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# TECHNICAL UPDATE

## Criminal Prosecution & HR1

In the case of [R v North Derbyshire Magistrates Courts and others \[2021\] EWHC 3013 \(Admin\)](#) the court under judicial review considered whether Administrators could be prosecuted for an offence, in this case not filing the HR1 upon appointment, and determined they could.

### Evidence to substantiate claims required in IVA

In the case of [Moorgate Industries UK Ltd v Mittal \(in bankruptcy\) and another \[2022\] EWHC 3009 \(Ch\)](#) the court considered the lack of evidence submitted with proofs of debt in an IVA. The judge determined there was a material irregularity at the meeting of creditors convened to consider the IVA proposal. The debts claimed by the challenged creditors had not been substantiated. The challenged creditors failed to discharge the burden of proof. The judge also made clear that the challenged creditors were expected to participate in the proceedings to substantiate their claims and because no evidence was filed and served, it was open to the court to make adverse inferences.

### Office-holders of Energy Suppliers seek directions

In the case of [Croxen & Ors V Gas and Electricity Markets Authority & Ors \[2022\] EWHC 2826 \(Ch\)](#) an application was made by various office-holders of energy supply companies seeking directions on

two matters. The first was in relation to the nature of the renewables obligation and the extent to which liabilities arising out of it are provable in the administration or liquidation. The second was related to a possible claim in unjust enrichment by a supplier of last resort (SoLR) arising out of the fact that the SoLR honoured credit balances of customers with the failed supplier, following their appointment as SoLR.

### Assets deducted from final award made by court

In the case of [Umbrella Care Ltd \(in liquidation\) v Nisa and others \[2022\] EWHC 3139 \(Ch\)](#) the court considered claims of breach of duty against the directors for fraud involving PAYE and NIC deductions made and VAT received which was not paid to HMRC. When assessing the value of the claims, the court deducted the amount of the realisation of the assets of the company from the claims.

### Administration moved to liquidation to give effect to S127 IA86

In the case of [Re MSOLD1 Ltd \(in administration\) \[2022\] EWHC 3015 \(Ch\)](#) the court was asked to move a company into liquidation which had recently entered administration. The application made by the administrators was to preserve the consequences of S127 since the company had a winding up petition served on it prior to entering administration.

The issue hinged around all the assets of the company having been transferred after the petition was served and prior to the appointment of the administrators by the director to connected companies. Due to the lack of cooperation of the director and the incorrect information being given to the court by the director when applying for a validation order, the court granted the winding up of the company and appointed the administrators as liquidators.

### Rejected creditor still a creditor?

In the case of [Spex Group Holdings Limited V Alexander Iain Fraser and others \[2022\] CSOH 74](#) the court determined that the Scottish definition of creditors includes creditors whose claim has been rejected for the purposes of the rejected creditor's right to appeal against the decision to accept or reject another party's claim.

### Changes to high risk third countries

[The Money Laundering and Terrorist Financing \(High-Risk Countries\) \(Amendment\) \(No. 3\) Regulations 2022](#) came into force on 15 November 2022.

### Increase in deposit for petitions

[The Insolvency Proceedings \(Fees\) \(Amendment\) Order 2022](#) came into force on 1 November 2022,

increasing the deposit amounts for both a bankruptcy petition and winding up petition.

### Scottish Legislation

[The Payment and Electronic Money Institution Insolvency \(Scotland\) Rules 2022](#) came into force on 19 December 2022.

[Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#) Section 22 had the effect from 1 November to increase the protected sum to £1,000 in an arrested bank account and S39 allowing statutory declarations to permanently be made virtually.

### Northern Ireland legislation

[The Insolvency Practitioners \(Amendment\) Regulations \(Northern Ireland\) 2022](#) came into force on 4 November 2022 removing the requirement to maintain an IP record for each case.

[The Insolvency \(Northern Ireland\) Order 1989 \(Prescribed Part\) \(Amendment\) Order \(Northern Ireland\) 2022](#) came into force on 4 November 2022 raising the prescribed part to £800,000 on security created from 4 November 2022, provided no previous floating charge created before the relevant date exists.

### Guidance on employee claims

The Insolvency Service has [updated its guidance](#) and asked that the employee also advise the IP of changes they are making.

This [guidance for company directors](#) claiming redundancy related payments was amended to remove the restriction on the company being incorporated for two years before a director could make a claim.

### Definition of “audit related” work

The RPBs ([ICAS](#), [ICAEW](#) & [IPA](#)) have issued a joint statement clarifying the meaning of the phrase ‘audit related work’ in the Code of Ethics as applied to insolvency practitioners, particularly for internal audit work in the context of evaluating a significant prior relationship.

### PSC & reporting a discrepancy

Companies House have [updated the guidance](#) on when they consider a discrepancy need not be reported.

### Guidance for debt advisors

The [guidance for debt advisors](#) was amended to include clarification on certain pension issues.

### AiB in Scotland & DAS

The DAS Administrator has [prepared a proforma request](#) with guidance which money advisers may use to make requests that the repayments made in cases where debtors can no longer meet their payment obligations are treated as paid to date settlements, allowing DPPs to be completed.

### Company Strike off, dissolution and restoration

Companies House have [updated their guidance](#) for company strike off, dissolution and restoration.

### MVLs & HMRC

HMRC have published further [Insolvency Guidance](#) on 16 November 2022 asking that emails

seeking clearance have in the subject line the specific issue.

### Insolvency Service Report on CIGA

The Insolvency Service (IS) has published the Corporate Insolvency and Governance Act 2020 (CIGA 2020) [final evaluation report](#) which found that the Restructuring Plan (RP) continues to satisfy its policy objectives consistently with the Interim Report from June 2022.

### Statutory Debt Repayment Plan Consultation

HM Treasury have published their [response to the consultation](#) on the introduction of Statutory Debt Repayment Plan (SDRP). It has been decided not to proceed at this time with legislation implementing SDRP and they will await the outcome of the review of the personal insolvency framework.

### ICAS AML Supervision Report

ICAS has published its [anti-money laundering \(AML\) supervision report](#), which covers its activities as an AML supervisor from April 2021 to April 2022.

### IS Winter Newsletter 2022

The [Insolvency Service Winter 2022 newsletter](#) is now available including links to the Insolvency Service’s Annual Report and Accounts 2021-22.

### Dear IP

The latest Dear IPs are now available: [Dear IP 150](#), [Dear IP 151](#), [Dear IP 152](#), [Dear IP 153](#), [Dear IP 154](#), and [Dear IP 155](#).



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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.