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TECHNICAL UPDATE

What costs are included when being paid from asset pools?

In the case of [Re Allied Wallet limited \(In Liquidation\), \[2022\] EWHC 1877 \(Ch\) \(19 July 2022\)](#) the issue of what constituted "costs of distributing the asset pool" was re-visited as well as dividing non-safeguarded assets between the asset pools. The judge determined that there would be costs that would fall outside the definition and therefore the liquidator would not be able to be paid these costs from the pooled assets. The judge also applied "the principle that equality is equity..." and directed "that such assets as are available to reconstitute the asset pools should be divided between them rateably by reference to the shortfall suffered by each pool".

Right to set aside judgment vests with bankrupt

In the case of [Addison v London European Securities Ltd \[2022\] EWHC 1077 \(Ch\) \(03 May 2022\)](#) the court considered whether a bankrupt had the right to challenge a statutory demand or whether the right of action had vested in the Trustee. In this case, the debtor had applied to set aside the statutory demand and the judge refused to set it aside. The debtor then appealed the judge's decision, but before the appeal hearing the debtor was made bankrupt. The judge held that this specific right of action did not vest in the Trustee and it would be a waste of time for the

debtor to re-issue the appeal on the basis of the bankruptcy order.

Selling at an under value & junior secured creditors

In the case of case [Fitzroy Street Capital Inc & Anor v Manning & Ors \[2022\] EWHC 1495 \(Ch\)](#) the junior secured creditors challenged the conduct of the Administrators as acting in excess of power by selling secured property and other breaches of duty including non-engagement with junior secured creditors, errors in the proposal document and lack of delivery to all secured creditors, failure to obtain a red book valuation for the properties and the truncated marketing approach adopted. The court agreed that there had been deficiencies in the Administrators' conduct but disagreed with the claim that the junior secured creditors were not aware of the proposed marketing. The judge also observed that the junior creditors could have offered to fund the administration to help address the truncated marketing approach adopted but had failed to do so. After extensively reviewing the marketing undertaken prior to administration and listening to evidence from experts, the judge found that the properties were sold for their market value.

Further AML Legislation

The following legislation has been passed:

- [The Money Laundering and Terrorist Financing \(Amendment\)](#)

[\(No. 2\) Regulations 2022](#) commenced 21 July 2022.

- [The Money Laundering and Terrorist Financing \(High-Risk Countries\) \(Amendment\) \(No. 2\) Regulations 2022](#) commenced 12 July 2022.

Amendments to Special Administration

[The Payment and Electronic Money Institution Insolvency \(England and Wales\) \(Amendment\) Rules 2022](#) comes into force on 10 August 2022 and addresses some gaps, including provisions for remote attendance and application for limited disclosure of statement of affairs information.

Russian Sanctions

[The Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 14\) Regulations 2022](#) came into force on 21 July 2022. The legislation prohibits the provision of Accountancy and Management Consultancy Services to persons connected with Russia.

Temporary coronavirus legislation made permanent in Scotland

[The Coronavirus \(Recovery and Reform\) \(Scotland\) Bill](#) was passed on 29 June 2022 and is due to come into force on 1 October 2022. This incorporates the temporary legislation and adds a few amendments to address issues identified.

Register of Overseas Entities

The [Register of Overseas Entities \(Verification and Provision of Information\) Regulations 2022](#) came into force on 30 June 2022. The [Register of Overseas Entities](#) commenced on 1 August 2022 and requires beneficial owners and managing officers of overseas entities to be verified by an agent.

Enforcement Notice: Social Media & Advertising

The Committee of Advertising Practice published an [Enforcement Notice: Debt Management \(IVA/PTD\) Ads by Insolvency Practitioners and Lead Generation Companies](#) on 23 Jun 2022.

Guidance on National Security and Investment

The government has issued [Guidance on the National Security and Investment legislation](#). Two insolvency specific scenarios are detailed under “Temporary acquisitions of control”.

CCAB AML case studies

The CCAB published [four case studies on 21 July 2022](#) which although not insolvency specific are helpful in maintain levels of knowledge.

HMRC Guidance

HMRC published:

- [Insolvency Guidance note on VAT100 returns on 17 June 2022](#). A new style VAT100 and a fully automated process have been introduced, although these may not be available for all cases.
- [Insolvency Guidance note on CVA voting, dropbox, MVL clearances on 7 July 2022](#).

FCA Guidance on compromise agreements

The finalised guidance on the [FCA's approach to compromises for regulated firms](#) was published in July 2022.

FCA Insolvency Webinar

The FCA are hosting a [webinar on 22 September 2022 at 10 am](#) on restructuring and insolvency of FCA regulated firms, addressing when and how to engage with the FCA.

Confidence in the Insolvency Regime

The Insolvency Service commissioned IFF Research to undertake qualitative research on stakeholders' confidence in the insolvency and enforcement regimes and the [report](#) was published on 13 July 2022.

CVA Research for Insolvency Service

The Insolvency Service commissioned research to address concerns of the commercial property sector about the impact of CVAs. The [report was published on 28 June 2022](#).

Consultation on two UNCITRAL Model Laws

The [open consultation on the implementation of two insolvency-related UNCITRAL Model Laws](#) into UK law was published on 7 July 2022.

Review of the operation of CIGA

The Government committed to a review of the operation of the

Corporate Insolvency and Governance Act 2020 (CIGA) three permanent measures within three years of the CIGA commencement. The [interim report is stage one of the process](#) and [stage two is an online survey](#).

Consultation on Personal Insolvency Framework

A [call for evidence to review the Personal Insolvency Framework](#) was issued on 5 July 2022 by the Insolvency Service and this closes on 24 October 2022.

Consultation on mediation on claims less than £10k

The Ministry of Justice has opened a [consultation proposing to introduce a requirement to attempt mediation for all proceedings allocated to the small claims track of the County Court](#). The consultation closes on 4 October 2022.

Review of New Rules

Michelle has recently [blogged about the review of the new rules](#) and brings some much needed humour to the topic.

Dear IP

The latest Dear IPs are now available: [Dear IP 144](#), [Dear IP 145](#), [Dear IP 146](#), [Dear IP 147](#) and [Dear IP 148](#).

Summer Reading

An IP has written a diary of 2021-2022 which is called “[Back to Better](#)” but I have renamed “The COVID Years”. It has nothing to do with insolvency but is a lovely, laugh out loud read so if you enjoyed Adrian Mole or Bridget Jones you will love this.



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.