CROWN CURRENCY EXCHANGE LIMITED ("CROWN")

1. Who is Crown?

1.1 Crown Currency Exchange Limited (to which I will refer to as Crown in this report) is a limited company incorporated in England.

1.2 The company number is 5167427.

1.3 The company was incorporated on 30 June 2004.

1.4 The registered office, that is to say the official address of the company, is

John Harvey House
Foundry Square
Hayle
Cornwall
TR27 4HH

1.5 Every company is required to submit an Annual Return to the Registrar of Companies. Crown's last Return was made up to 16 August 2010 and gives the following information:-

1.5.1 The Company Secretary is Stephen John Matthews. The role of the Company Secretary is often an administrative one. I do not have any information at this time about Stephen Matthews' specific role in the company.

1.5.2 The sole director of the company is Peter David Benstead. I will refer to him again below. He was appointed director on 21 October 2008.

1.5.3 The company has issued 10,000 shares which have been issued as follows:-

Peter Benstead	7,750
Edward James	2,250

1.6 The sole director of the company is Peter Benstead about whom we also have the following information from the public records:-

1.6.1 Date of Birth – 18 November 1942.

1.6.2 His home address is Penzance is available on the public record but I have chosen not to publicise his full address in this report.

1.7 Peter Benstead's other companies are:-

Name	**Company No**	**Status**	
Crown Holdings (London) Limited	5204837	Administration	- 4 Oct 2010
Grants of Cornwall Limited	6948659	Incorporated	- 30 June 2009
West Country Sales and Marketing Limited	6893249	Incorporated Now dissolved	- 30 April 2009
Mayfair and Grant Limited	6945694	Incorporated	- 26 June 2009

1.8 Former Directors:-

- Susan Margaret Benstead resigned as a director of the company on 30 January 2009.

- Edward Norman James resigned as a director of the company on 17 December 2009.

1.9 If there are any secured creditors who have a charge against the company's assets, these would be registered at Companies House. There are no such charges in the case of Crown.

1.10 Joint Administrators were appointed on Monday 4 October 2010. In fact, there are two pairs of joint Administrators. One pair (Sorsky and Davis) are from the firm of SPW (UK) LLP and the other pair (Clark and Bond) are from the firm MCR. It appears that MCR are taking the lead in running this Administration.

2. What is Crown's situation?

2.1 A limited company is required to submit its accounts to the Registrar of Companies annually. The amount of detail disclosed in the filed accounts will depend upon the size of the company. Above a certain size, a company is required to submit full accounts which must be fully audited but, otherwise, abbreviated accounts may be filed. In the case of Crown we only have abbreviated accounts. The Investors Chronicle reported last year that Crown had a turnover of £264M. That is clearly not the company's commission income and is therefore assumed to be referring to the total funds transacted. If, however, this is the commission income that I would expect the accounts to be fully audited, which they are not.

The last accounts were made up to 30 November 2009. I have set out below a summary of the main points disclosed by those accounts but you should bear in mind that the company has only disclosed a balance sheet but no details of its profits or losses during those periods.

	30-Nov-09	**30-Nov-08**	**30-Nov-07**	**30-Jun-06**	**10-Aug-05**
Number of Weeks	**52**	**52**	**72**	**43**	**9**
Fixed Assets	**113,228**	**79,911**	**78,951**	**2,261**	**1,241**
Current Assets					
Debtors	1,142,427	1,175,341	1,127,876	1,249,604	29,064
Cash at Bank & in Hand	1,393,031	529,523	1,241,399	165,699	14,244
Total Current Assets	**2,535,458**	**1,704,864**	**2,369,275**	**1,415,303**	**43,308**
Current Liabilities	(2,836,974)	(2,053,933)	(2,782,17)	(1,647,793)	(40,563)
Net Current Assets (Liabilities)	(301,516)	(349,069)	(412,901)	(232,490)	2,745
Total Assets (Liabilities)	**(188,288)**	**(269,158)**	**(333,95)**	**(230,229)**	**3,986**
Capital & Reserves					
Called up Share Capital	10,000	10,000	10,000	10,000	10,000
Accumulated Losses	**(198,288)**	**(279,158)**	**(343,950)**	**(240,229)**	**(6,014)**

