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TECHNICAL UPDATE

Environmental liability

In the case [Dawson International Public Limited Company & Dawson International Trading Limited \[2018\] CSOH 52](#) the Administrator made an application to court for directions in respect of: any potential claim from the Environmental Agency (EA), whether the EA's claim would be unsecured or an expense of the administration, whether they were able to stop the remedial work in respect of the contaminated land and whether they could now exit the administration. There was pressure by the PPF, who were owed £10 million, for a distribution to be made in the administration. Other avenues explored by the Administrator in transferring the responsibility for the remedial action in respect of the environmental contamination which occurred 20 yrs ago had failed. The court advised that it could only deal with the issue of liability arising prior to appointment and determined that the EA was a contingent liability creditor for this amount. Other issues relating to personal liability of the Administrator and whether he was obliged to continue to pay for the remedial action would need to be determined under English law. The judgment may be found [here](#).

Procedural irregularity in dismissing application

In the case of [Black v Sale Service and Maintenance Ltd \[2018\] EWHC 1344 \(Ch\)](#) a district judge's decision to dismiss an individual's application to set aside a

statutory demand was reviewed and found to be both both wrong and unjust because of a serious procedural irregularity.

Who pays the costs?

In the case of [Lomas and others v Burlington Loan Management Ltd and others \[2018\] EWHC 924 \(Ch\)](#) the court was asked to consider the question of costs in relation to the tranche of the Lehman *Waterfall* proceedings sometimes referred to as *Waterfall IIC*. *Waterfall IIC* concerned the construction and effect of various standardised pre-administration agreements (and especially two forms of ISDA Master Agreements) on creditors' entitlement to statutory interest. The court split the costs being sought into two categories to determine whether the parties would be entitled to their costs. The first category of costs related to issues that affected the administration generally and were thought to be of benefit to all creditors. these costs were allowed to be expenses of the administration. The second category of costs related to a particular issue unique to that creditor and were not found to be beneficial to the general administration and were not allowed as an expense of the administration.

Behaviour during trial may affect sentence

In the case of [Re Exotic Global Ltd; Secretary of State for Business, Energy and Industrial Strategy v Al-Safee \[2018\] EWHC 509 \(Ch\)](#), [2018] All ER (D) 211

(Mar) the defendant denied that he was the director of the company and advised that his passport had been stolen and he was the subject of identity theft. During the trial the court found the debtor had not been honest. The liquidator of the company identified him as the director who had instructed him to wind up the company. The Secretary of State had initially asked for a 10 year ban in respect of various offences under CDDA 86 but the court invited them to review the period of the ban sought and the court banned the director for 13 years.

Financial Support Direction

In the case of [ITV plc & ors v The Pensions Regulator \[2018\] UKUT 164 \(TCC\)](#) the pension regulator sought a financial support direction for a pension scheme of a joint venture company which was insufficiently resourced. The tribunal considered whether five companies were connected with or associates of the employer (ITV) at the relevant time and whether the legislation can be applied to events, all of which occurred before legislation came into force. The tribunal also considered whether different treatment by the Regulator of the five companies to the co-joint venturer was lawful and whether the presence of "moral hazard" was necessary. The tribunal determined that there was sufficient connection between the five companies and ITV and that the legislation may be applied retrospectively. The tribunal also found that the different treatment of the five companies was lawful and determined that

moral hazard did not need to be present.

Data Protection Act 2018

The [Data Protection Act 2018](#) came into force on 25 May 2018 and is available [here](#).

Insolvency & Social Housing

The [Insolvency of Registered Providers of Social Housing Regulations 2018 SI 2018/728](#) came into force on 4 July 2018 and may be found [here](#).

Scottish Law

The [Bankruptcy Fees \(Scotland\) Regulations 2018 SSI 2018/127](#) came into force 1 June 2018 which amends the fees and outlays payable to the Accountant in Bankruptcy and is available [here](#).

New Guidance from NCA

The National Crime Agency has published guidance dealing with frequently asked questions which may be found [here](#).

GDPR Guidance

R3 and ICAEW have issued some frequently asked questions on the GDPR which may be found [here](#). Unfortunately some questions remain unanswered as responses are still awaited from ICO.

PPF CVA Guidance

The PPF restructuring & insolvency team have issued guidance note 4 dealing with CVAs which may be found [here](#).

Redundancies & Insolvencies new guidance

The insolvency Service have advised that new guidance will be

produced to help employers and insolvency practitioners manage staff engagement and redundancies during insolvency. New guidance will set out minimum expectations for insolvency practitioners to:

- notify the government in advanced of collective redundancy proposals
- comply with the requirement to consult when seeking to rescue or wind up a business
- provide information on how to ensure legal compliance when electing employee representatives

Further information may be found [here](#).

Updated Insolvency Service documents

The Insolvency Service has updated various documents:

- Pre-appointment case template available [here](#)
- RP14 available [here](#)
- RP14A available [here](#)
- HR1 form available [here](#)

Breathing Space

The consultation by HM Treasury following its call for evidence relating to relieving the burden of problem debt for individuals has concluded and the summary of responses is available [here](#).

Insolvency regime for further education

The consultation on the insolvency regime for further education and sixth-form colleges has concluded and the summary of responses is available [here](#).

R3 CVA Research

The research commissioned by R3 evaluating the success and failure of CVAs has been published and is available [here](#).

Pre-Pack Annual Review

The Pre-Pack Pool (PPP) annual review is available [here](#). In 2017 there were 203 pre packs with a connected party and only 23 applications were made by to the PPP. The sunset provision in S129 SBEE Act 2015 which allows for new legislation to be introduced for pre pack sales in administration expires 25/5/2020.

Annual Review of IP Regulation

The Insolvency Service has published its annual review of IP Regulation in May 2018 which may be found [here](#). The review comments on remuneration being fair and reasonable, volume IVA providers and bonding.

ICAS Annual Report

The ICAS Insolvency Monitoring Annual report is available [here](#). The most frequent issues identified were:

- a lack of appropriate risk-based anti-money laundering (“AML”) procedures;
- incidents of late compliance with statutory timescales;
- inadvertent omissions in the provision of information; and
- failure to fully complete checklists and procedures.

ICAS Anti-money Laundering Annual Report

The ICAS Anti-Money Laundering Annual Report 2017 may be found [here](#).

Insolvency Live 2018

The Insolvency Live 2018! annual forum for insolvency professionals and debt advisers is being advertised. To attend email stakeholder@insolvency.gsi.gov.uk



Joanne Harris has 20 years' experience in insolvency dealing with all case types. She was formerly a Director of Technical and Compliance in a top 20 firm before starting her own business to supply technical services for insolvency practitioners without a compliance resource.

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.