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# TECHNICAL UPDATE

## Breathing Space: Court, Procedure, Unfair Prejudice & Moratorium Debt

In the case of [Axnoller Events Ltd v Brake and another; Brake and others v Chedington Court Estate Ltd \[2021\] EWHC 2308 \(Ch\)](#) the court was asked to consider an application by a creditor to cancel the moratorium in place under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. The application raised issues relating to jurisdiction and the relevant procedure to be adopted. The Court determined that an application may be made to either the high court or the county court and the wording did not prevent the application to the high court. The court also determined that an ordinary application using form N244 was not appropriate and that the application should be made by issuing a claim form. The court reviewed the requirements of what is “unfair prejudice” and determined that the creditor having to meet the ongoing costs of litigation was not unfair prejudice created by the moratorium, but by the litigation system itself. Clarification was given by the court on what was a moratorium debt and it was emphatically determined that a liability arising after the date of the commencement of the moratorium could not be added to the moratorium. The liability must be owed at the date of commencement of the moratorium. In this case the

liabilities were cost orders made against the debtor post-commencement of the moratorium.

## Restructuring plan with dissenting secured creditor

In the case of [Re Amicus Finance plc \(in administration\) \[2021\] EWHC 2340 \(Ch\)](#) the court considered the application for a restructuring plan under part 26A CA06 proposed by the Administrators of the company and opposed by a secured creditor. One of the senior secured creditors voted against the plan and the approval of 75% of secured creditors was not achieved. An application was made to court for a ‘cross-class cram-down’ procedure and sanction for the plan. The conditions to be met were that: the dissenting creditor would not be any worse off, and that at least 75% in value of a class of creditor who would receive a payment or who would have a genuine economic interest in the company, would approve the plan. The court considered these conditions had been met despite the secured creditor suggesting that liquidation would allow certain rights of action to be pursued.

## Trust & Electronic Money Holders

In the case of [Re ipagoo LLP \(in administration\); Baker and another \(as joint administrators of ipagoo LLP\) \(Financial Conduct Authority intervening\) \[2021\] EWHC 2163 \(Ch\)](#) the court was

asked to determine whether the Electronic Money Regulations (EMR) create a statutory trust of the asset pool as defined by Reg 24 and whether funds that were not safeguarded in accordance with the regulations, but should have been, form part of the asset pool. The court held that Regs 20-22 and 24 of the EMR do not create a statutory trust in favour of electronic money holders (EMHs) but give a statutory right for EMHs to be paid out of relevant funds in priority to all other creditors. The definition of the “asset pool” includes a sum equal to that which should have been safeguarded but was not.

## S236 & Immunity from Suit

In the case of [Al Jaber v Mitchell \[2021\] EWCA Civ 1190 \(30 July 2021\)](#) the court considered whether immunity from suit applies to statements made under oath and by witness statement by an examinee in the course of a private examination conducted under section 236 IA86. The conclusion was that immunity of suit does apply and public policy grounds support this conclusion in ensuring information is given freely to facilitate the winding up of a company.

## National Security and Investment Act 2021

The [National Security and Investment Act 2021](#) will commence fully on 4 January 2022. [R3 has provided information on the implementation](#) with links to further guidance.

## COVID & Scottish legislation

[ICAS in their latest technical update](#) have provided information on Scottish legislation and the extension of the COVID-specific provisions until 31 March 2022.

### Changes to Guideline Hourly Rates

The Master of the Rolls has accepted the changes recommended by the Civil Justice Council's (CJC) working group on [Guideline Hourly Rates \(GHR\)](#), and has asked that the recommendations are implemented with a view to the new guide being used from 1 October 2021.

### COVID-19 & Commercial Rent Arrears

The government has issued a [policy statement on ring-fencing COVID-19 commercial rent debts](#) and introducing binding arbitration. The moratorium on commercial property evictions will remain in place until 25 March 2022 while the government seeks to legislate to ring-fence COVID-related rent arrears and introduce a system of binding arbitration for landlords and tenants who cannot come to a negotiated settlement.

### SIPs 13 & 16 NI

The revised SIP 13 and SIP 16 came into force on 25 June 2021 for Northern Ireland (NI) to reflect the introduction of the new legislation in NI.

### Consultation SIP 3.1

The consultation for the revised SIP 3.1 commenced 12 August 2021 and closes 5 November 2021. The following documents have been published:

- [the consultation questionnaire](#)

- [consultation draft SIP 3.1](#)
- [comparison of consultation SIP 3.1 against current SIP 3.1](#)

## Consultation on Insolvency Arrangement for Insurers

HM Treasury opened up a consultation on 20 May 2021 on [Amendments to the Insolvency Arrangements for Insurers](#) which closed 13 August. On 17 August the City of London Law Society published its [response](#).

### Bounce Back Loans: FAQ for IPs

R3 has published some guidance for Insolvency Professionals about Bounce Back Loans in the form of [frequently asked questions](#). D Menzie has tweeted that the RPBs will be meeting with the Insolvency Service to discuss question 10.

## Companies House

R3 have published a message from Companies House which states that it will no longer be using its discretion to return documents which had not yet been filed. The information on what powers Companies House have may be found on the .gov website under "[Company registrar's rules and powers](#)".

## HM Land Registry updated Practice Guides

HM Land Registry have updated the following practice guides:

- [Charities \(PG14\)](#)
- [Approval of mortgage documentation \(PG30\)](#)
- [Personal insolvency \(PG34\)](#)
- [Standard form of charge: approval \(ACD\)](#)
- [Practice guide 35: corporate insolvency](#)

## HMRC Guidance

R3 have published further guidance from HMRC:

- [Disguised remuneration and the loan charge - IP information regarding insolvent employers](#)
- [Changes to HMRC's liquidation process for Corporation Tax cases](#)
- [Update on Service levels](#)
- [Insolvency Practitioner appointments](#)

Also [VAT 700/56](#) has been updated and there is a new section for funded pension schemes.

## Defence Against Money Laundering

R3 and the RPBs have published guidance for IPs on [Defence Against Money Laundering](#).

## Pensions: Nest

Nest has set up a dedicated email channel for IPs to submit documents and raise queries: [IPsupport@nestpensions.org.uk](mailto:IPsupport@nestpensions.org.uk).

## Dear IP

The latest Dear IPs are now available: [Dear IP 133](#), [Dear IP 134](#) and [Dear IP 135](#).

## IS Monthly Statistics

The [Insolvency Service Monthly Statistics for July](#) are available.

## FCA & Debt Packager Firms

The FCA has [removed permission for five debt packager firms](#). The FCA has also published correspondence between [Sheldon Mills](#) and [Dean Beale](#), CEO of the Insolvency Service, setting out how the two organisations are approaching working to protect consumers.



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.