3. What is the meaning of these accounts?

3.1 Based on Section 123 Insolvency Act 1986 it is commonly accepted that where a company's liabilities exceed its assets, the company is insolvent. On that basis the single most telling thing about these accounts is that they disclose an insolvent position, if not throughout the entire period of its trade, relates to wrongful trading certainly at each year end date.

Section 214 Insolvency Act 1986, to which I refer again at paragraph 5.5.1 below can impose, in certain circumstances, a personal liability on any director who presided over such a situation.

The Administrator will certainly wish to examine this before deciding whether to pursue any of the directors for wrongful trading.

4. What does all this mean?

4.1 Given that this matter only blew up in the last few days, the amount of information presently available is somewhat limited. I have obtained a lot of information from the public record and from speaking to creditors. I also probably have an advantage over other creditors in that one of the Administrators, Paul Clark, has spoken to me candidly about the case

4.2 The Administrator has informed me that, in broad terms, the company's assets amount to about £3M which is represented by about £2M cash in the bank and a further £1M of foreign currency.

You probably know that if a solicitor is holding funds for you it must be in a designated client account which cannot be used for other purposes. Client accounts are mandatory in certain cases but not in the case of a company like Crown. The Administrator has informed me that Crown kept its money in a general account and not a Trust account for its clients. It is my general view that a prudent director of a company handling large sums of its customers' cash would be well advised to go beyond the strict requirements of the law and ensure that the money which the company is holding is designated as trust money for its customers.

Whether or not the law will change to impose client account regulation on currency dealers, this will not now help the creditors of Crown.

4.3 The Administrator has informed me that the company's liabilities are in the order of £20M. There are no institutional creditors (that is to say banks, investors or significant loan creditors) and the vast majority of this is represented by debts due to about 13,000 customers, most of whom are individual consumers.

4.4 It follows that there is a deficiency in the order of £17M.

4.5 Just refer back at this point to the accumulated losses in November 2009 from the schedule above, amounts to £198,288. I will refer to this again as I believe that the key to any investigation is in the answer to the question how the company has apparently lost £16.8M in less than 12 months.

4.6 There is a lot more work to do here and I would not expect any more clarity until a Liquidator has been appointed to investigate thoroughly on behalf of the creditors.

5. What is Administration?

5.1 Administration is one of the formal insolvency processes available under the Insolvency Act 1986 and associated legislation.

5.2 An insolvent company can be wound up either by way of Liquidation or by Administration. Generally, a company would be placed into Liquidation if it is simply a matter of closing down an insolvent company and dividing up the assets in the order prescribed by the law, to its creditors.

5.3 Administration may only be used in certain prescribed circumstances. In general terms, that will be where there is a prospect of selling the company or a part of it, or, at least, achieving a realisation and therefore a return to creditors better than they would have had in a Liquidation. There are other differences which might determine the choice of insolvency route, including the fact that a company can be placed into Administration immediately on the instruction of the director without the need to consult with creditors or to convene a meeting. The Insolvency Practitioner who is advising the company must consider these factors and make sure that he has given the proper advice he if wishes to avoid criticism. It appears to me that this is a proper case for Administration not least because of the difficulty of convening a meeting of so many creditors with urgency.

