The Insolvency Service News

Issue 07 January 2009

THE INSOLVENCY SERVICE

Introduction

Dear Reader
In recent weeks insolvency has moved from its usual place deep in the finance and business pages of the newspapers onto the front pages and into the TV news headlines.

As ever, our newsletter illustrates the many ways in which The Insolvency Service contributes through its actions to consumer confidence and the effective operation of markets.

We start 2009 with the introduction of a new Code of Ethics for Insolvency Pratitioners and a new Statement of Insolvency Practice. At the end of December, we announced that we would be paying special attention to pre-pack administrations to ensure that any abuse is spotted and dealt with effectively.

In April, we will be introducing Debt Relief Orders - a brand new form of insolvency procedure for those on low income and with no assets who are overwhelmed by relatively low levels of debt.

Stephen Speed
Chief Executive

New Rules For Pre-pack Administrations

New rules that will require administrators to reveal to creditors the name of the buyer and the price paid when carrying out a 'pre-pack' administration were introduced on 1 January 09.

Pre-pack administrations tend to be used where commercial pressures require urgent action. The new rules (Statement of Insolvency Practice [SIP] number 16) will require administrators to explain to creditors the background to their appointment and the reasons why they considered that a 'pre-pack' sale would be the best outcome for creditors. Administrators will not only have to reveal the name of the purchaser of the business, they will also have to provide details of any connection the purchaser had with the former directors or shareholders and the price paid.

Graham Horne, Deputy Chief Executive of the Insolvency Service said: "The Insolvency Service welcomes the greater transparency that the new rules relating to 'pre-pack' administrations will provide. Creditors will have better access to information about the new owners of a troubled business providing them with greater clarity about the administration process."

He went on to say: "Pre-packs can be a good thing, as we agree with the view that in some circumstances they will improve returns to creditors. In addition they can help to preserve the business of the failed company, thereby saving jobs. However, we will be working closely with the bodies that regulate administrators to ensure that SIP 16 is put into practice. We will also be looking to use our enforcement powers to clamp down on any directors who misuse the administration process to disadvantage creditors or seek to gain benefit for themselves. We are happy to hear from any creditors who consider they have been disadvantaged."

Directors of insolvent companies, which includes those going through administration, can be banned by the Insolvency Service for a period of between 2 to 15 years if their conduct in the period leading to the insolvency proceedings is considered to be unfit.

A full copy of the SIP is on our website – **www.insolvency.gov.uk**.

Warranty runs out for satellite TV company

A company selling warranties for satellite television equipment has been wound up by the High Court following an investigation by Companies Investigation Branch of the Insolvency Service (CIB).

Satellite Protection Services Limited (SPS), based in Norwich, used the trading name of "Satellite Services" and operated a website called www.sat-serv.co.uk. The company made unsolicited sales calls throughout the UK and Channel Islands offering to repair or replace customers' satellite TV equipment in the event of breakdown, in return for a renewable ongoing annual subscription of £60.

The company encouraged potential customers to believe that the calls came from Sky or that the company was closely associated with Sky. In fact it had no connection with Sky.

Satellite Services failed to comply with relevant distance selling regulations when it failed to inform customers of their right to cancel their agreements within the statutory cooling-off period, and did not provide customers with the registered name of the company or its registered or geographic address.

The company selected telephone numbers for its calls from telephone directories, making no attempt to comply with Regulation 21 of The Privacy and Electronic Communications (EC Directive) 2003 which prohibits the making of unsolicited sales telephone calls to persons registered with the Telephone Preference Service.

And although the company offered to replace irreparable equipment with "new" equipment, in fact replacement equipment was second-hand or re-conditioned.

Serving the public interest

The combination of misleading phone calls, failure to inform customers of their statutory rights to cancel, and failure to comply with regulations for the telephone preference service led to CIB presenting a petition on 28 November 2007 to wind up the company in the public interest and in the interim obtaining an order appointing the Official Receiver (OR) as provisional liquidator.

The OR was appointed on 10 December 2007 and put in place significant changes to the company's sales and administrative systems and this enabled business to continue under his supervision, thereby preserving the assets of the company pending the hearing of the petition. However, activities were limited to servicing existing contracts and no new business was taken on during the period.

Information from the investigation was also referred to the Financial Services Authority (FSA) on the basis that the company's warranty contract appeared to constitute a contract of insurance, and the company was not authorised to carry on insurance business. After due consideration, the FSA concluded that the company was engaging in regulated activity contrary to section 19 of the Financial Services and Markets Act 2000 and supported the Secretary of State's application to have the company compulsorily wound up in the public interest.

