

# Insolvency Insight

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

## Legislation

- » [The Corporate Insolvency and Governance Act 2020 \(Coronavirus\) \(Amendment of Schedule 10\) Regulations 2021](#) (the “**Schedule 10 Regulations**”) came into force on 29 September 2021, amending Schedule 10 of CIGA. They are currently due to be in place from 1 October 2021 to 31 March 2022 (the “**Relevant Period**”).
- » The Schedule 10 Regulations do not contain any restrictions on statutory demands but impose four conditions (the second and third of which may be varied on a creditor’s application) during the Relevant Period on the presentation of winding up petitions by a creditor on the grounds of inability to pay debts:
  1. The debt is liquidated, has fallen due for payment and is not an excluded debt (in general terms, rent or other liability of a tenant under a relevant business tenancy which is unpaid by reason of a financial effect of coronavirus qualifies as an excluded debt).
  2. The creditor must have delivered a written notice to the debtor company which among other requirements contains statements that: (a) the creditor is seeking proposals for payment of the debt and (b) if no proposal to the creditor’s satisfaction is made within the period of 21 days beginning with the date on which the notice is delivered, the creditor intends to present a petition to the court for the winding-up of the company.
  3. By the end of the period of 21 days beginning with the day on which the written notice was given, the company has not made a proposal for the payment of the debt that is to the creditor’s satisfaction, and
  4. The debt (or sum of debts where the petition is to be presented by more than one creditor) is £10,000 or more.
- » [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021](#) come into force on 1 October 2021. These Rules insert a new Part 1A into the Insolvency Rules 2016 to provide permanent procedural rules for the company moratorium procedure under Part A1 of the Act, and also remove references in the 2016 Rules to the now repealed Schedule A1 moratorium.

## Case law

- » [Hughes v Howell \(CA\)](#): The Court of Appeal considered s. 271(3) of the IA 1986, which allows the Court to dismiss a petition if satisfied that the debtor has made an offer to secure or compound for the petition debt which offer has been unreasonably refused. The Court of Appeal held that it was for the debtor alone to make such an offer, that the offer must be concrete and capable of acceptance, and so a present offer, not the possibility of a future offer. Further, security is only of value if it enables the debt to be paid within a reasonable time. A creditor is not unreasonable in refusing to wait for an indeterminate time for an indeterminate amount before security can be realised.
- » [Re Amicus Finance Plc](#) [2021] EWHC 2340 (Ch): Further to [the convening judgment](#) handed down on 9 August 2021, on 19 August 2021 the UK High Court sanctioned Amicus Finance Plc’s restructuring plan, applying cross-class cram-down to essentially override the dissenting votes of certain secured creditors. This is the first time a restructuring plan has been proposed as a means of exiting administration and is thought to be the first restructuring plan proposed by a small / medium sized enterprise. A reasoned judgment will follow.
- » [Fenton Whelan Limited v Swan Campden Hill Limited](#) [2021] EWHC 2470 (Ch): Decision of ICC Judge Burton, containing a useful review of the authorities and their application to the question of when a Court will find a petition debt to be genuinely disputed and/or the existence of a genuine or serious cross-claim.

## MEET THE AUTHOR



**Nicola Allsop**’s practice encompasses all aspects of corporate and personal insolvency from voluntary arrangements to liquidations, administrations and bankruptcies. She advises and represents office-holders, individuals, directors, and insolvent companies. Her insolvency work covers domestic and international cases and she has been retained in a number of high profile liquidations during her career. Nicola is particularly adept at dealing with complex cases spanning multiple disciplines thanks to her expertise in civil fraud, company law and property law.

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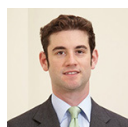
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