

**CASE LAW**

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**GENERAL INFORMATION**

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More information about the firm and the services we offer may be found [here](#).

We also have a blog : <http://thecompliancealliance.co.uk/blog/>

All current and previous technical updates may be found [here](#)

# TECHNICAL UPDATE

## Insolvency & Group Tax Relief

In the case of [Farnborough Airport Properties Company and Farnborough Properties Company v HMRC \[2019\] EWCA Civ 118](#) the Court of Appeal dismissed the taxpayers' appeal, upholding the decision of the Upper Tribunal (UT) that the company in receivership was unable to surrender losses to the appellant taxpayers by way of group relief because the receiver's appointment severed the company in receivership from the loss relief group.

## Removal of a Trustee

In the case [Re Birdi, Miles and others v Price and others \[2019\] EWHC 291 \(Ch\)](#) the applicants were seeking to remove the Trustee, have the Trustee convene a meeting for this purpose, and have the sum of £300,000 repaid into the estate for the purpose of a dividend. Various allegations of fraud in respect of the conduct of the bankruptcy were made. The judge determined that the Trustee would only need to be replaced at this late stage in the bankruptcy proceedings, where all assets had been realised, if there was an issue in respect of the remuneration drawn by the Trustee. The judge stated in respect of the Trustee's remuneration that "...the evidence shows that a great deal of time and effort has been spent in responding to the efforts of Mr Birdi and his associates to avoid engaging with the bankruptcy process and to complicate and

disrupt it" and dismissed all the applications sought.

## IVA Provider & Dishonesty

In the case [Varden Nuttall Ltd and another v Nuttall and another \[2018\] All ER \(D\) 172 \(May\)](#) claims were brought against Mr Nuttall and Mr Varden in their capacity as directors of the company and against Mr Nuttall in his personal capacity as Supervisor of various IVAs. The claims arose as a consequence of finding a circa £4 million discrepancy between the funds that should have been in the global account according to the individual case accounting system and what was actually in the global account. The ICAEW concluded that the sum of £4 million was found to have been paid to the company, and £750k to a connected company: RMG. The judge held that Mr Nuttall had been content to enhance the fees obtained from insolvency cases by entering into agreements with third party service providers to be paid referral fees/commission as a means of enhancing the fees received. He had acted in dishonest breach of his duties as a Supervisor, and had been in negligent (but not dishonest) breach of his duties as a director of the company in relation to the manner in which he supervised the company's accounting.

## Invalid ADM Appointment

In the case of [Caroline Tighe V \(1\) Alistair Fraser Peters \(2\) Mike Kienlen & Rob Adamson \(As Joint Administrators of Sprout Land Holdings Limited\)](#) the board of directors was deadlocked and to

## Scottish Insolvency & SIP1

### SCOTTISH INSOLVENCY

David Menzies, Director of Practice at ICAS, has produced a series of articles to familiarise IPs with the proposed changes which may be found [here](#) and include the following:

- Scottish Insolvency Rules are changing: Summary of changes
- CVL commencement under the Scottish Insolvency Rules 2018
- Communications under the Scottish Insolvency Rules 2018
- Decision making under the Scottish Insolvency Rules 2018
- Time periods under the Scottish Insolvency Rules 2018
- Claims under the Insolvency Scotland Rules 2018
- Companies House Forms - Insolvency Scotland Rules 2018

New rules require new documents and ICAS have posted the forms to help firms prepare and they are available [here](#).

There is also a destination table available [here](#).

### SIP 1

It would be disingenuous of me to suggest my view was the only view or even the correct view of whether SIPs are beneficial to the industry and in particular whether SIP 1 was superfluous. I was surprised by the responses to my, what I thought were, innocuous comments ;-). In the interests of presenting a balanced view I have invited John Milsom, who was instrumental in the implementation of SIP 1, to present his view:

These are my views, not those of my firm, or of the JIC.

circumvent this, one director emailed the other requesting that the company circulate a written resolution to appoint a third director and to have a board meeting at noon that day. There was no written resolution attached to the email and one director refused to attend due to insufficient notice. The director requesting the board meeting then held it, passing the resolution to appoint the third director and then the two directors resolved to place the company into administration. The court held that the resolution proposed, circulated and passed had not been compliant with the requirements of CA 2006. Therefore the third director had not been validly appointed and the appointment of the administrators was also invalid.

### Service of a bankruptcy petition

In the case of *Ardawa v Uppal and another* [2019] EWHC 456 (Ch) an acrimonious divorce led to an outstanding costs order of £8,834.80. The ex-wife instructed solicitors to petition for the bankruptcy of the debtor and a bankruptcy order was made. The debtor then applied for an annulment based on invalid service, as substituted service had been approved by the court. The court originally found that service would have been effective at the address served and that the debtor had been evading service. On appeal, the court again confirmed that its view was that the debtor had been evading service but had been aware of the petition and the bankruptcy order, and the appeal was dismissed.

### Electronic Filing at Court

The Courts and Tribunal Judiciary announced on 15 February that CE-File electronic filing was extended to the Business and Property Courts (B&PCs) outside London

from 25 February 2019, to include Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle. Notification may be found [here](#). From 30 April all professional users will be required to use it in new proceedings.

### Consultation for HMRC preferential status

The government has issued a consultation document in respect of the proposal that HMRC be given secondary preferential status again, which may be found [here](#). This will mean HMRC be paid after the current preferential creditors have been paid in full. The consultation ends 27 May 2019, responses submitted by [insolvency.protectingtaxes@hmrc.gsi.gov.uk](mailto:insolvency.protectingtaxes@hmrc.gsi.gov.uk).

### Consultation on Pensions concluded

The consultation on protecting defined pension schemes has concluded and the governments responses may be accessed [here](#). Rachael Markham of Squire Patton Boggs has analysed the governments responses [here](#) which you may find informative.

### Insolvency Service IT

In Dear IP 85 the Insolvency Service announced the rollout of its new Case Management System (CMS). The rollout includes a change of name for the Director Conduct Return Service (DCRS) which is going to be called Insolvency Practitioner Service (IPS) (so that won't be confusing ;-)).

### Insolvency Service Guide

The IS have issued guidance on searching for people or companies in insolvency proceedings which may be found [here](#).

### SIP1 - ctd

#### SIP 1 ctd

However I am the ICAEW representative on the JIC, at the time of the creation of SIP 1 I was its chairman.

Firstly, it needs to be noted that the SIPs are continually monitored, and change. At the time of the creation of SIP 1 there were a number of different styles of SIP some being principles based with others being more prescriptive. The JIC constantly works on modernising the SIPs to ensure they meet current best practice and the ever-changing regulations and legislation.

What was also apparent at the time of the creation of SIP 1 was that some insolvency practitioners were reading the black letter of the law and complying with that, as opposed to its intention. Whilst the JIC recognise the need for clarity, which should be enshrined in both the legislation and indeed SIPs it was believed that by having an overarching SIP any potential lacunas could be dealt with.

It was recognised that this was not ideal, but it was better to have a backstop than nothing.

What I think is useful about SIP 1 is that it details for a wider audience the framework which applies to IPs and sets out the fundamental principles without a third party having to go off and track down the code themselves. That can only be helpful for those who aren't familiar with insolvency. It also includes the requirement for the IP to tell third parties that he/she is bound by the code of ethics, something the lay members of JIC were particularly keen on including. Plus there is also restatement of the duty to report which is a necessary addition given that not all IPs were a member of a professional body at that time.



Joanne Harris has 21 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.