

The Insolvency Act 1986

Administrator's progress report

Name of Company

Dairy Farmers of Britain Processing Limited

Company Number

02874550

In the

High Court of Justice, Chancery Division,
Leeds District Registry

(full name of court)

Court case number

1563 of 2009

(a) Insert full name(s) and
address(es) of
administrator(s)

I/ We (a) Ian David Green of PricewaterhouseCoopers LLP, Benson House, 33 Wellington Street, Leeds, LS1 4JP, David James Kelly of PricewaterhouseCoopers LLP, 101 Barbirolli Square, Lower Mosley Street, Manchester, M2 3PW and Stephen Mark Oldfield of PricewaterhouseCoopers LLP, Abacus House, Castle Park, Gloucester Street, Cambridge, CB3 0AN

administrator(s) of the above company attach a progress report for the period

from

to

(b) Insert dates

(b) 4 June 2011

(b) 8 November 2011

Signed


 Joint / Administrator(s)

Dated 8 November 2011

Contact Details:

You do not have to give any contact information in the box opposite but if you do it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

Alison Myatt

Benson House 33 Wellington Street Leeds

LS1 4JP

Tel 0113 289 4395

DX Number

DX Exchange



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10/11/2011

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COMPANIES HOUSE

When you have completed and signed this form please send it to the Registrar of Companies at
 Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff

THURSDAY



**To all known creditors
The Registrar of Companies
The High Court of Justice, Chancery Division, Leeds District Registry**

8 November 2011

Our ref ACM/DFoBP/061011

Dear Sirs

Dairy Farmers of Britain Processing Limited – in administration (“the Company”)

Further to my last progress report dated 3 May 2011, which was sent to all creditors on 17 June 2011 in accordance with the terms of a court order dated 6 May 2011, I write to provide you with my fifth and final progress report on the above Administration in accordance with Rules 2.47 and 2.118 of the Insolvency Rules 1986 (“the Rules”) covering the period from 12 April 2011 to 8 November 2011.

Statutory and financial information

I enclose the following for your information

- Appendix A Extract from the Administrators’ proposals,
- Appendix B Statutory information;
- Appendix C Administrators’ receipts and payments accounts to 8 November 2011,
- Forms 2.24B Administrators’ progress report, and
- Forms 2.35B Notice of move from administration to dissolution.

Background information

The Company was incorporated on 23 November 1993, and is a subsidiary of the agricultural milk co-operative Dairy Farmers of Britain Limited (“DFOB”). The Company was in turn the parent of Lubborn Cheese Limited (“Lubborn”) and Nene Valley Foods Limited (“Nene”).

Nene was a purpose-built dairy plant located in Peterborough, which produced flavoured milk for major multiples and specialist milk and ingredients products, especially for the ready-meals market.

Lubborn processed around 10 million litres of milk per year into a range of continental, soft-style cheeses. These included premium Brie-style cheeses (Somerset Brie, Channel Island Brie and Somerset Rustic), together with Somerset Camembert and Capricorn Goats Cheese.

On 20 May 2009, the Company sold its interest in Nene for an enterprise value of £3.5 million and therefore the Company’s only remaining asset were the shares in Lubborn.

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DFOB suffered significant losses in its liquids division which was compounded by the loss of its contract with the Co-operative supermarket. Whilst losses in its liquid division were partially mitigated by the Group's closure of two dairies earlier in 2009, the extent of the loss over 2008/9 meant it was unable to pay its farmer members what was considered to be an economical milk price, leaving it towards the bottom of the UK milk price league. This inability to pay what the farmers considered a competitive milk price, led to 50% of its farmer members tendering their resignation in the period November 2008 to 3 June 2009.

The farmer member council were requested to consider new methods of raising equity in March 2009, but were unable to sanction these pending the sale of the liquids business, which had been put up for sale along with other parts of the DFOB Group.

On 3 June 2009, Stephen Oldfield, David Kelly and Ian Green were appointed receivers and managers of DFOB following an invitation by its Directors to its bankers, HSBC Bank Plc ("the Bank"), for the appointment.

At the time of the receivers and managers appointment, DFOB had interested parties in its hard cheese business in Llandyrnog, its liquid milk business which processed milk at DFOB's three dairies and for Lubborn. In April 2009, the Company received six second round offers from interested parties for Lubborn. The Company progressed these expressions of interest with two interested parties, running full due diligence processes, and negotiations were still ongoing when the receivers and managers were appointed over DFOB on 3 June 2009.