5.4 Once appointed the Administrators have numerous duties which they and their staff must attend to immediately. These will include (but this is not comprehensive):-

- Secure all of the company's assets
- Deal with all of the company's staff
- Take possession of the company's books and records
- Identify the creditors and other liabilities
- Report to creditors as soon as possible
- Devise a strategy for the Administration

5.5 The above points, and many others, have to be dealt with urgently. There are other matters which cannot be dealt with urgently but only when a great deal of information and evidence has been obtained. This will include an investigation into the affairs of the company and consideration of any action to recover additional assets. In this connection, the Administrators will consider any action against the directors of the company which may arise from their investigation. Due to a quirk in the law, some of these matters can only be pursued by a Liquidator and not by an Administrator and may therefore have to wait until the Administration is converted into a Liquidation, which I guess will probably happen. Depending on what information is gathered by the Administrator, the kind of investigation which might then follow could include:-

5.5.1 **Wrongful trading.** In lay terms this is referred to as trading whilst insolvent but is in fact more complicated than that. If it can be shown that the directors traded beyond the point where they ought properly to have realised that the company could not avoid going bust, they may be responsible for wrongful trading and may be called on to make good the losses incurred by wrongful trading.

5.5.2 **Preference.** Where an insolvent company makes a payment to a particular creditor with the intention of putting them in a better position than the other creditors, that payment

can be clawed back. By way of example, it has been reported that certain local creditors may have been paid in full to the detriment of other creditors. I do not know if that is correct, but if it can be shown that such payments were made for the purpose of putting those people in a better position than they would otherwise have been, that would be a preference and they can be called on to repay it.

5.5.3 **Transactions at undervalue.** Where assets have been disposed off at undervalue within a certain period prior to the insolvency these can be reversed.

5.5.4 In addition, there are general duties on directors under the Companies Acts and the Insolvency Act to act in the best interests of the company and its creditors if they are to avoid a penalty for **misfeasance**.

5.5.5 Once a company goes into Liquidation, the Liquidator is required by **Section 218(4)** Insolvency Act 1986 to report if it appears to him that any past or present officer of the company has been guilty of an offence for which he is **criminally liable**. This is the process whereby a criminal investigation arising out of an insolvent company, whether it be fraud or otherwise, is commonly started.

8. What happens in the Administration?

8.1 The Administrators must report to creditors as soon as possible. New rules came into force in April 2010 allowing an Administrator to communicate by electronic means and I expect that that may happen in this case, especially given the large number of creditors and the fact that Crown was internet based.

8.2 The Administrators must report in full to creditors within 8 weeks. The contents of that report are prescribed by law and will include :-

- The background to the insolvency
- The Administrator's proposals
- The proposed exit route (i.e. is it proposed that the company will go into Liquidation or be dissolved?)
- Various resolutions will be put to the creditors

8.3 In addition to the information provided by the Administrator the director should by that time have provided a Statement of Affairs which should be incorporated in that report. That will be a sworn statement by the director disclosing details of the assets and liabilities. Even if the director does not provide a sworn Statement of Affairs, the Administrator may reasonably be expected to provide such information that he has for the assistance of creditors

8.4 Creditors should expect the Administrator to go beyond the strict requirements of the law and to provide as much information as possible to creditors so that they can have an idea what they may expect.

8.5 An Administration would normally be terminated after 12 or 18 months. It can only be extended beyond that by order of the Court. In reality, it is probable that the Administrators will wish to convert the Administration into a Liquidation and for Liquidators to be appointed. Whilst they may seek that appointment themselves, you should bear in mind that they cannot do that without

the creditors' approval. The creditors may choose to appoint an alternative Liquidator of their own choice.

9. What can creditors expect from the Administration?

9.1 If it is true that there are assets of £3M and liabilities of £20M, it should follow as a matter of arithmetic that creditors can expect no more than 15p in the £ back. Some Press reports have suggested that that is what you will get.

9.2 In reality, it will be less than that, because of the costs of the Administration which are presently unknown. Bear in mind that the Administrator's costs be approved by the creditors or by the Court. It is anybody's guess what those costs might be but it does mean that the estimate is likely to be closer to 10p than 15p.

