



Welcome



A very warm welcome to our Winter 2016 issue of Insolvency News.

The first quarter is often a hectic time in our profession, so I hope you have a good rest over the holiday period.

In January & February, we usually see a large influx of both businesses & individuals needing assistance with financial distress. A tough festive period often lies behind and tax bills often loom ahead. Should you discover one of your clients is suffering from a debt burden, we are here to help. We can offer free initial meetings, and offer expert impartial advice on all types of debt solutions.

If you'd like to discuss anything that catches your eye in this newsletter, please do not hesitate to contact me on 01257 257030.

Anthony Fisher, MIPA, FABRP
Managing Director
Licensed Insolvency
Practitioner

Modernised insolvency rules to commence in April 2017

The Insolvency Service have recently announced that the newly modernised insolvency rules will come into force on 6 April 2017. The Insolvency Rules 1986 currently provide the procedural framework for the Insolvency Act 1986.

The long awaited Insolvency (England and Wales) Rules 2016 have primarily been introduced to replace and consolidate the 1986 Rules and their 28 subsequent amendments. The 2016 Rules have also been re-drafted to make them more user-friendly, with a simplified structure and gender-neutral language.

As well as the language, a further modernisation is regarding the use of technology in liquidations. Previously, insolvency practices could not contact creditors via email unless the creditor had provided written permission. Under the 2016 Rules, if the creditor customarily communicated with the now insolvent company via email, an insolvency practice can continue to use email without seeking any additional permission. A further technological step forward is that the 2016 Rules permit an office holder to send a notice to creditors, stating that all future documents will be available on a website (subject to certain restrictions).

Other important changes by the 2016 Rules include:

- IPs need no longer hold a physical meeting of creditors; there will be an alternative decision-making process, such as a virtual meeting, correspondence or electronic voting. However, a physical meeting will still be required if an IP receives objections from 10 creditors, 10% or more of creditors, or 10% or more of creditors by value.
- The introduction of a fixed reporting requirement where the office-holder is not the Official Receiver. The term will either be 6 or 12 months, depending on the procedure.
- The reintroduction of the requirement for an administrator to file a final report to convert an administration into liquidation proceedings.
- Details of employees, ex-employers and consumer customers must be redacted within the statement of affairs.
- Removal of all final meeting of creditors requirements.
- Creditors can opt out of correspondence from an insolvency practice; this will not opt them out of notices regarding dividends.
- IPs will now be allowed to rely on information contained in a company or bankrupt's statement of affairs or accounting records to pay a dividend without the creditor having to submit a claim if the amount is below £1,000.
- The official receiver will be appointed the trustee on the making of a bankruptcy order.
- An insolvency practitioner can now be appointed as an interim in all circumstances (rather than in the previous relatively limited circumstances).

Having reviewed the proposed changes, one of Focus Insolvency Group's IPs, Natalie Hughes, commented: "Any change will always be approached warily by IPs, there will always be an element of 'better the devil you know'. Change on this scale can be problematic for insolvency firms, who will have to modify their standard procedures, their precedents and their working practices. However, on the whole, the changes are a positive step forward. Allowing IPs to make greater use of electronic communication, utilising their websites and to hold virtual creditors meetings reflects the way that most business is conducted in the modern age."

Inside this issue • Services for Directors • Landmark decision in Horton v Henry • Latest insolvency statistics and more...

If any of your clients have been affected by the stories in our newsletter or need advice on any other matters, please feel free to contact us. All our introducers receive unrivalled levels of service and personal attention.

Services for Directors

Being the Director of an indebted company can put great strain on both the Director's professional and personal life. You will already be aware that Focus Insolvency can help your contacts or clients with their business debt. When we are assisting Directors with their limited businesses, our licensed Insolvency Practitioners also have the knowledge and experience to provide other services to Directors personally. Whilst every Director's situation is unique, our insolvency team have the expertise to advise Directors in all conceivable scenarios.

Personal Insolvency

Personal debt often goes hand in hand with business debt. Whilst our IP's will be able to give Directors an overview regarding all debt solutions, we also have dedicated corporate and personal debt advice teams.

An Individual Voluntary Agreement (IVA) is similar to a CVA, but as its name suggests is designed for personal debt rather than corporate. One affordable monthly repayment can help directors to manage their personal debt whilst ceasing pressure from their creditors. An IVA may also be a suitable solution for non-limited businesses.

If an IVA is not an appropriate solution to a Director's personal circumstances, they may need to consider bankruptcy. Our advisers understand what a difficult decision this can be; we can help guide Directors through the process, whilst providing both the advice and compassion that the individual may need.

Wrongful Trading

If a company is in an insolvent position, the company's director is left open to a wrongful trading investigation. If a Director has traded whilst insolvent, or breached any of their other duties, the directors can be made personally liable to the company's creditors. In extreme circumstances, a director can be disqualified or imprisoned.

During any wrongful trading investigation, the Insolvency Service are heavily influenced by evidence that a Director has sought professional advice to resolve the company's issues. Whilst obtaining guidance from a Solicitor or an Accountant is useful, the advice of a licensed Insolvency Practitioner is the most persuasive to the Courts in an insolvency situation.

