registrar of Companies
5. KPMG falsely stated in accounts to creditors and the Registrar of Companies that the sum of £356,000 was “ring fenced” under the terms of the CVA for the benefit of HMRC and other preferential creditors of EDI Realisations Ltd
6. KPMG failed to account for and/or repay to JUST the difference between the £1,300,000 estimate of their time-cost fees and the actual fees payable on a meritorious basis as determined in accordance with the binding provisions of Statement of Insolvency Practice 9 (“SIP9”).
7. BEGBIES failed to ensure that KPMG properly conducted the Administrations and rendered invoices to them for any actual shortfall in time-cost fees they had not recovered from the estates by agreement with the Creditors of those estates and JUST after all asset realisations had occurred.
8. KPMG have Cheated the Public Revenue contrary to Common Law by intentionally failing to timeously or at all pay the claims of HMRC in the EDI Realisations Administration as required by law.
9. In April 2004 KPMG informed the directors of JUST Group that they could make sworn declarations of

solvency in accordance with the provisions of the Insolvency Act relying on KPMG's representations that £385,000 should be accounted for as a current asset of JUST for the purposes of inducing its shareholders to enter into a reorganisation under s110 of the Insolvency Act.

10. BEGBIES failed to diligently exercise their duty of care and verify the reasonableness of the matters related to the CVA contained in the Declaration of Solvency before confirming to JUST's creditors that the s110 reorganisation would protect their interests, and in so doing failed to carry out their duty of care to JUST and its assignees.

11. Think Entertainment plc ("THINK"), successor to JUST by virtue of the s110 was induced into providing an indemnity to JUST's creditors in part based upon the representations of KPMG and relying upon the duty of care owed by BEGBIES.

12. Following the s110 reorganisation in May 2004, KPMG attempted to cover up their misconduct by bad faith and inducing THINK's solicitors, Addleshaw Goddard, into negotiating that EDI Realisations Ltd would enter into a loan agreement with THINK by falsely representing that they could not pay any monies away until the Judicial Committee of the House of Lords had ruled in the matter of RBS -v- Spectrum Plus ("BRUMARK").

13. Such accounting as does exist proves beyond all doubt that KPMG were lying as to any possible relevance of BRUMARK to the JUST CVA, as not only had RBS been repaid in full but there was more than enough cash to pay HMRC and all other preferential creditors in full in early 2003 as they were required to do, and that their delay was part of a well documented policy by all Insolvency Practitioners not to pay any monies to HMRC in any Administration, Receivership or Liquidation ahead of the BRUMARK ruling - even in cases such as JUST where the ruling was of no relevance.

14. In January 2005 relying upon Addleshaw Goddards representations that KPMG had told them not less than £250,000 would be imminently made available and paid to THINK, without making further enquiry I accepted the grant of a Power of Attorney to act for THINK. At all times I asked KPMG, and their solicitors EVERSHEDES why any money was in EDI Realisations and that they justify why BRUMARK was justification for any delay as to payment.

15. In April 2005 I and the liquidators of JUST wrote to KPMG pleading with them to sort out the monies and provide accounting for why money was in EDI, as otherwise the liquidation of JUST would have to be converted from a Members Voluntary to a Creditors Voluntary in late May 2005. They refused.

16. BEGBIES then threatened the liquidators of JUST that unless their outstanding fees as Supervisors of the CVA, unverified as to merit in accordance with SIP 9, were immediately paid, they would petition the High Court to have JUST placed in Compulsory liquidation. Such conduct is reprehensible and unethical and in breach of all applicable codes of professional conduct.

17. After the BRUMARK decision, in January 2006 KPMG, acting by EVERSHEDES (formerly solicitors to JUST), finally applied to the High Court for directions in the EDI Realisations matter asking to whom the more than £500,000 remaining should be paid.

18. KPMG and EVERSHEDES made that application knowing they were withholding information relevant to the Court in relation to the order they sought, with the intention of Perverting the course of Justice contrary to the Rules of Court and the Perjury Act 1911, and for the purpose of covering up their prior improper acts and gaining improper financial advantage by obtaining one of the most perverse costs orders ever given by the High Court. EVERSHEDES and KPMG failed to tell the High Court, THINK and JUST that in 2003 they had told EDI creditors that £356,000 was ring fenced for HMRC, and it therefore being unarguable that HMRC should have been paid in full before making the application.

19. Since then KPMG and EVERSHEDES have claimed more than the entire £500,000 on as yet unassessed fees for themselves, and KPMG have admitted taking more than £60,000 in fees for other administrations (already ordered closed by the High Court) from the EDI estate contrary to all statutory and professional obligations.

20. THINK, JUST and HMRC have sought to resolve the EDI matter with KPMG and EVERSHEDES by agreement but have failed to do so because of what HMRC have stated by letter in November 2007 are claims for fees that “are, frankly, staggering ... we can see no justification for costs of this magnitude ... HMRC are of the view that your costs should be assessed by the Court, as a matter of principle and public interest” an opinion shared by THINK and JUST's liquidators.

21. EVERSHEDES response in January 2008 was an admission that their and KPMG's fees are usually reduced by upto 25% upon independent assessment by the High Court in any event. Such a statement conflicts with the provisions of SIP 9 as to fees and expenses that may be claimed by Licensed Insolvency Practitioners.

22. Following the November 2007 discovery of the 2003 “ring fenced” statement, which neither THINK nor JUST could have known about before, THINK has applied to the High Court for an order setting aside all prior orders in the January 2006 KPMG/EVERSHEDES application and ordering that the entire sum be paid into Court forthwith together with interest. A directions hearing is set for 20<sup>th</sup> May.

### **RELIEF SOUGHT**

- **INVESTIGATIONS**
- **PROSECUTIONS**
- **SANCTIONS**
- **RESTITUTION**

## IN THE MATTER OF THE INSOLVENCY ACT 1986

## AND IN THE MATTER OF

**JUST GROUP PLC – IN ADMINISTRATION**

REPORT of David Paul Hudson, a partner in the firm of Messrs. Begbies Traynor, the Old Exchange, 234 Southchurch Road, Southend-on-Sea, Essex SS1 2EG, a licensed Insolvency Practitioner, and the Joint Nominee named in the Proposal presented by the Administrators of Just Group Plc ("the Company"), under Section 2 of the Insolvency Act 1986.

I have considered the proposals of the Administrators for the implementation of a Voluntary Arrangement in respect of the Company.

