

CASE LAW

- PERSONAL LIABILITY OF DIRECTOR FOR PAYE/NIC
- PENSION DRAWDOWN TO SATISFY A JUDGMENT DEBT
- THIRD PARTY FUNDERS, ADJUDICATION & CHAMPERTY
- INDEMNITY COSTS

LEGISLATION

- EMPLOYMENT AWARDS INCREASE
- MORATORIUM RULES NI
- PERSONAL INSOLVENCY SCOTLAND
- SCOTTISH MINIMUM EARNINGS DEBTOR

- EU LAW REVOCATION BILL
- GUERNSEY LEGISLATION
- GENERAL INFORMATION**
- REDUNDANCY PAYMENTS DIRECTORS
- HMRC VAT100 UPDATE
- ICAS, MVLS & TAX CLEARANCE
- UPDATED GUIDES

- PROLIFERATION FINANCING
- UPDATE TO GUIDANCE BY UKFIU
- COMPANIES HOUSE
- SIP 3.1
- VOLUME PROVIDERS GUIDANCE
- SFS SPENDING GUIDELINES
- E SIGNATURES
- DEAR IP

TECHNICAL UPDATE

Personal liability of director for PAYE/NIC

In the case of [Gary Wagstaff V Revenue and Customs \[2022 UKUT 327 \(TCC\) 6 December 2022\]](#) the Upper Tribunal (UT) considered the impact of a CVL on any claims HMRC had personally against the director of a company for outstanding PAYE/NIC and the statute of limitations. The UT held that despite the personal liability notice relating to periods more than 6 years old, the insolvency legislation would apply in that the limitation period ceased upon the company entering CVL provided that the debt was not time-barred at this point. The court went on to state that HMRC would be able to pursue the director, provided the company was still in CVL and the right to pursue the debtor would not cease until the company was dissolved.

Order to draw down pension benefits to satisfy a judgment debt

In the case of [Re Lloyds British Testing Ltd \(in liquidation\) Manolete Partners plc v White \[2023\] EWHC 567 \(Ch\)](#) an order was sought to draw down benefits under an occupational pension scheme to satisfy a judgment debt. The court found that “the principal asset comprised with the respondent’s pension fund was derived entirely from funds provided by the company” and that the judgment debt was the result of the “respondent’s misfeasance and

breaches of fiduciary duty whilst acting as the company’s controlling director and shareholder”. In these circumstances, the court decided to agree to the order sought.

Third party funders, Adjudication & Champerty

In the case of [JA Ball Ltd \(in administration\) v St Philips Homes \(Courthaulds\) Ltd \(unreported\)](#) the Technology and Construction Court reviewed the issue of enforcement of an adjudicator’s decision by a company in administration. The court made various determinations one of which was that the company in administration was comparable to a company which had entered liquidation. The second issue was the security offered by the Administrators, which was to ring-fence any payments made by St Philips in compliance with the decision and the third party funder of the Administrators offered to guarantee St Philips’ costs. This was rejected due to the unenforceability of the decision due to the breach of the rules of natural justice, since the adjudicator’s decision was based on a premise proposed by neither party or where neither party had the opportunity to address the issue. However, if the decision had been enforceable, the court would have stayed execution for 6 months to allow the cross claims to have been pursued. Finally, the issue of champerty was raised in respect of the Damages Based Agreement (DBA). Due to non-compliance with the Damages-Based Agreements Regulations 2013, and that the DBA did not

adequately explain the basis of the percentage of recovery agreed, it was found to be champertous; although it was not found to be abuse of process there were concerns raised about the fact that the funder and legal representatives of the Administrators were under common control.

