

**CASE LAW**

- LOSS OF PURPOSE
- S127 VOID DISPOSITION
- PART 26A APPROVED
- ORAL EXAM UNDER CPR 71
- RETROSPECTIVE IPO
- MISFEASANCE AGAINST MVL LIQUIDATORS
- BANKRUPTCY, FRAUD & ACCESS TO A PENSION

**LEGISLATION**

- ARBITRATION, COMMERCIAL RENTS AND COVID
- TEMPORARY INSOLVENCY MEASURES ENDED
- ACCA NI NO LONGER AUTHORISED TO LICENSE IPS

**GENERAL INFORMATION**

- SCOTLAND: MOVEABLE TRANSACTIONS BILL
- DISPUTE RESOLUTION
- HIGH RISK COUNTRIES
- COMPANY HEALTH CHECK
- GUIDANCE FOR DEBT ADVISERS
- HMRC NEW FORM 64-8

- DEAR IP
- SCOTLAND: A GUIDE TO YOUR OPTIONS PERSONAL INSOLVENCY
- AML ICAS REGULATORY ACTIONS GUIDANCE
- ACCOUNTANT IN BANKRUPTCY
- SCOTLAND: GUIDE TO FEES
- UK SANCTIONS RUSSIA

# TECHNICAL UPDATE

## Loss of purpose could lead to winding up

In the case of [Duneau v Klimt Invest SA and others \[2022\] EWHC 596 \(Ch\)](#) the company had sold the business and assets in January 2019 but no distribution to shareholders of the proceeds had occurred. The majority of shares were then acquired and used to vote for the company to continue as an investment company. A minor shareholder then sought to wind up the company on the grounds that it was just and equitable to do so for loss of substratum, being no longer able to continue with the original purpose for which it was incorporated. The court held that the winding up was appropriate; a company could be wound up for loss of purpose.

## S127 void disposition

In the case of [Brothers Produce Ltd \(in liquidation\) and another v Tydene \(Western\) Ltd and others \[2022\] EWHC 291 \(Ch\)](#) the company had a petition issued against it and on the day the petition was advertised, the directors sold the assets including goodwill to a third party, Mr Tarim (Mr T), who transferred the assets to a company, Tydene (Western) Limited (TWL), in which he was the sole director and sole shareholder. The liquidators made an application on the basis that the sale was a void disposition under S127 IA86. The liquidators sought compensation for loss from the directors. The liquidators also sought damages, restitution in respect of profit, and damages in

lieu for unjust enrichment from Mr T and TWL. Orders were made against the directors under S212 IA86 for the shortfall in the value of the goodwill. The judge also found that Mr T and TWL received the benefit of property in breach of trust and were therefore knowing recipients meaning they would need to account for profits as well as the shortfall for the goodwill.

## Part 26A approved due to genuine economic interest

In the case of [Re Smile Telecoms Holdings Ltd \[2022\] EWHC 740 \(Ch\)](#) the court used its power to approve a part 26A restructuring plan, whereby through various transactions the main creditor would buy the company due to them having a genuine economic interest.

## Oral exam under CPR 71 for undischarged bankrupt

In the case of [Hijazi v Yaxley-Lennon \[2022\] All ER \(D\) 82 \(Mar\)](#) the court considered the issue of whether an oral examination under CPR 71 should continue when the individual had made himself bankrupt and Trustees had been appointed. The judge considered that the Trustees had not objected to the creditors pursuing the oral exam and that the Trustees may not wish to pursue investigation work until they had more substantial evidence which the CPR 71 oral exam may help to produce. The judge also considered whether upon obtaining information about the debtor's assets it may arise

that the debtor is not actually insolvent and that a potential claim under S423 IA86 may exist. The judge made the order for an oral examination to occur under CPR 71.

## Retrospective IPO

In the case of [Atkinson \(as trustee in bankruptcy of Mark Harvey Lorrell\) v Lorrell \[2022\] EWHC 443 \(Ch\)](#) the court considered an application to vary an income payments agreement (IPA) of a discharged bankrupt. The judge reviewed the definition of reasonable domestic needs of family as defined by S385(1) IA86 and the lack of supporting documents provided to evidence these needs. The judge made a variation to the original IPA and determined that it should apply retrospectively from the date the change in circumstances occurred.