1. The Administrators of the Company have submitted to me:
  - 1.1 A Proposal for a Voluntary Arrangement for the Company which includes all the matters required by Rule 1.3(c) of the Insolvency Rules 1986 ("the Rules") to be stated therein. A copy of the proposal is attached.
  - 1.2 A Statement of Affairs for the Company as at 13<sup>th</sup> June 2002 with supporting schedules. A copy of the Statement of Affairs is attached to the proposal. The Statement of Affairs and Schedules include all matters required by Rule 1.5(2) of the Rules to be stated therein.
2. In reaching my opinion, I have taken into consideration the following matters:
  - 2.1 I have reviewed the Company's estimated Statement of Affairs as at 13<sup>th</sup> June 2002. I have also been provided with a list of creditors, including the Inland Revenue and VAT liabilities. The company was placed into Administration on 9<sup>th</sup> January 2002 and A. Graham and M. McLoughlin of KPMG were appointed Joint Administrators. I have relied upon information provided by the Administrators and former members of the Company's staff. In the time available, I have not had an opportunity to examine in detail or verify the financial information upon which the Proposal and Statement of Affairs are based. However, Creditors' interests are safeguarded after the commencement of the Voluntary Arrangement. This is because if it is discovered in the course of the Voluntary Arrangement that the financial information provided was misleading to Creditors in a material way, the Supervisor will apply to the Court for a Winding Up Order in relation to the Company.
  - 2.2 It is proposed that all assets of the Company will be excluded from the Voluntary Arrangement, other than the continued trading via the Intellectual Property Rights and Licence Rights. No formal valuation of these assets has been undertaken.
  - 2.3 The Administrators have co-operated entirely in relation to the information which I have requested.
  - 2.4 The performance of the Arrangement does depend upon the response of the secured creditor, Royal Bank of Scotland, who hold a fixed debenture conferring a fixed and floating charge as security. I have spoken to a representative of the Bank who has advised me that the Bank is willing to support the proposal.
  - 2.5 The approval of this Arrangement will not depend upon the response of the preferential creditors, given their estimated claims. In any event, should the Company be placed into liquidation, it is unlikely that any of the unsecured creditors would receive a dividend from the Administration or Liquidation.


- 2.6 The approval of the Arrangement will depend on the approval of the major Creditors, together with the approval of the Shareholders. With representatives of the Shareholders, I have sought to canvass views from a number of Creditors. A majority of these Creditors have indicated that the prospect of receiving a dividend by way of a CVA is preferable to the liquidation of the Company, given that no dividend will be payable to the unsecured Creditors in a Liquidation.
- 2.7 In the event that the Arrangement is approved and implemented successfully, unsecured Creditors will receive redeemable loan notes equal to 40% of their claim. Preferential Creditors will be paid in full. In the event that the Company is placed into liquidation, it is unlikely that there will be a dividend for any ordinary unsecured Creditors.
- 2.8 In the event that the proposal is rejected, it is likely that the Administrators will seek to dispose of the remaining assets of the Company. It is unlikely that realisations would be sufficient to enable a dividend to ordinary unsecured Creditors.
- 2.9 I have been advised by the Administrators that a potential preference has been identified in respect of a payment made by Just Group Plc on or around 6<sup>th</sup> August 2001, when contractually, this payment was not due until 1<sup>st</sup> October 2001. The Company was placed into administration on 9<sup>th</sup> January 2002. In the event that the Voluntary Arrangement is accepted, the Supervisors would be unable to pursue this action.

3. Opinion

- 3.1 I agree with the Administrators that a Voluntary Arrangement is desirable and in the interest of the Creditors and Shareholders of the Company. I am satisfied that:-
- (a) from the information which has been provided to me, the Company's position as to assets and liabilities is not materially different from that which is to be presented to the Creditors and Shareholders.
  - (b) the Administrators' proposals have a real prospect of being implemented in the way it is represented.
- 3.2 There is no manifest or prospective unavoidable unfairness.

I am therefore of the opinion that meetings of the Creditors and Members of the Company should be convened and held on the 2nd day of August 2002 at 11.00am and 2.00 pm respectively.

Signed:

  
David Paul Hudson

Dated this 17th day of June 2002



**Just Group Plc.**  
**Just Licensing Limited**  
**Just Entertainment Limited**  
**Proposal for a Company Voluntary Arrangement**  
**under Part I of the Insolvency Act 1986**

WE, the Administrators of the Just Group Plc, Just Licensing Limited and Just Entertainment Limited propose a Voluntary Arrangement under Section 1 of the Insolvency Act 1986 in satisfaction of the debts of these companies.

The Proposal consists of eight pages and five Appendices as well as three statements of affairs. For the avoidance of doubt, any other documents sent to you with this Proposal by the Shareholder Action Group, or any other person, does not form part of it and we accept no responsibility for the content thereof.

I. **DEFINITIONS**

1.1 In this Voluntary Arrangement proposal the following definitions shall apply, unless the context otherwise requires:

"The Act"	The Insolvency Act 1986 and any statutory modification or enactment thereof.
"The Bank"	The Royal Bank of Scotland Plc
"The New Company"	Just Group Plc, Just Licensing Limited and Just Entertainment Limited – all in Company Voluntary Arrangement.
"The Creditors"	The Secured Creditors, the Preferential Creditors and the Unsecured Creditors.
"The Directors"	The Directors of the Group, details of whom are set out in the Statutory Information in "Appendix 1" to these proposals.
"Fixed Date"	The date (if any) of approval of this Voluntary Arrangement.
"The Administrators"	A.W. Graham and M.V. McLoughlin of KPMG.
"The Nominees"	David Paul Hudson and Jamie Taylor of Begbies Traynor.
"Preferential Creditors"	Creditors to the Group whose claims as at the Fixed Date are Preferential under Sections 4 and 386 of the Act.
"The Rules"	The Insolvency Rules 1986, as amended from time to time.
"The Supervisors"	David Paul Hudson and Jamie Taylor or any other person for the time being duly appointed Supervisor of this Voluntary Arrangement.
"Secured Creditors"	The Bank, and those companies listed in paragraph 10.2.1 as having supplied assets to the Group on the terms of hire, hire purchase, lease or similar agreements.
"Group"	Just Group Plc and subsidiary companies.
"Unsecured Creditors"	Creditors of the New Company who would have been entitled to prove in a Liquidation had the New Company gone into Creditors Voluntary Liquidation on the Fixed Date including prospective and contingent Creditors other than:  (i) Secured Creditors to the extent of their security;  (ii) Preferential Creditors.
"The Voluntary Arrangement"	This Voluntary Arrangement in its present form or with any modification made at the meetings of the Shareholders or Creditors of the Company summoned under Section 3 of the Act.
The Solicitors	Mischon de Reya who are legal advisors to JAG.
The Shareholders	The registered shareholders Just Group Plc.

## 2. **BACKGROUND INFORMATION**

- 2.1 Just Group Plc was incorporated on the 9th November 1993, and on 11th March 1994 acquired the whole of the issued share capital of Just Licensing Ltd, a toy development and licensing business which was founded in 1987.
- 2.2 The business historically traded from Bakewell, Derbyshire.
- 2.3 During May 1996, Just Group Plc was listed on the alternative investment market, since when the Group has expanded rapidly.
  - 2.3.1 Investment was made during 1999 to secure merchandising rights in a TV property entitled Jellikins/Jellabies. This was the Group's first entertainment property which was followed by significant investments in Butt-Ugly Martians, McDonalds Farm and Pinky and Perky. The IP rights of Jellikins/Jellabies are still owned by Just Licensing Ltd. The IP rights of Butt Ugly Martians are co-owned by Just Group Plc, Just Licensing Limited and Just Entertainment Limited.
  - 2.3.2 During 2000, the Group acquired two further businesses, Optical Image Ltd, a television production, motion & post production house and MediaKey Plc, predominantly a creator and publisher of illustrated reference books and owner of children's Intellectual Properties, including Wide Eye, a pre-school learning range.
- 2.4 The overheads of the Group increased substantially following flotation, particularly from the end of 2000 with the acquisition of MediaKey Plc.