The winding up order was made on 12 November 2008. However, public announcement was delayed for a short period to enable the liquidator to write to the company's 8,500 current customers informing them of the position.

Curtains for ticket touts

Investigations by the Insolvency Service have led to the closure by The High Court of a number of unscrupulous ticket tout companies. The companies advertised tickets for rock concerts, festivals and sporting events on the internet but regularly failed to deliver the tickets to customers or grossly overcharged for them. Two of the sites were: www.londonticketshop.co.uk and www.londonticketmarket.com.

Several members of the public had complained about not receiving tickets for events. There were lengthy exchanges between unhappy customers on blog sites such as blagger.com. There had also been considerable press coverage with *The Guardian's Money* section and BBC 1's *Watchdog* pursuing the case.

One person wrote on blagger.com: "I bought two tickets to see MIKA for my boyfriend's Christmas gift and it's now the day before and I still don't have any tickets nor any communication whatsoever! I'm absolutely gutted. It's really disheartening and a waste of my hard-earned £120."

During the hearing, the High Court heard that Michael Rangos, who ran the four companies, had tried to hide his involvement from the Companies Investigation Branch (CIB) of the Insolvency Service.

Registrar Simmonds said that there had been a conspiracy to defraud the public and benefit the particular "gentleman" behind the companies. The companies are now in liquidation.

Restrictions on unfit company directors

Three directors of property investment companies have been given disqualification undertakings for between seven and 15 years, following investigations by The Insolvency Service.

The longest undertaking of 15 years is for Mr Kieran Connolly who originally ran a company called Mansion but subsequently traded under several other names. The company offered to make people into property millionaires within five years. It charged them a membership fee to build up a property portfolio, as well as fees for closing deals. Potential members were attracted by advertisements in national papers and trade magazines.

However, a fellow director, Mr Jamieson accused Mr Connolly of "misappropriating company funds", losing records and not dealing with complaints.

When the first company, Mansion, was placed in administration, Connelly set up a new company called Sterling Mansion in the same year. Mansion's clients were not fully informed that they had been transferred to Sterling and mistakenly believed that two companies had merged. Sterling also advertised its business through its website, in the national press, in trade magazines and on local radio broadcasts. The company had approximately 50 clients, who were charged £33,000 for the services provided.

Sterling's website and brochures made the pledge to members that they would be able to build an investment property portfolio to a value of £1m within 12 months, rising to £5m in five years. The properties were sourced through 'property finders', such as Seal Properties, which was paid 1% of the purchase price on each completed purchase. Once a property was found, a letter was sent to clients outlining the costs involved and the fees payable.

In early December 2004 a change took place in the management of Sterling. Mr Connolly left the company. After Mr Connolly's departure the number of complaints increased. Mr Jamieson put the company into Creditors Voluntary Liquidation in March 2005.

Meanwhile, Mr Connolly wrote to all Sterling clients in December 2004 stating that he had resigned from the company and was now "employed in obtaining a number of properties for other investment and development companies, who require properties from overseas countries" and as a "gift" he exclusively offered them buy-to-let properties in Turkey.

VAT dodger banned for 15 years

A former restaurateur who ran up a VAT bill of over £3m in an illegal trading spree between 16 and 19 January 2006 has received a Bankruptcy Restriction Order for the maximum allowable period of 15 years. Mr Maher Khater traded as a restaurateur before he was locked out of his premises for the non-payment of rent. He then moved to new premises and started trading in motor vehicles, central processing units and mobile phones.

Khater bought the goods from the EU free of VAT and then sold them to companies in the UK inclusive of VAT. Records show that he made purchases of £18,929,692 and sales of £22,219,516 inclusive of £3,309,290 of VAT in a period of four days from 16 to 19 January 2006.

He asked his customers to make payments to six unconnected third parties and to the bank account of his limited company with no payments to be made to his suppliers.

He also failed to make any provision to pay the VAT and had no system to ensure goods were delivered. Khater also failed to tell HM Revenue and Customs of his change in trade or the estimated volume of his trading.

He also managed to trade at a loss without giving any satisfactory reason for this. Since the investigation, he has informed the Official Receiver that he received £42,000 for his trading. The only way he could have done this was to use the VAT monies to offset his losses.

HMRC claims it has suffered detriment as a result of Mr Khater's actions and have submitted a claim for £3,554,530 to the Official Receiver.

Severe penalties for dishonesty

A 54-year-old woman who petitioned for bankruptcy has given a 10-year Bankruptcy Restrictions Undertaking and been sentenced to 18 months' imprisonment for criminal offences which came to light during the investigation of the Official Receiver (OR).

