AMB LAW INSOLVENCY UPDATE

No. 9 • March 2015

Welcome to the 9th Edition of our *Insolvency Update*. This and all future editions will be available to view as downloads on our new website at www.amblaw.co.uk.

The two big bits of news at the mo' are the last minute reprieve for the insolvency exemption in relation to conditional fees and the SoS's suggestion that IPs will need to provide costs budgets upon taking appointments; both likely to be controversial.

We hope that you will find this useful – please let us know if there are any items about which you require further information. If you have any queries, would like to be removed from our database or are just lonely, please email *office@amblaw.co.uk*.

Insolvency Proceedings Remain Exempt from Legal Aid, Sentencing and Punishment of Offenders Act 2012

House of Commons: Written Statement (HCWS303), 26 February 2015

Hardly news because you would have to be living in a nunnery not to have heard that the Government has given Insolvency Proceedings a last minute, indefinite reprieve on ending its exemption from section 44 of LASPO – in other words, IPs will continue to be able to pass the costs of ATE insurance premia and the uplift paid to their lawyers under CFAs. We are slightly cautious as the threat of having to pay up to 2¾ times the liquidator's costs if he fails to defeat a claim places an intolerable burden on an impecunious director who may be culpable only of a technical breach of duty. However, on balance, we think that this is a *Good Thing* and generally in the interests of creditors – there is, after all, no reason why these additional costs should be borne by the unsecured creditors which would be the alternative.

MISCELLANEOUS

'Upside Fee' not Penalty Clause

Edgeworth Capital (Luxembourg) S.A.R.L v Ramblas Investments B.V

A borrower had entered into an "upside fee agreement" with its bank by which a large fee would be payable on the occurrence of certain events including repayment of the loan. This loan was not repaid as various individual borrowers had defaulted under a related loan agreement.

The court found that, on the facts, the obligation to pay the upside fee was triggered. The more interesting bit was the *obiter* finding that the 'upside fee' was not covered by the rule against penalty clauses as

- it was payable in a number of different circumstances not just in the event of a breach;
- it was not triggered by a breach by a party to the agreement but by defaults under a separate agreement;
- it was not a deterrent but to compensate the bank a loan in difficult circumstances.

The case is interesting in the context of penalty clauses generally – these have long be controversial in the context of termination fees, especially in the ABL arena. Provisions providing for payments in circumstances other than breach of contract can be saved by careful drafting.

Protection of Utility Supplies

Insolvency (Protection of Essential Supplies) Order 2015

The Order is set to take effect from **1 October 2015**. It is essentially a re-hash of the provisions in section 233 of the Act but will provide a higher degree of protection for insolvent businesses, rendering void any contractual provision by which utility suppliers seek to exploit the essential nature of their supplies.

Most importantly, the Order will extend the definition of utility to include IT-related goods and services such as hardware and software, internet servers, data storage and hosting facilities.

There are currently various versions of the Order and the final wording has not been settled but it will be a great help to any IP wanting to trade a business not to have to negotiate with ISPs hell-bent on getting paid.

Increased Court Costs. Again

With effect from Monday **9 March 2015**, the court fees in civil matters were once again increased.

Essentially, claims under £10,000 will be unaffected but claims over £10,000 will incur a court fee of 5% of the claim up to a maximum fee of £10,000!

Leaving aside that we all pay general taxes to fund the government and it functions and leaving aside that it is utterly abhorrent that the courts should be used as a profit centre, none of this would be so bad if the level of service provided by the court had not collapsed to a position where the civil court system is all but unusable.

This rise in court fees is a serious bar to access to justice to private individuals and small businesses and could also have a substantial negative effect on the use of London as a centre for dispute resolution.

