

## INSOLVENCY NEWS

### ISSUE ONE



*Craig Parrett, Partner, joined Payne Hicks Beach to expand the Insolvency and Restructuring team. Here, Craig shares a bulletin on important matters affecting the industry. Updated regularly, expect to read more insights and opinions from the team at Payne Hicks Beach.*

### **Will the court refuse relief under Section 423 even when all conditions are satisfied?**

In *Credit Suisse v SoftBank* [2025] EWHC 2631, the Supreme Court declined to make an order against the Defendant despite the fact that the constituent elements of Section 423 were satisfied. The First Claimant had invested in loan notes, but the borrower was left without assets and the claimant's security therefore became worthless, following a series of subsequent transactions. The court, however, declined to order any relief against SoftBank, as the value of the assets reduced to £0 through no fault of the Defendant and it was found not to be a straightforward case of an asset transfer from a Defendant to a third party for the purpose of defeating a creditor claim.

### **When should loss be valued for the purposes of a breach of duty claim?**

In *Mitchell v Al Jaber* [2025] UKSC 43, the Supreme Court gave judgment on a claim for breach of duty against the First Defendant. The claimant company was wound up in October 2011, at which time it owned shares in JJW Inc ("JJW"). Some 5 years later, the former director signed share transfer forms to transfer the shares held to another company. Further transactions then ensued, all controlled by the First Respondent, that meant that the shares originally transferred were worthless. The company liquidator brought proceedings against the First Respondent and others and the trial judge calculated the loss at just over €67,000,000. The Court of Appeal upheld the liability judgment, but on quantum stated that no loss had been established. This was because future restructurings had rendered the shares worthless. The Supreme Court overturned this point and stated that the loss to the company should be calculated based upon the value of the shares as at the original transfer, which was the date of the breach of duty. A particularly strong factor in reaching this conclusion was that the future restructurings were effected by the same respondent, so it could not be right that he could escape liability for breach of duty by reducing the value of the company shares to zero through future actions.

## **Petitions and disputed debts – when is there a genuine and substantial dispute**

In three recent cases, the court has considered whether or not a disputed debt in the context of winding up or bankruptcy petition constituted a sufficient enough dispute to dismiss a petition or to grant an injunction restraining the presentation of a petition. Although they create no new law, all three are a useful reminder that the bar to demonstrate a dispute is relatively low, and that threatening or presenting a petition is risky where there is known to be such a dispute.

In the first case (*McGann v Eldonian Community Trust Limited* [2025] EWHC 3103), Mr McGann presented a petition against a charitable company limited by guarantee, on the basis that the company was indebted to him in respect of payments he made to third parties to discharge liabilities of the company to third parties for services provided. The petition was opposed by the company on the basis that the invoices reportedly paid were not genuine (and at least one was a suspected forgery), that a question remained over whether the company was properly constituted when authorising the said services, and whether the company had a claim against Mr McGann for breach of statutory duties. The court found that there was enough to constitute a dispute as to the petition debt (on the first two grounds, but not the third) and therefore dismissed the petition.

The second case (*Bluerock Capital Limited v Miride Management Limited* [2025] EWHC 3126) concerned an application seeking an injunction to restrain the presentation of a petition. The dispute related to unpaid rent, although the company argued that there were already agreements in place which either waived the rent, or that the respondent's director would pay the sums due. There was sworn evidence before the court and although there was limited evidence as to the oral agreement (as there often is), the court found that an injunction should be granted, as the relatively low threshold to establish a disputed debt had been met, and there were no grounds to reject the sworn evidence as being “incredible”. There was a relatively casual relationship between the companies and their directors (shown by WhatsApp messages), which would explain the lack of documents. As would be the case where there is a disputed debt, a judgment would be necessary before a petition could be presented.

In the bankruptcy context we have *Leahy v Schneider Investment Associates LLP* [2025] EWHC 2900. Mr Leahy applied to set aside a statutory demand served upon him by Schneider on the basis of an unlimited guarantee. Mr Leahy alleged that certain promises and representations had been made to him when the guarantee was signed and the court found that this was enough, based on the evidence before it, to amount to a genuine and substantial dispute. There was evidence before the Court in the form of email exchanges and telephone conversations that took place before the guarantee was signed, and these were important in leading the Court to its conclusion.

