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TECHNICAL UPDATE

Companies House & SOA

In the case of [Re Peter Jones \(China\) Limited \(\[2021\] EWHC 215 \(Ch\)](#) the court has held that where a SOA has been filed with the employee and consumer schedules attached, then the Registrar has the power to remove these documents without the need for the officeholder to apply for a court order to remove the documents.

ADM, retrospective order & determination of proceedings

In the case of [Duffy v Mederco \(Cardiff\) Ltd \[2021\] EWHC 386 \(Ch\)](#) the administrators failed to obtain authority from all secured creditors for an extension, having made a para 52(1)(b) Sch B1 IA86 statement in the proposal and having no ability to pay a distribution to preferential creditors. The creditors who had paid a deposit to the company to purchase a long leasehold interest in apartments which were being built were not initially recognised as secured creditors. However, it was determined that they had an equitable lien and under s248 IA86 should be considered secured creditors. The administrators applied to court to rectify the invalid extension. The court gave a retrospective administration order validating the actions of the administrators to date but determined that proceedings would be deemed to be open at the date of the order, meaning that proceedings would be under the new regime following the UK's departure from the EU.

Director Disqualification & Charities

In the case of [Re Keeping Kids Company, Official Receiver v Batmanghelidjh and others \[2021\] EWHC 175 \(Ch\) \(12 February 2021\)](#) the court reviewed whether there were breaches under the CDDA in respect of the disqualification proceedings brought by the Insolvency Service against various directors and Ms Batmanghelidjh, who they suggested was a de facto director. The allegations were made on the basis of incompetence rather than probity. The judge felt that inappropriate assumptions were made due to the lack of experience of the Official Receiver in relation to charities and that led to the OR's failure in understanding that charities were heavily dependent on donations. The judge also suggested that the standards applied should be those set by the Charity Commission. The proceedings were dismissed and the judge did not find that Ms Batmanghelidjh acted as a de facto director but even if she did, there were no findings against her.

ADM & Multiple Notices of Intention to Appoint an Abuse of Process

In the case of [Seabrook Road Ltd v security Trustee Services Ltd \[2021\] EWHC 436 \(Ch\) \(25 January 2021\)](#) the company issued four notices of intention to appoint (NOI) and the court found that there was no such intention to appoint administrators and was

SIPs 3.2, 7 and 9

The changes to the SIPs will have a significant impact on IPs and I have detailed below some of the key changes. I would highly recommend watching the ICAS webinar, click here to watch a recording of this [Teams Event Live](#). Michelle has also produced a [blog](#).

SIP 9

Summary below of key amendments:

- SIP 9 will not apply to Moratorium or MVLS;
- IP to review all payments to assess whether they are proportionate;
- New definition of associate - need to identify who this applies to;
- Disclose details of relationship with "associates";
- Ensure explanation about fees and all expenses, including subcontractors, provides what was done, why it was done and how much it costs;
- Overheads redefined so most firms' cat 2s no longer allowed
- All payments should be directly attributable to the estate from which they are being made or sought;
- Give narrative relevant to each fee basis sought - clear divisions;
- Expenses now includes cat 1 and 2 disbursements;
- Cat 2 = shared or allocated costs and of course payments to associates.

KEY ACTION POINTS:

- [Review firm's cat 1 and cat 2](#)
- [Amend reports and fees documents](#)
- [Identify newly defined associates and ensure appropriate fee authority is obtained to pay them.](#)

merely using this as a negotiating mechanism. None of the NOI were served on the QFCH, who appointed fixed charge receivers while the NOI were in place. Due to the lack of intention of the company to appoint and the non-compliance of serving the QFCH the court held that the NOI were invalid and no valid interim moratorium was in place. The court agreed that the NOI should be removed from the court file and deemed this an abuse of process.

Sales to connected parties in ADMs

The draft [Administration \(Restrictions on Disposal etc. to Connected Persons\) Regulations 2021](#) is expected to come into force on 30 April 2020 legislates on the requirements where there is a sale to a connected party in the first 8 weeks of an administration. The amendments to SIP 16 is also in progress although [ICAEW](#) have indicated there will be limited advance notice. ;-)) We will be providing [Bite-sized Training](#) on this before 30 April.

Debt Respite Scheme

The [Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020 \(SI 2020/1311\)](#) comes into force on 4 May 2021. Some useful resources:

- [FCA Policy Statement](#)
- [Insolvency Service Guidance Debt Respite Scheme \(Breathing Space\) guidance for creditors](#)
- [Insolvency Service Guidance Debt Respite Scheme \(Breathing Space\) guidance for money advisers](#)

Victim payments exempt from bankrupt's estate

The [Victims' Payments Regulations 2020 SI 2020 No. 103](#) came into

force on 29 May 2020 and exempts payments under the regulation from the bankrupt's estate.

Minimum Wage Increase

The [National Minimum Wage \(Amendment\) Regulations 2021](#) comes into force on 1 April 2021 and will impact redundancy payments that may be claimed.

IPs & Marketing

The Advertising Standards Agency have made [two rulings](#) in respect of misleading debt advice adverts and in light of this the Insolvency Service has produced [Guidance on monitoring insolvency practitioners: Advertisements, marketing and debt advice](#). Further information may be found in [Dear IP 120](#).

PPF & Moratorium and Restructuring Plan

The PPF Restructuring and Insolvency Team have issued [Guidance note 9 - Corporate Insolvency and Governance Act 2020](#) for those dealing with Moratoriums or Restructuring Plans.

New SIPs

The new [SIP 3.2](#), [SIP 7](#) and [SIP 9](#) come into force 1 April 2021 and there are no transitional provisions so they will apply to old and new cases from 1 April 2021. This may significantly impact billing and your documents will need to be updated to reflect the SIP requirements.

Dear IP

The latest Dear IPs are now available: [Dear IP 118](#), [Dear IP 119](#), [Dear IP 120](#), [Dear IP 121](#) and [Dear IP 122](#).

SIPs 3.2, 7 and 9 ctd

SIP 7

Summary below on the key changes to SIP 7:

- New wider definition of associate;
- Ensure R & P also analysis to enable comparison with SOA/EOS figures previously provided;
- Make sure you reconcile balances at bank, the case records and to any amount due to the officeholder;
- Information for payments to IP now includes wide definition of associates and the IP's firm;
- Provide information to successor IP;
- Trading and alternative method of asset realisation - provide information about what was done, why it was done and how much it costs.

SIP 3.2

Summary below on the key changes to SIP 3.2:

- Explain directors' responsibilities before and during the CVA;
- Additional use of specialists to be discussed with director and disclosed to creditors in proposal;
- May use conferencing technology for in person meeting with directors;
- Roles of nominee and supervisor detailed in proposal;
- Document impact of trading within a CVA for prolonged period;
- Give creditors adequate time to consider proposal and consider signposting to useful information;
- Various additional information within proposal including how debts are to be valued for voting purposes specifically long term or contingent liabilities and how compromised debts to be treated on failure of the CVA;
- Supervisor must ensure company dealt with post failure of CVA;
- Disclosure in annual reports in respect of payments to associates (new definition applies) and explanation of any increase in fees from the original estimate or previous reports.



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.