Disproportionate Legal Costs
Savoye & Savoye v Spicers

This case was not an insolvency matter but, rather, involved the enforcement of an adjudication award by way of court proceedings. The judge took a very robust approach to dealing with the costs and reduced a partner's chargeable time from 111 hours to just 20. He also disallowed the fees of leading counsel which he considered unnecessary even though the paying party had not objected. The overall awarded costs of the successful party were less than half of those claimed (£96,465 as opposed to £201,790).

Whilst not directly an insolvency costs case, the judgment does demonstrate the court's willingness to intervene and closely to scrutinise the professional costs in bills delivered for assessment.

Registrar's Duty of Care
Sebry v Companies House

The Registrar of Companies entered a winding-up order against the wrong company causing that company to go into administration following a loss of confidence by its creditors and suppliers.

The court held that the Registrar owes a common law duty of care to ensure that he registers a winding-up order against the correct company. The duty does not extend to verifying information supplied to him.

This might seem obvious to a casual onlooker but claimants have always struggled to pin any form of duty of care onto civil servants. In ***Re Louise St John Poulton*** the court had held that court officials owed no duty of care to the public in the carrying out of their job (although conceded that breach of statutory duty might be conceivable).

Pension Liabilities May Be Assigned
Re Singer and Friedlander Ltd

The High Court has held that pension trustees may assign a section 75 debt thus enabling a scheme to be wound up before the administration of the sponsoring employer is concluded.

In this case, the trustees had been unable to wind up the scheme whilst there remained the possibility of a further dividend from the company whose administration was not expected to be concluded until 2017. An application for directions was made.

The court held that the section 75 debt was assignable and further declared that a reasonable and properly advised trustee would assign it. The scheme may now be wound up thereby saving substantial administration costs.

No Power to Take Pension Pot
Re Henry

The High Court has held that there is no power under section 310 of the Act to make an income payment order in respect of an uncrystallised pension that was not yet paying out. Robert Englehart QC held that the words *"becomes entitled"* in section 310(7) of the Act implied a pension in payment under which defined amounts were being paid to the bankrupt.

Furthermore, neither the court nor the trustee could compel the bankrupt to elect to receive payments from his pension. This is a clear departure from the earlier decision in *Raithatha v Williamson.*

Change of Position in Overpayment Cases
Webber v Department for Education

A retired teacher went back to fulltime employment but continued to receive payments from his pension. The pension fund eventually caught up with him and sought to claim back £36,000 overpaid payments. Mr Webber's defence was that he had changed his position inasmuch as he had spent the money and it would not now be reasonable to require him to repay the money.

The found that Mr Webber should have known or at least suspected that he was not entitled to the continued pension payments and that they would eventually have to be repaid. A simple enquiry to the pension provider would have settled the issue, but Mr Webber decided to keep quiet, presumably in the hope that he would get away with it. It would therefore be inequitable to allow Mr Webber to rely on a change of position defence when he had turned a blind eye to the prospect of his having to repay the monies.

Again, this is not an insolvency case but is relevant to all cases where parties have wrongly been overpaid by a debtor or otherwise unjustly enriched. Often, an innocent change of position will be a good defence but it is clear that the defendant's state of mind will be an important consideration. Whilst this might seem a bit harsh to Mr Webber, the fact remains that he knowingly received funds to which he knew that he wasn't entitled and kept *schtum* – more fool him!

ADMINISTRATION

Administrators Have No Power Over Third Party Assets
Re Business Environment Fleet Street Limited

Administrators had agreed a sale of various properties and the equipment contained in them. The sale was conditional upon the administrators' getting permission from the court to sell the equipment. A third party

challenged the application claiming to be the owner of the assets.

It was clear that the sale of the properties with the assets inside would produce a massive benefit to the company; the administrators contended that the court had power under para 72 Sch B1 to make such an order.

The court rejected the administrators' application as, on the facts, the administrators could not show that the assets were held under a '*hire purchase agreement*' (as defined in para 111).

The administrators also contended that the court had a general power under para 68 to permit the administrators to dispose of the assets that they thought belonged to the company pursuant to para 67. The judge rejected the notion that the '*property*' in para 68 (court's power to give directions) would include any property that the administrators thought might be the company's.