During 2001, the Group incurred significant additional costs associated with the purchase and refurbishment of a freehold office block in Shepherd's Bush, London and the refurbishment of its offices in Bakewell, Derbyshire.
- 2.5 Early in 2001, the Directors became aware of a significant creditor backlog inherited by the Group following its acquisition of MediaKey Plc. Consequently, there was a need to raise further cash to sustain the Group's growth plans and to assist with working capital.
- 2.6 Delays in the uptake of Butt-Ugly Martians broadcast licences adversely affected the level of licensing and consumer product revenues in the spring of 2001, resulting in further shortfalls in cash generation.
- 2.7 In the summer of 2001, a cease and desist letter was received from Universal in respect of the Butt-Ugly Martians property, preventing the finalisation of a number of licensing contracts, resulting in further significant shortfalls in cash generation. This letter was issued as a result of a dispute concerning the ownership of the rights. This dispute was later resolved.
- 2.8 During this period the Board of Directors reviewed its accounting policies for revenue recognition of licensing income. Whilst its policy of recognising guaranteed licensing income in full in the period in which a contract was signed was acceptable accounting practice, the Board of Directors agreed to change to a more prudent policy and that the new policy should be applied to the April 2001 accounts. The new policy apportioned the guaranteed revenue evenly over the period of the license. We understand from the Directors that non refundable advances were to be included as a creditor and released in line with reported royalties.
- 2.9 The Group's auditors reported to the Directors, during the second half of 2001 that the Group would require circa £7.5 million of additional funding to overcome the creditor pressure that had accumulated.
- 2.10 Despite the Director's efforts to raise additional funds by inviting investment from financial institutions, sufficient funding was not generated.
- 2.11 By the end of 2001, the Group had utilised its available funding and the Directors took legal advice which resulted in the following companies within the Group being placed into Administration on the 9th January 2002.

Just Group Plc.  
Just Licensing Limited  
Just Group Properties Limited  
Just Publishing Limited (formerly Bughley Publishing Limited)  
Just Entertainment Limited  
Newstand Publications Limited  
Abbey Home Entertainment Group Limited  
Monster Innovations Group Limited  
MediaKey Plc.  
EDI Realisations Limited (formerly known as Marshall Editions Limited)  
DEV Realisations Limited (formerly known as Marshall Editions Developments Limited)  
PBL Realisations Limited (formerly known as Marshall Publishing Limited)  
Marshall Information Limited  
Marshall Direct Learning Limited  
Marshall Media Limited  
eMediaKey.com Ltd

- 2.12 The purpose of the Administration was to enable a more advantageous realisation of the Group's assets than would be effected in a winding up and or the approval of a Voluntary Arrangement under the Insolvency Act 1986.

### **Company Voluntary Arrangement**

- 2.13 It is proposed that three of the Group's companies enter into a Company Voluntary Arrangement. The companies are:-

Just Group Plc  
Just Entertainment Limited  
Just Licensing Limited
- 2.14 Just Group Plc was the ultimate parent company and holding company of the Group.
- 2.15 Just Group Plc, Just Entertainment Limited and Just Licensing Limited form the traditional core of the Just business owning rights in Butt-Ugly Martians and Jellikins/Jellabies respectively.

## 3. **CURRENT FINANCIAL POSITION**

- 3.1 Attached as 'Appendix 2' is the estimated Statement of Affairs submitted to the Administrators of Just Group Plc, Just Licensing Limited and Just Entertainment Limited as at 27th February 2002.

- 3.2 Attached as 'Appendix 3' is an Estimated Statement of Affairs in respect of Just Group Plc, Just Licensing Limited and Just Entertainment Limited as at 1st June 2002.
- 3.3 It should be noted that following the submission of the Statement of Affairs to the Administrators, assets have been sold and a review of the estimated to realise values of assets has been undertaken accordingly. The Statement of Affairs differ significantly.

#### 4. PROPOSALS

- 4.1 The Voluntary Arrangement is proposed as a means of enabling Just Group Plc and its two subsidiaries, Just Entertainment Limited and Just Licensing Limited to continue to trade (the "New Company"). Continuing to trade will enable the New Company to:-

- a) Collect royalties from existing signed contracts;
- b) Develop the licenses that are held; and
- c) Seek new opportunities in the expanding children's entertainment market and media industry.

By continuing to trade it is anticipated that a greater return will be provided to Creditors and Shareholders than would be available if the three companies were to enter into liquidation. It is anticipated that in the event of liquidation, there is little likelihood of a dividend to Unsecured Creditors.

- 4.2 The principal assets of the three companies relate to the rights in Butt-Ugly Martians and Jellabies/Jellikins. Universal Studios has a significant ownership share of the rights in Butt Ugly Martians and we understand from the "Just Action Group" (JAG - See paragraph 4.3) that Universal Studios is prepared to support the Proposal for a Voluntary Arrangement. **In the event that funds were realised from a sale of the rights, they would be due to the Bank under the terms of its security. There would be little likelihood of a return to Creditors or Shareholders from any sale.**
- 4.3 Following the granting of the Administration Orders, a shareholders action group 'Just Action Group' (JAG) was formed. We understand from members of JAG that it was formed in order to seek to preserve value in the Group for the benefit of Creditors and Shareholders. We understand that substantial funds have been raised by the Shareholders in order to assist in securing the acceptance of the Arrangement and to provide working capital for the New Company. These funds would not of course, be available in the event of a liquidation.
- 4.4 It is proposed that all the Unsecured Creditors between the three companies will be treated equally as creditors of the New Company. Each company is dependent upon the other for support and services to maximise the value of its assets and therefore it is equitable that the claims against the companies should be treated equally.
- 4.5 In consideration of the claims against the New Company, it is proposed that Just Group Plc. will issue redeemable loan notes. These notes will be issued as follows:-
- a) The loan notes issued by Just Group Plc. to its Creditors will equate to 40% of the agreed unsecured claims of creditors of Just Group Plc, Just Licensing Limited and Just Entertainment Limited.
  - b) The repayment of these loan notes will equate to 10% of the agreed Unsecured claims after three years, 10% after five years and the balance of 20% of the agreed claim after seven years. The redemption date will be the respective anniversary of the acceptance of the Voluntary Arrangement. Attached as "Appendix 4", is a further explanation of the loan notes.
  - c) Interest will be payable on the redeemable loan notes at a rate of 3% per annum. This interest will be payable annually in arrears.
  - d) Creditors will be given the opportunity to transfer the redeemable loan notes into shares in Just Group Plc. during the seven years prior to the final payment under the loan notes. Shares will be issued on the quarter date after the application for transfer and the share price will be calculated at the market value as at the quarter date.
  - e) Prior to the shares being re-listed on a recognised exchange, the shares will be deemed to have a value of 1.9p. The shares will only become disposable on the same date and in the same proportions as the loan notes. If a Creditor elects to transfer its entire holding of loan notes to shares during the first three years then 25% can be disposed of between years three and five, 50% between years five and seven and 100% after seven years. The commencement of the quarter date for the purposes of the transfer of loan notes will be 1st April.
  - f) The redemption of the final tranche of redeemable loan notes will be taken as full and final settlement of a Creditors' claim against Just Group Plc, Just Licensing Limited and Just Entertainment Limited.
- 4.6 The estimated shortfall to the Bank after taking into consideration assets to be realised and due to the Bank under its security totals £2.15 million. This figure includes an estimate of the amount required to discharge Administrators' fees and the costs of the Administration. The Bank holds security over the assets of the Group in the form of a debenture comprising a fixed and floating charge. There are cross guarantees throughout the Group with supporting security. The principal remaining assets relate to a free hold property and book debts.
- 4.7 Redeemable loan notes will be issued to the connected companies/associates in respect of any claim that they may have against Just Group Plc, Just Licensing Limited and Just Entertainment Limited. It will be for the Supervisors to adjudicate any claims submitted.
- 4.8 The claims of the Preferential Creditors are estimated at £198,000. The agreed preferential claims will be met in full from funds currently held by Solicitors on behalf of Shareholders. Sufficient funds to meet the estimated Preferential Claims will be passed immediately to the Supervisor.
- 4.9 A Proposal that the Administrators' fees could be drawn on a time cost basis was approved by the Creditors at the Section 23 Insolvency Act 1986 Meeting of Creditors held on 3rd April 2002. It is estimated that the Administrators' time costs will total £1.3m. This liability has been included in the shortfall to the Bank.
- 4.10 The shortfall to the Bank and the Administration will be settled as follows:-
- a) The sum of £1.3 million will be paid to the Administrators immediately following the agreement of the Voluntary Arrangement. The funds to meet this payment have been raised by Shareholders and are held by Solicitors on behalf of Shareholders. The funds will be used towards discharging the estimated shortfall to the Bank.