9.3 Creditors would also be interested to know when they will get their money back. I am fairly sure that nobody will see a penny for quite some time, probably more than a year. To be fair to the Administrators, there is likely to be a lot of work to be done in agreeing and administering such a large number of claims.

10. How might the position be improved?

10.1 Ideally, the Administrator, or subsequent Liquidator, will identify any additional source of assets to supplement the figure of £3M which is discussed earlier in the report. I have no reason to suppose that there is (or is not) such an additional fund but I come back to the single figures questioned which I have highlighted above, that is "where is the £16.8M?"

10.2 I have referred above at paragraph 5.5 to the various areas of investigation which an Administrator or Liquidator may pursue if appropriate. These may give rise to additional assets.

11. What other parties might get involved?

11.1 I have mostly been concerned with the performance of the Administrators and what civil claims they may make, depending on the information they gather. If it transpires that there have been any criminal breaches these will be investigated by the appropriate prosecuting authority. This is unlikely to assist creditors directly.

11.2 There has been a suggestion that the Administrators may have an action against the Financial Services Authority (FSA). I believe this was covered adequately in MSE news on 6 October 2010 including the FSA response that it does not have any duties in this case. Realistically, I would advise creditors to put this out of their minds and leave it to the Administrators to take legal advice if they determine that there is any prospect of a claim. I think it very unlikely.

11.3 The Administrator is required to report to BERR (formerly DTI) on the conduct of the company and its directors. He has to make this report within 6 months in order to give BERR sufficient information for them to decide whether to take steps to disqualify a person from acting as director in the future. In order to make that report, the director should be interviewed carefully and questioned, amongst other things, on the reason for the losses.

11.4 I have observed a lot of comments about the role of Barclays Bank and whether they have a case to answer. It appears to me that, since the Bank were not owed anything, they were never in a position to force the winding up of the company. Barclays will certainly have a duty to their own shareholders but I cannot see that they had any duty to the creditors of the company.

12. Where is the £16.8M?

12.1 I have said a few times in this report that this is the big question.

12.2 The last accounts made up to November 2009 indicated accumulated losses, which have always hovered around that figure for several years, of about £200,000.

12.3 In my opinion that must mean one of two things. Either;

12.3.1 The company has lost £16.8M trading in 10 months or;

12.3.2 The company has been losing money hand over fist for the earlier period(s) but that such losses are not disclosed in the filed accounts.

12.4 I do not have any evidence to suggest that the filed accounts are wrong but it is difficult to see how £16.8M could have been lost in 10 months unless the company was trading at a huge **gross** loss. The Administrators' investigation into the books and records of the company which are hopefully intact and reliable, ought to show whether or not that is the case.

13. Where does the responsibility lie?

13.1 Crown was a private company. There were only ever three individuals involved. They are:

13.1.1 Peter Benstead – director and majority shareholder

13.1.2 Edward James – former director and minority shareholder

13.1.3 Susan Benstead – former director who resigned on 30 January 2009

13.2 The responsibility for running the company in accordance with the Companies Acts and other legislation and good practice must rest with the directors. Although Peter Benstead was the sole director of the date of the Administration, Edward James resigned only a few days earlier. This means that he was a director during the period which the Administrators are likely to examine most carefully, and will not escape investigation simply through his resignation.

13.3 Whilst Susan Benstead was also a director, she had resigned in January 2009. If that is the case, I would not expect her to be the prime focus of the Administrators' attention.

13.4 Theoretically, all creditors (that is to say customers) must take some responsibility in choosing to deal with the company. The only information on which they can rely for financial information to decide whether to deal with that company is the filed accounts.

I have referred to the financial accounts previously. The last accounts go up to November 2009 but those accounts were only approved by the company, and signed by Edward James, on 27 August 2010 so that does not help anybody with an up-to-date summary of the financial position of the company. Incidentally, the 2008 accounts were also submitted at the last moment on 10 September 2009, just within the 10 months filing deadline.

David Kaye
Crawfords
28 October 2010