

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.

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Legislation

- » The last of the temporary measures introduced by the Corporate Insolvency and Governance Act 2020 to help protect companies affected by lockdown restrictions during the Covid pandemic, including the general moratorium on commercial evictions, have expired.
- » [The Commercial Rent \(Coronavirus\) Act 2022](#) has entered into force. The Act provides a temporary ringfence for certain outstanding commercial rent debts related to the Covid pandemic and establishes a binding arbitration process to resolve rent disputes that cannot be settled by agreement.
- » Following the July 2021 Reforming Competition and Consumer Policy consultation, the UK Government has presented [proposals to Parliament](#) for the reform of the UK competition and consumer protection regimes. The proposals include amendments to the Package and Travel Arrangement Regulations 2018 to allow better flexibility for insolvency protection for non-flight packages, and better protection for pre-paying customers of suppliers of goods and services which become insolvent, including Christmas Savings Clubs and similar savings schemes not covered by existing financial protections.
- » The Insolvency Service has published its first [five-yearly report on the operation of the Insolvency \(England and Wales\) Rules 2016](#). The report concludes that the Rules as a whole are operating correctly and that they are achieving the goals that were set for them. It also identifies a number of issues requiring attention, including the Creditors' Voluntary Liquidation process and the scope of insolvency applications.

Sanctions

- » The Russia (Sanctions) (EU Exit) Regulations 2019, SI 2019/855, empower the British Government to impose a variety of sanctions on individuals and entities, for the purpose of pressurising Russia over its actions in Ukraine. Among the entities which have been sanctioned under the Regulations are two Russian majority state owned banks, VTB and Sberbank, and their subsidiaries. Regulation 64 empowers the UK Treasury to issue licenses which permit particular persons to do acts which would otherwise be prohibited by the sanctions. The Government has recently granted a [license](#) under that regulation, permitting any person to make, receive or process payments and other action in connection with any insolvency proceedings relating to UK subsidiaries of VTB and Sberbank.

Caselaw

- » In [Bott & Co Solicitors Ltd v Ryanair DAC](#) [2022] UKSC 8, the UK Supreme Court clarified the nature and scope of the solicitor's equitable lien for their costs and fees, characterising it as an immediate right of security in the solicitor's favour, over property which is recovered or preserved through the solicitor's instrumentality, which survives the client's insolvency.
- » The jurisdiction of the High Court to entertain a bankruptcy petition against a debtor is governed by section 265 of the Insolvency Act 1996. One of the grounds of jurisdiction is that the debtor has a "place of residence" in England and Wales. In [HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud v Mobile Telecommunications Company KSCP](#) [2022] EWHC 744 (Ch), Roth J had to consider the meaning of that expression. He held (rather unhelpfully from a practitioner's perspective) that the issue was one of fact and degree, which might involve a broad range of factual considerations; and he rejected the suggestion that de facto control of the property was a necessary condition in every case.
- » Section 127 of the Insolvency Act 1986 provides that, in a winding up by the court, any disposition of company property made after the commencement of the winding up is void unless the court orders otherwise – a discretionary remedy known as validating the disposition. Liquidators are entitled to bring proceedings on behalf of the company to recover company property from a person who received it pursuant to a void disposition. There are conflicting authorities on whether a defence of change of position is available in such a case. In [Rose v AIB Group \(UK\) plc](#) [2003] 1 WLR 2791, Nicholas Warren QC stated that the defence was available in section 127 cases, as in any other claim for restitution. However, in the later case of [Re MKG Convenience Ltd \(in liquidation\)](#) [2019] EWHC 1383 (Ch), HHJ David Cooke concluded that, while the defence was available in principle, the circumstances in which it could succeed were constrained in the same way and for the same reasons as the exercise of the court's discretion to validate. The point arose again before ICC Judge Barber in [Re Changtel Solutions UK Ltd \(in liquidation\)](#) [2022] EWHC 694 (Ch). She held that [MKG Convenience Ltd](#) was to be preferred to [Rose](#), and that, in the absence of circumstances which could justify validation, the defence of change of position must also fail.
- » [Denaxe Ltd v Cooper](#) [2022] EWHC 764 (Ch) is the latest chapter in the long-running legal battle between the former owners of Blackpool Football Club, which resulted in a 2017 judgment for £31 million against Denaxe and Owen Oyston. The court appointed receivers to sell Denaxe's assets by way of equitable execution in order to satisfy that judgment debt. Denaxe then brought a claim for damages against the receivers for failure to use reasonable endeavours to achieve the best price obtainable in the market. Fancourt J struck out the claim against the receivers, holding that they were entitled to immunity from such claims, the same as trustees and administrators.
- » Section 212 of the Insolvency Act 1986, entitled "Summary remedy against delinquent directors, liquidators, etc" permits the court, in its discretion, to order a director who has misapplied property of a company which is being wound up to restore the property. In [Re Glam and Tan Ltd](#) [2022] EWHC 855 (Ch), Chief Insolvency and Companies Court Judge Briggs had to consider whether to hold the sole director of an insolvent company personally liable under s 212 for online transfers and cash payments of company money to her violent and controlling estranged husband. He held that it was unjust to do so, in circumstances where her free will had been subjugated to her husband's will under threat of violence.

MEET THE AUTHOR



Tom is a leading commercial barrister. As part of his banking, shipping and general commercial practices, deals with a wide range of domestic and international corporate insolvency matters, in the Chancery Division, Commercial Court, Companies Court and overseas. In the directories, Tom has been described as *“fantastic”*, *“spectacular”*, *“extremely hard-working and clever”*, *“quick on his feet”*, *“brave”*, *“intuitive”*, *“incredibly practical”* and *“completely unflappable”*; and he has won praise for his *“spot-on”* command of the law, his *“exceptionally good”* mastery of technical issues, and his *“compelling”*, *“highly persuasive and very effective”* advocacy.

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