By seeking advice from Focus Insolvency Group, a Director can ensure that they remain in control of the destiny of the company without leaving themselves open to later criticism for their actions.

Personal Guarantees

Particularly in the early days of a business, personal guarantees can be a crucial way to help a company find its financial footing. Later down the line, personal guarantees can become more of a burden.

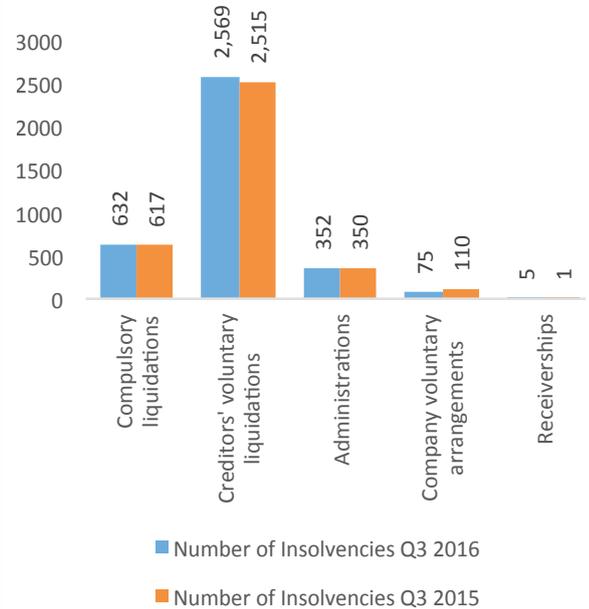
Whether a Director is considering entering into a personal guarantee, is looking to clarify their liabilities, or wants to remove their personal liability, our Insolvency Practitioners can help.

If any of your clients need any advice regarding their personal circumstances, please give us a ring on 01257 257030.

Insolvency Statistics - Quarter 3 2016

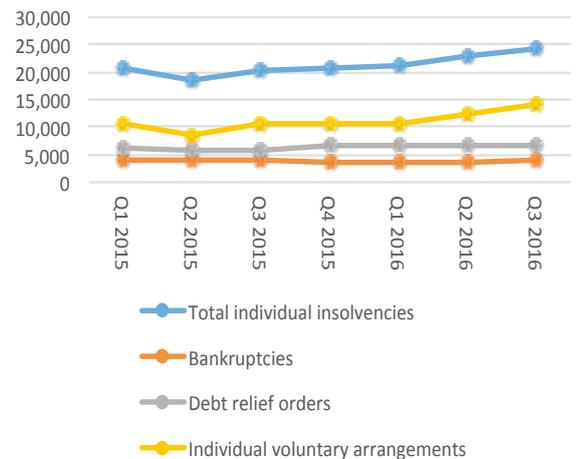
In the year ending Q3 2016, 1 in 244 companies entered liquidation. In that same period, 1 in 515 adults became insolvent.

Company Insolvencies



The estimated liquidation rate in the 12 months ending Q3 2016 was 0.41% of active companies, the lowest level since comparable records began in Q4 1984.

Total individual insolvencies



Total individual insolvencies increased for the fifth consecutive quarter, driven primarily by an increase in individual voluntary arrangements.

Source: The Insolvency Service, "Insolvency Statistics: July to September 2016 (Q3 2016)"

Landmark ruling protects bankrupts' pensions

The Court of Appeal have passed down their long-awaited ruling in the matter of *Horton v Henry*, dismissing the trustee's appeal. In doing so, the Court of Appeal have ratified the High Court's decision that a bankrupt person cannot be compelled by a trustee to drawdown from their pension.

The matter revolved around the interpretation of the word "entitled", as contained in s310(7) of the Insolvency Act:

Horton v Henry – Facts of the Case

Michael Henry was declared bankrupt by his own petition on 18 December 2012. Robert Horton was appointed Trustee of Mr Henry's estate on 15 March 2013. Mr Henry had various pension policies which were worth a substantial amount of money. As with most pensions, Mr Henry was entitled to draw down from his pension, the amount of which depended upon his age.

The day before Mr Henry was due to be discharged from his bankruptcy, the Trustee filed an application pursuant to section 310 of the Insolvency Act for an Income Payment Order (IPO), requiring Mr Henry to pay the Trustee (a) the amount presently available to be drawn down by him from his pensions as a tax free lump sum; and (b) such further periodic income as might also be derived from the pensions for the three-year duration.

Mr Henry opposed the making of the IPO, on two grounds: (a) the benefits which he was entitled to draw from his pensions did not constitute income to which he had "become entitled" (within the meaning of section 310(7) of the Insolvency Act) and (b) it was unreasonable to require him to drawdown from his pension, because he wished to "preserve the maximum capital value" of the pensions for "as long as possible", with a view to transferring the remaining balance to his children on his death.

On 17 December 2014, Mr. Robert Englehart QC, sitting as a deputy judge of the High Court, Chancery Division, dismissed the trustee's application for an IPO, thereby ruling in favour of Mr Henry.