- b) A further £322,000, which has been raised by Shareholders, will be held in escrow. These funds will not be utilised until the validity of the Bank's fixed charge on book debts has been agreed. The conduct of this matter will be determined solely by the Bank, but will be in any event settled not more than 24 months from the date of approval of the Arrangement. In the event that the Bank's charge is not valid these funds will be passed to the Bank in reduction of its liability. The funds will be returned to the New Company only if the Bank's fixed charge on book debts is valid and to the extent that there is no remaining shortfall to the Bank. If such a shortfall exists, the funds will be used first to discharge any remaining shortfall to the Bank.
- 4.11 A second further letter from JAG to the Shareholders has been issued inviting further funding. The funds raised as part of this exercise will be used as follows:-
- a) The first £200,000 will be paid to the Administrators in reduction of any remaining outstanding liability to the Bank and the Administration.
  - b) The next £700,000 will be paid to Tiger Aspect to allow the New Company to purchase the shareholding Tiger Aspect holds in Target Distribution Limited. The proposed merger with Target Distribution Limited is detailed in paragraph 5.2.
  - c) The next £364,000 will be retained by the New Company as working capital.
  - d) In the event that funds in excess of those detailed above are raised from Shareholders, they will be utilised to extinguish any remaining shortfall to the Bank and the Administration.
- 4.12 In the event that more than £1,246,000 of additional funds are raised from Shareholders (following the fund raising exercise in 4.11 above) on or before 28th June 2002 and a shortfall to the Bank still exists, the first £136,000 of any remaining shortfall to the Bank will be repaid by the New Company to the Bank within six months of the date of approval of the Voluntary Arrangement. The repayment will be made in six equal monthly instalments on the last business day of each month. The first instalment will be paid on 31st July 2002. In the event that there is any residual liability to the Bank after the above, the Bank will have the discretion to take an equity stake in the New Company or opt for repayment of the remaining shortfall over a period to be negotiated between the Bank and the Directors of the New Company. It should be noted that the Bank retains its security over all the remaining assets of the Group until it is repaid in full including interest accruing to the date of full repayment.
- 4.13 In the event that less than £1,246,000 of additional funds are raised from Shareholders on or before 28th June 2002 a renegotiation of the terms in 4.12 above will be required. The Bank will have the discretion to take an equity stake in the New Company and/or opt for repayment of the remaining shortfall over a period to be negotiated between the Bank and the Board of the New Company. In the event of either of the aforementioned options being exercised by the Bank, and regardless of the time taken by the Bank to arrive at its decision, this proposal will remain valid and will nevertheless proceed to voting and approval by the Creditors and Shareholders of Just Group Plc., Just Licensing Limited and Just Entertainment Limited. It should be noted that the Bank retains its security over the assets of the New Company until it is repaid in full including interest accruing to the date of full repayment.
- 4.14 It is proposed that Just Group Plc will assume the pre-Arrangement ordinary unsecured liabilities of Just Entertainment Limited and Just Licensing Limited. Loan notes will be issued to the Unsecured Creditors of Just Entertainment Limited and Just Licensing Limited in respect of these liabilities which will equate to 40% of Unsecured Creditors' claims in these companies.
- 4.15 It is proposed that Creditors with specified rights under license agreements will be treated as Unsecured Creditors and receive redeemable loan notes under 4.5. However, the proposed Board of Directors of the New Company recognises that these creditors are of strategic importance, without whose support the Arrangement would not be possible, and the Directors will undertake to renegotiate their entitlement once the up to date royalty position has been quantified. We understand from JAG that the strategic creditors include:-
- |      |                          |     |                        |
|------|--------------------------|-----|------------------------|
| j)   | Winchester Entertainment | ii) | Trebor Bassett         |
| iii) | Universal Studios        | iv) | Mike Young Productions |
| v)   | DCDC                     |     |                        |
- 4.16 Prior to the Group being placed into Administration a dispute arose with a firm of accountants regarding due diligence undertaken in anticipation by Just Group Plc of the acquisition of MediaKey Plc. The Directors instructed solicitors to review a claim by the Just Group Plc against the accountants for negligence. The Supervisors will review the merits of this claim. In the event that any claim is successful the funds received by the New Company will go first towards discharging any remaining shortfall to the Bank. Thereafter, 15% of the net proceeds will be used to finance a dividend to Creditors in addition to the redeemable loan stock. The maximum distribution to Creditors will equate to 60p in the £ on the claim agreed by the Supervisors. The balance will be retained by the New Company as working capital and in meeting the costs of agreeing disputed Creditors' claims.

## 5. FUTURE TRADING

- 5.1 It is proposed that a new Board of Directors will be incorporated. This will provide the New Company with a new board to manage the New Company's activities and the ability to develop the licenses held, and seek new opportunities. A meeting of Shareholders has been convened for the purpose of appointing a new Board of Directors.
- 5.2 Terms have been agreed, conditional upon the acceptance of the Voluntary Arrangement at the Extraordinary General Meeting which has been convened in respect of the Arrangement, for a merger with a private company, Target Distribution Limited. JAG believes that this company is a successful and profitable business, established four years ago. We understand from JAG that the merger will provide the New Company with almost 1,000 hours of television programming and global licensing opportunities, providing the potential to create substantial additional revenue for the New Company.
- 5.3 It is proposed that following the satisfaction of the conditions in 7.1, the Company Voluntary Arrangement will be completed. Following the completion of the Arrangement, the New Company will seek advice from its nominated Brokers and Advisors regarding the timing and other issues in order to seek a re-listing on a recognised Stock Exchange.
- 5.4 Any Creditors whose debts have been incurred by the New Company in the carrying on of the business of the New Company after the fixed date, will be paid from the ongoing trade outside of the Voluntary Arrangement.
- 5.5 Immediately following the Fixed Date:-
- 5.5.1 For the duration of the Voluntary Arrangement and subject to the provisions of paragraph 10.2.1, no Creditors (save for the Bank and the Supervisors) shall have any remedy against the assets or the property of the New Company nor shall any such Creditors proceed with or commence any demand, legal proceeding, execution, judgement, distress or other step whatsoever against the New Company.

