

CASE LAW

- OUT OF HOURS APPOINTMENTS
- LAND REGISTRY ACT V INSOLVENCY ACT
- LITIGATION FUNDING & THE IPS FIRM'S LIABILITY
- COMPENSATION ORDER
- CVL LIQUIDATORS SEEK TO STAY CRIMINAL PROCEEDINGS

COURTS & LEGISLATION

- INSOLVENCY (SCOTLAND) RULES 2018 SUMMARY OF QUERIES
- INSOLVENCY SERVICE LEVY INCREASES
- PENSION SCHEMES BILL

- UNCONSCIONABLE CONDUCT IN COMMERCE BILL
- COURT CLOSURES OVER THE HOLIDAYS
- GENERAL INFORMATION**
- CONSULTATION BY AIB IN RESPECT OF CFT
- RECOMMENDATIONS BY BEIS COMMITTEE

- HM LAND REGISTRY GUIDE 35
- HMRC CLARIFIES TAX ISSUES OF DLAS IN MVLS
- EXCEPTIONAL COMPENSATION SCHEME
- INCREASE IN INSOLVENCIES
- INSOLVENCY SERVICE ANNUAL PLAN

TECHNICAL UPDATE

Out of Hours Appointments

In the cases of [Re S.J. Henderson & Co Ltd; Re Triumph Furniture Ltd \[2019\] All ER \(D\) 126 \(Oct\)](#) the courts considered the effect of filing a notice of appointment via the e-filing system out of hours by the directors. The conclusion reached in each case was that the directors are not able to file notice of appointment out of court hours. Therefore, irrespective of when the notice of appointment is filed, the appointment will not take effect until the court office is open next. Clarification was also given on when a notice of intention to appoint takes effect and this was deemed to be upon filing provided there were no defects in the documentation which would mean the documents were rejected. R3 has also issued some guidance for members which may be accessed [here](#). This has only been determined at first instance in the High Court.

Land Registry Act V Insolvency Act

In the case of [Woloff v Patel \[2019\] UKUT 333 \(LC\) \(04 November 2019\)](#) the Upper Tribunal (Land Chamber) (UT) considered the inter-relationship of the dispute resolution provisions of the Land Registry Act 2002 and the jurisdiction provisions of the bankruptcy code in the Insolvency Act 1986. The Trustee in bankruptcy had filed an application to register a restriction over a property registered in the name of the debtor and his partner. The partner contested the registering

of the restriction and the first tier tribunal determined whether the bankrupt had a beneficial interest in the property. The Trustee appealed on the basis that the Tribunal did not have the jurisdiction to determine whether the bankrupt had a beneficial interest. The UT held that they did have the jurisdiction to determine the matter, but noted that S285(1) IA86 gave the bankruptcy court with the relevant jurisdiction the power to “stay any action, execution or other legal process against the property or person of... the bankrupt”. The UT noted “Whether that power is exercisable, or should properly be exercised, in a case where the First-tier Tribunal has jurisdiction to determine whether a bankrupt had a beneficial interest in registered land is a question that should be determined with the benefit of full argument in a case in which the issue arises”.

Litigation Funding & the IP's Firm's Liability

In the case of [Burnden Holdings \(UK\) Ltd v Fielding \[2019\] EWHC 2995 \(Ch\) \(07 November 2019\)](#) the court reviewed the position of the costs to be awarded where the liquidator had lost the litigation and had been funded in part by his firm and a third party funder. The liquidator's firm had originally funded the litigation due to an order that the litigation was outside the limitation period, which meant that the liquidator was not able to obtain funding for the appeal and the potential right of action until the court gave leave to pursue outside the

limitation period. The liquidator's firm funded the matter in the sum of £478,265 and this was the amount of costs awarded, which was significantly less than the “in excess of £1million” costs being sought for the period the firm funded the matter.