This case is somewhat dependent on its own facts and it is clear that the matter was heard at short notice and with a paucity of proper evidence. Nonetheless it is a useful illustration of the limits both of the powers of administrators and of the court's discretion. Whilst para 67 is clearly intended to protect an administrator who is required quickly to take control of the company's assets from mistakenly securing assets that turn out not to be the company's, it would be going too far in a case like this to allow an administrator to ride roughshod over the rights of third parties where he knows there to be a dispute over title.

Inquorate Board Cannot Appoint Administrators

Pui-Kwan v Kam-Ho

This case involved a fairly messy set of facts – a BVI company registered in England with disparate directors one of whom was in Hong Kong and didn't speak English. One of the two directors purported to pass a board resolution appointing administrators which was subsequently challenged after the company had gone into liquidation.

The court found that, as the company's articles required both directors to be present at board meetings for them to be quorate, the purported resolution to appoint administrators had been a nullity and, accordingly, the administrators had never been appointed. Although there are various provisions within the Act and Rules (notably rule 7.55) to protect invalidly appointed officeholders, none applied here as there were no extant insolvency proceedings.

This case is not particularly remarkable in itself, but it does beggar one big question: why could the court not magic up an unwritten rule about its jurisdiction to right a defect? [See our rant in relation to *Re Eiffel Steel Works* on the back page below].

Directors' Motives Irrelevant

Re BW Estates Ltd

This is another stage in the *Randhawa v Turpin* litigation. Creditors challenged administrators' remuneration as excessive. Part of their argument was that there was no good reason to put the company into administration in the first place and that the directors were motivated by improper purposes. The court dismissed this argument; the company was insolvent and the administrators had considered that at least one of the statutory purposes was achievable. That was all that was required.

This is comparable to the decisions in company cases in relation to shareholders who have always been permitted to exercise their rights however they please even if bizarre or malicious.

Administrators' Consent Can Be Retrospective

Fulton and another v AIB Group

Following the administration of a partnership, a creditor served stat demands against the individual partners. The partners challenged these as an abuse of process as they violated the administration moratorium. Prior to the hearing the administrators consented to the creditor's proceedings against the partners.

The High Court in Northern Ireland held that the administrators' retrospective consent was effective. This follows an earlier English decision in *Bank of Ireland (UK) plc v Colliers International UK plc* (2012)

LIQUIDATION

HMRC's Cross-Undertaking in Damages

Re Abbey Forwarding Ltd

HMRC had presented a petition and obtained a provisional appointment of liquidators. The First Tier Tribunal subsequently found that the tax upon which the petition had been based was not, in fact, due. The liquidator then sought damages against HMRC by enforcing the cross-undertaking in damages given to the court by HMRC on the appointment of provisional liquidators.

HMRC contested the claim on the basis that public policy required HMRC to be exempt from giving an undertaking in damages citing *Parkwell v Wilson* (cf **AMB Insolvency Update** #8, Dec 2014).

Luckily the High Court was having none of this and held that HMRC was liable in damages on an implied undertaking given at the time of the making of the provisional liquidation order. That undertaking did not expire on the making of the winding up order and was not affected by the fact that the petition was not contested.

Petition Based on Appealed VAT Assessment

Re Changtel Solutions UK Ltd

It is becoming all but impossible to state with any certainty what constitutes the courts' position on the vexed issue of HMRC petitions based upon disputed assessments.

The company had appealed against its VAT assessment but HMRC nonetheless presented a winder. The Court of Appeal overturned the high Court's finding that the petition amounted to an abuse of process. Under s. 79(3) of VATA the VAT

assessment is a recoverable debt unless and until the taxpayer successfully appeals to the First Tier Tax Tribunal.

