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TECHNICAL UPDATE

S127 & Validation Orders

In the case [Dingley and others v Nisa Retail Ltd \(Re MKG Convenience Ltd \(in liquidation\)\) \[2019\] EWHC 1383 \(Ch\)](#) the court reviewed an application for repayment of s127 IA 86 void dispositions and also the defendant's (NISA) application for a validation order for the payments they had received. NISA supplied weekly grocery goods to the shops being traded by the company and had a bond in place of £25k. The case was complicated by sale of the business, the date of which was unclear, and NISA's knowledge of this sale. NISA had not supplied information requested by the liquidators and gave inconsistent evidence in court. The court unsurprisingly refused to give a validation order to NISA and would not allow them to rely on the defence that the company had changed its position in good faith in reliance on the validity of the payments.

ET, Moratorium & Case Management

In the case of [Ince Gordon Dadds LLP v Tunstall \[2019\] 6 WLUK 323 \(19 June 2019\)](#) an employee brought claims against various parties including the company in administration. The administrators relied on the moratorium and denied permission for the Employment Tribunal (ET) proceedings to continue. The ET considered whether to allow the proceedings to continue against the parties but excluding the company in administration and determined

that it was appropriate. The Administrators appealed against this decision on the basis that they would be bound by any judgment made and would need to be part of the disclosure of documents since they held the company's records. The Employment Appeal Tribunal upheld the ET's decision that proceedings could continue against the other parties as they were not contingent upon the claims against the company in administration and determined that it was up to the ET to make a third party disclosure order.

Security & statutory Demands

In the case of [Promontoria \(Chestnut\) Ltd v Bell & Anor \[2019\] EWHC 1581 \(Ch\) \(Zacaroli J\)](#) the issue of disclosing security and deducting it from the debt owed on a statutory demand was reviewed by the court. A company (C), owned and managed by two individuals (together, B) borrowed around £783,000 from a bank. C provided security for the loan and B also provided guarantee and indemnity for around 20% of the loan. B also provided security for the obligations of C. However, the security granted by B expressly provided that B did not, pursuant to the security, have personal liability for C's liabilities. B's security therefore did not secure B's liabilities under their guarantees. C defaulted and demands were made to C and B, and when this did not obtain payment, receivers were appointed to realise the security. Statutory demands were issued to B, but these did not detail the

Insolvency Live! 2019

I attended Insolvency Live! this year and here is a brief overview of the key matters discussed.

Breathing Space "individuals"

It seems that HM Treasury are moving forward with this, although with a few changes to the original proposal. On 19 June 2019, HM Treasury published the response to its consultation on a breathing space and statutory debt repayment plan to protect individuals with problem debt which may be found [here](#). Key changes are not having a public register for those who use the moratorium created by Breathing Space, although there will be a private register kept which will be accessible by creditors owed money by an individual on the register and debt advisory agencies to determine if an individual had used the moratorium within the last 12 months. The moratorium will be for 60 days instead of the 6 weeks originally proposed. The draft legislation will be put before Parliament at the end of 2019 with a view to full implementation in 2021. The government is also moving ahead with its proposed statutory repayment plan, the criteria of which is that all the debtor's liabilities will be repaid in full within 7 to 10 years. I am not sure how any debt advisor could suggest that this is appropriate when bankruptcy would see the debtor contributing for a maximum of 3 years and an IVA a maximum of 5 years. Considering the success of DAS in Scotland it will be interesting to see how fully this procedure is used in England and Wales.

security. The Court set aside the statutory demands stating that security should have been disclosed and deducted.

Full disclosure of relevant documents

In the case of *Re Karl Eric Watkin Wood and another* (as the joint trustees in bankruptcy of Karl Eric Watkin) v *Watkin* [2019] EWHC 1311 (Ch) the Trustee in bankruptcy unsuccessfully challenged various transactions under s423 and s339. The importance of the case is the comment by the judge for the need of "Office-holders bringing an application by application notice and witness statement must take proper steps to ensure that all non-privileged documents in their possession which are of obvious relevance to the issues raised by their application are exhibited to their supporting statements. If this long-standing practice is not honoured, it may prove necessary for directions for pleadings and formal disclosure to be given in a higher proportion of office holder applications than is currently the case".

Scottish Legislation

The draft *Debt Arrangement Scheme (Scotland) Amendment Regulations 2019* and is due to come into force 4 November 2019 and may be found [here](#).

Complaints Gateway

The insolvency practitioners guidance on how to complain about an insolvency practitioner was updated 11 June 2019 and is available [here](#).

Dear IP 88

Dear IP 88 has recently been published and is available [here](#) and deals with the new Scottish rules,

uploading form RP14a and gazetting adverts.

Redundancy Payments

The Insolvency Service issued guidance on redundancy payments in insolvency on 17 May 2019 which may be found [here](#).

Insolvency Service Annual Review

The Insolvency Practitioner Regulation process review 2018 was published on 28 May 2019 and is available [here](#). Michelle reviewed the report and her initial comments on it may be found [here](#) with more to follow.

Airline Insolvency

The Airline Insolvency Final Report was published on 9 May 2019 and is available [here](#). Whilst various recommendations have been made, there is no clear timetable of what or when the recommendations will be implemented.

Companies House & transparency

The government is consulting on new proposals to enhance the role of Companies House, increase the transparency of UK corporate entities and help combat economic crime. Further information may be found [here](#) and the consultation closes 4 August 2019.

Phoenixing in Financial Services

The FCA has launched the Financial Services Regulatory Partners Phoenixing Group and further information may be found [here](#).

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IP Regulation

A call for evidence on regulation of insolvency practitioners' review of the current regulatory landscape was made on 12 July 2019 with the closing date of 4 October 2019. The document may be found [here](#). It is disappointing that the call for evidence asks perception questions and yet no information has been published by the Insolvency Service about their review of the various RPBs or analysis provided of sanctions and fines of each RPB to again highlight any actual errors or inconsistency. The Insolvency Service are also asking for any recommendations, not only in respect of a single regulator and how it would work, but also in respect of sector specific changes, in particular volume providers, and whether firms should also be fined as well as the IP where the IP is not the owner of the business. The Insolvency Service was adamant that no decisions have actually been made about whether there should be a single regulator.

Pre-packs

The government is to imminently publish its thoughts and proposals on the pre-pack regime. There seems to be the intention to legislate, but to what extent is unclear. It could make using the pre-pack pool compulsory or we could have full draft legislation on consultation with creditors.

Changing Landscape "corporate"

It is still the government's intention to introduce a moratorium within the corporate insolvency regime as well as a chapter 11 style restructuring. Finally there is the intention to introduce legislation that will allow the Insolvency Service to investigate companies which have been struck-off.

Insolvency Service Technical Manual

The manual is to be removed from the website and not replaced.



Joanne Harris has 21 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.