- 5.5.2 Creditors who have issued legal proceedings against the Just Group Plc, Just Licensing Limited or Just Entertainment Limited as at the Fixed Date shall only be entitled to continue those proceedings for the purpose of establishing their claim in the Voluntary Arrangement.
- 5.5.3 The New Company shall execute and deliver to the Supervisors powers of attorney in such form as the Supervisors require irrevocably appointing the Supervisors the attorneys of the New Company and in their names and on their behalf and in their acts and deeds or otherwise to seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or right which may be required or may be deemed proper by the Supervisors for any of the purposes of the Voluntary Arrangement.
- 5.6 The New Company shall provide the Supervisors with its management accounts on a six monthly basis, together with any explanatory information which the Supervisors may require. This will enable the Supervisors to monitor the performance of the New Company throughout the duration of the Voluntary Arrangement.
- 5.7 All outstanding Value Added Tax and Corporation Tax returns are to be rendered within six months of the approval of the Voluntary Arrangement with all future returns to be rendered and paid by the due date. In the event that outstanding returns are not lodged within six months, the Supervisors shall review the position and may extend the period to twelve months or eighteen months i.e., the devaluation of the arrangement, if appropriate. The New Company recognises that substantial work will be required to reconcile the Corporation Tax position. In the event that the New Company is unable to agree the position in the timescale detailed the Supervisor/New Company will seek further time from the Inland Revenue.
- 5.8 All tax liabilities not included in the Inland Revenue's final claim to the Supervisors as Creditors of the New Company shall be paid as and when they fall due for payment.

## **6. THE SUPERVISORS**

### **6.1 PERSONS PROPOSED AS SUPERVISORS**

The proposed Supervisors are David Hudson and Jamie Taylor of Messrs. Begbies Traynor, The Old Exchange, 234 Southchurch Road, Southend-on-Sea, Essex SS1 2EG. Both David Hudson and Jamie Taylor are Members of the Insolvency Practitioners Association and are both Licensed Insolvency Practitioners.

### **6.2 DUTIES AND POWERS OF THE SUPERVISORS**

- 6.2.1 The Supervisors their servants or agents shall incur no personal liability in connection with the negotiation or implementation of the Voluntary Arrangement or under any deeds instruments or documents entered into pursuant to or in connection with it.
- 6.2.2 In exercising their powers, the Supervisors are deemed to act at all times as the New Company's agents and without prejudice to the generality of the foregoing the New Company shall keep the Supervisors and each of them indemnified on demand against all actions, claims, proceedings and demands brought or made against them or either of them in respect of the conduct of the business during the period of the Voluntary Arrangement and in respect of all expenses and liabilities properly incurred by them in carrying out their functions.
- 6.2.3 The Supervisors have all powers specified in Schedule 1 of the Act as if they were Administrators of the New Company.
- 6.2.4 Any act to be done in connection with the Voluntary Arrangement may be done by any one of the Supervisors.
- 6.2.5 A person dealing with the Supervisors in good faith and for value is not concerned to enquire whether the Supervisors are acting within their powers.
- 6.2.6 Should this Arrangement be approved by the requisite majority of Creditors and Members, the Supervisors shall within 28 days of the Fixed Date provide all Creditors with a notice of claim form.
- 6.2.7 The Supervisors shall consider the claims of all persons claiming to be Creditors of the New Company. For the purpose of quantifying claims of Creditors, the rules in Part 4, Chapter 9, Section B of the Rules shall apply as if the New Company had gone into Creditors Voluntary Liquidation on the Fixed Date. No Creditors shall be entitled to challenge a decision by the Supervisors to admit the claim of another Creditor unless they can prove bad faith on the part of the Supervisors. The Supervisors shall have power to compromise the claim of any Creditor at their discretion.
- 6.2.8 The Supervisors shall distribute the funds retained in the Voluntary Arrangement in the following order of priority:-
- 6.2.8.1 (a) All fees, costs, charges and expenses of the Administration that have been properly incurred by the Administrators in carrying out their duties.
- (b) In paying or providing for the fees, costs, charges and expenses of the Voluntary Arrangement including:-
- i) The fees, costs and expenses of the Supervisors fixed by reference to the time properly spent by them and their staff in attending to matters arising in the Voluntary Arrangement; and
- ii) The costs and expenses of any agent or Solicitor appointed by the Supervisors to assist or advise in the performance of their duties.
- (c) The New Company will within 28 days from the fixed date and at the end of every calendar month thereafter ensure that sufficient funds are passed to the Supervisor's to meet these liabilities.
- 6.2.8.2 In paying the Preferential Creditors.
- 6.2.9 The Supervisors shall make initial distributions under paragraphs 6.2.8.2 as soon as reasonably practicable after the Fixed Date. Any Preferential Creditors who have not notified the Supervisors of their claims before a dividend is paid, but whose claims are thereafter admitted by the Supervisors, shall be entitled to be paid out of any money or property of the New Company in the Supervisors hands in respect of any dividend which they have failed to receive before that money or property is applied in payment of future dividends, but such Preferential Creditors are not entitled to disturb distributions made before they notified their claim to the Supervisors.

### **6.3 FUNCTIONS AND ADDITIONAL POWERS OF THE SUPERVISOR**

- 6.3.1 The Supervisors will monitor the payment of contributions of funds held by Solicitors on behalf of Shareholders which are payable under the terms of the Voluntary Arrangement.

They will have such access to the books and records of the New Company as they may require. The Supervisors will agree Creditors claims and deal with all queries on behalf of Creditors and make the appropriate distributions. It is expressly noted for the avoidance of doubt that the Supervisors shall not in any circumstances be personally liable for any liabilities incurred in connection with the continued trading of the New Company.

- 6.3.2 It is proposed to give the Supervisors the power to convene and hold further meetings of Creditors and Shareholders at any time throughout the duration of the Voluntary Arrangement. Any decision or resolutions passed by those meetings should be binding on the Supervisors, the New Company and all Creditors.
- 6.3.3 A Meeting of Creditors may be convened at any time throughout the duration of the Voluntary Arrangement on not less than 21 days notice in writing by post to the last business address known to the New Company to consider, and if necessary to vote on, matters of relevance to the Voluntary Arrangement including, without limitation, the variation or termination thereof. Such Creditors Meetings may be called at the request of the Supervisor, or one or more Creditors whose claims in aggregate exceed more than 25% of the total claims at the time.
- 6.3.4 At a Creditors Meeting pursuant to Clause 6.3.3 to consider a matter of relevance to, including a variation in the terms or termination of the Voluntary Arrangement, a majority in value of 75% calculated by reference to the provisions of paragraph 1.17 of the Rules, present and voting in person or by proxy shall be required to approve such variation or termination.
- 6.3.5 The Supervisors will have the power to compel Creditors to lodge with them their claim in the proceedings by serving upon them a notice giving at least 21 days notice of an intention to issue the redeemable loan stock. If any Creditors should fail to submit their claim before expiry of that time then they may be excluded from the distribution. In the event that any of the Creditors claims are disputed, the Supervisors may reject that claim and invite that Creditor to issue legal proceedings against the New Company which will ultimately decide the validity of such claims. The legal costs of defending and any costs awarded against the New Company are to be paid as an expense of the Voluntary Arrangement. If within 28 days of such an invitation being served upon a Creditor no proceedings are received, then the Creditor may be excluded from all distributions by the issue of a notice by the Supervisors on the Creditor.

