

CASE LAW

- ADM & DISTRIBUTION TO SHAREHOLDER
- APPOINTMENT OF PROVISIONAL LIQUIDATORS
- VOID NOTICE OF APPOINTMENT OF ADMINISTRATOR
- S283A - DETERMINING

- CVA & CONTINGENT CREDITORS

LEGISLATION

- MORATORIUM FOR INDIVIDUALS
- NEW SPECIAL ADMINISTRATION
- MORATORIUM & CIO
- COURT FEES

- PENSION SCHEMES BILL

- FINANCE BILL
- PRACTICE DIRECTIONS: INSOLVENCY & CI&GA 2020
- PRACTICE STATEMENT: SCHEMES - CA06 UPDATED

GENERAL INFORMATION

- DEAR IP
- COMPANIES HOUSE & DIGITAL FILING
- HMRC & VAS
- HMRC & VAT426
- PENSIONS & MORATORIUM
- HMRC & MORATORIUM
- MORATORIUM MUDDLES

TECHNICAL UPDATE

ADM & distribution to shareholder

In the case [Re Lehman Brothers International \(Europe\) \[2020\] EWHC 1932 \(Ch\)](#) the court reviewed whether all the actions of the Administrators had to achieve the purpose of the Administration. In this case the directors wanted the Administrators to consent to their request that a distribution to its sole shareholder be made. The company was solvent but not in a position to be handed back to the directors and the Administrators did not have the power to make a distribution to the shareholder. The court held “The administrator should obviously not do anything that is directed at achieving an objective that is inconsistent with the relevant statutory purpose. That does not, however, mean that every exercise of every power must be capable of being shown specifically to advance the statutory objective in a definable way.” The court agreed that the Administrators could consent to the distribution.

Appointment of Provisional Liquidators

In the case of [Re Debenhams PLC \[2020\] EWHC 1755 \(Ch\)](#) the court was asked to consider the appointment of provisional liquidators to investigate potential rights of action against the administrators before winding up the company. The judge determined that no further information was actually required for the petition hearing and

declined to make the appointment.

Void Notice of Appointment of Administrator

In the case of [Secure Mortgage Corporation Ltd v Harold \[2020\] EWHC 1364 \(Ch\) \(28 May 2020\)](#) the court held that the notice of appointment of administrators filed by the executors of the deceased estate claiming to hold a qualifying floating charge was void due to legal and procedural errors. The company had requested evidence to substantiate the validity and existence of the charge after the appointment of an Administrator and that it had vested in the estate of the deceased, but the representatives and the Administrator failed to provide this evidence. The court was not willing on the basis of the evidence produced to provide an indemnity to the Administrator.

S283A - determining residency

In the case of [Brake and others v Swift and another \[2020\] EWHC 1810 \(Ch\)\(13 July 2020\)](#) the court was asked to determine the issue of whether a property was deemed to be the principal or main residence of the bankrupt and what actually constituted belonging to the property. This was a complicated case with a dwelling house being part of a partnership that was liquidated, as well as the debtor living between two different properties and the debtor having bought two separate pieces of land adjoining

the property. The judge held that all that vested in the Trustee in respect of the cottage, which was an asset of the partnership, was the contingent right to receive a cash payment in respect of partnership capital, *if* there should be a surplus. In order to establish the principal residence of the bankrupt at the date of the bankruptcy it was necessary to establish an objective view of the facts and in this case the cottage was not deemed to be the principal residence. The two strips of land that were adjoining the dwelling house could not be considered to be belonging to the dwelling house defined by s385(1) IA86 as “belonging” refers to being useful to or serving the dwelling-house, and “occupied” refers to occupation of the same quality by the same person. Therefore the strips of land did not revert to the debtor after 3 years.

CVA & Contingent Creditors

In the case of [Re North Point Global Limited \[2020\] EWHC 1648 \(Ch\) \(26 June 2020\)](#) the company had entered into a CVA and a subsidiary of the company entered into liquidation six months after the CVA was approved. The liquidators subsequently filed a proof in the CVA for a preference that had occurred prior to the CVA being approved. The court held that the subsidiary was a contingent creditor for the preference claim and it was able to prove.

Moratorium for Individuals

The draft legislation [The Debt Respite Scheme \(Breathing Space](#)

[Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020](#) has been published and is due to come into force 4 May 2021. Only those authorised by the FCA to provide debt counselling will be able to act in respect of the Moratorium.

New Special Administration

[The Smart Meter Communication Licensee Administration \(England and Wales\) Rules 2020](#) comes into force on 1 August 2020.

Moratorium & Charitable Incorporated Organisations

[The Charitable Incorporated Organisations \(Insolvency and Dissolution\) \(Amendment\) Regulations 2020](#) came into force on 7 July 2020 to allow the new moratorium legislation to apply to CIOs.

Court Fees

[The Court Fees \(Miscellaneous Amendments\) Order 2020, SI 2020/720](#) comes into force on 3 August 2020. The fee for filing a Nominee's report at court has been reduced from £50 to £35.

Pension Schemes Bill

The draft [Pension Schemes Bill](#) had its third reading on 15 July 2020.

Finance Bill

The [Finance Bill](#) in its current format has been approved and whilst I agree that it is disappointing that HMRC now obtain preferential status for some tax claims from December 2020, this will certainly help IPs with Administrations where there is no QFC nor employee claims as the para 3c purpose will now be able to be met by paying a distribution to preferential creditors (since

HMRC will now always be a preferential creditor in the majority of cases).

Practice Directions: Insolvency & CI&GA 2020

The court has issued a new [Insolvency Practice Direction relating to the Corporate Insolvency and Governance Act 2020](#) and has amended the [Insolvency Proceedings Practice Direction](#) published on 7 July 2020.

Practice Statement: Schemes - CA06 updated

The [Practice Statement \(Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006\)](#) dated 26 June 2020 has been published.

Dear IP

A further three Dear IPs have been issued: [Dear IP 105](#), [Dear IP 106](#) & [Dear IP 107](#).

Companies House & Digital Filing

Companies House has advised that IPs using their personal email address will be able to upload documents to their system. This will eventually replace the email filing which was a short-term measure introduced to deal with the difficulties of lockdown. Further information may be found [here](#).

HMRC & VAs

HMRC have set out some interesting criteria for supporting Covid-19 affected companies which may be found [here](#). They require the tax arising from the Coronavirus Job Retention Scheme

payments to be given super priority in the CVA ahead of all other unsecured claims. I am unclear how a Nominee will be able to make a statement that there is no manifest unfairness if a creditor is being given preferential status when they are not a preferential creditor. It will be interesting to see if companies, as a consequence of this stance by HMRC, decide to apply to court for an arrangement under the CA06 and treat HMRC as a dissenting creditor.

HMRC & VAT426

HMRC have introduced filing VAT426 and supporting documents via Dropbox. To sign up to this service you need to email dmvat426team@hmrc.gov.uk.

Pensions & Moratorium

The Pension Protection fund has a dedicated email address for notifications: 2020actnotification@ppf.co.uk which replaced their previously published email address for this purpose recoveries@ppf.co.uk. Notifications to The Pensions Regulator may be sent directly to CustomerSupport@tpr.gov.uk.

HMRC & Moratorium

HMRC have a specific team handling companies that enter Moratoriums and they have asked that they be notified immediately by phone or email and then be provided with the notice to all creditors subsequently. Contact information is available [here](#).

Moratorium Muddles

If you are interested in some of the other issues that may impact administering a Moratorium from a technical viewpoint I would recommend reading Michelle's latest blog [Moratorium Muddles](#).



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.