It always amazes us that there isn't more of a groundswell of public opinion against this provision which is sorely in need of reform.

cf *Parkwell Investments v Wilson* in **AMB Insolvency Update** #8

Exercising Powers Under Section 236

Re Comet Group Limited

This is a more significant judgment that might on first blush appear.

The liquidators had applied for an order under s.236 for the delivery up of documents and information relating to the business of Whirlpool UK and Embraco, an associated company that made compressors for fridges. The background was that Whirlpool and Embraco had been heavily find by the EC for operating an unlawful cartel and the liquidators wished to explore the possibility of Comet's having a claim against Whirlpool in relation to the pricing of goods supplied. Bar one minor (but significant amendment) the judge granted the liquidators' their order.

The respondents had, as one might expect, raised a number of arguments in opposition to the application. The judge rejected their contention that the court had no jurisdiction to make an order as the information sought did not relate directly to the business of Comet but to business dealings between Whirlpool and Embraco. The judge found that price fixing between Embraco and Whirlpool could easily have had an indirect effect on Comet and that it was sufficient that the documents sought should have some connection with the business or affairs of the company and were relevant to the carrying out of the liquidators' duties.

Having lost the jurisdiction point, the respondents challenged the court's discretion on the ground that the liquidators had already decided to sue Whirlpool and what they were in fact seeking was early disclosure thereby giving them an unfair advantage in any litigation. The judge rejected this too and, in so doing, also rejected the long established *dictum* of Robert Walker J in *Re Atlantic Computers* where he held that s.236 should only be used to gather information to enable a liquidator to decide whether to bring proceedings but, once that decision had been taken, s.236 should not be available to the liquidator. [*That fine distinction has always struck us as rather artificial]*. The judge was persuaded by the imbalance between the two sides in terms of information available to them and the near impossibility for Comet of proving a causal link between cartel price fixing and any loss suffered by it.

Having then balanced the competing burdens, the judge ordered that the documents requested be provided to Comet by the respondents. One small victory was the judge amended the liquidators' draft order so as only to order the delivery up of books, papers or other records. The original draft had sought the provision of "*information"* which the judge held could only be done by oral examination or affidavit evidence and was therefore outside the scope of section 236.

The is certainly a wider application of section 236 than has on many occasions been permitted and is certainly a step away from the artificially strict test of *Re Atlantic Computers.* It would, however, probably be dangerous to read too much into this decision as the judge was clearly influenced by the impossible situation that Comet was in when faced with a blanket information vacuum. Also, having been fined for operating a price-fixing cartel one assumes that the respondents did not curry too much favour with the court.

Costs Of Complying With s. 236 Order

Re Harvest Finance Limited

Liquidators had sought delivery up of conveyancing files from various solicitors in respect of property transactions involving the company that they suspected to be fraudulent. The solicitors them sought an award in respect of their costs for complying with the order.

The registrar was faced with conflicting authorities – Vinelott J in *Re Cloverbay* and Hoffman J in *Re Aveling Barford*. Ultimately, the registrar preferred the view of Vinelott J which was that rule 9.6(4) provided only for the costs of attending before the court and did not extend to the costs of delivery up although he said that the court could make such an order in 'exceptional circumstances' if compliance would otherwise be oppressive or unfair.

Harman J took the view that costs could be ordered under rule 9.6(4) to a person ordered to provide documents but declined to make such an order.

In the present case, the registrar fond that the court had a discretion as to whether to order costs but that that discretion should be ordered in 'exceptional circumstances'. There were no such circumstances in this case where disclosure of the files was clearly in the public interest.

