

CASE LAW

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TECHNICAL UPDATE

Fees application overturned

In the case of Re Salliss [2014] All ER (D) 99 (Feb) the court considered whether when determining the trustee's remuneration the Deputy Registrar had erred in granting the remuneration application. The court held that the deputy Registrar had failed to apply settled law and the relevant Practice Direction in considering those applications. The proper approach was to begin by asking what had changed, had not been foreseen and could not have been foreseen when the creditors had made their decision. The Deputy Registrar had failed to take into account whether the application should have been made earlier and if so the reasons for any delay in making it.

Creditor uses Para 74 to seek assignment of right of action

In the case of Hockin and others v Masden and another [2014] EWHC 763 (Ch) administrators were appointed over the company and had decided not to bring an action against the company's bank for mis-selling. The applicants sought to rely on para 74 schedule B1 and make an application to court to direct that the administrators assign the right of action to them. Whilst the applicants controlled the company they were not members, but one of the applicants was a creditor and based on this the court directed for the right of action to be assigned.

Duty of care when selling property

In the case of Aodhcon Llp v Bridgeco Ltd [2014] EWHC 535 (Ch) the duty of care owed when selling a property was re-visited. The company claimed that the property should have been sold for £1.25 million and not £825k the bank sold it for. The court again held that the duty owed was to take reasonable care to sell the property for the best price reasonably obtainable and that the mortgagee decision to sell at that price was within an acceptable margin of error.

Costs in administration

In the case of Neumans LLP v Andronikou and others the Supreme Court refused the appeal and confirmed that the solicitor's fees in relation to the defence of a winding-up petition were payable as an expense of the liquidation, and not the administration.

Only one County Court

The following legislation has been introduced to recognise the merging of the County Courts into one County Court: The Insolvency (Commencement of Proceedings) and Insolvency Rules 1986 (Amendment) Rules 2014 which may be found here <http://goo.gl/HWjulW> and The London Insolvency District (County Court at Central London) Order 2014 found here <http://goo.gl/IXEShP>. This means that there will be new forms introduced to reflect the changes and your document pack

Insolvency Guidance Paper - Bankruptcy - family homes

This is an opportunity for firms to review their initial letter to the debtor and other affected parties as well as case management diaries. The Insolvency Guidance Paper (IGP) suggests that the matrimonial home is to be "dealt with fairly and expeditiously" and therefore there is a need to supply sufficient information for all parties to understand the options available.

Affected parties

IPs are recommended to identify all potentially interested parties who are detailed as:

- the debtor's spouse, former spouse, or unmarried partner;
- members of the debtor's immediate family;
- a joint legal owner;
- anyone who has contributed towards the purchase of a property;
- anyone in occupation of the property; and
- previous trustee in bankruptcy.

Information to be provided

It is recommended that "a trustee should write to the debtor and any other affected parties as soon as possible, after the appointment". The following information should be provided:

- an explanation of the trustee's interest and why that interest may continue after discharge;
- the circumstances in which the property will revert to the debtor, and why it may not revert;

will need to change from "XXX County Court" to "County Court at XXX".

Week's wage raised

The Employment Rights (Increase of Limits) Order 2014 came into effect on 6 April 2014. The legislation raises the statutory limit on the maximum amount of a week's pay from £450 to £464. Further information may be found here <http://goo.gl/zVaID7>.

Changes to Insolvency deposits & SOS fee

The Insolvency Proceedings (Fees) (Amendment) Order 2014 SI2014/583 came into force on 6th April 2014. There are costs increases :

Deposits

- WUC increased to £1,250.
- WUC public interest fee £5,000.
- BKY Creditor's petition increased to £750

OR administration fee

- BKY increased to £1,850
 - WUC increased to £2,400
 - WUC public interest £5,000
- Further information may be found here <http://goo.gl/NqePqb>.

New EU proposed changes to ML rules

It is proposed that each EU country maintain information on the ultimate beneficial owners of legal arrangements including companies, foundations, holdings and trusts. More importantly though the definition of politically exposed person (PEP) is to be extended to include PEPs in each country so these will include "heads of state, members of government, Supreme Court judges, and Members of Parliaments". Further information may be found here <http://goo.gl/yXZNyY>.

Disclosure of information to the Insolvency Service

The draft Communications Act 2003 (Disclosure of Information) Order 2014 which has no date for enactment yet, if introduced, would allow the Office of Communications (Ofcom) to disclose information to the Insolvency Service relating to misconduct during bankruptcy by company directors.

PPF to use new PPF-specific insolvency model

The PPF have created a model to assess the risk of insolvency. The PPF will be using the insolvency risk scores from the model as one of the three main factors, alongside investment and underfunding risk, which the PPF uses to calculate individual levies. Further information may be found at <http://goo.gl/SSkzfi>.

Pre-pack sales under government review again

The government announced on the 28 March 2014 that they will be reviewing whether pre-packaged administrations (pre-packs) are a viable rescue tool or an abuse of the insolvency process. The spotlight certainly seems to be on IPs at the moment with a review in respect of fees as well as further review of SIP 16. Further information may be found here <http://goo.gl/p6vSIw>.

Dear IP

The Insolvency Service has decided to review the way information is provided to IPs. This is good news as within the next 6 months it is hoped that IPs will be updated monthly on both technical and general issues with outdated material being removed.

Bankruptcy - family homes ctd

- an explanation of why the trustee needs to realise the property;
- the way in which the property and the trustee's interest would be valued;
- an explanation of how any changes in the value of the property, and payments under a mortgage, may be treated;
- how any mortgage, or other security for the repayment of any loan, may be treated;
- details of the steps that the trustee can take, and any timetable, for realising the property; and
- a copy of the Insolvency Service leaflet "What will happen to my home".

Timing of communications

After the initial correspondence to affected parties it is expected that the Trustee will communicate at least once every 12 months. Further information should deal with the following matters: trustee's intention, timetable for dealing with the property, changes to the value of the trustee's interest, changes to the position of the affected parties and whether an offer is being sought.

Dealing with offers

It is expected IPs should obtain a proper price for the trustee's interest in the property but discretion is expected to be used if the matter is dealt with quickly, and without incurring legal or agents costs. If an offer is rejected then an explanation why should be provided.

Guidance for affected parties

IPs should recommend that independent advice be obtained either from a solicitor or the Citizens Advice Bureau in respect of their rights.

Duty of care

The IGP states that the guidance does not create a duty of care beyond that detailed in the legislation.



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