

CASE LAW

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TECHNICAL UPDATE

Costs payable for s236 examinations

In the case of *Re Saad Investments Company Ltd and another (in liquidation); Akers and others v Hayley* [2016] All ER (D) 103 (Jun) the court held there was plainly jurisdiction for the court to make an order in respect of costs incurred by a respondent in relation to an application under s236 of the Act. The court had a discretion to award legal costs to an examinee and rule 9.6(4) gave the court an unfettered discretion to make an order for costs in favour of '[a] person summoned to attend for examination' on the basis that such costs were 'other costs', not being 'travelling expenses'. Rule 9.6(4) was limited to dealing with costs arising out of an examination, not costs attributable to some alternative method of gathering information.

Challenge to Administrators' solicitor's costs

In the case of *Hosking and another (as joint liquidators of Hellas Telecommunications (Luxembourg) II SCA) v Slaughter and May* [2016] EWCA Civ 474 the judge held that in an administration which had commenced prior to 6 April 2010 the costs of the Administrators' solicitor which had been paid could not be subject to detailed assessment of costs. The judge advised that the only way to challenge payment of the solicitor's costs was to bring a misfeasance

action against the former administrators.

De Facto Director?

In the case of *Green (as liquidator of Sports Management Group Ltd) v Marston and another* [2016] All ER (D) 208 (May) the court was asked to determine whether an individual was a de facto director and if so to allow for a claim under S212 IA86 to be made against him. The judge stated that identifying a de facto director was a question of circumstance. Some of the factors to be considered were whether or not there had been a holding out by the company of the individual as a director, whether the individual used the title, whether the individual had proper information (such as management accounts) on which to base decisions, whether the individual had to make major decisions, and therefore determine whether that individual had been part of the corporate governing structure. In this case the facts supported the case that the individual was a de facto director.

Pensions and Bankruptcy

In the case of *Hinton (trustee in bankruptcy of Wotherspoon) v Wotherspoon* [2016] EWHC 621 (Ch) the court held that s310 of the Insolvency Act 1986 applied to the defendant bankrupt's self-invested personal pension (the SIPP), in respect of which he had elected to drawdown. An income payments order was therefore made allowing for the bankrupt's reasonable domestic needs. The judge further stated that in respect of an

Revised IVA Protocol

The revised IVA Protocol has been published and is available [here](#). A full review of the revised IVA Protocol has been undertaken by Michelle Butler and her blog on this may be found [here](#). The new document is expected to be introduced by 1 October 2016 (although you will note from Michelle's blog a 1st September date has crept in to bring confusion). I have, however, detailed below some key points:

2.6 - Changes to the definition of consumer to include self-employed people who have a regular income.

2.8, 2.9 & 2.10 – Makes reference to vulnerable consumers and the recommendation appears to be for transparency to ensure creditors take this into consideration. I think this area is of concern and whilst the recommendation is to involve family members, health professionals and charities, I would be very careful to ensure that a vulnerable person has the capacity to enter into an IVA. This is probably an area all staff would benefit from training.

3.2 - Caution for IVAs proposed for individuals on benefits, I would suggest that this would be classified as vulnerable in any event.

5.3 – The IP has responsibility to ensure their lead generators follow the protocol. This will need to be evidenced, I would suggest, should an issue arise with an RPB.

undrawn pension, *Horton v Henry* [2014] All ER (D) 193 (Dec) was plainly correct. This case is waiting for the result of an appeal.

Banks and transactions

In the case of *AS Latvijas Krajbanka (in Liquidation) v Antonov* [2016] All ER (D) 30 (Jun) a Russian national (A), who was at all times the majority shareholder and majority beneficial owner of the bank, was being pursued by the bank for various transactions. The bank contended that, prior to its insolvency, A had caused it to enter into transactions amounting to £65 million which were not in its interests and which were arranged in order to benefit A and/or people closely associated with him. It was alleged that, in so doing, A had acted dishonestly and in breach of duties owed to the bank. The court held that A was liable for the bank's losses.

Breach of duty and insolvency

In the case of *Cosy Seal Insulation Ltd (in administration), Re; Ross and others v Gaffney* [2016] All ER (D) 29 (Jun) claims were made in respect of various preferences and transactions at an undervalue. The court held that the company was insolvent at the date of these transactions but more importantly this was not a cashflow issue; the company had been unable to pay its debts at any point. Therefore the interests of creditors were plainly engaged. It was also a case where the court was entitled to take an objective approach. None of the payments in issue had objectively been in the best interests of the creditors as a whole and had therefore been in breach of duty.

New insolvency fees

The *Insolvency Proceedings (Fees) Order 2016* SI 2016/692 comes in to force on 21 July 2016 and may be

found [here](#). It seems that the OR will be dealing with more cases and IPs will need to seriously consider whether the case has sufficient assets to accept the appointment off the rota.

Changes to Senior Manager Regime

The Bank of England and Financial Services Act 2016 (Commencement No. 3) Regulations 2016 brought into force from 6 July 2016 certain provisions. The key provision for insolvency relates to the provisions on the Senior Manager regime. The instrument may be found [here](#).

Guidance on Bribery Law

LexisNexis has produced a great guidance note on Bribery law for insolvency practitioners which may be found [here](#).

Land Registry Practice Guide 31 updated

The land registry has amended Practice Guide 31, which may be found [here](#), to reflect the use of MR04 to register a declaration in satisfaction of a floating charge.

LMA updated guide

The Loan Market Association guide to European Insolvency Regimes has been updated and may be found [here](#).

Opportunity for JIEB qualified individual

An opportunity has arisen for a Manager/Appointment taker with Quabbala Limited based in the centre of London. A job description may be found [here](#). Email CVs to hr@quabbala.com.

Revised IVA Protocol - ctd

6.1 – Every individual should be given advice (to ensure that both parties in an interlocking IVA are given full advice). This, I am sure, is being met by all IPs through documentation issued to all parties. It is probably harder to ensure that staff consider the particular circumstances of both the husband and wife separately and where appropriate provide different advice.

9.2, 10.5 and 10.8 – All of these deal with time extensions. Where contributions are received instead of a re-mortgage this is now extended automatically for 12 months. Where money is due from overtime an extension of up to 6 months may be used to recover the funds. Removal of the 6 month payment break but more flexibility is now given to the Supervisor who is able to extend up to 9 months for emergency expenditure payments.

Changes to the Standard Conditions

17(2) – No longer require a claim form for debts of less than £1,000. This has obviously been added in anticipation of the new rules, whenever they may be introduced.

Old 19(2) – removed requirement to convene a meeting on the consumer's request to give more discretion to the supervisor.

Standard Report Sheets - Appendix 5 to the Protocol now provides templates for the proposal summary sheet, chairman's report on the meeting to consider the proposal, annual progress report, notice of variation meeting, chairman's report on the meeting to consider a variation, report on completion and report on failure. Be careful though, these are not SIP compliant so you will need to add to them to ensure SIP 9 is addressed.



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