

**CASE LAW**

- CONCURRENT ADMINISTRATORS
- POCA, RESTRAINING ORDERS & THE INSOLVENCY ACT
- FURTHER CLARIFICATION ON THE CALCULATION OF INTEREST

- VOTING & MATERIAL IRREGULARITY
- POCA, RESTRAINING ORDERS & SECURITY

**SIP**

- DRAFT SIP 15

**GENERAL INFORMATION**

- INSOLVENCY SERVICE MONITORING REPORT ON IPA
- PPF FURTHER GUIDANCE
- COMPANIES HOUSE GUIDANCE

- EXTENDED DEADLINE FOR PPI CLAIMS
- DEBT RELIEF ORDER SERVICE
- CHANGES TO THE GAMING INDUSTRY
- NEW INSOLVENCY RULES 2017

# TECHNICAL UPDATE

## Concurrent Administrators

In the case of *Re BHS Ltd (in administration)* [2016] EWHC 1965 (Ch) the court agreed to the appointment of concurrent administrators to allow for the investigation of claims against former and current directors to be brought in the most timely and efficient manner and would meet the jurisdictional requirements of para 103 Sch B1 IA86.

## POCA, Restraining Orders & the Insolvency Act

In the case of *Brittain and another v Whyte and another* [2016] All ER (D) 03 (Sep) the court reviewed the implications of a POCA 2002 restraining order (RO) made pre bankruptcy and after acquired property in the bankruptcy and the obligations of the Trustee in bankruptcy. The issue is that where an RO exists, all of the assets which might become part of the RO are not available to the Trustee until the RO is discharged. The court held that although after acquired property would be capable of being captured by the RO the Trustee should still serve the relevant after acquired property notice under S307 IA86.

## Further clarification on the calculation of interest

In the case of *Re Lehman Brothers International (Europe) (In Administration); Lomas and others v Burlington Loan Management Ltd and others* [2016] All ER (D) 81 (Aug) the Administrators applied for further clarification on how to

handle post administration interest in particular circumstances.

## Voting & material irregularity

In the case of *Golstein v Bishop and another* [2016] EWHC 2187 (Ch) the court was asked on appeal to determine whether a claim was unliquidated for voting purposes. It was also asked whether the failure to disclose that the solicitor proposing the IVA was subject to disciplinary proceedings before the Solicitors Disciplinary Tribunal (SDT) was a material irregularity. The court held that non-disclosure of the SDT proceedings was a material irregularity. The issue in respect of the voting was based on a partnership agreement allowing one partner an annual salary of £120k per annum from profits of the firm which was indemnified by the other partner if the profit was insufficient. The judge held this was an unliquidated claim and was treated correctly for voting purposes.

## POCA, Restraining Orders & Security

In the case of *Ready Rentals Ltd v Ahmed and another, Crown Prosecution Service v Ahmed* [2016] EWHC 1996 (Ch) the court reviewed whether money paid in to court could be the subject of a restraining order (RO) under POCA or whether the order made in respect of the payment into court could be considered security. The money had been paid into court after a freezing order had

## Draft SIP 15

The draft SIP 15 was published in August with the consultation to end 12 September 2016 and a copy may be found [here](#).

As you would expect, this SIP has been vastly changed to reflect the principles-based approach.

Para 2 - Clarifies that the different terms used for committee within the legislation are all applicable in respect of this SIP.

Para 3 - The SIP requires that information be provided to those considering being a member of the committee and those who are elected to the committee. This seems to be suggesting the information is given twice. The practicalities of providing this information will be in the form of a link to the revised guidance notes produced by R3 (hopefully) before voting on a committee and after appointment. This becomes more challenging when the new rules are introduced and the decision making process becomes less straight forward than a physical meeting of creditors.

Para 4 - The key principle of providing transparent, useful and proportionate information is here.

Para 5 - Office holders are to exercise professional judgement "but normally have regard to the views of the committee". Nothing new here - the IP is expected to act in the best interests of all creditors.

been made that stated the freezing order would cease to have effect if the defendant provided security by paying the sum of £90k pending detailed assessment of the claimants costs. The court then received notice from the police stating that the money should not be paid out unless an application on notice to the police was made. Nothing happened for 3 years and the claimant entered liquidation. The parties tried to negotiate a settlement and the police applied for an RO. The court held that the freezing order, due to the wording of the order, could amount to security which meant the funds could not be captured by the RO.

### Insolvency Service Monitoring Reports

The Insolvency Service has issued its monitoring report on the IPA and the ACCA which may be found [here](#) and [here](#).

### PPF Further Guidance

The Pension Protection Fund has updated its guidance "The PPF Approach to Employer Restructuring" which may be found [here](#). The approach of the PPF is very commercial and the guidance sets out their position succinctly. They have also issued General Guidance for Restructuring & Insolvency Professionals which may be found [here](#).

### Companies House Guidance

The Companies House guidance on: Limited liability partnership strike off, dissolution and restoration has been updated and may be found [here](#). This is to reflect the changes introduced by [Third Parties \(Rights against Insurers\) Regulations 2016](#) which came into force 1 August 2016 and allows for litigation to be issued against a dissolved company

without the need for it to be restored to the register.

### Extended deadline for PPI claims

The Financial Conduct Authority (FCA) has proposed to extend the deadline for payment protection insurance (PPI) claims to June 2019.

### Debt Relief Order Service

The Debt Relief Order Service (DRO2) went partially live on 1st September and should be fully rolled out by 30th September. Guidance on the new service may be found [here](#).

### Changes to the Gaming Industry

It seems there have been many changes in the Gaming Industry to try to protect funds where there is an insolvent event over the last few years. Details of the various changes may be found in the guidance published by the Gambling Commission "Customer funds: segregation, disclosure to customers and reporting requirements (Ratings system and advice note for operators January 2016)" and a link is [here](#).

### New Insolvency Rules 2017

The Compliance Alliance are preparing and anticipating services that IPs will need when the new rules are introduced in April 2017. We will be producing webinars covering the new processes being introduced and how this will need to be implemented as well as issuing amendments to our document packs in advance of the new rules so that clients are not inundated with changes on 6th April 2017. Further information about our services may be found [here](#).

### Draft SIP 15 - ctd

Para 6 & 7 - This seems confusing and implies that the information about 'the role of the committee' is a different document than that of the 'information on their rights, duties and functions'. It will be interesting to see what is produced by R3 since the information on each is to be provided at different times in the insolvency process.

Para 8 - It is a requirement that IPs discuss at the first meeting the reporting frequency as well as the information to be provided. The first meeting is to be held as soon as practicable after the committee is elected. The terminology is interesting here, since the draft rules state that a committee is not "established (and accordingly cannot act)" until notice of membership is delivered to Companies House, for companies, or the Court, for bankruptcies. This may well be a change in approach for many IPs.

Para 9 - This paragraph seems to be implying that a full report each time is not necessary and that a report on the matters of interest to the committee is sufficient.

Para 10 - It is a requirement to document reporting arrangements with the committee. I would have expected IPs to have this detailed within the minutes or within the summary of postal resolutions.

Para 11 - It is being suggested that IPs should continue during the life of the case to review the frequency of the reporting requirements and change them where appropriate.

Para 12 - This is a welcome addition as it sets out guidance on the issue of conflict between the committee and the IP. It confirms the requirement to either refer the matter to the general body of creditors or the court.



Joanne Harris has 18 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.