

**CASE LAW**

- WHICH APPLICATION SHOULD BE USED: INSOLVENCY OR PART 7 CPR?
- STATUTE OF LIMITATION
- STATUTORY DEMAND & COSTS
- BIAS & APPOINTMENT OF A CONFLICT LIQUIDATOR
- PART 26A AND CONDITION A

- STATUTORY MAJORITY MAY NOT BE ENOUGH

**LEGISLATION**

- COVID-19
- CDDA -DISSOLVED COMPANIES
- PENSION SCHEMES
- ADMINISTRATION DISPOSALS NI

- FINANCIAL MARKETS & BREXIT

**GENERAL INFORMATION**

- COMPANIES HOUSE FORMS
- DEAR IP
- HMRC
- R3 GUIDE FOR CORPORATE INSOLVENCY

**GENERAL INFORMATION**

- REPORT ON THE ROLE OF TURNAROUND IN INSOLVENCY
- IS REPORT ON ICAEW COMPLAINTS HANDLING
- CONSULTATION FOR ARRANGEMENT FOR INSURERS
- BITE-SIZED TRAINING

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# TECHNICAL UPDATE

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## Which application should be used: Insolvency or Part 7 CPR?

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In the case of [Manolete Partners plc v Hayward And Barrett Holdings Ltd & others \[2021\] All ER \(D\) 08 \(Jun\)](#) the court reviewed hybrid claims and the practice of issuing hybrid claims under an Insolvency application. The court highlighted “A distinction is to be drawn between an assignment of claims vested in the joint liquidators and capable of assignment, claims vested in the [company] and capable of assignment by the joint liquidators and the office of liquidator. The office is not capable of assignment.” Therefore when issuing proceedings in respect of a s212 claim which has been assigned and s423 claim, these claims may not be brought under an Insolvency application but must be brought under Part 7 of the CPR. This results in an additional fee needing to be paid but also has wider implications for the profession when seeking to assign claims.

## Statute of Limitation

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In the case of [Goldtrail Travel Ltd \(in liquidation\) v Grumbridge \[2021\] EWHC 1713 \(Ch\)](#) the court considered the appeal of the liquidators of Goldtrail in respect of the initial proceedings being struck out due to the period of limitation having expired. The case seemed to rely on new evidence coming to light in 2018 when the initial litigation against other parties occurred in 2010.

The court held that there was sufficient knowledge in 2010 to consider issuing proceedings and therefore the statute of limitation does apply and the appeal failed.

## Statutory Demand & Costs

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In the case of [Re Moskalev Moskalev v Yanishevskiy Moskalev v Yanishevskiy \[2021\] EWHC 1575 \(Ch\)](#) the court considered that the party who issued the statutory demand and subsequently withdrew it had sufficient time to avoid the necessity of a court hearing dealing with the application of withdrawal of the statutory demand. The court therefore awarded against them although their actions were not deemed sufficient to warrant indemnity costs.

## Bias & Appointment of a Conflict Liquidator

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In the case of [Re Microcredit Ltd Microcredit Ltd v Rosler \[2021\] EWHC 1627 \(Ch\)](#) the court considered an application seeking to have the current liquidator initiate a decision making procedure for the purpose of removing him as liquidator. Whilst the court did not order the liquidator to initiate a decision procedure for this purpose it did take the view that it would be beneficial to appoint a “conflict liquidator” with the sole purpose of reviewing the benefit of appealing HMRC’s assessments. The court had reservations about the enthusiasm with which the liquidator appeared to encourage claims from HMRC and another creditor and while the judge did

not think there had been misconduct or dishonesty, he did feel that the appearance of bias could be addressed by the appointment of a conflict liquidator.

## Scheme of Arrangement - Part 26A and condition A

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In the case of [Re Hurricane Energy plc \[2021\] EWHC 1759](#) there were two meetings held, the first for bond holders and the second for shareholders. The bond holders approved the proposed scheme of arrangement and the shareholders rejected it. The court was then asked to exercise its discretion under Part 26A. Condition A for the court to use its discretion is that “the court is satisfied that, if the compromise or arrangement were to be sanctioned [...], none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative”. The judge concluded after reviewing the evidence of the various alternative scenarios that may occur that condition A had not been met and declined to exercise discretion to approve the scheme.

