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# TECHNICAL UPDATE

## Fees may still be challenged out of time

In the case of *Re Calibre Solicitors Ltd (in administration) Justice Capital Ltd v Murphy and another (Administrators of Calibre Solicitors Ltd) [2014] All ER(D)187 (Dec)* the court confirmed that an administrator's fees were deemed to be agreed 8 weeks after the progress report had been issued. However, the court did have the power to give leave for the creditors to apply out of time to challenge the Administrator's fees as detailed in both progress reports.

## No advert required in public interest winding-up

In the case of *Secretary of State for Business, Innovation and Skills v Combined Maintenance Services Ltd [2014] All ER (D) 181 (Dec)* the court held that they could dispense with the requirement for an advertisement of the petition as the purpose of the advertisement was to allow other creditors to join the proceedings. In a public interest case creditors would not be adversely affected by the lack of advertisement.

## Pensions revisited

In the case of *Horton v Henry [2014] All ER (D) 193 (Dec)* the issue of whether a Trustee has the power to compel a bankrupt to crystallise his pension policies and elect to draw down on his pension in a way requested by the Trustee was revisited. The court held that

s310 IA 86 does not apply to uncrystallised pensions. An application to appeal this decision has already been made.

## Costs for Complying with s234 & s236 Orders

In the case of *Re Harvest Finance Ltd (In Liquidation); Jackson and another v Cannons Law Practice LLP and others [2014] EWHC 4237 (Ch)* the court considered the issue of the costs of complying with an order for information under s234 and s236 IA86. The court held that the duty to comply was a public duty and although it had jurisdiction under Rule 9.6(4) or s51 of the Senior Courts Act 1981 it declined to exercise it.

## New Part 36 CPR

The Civil Procedure (Amendment No. 8) Rules 2014 SI2014/3299 will come into force on 6th April 2015 and makes significant amendments in respect of offers made under part 36 CPR.

## OR to stop applying for release as trustee/liquidator

The Official Receiver has stopped applying for release as trustee or liquidator from 1 December 2014 as part of their commitment to simplification of processes. Further information may be found here <http://goo.gl/HXS4Ix>. This has necessitated the amendment to the following guides: a Guide for Creditors <http://goo.gl/f6EjBj>, How to Put a Company into Compulsory Liquidation [## Draft SIP 16](http://</a></p>
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The new draft SIP 16 has been issued for consultation, which ends 2 February 2015.

My initial thoughts on the new SIP 16 are that many more liquidations will now be undertaken and negotiations for sales will occur after formal appointment in administrations. The level of additional compliance seems draconian and disproportionate to the benefits hoped to be achieved. Since the issue seems to be one of perception rather than fact, it is disappointing that this approach is being required by the Insolvency Service.

SIP 16 para 3 & 4  
I stated that this is an issue of perception and para 3 seems to bear this out with an emphasis being placed on an IP's need to recognise the "high level" of public interest, especially where a sale is to a connected party. This is not enough though; an IP must be "seen to be acting" in the interests of all creditors.

SIP 16 para 5  
IPs are expected to explain their different roles in the pre-pack sale to both directors and creditors.

SIP 16 para 6  
More importantly, if a sale is to a connected party, then even more information is required than if just a sale to a third party. We now seem to be moving from the sublime to the ridiculous.

[goo.gl/NtzOkq](http://goo.gl/NtzOkq) and A Guide for Directors <http://goo.gl/dusS5Z>.

### New Practice Direction: CDDA

The new Practice Direction: Directors Disqualification Proceedings came into force on 9th December and is available here <http://goo.gl/gq7PX3>. The previous practice direction was introduced in 1999 so the amendments reflect current practice.

### Insolvency and Consumer Credit Advice

Further clarification has been issued by the IPA and various relevant examples are given to demonstrate the limitation on the exemption for IPs. Here is the link to the guidance <http://goo.gl/xLAyb8>. For IPs not to inadvertently breach the exemption they should make an application for a Consumer Credit Licence.

### VAT & Property Issues

The ICAEW have issued a reminder to IPs about claiming VAT back on associated costs of agent's fees, legal fees and the IPs own remuneration where a property is sold and there has been no option to tax on the property. The link to the blog is <http://goo.gl/VvHrnP>.

### 18 month rule

The ICAEW have posted a blog confirming both their and the Insolvency Service's (IS) interpretation of the 18 month rule for compulsory liquidations and bankruptcies. It seems the consensus is that if your fees have not been fixed then you have to rely on scale rate and cannot revert to creditors to change the basis. The IS have stated that IPs may

want to obtain their own legal advice and this is all shortly to be confirmed in a Dear IP. See <http://goo.gl/x2fJxU>.

### Pre-pack pool

The draft SIP 16 has been issued and in anticipation of its implementation, business people are being asked to submit their CV to become members of the pool of individuals who will be considering pre-packs. CVs may be sent to [governance@icm.org.uk](mailto:governance@icm.org.uk) and the deadline is 12 January 2015.

### IS Publications for BRO and DRRO

The IS have issued new publications in respect of Bankruptcy: Restrictions Orders and Debt Relief Orders: Restrictions Orders and these may be found here <http://goo.gl/J27RNw> and here <http://goo.gl/qaAKfQ>.

### IS Technical & Case Help Manuals

The Insolvency Service (IS) Technical and Case Help Manuals are a great source of information for IPs. After the recent changes to the website the IS have issued links to both documents. The Technical Manual may be found here <http://goo.gl/AjSMBI> and the Case Help Manual may be found here <http://goo.gl/eaLgW1>.

### Saturday JIEB classes start this month

My JIEB classes have a maximum of 10 students allowing all students an opportunity to participate in the learning process. My JIEB courses start 17th January on Saturdays. For information click the link [www.insolvencyexamtraining.co.uk/jieb2015.html](http://www.insolvencyexamtraining.co.uk/jieb2015.html)

### Draft SIP 16 - ctd

#### SIP 16 para 9

This para has expanded the reasoning and documentation required to include information on consideration of all alternatives to a pre-pack and I believe most firms are doing this anyway. However, IPs are now required to ensure that professional valuers must have sufficient professional indemnity insurance for the valuation they are to perform. If this is not obtained, the IP must justify why they used that professional.

#### SIP 16 para 10

The new requirements in respect of marketing are quite comprehensive and detailed in the appendix. Any non-compliance with the new regime will need to be vigorously defended. The requirements as detailed in the appendix I have reviewed below:

**Broadcast rather than narrowcast** - instead of agents identifying business in a similar industry agents now need to approach everyone!

**Justify the media used** - the IP is now required to justify the marketing undertaken, not just disclose what marketing had occurred.

**Independence** - prior marketing of a company may not be relied upon and further marketing will be expected by the IP.

**Publicise rather than simply publish** - IPs are expected to market for an appropriate length of time and will now be required to justify how long the marketing was for.

**Connectivity** - IPs and their agents must use the internet to market the business as well as other media.

**Comply or explain** - emphasis seems to be placed on connected party sales and the requirement for the IP to demonstrate that the best outcome was achieved for creditors where there has been any non-compliance with the SIP 16 requirements.

TO BE CONTINUED



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