

JOH Consultancy LLP

November 2012 Technical Update

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Right to challenge judge's conclusions s423 IA 86

In *Williams v Taylor and another* [2012] All ER (D) 262 (Oct) the court was reviewing whether a decision made by a judge could be overturned based on whether the judge failed to give adequate weight to evidence from which intention to defraud creditors ought to be inferred, Insolvency Act 1986, s 423. It was held that the judge's conclusion about the documents which had been entered into to escape liabilities, could not be challenged.

Evidence property was transferred for value

In *Withers LLP V Walsh* [2012] All ER (D) 70 (Oct) the solicitors had acted on behalf of the defendant in respect of her litigation. The defendant was supported by her new partner financially in respect of the litigation and subsequently married. The defendant's solicitors advised to settle the litigation and were ignored and were dis-instructed. The solicitors sought payment of outstanding costs and obtained a judgement. The defendant then finalised the transfer of her 99% interest to her new husband. The solicitors obtained a charging order and challenged the transfer of the property under s423 IA 86. It was held that although the transfer document indicated it was for nil value there was evidence that this was not the case.

Landlord proving in CVL for reinstatement and repairs

In *Teathers Ltd, Re: Baroque Investments Ltd v Heis* [2012] EWHC 2886 (Ch), the landlord appealed against the rejection of their proof for the reinstatement liability and the repair liability of a lease that was not due to expire until 2014. The leases were surrendered on the basis that they were released from the rights and obligations contained in the leases and from all liability in respect of any breach of those rights and obligations whether arising on or after, but not before, the date of the surrender. As the company's repair and reinstatement liabilities did not arise until after the date of the surrender it was held that the liabilities were released by the surrender. Thus they were able to hold that *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co* did not apply.

Enterprise and Regulatory Reform Bill

The government has decided to continue with their plans to simplify the entry procedures into bankruptcy by removing the court process when it is not needed. The Bill proposes that insolvent individuals may apply directly to the Adjudicator, who will be a member of the Insolvency Service, to be made bankrupt.

SIP UPDATE

I recently attended an IPA roadshow where some interesting suggestions are being made about the future amendments to SIPs which I thought I would share with you.

SIP 3

The new SIP 3s are due out early in the new year and you now will have one for CVAs and one for IVAs. The SIPs are consistent with the new principles based approach being taken. So are much reduced in size but with very little change expected in the way you currently deal with pre- and post-appointment VA issues.

SIP 4

The question is being asked about whether we really require this SIP at all in light of the Insolvency Services revised guidance in respect of D report detailed in Dear IP 54. Here is the link if you missed it <http://www.bis.gov.uk/assets/insolvency/docs/publication-word/guidance-notes-completion-of-stat-reports.doc>

SIP 8, 10 & 12

The above SIPs all deal with meeting issues and consideration is being given to creating a SIP specifically for meetings generally and possibly covering the issue of remote attendance bringing it up to date with the 2010 Rules.

SIP 11

The SIP deals with mandatory regulation and the suggestion is to combine it with the Client Money Regulations or SIP 7. Since SIP 7 has only recently been amended it is assumed this will be one of the last SIPs to be tackled during this current overhaul.

SIP 13

This SIP was issued in 1997 and we have had the Enterprise Act and the 2010 rule changes since, so it is overdue being rewritten. Whilst the title of the SIP refers to acquisition by directors the SIP itself discusses connected party transactions making its application much wider. It also could usefully be link to SIP 16.

HMRC new address

HMRC have a new address:

5th Floor
Regina House
James Street
Liverpool
L75 1AD

IVAs and Paymex

It was suggested at a recent conference that IPs only addressing the VAT reclaim for the last 4 years is misguided and highlights a conflict. The implications of Paymex is that IPs should be seeking from their own firms the VAT that was paid going back to 1986. This is a very worrying interpretation and the 6 year limit for action being taken is suggested as being the date of the Paymex decision. The IPs therefore appear to have a risk for the next 6 years of creditors requesting the repayment of VAT on old closed cases.

Defending Protective Awards

This is now on the Insolvency Service's radar and they seem to be implying that if IPs do not actively defend protective award proceedings, then the government will seek to impose some criteria to require IPs to do so, because this is costing the Government a fortune. The Employment Tribunal is criticising the profession despite the time pressure and there seems to be no understanding and no will to change the regulations to reflect insolvency issues.

IT and the RPBs

I have been speaking about the new SIPs over the last few months and the increased compliance. I would also bring to your attention the RPBs' requirement that you are using software systems that are efficient and not adding unnecessary costs to the case, and yes they will review the efficiency of your systems and review the costs.

There are various options on the market and my recommendations are based on working with and for these companies. I would suggest you review all the systems available before making a choice which meets your firm's needs.

Case Management System

Your case management system should have a diary which not just meets your statutory deadlines but also best practice and should be a work program. The diary lines should be linked to the document and which should be generated with the press of a button. For small firms having letter packs provided as part of the system is a huge saving on their time and resources.

More importantly there should be no cost to the firm, only to the case. I therefore would recommend INSOLV who charge a fixed fee per case which is a category 1 disbursement and has no licence fee or limit to the number of users.

<http://www.insolv.co.uk>



Time Management System

If you do not have time recording system software and you are not able to press a button and provide the SIP 9 report, you need to reconsider the system you are using. RPBs will challenge fees you charge if your time costs include hours trying to produce a SIP 9 table. INSOLV also has a time management system.

Website use for reporting

The new rules allow for reports to be posted to a website and there are various providers of this service. My recommendation would be My Insolvency Reports because they charge a single fee per case, not per report and again this is a category 1 disbursement.

<https://www.myinsolvencyreport.com>



SIP UPDATE CTD

SIP 15

This SIP is really just the Guides to Creditors about Committees. It is being suggested that the SIP be dispensed with and the Guides be kept as separate documents similar to the former SIP 9 Guides to Fees for Creditors.

SIP 16

This SIP is again being targeted for review despite the Dear IP 42 and the aborted legislation. If you are following Michelle Bulter's blog, www.insolvencyoracle.com, you will have seen that questions were asked about pre-pack sales, so this issue is not going away. A suggested approach is to deal with this as part of the SIP 13 review since the concern appears to be about sales to directors.

SIP 14

This SIP has been due for review surely since the Enterprise Act came into force in 2003. It is being suggested that this SIP apply to Administrations as well with a section dealing with the application of the prescribed part.

SIP 17

We very nearly had this SIP removed when the new SIP 1 came into force but it is still here and consideration is being given to generalising this SIP deal with company records in formal insolvency.

SIP CONSULTATION

The IPA is inviting members to give their thoughts on the SIPs and the contact is Alison Curry alisonc@ipa.uk.com.

Author

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