As a consequence of the appointment of Receivers and Managers to DFOB, the availability of ongoing work capital was uncertain, and in order to expedite and conclude the sale of Lubborn, the Bank appointed Stephen Oldfield, David Kelly and Ian Green as joint administrators of the Company on 4 June 2009.

An extract from the Administrators' proposals is enclosed at Appendix A and statutory information concerning the appointment is enclosed at Appendix B.

The Proposals

The purpose of an administration is to achieve one of the following objectives

- (a) primarily, rescuing the company as a going concern, or failing that,
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or finally
- (c) realising property in order to make a distribution to one or more secured or preferential creditors

As detailed in the Proposals, objective (b) was being pursued as it was not reasonably practicable to rescue the Company as a going concern.

The Proposals were deemed approved in accordance with Rule 2.33(5) IR86, a meeting of creditors not having been requisitioned by creditors in the prescribed manner.



Steps taken during the administration

- **Sale of shares in Lubborn**

On 6 June 2009, the Company sold its shares in Lubborn to Lactalis McLelland Limited ("Lactalis") for £6.1 million, together with the settlement of various debts as detailed below

	£
Lubborn equity	6,100,000 00
Settlement of external book debts	852,231 29
Settlement of intergroup book debts	302,688 18
Settlement of intercompany debts	2,120,427 38
Settlement of bank overdraft	92,420 71
Total	<u>9,467,767 56</u>

A retention of £605,778 89 was withheld pending the finalisation of the inter-company balances.

The inter-company debts were subsequently finalised with Lactalis and a portion of the retention totalling £255,935 91 was released to the Administrators on 3 December 2009, and a further £32,000 was released following a VAT reclaim on 29 October 2010.

The remaining balance of £317,842.98 was for the benefit of DFOB due to the inter-company debt being with DFOB and not the Company. £302k was released to DFOB on 22 December 2009, with the balance being irrecoverable

- **Receipt of funds from Milk Group Products Limited ("MGP")**

MGP is a wholly owned subsidiary of the Company and was also a creditor for distribution purposes in the Company's 'Prescribed Part' distribution (discussed below)

MGP entered Members' Voluntary Liquidation on 27 September 2010. Following receipt of the 'Prescribed Part' distribution from the Company, MGP itself made a distribution to its sole member (the Company) on 15 August 2011 in the sum of £31,515.05

- **Dealing with statutory and compliance matters**

These included dealing with the Company's VAT and tax matters, reporting to creditors, reporting on the directors' conduct and distributing funds to the Company's secured creditors and its unsecured creditors via a 'Prescribed Part' distribution

The Administrators gave notice of their intention to make a 'Prescribed Part' distribution to unsecured creditors of the Company who lodged their claims by 19 November 2010.

The Administrators had been due to make the distribution by 19 January 2011. However, on 17 January 2011 creditors were notified that the distribution was postponed until further notice as a result of a judgement handed down by the High Court on 10 December 2010 in the unrelated case of

Re Nortel GmbH and other companies, Re Lehman Brothers International (Europe) (in administration) and other companies ("the Nortel/Lehman case") which prevented the distribution being made.

In the Nortel/Lehman case, the Court ruled that a Contribution Notice ("CN") which followed on from a Financial Support Direction (FSD) issued by the Pensions Regulator against a company in administration, where the FSD was not in place at the start of the administration, ranked as an expense of the administration in priority to all creditors of the company, other than fixed charge holders.

The appeal of the Nortel/Lehman case was listed in the Court of Appeal for the week beginning 25 July 2011, but it was likely that judgment would not be issued until October or November 2011 at the earliest. It was not known at that stage whether there would be a further appeal to the Supreme Court, which would prolong the uncertainty now faced.

Although the Company itself did not have a defined benefit pension scheme, the Administrators understood that Dairy Farmers of Britain (Bridgend) Limited ("Bridgend") operated a defined benefit pension scheme which was understood to be in deficit by a sum exceeding £1 million. Further, DFOB participated in an industry wide defined benefit scheme which had a deficit claim against DFOB of around £8.6m. The Company was associated with both Bridgend and DFOB and so there was a theoretical risk that the Regulator could impose a FSD against the Company in respect of the deficits in those schemes. It is possible for the Regulator to impose a FSD (and subsequently a CN) only if certain prescribed conditions are met and only if it is reasonable to do so.