Christine Susan Dunville filed for bankruptcy and an order was made on 19 January 2005. She claimed she was unable to pay £37,000 of debts and disclosed no assets other than a vehicle. In fact, she had £29,000 in a joint bank account at the time of the bankruptcy order. The account was in the name of Christine Susan Townsend – the name she had adopted by deed poll in 2004.

During investigations, the OR had concerns that £19,707 had been received by Christine Dunville from a 77-year-old woman for whom she was acting as a paid part-time carer and reported the case to BERR. The OR's report and subsequent BERR investigations led to Townsend being prosecuted for offences under the Insolvency Act and Theft Acts.

A jury at Luton Crown Court heard how the OR had discovered the existence of the account during the usual investigation into whether Christine Dunville – the name she used on the petition, despite having changed her name to Townsend the year before – had been honest in the declaration of her assets.

In 2007 - 2008, 1145 directors were disqualified. Conduct that could lead to disqualification includes:

- continuing to trade to the detriment of creditors at a time when the company was solvent
- failure to keep proper accounting records
- failure to cooperate the official receiver and insolvency practitioner
- failure to submit tax returns or pay over to the Crown tax or other money due

£19,707 was traced to withdrawals in April 2004 from two accounts in the name of Mrs Marden, the elderly woman for whom Dunville worked as a carer. Mrs Marden passed away in January 2008, aged 81.

The jury unanimously found Townsend guilty on both counts, and she was sentenced in November 2008 to 15 months for the theft and a further three months for the Insolvency Act offences.

Total lack of records

Leslie Walker Crossland has given a disqualification undertaking of 14 years. The evidence to prove him an unfit director was plentiful. He was already disqualified as a director when between September 2006 and December 2007 he acted as a director and in the management of a Total Solutions (Build) Ltd. He failed to ensure that Total maintained, preserved and/or delivered adequate accounting records for the whole period of trading. It has therefore not been possible to verify the sales income received or to confirm whether it was used for legitimate business purposes.

Third party evidence confirmed that between 13 February 2007 and 7 September 2007 at least £22,103 was received but not paid into the company's bank account. In the same period, at least £60,659 was paid out of Total's bank account but due to the lack of adequate records it was not possible to verify and/or vouch for how these monies were spent or to confirm that they were used for legitimate business purposes. During the period of trading, sales income was paid into the personal accounts of both Crossland and his son, and after 7 September 2007 all sales income was paid into these accounts. Crossland also allowed a cheque to be issued for £2,077 on 23 October 2007 in payment for goods supplied, a month after the bank closed Total's account. This debt remained outstanding as at the date of liquidation.

A bankrupt who has been dishonest or in some other way to blame for their bankruptcy may have a court order made against them or give an undertaking to the Secretary of State which will mean that bankruptcy restrictions continue to apply after discharge for a period of between two to 15 years. Since their introduction as a result of the Enterprise Act, some 4,000 bankrupts have been made the subject of Bankruptcy Restriction Orders or Bankruptcy Restriction Undertakings.

Bankruptcy restrictions include:

- ✗ obtaining credit of £500 or more either alone or jointly with any another person without disclosing the bankruptcy.
- ✗ carrying on business (directly or indirectly) in a different name from that in which the person was made bankrupt, without disclosing the name in which they were made bankrupt;
- ✗ being concerned (directly or indirectly) in promoting, forming or managing a limited company, or acting as a company director, without the court's permission.
- ✗ holding certain public offices.

Scheme offers hope for those least able to pay

The Insolvency Service has been working with the debt advice sector to design a scheme aimed at providing debt relief for those people who have little surplus income and have no prospect of being able to pay off their debts in a reasonable time.

Debt Relief Orders (DROs) will provide those who cannot pay their debts and have relatively low liabilities, little surplus income and few assets, with immediate relief from creditor action. This will lead to a write-off of debts included in the Order, at the end of a one-year moratorium period. The DRO process will be readily accessible but those who seek to abuse the system may face extended restrictions for a period of between 2 to 15 years.

The DRO is the result of extensive consultation with creditors, advisors and interested parties examining the accessibility of debt relief. Nick Howard, Head of Policy Development for Personal Insolvency, said: "There are a significant number of debtors who are currently unable to access any form of debt relief because of the costs involved. DROs provide the debtor with official notification that an individual is subject to debt relief proceedings which they can show to their creditors if necessary, and it provides debt relief for people who have insufficient surplus income to pay off their debts once they've paid for their essentials."

