

CASE LAW

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TECHNICAL UPDATE

Conflict of Interest & Pre-Pack Sale

In the case of [VE Vegas Investors IV LLC and others v Shinnors and others \[2018\] EWHC 186 \(Ch\)](#) the judge was asked to decide whether the administrators should be removed from office due to a conflict of interest that arose in respect of a pre-pack sale to the company’s management team. The judge advised that he thought the issue of the conflict of interest that arose was clear, and it was for the administrators to have effectively addressed the conflict through the appointment of independent administrators to deal with the investigation of the sale. Since the administrators had failed to acknowledge at all or address the conflict of interest, the court made an order for their removal.

Removal of an LPA Receiver by Administrator

In the case of [Promontoria \(Chestnut\) Limited v Craig and another \[2017\] EWHC 2405 \(Ch\)](#) the judge reviewed the decision of the joint administrators to remove the LPA receivers the day after the administrators were appointed. The issue of the valuation of the properties not being robust was considered, and the joint administrators focus on refinancing and or sale of the properties. In this case, there would not be a surplus available to unsecured creditors and even though the proposal of the administrators had been approved, the court held that they could re-appoint the

receivers under para 43(2) Sch B1. The judge determined that the removal of the receivers was irrational and therefore decided to make a costs order against the administrators personally.

Statutory Demand & Cross Claim

In the case of [LDX International Group LLP v Misra Ventures Limited \[2018\] EWHC 275 \(Ch\)](#) the court considered the correct threshold test where the debtor’s company with a cross-claim applies to restrain the winding up petition. The judge held that there must be a genuine and serious cross-claim that exceeds the value of the debt, but it is not the role of the Companies Court in these sorts of applications to conduct a mini-trial on the merits.

Notice to QFCH for liquidations

In the case of [Bevan and another v Walker and others \[2018\] EWHC 265 \(Ch\)](#) the court considered whether the lack of notice of intended winding-up resolution to a QFCH even though the charge was unenforceable, would invalidate the appointment of the liquidator. The court agreed that notice should be given to the QFCH even if the charge was unenforceable as this was an issue for the charge holder to prove in the event they wanted to appoint administrators. However, lack of notice to a QFCH would not invalidate the appointment of a liquidator and a clear distinction was made between liquidation

R3 IVA T & Cs

R3 has now issued updated terms and conditions for IVAs which may be found [here](#).

The aim of the amendments to the T & Cs was twofold: 1. To bring them in line with the insolvency rule changes in April 2017 and in particular the use of decision procedures instead of physical meetings and 2. To address the Green v Wright trust issue.

I have therefore decided to cherry pick some changes to bring to your attention:

Decision procedure

S65(2) gives a creditor whose claim has been reduced for voting purposes 28 days to challenge that decision from when record of the decision is given.

S69(4) requires supervisors to circulate to creditors the record of any decision procedure but does not give any time limit in which this needs to be completed.

S60 means that you can use R1.50 general use of websites and just place all non-exempt documents straight on to the website without writing to creditors each time, making it easier to comply with s69(4).

S64(4) disappointingly follows the new rules and states that votes cast in non-meeting decisions cannot be changed.

S68(1) allows for suspension of meetings for more than 1 hr in exceptional circumstances.

S68(4) allows for proofs and proxies to be lodged up until the time of the meeting.

and administration in respect of this issue.

Tax deductions made on statutory interest

In the case of *Re Lehman Brothers* [2017] EWCA Civ 2124 the court has held that payments of statutory interest pursuant to rule 14.23(7) of the Insolvency (England and Wales) Rules 2016 (and formerly payable pursuant to rule 2.88(7) of the Insolvency Rules 1986) give rise to an obligation to withhold amounts representing income tax (subject to such exemptions or reliefs as may be available).

Financial Institutions and Creditor Meetings

The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 came in to force on 13 March 2018 and may be found [here](#). The amendments apply to financial institutions and try to align with the rule changes introduced April 2017 but there are exceptions and they are restricted to companies and partnerships.

Insolvency & Housing Associations

The Insolvency of Registered Providers of Social Housing Regulations 2018 have been laid before parliament but have yet to have an implementation date. The legislation may be found [here](#).

Change in name for Registrars in Bankruptcy

The Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018 came into force on 26 February 2018 and a copy of the order may be found

[here](#). This legislation among other things renames Registrars in Bankruptcy to Insolvency and Companies Court Judges.

Closing Bankruptcies and Compulsory Liquidations

The Insolvency Service has issued guidance to help understand the new procedure introduced by the change in the rules on 8 December 2017. The rule change was to address the issue of ISA fees accruing after the final report had been issued. The guidance may be found [here](#).

HMRC, MVL & Statutory Interest

Further guidance has been issued by HMRC on the issue of statutory interest on current open cases and the application of the early payment discount which may be found [here](#).

AML Firm Risk Assessment

The RPBs have been issuing guidance and templates to help firms conduct the firm risk assessment. ICAEW have also published guidance and templates [here](#). ICAS have published guidance on how to conduct the annual AML firm risk assessment, together with a template checklist and worked case studies which may be found [here](#).

R3 website

R3 have amended their website and decided to place some key documents in the members area and moved others. In particular please be aware that the R3 IVA T & Cs has been placed in the members area and the link to the guides to fees have changed. R3 are currently considering the question of website access and document placement.

R3 IVA T & Cs- ctd

Decision procedure - ctd

s62(4) interestingly this requires meetings to be called between 10 am and 4pm which is a deviation from the new rules.

Proof of Debt & Claim

S1 under definitions proof of debt is now prescriptive in the format to be used in line with the new rules.

S32 gives the IP some flexibility in accepting a proof not in the specific format but with the required information.

S33(2) allows the supervisor to vary a claim amount with the creditor without the debtor agreeing.

S36 the right for the debtor to review proofs has been removed from the T & Cs

S39(4) allows for small debts of £1,000 or less to be agreed by the supervisor without a proof of debt and without the need to notify them of the amount that their claim has been admitted for in advance of paying the dividend. This is at the IPs discretion.

S41 references to official exchange rate has been replaced with "exchange rate prevailing".

S55(2) (but should be 55(3), we have a numbering error) be aware of the new formula being used to calculate the discount for future debts (a hot topic in MVLs!)

Trusts

Greenv Wright obviously raised some key issues about how the trust clause works in IVAs and certainly generated problems for the profession. The new R3 T & Cs is an attempt to clearly define when the trust should finish by introducing "the Trust Realisation Period" and s29 has details of how this will work upon termination, full implementation and expiry of the IVA.

Michelle will be blogging with a more detailed review of the changes and impact of the new R3 IVA T & Cs in due course.



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Joanne is also a partner of both The Compliance Alliance and JOH Consultancy which offer a range of services that may be tailored to an individual IP's needs.

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