The Administrators therefore needed to consider in detail the extent of the risk of a FSD (and subsequently a CN) being imposed on the Company and as a result obtained an extension to this administration to 3 June 2012.

Following detailed analysis of the Company's position further, it was determined that the risk of an FSD being imposed expired on 6 June 2011, two years after the sale of Lubborn. The Administrators therefore gave notice of their intention to declare a 'Prescribed Part' dividend on 17 June 2011, with a last date for proving of 15 July 2011 and final date for declaration of the dividend of 15 September 2011.

The 'Prescribed Part' dividend was declared on 15 August 2011. Further details of the quantum of this dividend are given below.

Outcome for creditors

- **Secured creditors**

The Bank holds fixed and floating charges over the Company's assets dated 15 July 2008. These charges relate to cross guarantees given by the Company.

The Bank's total indebtedness was approximately £62 million across the DFOB group of companies. The directors' statement of affairs indicates that none of this debt related directly to the Company.

The Bank has received a distribution of £8,607,621.02 from the Company's fixed and floating charge realisations. The Bank has also received distributions from other members of the DFOB group of companies against its indebtedness.



The Bank will suffer a shortfall on its total lending

- **Preferential creditors**

The Company has no known preferential creditors

- **Unsecured creditors**

As the Bank's security is dated after 15 September 2003, the Administrators were required to make available, for the payment of non-preferential unsecured creditors, the 'Prescribed Part' of the net floating charge realisations that (but for setting aside the 'Prescribed Part') would be available to meet the claims of the Bank under its floating charge.

The 'Prescribed Part' is calculated as 50% of the Company's net property not exceeding the first £10,000, plus 20% of the excess of the Company's net property over £10,000

On 12 March 2010, the Administrators successfully applied to Court for permission to distribute the 'Prescribed Part' within the administration.

For the reasons set out above, the declaration of the 'Prescribed Part' dividend was delayed from January 2011 until 15 August 2011

The Administrators calculated the 'Prescribed Part' available to the unsecured creditors of the Company to be £424,573 26. On 15 August 2011, the Administrators declared a first and final dividend of 11 295 p in the £ to the unsecured creditors of the Company by virtue of the 'Prescribed Part'

The total distributed, after the costs of agreeing claims and making the distribution were deducted from the 'Prescribed Part', was £420,635 40

Receipts & payments account

Attached at Appendix C is an abstract of the Administrators' receipts and payments to 8 November 2011.

Extension to the Administration

The Administration was initially due to come to an automatic end on 3 June 2010. The Administrators requested and gained an extension via the secured creditor for a period of six months to 3 December 2010, in accordance with Paragraph 76(2)(b) and 78(2)(a) of Schedule B1 to the Insolvency Act 1986 ("Sch B1 IA86")

Further extensions of the Administration to 3 June 2011 and 3 June 2012 were granted by the Court on 26 November 2010 and 6 May 2011 respectively

Administrators' remuneration and disbursements

In accordance with Rule 2.106(5A) IR86, the Administrators' remuneration and disbursements has been fixed by the secured creditor. The Administrators obtained approval to their remuneration from

the secured creditor on 1 June 2010 and fees of £96,082 30 and disbursements of £581 28 have been drawn

Discharge from liability

Pursuant to Paragraph 98(3)(a) Sch B1 IA86, the Administrators are discharged from liability in respect of any action of theirs as Administrators, at a time specified by the secured creditor. The secured creditor has approved that such discharge take effect 14 days after we cease to be joint administrators of the Company.

Exit from the administration

I have today forwarded a Notice to end the Administration under Paragraph 84(1) of Sch.B1 IA86 to the Registrar of Companies

Upon registration of the Notice with the Registrar, the appointment of the Administrators will cease to have effect. At the end of the period of three months beginning with the date of the registration of the Notice, the Company will be deemed dissolved.

In accordance with the Rules, Form 2 35B (Notice of move from administration to dissolution) is included with this report for your records

Should you have any queries in relation to the contents of this report, please do not hesitate to contact Alison Myatt on 0113 289 4395

Yours faithfully
for and on behalf of the Company



David Kelly
Joint Administrator

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Enclosures

Appendix A	Extract from the Administrators' proposals
Appendix B	Statutory information
Appendix C	Administrators' receipts and payments accounts to 8 November 2011
Forms 2 24B	Administrators' progress report
Forms 2 35B	Notice of move from administration to dissolution

I D Green, D J Kelly and S M Oldfield have been appointed as joint administrators of the Company on 4 June 2009 to manage its affairs, business and property as its agents and act without personal liability. All are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales

Dairy Farmers of Britain Processing Limited – in administration
Extract from the Administrators' proposals

Proposals for achieving the purpose of the Administration

The Administrators make the following proposals for achieving the purpose of administration

- i) The Administrators will continue to manage and finance the Company's business from asset realisations in such a manner as they consider expedient with a view to achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration).
- ii) The Administrators may investigate and, if appropriate, pursue any claims that the Company may have under the Companies Act 1985 or IA86 or otherwise. In addition, the Administrators shall do all such other things and generally exercise all their powers as Administrators as they in their discretion consider desirable in order to achieve the purpose of the Administration or to protect and preserve the assets of the Company or to maximise their realisations or for any other purpose incidental to these proposals
- iii) If the Administrators think that funds will become available for unsecured creditors, the Administrators may at their discretion establish in principle the claims of unsecured creditors for adjudication by a subsequent liquidator and that the costs of so doing be met as a cost of the Administration as part of the Administrators' remuneration (where the Administrators think there will be sufficient funds for a distribution to unsecured creditors other than by virtue of the prescribed part) or out of the prescribed part as costs associated with the prescribed part (where the Administrators think that funds will become available to the unsecured creditors by virtue of the prescribed part but not otherwise).
- iv) If the Administrators think that funds will become available for unsecured creditors, the Administrators may at their discretion make an application to court for permission to make distributions to unsecured creditors under Paragraph 65(3) Sch B1 IA86
- v) As there will be insufficient funds to enable a distribution to be made to non-preferential unsecured creditors of the Company other than by virtue of the "Prescribed Part" the Administrators are not seeking to form a creditors' committee
- vi) If the Administrators conclude that the cost of distributing the "Prescribed Part" to the non-preferential unsecured creditors would be disproportionate to the benefits they will make an application to the court under section 176A(5) IA86 for an order not to distribute the "Prescribed Part"
- vii) If the Administrators believe that it is considered advantageous to extend the Administration beyond the statutory deadline of one year, the Administrations shall either apply to the court or seek the consent from the appropriate classes of creditors for an extension
- viii) The Administrators may use any or a combination of "exit route" strategies in order to bring the Administration to an end, but in this particular instance the Administrators are likely to wish to pursue the following options as being the most cost effective and practical in the present circumstances: -
 - (a) Once asset disposals are complete, the Administrators will apply to the Court to allow the Administrators to distribute surplus funds, if any, to unsecured non-preferential creditors. If such permission is given, the Administration will be brought to an end by notice to the Registrar of Companies under Paragraph 84 Sch B1 IA86, following registration of which the Company will be dissolved three months later. If permission is not granted the Administrators will place the Company into creditors' voluntary liquidation or otherwise act in accordance with any order of the court, or
 - (b) Once asset disposals are complete, the Administrators will place the Company into creditors' voluntary liquidation. In these circumstances, it is proposed that Ian Green, Stephen Oldfield and David Kelly be appointed as Joint Liquidators and any act required or authorised to be done by the Joint Liquidators may be done by any or both of them. In accordance with Paragraph 83(7) Sch B1 IA86 and Rule 2.117(3) IR86, creditors may nominate alternative liquidators, provided that the nomination is made after the receipt of these proposals and before they are approved,

Dairy Farmers of Britain Processing Limited – in administration
Extract from the Administrators' proposals

- (c) the Administrators will make an application to court under paragraph 79 Sch B1 IA86 for the Administration to be ended accompanied by a petition under Section 124 IA86 for the Company to be wound up; or
 - (d) if it transpires that there are insufficient funds with which to make a distribution to unsecured non-preferential creditors, once all of the assets have been realised and the Administrators have concluded all work within the Administration, the Administrators will file a notice under Paragraph 84(1) Sch B1 IA86 with the Registrar of Companies, following registration of which the Company will be dissolved three months later, or apply to Court under Paragraph 79 Sch B1 IA86 for the Administration to be ended
- ix) The Administrators shall be discharged from liability pursuant to Paragraph 98(1) Sch B1 IA86 in respect of any action of theirs as Administrators at a time resolved by the secured creditor, or if a distribution has been or may be made to the preferential creditors, at a time resolved by the secured and preferential creditors or in any case at a time determined by the court
- x) It is proposed that the Administrators' fees be fixed under Rule 2.106 IR86 by reference to either the time properly given by the Administrators and the various grades of their staff according to their firm's usual charge out rates for work of this nature or as a percentage of realisations and that Category 2 disbursements (as defined by the Statement of Insolvency Practice No 9) be charged in accordance with their firm's policy. As the Administrators have stated that they think that the Company has insufficient property to enable a distribution to be made to non-preferential unsecured creditors other than by virtue of the "Prescribed Part", it will be for the appropriate classes of creditor pursuant to Rule 106(5A) IR86 to determine these instead