BANKRUPTCY

Proceedings Issued By Bankrupt Not Abuse

Hendry v Chartsearch

A bankrupt had issued proceedings seeking damages without realising that the clam had vested in his trustee. There is clear authority that the issuing or continuance of proceedings in the knowledge that the claimant's title to the claim is defective is an abuse of the court's process. In this case, however, the court held that it could not be an abuse if the claimant did not know that title to the claim had vested in the trustee [*funny – we always thought that ignorance was not a defence. Ed]*

This case was slightly more complicated as, sometime after the claim was issued, the bankrupt achieved an annulment of the bankruptcy order which meant that the claim vested back in him. In reality this decision is a pragmatic one as the Court has jurisdiction to cure any

procedural defect and (subject to limitation) the bankrupt could simply have started proceedings again. This is probably therefore the right result but we are not convinced by the judge's comments regarding the need for *actual* knowledge in order to found a claim for abuse of process.

Creditor Gets Judgment Despite IVA

Stella v Harris

Slightly odd set of facts here but the creditor had got a summary judgment on part of his claim with the debtor being given permission to defend the balance provided he made a payment into court.

In the meantime, the debtor instead got an interim order and proposed an IVA that recognised only the debtor's judgment debt and completely ignored the rest of his claim. The nominee had already indicated that he would admit the claim to vote for only a £1 on the basis that it was a contingent or unascertained claim.

The judgment creditor therefore applied to court for leave to list his application for summary judgment on the balance of his claim which would, if successful, make him the major creditor in the IVA.

The judge said that the creditor was a contingent creditor who wanted to remove the contingency and that he was not trying to gain an advantage over other creditors. Furthermore, he was merely asking for a judgment – he was not seeking to lift the stay and was not seeking to start or complete any execution or legal process.

The judge also held that, as the debtor had failed to comply with the original order, the creditor's claim should be admitted in full for voting purposes within the IVA.

New Thresholds For Bankruptcy And Debt Relief Orders

The Insolvency Service (IS) has proposed that with effect from **1 October 2015** the following financial limits should apply:

•Minimum bankruptcy debt on a creditor's petition to rise to **£5,000** from the current £750.

DRO eligibility will be:

- max debts £20,000 (currently £15,000).
- max assets £1,000 (currently £300).
- max monthly surplus income of £50 (no change).

Whilst the general perception is that £750 is possibly on the low side for a bankruptcy petition, it is our view that £5,000 is too high and too great a jump from the current position. The above is only a proposal and we suspect that the figure when implemented will probably be £1,750 or £2,000.

Service via Facebook

Re A Debtor (No 0274 of 2010)

The county court allowed a trustee in bankruptcy to notify a bankrupt that he had been ordered to appear before the court via a posting on his Facebook page. Although described as "ground-breaking" by the trustee's solicitors, it is nothing of the sort; similar orders having been made in England in 2012 (*AKO Capital LLP v TFS Derivatives*) and in New Zealand in 2008 (*Axe Market Gardens Ltd v Axe*).

This does, however, show how difficult it is becoming to avoid the long arm of the law. For too long, recalcitrant bankrupts could too easily ignore their trustees who would often give up and go away. Bankrupts may now have to do a lot more than just keep their heads down although this does rather beggar the question of how a *subpoena* would be enforced.

Bankruptcy Annulled Due to 'Exceptional Circumstances'

Re Mowbray

The bankrupt appealed against her bankruptcy under s. 282(1)(a) (ie that the order not have been made). On the ground, she alleged, that the petition debt had been time barred.

The respondent had failed to address the bankrupt's argument until the application was made. The respondent claimed that a partial payment by the bankrupt some years after the debt arose had restarted the clock for limitation purposes. The court found that the respondent's dilatoriness allowed it to open and closely examine the case. The judge found that it was 'inherently unlikely' that the bankrupt would have made a small, partial payment and that there was incontrovertible evidence that no payment had been made.

The court found that the issue could not be settled without disclosure and a full trial. In the meantime, it annulled the bankruptcy on the bankrupt's undertaking to settle her unsecured creditors and some of the trustee's costs.

Splitting A Hybrid Claim

Hayes v Butters

In a hybrid claim, the bankrupt was entitled to retain damages awarded for his personal loss (such as pain and suffering etc) but any damages by way of compensation for financial loss formed part of his bankruptcy estate (see *Ord v Upton*).

