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Insolvency & Adjudication Process

In the case of [Bresco Electrical Services Ltd \(in liquidation\) v Michael J Lonsdale \(Electrical\) Ltd](#) the Court of Appeal revisited the issue of set off and the construction adjudication process. The appeal in the case of [Cannon Corporate Ltd v Primus Build Ltd](#) was also discussed and the conclusion made part of the judgment despite a settlement having occurred prior to the appeal being heard. The conclusion on the Bresco case was that the adjudicator did have the jurisdiction and that the right to refer a dispute to adjudication was not automatically lost when a company enters liquidation. However, because of the cross claims, a decision against the company in liquidation would not be able to be enforced and therefore would be an exercise in futility. The conclusion of the court was that it was just and convenient to grant the injunction not on the grounds of theoretical jurisdiction, but on the grounds of practical utility. In respect of the Cannon case the court concluded that the same jurisdictional conclusion would apply and the matter could be referred to adjudication. The previous judgment detailed the issues with the reservation of position being claimed by Cannon as being vague and too little, too late and this was upheld by the Court of Appeal. The Court also held that summary judgment could be obtained in this case where there was a CVA and therefore a stay of execution was not appropriate. In particular where the party seeking the stay is

responsible, either wholly or in substantial part, for the claimant's financial difficulties, the court is able to exercise its discretion.

Former Administrators & Discharge from Liability

In the case of [Re Lehman Brothers Europe Ltd \(in administration\) \[2020\] EWHC 1369 \(Ch\)](#) an application was made to court by the former Administrators seeking their discharge from liability and asking for the matter to be dealt with on paper without an oral hearing. The company had entered liquidation without the Administrators obtaining their discharge but all creditors had been paid in full with statutory interest and a return had been made to shareholders. All interested parties were invited by the former Administrators to advise of any objection they may have to the application but no interested party responded. The judge agreed he had the jurisdiction to grant discharge based on the application of the former Administrators and despite the order being made after the Administration had ceased.

Costs order against Liquidators & Trustee

In the case of [Brake and another v Guy and others \[2020\] EWHC 1484 \(Ch\)](#) the individuals, who had been made bankrupt and whose partnership had been placed into administration and subsequently into liquidation, brought a claim against the Liquidators and their Trustee in respect of unlawfully appropriating electronic and hard

Moratorium

Having reviewed the draft legislation and the guidance for monitors here are some key issues:

Bonding - the requirement for the Moratorium is to Bond for **total value of the assets of the company** despite an IP never being in possession of any assets.

Record keeping - the guidance reminds IPs that the Monitor is an office holder and therefore needs to comply with IP Regulation 2005 as amended.

Use of website - frustratingly the ability to deliver documents by either single use of website or general use of website has been excluded.

Decision procedure - the first issue is that Deemed Consent is not an option. The second issue is the director is the convener of the decision procedure. The Insolvency Service have created something similar to a S100 decision procedure scenario as I am sure that directors will need help from the Monitor to ensure that there are no technical issues in obtaining the extension. The third issue is that if an extension is not obtained or there is a technical defect this may be an issue as the legislation does not provide the court with discretion to deal with a lapsed Moratorium.

Voting - a majority of secured creditors as well as unsecured creditors is required. There will also be two levels of voting in respect of the decision procedure to obtain an extension with the second vote for secured and unsecured excluding¹ connected parties.

copy documents containing private, confidential and privileged information and personal data belonging to them. The Liquidators and Trustee applied for an order for security of costs and later accepted this could not succeed. The costs of the application were ordered to be paid jointly and severally by the Liquidators and Trustee, but not on an indemnity basis, since the claimants were the successful party in respect of the application for security of costs.

Finance Bill

The [Finance Bill](#) is progressing through Parliament and the committee stage day 5 hearing was provisionally in for 18/06/2020 and still has the proposed preferential status for HMRC.

Corporate Insolvency and Governance Bill 2020

The draft [Corporate Insolvency and Governance Bill](#) has been published. The government has published an [Overview of the Bill](#) detailing how they envision this will work and [Draft Guidance for Monitors](#). The [current stage](#) of the Bill is at the report stage and the third hearing of the Bill will occur on the 23 June 2020.

HMRC, IVAs & Email

HMRC have advised that their IVA team may be contacted via the following email address vas@hmrc.gov.uk. However, they require a disclaimer to ensure that IPs confirm they accept the risks associated with email communication.

Furlough & Redundancy

The Insolvency Service have published new guidance in respect of furloughed staff who are

subsequently made redundant because their employer is insolvent which may be found [here](#).

Redundancy Payment Office

The Redundancy Payments Office have produced forms to allow for amendments to online redundancy claims which may be found [here](#).

ICAEW Insolvency Monitoring Report

The ICAEW [Insolvency Monitoring Report 2020](#) is now available. This is a useful read for helping understand compliance issues.

Dear IP

Further Dear IPs have been published and may be found here: [Dear IP 100](#), [Dear IP 101](#), [Dear IP 102](#), [Dear IP 103](#) & [Dear IP 104](#).

R3 Technical Bulletin

The latest [Technical Bulletin 120](#) has been released with some very useful information for IPs on VAT group registration, use of website, pre-appointment fees and amendments needed for documents with a statement of truth incorporated.

Insolvency Service & Monthly Statistics

The Insolvency Service have issued their [Monthly Statistics](#) for May and have produced a [Commentary](#). The reasons for the low insolvency numbers seems unconvincing. We are still keeping our own statistics up to date and you may want to compare and contrast. They are available here <http://thecompliancealliance.co.uk/blog/appointment-statistics/>

Hints, Tips & Reminders

[Monitor's fees](#) - the monitor's fee does not include advisory or review work before appointment and potentially does not include the decision procedure work, so IPs may want to ensure they are paid in advance where a decision procedure to extend the Moratorium is required.

[Notice in days](#) - reference is made to both days and business days. The Insolvency Service in their Draft Guide for monitors has stated "Where the rules refer to "days" it does not mean business days."

[Reporting to creditors](#) - whilst the legislation is very specific about when the Monitor should contact the creditors, the guidance seems to be suggesting that Monitors should contact creditors outside the statutory requirements to avoid challenges to their actions being made, although the wording is "some creditors" rather than all creditors.

[Super priority debts](#) - these liabilities become an issue when the company enters ADM or LIQ within 12 weeks of exiting the Moratorium since they will rank above the new office holder's fees and the costs of ADM/LIQ.

[Webinar](#) - I shall be recording a webinar on the practical aspects of the Moratorium legislation for IPs and staff shortly plus an update once we have the final version of the legislation for our webinar clients.

[Document pack](#) - we will be drafting a Moratorium pack which will be available to document pack clients within 1 month of Royal Assent. If you are not a client the cost of a stand-alone Moratorium pack will be £2,000 plus VAT and will **not include** subsequent updates. If you are a sole IP the cost to access **all** our document packs is £1,500 plus VAT and will include the moratorium pack.



Joanne Harris has 22 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.