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TECHNICAL UPDATE

Horton v Henry

The hearing for the [Horton v Henry](#) case was held in April but judgment may not be with us until September 2016 so watch this space!

Petition hearing should have been adjourned

In the case of [Okon v London Borough of Lewisham \[2016\] All ER \(D\) 123 \(Apr\)](#) the council issued a petition in respect of outstanding council tax. The bankruptcy order was made and this was appealed against. On appeal the court held that the bankruptcy order ought not to have been made since the council tax was disputed and therefore the court should have adjourned the petition hearing until a determination had been made in respect of the disputed council tax.

Charging order could not be removed on sale of beneficial interest

In the case of [Banwait v Dewji and another \[2015\] EWHC 3441 \(Ch\)](#) the debtor had a charging order made against his interest in the jointly owned property. The debtor then transferred his interest to his wife for a sum of money and the wife sought to remove the charging order from the property on the basis he no longer had an interest. The court reviewed whether the legal title had actually transferred and not just the beneficial interest as this would determine whether the charging order could be

removed. The court held that only the beneficial interest had been transferred and the charge could remain in place.

Scottish personal insolvency

The Scottish personal insolvency legislation has been consolidated under the [Bankruptcy \(Scotland\) Act 2016](#) which received royal assent on 28 April 2016 and may be found [here](#).

Third Parties Rights against Insurers

The [Third Parties \(Rights against Insurers\) Act 2010 \(Commencement\) Order 2016](#) will bring into force on 1 August 2016 the rest of the [Third Parties \(Rights against Insurers\) Act 2010](#) (which is most of it). The Order may be found [here](#) and the Act may be found [here](#). The key part for insolvency practitioners is in schedule 1 para 3(2) we are named as appropriate persons to request disclosure of any documents that are relevant to proceedings where we were in office before the company dissolved. I have no idea how this will work or whether this enhances our obligations to keep the company books and records for longer than 12 months from dissolutions but I certainly look forward to guidance being issued by R3 on this matter.

Insurance Act 2015

The [Insurance Act 2015](#) was passed on 12 February 2015 and comes

Guidance Note to SIP 9

The long awaited Guidance Note to SIP 9 has been issued and may be found [here](#).

I personally think it creates confusion between what should go into the report and what should be in an appendix. I think this will create longer reports, not shorter ones and the numerical information will be more confusing not less. The only way now to provide meaningful information to creditors will be in a one page executive summary.

I have noted below some key issues in the guidance note.

[Section 2](#) - ensure you are not providing generic information that is irrelevant to case.

[Section 5](#) - explain within the narrative why work was completed: statutory, asset realisation, investigation, etc.

[Section 7](#) - clarification that narrative about the work to be undertaken when seeking fees is required irrespective of the basis sought.

[Section 8](#) - more worrying is the recommendation to give market rates for collective activities as a comparison when seeking a fixed or % basis fee although you do not have to compare to time-costs.

[Section 9](#) - the expectation of communicating to creditors about apportionment of costs between fixed and floating.

[Section 10](#) - give explanation about why work was completed by particular grades of staff and rationale for when higher grades of staff used.

into force on 15 August 2016. Willis Towers Watson have produced some guidance which you may be interested to read [here](#).

VAT on going concern sales

As you are no doubt aware on sale of business where the purchaser is not registered for VAT then the IP should charge VAT on the transaction. IPs normally have a clause in the sale contract, providing for the IP to come back to the purchaser for VAT if it becomes applicable. However, on sales where a purchaser may decide not to register for VAT because he falls below the threshold and the IP has not charged VAT on the sale of business and the purchaser then ceases to trade, there is a potential risk to the IP that HMRC will request payment. IPs may want to take advice on this issue. Thanks to Lane Bednash for raising this issue.

FRC guidance on company solvency

The FRC have issued Guidance on the Going Concern Basis of Accounting and Reporting on Solvency and Liquidity Risks and this may be found [here](#).

Guide to IPA Code of Ethics

The IPA has issued a guide to the Code of Ethics which may be provided to stakeholders to help aid understanding. There is no requirement for this guide to be issued to stakeholders. The guide may be found [here](#).

Personal Licences being issued

The IPA and ICAS have publicly stated that they are now ready to issue personal insolvency licences as provided for by the Deregulation Act 2015. You will need to meet the normal criteria for applying

for a licence, but the examinable part is having passed the JIE personal paper. You will also need to have an understanding of corporate issues which may be demonstrated by relevant CPD or experience undertaken.

IS guidance partnerships

The Insolvency Service (IS) has issued guidance on how to wind-up an insolvency partnership which may be found [here](#).

VAT De-registration

HMRC via R3 have reminded IPs that de-registration of companies in Administration and MVL should be sent to Grimsby De-registration Unit, Imperial House, 77 Victoria Street, Grimsby, DN31 1NH.

Jackson Reform - the New Form Bill of Costs

The keynote speech given by Lord Justice Jackson on the New Form Bill of Costs may be found [here](#).

Jackson Reform Report

The report commissioned by R3 on Insolvency Litigation and the Jackson Reforms produced by Professor Peter Walton has now been published and is available [here](#).

Webinars

The team at the Compliance Alliance has been busy again producing webinars and over the next four weeks the following webinars will be available:

- SIPs and Compliance Issues by Joanne Harris
 - An Introduction to Insolvency by Deborah Manzoori
- Further information to the above may be found [here](#).

Guidance Note to SIP 9 - ctd

Section 11 - the issue of only providing information about the period under review is on the RPBs' radar.

Section 14 - within the narrative explain the value to creditors of the work undertaken.

Section 16 - the narrative needs to give the number and frequency of periodic tasks. Where a third party has been instructed to complete the statement of affairs, why it was desirable and necessary to instruct.

Section 17 - revisions in case strategy and the benefit of those changes need to be explained.

Section 18 - also need to explain the production of any non statutory reports and the benefit derived.

Section 19 - this defies belief but you are expected to provide an estimate of the duration of the case and the impact this will have on the work required.

Section 23 - you are expected to comment on the level of co-operation from directors/debtor, again something I would have expected in the body of the report.

Section 26 - where debt collection has been outsourced you are expected to provide narrative about this under the asset realisation heading.

Section 27 - details of the marketing strategy for each asset should be provided in the narrative.

Section 28 - details of any changes of strategy, the reasons why and the impact on timing and cost.

Section 29 - details of any legal action required to realise assets and any other difficulties together with information about revision of fees.

Section 30 - also information required about outsourcing work to agents.

Section 33 - where trading occurs information about the strategy and progress should be provided.

This guidance note, I believe, is less about the new legislation and SIP 9 and more about how to write a report to creditors.



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