In this case, the bankrupt pursued an action for harassment seeking both damages and an injunction. The acts complained of took place before and after the bankruptcy order, effectively straddling the bankruptcy.

The High Court split the claim, allowing the bankrupt to pursue a claim for damages incurred after his bankruptcy order without it vesting in his trustee in bankruptcy. Damages award for harassment prior to the bankruptcy order, consisting of both personal and financial loss, vested in the trustee in bankruptcy but he held on trust for the bankrupt that part of the damages award that related to non-financial loss.

The court also held that the bankrupt's claim for an injunction was wholly unaffected by the bankruptcy as it had no monetary value, no interest to the creditors and did not fall within the definition of 'property' comprised in the bankruptcy estate.

This is the first reported case of a hybrid claim in bankruptcy being split.

EMPLOYMENT

'Establishment' for Consultation Purposes

USDAW v Ethel Austin

Readers will recall that the EAT in the Woolworths case overruled the first instance tribunal and held that 'establishment' in TULRCA referred to the whole company. In other words, if the company was to seek to make redundant more than 20 employees, the consultation provisions would be triggered regardless of where those employees worked. The 1st instance tribunal had ruled that the reference to an 'establishment' referred to each shop and, accordingly, the need to consult would only arise if 20 employees from a single shop were to be made redundant.

The Advocate General has now delivered his opinion to the ECJ and he has come down on the side of the 1st instance tribunal. According to the Advocate General, 'establishment' refers to '*the unit to which the workers made redundant are assigned to carry out their duties*' which is something for national courts to determine.

Although the AG's opinion is not strictly binding on the court it is very rare for ECJ judges to row their own boat so it is likely to be followed which would be good news for IPs and the insolvency process as the consultation process may be avoided in cases where there is a large number of pockets of relatively few employees – such as a chain of shops or restaurants.

Watch this space!

Minimum Wage Increases

With effect from **1 October 2015** the National Minimum Wage rates will be set as following hourly rates:

Adults £6.70

18-20 y/o £5.30

16-17 y/o £3.87

Apprentices £3.30

Apparently this is the largest rise in the NMW since 2007.

New Limits For Employee Claims

Employment Rights (Increase of Limits) Order 2015

With effect from **6 April 2015** new ERA limits will come into force as follows:

A week's pay.....£475

Basic Award £5,807

Compensatory Award £78,335

CROSS-BORDER

Suing A Scottish Defendant

Hewitsons LLP v Wood

Generally, a creditor can institute debt recovery proceedings in his own jurisdiction regardless of the debtor's convenience (subject to leave to serve proceedings outside the jurisdiction). The Brussels I regulations were introduced to deal with web-based businesses which are, by definition, international. When dealing with consumers, such businesses would be required to bring proceedings in the defendant's jurisdiction.

This case concerned an English firm of solicitors pursuing a Scottish client for unpaid fees. In legal terms, Scotland is a wholly different jurisdiction as remote as Darkest Peru.

The debtor had sought to invoke the above regulations (seemingly on the basis that the law firm had a website). As the defendant was a consumer, the regulations applied so the key issue before the Court of Appeal was whether there was sufficient evidence that the claimant "directed its activities" to Scotland. Lewison LJ considered that the claimant could not be said to be directing its activities towards Scotland simply by virtue of its being a member of a large group of international firms; this was not sufficient to find that the firm was engaged in "international activities". In any event, the firm's website referred Scottish readers to a Scottish law firm which was the antithesis of suggesting that it was directing its business activities to Scotland. On this basis, the defendant could be properly sued in the English courts.

Declaration on COMI

Re Northsea Base Investment

This case involved six SPV ship-owning companies that were all registered in Cyprus. The sole shareholder was incorporated in Nevis and commercial operations were operated from India. The shipping agents were, however, based in England and all charterparties were concluded through England as was all billing and invoicing. All loans, security and other documents were subject to English law.

