

# Insolvency Insight

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Chambers UK 2020







Welcome to the next edition of the insolvency insight bulletin from the insolvency specialists at Quadrant Chambers. All cases link to the relevant judgments.

#### Case law

- » [\*Al Jaber v Mitchell\*](#) [2021] EWCA Civ 1190: the Court of Appeal held that oral and written statements made by an examinee in an examination under section 236 of the Insolvency Act 1986 enjoy immunity from suit. This overturned the decision at first instance.
- » [\*Re Bedzhamov\*](#) [2021] EWHC 2281 (Ch): a Russian bankruptcy order should be recognised in this jurisdiction but there is no common law power to entrust real property in England owned by a Russian bankrupt domiciled in England to the Russian trustee in bankruptcy. There is no common law power to declare that the property has vested in the trustee, or to order it to be transferred to the trustee or sold for her benefit.
- » [\*Bucknall v Wilson\*](#) [2021] EWHC 2149 (Ch): change of position is not a defence to an action under section 339 (transactions at an undervalue) and/or section 340 (preferences) of the Insolvency Act 1986.
- » [\*Re Ipagoo LLP \(In Administration\)\*](#) [2021] EWHC 2163 (Ch): Ipagoo LLP was authorised by the Financial Conduct Authority as an Electronic Money Institution (“EMI”). As such it was not entitled to take deposits, and it was required to safeguard “*relevant funds*”, defined in the Electronic Money Regulations 2011 (“the Regulations”) as sums paid by Electronic Money Holders to the EMI in exchange for e-money. The Court found that the Regulations do not create a statutory trust in favour of electronic money holders in the event of an EMI’s insolvency. However, regulation 24 of the Regulations gives electronic money holders priority over the “*relevant funds*”. Where the “*relevant funds*” have not been safeguarded as they should have been, a sum equal to the deficit should be added to them and the “*relevant funds*” distributed in priority to other distributions.
- » [\*Re Rufus\*](#) [2021] EWHC 2124 (Ch): trustees in bankruptcy could rely on equitable waiver where they had not served insolvency applications in accordance with the Insolvency Rules but the respondent had taken significant steps in the proceedings, including serving pleadings, before applying to strike out the applications for failure to comply with the Rules.
- » [\*Re A Company\*](#) [2021] EWHC 2289 (Ch): the Court considered the burden of proof arising on the restrictions on presenting winding up petitions under the Corporate Insolvency and Governance Act 2020 and the two-stage “coronavirus test” identified by ICC Judge Barber in *Re A Company (Application to Restrain Advertisement of a Winding Up Petition)* [2020] EWHC 1551 (Ch).

## MEET THE AUTHOR



**Emily Saunderson** has broad experience advising and acting for both liquidators and creditors across a variety of matters ranging from asset recovery and actions against directors to applications to restrain the presentation and/or advertisement of winding up petitions, and obtaining validation orders. Her commercial fraud experience is particularly valuable in the context of actions against directors of insolvent companies.

*“A very strong technical lawyer who has a clear sense of the commercial practicalities of a case.”* (Chambers UK, 2021)

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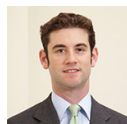
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