Under the new scheme, debtors will pay a £90 fee directly to the Official Receiver, initially using the 'Payzone' system and possibly other sites in due course. Applications for a DRO can only be completed online with an authorised intermediary – a skilled debt advisor authorised to act as an intermediary. Nick Howard went on to say: "Applications for a DRO must be completed with an authorised intermediary so that we can ensure the person who is subject to an Order understands and receives debt advice before going ahead with the application. Being subject to a DRO can affect their credit rating for up to six years, so like all forms of debt relief it is a serious step for anyone to take."

This process will be available from April 2009. More information will be available on the Insolvency Service website – **www.insolvency.gov.uk**.

Ethical code for insolvency profession agreed by Joint Insolvency Committee

All the bodies that authorise and regulate insolvency practitioners have agreed a new ethical code which came into force in January 2009.

The 'Insolvency Ethical Code' (the Code) published by The Insolvency Service, has been designed to assist insolvency practitioners and their staff to undertake their work to high professional and ethical standards.

Based on the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour, the Code provides a framework that applies to all aspects of an insolvency practitioner's professional work relating to, or that may lead to, an insolvency appointment.

The Code also provides specific guidance regarding pre-packaged administrations; the means of obtaining work; the use of specialist agents; and referral fees. Most insolvency practitioners are qualified accountants and the Code is aligned to a model Ethical Code adopted by the International Federation of Accountants.

The Code will provide practitioners with clear consistent guidance on what they can and cannot do

Mike Chapman, Head of Insolvency Practitioner Regulation at the Insolvency Service, said: "Integrity and objectivity have always been fundamental principles that insolvency practitioners should apply in all aspects of their work. The new Code will provide practitioners with clear consistent guidance on what they can and cannot do in their professional life and assist them to work to high professional and ethical standards."

IPs will be expected to take reasonable steps to identify any threats to compliance with the fundamental principles. Breaches of the Code of Ethics may be taken into account by an IP's authorising body when assessing the IP's conduct.

Proposals on advertising in voluntary liquidations

In late 2007, we consulted on proposals for the modernisation and streamlining of insolvency procedures. The consultation document and summary of responses to the consultation are on our website. The proposals in respect of advertising in voluntary liquidations are being taken forward by a separate Legislative Reform Order (LRO). The draft of The Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 still has to be examined by the appropriate Parliamentary Committees who will decide if the proposed changes should be made.

If the Parliamentary Committees approve the proposals in their current format, the proposal will allow discretionary advertising of initial meetings of creditors in a voluntary liquidation and remove the restrictions on the form such advertisement can take. The obligation to advertise in the *Gazette* will remain. For more details visit **www.insolvency.gov.uk**.

Investigations and enforcement services launched

The Insolvency Service has created the Investigations and Enforcement Service (IES) which brings together the current businesses of Investigations, Enforcement and Companies Investigation Branch to form a national investigation and enforcement structure.

Priorities for the new business include:

- maximising the quality and efficiency of investigation and enforcement processes by identifying and promoting best practice and taking a corporate approach to the pursuit of excellence; and
- engaging with stakeholders with the aim of maximising the impact of investigation and enforcement activities.

"This is an exciting time for The Service," says Stephen Speed, Insolvency Service Chief Executive. "The establishment of IES marks a major step forward. Our vision is of a vibrant, outward-looking and ambitious organisation that engages with and is responsive to the concerns of our stakeholders."

Charity update – target smashed

The Insolvency Service raised £35,000 for Cancer Research UK, smashing its original target of £10,000. This was the first time The Service has adopted a charity of the year and it proved a successful partnership.

The cheque for £35,000 was handed over to Sam White, a representative of Cancer Research UK, at a ceremony at the Bloomsbury Street office. Sam said: "Often in Charity of the Year partnerships, the efforts can be focused solely on the head office. With the Insolvency Service, I know that offices all over the country have really got on board with so much enthusiasm and energy. I'd really like to congratulate and acknowledge your success here, because I know that is quite an undertaking."

Sam also outlined how the charity is spending the money raised. This ranges from health awareness campaigns to prevent cancer in the first place through to clinical trials of new drugs to improve survival rates in lung and prostate cancer.

Last year the charity published research showing that survival from cancer has doubled in the last 30 years. Cancer Research UK is also putting pressure on government to provide better screening across the UK. Over 100,000 people have already pledged their support for this campaign.

In her acceptance speech, Sam acknowledged the poignancy of the Service's fundraising efforts given the sad loss of former chief executive, Desmond Flynn, who died last year.

Feedback

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