The court noted that there would be a presumption that the COMI would be in Cyprus being the place of the registered offices. The court held that there was sufficient evidence in the manner of the administration of the companies to conclude that the COMI was in England.

Whilst not making new law, this is an interesting example of the *Eurofood* principles being applied and the court's looking at the

Alistair Bacon
25 March 2015

INSOLVENCY UPDATE

More Nonsense On Notices of Intention
Re Eiffel Steel Works Ltd [2015] EWHC 511

This case makes me really angry and desperately frustrated in equal measures! I really thought that all the ludicrous nonsense surrounding the issue had been settled but, apparently, not quite.

Re Eiffel was another of those cases where directors effected an appointment of administrators in respect of a company over which there was no floating charge. As there was no Qualifying Floating Charge Holder, the directors did not serve a Notice of Intention under paragraph 26. The court held (1) that this was a formal defect and (2) that it was a defect that was capable of remedy. With (not much) respect, the court was wrong on both counts although the outcome was the same – ie that that appointment was valid. The commentators in relation to this case mostly say that there is genuine confusion and that it is all down to poor statutory drafting. That is wrong too; it is down to a *Nelsonian* inability to read plain English.

I simply do not see how there can be any controversy in relation to paragraph 26 of Schedule B1 which states that the directors must give five days' written notice to any person who is entitled to appoint either an admin receiver or an administrator. Surely anyone can see that the corollary of that is that, if there is no such person, no notice need be given.

Rule 2.20 then goes on to say that, where Notice of Intention has been given, a copy must be served on the company itself. How on earth is this confusing? *Obviously*, if no notice needs to be served under para 26, no copy of it needs to be served on the company; to suggest otherwise is a complete nonsense.

There has been a string of cases in which counsel have argued the totally unarguable – ie that rule 2.20 requires that a Notice of Intention be served on the company even if there is no QFCH. That is simply not what rule 2.20 says – it refers to '*the* notice' (ie the one under para 26) and that notice is only served on a QFCH. Leaving aside the issue of the total waste of legal costs, ultimately, in *Re Eiffel* it didn't matter because the court decided (somewhat dubiously and without any reference to any authority) that it had jurisdiction to declare as valid that the appointment that it had decided was invalid (even though it wasn't).

So, does it really matter that we have these ludicrous decisions? Well, yes – it bloody well does because of the carnage and confusion that is left bouncing around in their wake. We are often faced with the same situation (we've had three this year) and the obvious advice to the director is that he does not need to serve the company with Notice of Intention where there is no QFCH. This advice then has to be tempered with the *caveat* that it is not impossible that a disaffected party may try to challenge the subsequent appointment and there is a very small prospect that such a challenge might be successful. So all these cases do is instill an uneasy uncertainty when there should be none.

Given that this issue is so straightforward how is it that it keeps coming up? It is all part of the Brave New World following the dissolution of the administration petition. Now that there is no court order to validate things, lawyers for disaffected parties spend their time poring over the work of others looking for ways to pick holes in it. The result is that where one used to give pragmatic advice to achieve a solution one is nowadays mostly advising on how to avoid potshots from others. The overall increase in costs is huge – in one case we had recently, another firm's standard process for a directors' administration appointment required three separate board meetings!

AMB Law
46 New Broad Street
London
EC2M 1JH

T: +44 (0)20 3651 5646
F: +44 (0)20 3651 5555

office@amblaw.co.uk

17 Deben Mill Bus Pk
Old Maltings Approach
Woodbridge
IP12 1BL

Alistair Bacon
Principal

T : 020 3651 5647
M: 07881 554062
abacon@amblaw.co.uk

Sutha Mohanadas
Trainee Solicitor

T : 020 3651 5704
M: 07973 222710
smohanadas@amblaw.co.uk

Stephen Carter
Consultant

T : 020 7329 4242
scarter@amblaw.co.uk