

# Insolvency Insight

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Legal 500 UK 2022



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

Author: Joseph England

Editors: Nicola Allsop and Emily Saunderson

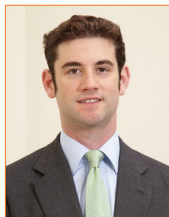
## Legislation

- » The Department for Business, Energy and Industrial Strategy has issued draft statutory guidance on how arbitrators should exercise their functions under Part 2 of the Commercial Rent (Coronavirus) Bill 2021-22. The legislation is aimed at resolving disputes over commercial rent arrears that accrued while businesses were forced to close during the Covid-19 pandemic. It introduces a new binding statutory arbitration process to resolve claims for rent arrears during such periods.
- » The Charities Act 2022 finally received Royal Assent. In terms of insolvency related matters, s.18 now excludes the exception, previously in the Charities Act 2011, of a disposition or mortgage of charity land by a liquidator/receiver/administrator.

## Cases

- » Section 901C(3) of the Companies Act 2006 provides that every creditor or shareholder of a company whose rights are affected by a restructuring plan must be permitted to participate in a class of creditors' meeting. Section 901C(4) allows this to be disapplied where the Court is satisfied that no member of that class has "a genuine economic interest in the company". In [Re Smile Telecoms Holdings Ltd](#) [2022] EWHC 387 (Ch), Miles J permitted, for the first time, such an application. In doing so, he set out the principles for s.901C(4) applications, including judging, to the civil standard, a genuine economic interest by referring to the alternative for the company if the restructuring plan is not sanctioned.
- » In [Minor Hotel Group MEA DMCC v Dymant](#) [2022] EWHC 340 (Ch), Sir Alistair Norris returned to the Chancery Division to deal with a relatively novel point on a monitor's duty where the company is unable to pay a pre-moratorium debt, holding that the company is deemed able to pay such debts if it had the "immediate" prospect of receiving sufficient funds (from a third party here). When judging the immediacy of such a prospect, the monitor may exercise their commercial judgment with "considerable latitude", with five business days being a useful but non-binding guide.
- » In [Re Ipagoo LLP](#) [2022] EWCA Civ 302, the Court of Appeal put pay (no pun intended) to issues that had arisen from conflicting decisions by ICC Judges (including in another case called [Re Allied Wallet Ltd](#) [2022] EWHC 402 (Ch.)) by upholding the Deputy Judge's decision in this case. The Court of Appeal (with Asplin LJ giving the lead judgment) held, in the context of an electronic money institution that had gone into administration, that it was not necessary to impose a statutory trust in order to fulfil the purposes of the safeguarding provisions in the Electronic Money Regulations 2011 and Directive 2009/110 Article 7/Directive 2015/2366 Article 10(1). The provisions were concerned with the protection of sums paid by electronic money holders in the case of insolvency and against the electronic money institution's other creditors, not third parties or against the world. They did not require the electronic money holder's funds to be held on trust to fulfil a particular purpose.

## MEET THE AUTHOR



**Joe England** is ranked in the latest edition of Legal 500 as a Leading Junior in four separate categories: International Arbitration, Energy, Civil Fraud and Insolvency, where he is described as: "Very conscientious, hardworking and enthusiastic, he is good on his feet and should go far"; "An up-and-coming star in civil fraud litigation. He has an intuitive feel for how the court will see cases. His grasp of the law and how to put legally complicated points is also excellent. He is a dangerous adversary, constantly looking for weaknesses in his opponent's position and clients love him"; "He is becoming a formidable opponent in court"; and "Joe is conscientious and has a deep knowledge of arbitration law - he's someone to watch and is going places."

joseph.england@quadrantchambers.com

Editors: Nicola Allsop and Emily Saunderson

## MEET THE INSOLVENCY TEAM



Robert Thomas  
QC



Robert-Jan Temmink  
QC



Thomas Macey-Dare  
QC



Jeremy Richmond  
QC



Nicola Allsop



Paul Henton



Turlough Stone



Emily Saunderson



Claudia Wilmot-Smith



Peter Stevenson



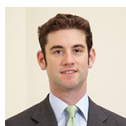
Christopher Jay



Simon Oakes



Tom Bird



Joseph England



Jamie Hamblen



William Mitchell



Tom Nixon



Maya Chilaeva



Joseph Gourgey