The Trustee appealed the decision. On 7 October 2016, Lord Justice McFarlane, Lady Justice Gloster and Sir Stanley Burton, sitting in the Court of Appeal (Civil Division), upheld the High Court's decision.

"For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and... any payment under a pension scheme..."

Prior to the recent case of *Horton v Henry*, the leading precedent was *Raithatha v Williamson*. In *Raithatha*, the court had found that that a bankrupt's present entitlement to compel payment of pension benefits should be included in the assessment of his income within the meaning of s310(7) of the Insolvency Act.

The bankrupt in *Horton v Henry* had a number of uncrystallised pension rights that he could choose whether or not to exercise. The Trustee wished the bankrupt to exercise this right, whilst the bankrupt naturally did not. The question before the Court was therefore "does a pension entitlement in respect of which a bankrupt has a present right to elect to draw down payment (but has not yet exercised) fall to be included in the assessment of his income"?

In the court of first instance, the judge declined to follow *Raithatha* on two different grounds. Firstly, the Court found that the word "entitled" only referred to definite amount of monies that had become contractually payable.

Secondly, the Court found that neither the Trustee nor the Court had the power to make a decision on the bankrupt's behalf regarding his personal pension. Therefore, as the monies were not contractually due to the bankrupt, and neither could the bankrupt be forced to drawdown from his pension, the Trustee's application was dismissed. The judge did however grant the Trustee the right to appeal.

The Court of Appeal subsequently upheld the High Court's decision. The Court found that in the same way that a trustee cannot compel a bankrupt to work in order to receive a salary, a bankrupt could not be required to take steps to obtain monies from their pension for the benefit of the bankrupt's estate. Gloster LJ stated that to compel a bankrupt to exercise his pension rights would "drive a coach and horse" through Parliament's intentions to encourage people to save for retirement.

Natalie Hughes, Licensed Insolvency Practitioner at Focus Insolvency Group, comments...

"The Welfare Reform and Pensions Act provides protection to any pensions that are not yet paid to anyone going bankrupt after the year 2000. The case of *Raithatha* began to erode this protection, but this has been firmly reconfirmed by the Court of Appeal in *Horton*. Whilst there are rare exceptions, such as if a bankrupt has made excessive contributions to his pension, going forward a bankrupt's pension looks fairly untouchable. This will come as a welcome relief to those in debt, but is an unfortunate blow for creditors."

References:

Horton v Henry [2014] EWHC 4209 (Ch), *Horton v Henry* [2016] EWCA Civ 989, *Raithatha v Williamson (a bankrupt)* [2012] EWHC 909



Staff Profile: Caroline Gray, Insolvency Administrator

Caroline joined the Focus Insolvency team in September 2016. She is responsible for taking our clients from the initial contact through to the Meeting of Creditors. Caroline previously worked as an IVA drafter, before leaving to set up a restaurant with her husband. The restaurant won various awards, including Northern Pub Restaurant of the Year and National Pub Chef of the Year. After leaving the restaurant business, she returned to the insolvency profession, and has now joined the team at Focus.



- **What three things would you take to a desert island?** It would have to be my husband, kids and a luxury cruise liner.
- **What was the first gig you ever went to?** Take That (the first time round, showing my age!!)
- **How do you like to relax?** Spending time with friends and family and a large glass of something sparkling.
- **What do you find most rewarding about your job?** I like to see the process through. From the first initial contact with the client, who is often worried and nervous to the passing of the meeting. I find the difference in the client once that weight has been lifted and their debts are manageable very rewarding.



FOCUS BUSINESS CLUB

Our latest Focus Business Club event took place on Thursday 24th November at the Deansgate Liquor Store. Over 30 accountants, lawyers and professional business people attended the event.

Andy Platt, Group Development Director at Focus Insolvency said: "It was great to see some familiar friends of Focus Insolvency, and to have a catch up alongside other likeminded professionals. It was also good to see some new faces so many thanks to everyone who attended!"

If you would like to be on the guest list for the next Business Club event, which will take place in Spring 2017, please get in touch with Andy on 0161 214 7913 or email a.platt@focusinsolvencygroup.co.uk.



Focus Insolvency Team Expands

In the last few months, there have been lots of staffing changes at Focus!

As the statistics show on page two, the total personal insolvencies is continuing to increase. A combination of the increased levels nationally, plus the success of our five year plan, means that we have expanded our IVA team! Caroline Gray, Matt Wiggins and Paul Hart have all joined our IVA drafting team. You can read our interview with Caroline above.

It's not just our IVA team that are expanding, so is our corporate team! Joanne Haines has joined us as an Insolvency Administrator, and Elizabeth Spencer as a Business Turnaround Consultant.

We are also delighted to welcome back two staff members, who are returning from maternity leave; Kim Nolan, who rejoins us as Cashier, and Katherine Valentine, who will be continuing her role as our Corporate Insolvency Administrator.

Natalie Vose has recently started her maternity leave, and we extend our many congratulations to her and her husband for the birth of their beautiful baby boy, Charlie!

Tel: 0161 214 7913

Email: a.platt@focusinsolvencygroup.co.uk

Web: www.focusinsolvencygroup.co.uk

Centurion House, 129 Deansgate, Manchester M3 3WR