## **7. COMPLETION OF THE VOLUNTARY ARRANGEMENT**

- 7.1 The Voluntary Arrangement shall finally be completed when:-
  - i) The Supervisors have received all payments due from the New Company and Shareholders without needlessly protracting the Voluntary Arrangement and have paid Preferential Creditors in full.
  - ii) The company has issued the redeemable loan stock to Unsecured Creditors.
  - iii) All fees, costs, charges and expenses incurred by the Supervisors have been settled.
  - iv) All fees, costs, charges and expenses incurred in the Administration have been settled.
- 7.2 Once the loan notes have been redeemed and the appropriate distributions made by the Supervisors and the New Company to a Creditor that Creditor shall be deemed to have irrevocably waived and released the New Company from all claims of that Creditor and that Creditor shall have no further additional rights against the New Company in respect of its claims, other than the redemption of the loan notes issued to them.
- 7.3 In the event that the New Company is unable to redeem the loan notes, any Creditor will have the right to pursue the New Company for the amount due to them at the date of the Arrangement, less any funds received from the New Company in respect of that debt.

## **8. FAILURE OF THE VOLUNTARY ARRANGEMENT**

- 8.1 In the event that the New Company fails to pay to the Administrators the shortfall to the Bank and the Administration in accordance with 4.10 and 4.11 within seven days of the date of approval of the Arrangement, the Arrangement will be deemed to have failed.
- 8.2 The Supervisors, in their absolute discretion, will have power to deem that the Voluntary Arrangement has failed and petition for the winding up of the New Company on the following grounds:-
  - 8.2.1 In the event that the funds deposited with the Supervisors to meet preferential claims are insufficient, the New Company will have 28 days, or such longer period as determined by the Supervisors, from the date the New Company is notified by the Supervisors of any deficiency. If funds are not received to meet the claims of the Preferential Creditors within that period, the Arrangement will be deemed to have failed.
  - 8.2.2 The New Company fails to issue the redeemable loan notes, as requested by the Supervisor.
  - 8.2.3 Failure to co-operate with the Supervisors to provide information required under the terms of this proposal or requested in connection with the New Company's affairs;
  - 8.2.4 Failure to comply with the requirements of paragraph 10.13;
  - 8.2.5 If the Bank appoint a Receiver under the terms of its security.
- 8.3 The Arrangement will also be deemed to have failed should any post Voluntary Arrangement Creditor successfully petition for a Winding-up Order against the New Company.

## **9. DESIRABILITY OF A VOLUNTARY ARRANGEMENT**

The principal reason why a Voluntary Arrangement is desirable and in the interests of the Creditors is that they can expect to receive a higher return than they would receive in Compulsory or Voluntary Liquidation of Just Group Plc, Just Licensing Limited and/or Just Entertainment Limited.

## **10. MATTERS REQUIRED BY RULE 1.3 OF THE RULES TO BE STATED OR OTHERWISE DEALT WITH IN THE PROPOSALS**

### **10.1 THE NEW COMPANY'S ASSETS**

The assets of the New Company and their estimated realisable values are shown in the Statements of Affairs attached at "Appendix 3".

#### 10.1.1. **CHARGED ASSETS**

The New Company's liability to its Secured Creditors are shown in the Statement of Affairs at "Appendix 3".

The security held by the Secured Creditors is detailed at "Appendix 1".

#### 10.1.2 **EXCLUDED ASSETS**

With the exception of any funds which are payable by the New Company to the Supervisors, all assets of the New Company are to be excluded from the Voluntary Arrangement.

#### 10.2 **THE NEW COMPANY'S LIABILITIES**

The liabilities of the New Company are set out in the Estimated Statement of Affairs at "Appendix 3".

##### 10.2.1 **SECURED CREDITORS**

It is anticipated that where the assets, subject to any charge in favour of Secured Creditors, are required for the ongoing trading purposes of the New Company that the New Company will maintain the payments scheduled under the respective agreements. It should be noted that the Bank retains its security in the form of a debenture dated 18th April 2001 conferring a fixed and floating charge over the assets of the Group. This security will remain until the liability has been settled in full including interest accruing to the date of full repayment.

##### 10.2.2 **PREFERENTIAL CREDITORS**

Preferential Creditors (as defined under Section 4 of 386 of the Act) will receive a dividend out of funds being paid to the Supervisors. Preferential Creditors will be paid in full.

##### 10.2.3 **UNSECURED CREDITORS**

Unsecured Creditors will receive redeemable loan notes in respect of their liability. The value of the loan notes will equate to 40% of the outstanding liability.

#### 10.3 **CONNECTED COMPANIES AND PARTIES**

A list of connected companies and parties is attached as "Appendix 5".

#### 10.4 **GUARANTEES OF THE COMPANY'S DEBTS**

The Bank holds an unlimited guarantee from the Group in respect of the indebtedness owed to it across the Group.

#### 10.5 **CIRCUMSTANCES GIVING RISE TO CLAIMS IN THE EVENT OF LIQUIDATION**

##### S.238 **Transactions at an undervalue**

We are not aware of any such transactions.

##### S.239 **Preferences**

A potential preference has been identified in respect of a payment made by Just Group Plc of £68,750 on or around 6th August 2001 when contractually this payment was due on 1st October 2001. Just Group Plc was placed into Administration on 9th January 2002. In the event that the Voluntary Arrangement is accepted the Supervisors would be unable to pursue this action and the Administrators will therefore give consideration to pursuing this alleged preference.

##### S.244 **Extortionate Credit Transactions**

We are not aware of any such transactions.

##### S.245 **Invalid Floating Charges**

We are not aware of any such charges having been created.

#### 10.6 **PROPOSED DURATION OF THE VOLUNTARY ARRANGEMENT**

The Voluntary Arrangement is intended to continue for 1 year and 6 months or until:-

- 1) All contributions payable to the Administrators, the Bank and the Supervisors have been received and the appropriate distributions made by the Supervisors to the Preferential Creditors.
- 2) All redeemable loan notes have been issued by the New Company to Unsecured Creditors.
- 3) The Supervisors may alter the duration of the Voluntary Arrangement in their absolute discretion if they consider it appropriate.

#### 10.7 **PROPOSED DISTRIBUTIONS**

Distributions are proposed to be made to the Creditors as indicated in paragraph 6.2.9 above.

#### 10.8 **NOMINEES REMUNERATION**

The Nominees' remuneration will be set at a maximum of £36,000 plus VAT.

#### 10.9 **SUPERVISORS REMUNERATION**

The Supervisors' remuneration is addressed in paragraph 6.2.8.1(c).

10.10 **GUARANTEES**

No guarantees are to be offered by Directors or other persons other than those already in existence.

10.11 **FUNDS FOR PAYMENT TO CREDITORS**

Funds held for the purpose of the Voluntary Arrangement are to be lodged in a recognised Clearing Bank under the control of the Supervisors. Funds held pending distribution should be invested by the Supervisors on deposit or otherwise with a recognised Clearing Bank under the control of the Supervisors.

10.12 **FUNDS ON TERMINATION**

It is proposed that all sums realised will be distributed in accordance with the terms of the Voluntary Arrangement. If, however, upon the termination of the Voluntary Arrangement the Supervisors retain funds for the purpose of payment to the Creditors and such funds have not been so paid, the Supervisors will either return the funds to the New Company or pursuant to Section 7(4) of the Act will seek the directions of the Court or petition to wind up the New Company so that the funds can be dealt with by a Liquidator.

