



## WHAT WE'VE BEEN UP TO

The team have been busy dealing with a wide range of instructions over the summer months.

### Some of our recent highlights include:

- The successful sale of a joinery business on behalf of its joint administrators, securing 70 jobs and enabling the business to continue trading.
- Dealing with the administrations of businesses in the mechanical building services and construction sectors.
- Providing urgent advice to trustees in bankruptcy to recover substantial sums not disclosed by the debtor upon their appointment.



## IN THE NEWS

### Government lifts (in part) the temporary insolvency measures

On 9 September 2021, the government announced that the temporary restrictions introduced by the Corporate Insolvency and Governance Act 2020 (CIGA 2020) which were put in place to protect companies during the pandemic are being lifted, and will be replaced from 1 October 2021 with new temporary measures, which include the introduction of a temporary revised debt limit for presenting winding up petitions.

It is hoped that these targeted and tapered measures will, in turn, support the economy, by protecting businesses that might otherwise be ploughed down from winding-up orders on relatively small debts. Business Minister Lord Callahan commented that "... we know many smaller businesses are rebuilding their balance sheets and reserves, and some will need more time to get back on their feet. These new measures will help them to do that".

We have very recently reported on the details of the new temporary measures, which are set to expire on 31 March 2022, and our article can be found [here](#).



### Increase in Court Fees

The government has announced that it intends to raise court fees as of 30 September 2021, despite opposition to the proposal from the majority of consultation respondents. The intention to raise the price of 129 court fees is claimed to be of benefit to the service provided, as the Ministry of Justice has stated that "The income generated from these proposals will go towards the running cost of HMCTS and will ensure that the courts and tribunals can continue to deliver access to justice for all".

This increase applies to some, but not all, applications within insolvency proceedings. For example, the fee for presenting a creditor's bankruptcy or winding up petition will be increased from £280 to £302. However, the fee for issuing a notice of intention to appoint administrators will remain at £50. The current and proposed increase in fees for petitions and applications relating to insolvency can be found [here](#) on the Ministry of Justice's list of Court and Tribunal Fees (page 47 onwards).

### Administration – pre-pack regulations' applicability to LLPs

In our [last newsletter](#), we explored the regulatory framework in relation to the new pre-pack regulations. But do the regulations apply to limited liability partnerships?

There appears to be some uncertainty on this, as the Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021, SI 2021/327 do not expressly refer to limited liability partnerships (LLPs), only that they apply to administrations that commence on or after 30 April 2021. On a literal interpretation, this wording suggests that the regulation applies to all forms of corporate entities entering administration after this date.

Mindful of this drafting omission, the Insolvency Service has indicated that it believes the regulations do apply to LLPs and we are of the view that the provisions in the regulations apply equally to LLPs as they do to limited companies.



## CASES THAT HAVE CAUGHT OUR EYE

### The court's first application of The Debt Respite Scheme

*Axnoller Events Ltd v Brake and another; Brake and others v Chedington Court Estate Ltd [2021] EWHC 2308 (Ch)*

The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020, which came into force on 4 May 2021, gives individuals in debt the right to legal protection from their creditors. The Regulations introduced two types of breathing space: a standard breathing space (available to anyone with debt problems) giving them legal protection from creditor action for up to 60 days; and a mental health crisis breathing space (only available to someone who is receiving mental health crisis treatment) which lasts as long as the person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).

This case brought about three interesting questions when assessing an applicant's request to cancel the moratorium brought about by the Scheme.

Firstly, who has the jurisdiction to cancel the moratorium - the County Court or the High Court? Pursuant to SI 2020/1311, reg 19, it is stated that the jurisdiction does not exclusively fall into the County or High Court, but that the High Court should have jurisdiction only if it has deemed it appropriate, and that the case "may" be made to the County Court.

Secondly, should the application be made using the N244 application form, or a claim form? Whilst it was noted that form N244 may be used in an application of this nature, the court held that a claim form should be issued, either under CPR Part 7 or 8, so as to ensure that the civil procedure management powers can be relied on.

And finally, what constitutes an "unfair prejudice to creditors"? In this particular case, there were ongoing issues being dealt with by way of litigation, which was causing further costs to be incurred. Whilst it was noted that the moratorium cannot be simply used to "shield" the debtor from any cost liability whatsoever, the "prejudice" referred to was not as a result of the moratorium, but of the ongoing litigation itself. On this reasoning, the application to cancel the moratorium was refused.

### Applying the rules in CIGA 2020 to a winding up petition

*BUJ Architects LLP v Investin Quay House Ltd [2021] EWHC 2371 (Ch)*

The Court approved a petition to wind up the Respondent company, despite its opposition under CIGA 2020, Sch 10, Pt 2, namely that the court should not approve the petition, as debt on which it was based was caused by the coronavirus pandemic having had an adverse financial effect on the company.

However in this case, the court held that this had not been the primary reasoning in the company's defence and as such approved the winding up petition.

### Non-party costs order claims against directors/shareholders

*Goknur v Aytacli [2021] EWCA Civ 1037*

This decision provides a clearer framework to establish whether an order can be pursued against a director/shareholder for a non-party costs order. The Court of Appeal confirmed that only one of the following criteria needs to be met:

- The director/shareholder has benefited, or has sought to benefit personally from the company's litigation.
- The director/shareholder was guilty of impropriety or bad faith.

In this case, Goknur (a Turkish-based company) sought a non-party costs order against Mr Aytacli, a director and shareholder of an insolvent company which had been involved in litigation with Goknur. Mr Aytacli had controlled and funded the company's conduct of the litigation.

At first instance, Goknur sought a non-party costs order against Mr Aytacli, which the court refused to grant, the Judge holding that Mr Aytacli could not be said to have sought to benefit personally because "A director who is controlling and funding the litigation to help preserve the company or advance its legitimate interests cannot usually be said to be seeking to gain personally from the litigation. He or she is merely doing what their duties as a director require them to do."

On appeal, and despite Goknur's claims against Mr Aytacli's that his evidence was "untruthful and lacking in credibility", it was held that there was no evidence of impropriety or bad faith on his behalf.

## AND FINALLY...

The team were delighted to get together "in person" last week for the first time since we joined forces with our Debt Recovery colleagues late last year, and Darryn's arrival in April, and were treated to a selection of burnt offerings from Phil "Grill Master" Smith!!



## Speak to us

If you need advice, an overview or simply a conversation about this update or any other legal issue please contact us on +44 (0)118 959 7711 or click to [submit an enquiry](#).



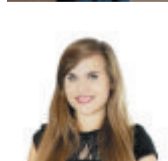
**Phil Smith**  
Partner  
0118 952 7205  
[psmith@boyesturner.com](mailto:psmith@boyesturner.com)



**Oliver Fitzpatrick**  
Partner  
0118 952 7130  
[ofitzpatrick@boyesturner.com](mailto:ofitzpatrick@boyesturner.com)



**Darryn Harris**  
Associate-Solicitor  
0118 952 7216  
[dharris@boyesturner.com](mailto:dharris@boyesturner.com)



**Lizzie Peck**  
Paralegal  
0118 952 7164  
[lpeck@boyesturner.com](mailto:lpeck@boyesturner.com)

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Boyes Turner LLP, Abbots House, Abbey Street, Reading, RG1 3BD, United Kingdom  
Tel: +44 (0)118 959 7711 Fax: +44 (0)118 957 3257 Email: [enquiries@boyesturner.com](mailto:enquiries@boyesturner.com)

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