## Misfeasance against former MVL liquidators

In the case of [Pagden v Fry \(Re Core CVT Plc and others\) \[2022\] EWHC 632 \(Ch\) \(22 March 2022\)](#) the judge gave leave for the current liquidators to bring proposed misfeasance claims against the former MVL liquidators. The judge stated that "The allegations of conflict and alleged breaches by the Respondents of their duties resulting in an alleged sale of the Companies' assets at an undervalue are matters that require determination at trial following evidence". Interestingly, vacation of office and release were not considered bars to a

potential misfeasance claim under S212 IA86.

### Bankruptcy, fraud and access to a pension fund

In the case of [Bacci v Green \[2022\] EWHC 486 \(Ch\)](#) the court was asked to determine the application of a creditor whose debt had arisen due to fraud committed by the debtor. The debtor had been declared bankrupt in February 2019. The application sought to release funds from the debtor's pension to meet the liability that arose due to the fraud. The debt was not discharged by the bankruptcy since S281(3) applied. The court granted leave for funds from the pension fund to be released to meet the liability.

### Arbitration, commercial rents and COVID

[The Commercial Rent \(Coronavirus\) Act 2022](#) came into force on 24 March 2022 enabling relief from payment of certain rent debts under business tenancies adversely affected by coronavirus to be available through arbitration.

### Temporary insolvency measures ended

[The Corporate Insolvency and Governance Act 2020](#) finally expired on 31 March 2022.

### ACCA NI no longer authorised to license IPs

[The Insolvency Practitioners \(Recognised Professional Bodies\) \(Revocation of Recognition\) Order \(Northern Ireland\) 2022](#) came into force on 16 February 2022. The ACCA NI is no longer a licensing body.

### Scotland: Moveable Transactions Bill

Information on the proposed changes to moveable transactions may be found [here](#).

### Dispute Resolution: Call for Evidence Summary

The Ministry of Justice made a call for evidence on dispute resolution in all forms and the consultation ran from 3/8/2021 to 31/10/21. The [summary of responses](#) is now available.

### High Risk Third Countries Updated

HM Treasury updated their [HM Treasury Advisory Notice: High Risk Third Countries](#) 29 March 2022.

### Company Health Check

The government has provided resources to help directors understand their duties in respect of solvency issues in the form of a [Company Health Check](#).

### Debt Relief Orders: Guidance for debt advisers

The [Debt Relief Orders: Guidance for debt advisers](#), which is guidance for approved intermediaries has been updated.

### HMRC New Form 64-8

A new [Form 64-8](#) has been released for use.

### Dear IP

The latest Dear IPs are now available: [Dear IP 142](#) and [Dear IP 143](#).

### Scotland: A guide to your options personal insolvency

R3 has issued "[Dealing with money worries - a guide to your options](#)" for people in Scotland.

### AML ICAS Regulatory Actions Guidance

ICAS has published [Regulatory Actions Guidance](#) as approved by the Authorisation Committee on 1 April 2022.

### Accountant in Bankruptcy

The Accountant in Bankruptcy has published its 2022-23 [Business Plan](#).

### Scotland: Guide to Fees

ICAS has published updated guides to fees for Scotland which may be found at:

[Administration](#), [Company Voluntary Arrangement](#), [Liquidation](#)

### UK Sanctions Russia

Various resources have been made available to help deal with the sanctions:

- A [Technical Alert](#) has been issued by R3
- [Dear IP 142](#)
- [Webinar: UK sanctions relating to Russia: Briefing by UK Government](#)
- [Guidance to implement and comply with Russia Sanctions](#)
- [OFSI e-alerts](#)
- [Notices to exporters](#)
- [Notices to importers](#)
- [CCAB joint statement to the profession following recent and on-going developments in Ukraine](#)
- [SAR glossary codes for reporters Money laundering and sanctions note March 2022](#)



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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.