Dairy Farmers of Britain Processing Limited– in administration
Statutory information

Registered number	02874550
Registered office	PricewaterhouseCoopers LLP, Benson House, 33 Wellington Street, Leeds, LS1 4JP
Court details	High Court of Justice, Chancery Division, Leeds District Registry Case number 1563 of 2009
Date of appointment	4 June 2009
Name of person appointing	HSBC Bank Plc
Appointed Administrators	Ian David Green, Stephen Mark Oldfield and David James Kelly
Joint administrators' address	PricewaterhouseCoopers LLP, Benson House, 33 Wellington Street, Leeds LS1 4JP PricewaterhouseCoopers LLP, Abacus House, Castle Park, Gloucester Street, Cambridge, CB3 0AN PricewaterhouseCoopers LLP, 101 Barbirolli Square, Lower Mosley Street, Manchester, M2 3PW
Division of the Administrators' responsibilities	In relation to Paragraph 100(2) Schedule B1 to the Insolvency Act 1986, during the period for which the administration is in force, any act required or authorised under any enactment to be done by an administrator may be done by either or both of the Administrators acting jointly or alone
Extension of the Administration	An extension of the administration was granted by the secured creditor for six months, to 3 December 2010 Further extensions were granted by the court until 3 June 2011 and 3 June 2012 on 26 November 2010 and 6 May 2011 respectively

Dairy Farmers of Britain Processing Limited - in administration
Administrators receipts and payments
For the period 4 June 2009 to 8 November 2011

Directors' Statement of Affairs		From 4 June 2009 to 3 June 2011	From 4 June 2010 to 8 November 2011	Total
£	ASSETS / RECEIPTS	£	£	£
	Fixed Charge			
7,200,000 00	Shares in subsidiaries	6,100,000 00	31 515 05	6,131,515 05
	Factored Book Debts	852,231 29	-	852,231 29
	Third party funds	2,492 41	38,611 85	41,104 26
	Interest received gross	21 90	-	21 90
	Total	6,954,745 60	70,126 90	7,024,872 50
	Floating Charge			
	Release of retention	287,935 91	-	287,935 91
	Inter Company debt	2,515,536 27	-	2,515,536 27
7,200,000 00	Total	2,803,472 18	-	2,803,472 18
		9,758,217 78	70,126 90	9,828,344 68
	COSTS OF REALISATION / PAYMENTS	£	£	£
	Fixed Charge			
(7,200,000 00) *	Distribution to Chargeholder	6,882,231 29	43,198 04	6,925,429 33
	Third Party funds	38,611 85	2,492 41	41,104 26
	Legal fees	34,068 08	-	34,068 08
	Legal Disbursements	126 37	-	126 37
	Office Holders Fees	24,144 46	-	24,144 46
	VAT receivable	(23 10)	23 10	-
	Total	6,979,158 95	45,713 55	7,024,872 50
	Floating Charge			
	Distribution to Chargeholder	1,270,000 00	412,191 69	1,682,191 69
	Office Holders Fees	71,937 84	-	71,937 84
	Office Holders Expenses	581 28	-	581 28
	Legal Fees	18,031 67	533 00	18,564 67
	Legal Disbursements	1,223 24	1,042 44	2,265 68
	Retention on sale of business	605,778 89	-	605,778 89
	Mail re-direction	130 02	-	130 02
	Bank charges	69 55	64 80	94 35
	Statutory advertising	1,078 74	73 62	1,152 36
	Irrecoverable VAT	-	100 00	100 00
	VAT receivable	94 39	(94 39)	-
	Total	1,968,925 62	413,911 16	2,382,836 78
		8,948,084 57	459,624 71	9,407,709 28
(3,748,270 00)	UNSECURED CREDITORS	-	420,635 40	420,635 40
(3,748,270 00)		810,133 21	(810,133 21)	-
	Represented by:-			
	Balance at Bank	810,133 21	-	-

* The Bank has been paid £8.6 million in respect of the combined debt owed by the Company and the DFOB Group under cross guarantees