

CASE LAW

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TECHNICAL UPDATE

Bankruptcy and Privilege

In the case of [Re Lemos; Leeds and another \(in their capacity as the joint trustees in bankruptcy of the estate of Lemos\) v Lemos and others \[2017\] EWHC 1825 \(Ch\)](#) the court considered the issue of privilege again in respect of the documents that need to be disclosed to a trustee in bankruptcy by the bankrupt's lawyer. Unfortunately the principles laid down in the case of [Shlosberg V Avonwick Holdings Ltd](#) were applied, confirming that "privilege is held by the bankrupt" and "the trustee does not automatically step into his shoes".

Bankrupt, S316 & Civil Restraint Order

In the case of [David John Frosdick v Nigel Ian Fox and Others \[2017\] EWHC 1737 \(Ch\)](#) the court considered whether it was appropriate to give a Civil Restraint Order (CRO) against the discharged bankrupt for the High Court and whether the bankrupt could be considered to be an interested party in respect of the disclaimed right of action under S316 IA86. The debtor had been deemed to be a vexatious litigant and a CRO was in place in the County Court; unfortunately though the reasoning for dismissing his various applications was not part of the judgments. The debtor believed he had a right of action against his former lawyers who were representing him on a CFA basis in respect of a personal injury claim. The Trustee had disclaimed the right of action as onerous property. The judge

concluded that the bankrupt was not an interested party for the purposes of s316 IA86 and because some of the issues reviewed by him were new, he could not strike this application out as being without merit. He therefore did make a CRO but suggested that if the debtor made a further application on the same issues it would be appropriate.

Contempt of Court and Debarring Order

In the case of [Palmer and another \(joint liquidators of Changtel Solutions UK Ltd \(in liquidation\)\) v Tsai \[2017\] EWHC 1860 \(Ch\)](#) the court considered the application for contempt of court against the former director, T, and a debaring order. A freezing order had been put in place over T's assets and an order to deliver up every passport and travel document relating to him. The joint liquidators cited 52 alleged breaches of the order. The judge sentenced T to 18 months imprisonment for contempt of court. The judge was not convinced that a debaring order was appropriate with the contempt of court order, nor did he think this would incentivise T, although he said this may change if further assets which had failed to be disclosed were identified.

Validity of Joint Administrator appointment

In the case of [Saw \(SW\) 2010 Ltd and another v Wilson and others \(as joint administrators of Property Edge Lettings Ltd\) and another \[2017\] EWCA Civ 1001](#) the

SIP 11

The consultation for SIP 11 has been published and the draft revised SIP is available [here](#). The consultation closes on 12 September 2017.

I have detailed below the changes being proposed.

Para 2 - the SIP now clearly distinguishes funds held between estate money, client money and money belonging to the firm or officeholder.

Para 3 - requires the IP to clearly differentiate and segregate the three types of funds.

Para 4 - confirms that estate money and client money must be held securely and the appropriate financial controls must be in place. Also, that estate money must be held in accordance with the principles and standard of the SIP.

Para 5 - is just the requirement to maintain records as detailed in the previous version of the SIP

Para 6 - while most of this is a regurgitation of the previous SIP, it has moved away from specifying the different types of accounts in an attempt to future-proof the SIP.

Para 7 - the requirement to quickly clear funds through a client account if necessary is not new, but instead of speaking about accounts operating on a trust basis it states the expectation that the client money rules and regulations of the IP's RPB will apply.

court was asked to consider on appeal whether the debenture used to appoint administrators under para 14 Sch B1 IA86 created a qualifying floating charge within the meaning of para 14 Sch B1 and whether the debenture was enforceable at the date of the appointment. The arguments put forward were that because prior consent of an earlier charge holder was not given this crystallised the prior floating charge leaving no assets to attach to the second debenture and preventing the directors from acquiring property for the company to which it could attach. In any event it was claimed that the company at the time of appointment had no property to which the charge could attach and the debenture was void because the company did not have the right to grant a floating charge. The judge found that the debenture was a qualifying floating charge and was enforceable but for different reasons than those detailed in the prior judgment.

Consultation on oversight of AML supervisory regime

HM Treasury have issued a consultation on the impact and drafting of regulations intended to improve oversight of the anti-money laundering supervisory regime. Further information on the consultation which closes 16 August 2017 may be found [here](#). Other consultation and documents on the new MLR2017 which may be of interest and have been published by the FCA may be located [here](#) and [here](#).

Recast Regulation Forms

Companies House has published five new forms for use under Recast Insolvency Regulation and the Insolvency (England and Wales) Rules 2016. The forms are numbered IE01 to IE05 and are located [here](#).

RP1 Guidance Updated

The factsheet for employees has now been updated and reflects the new weekly limit and may be found [here](#). A factsheet for employees pre-appointment has also been produced and may be found [here](#). It helpfully clarifies the position if no formal insolvency process is entered into by the employer.

PPF Technical News

The PPF has published Technical News Issue 9 available [here](#).

MLR2017 Blogs

Our latest blogs on the MLR2017 are available [here](#) and they cover infrastructure changes and customer due diligence. Michelle's first webinar on the MLR2017 will be available at the end of this week.

Property Tip

When can an accurate RICS Red Book Market Valuation of real property be easily rendered invalid? When the valuer has failed to comply with Valuation Practice Statement 1 (VPS1) in the Red Book (containing the prevailing RICS Valuation - Professional Standards). What is VPS 1? It simply states that the recipient of the property valuation report MUST have signed and returned the valuer's terms and conditions of engagement BEFORE the valuer releases the report to the recipient. Failure to comply renders the valuation report invalid; regardless of who prepared the report and even if others confirm that its findings are accurate. Peter Fenwick MRICS, Chartered Surveyor and Strategist, provided this tip and may be contacted [here](#).

SIP 11 - ctd

Para 8 - this seems to be aggressively proactive and clearly states that it is the responsibility of officeholders to safeguard against misapplication or misappropriation, restricting access to estate funds and having safeguards in place for those who have access. Safeguards may include insurance or other financial controls.

Para 9 - this gives examples of the financial controls expected to be in place and includes:

- a. ensuring transactional processing is conducted in a timely manner;
- b. allowing only appropriate persons within the entity to conduct transactions;
- c. adequate supervision of personnel with access to funds;
- d. limiting the size of payment that can be processed by different grades of staff;
- e. implementing secure and robust authorisation procedures within the entity;
- f. regular reconciliation of estate and client accounts;
- g. periodic risk assessment of transactional processes within the entity;
- h. requiring joint signatories.

Para 10 - having listed the types of financial controls expected, it then goes on to caveat this by stating that financial controls should be proportionate to the number of estates, the quantum of funds held, the number of transactions and the structure and ownership of the entity.

Para 11 - this para will generate the most work for the IP as it requires that "*Financial controls and safeguards, including levels of insurance cover, should be fully documented and reviewed by the office holder for their adequacy, as and when appropriate (and at a minimum annually)*". If you have yet to document your financial controls and safeguards now would be good.



Joanne Harris has 19 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.