

CASE LAW

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TECHNICAL UPDATE

PPI available to IVA creditors after completion

In the case of [James Green \(former Supervisor\) v James Wright \[2017\] EWCA Civ 11](#) the Court of Appeal considered the issue of whether PPI claim refund was available to creditors in an IVA after the supervisor of the IVA had issued a completion certificate. The court of Appeal held that the asset which would have been an asset at the time of the IVA is held on trust for the IVA creditors even if a completion certificate has been issued. However, this will depend on the terms of the IVA as not all firms use the R3 and IVA Protocol terms and conditions. So IPs may be able to start closing IVA cases again, once they have reviewed the terms and conditions they use.

Notice of intention not to be used as delay tactic

In the case of [South Coast Construction Ltd v Iverson Road Ltd \[2017\] EWHC 61 \(TCC\)](#) an award had been made against the company by an adjudicator and the creditor had made an application to court seeking to enforce that award. The Company in the meantime had issued three sequential notices of intention to appoint (NOI) creating a 30 day moratorium. The company did not supply a copy of the three NOI to the creditor and only supplied a copy of the latest NOI on 16 of January two days before the hearing on 18 January and then upon the expiration of the last NOI placed the company into liquidation. The court was not

impressed by the lack of information about the NOI to the creditor and found in any event that it would have given leave by the creditor to continue with its action. The court awarded a judgement debt against the creditor.

Sham Transaction Void

In the case of [Dickinson v NAL Realisations \(Staffordshire\) Ltd and another Company \[2017\] EWHC 28 \(Ch\)](#) the court considered several transactions which included the company purchasing back its shares from the shareholders and converting the sale price of the shares into a secured loan. The company also sold a subsidiary for £1 which was challenged as a transaction at an undervalue as well as investments, loans and supplies on credit to a connected company. The court held that the transactions were a sham and the share buyback had been void.

Tools of the trade do not include HP car

In the case of [Mikki v Duncan \[2016\] EWCA Civ 1312](#), the court considered whether a car subject to hire purchase could be considered a tool of the trade. The car had equity and the Trustee agreed for the HP company to take possession and sell the vehicle with the equity then being paid to the Trustee. The debtor objected as he wanted to pay the balance owed which would have resulted in the equity being retained by the bankrupt and not being paid into the

Decision procedures & SIP 15

Part 15 of the New Rules deals with Decision making. I thought it would be useful to explore some practical issues of the decision procedures available. But let's first remind ourselves of the decision procedures available: correspondence, electronic voting, virtual meeting, physical meeting upon request of creditors and any other decision procedure which enables creditors to participate. Voting - or more importantly changing a vote. R15.31(8) states "A vote cast in a decision procedure which is not a meeting may not be changed." This will certainly impact upon VAs where HMRC are known to change their vote after negotiation and modifications.

Adjournments - similarly you are unable to adjourn any decision procedure apart from meetings R15.23. So there is no opportunity to discuss a decision received by correspondence or electronically, not that it would matter since they cannot change their vote!

Software - as you can no doubt tell I am firmly in the camp of virtual meeting to deal with VAs and other contentious matters but will the technology present problems for the IP and his staff? Not necessarily, provided that the access information is given to creditors upon request rather than detailed in the notice. Whilst the rule seems very prescriptive R15.5(a) the Insolvency Service reps have told us that they believe that notices requiring creditors to call/email for access information would be compliant.

estate. The Trustee's argument was that the debtor could only claim physical assets owned by the bankrupt and not the right of possession of something that could be a tool of the trade. The court agreed to this interpretation.

S127 Dispositions by Trustee of Trust Valid

In the case of *Akers and others v Samba Financial Group* [2017] All ER (D) 06 (Feb) the court considered whether transactions, transferring the beneficial ownership of shares in Saudi Arabian companies by a Saudi Arabian citizen to a Cayman Islands company, were void dispositions of property under s127 of the Insolvency Act 1986. The Supreme Court held that section 127 of the Insolvency Act 1986 did not apply to a transfer of shares by the registered owner and that there was no disposition of the company's property. Its beneficial interest was not disposed of, but continued, unless and until overridden by disposal of the legal title.

Scotland

The *Bankruptcy Fees (Scotland) Regulations 2017* SSI 2017/37 comes into force 3 April 2017 and a copy may be found [here](#). The draft *Bankruptcy and Protected Trust Deeds (Miscellaneous Amendments) (Scotland) Regulations 2017* is available and due to come into force 1 May 2017 and a copy may be found [here](#).

Insolvency Rules

The Insolvency Service has confirmed that it is planning for amendment rules, which are expected to be c.8 pages long, to be enacted on 6 April 2017. Unfortunately we will not have an opportunity to preview these before they are enacted. There

are also other statutory instruments being enacted on 6 April 2017 to address the secondary legislation like Administration of Deceased Persons Estate and Partnership to name but a few.

Companies House Forms

Companies House have made available on its website a list of the forms it has produced for the New Rules which may be found [here](#). The forms will be available from 6 April 2017 on their website [here](#).

Electronic Filing & Insolvency

It has been announced that from 25 April 2017 all insolvency proceedings in the London High court are to be dealt with in line with Practice Direction 510, which provides for a pilot scheme for electronic working. This means filing electronically your new forms under the new rules e.g. to be appointed Administrator. The timing will certainly make things interesting being the month that the new rules go live.

Practice Direction Insolvency Proceedings

It is anticipated the the Practice Direction Insolvency Proceedings will be amended and issued by 6 April 2017 to reflect the changes to the insolvency legislation.

New Rules and Document Packs

The Compliance Alliance are producing New Rules compliant document packs. Further information may be found [here](#). Or membership fee starts from £1,500 plus VAT for a sole IP firm.

Decision procedures & SIP 15 - ctd

Excluded person - the issue with virtual meetings, apart from the use of technology, is dealing with excluded creditors. A creditor is excluded if they have followed your access information to attend a virtual meeting (or a physical meeting remotely) but they have been unable to gain access or they have been cut off from the meeting (R15.36 to 15.38). The excluded person rules are the same as those introduced in April 2010 and give the excluded creditor until 4pm on the next business day to contact the IP to indicate he may have an issue.

SIP 15

The new SIP 15 came into force 1 March 2017. R3 has published a guide which replaces the previous guides, "Liquidation/Creditors' Committees and Commissioners A Guide for Creditors" which may be found [here](#).

SIP 15 para 8 - states that potential committee members should be provided with access to suitable information on the committee *prior to inviting nominations* of committee members. The new rules require in ADM, BKY and CVL that whenever creditors are approached to make a decision they should be invited to form a committee. So I am hoping the RPBs will be interpreting this requirement to mean: 'does not exclude 'at the same time as' issuing the invitation to creditors to form a committee, so that the requirement is met by including a link to the guide in the invitation/notice or be accompanied by the guide.

SIP 15 para 9 - the new rules make holding the first committee meeting a problem as they provide that the committee is not established until the notice of membership has been delivered to Companies House or the Court depending on the process R17.5(5), (9) & (10). So the initial meeting may not be held immediately after the nomination of the committee.



Joanne Harris has 19 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.