10.13 **FURTHER CREDIT FACILITIES**

The New Company will on normal trade terms incur credit from suppliers for the purpose of carrying on its business under the Voluntary Arrangement. The New Company will continue trading for some or all of the duration of the Voluntary Arrangement meeting its day to day liabilities as and when they fall due. In the event that the New Company fails to meet its day to day liabilities as and when they fall due, the Supervisors will notify the New Company of their intention to fail the arrangement and the New Company will have 14 days in which to respond to this notice prior to the arrangement being failed. Following the expiry of this notice period the Supervisors will have the power to commence winding up proceedings against the New Company.

Signed



Dated 17th June 2002

Joint Administrator





**HM Revenue  
& Customs**

**Solicitor's Office**

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**Our Ref** SLR 163148/PAJK  
**Your Ref**

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**DX** 146765 LONDON  
(Somerset House)

**WITHOUT PREJUDICE SAVE AS TO COSTS**

**PART 36 OFFER**

Dear Sirs

**EDI Realisations Limited ("EDI") (In Administration)**

I refer to previous our correspondence in relation to this matter. Following a review of the information relating to costs recently provided, we are now in a position to set out formally our views on the position reached regarding the trust funds held by your client in the Administration of EDI ("the Funds").

In summary, we are extremely concerned about the way in which this whole matter has been handled. It appears to us that following the CVA (at a time when secured liabilities to the bank had been discharged), the Joint Administrators of EDI were holding a sum in excess of £524,000 in trust monies. We attach a summary analysis of the Joint Administrators' Receipts and Payments, which shows that at January 2005, when the ownership of the Fund was the only outstanding issue in the Administration, they were holding the sum of £591,488.50.

In reality there can have been very little room for doubt as to who was entitled to the Funds: it was inevitably one or both of Her Majesty's Revenue & Customs ("HMRC") and Newscreen Media Group Plc ("Newscreen"), the original source of the monies in question. Indeed, the Joint Administrators' Reports to Creditors consistently expressed the view that the Funds should be applied to settle the claims of the preferential creditors. If they had acted in accordance with that belief, HMRC would have received its preferential claim in full

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and there would have been some £200,000 to return to Newscreen as well as adequate funds to cover the cost of closing the Administration. (This is reflected in the agreement which HMRC reached with Newscreen, whereby it was agreed to divide what remained of the Funds in the proportions 60:40, which broadly equates to HMRC's original claim of £324,000 out of trust monies of £524,000.)

The manner in which the Joint Administrators chose to deal with the one remaining issue in relation to ownership of trust monies is also of concern. It is not easy to understand why they did not simply pay the Funds into Court and allow interested parties to make representations if they chose to do so. Instead, we are told that your clients have incurred costs of almost £500,000 in order to have determined an issue in whose outcome your clients had no financial interest and which, frankly, could have been resolved in a far more straightforward manner. It seems to us that the method chosen has led to far greater costs being incurred than was necessary, and that trust monies have been expended in dealing with other matters unrelated to the question of ownership of the Funds, such as criticism of the Joint Administrators by Mr Jones and Mr Hardy in relation to their conduct of the Administration. In this regard, it is helpful to remind oneself that as your clients' counsel put it at the hearing on 18.12.06: "The Court has already made it plain that the question in this application is a narrow one, namely who is entitled to these funds. If Mr Jones, Mr Hardy, or anyone else genuinely believes that as a matter of substance and law the insolvency practitioners, which I represent today, have acted in breach of duty in the administration of the estate of EDI Realisations, then of course it is up to them to bring proceedings to that effect. But in relation to these proceedings it must be noted that the allegations need to centre on the funds." In reality, however, HMRC considers that the level of costs incurred is primarily attributable to matters such as the "allegations of false accounting, deception, conspiracy and fraud" on the part of the Joint Administrators to which reference is made in paragraph 3.5 of Mr Graham's third witness statement and the conduct of Newscreen's former directors, rather than the limited issue concerning beneficial ownership of the Funds.

You have recently informed us that of the sum of £591,488.50 which was held by the Joint Administrators at January 2005, there now remains less than £100,000. You have also gone so far as to state that these remaining monies could be absorbed in the costs assessment process, with the consequence that there will be no monies available for distribution to the parties entitled.

We can see no justification for costs of this magnitude, when you and your clients have known throughout that you were dealing with trust monies.

We have discussed these matters with the other parties entitled to the Funds and confirm that they and HMRC are of the view your costs should be assessed by the Court, as a matter of principle and public interest. You should be aware that HMRC will be vigorously challenging your entire approach in relation to the handling of this issue as well as specific items of costs incurred.

We have also briefly reviewed the information provided by you and are concerned by the following matters in particular:

- The high level of internal meetings, correspondence and consideration especially by Eversheds LLP ("Eversheds"). There is no indication that any of this was of any value to the beneficiaries of the Funds.

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- The number of staff involved by Eversheds in relation to this issue and the fact that the total fees exceed £333,000 to date in relation to what can only be regarded as a fairly simple claim.
- The fees taken by KPMG LLP ("KPMG") (some £60,000 to April 2007) in relation (so we assume) to the Administrations of other group companies, when those Administrations were closed in April 2004, prior to your clients' application being issued.

An analysis of the costs incurred by KPMG and Eversheds in line with the 6-monthly Reports to Creditors of EDI is enclosed herewith. The amounts spent are, frankly, staggering given the limited role which you and your clients ought to have played.

However, in order to try to avoid further Court proceedings and to try to bring this matter to a swift resolution HMRC is prepared to make the following proposals in settlement of your and your clients' claims:

	£000	£000
Initial trust fund		524
Add interest accrued (from January 2005 at, say, 3.5% per annum)		<u>51</u>
		575
Reasonable costs of determining ownership of trust monies		
Eversheds	(55)	
KPMG	(50)	
Counsel	<u>(20)</u>	
		<u>(125)</u>
		450
Reasonable costs of closing Administration (KPMG)*		<u>(25)</u>
Settlement offer		<u><u>425</u></u>

\*It should also be noted that at January 2005 there were significant funds of some £60,000 to £70,000 available over and above the Funds (i.e. trust monies) in the Administration, which would have been available for this purpose if the Administration had been closed promptly in 2004.

No deduction should have been made from the capital sum in respect of fees without the permission of the Court, and accordingly interest at 3.5% per annum should run throughout on the full capital sum.

Accordingly, HMRC is prepared to settle on the basis that the sum of £425,000 is agreed to be the amount now available for distribution. Please send 60% of this amount to HMRC and 40% to Newscreen.

This offer is intended to have the consequences specified in CPR Part 38. Please note that if the offer is accepted within 21 days then HMRC will be entitled to the costs of these proceedings up to the date on which notice of acceptance is served on us. This offer relates to the whole of your costs in this case.

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We look forward to hearing from you.

Yours faithfully

**Paul A J Kreling**

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Mr M Hardy  
3 St Mary's Square  
Bury St Edmunds  
IP33 2AJ

Date 17 January 2008  
Your ref  
Our ref WOODMX/145720-000001  
Direct dial 0845 497 7  
Direct fax 0845 497 7477  
markwood@eversheds.com

**By email: [thinkplc@gmail.com](mailto:thinkplc@gmail.com)  
WITHOUT PREJUDICE SAVE AS TO COSTS**

Dear Mr Hardy

**EDI Realsations Limited (in Administration) ("the Company")**

In accordance with the sealed Orders dated 27th July 2007 and 9 January 2008 made in this matter, we now write in an attempt to reach settlement of the Applicants' remuneration, costs and expenses. As you are aware, we have until 28 January 2008 to agree the same before continuing to a costs assessment.