Indemnity costs awarded against Liquidator

In the case of [Re Aston Lloyd & Partners International Ltd \[2022\] EWHC 3006 \(Ch\)](#) the liquidator sought an order in respect of his costs. The company entered administration in April 2010 and then CVL with the same office-holders in July 2011, then the company was compulsorily wound up in February 2013 with the Official Receiver initially being appointed liquidator before being replaced in July 2014 by an IP who is still in office. In 2018, 2019 and 2020 the liquidator had sought orders for his costs but had not advised the court of the statutory charge that the administrators had. After correspondence with the former administrators in 2020 and 2021, the liquidator made an application to court to obtain relief and directions in respect of the amount payable to the former administrators. The importance of Ex party James and ensuring that all information was provided to the court when making an application was emphasised. The judge raised the issue of the public perception of office-holders and criticised the IP for seeking to retain the benefit of the previous orders despite full disclosure having not been given

about the Administrators' statutory charge. The judge determined that the administrators were entitled to their fees under the statutory charge and ordered costs to be paid on an indemnity basis.

Employment awards increase

[The Employment Rights \(Increase of Limits\) Order 2023](#) comes into force on 6 April 2023. It is time to change letters to employees again if you have added the statutory weekly amount to your proforma.

Moratorium Rules NI

[The Insolvency \(Amendment\) Rules \(Northern Ireland\) 2023](#) came into force on 13 March 2023.

Personal Insolvency Scotland

[The Bankruptcy and Debt Arrangement Scheme \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#) came into force on 6 February 2023.

Scottish minimum earnings debtor legislation

[The Diligence against Earnings \(Variation\) \(Scotland\) Regulations 2023](#) comes into force on 6 April 2023.

EU Law Revocation Bill

The [Retained EU Law \(Revocation and Reform\) Bill](#) is making its way through Parliament and if/when enacted could impact Data Protection legislation.

Guernsey legislation

[The Companies \(Guernsey\) Law 2008 \(Insolvency\) \(Amendment\)](#)

[Ordinance 2020](#) came into force on 1 January 2023. ICAS has published an [article](#) on the governing legislation and guidance as part of their series on crown dependencies including [Jersey](#) and the [Isle of Man](#).

Guidance for Redundancy Payments for Directors

The Insolvency Service has updated their [guidance on the eligibility of directors in making redundancy payments claims](#).

HMRC VAT100 update

HMRC have issued [Insolvency Guidance on 8 February 2023](#) on completing and submitting VAT 100s.

ICAS, MVLs & Tax clearance

ICAS has issued [guidance in respect of MVLs](#) for their members when dealing with long delays in obtaining tax clearance in MVLs.

Updated Guide to Committees & others

R3 has updated the following guides:
[Creditors' Committees: a guide for Creditors \(E&W\)](#)
[A Creditor's Guide to Administrative Receivership](#)
[A Creditors Guide to Administration](#)

Proliferation Financing

The RPBs at the end of last year published articles on the impact of the new AML requirements when conducting your annual firm-wide AML risk assessment to incorporate the risk associated with proliferation financing ([IPA](#), [ICAEW](#), [ICAS](#)). The risk must also be incorporated into case specific risk assessments.

Update to Guidance by UKFIU

The UKFIU have provided updated [guidance on requesting a defence from the NCA](#) and a [SARs Reporter Booklet](#).

Companies House

Companies House Direct and WebCheck are closing 30 November 2023. It is recommended that the [Find and Update service](#) be used instead.

SIP 3.1

Michelle has recently blogged about the revised SIP 3.1 and the issues faced by IPs, which may be found [here](#) and [here](#).

Volume Providers Guidance

The Insolvency Service has updated its guidance on [Monitoring Volume Individual Voluntary Arrangement and Protected Trust Deed providers](#).

SFS Spending Guidelines

Here are the [SFS Spending Guidelines](#) for April 2023.

eSignatures

The [Industry Working Group on eSignatures Final Report](#) was published 14 March 2023.

Dear IP

The latest Dear IPs are now available: [Dear IP 156](#), [Dear IP 157](#) and [Dear IP 158](#).

Bite-sized Training

You might find [these](#) useful;-)



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.