

**CASE LAW**

- TWO APPLICATIONS FOR THE PRICE OF ONE
- TRUSTS & PARI PASSU
- FREEZING ORDERS & FULL DISCLOSURE
- BRIBERY

- TRUST MONEY & SETTLEMENTS

**INSOLVENCY****GUIDANCE PAPER**

- CONTROL OF CASES

**LEGISLATIVE UPDATE**

- EU AND THE BANKING SYSTEM

- LAW FOR CO-OPERATIVE AND BENEFIT SOCIETIES MERGED
- COMMUNICATION BETWEEN REGULATORY BODIES
- FREE ACCESS TO COMPANIES HOUSE

**GENERAL INFORMATION**

- "TIMES THEY ARE A-CHANGIN'"
- SIP 16 DISCLOSURE
- RTI AND DIVIDENDS
- SECURED TRANSACTIONS LAW REFORM PROJECT

# TECHNICAL UPDATE

## Two applications for the price of one

In the case of *Eddie Stobart Group Limited v (1) The Registrar of Companies (2) Innovate Logistics Limited ChD, 23 June 2014*, (Asplin J) a company that had previously been in administration and which exited via dissolution, sought an order restoring the company to the register and re-appointment of the previous Administrators. The application was made by a creditor under s1029 CA06 on the basis of a large tax refund being due which would allow for a payment to be made to preferential creditors.

## Trusts & Pari Passu

In the case of *Charity Commission for England and Wales v Framjee [2014] EWHC 2507 (Ch)*, the court reviewed the issue of trust monies paid via a website to be donated to specific charities. It seems the charity running the website experienced financial difficulty and did not have sufficient funds to forward the monies pledged. The court decided that the funds held would be paid on a pari passu basis to those charities that money had been pledged.

## Freezing Orders & Full Disclosure

In the case of *Greenwich Inc Ltd (in administration) v Dowling and others [2014] EWHC 2451 (Ch)* an application for a freezing order had been made and replaced with an undertaking and these were

subsequently challenged. The challenge was that the order was not in the standard form as presented to the court and that key information had not been disclosed. The importance of ensuring that full disclosure was made to the court together with the necessity for Counsel to draft the orders sought was reinforced by the court allowing the release from the undertakings based on these irregularities.

## Bribery

In the case of *FHR European Ventures LLP and others (Respondents) v Cedar Capital Partners LLC (Appellant) [2014] UKSC 45* the court held that a bribery payment was owned by the Principal in the relationship and is a proprietary asset.

## Trust Money & Settlements

In the case of *Re MF Global UK Ltd (in special administration) [2014] EWHC 2222 (Ch)* client money that should have been held on trust had failed to be segregated. There was therefore a claim against the general estate by the trust. An application was made to the Companies Court to enable a settlement agreement to be made between the company as trustee of the trust, and the general estate of the company acting by its joint administrators, which the court allowed.

## EU and the Banking System

The Bank Recovery and Resolution Directive (BRRD), which came into

## Insolvency Guidance Paper - Control of Cases

The final Insolvency Guidance Paper I need to review is the Control of Cases paper issued April 2005.

The principle behind the paper is that a "Insolvency Practitioner [...] has an obligation to ensure that cases are properly controlled and administered at all times" and he must also "ensure that proper regard is paid to the interests of creditors and other affected parties".

### Delegation

Therefore to be able to ensure that appropriate controls are in place an IP is expected to consider the different types of delegation that may occur:

- to staff in the IP's own office, or to sub-contractors, or staff in another location;
- taking a reduced role in an appointment taken jointly with an IP in the practitioner's office or at another location;
- allowing a specialist IP within a firm to take responsibility for all work of a specific type;
- allowing a specialist within a firm to handle work of a specific type (e.g. tax);
- sharing work on an agreed basis in an appointment taken jointly with a practitioner from another firm;
- employing another firm to give specialist advice (e.g. tax), or to undertake specific work (e.g. an investigation); and
- allowing an IP in a former firm to take responsibility for appointments for a short time pending the transfer of cases when the IP retires or leaves.

force on 2 July 2014, provides a common framework for the recovery and resolution of banks and investment firms across the EU. The Directive must be introduced into national law by 31 December 2014. Further information may be found here <http://goo.gl/IbjsbK>.

### Law for Co-operative and Benefit Societies merged

The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) Order 2014 SI 2014/1822 will Commence on 1 August 2014 and may be found here <http://goo.gl/5TM7ms>. This will harmonise the consolidation of legislation by the Co-operative and Community Benefit Societies Act 2014.

### Communication between Regulatory Bodies

The Communications Act 2003 (Disclosure of Information) Order 2014 came into force on 10 July and allows for Ofcom to disclose information to the Insolvency Service relating to misconduct by company directors.

### Free Access to Companies House data

It has been announced by Companies House that abstract digital data is to be made available for free to businesses and members of the public from the second quarter of 2015. Further information may be found here <http://goo.gl/N1R6z4>.

### "Times they are A-Changin'"

The Small Business, Enterprise and Employment Bill had its second reading at the House of Commons on 16 July. This has a significant

impact on insolvency case management, from D reports to sales in an Administration to a connected party, as well as regulatory impact in respect of the much dreaded partial licences, and the power to make the Secretary of State the sole regulator. The Bill may be found here <http://goo.gl/4VrkfT>. I would also recommend reading Michelle Butler's article on the legislation <http://goo.gl/eJsx1Z>.

### SIP 16 Disclosure

There seems to be some confusion at the Insolvency Service as the latest Dear IP stated that from 1 July you did not need to send your SIP 16 disclosure to them. Less than two weeks later a circular was sent to IPs stating that until the RPBs take over this review you do still need to send your disclosure to the Insolvency Service.

### RTI and Dividends

Further guidance has been issued in respect of RTI which may be found here <http://goo.gl/1OhXBP>. The key issue you need to be aware of is that notification will need to be made electronically when paying employee dividends and you will need to obtain a new PAYE Employer Scheme reference number.

### Secured Transactions Law Reform Project

The Secured Transactions Law Reform Project (STLRP) is inviting views from interested parties in respect of clauses which ban assignment of receivables arising under contracts. This distinguished group is also seeking to remove the distinction between fixed and floating charges and I would recommend reviewing their website and adding your comments <http://goo.gl/GrGBvr>.

### Insolvency Guidance Paper - Control of Cases ctd

#### Control

When considering the level of control required the IP may have regard to:

- the structure within a firm, and the qualifications and experience of staff;
- the need for the IP to be involved in setting case strategy at the outset, depending on the nature, size and complexity of the case;
- the procedures within a firm to ensure consultation by joint appointees, other IPs, and staff;
- the extent to which levels of responsibility are defined, and the circumstances in which a reference to, or approval by, the IP is required;
- whether there are clear guidelines within a firm to deal with the administration of cases at locations remote from the IP;
- the ways in which compliance and case progress are monitored, and then reported to the IP;
- the frequency of case reviews, and who carries them out;
- the systems for dealing with correspondence received and, in particular, complaints;
- the process by which work is allocated on a joint appointment with an IP from another firm, the rationale for that split, and the controls to be put in place, subject always to statutory requirements; and
- the way in which specialist advisers (including agents and solicitors) and sub-contractors are chosen and engaged, and how their work is monitored.

You could use the delegation and control criteria to analyse your firm's policies and procedures in respect of each scenario. This is an opportunity to review what you already have in place and what additional procedures or documents need to be introduced and disseminated to staff.



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Joanne also provides training for the JIEB, CPI, CPPI & CPCI exams.

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