## **Can a trustee in bankruptcy apply to annul a bankruptcy order?**

In *Nilsson and another (as joint trustees in bankruptcy of Timothy Jones) v Jones* [2025] EWHC 2652, the court considered a number of issues in relation to annulment applications. One of the issues related to the identity of the applicants (and whether they could make such an application) and the second related to jurisdictional issues concerning whether England and Wales was the right forum for the bankruptcy order to be made.

The application in this case was made by the trustees in bankruptcy, which was unusual. The standing of the trustees to make the application was challenged by Mr Jones, but the court found that the trustees did have the right to do so. They clearly have an interest, and if they had concerns over the initial right of the court to make a bankruptcy order, then they would have standing to make the application notwithstanding that section 282 does not specify who can apply. It followed, the court said, that the trustees must therefore have the right to make such an application as they were not expressly excluded. The judgment stopped short on indicating whether or not a trustee in bankruptcy would have a positive obligation to make an application where they had concerns about jurisdictions, but it is more than likely that such an application would need to be made if the trustees are unable to fulfil their functions.

## Can the court make a possession order under section 234 of the Insolvency Act 1986?

In *Maher v Investalet Limited* [2025] EWHC 3133, the Companies Court considered whether section 234 of the Insolvency Act can be used by administrators when seeking possession of a property from a tenant. Section 234 gives the court authority to require any personal holding property, books, papers or records belonging to a company to deliver, convey, surrender or transfer them to the office holder. Property is defined widely in section 436 of the Insolvency Act, and it includes land.

In this particular case, the administrators made an application under section 234 seeking possession against (1) Investalet, the tenant of various properties; and (2) unknown sub-tenants. Although the judge found that this was a case where a possession order was appropriate, section 234 did not go as far as providing jurisdiction for such an order to be made. The section only permits "payment, delivery, conveyance, surrender or transfer" of property, but a trespasser does not, in fact, transfer anything to the company. Rather, they are ordered to vacate, and any interest they had in the property is terminated. The other option available to the administrators would be to pursue alternative possession proceedings.

## What is next for director disqualification?

The Insolvency Service has also published the number of director disqualifications under Section 6 of the Company Directors Disqualification Act 1986, which relates to unfit conduct in relation to an insolvent or dissolved company. There were 895 disqualifications in 2022/2023, and the number rose to 1,169 in 2023/2024. In 2024/2025, the number had fallen to 968. Post-Covid, the most common basis for disqualification is abuse of the Covid support schemes. The statistics suggest that there may be a slow decline of these cases as we move further in time from the Covid support measures. Disqualification proceedings must usually be issued within three years from the commencement of insolvency. We are still seeing a number of interesting cases involving defences of threatened disqualification proceedings arising from alleged bounce back loan abuse, so we expect these cases to continue for at least several more years. Creditors' Voluntary Liquidations still count for the vast majority of disqualifications in each year.

## OUR TEAM

Payne Hicks Beach offers experience in insolvency-related advice, litigation and investigations. We have a practical and pro-active approach to dealing with companies and individuals in financial difficulty.

We advise company officials dealing with decisions to be taken before, during or after insolvency. We advise creditors, major accountants and insolvency practitioners in their capacity as administrative receivers, administrators, supervisors and liquidators. We also deal with issues arising out of corporate and personal guarantees and advise directors in their defence of claims by insolvency practitioners.

The team also advises on all issues related to personal insolvency, including investigations, claims by trustees in bankruptcy and the defence of those claims on behalf of bankrupts and their families and associates

*Craig Parrett is the lead partner in the team, recognised by Chambers and Partners in band 3 for Personal Insolvency: UK Wide, and listed as a "Key Lawyer" in The Legal 500 (2024) for corporate insolvency. Craig was also named one of the UK's top ten most influential personal insolvency lawyers by Business Today. The Insolvency practice is supported by the Commercial Litigation practice, led by Lucas Moore, forming a vital part of the Litigation services at Payne Hicks Beach.*



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