



2014 and beyond

SO, what will 2014 bring to the world of insolvency? And how might any changes affect the creditor community this year and beyond?

In the corporate world, administration numbers are down, but there are ongoing gloomy predictions for the retail sector. The quirks of the current law regarding rent payments and how they fall to be treated in administrations can cause companies to collapse in the wake of the quarter days, so that outstanding rent becomes an unsecured claim on a par with other debts. That has some advantages for ordinary unsecured trade creditors, but it is anomalous in many respects and we might soon see a return to the more common sense 'pay as you go' approach to dealing with post-administration costs (rent included) when one of the current rumbling cases is appealed shortly.

The consultation on the major Insolvency Rules revision, the first wholesale update since the 1986 Insolvency Act and Rules were introduced, has just closed. Expect changes to bring the Rules into the 21st century in respect of electronic delivery of information from Insolvency Practitioners (IP) and perhaps more significantly a move towards the removal of creditors' meetings as a fixture in all cases. The merits of that amendment (driven by the Red Tape challenge) are debatable, but one thing it will require is more vigilance on the part of creditors. Meetings will still be held when requested, but creditors will have to be alert for the opportunities to make such a request in cases where they feel a meeting would be beneficial.

The above change takes away one of the facilitating provisions for creditors to act in unison and appears to run counter to a theme we can expect to feature in proposals from the Insolvency Service on IPs' fees – that of creditor engagement. The Kempson review confirms that a lack of unsecured creditor involvement (and in particular, co-ordinated creditor involvement) in the fee setting/approval

process is an issue of concern. The Service should announce soon how it proposes to address that, but removing the requirements for creditors' meetings seems, intuitively, to be a move in the wrong direction. Creditors' meetings may be less well attended than they once were, but they still have their place. We await

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the output of the Service's deliberations with interest.

Expect too some news on pre-pack administrations, where proposals on the back of another government review are sitting in the Service's in tray awaiting ministerial approval. Some limits on the use of pre-packs are anticipated, but whether the suggestions will go as far as creditors would wish remains to be seen.

Whilst not specifically concerning pre-packs, the number of complaints generally against IPs has increased in 2013. Some of that may be attributable to the new central gateway operated by the Service. Some is due to IPs complaining about their competitors when they see unethical practice; that suggests an element of self-policing, which is not unhealthy. The regulators have reminded IPs of the codes of practice in force regarding obtaining insolvency work, through a joint newsletter published on the IPA website and elsewhere.

In the personal insolvency world, the Service is about to embark on an evaluation of the Debt Relief Order regime and how it has worked in its first four years. Elsewhere, bankruptcies continue to decline in number, while IVAs remain the more popular alternative. There have however been some high profile bankruptcy cases (one parliamentarian comes to mind), where IVAs have been rejected by creditors exercising their voting rights. And there is an ongoing debate with

one or two of the major banks about the extent to which they will support low value IVA proposals where debtor contributions necessarily reflect reducing levels of disposable income. Encouragingly, there are some moves towards unified income and expenditure guidelines in personal insolvency cases in England and Wales,

similar to the intended Common Financial Tool in Scotland.

The use of plastic to pay for seasonal gifts etc. often comes back to haunt credit card users in January/February, and that brings debt problems to the fore. Some turn to short term 'pay day' lenders, whose practices have been in the news recently; the CEO of their trade body (the Consumer Finance Association, which represents a significant number of companies in that sector) spoke at the IPA's annual personal insolvency conference at Old Trafford shortly before Christmas and commented: "It is important for the CFA to engage with a wide range of stakeholders about...how the responsible elements of our sector are driving up standards. It is very much a priority of the members...to assist people with debt problems and avoid bankruptcy wherever possible."

Credit managers will have their own views about the pros and cons of pay day loans and credit card borrowing, but most might agree that avoiding bankruptcy is likely to be in everyone's best interests. Mind you, if the Bank of England has its way, we will all be using plastic notes soon, and that could add a whole new meaning to paying with plastic! **CM**

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