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# TECHNICAL UPDATE

## Volume IVA provider wound up in public interest

The Insolvency Service have [reported](#) that Vanguard Insolvency Practitioners Limited has been wound-up in the public interest due to payments to third parties of over £9million. Some of the third parties were paid under a fee sharing agreement and were connected to Vanguard.

## Enforcement of charging order, eligible debt and moratorium

In the case of [Lees v Kaye and another \[2022\] EWHC 1151 \(QB\)](#) the applicant had a mental health crisis moratorium in place when she was evicted from her property and the was property sold. The court considered whether the debt owed, which had been secured against the property, was an eligible debt and found that it was. The court ordered that the eviction and sale were null and void and an order was made to restore the position prior to eviction.

## IVA, Voting & Burden of Proof

In the case of [Karapetian v Duffy and another \[2022\] EWHC 1053 \(Ch\)](#) a creditor failed to provide evidence of his full claim before or during the virtual meeting to consider an IVA proposal and his claim was therefore limited to the amount supported by the documents supplied when the meeting occurred. In particular,

the creditor claimed a significant debt of €1,283,847 under a guarantee but had failed to provide details of the amount owed and only supplied the front page of the guarantee. The court took the opportunity to review the documentation supplied at the meeting and further the guarantee itself, and determined that even if the further information had been supplied, the Nominee would have been obliged to admit the debt under the guarantee for damages for £1 only as an unliquidated amount. Other matters considered included an email with the inaccurate time of the meeting (although the notice and proxy form did have the correct time) and the request for the IP to receive the information at the meeting in respect of the creditors' claim via messages on the debtor's phone. The judge held the creditor had sufficient time to provide his proof and proxy prior to the meeting and it was not a material irregularity that the Nominee refused to take account of the messages sent by the creditor to the debtor.

## Application to Suspend Automatic Discharge

In the case of [Allen v Mittal \[2022\] EWHC 762 \(Ch\) \(01 April 2022\)](#) the application to suspend the debtor's automatic discharge was not made within the 12 months. An urgent application was made days prior to the 12 months expiring, asking for an interim suspension which was granted subject to a full hearing on the issue. A late application was made for validation of service of the

suspension application. The judge held that the suspension application was not served in accordance with the rules and refused to make a post-validation service order. The merit of whether automatic discharge should have been made was found to be irrelevant in these circumstances.

## Liability for misfeasance restricted due to threat of violence

In the case of [Re Glam and Tan Ltd Barnett \(as liquidator of Glam and Tan Ltd\) and another v Litras \[2022\] EWHC 855 \(Ch\)](#) the liquidator pursued the sole director for payments made from the assets of the company that provided no benefit to the company in breach of her duties as a director. The director advised that she was the victim of domestic violence and "some" of the payments made were at the behest of her husband. The judge determined that the director should not be personally liable for sums "...paid when her free will had been subjugated to the will of her husband under threat of violence". The director was liable for the other sums paid in breach of her duty as a director.

## Right to assign to third party

In the case of [Lock v Stanley and another \[2022\] EWCA Civ 626](#) the assignment of a right of action to a third party litigation funder was challenged as it had not been offered to the director who was

also a creditor and who had expressed an interest. The judge determined that the party challenging had no standing as her interests did not align with the interest of the creditors as a whole. This conclusion was supported by the lack of offer for the right of action made by her.

### Scottish Land Reform

The [Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Regulations 2021](#) came into force on 1 April 2022. IPs are now required to notify the Keeper of Registers of Scotland if they are winding up or dissolving a 'non-natural person' that appears on the new Register of Persons holding a controlling interest in land as soon as reasonably practicable.

### Proposed changes to Companies House

The [Economic Crime \(Transparency and Enforcement\) Act 2022](#) was referred to in the Queen's speech and seeks to set up a register of overseas entities and their beneficial owners and requires overseas entities who own land to register in certain circumstances. It is unclear when this will be brought into force.

### First Review of the New Rules

The [First Review of the Insolvency \(England and Wales\) Rules 2016](#) was published on 5 April 2022. Michelle has posted a [blog](#) on one of the key issues arising from the review which may be of interest.

### Consultation on Debt Repayment Plan

The [consultation](#) on the "Statutory Debt Repayment Plan" opened on

13 May by HM Treasury and closes 5 August 2022. This will be a new debt solution administered by the Insolvency Service with focus on repayment rather than debt forgiveness.

### Consultation on Stablecoin

HM Treasury have opened a [consultation](#) on 31 May 2022 on "Managing the failure of systemic Digital Settlement Asset (including stablecoin) firms". The consultation regarding the proposed special administration regime to be introduced to manage the failures closes on 2 August 2022.

### HMRC Guidance S100

There seems to be some confusion over the latest guidance issued by HMRC and for clarification you may wish to read [Michelle's blog](#).

### New Forms

The following new forms have been published:

- [VAC Notice of a court order in respect of a voluntary arrangement](#)
- [VAC \(Scot\) Notice of a court order in respect of a voluntary arrangement](#)

### CCAB Guidance finalised

The [CCAB Anti Money Laundering guidance](#) has finally been approved by HM Treasury. In particular, [Appendix F](#) supplementary guidance for IPs has now been finalised.

### AML Training

Michelle will be providing two bite-sized training sessions for our webinar clients to advise on the latest AML guidance:

- 16 June 2022 AML Update Part 1: What's new from the RPBs?

- 30 June 2022 AML Update Part 2: New legislation and a closer look at DAML requests and financial sanctions

If you are interested in becoming a webinar client please contact [info@thecompliancealliance.co.uk](mailto:info@thecompliancealliance.co.uk)

### Insolvency Service (IS) update to guidance

The following have been updated May 2022:

- [Explaining your Protective Award](#)
- [Explaining your redundancy payments](#)
- [Factsheet: what to do when you've been made redundant](#)
- [Redundancy payments: links to further information and guidance](#)
- [Check if you can apply for redundancy payments as a company director](#)
- [HR1 form updated](#)

### IS Annual Review

The [Annual Review of Insolvency Practitioner Regulation 2021](#) was published on 1 June 2022.

### RPB issues SIP 9 reminder

The ICAEW has published its latest [Insolvency News](#) on 8 May 2022. I would specifically draw your attention to the [SIP 9 reminder](#) regarding avoidance schemes and the suggested protective steps for IPs as employees. The IPA have issued [similar guidance](#).

### Dear IP

The latest Dear IPs are now available: [Dear IP 144](#), [Dear IP 145](#) and [Dear IP 146](#).

### Spring Newsletter

The Insolvency service's [spring newsletter](#) was published on 5 May 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.

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