Compensation Order

In the case of [Secretary of State for Business, Energy & Industrial Strategy v Eagling \[2019\] EWHC 2806 \(Ch\) \(1 November 2019\)](#) the court considered the background leading to the introduction of the legislation on compensation orders, how the legislation would interact with the insolvency legislation and the practical considerations of distribution of funds from any compensation order made. The court found that legislation supporting the making of a compensation order is directly linked to the loss by individual creditors and therefore is distinct from potential rights of actions under the Insolvency Act 1986. The amount of direct loss to creditors was £559,484 and evidence presented traced 28 creditors with claims totalling £460,066 and other creditors' losses totalling £99,416. The court order made for the compensation was that the sum of £460,066 was to be paid to the Insolvency Service who were responsible for repaying the 28 creditors whose money could be directly traced. The remaining amount of £99,416 would be paid to the liquidator who after his costs would be able to make a distribution to the general body of creditors.

CVL liquidators seek to stay criminal proceedings

In the case of [Paperback Collection and Recycling Ltd, Re \[2019\] EWHC 2904 \(Ch\) \(30 October 2019\)](#) the court considered, upon the application of the CVL liquidators, whether the court had the power to stay criminal proceedings in respect of environmental breaches. The judge held he did not have the power to stay the criminal proceedings but even if he did have the power he would have used his discretion to reject the application due to the public interest issues in the criminal proceedings.

Insolvency (Scotland) Rules 2018 summary of queries

The Insolvency Service advised on 14 November that they had published a summary of queries on the new Scottish Insolvency legislation. Unfortunately this seems to have disappeared, but you may want to check their website for when it reappears [here](#).

Insolvency Service Levy Increases

The [Insolvency Practitioners and Insolvency Services Account \(Fees\) \(Amendment\) Order 2019 SI 1427/2019](#) will be coming into force 31 December 2019. This will increase the Insolvency Service levy from £360 to £470.

Pension Schemes Bill

The [Pension Schemes Bill](#) had a first reading in parliament 1 Oct 2019 and the draft legislation and its progress through parliament may be found [here](#). This will impact IPs since section 114 of the Bill inserts a new section 80B into the Pensions Act 2004 which gives

the Pensions Regulator power to issue insolvency practitioners with a fine of up to £1 million for providing false or misleading information to trustees or managers.

Unconscionable Conduct in Commerce Bill

A Bill to create an offence of conduct in trade and commerce that is unconscionable and for connected purposes has had its first reading and further information may be found [here](#).

Court closures over the holidays

Her Majesty's Courts and Tribunals Service (HMCTS) has published details of which courts and tribunals will be closed over the Christmas 2019 holidays which may be found [here](#).

Consultation by AiB in respect of CFT

The Scottish Government has confirmed that the Common Financial Tool, introduced by the Bankruptcy and Debt Advice (Scotland) Act 2014, will continue to be the Common Financial Statement from 1 April 2020. The Accountant in Bankruptcy (AiB) has also launched a consultation on the Bankruptcy and Debt Advice (Scotland) Act 2014 which closes 11 February 2020 and may be found [here](#).

Recommendations by BEIS Committee

The Business, Energy and Industrial Strategy (BEIS) Committee has proposed a series of recommendations on corporate governance, executive pay and bonuses, and audit reform in light of the collapse of Thomas Cook

and voiced its concern that previous recommendations had not been implemented. Further information may be found [here](#).

HM Land Registry guide 35

HM Land Registry has updated its Practice guide 35: Corporate Insolvency which may be found [here](#) to distinguish between MVL and CVL.

HMRC clarifies tax issues of DLAs in MVLs

HMRC has published guidance on the tax implications of directors loan accounts (DLAs) and distributions in MVLs which may be found [here](#).

Exceptional Compensation Scheme

The government has announced that it intends to set up an exceptional compensation scheme for holidaymakers who have outstanding loss of life or serious personal injury claims against UK companies in the Thomas Cook Group, further information may be found [here](#).

Increase in insolvencies

The government's quarterly figures for Q3 for both personal and corporate insolvency show an increase. The reports for Q3 for personal may be found [here](#) and the report of Q3 for corporate may be found [here](#).

Insolvency Service Annual Plan

The Insolvency Service has published its annual plan which may be found [here](#).



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.