## Schemes of Arrangement - statutory majority may not be enough

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In the case of [Re Provident SPV Ltd \[2021\] EWHC 1341 \(Ch\)](#) the judge stated that “The Court, for example, will have to be satisfied that the scheme is one which an intelligent and honest class member, acting according to his or her interests as such, could

reasonably approve: a test that is not satisfied simply because the requisite statutory majority has been obtained.” This is something to consider when reviewing whether a scheme of arrangement is an appropriate option.

## COVID-19

The following legislation and guidance came into force in March to extend the deadlines previously set:

- [The Business Tenancies \(Protection from Forfeiture: Relevant Period\) \(Coronavirus\) \(England\) \(No. 2\) Regulations 2021 SI 2021/732](#)
- [The Corporate Insolvency and Governance Act 2020 \(Coronavirus\) \(Amendment of Certain Relevant Periods\) \(No. 2\) Regulations \(Northern Ireland\) 2021 SI 2021/165](#)
- [Temporary Insolvency Practice Direction](#) in force until 30 September 2021
- [Business Tenancies \(Extension of Protection from Forfeiture etc\) \(Wales\) \(Coronavirus\) \(No. 2\) Regulations 2021 SI 2021/759](#)
- [Coronavirus Act 2020 \(Residential Tenancies: Protection from Eviction\) \(Amendment\) \(England\) \(No. 2\) Regulations 2021](#)

## CDDA -Dissolved Companies

The [Ratings \(Coronavirus\) and Directors Disqualification \(Dissolved Companies\) Bill](#) was introduced in May 2021 following on from the changes proposed in 2018 to allow the Insolvency Service to investigate directors of dissolved companies.

## Pension Schemes

The [Pensions Regulator \(Information Gathering Powers and Modification\) Regulations 2021 SI 2021/754](#) comes into force on 1 October 2021. This instrument sets out the minimum information

which The Pensions Regulator must include on a notice which requires a person to attend an interview under the extended provisions in the Pension Schemes Act 2021. It also modifies the Regulator’s extended inspection powers so they apply to multi-employer schemes and sets the level of the fixed and escalating civil penalties introduced by the same Act.

## Administration Disposals NI

The [Administration \(Restrictions on Disposal etc. to Connected Persons\) Regulations \(Northern Ireland\) 2021 SI 2021/174](#) came into force on 25 June 2021.

## Financial Markets & Brexit

The [Financial Markets and Insolvency \(Transitional Provision\) \(EU Exit\) \(Amendment\) Regulations 2021 SI 2021/782](#) came into force on 1 July 2021.

## Companies House Forms

Companies House has published new [forms](#) for filing a proposal to accommodate where there has been a disposal under the new the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021) legislation.

## Dear IP

The latest Dear IPs are now available: [Dear IP 127](#), [Dear IP 128](#), [Dear IP 129](#), [Dear IP 130](#), [Dear IP 131](#) and [Dear IP 132](#).

## HMRC

R3 have published the two latest guidance notes from HMRC:

- [Insolvency Guidance Recording tax and national insurance preferential dividends June 2021 V2](#)

- [Insolvency Guidance Update Introduction of electronic banking for Insolvency Practitioners making dividend payments June 2021](#)

R3 have also published the [Secretary of State for BEIS letter concerning HMRC's role in supporting business rescue](#).

## R3 Guide for Corporate Insolvency

R3 have published “[Get Back to Business: A guide to dealing with corporate financial distress](#)”.

## Report on the Role of Turnaround in Insolvency

The Lending Standards Board (LSB) has partnered with the Institute for Turnaround (IFT) on a [report discussing the important role that turnaround plays in supporting firms in difficulty](#).

## IS Report on ICAEW complaints handling

The Insolvency Service have issued a “[Report on the Institute of Chartered Accountants in England & Wales complaints handling process](#)”.

## IS Consultation for Arrangement for Insurers

The Insolvency Service published [Amendments to the Insolvency Arrangements for Insurers: Consultation](#) which was issued on 20 May 2021 and which closes on 13 August 2021.

## Bite-sized Training

The next session will be an AML Catchup on 15 July. Further information may be found [here](#) and is available to all Webinar clients.



Joanne Harris has 22 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.