This letter contains an offer to the Respondents of an amount that the Applicants, as agents of the Company, are willing to make available in full and final settlement of all claims.

A similar letter has been forwarded to all other Respondents in this action.

**Background**

In providing this offer, we would comment as follows:-

The Court has confirmed that the Joint Administrators' remuneration, costs and expenses of and incidental to their investigation of the ownership of the Funds, to include the costs of and incidental to the application, be paid out of the Funds. The only issue which is now subject to the settlement negotiations is therefore the level of the Administrators' remuneration, costs and expenses of and incidental to their investigation of the ownership of the Funds, including the costs of and incidental to the application.

The costs that have been incurred by the Administrators and their advisers in dealing with this matter have been increased significantly by some of the Respondents' actions, the manner in which they have responded to the application and their inability to agree a proportional split of the Funds at an earlier date. In particular, we would state as follows:-

- (i) the Respondents failed to agree to Alternative Dispute Resolution ("ADR") when this was suggested by Registrar Simmonds at the hearing on 15 May 2006 (lines 15 to 26 of page 11 of the transcript of the hearing) and by suggestion by the Administrator's solicitors in correspondence dated 30 June 2006 and 11 July 2006;

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- (ii) the Respondents failed to submit evidence as to why they claimed they were entitled to the Funds as directed by Registrar Simmonds on 15 May 2006;
- (iii) although the Respondents were claiming entitlement to the Funds, they did not appear to hold evidence which could be of assistance to the Court in determining where the Funds should be paid. In this regard, we refer to paragraphs 3 to 7 of the Second Witness Statement of Allan Graham;
- (iv) the Respondents only submitted evidence as to why they believed they were entitled to the Funds when the Administrators applied to the Court on 9 October 2006;
- (v) the Respondents did not agree until July of 2007 as to who was entitled to the Funds and in what proportions. The contradictory arguments put forward by the Respondents are summarised in Allan Graham's Witness Statements and, in particular, at paragraph 35 of Allan Graham's Fourth Witness Statement;
- (vi) further substantial correspondence has been necessary due to allegations made by the Third Respondent and Fourth Respondent, which are more fully particularised at paragraphs 47 to 49 of Allan Graham's Fourth Witness Statement and paragraph 5 and 6 of Allan Graham's Second Witness Statement;
- (vii) the Respondents' actions also resulted in the further application made by the Administrators on 15 November 2007; and
- (viii) the Administrators and their advisers have responded as fully as possible in the circumstances to the relevant points raised and information requested by the Respondents. Again, however, this has had the effect of further increasing the costs in this matter.

The Administrators consider they have acted properly throughout. They sought directions from the Court given the competing interests in the Funds and the Court has found that the Applicants' remuneration, costs and expenses are rightfully drawn from the Funds held. As such, the Administrators consider that they are entitled to the full extent of the remuneration, costs and expenses incurred in this matter.

We have considered the recent correspondence with our client provided by the respective Respondents and there is nothing contained within those letters that would lead us to conclude that our client is not entitled to their remuneration, costs and expenses to date.

The Administrators are therefore fully prepared to continue with the directions provided by the Court and proceed to a detailed costs assessment and to abide by the Court's decision on the appropriate level of fees in this matter, if this is necessary.

### **Previous Offers**

By email dated 29 October 2007, our clients made a best and final offer to settle this matter which was available for acceptance until 5.30 pm on 2 November 2007. This offer was in the sum of £150,000. The Respondents rejected this offer and made a counter offer in the sum of £425,000 by letter dated 22 November 2007. This was rejected by the Administrators in a letter dated 11 December 2007.

## **Offer**

As you are aware, further remuneration, costs and expenses have been incurred by the Administrators in dealing with this matter since the offer was made on 29 October 2007. In particular, the Administrators and Eversheds have been involved in the preparation of two Bills of Costs as well as the Fourth Witness Statement of Allan Graham and dealing with correspondence from the Respondents.

The Administrators are entitled to be paid their remuneration, costs and expenses in investigating the ownership of the Funds and of the assessment process from the Funds. In addition, the Administrators are entitled to their remuneration and expenses properly incurred as defined by section 19(4) of the Insolvency Act 1986.

Although the Administrators consider that they are entitled to their remuneration, costs and expenses of dealing with this matter in full, in the interests of reaching a final settlement in this matter, they are willing to take a frank and pragmatic approach.

As you may be aware, parties to costs assessment proceedings rarely obtain full recovery for their fees. They can typically expect to receive, where the standard basis is applicable, a reduction of somewhere between 0-25%, and where the indemnity basis is applicable, a reduction of somewhere between 0-10%. For the purposes only of these settlement negotiations the Administrators and Eversheds are willing to assume that they would face reductions at the higher ends of these scales: a reduction of 25% in respect of the Joint Administrators' fees (£81,000) since they are subject to assessment on the standard basis; and a reduction of 10% in respect of Eversheds' costs (£395,735) which are subject to assessment on an indemnity basis. We emphasise that these assumptions are for the purposes of negotiation only, and at any costs assessment proceedings, recovery in full of both the Administrators' fees and Eversheds' costs would be vigorously sought.

On the basis of these assumptions, the maximum amount which we estimate would be available to the Respondents, if a cost assessment were to take place, is £71,656. A breakdown of the calculation of this figure is set out at Appendix 1 to this letter. We have assumed that an assessment process would proceed smoothly. It is of course self-evident to all concerned, that the amount would be much less if the assessment process became protracted.

We would remind the Respondents of the comments made by Registrar Nicholls at the hearing on 17 July 2007 that, if an agreement cannot be reached then in all likelihood there will be no Funds available at the end of this matter and that the Order dated 17 July 2007 provides for the legal costs in this matter to be assessed on an indemnity basis.

In the interests of settling this matter, the Administrators and Eversheds are prepared to offer a significant reduction in their fees in order to make available to the Respondents a settlement sum of £105,000. This offer is in full and final settlement of all claims between the Administrators, Eversheds, HM Revenue & Customs, Newscreen Media Group Plc, Mark Hardy and Think Entertainment Plc.

In view of the much lesser sum which would be available were a costs assessment to take place (on the basis set out above), this offer represents a more favourable outcome to the Respondents. We look forward to receiving Respondents' responses to this offer.

## Appendix 1

<b>Item</b>		<b>Amount</b>
Approximate Funds held as at 17 January 2008		151,833.00
Less outstanding legal work in progress		60,000.00
<b>Balance</b>		<b>91,833.00</b>
<b>Less Costs of assessment</b>		
Legal fees	20,000.00	
Assessor's fees	20,000.00	
Joint Administrators' fees	10,000.00	
Counsel's fees	15,000.00	
<b>Total costs of assessment</b>		<b>65,000.00</b>
<b>Balance</b>		<b>26,833.00</b>
<b>Plus Estimated Maximum Potential Abatements</b>		
Joint Administrators (25% of £81,000)	20,250.00	
Legal fees (10% of £395,735)	39,573.00	
<b>Total Estimated Maximum Potential Abatements</b>		<b>59,823.00</b>
<b>Balance</b>		<b>86,656.00</b>
<b>Less costs to exit administration</b>		
Legal fees	7,500.00	
Joint Administrators' fees	7,500.00	
<b>Total costs to exit administration</b>		<b>15,000.00</b>
<b>Maximum estimated amount available to respondents post assessment</b>		<b>£71,656.00</b>