

NEWSLETTER

Spring 2018

Effect of failed Company Voluntary Arrangement (CVA) on pre-existing agreements

Following the Administration of BHS and the consequent termination of its CVA it went into liquidation. The liquidators applied to the court for directions on the treatment of property lease agreements which had been amended for the purposes of the CVA. Did the revised terms of the leases apply in the liquidation or, given the termination of the CVA, were the pre-existing terms applicable? The court gave the liquidators short shrift. The CVA had included the following:

"Upon a termination ..., the compromises and releases effected under the terms of the CVA shall be deemed never to have happened, such that all Landlords and other compromised CVA Creditors shall have the claims against [the Company] that they would have had if the CVA Proposal had never been approved.."

The liquidators argued that the CVA was a contract which varied the leases, that the operation of the clause in effect imposed a penalty because BHS' liability was increased as a consequence of insolvency (contrary to public policy) and it breached the *pari passu* rule by increasing the debt due to the landlords to the detriment of the other creditors.

The court disagreed. 'The fact that the CVA has contractual effect does not mean that it has every attribute of a contract or that every principle of the law of contract applies to it.' It followed that the law regarding penalties and *pari passu* did not apply. The court concluded that 'the CVA provided for a Rent Concession Period to enable the Company's finances to be re-structured; that objective was not achieved and the Company defaulted; in those circumstances, the Company must accept the consequences, which (by the terms of the CVA itself) were that the concession be unwound'.

The court also found that the additional sums falling due to Prudential upon the termination of the CVA were payable as an administration expense or administration expenses for the period during which the (original) administrators were in possession of the premises for the purposes of the administration.

[Wright & Anor \(Liquidators of SHB Realisations Ltd\) v The Prudential Assurance Company Ltd \[2018\] EWHC 402 \(Ch\) \(06 March 2018\)](#)

The Employment Rights (Increase of Limits) Order 2018

This Order will increase the compensation and weekly pay limits that are payable from 6 April 2018.

- The maximum Unfair Dismissal "Compensatory Award" will rise from £80,541 to £83,682;
- The limit on a week's pay for the purposes of calculating statutory redundancy payments and the basic award for unfair dismissal, will increase from £489 to £508;
- Guarantee pay will increase from £27 to £28 per day;
- The minimum Basic Award for Unfair Dismissal, in cases where a dismissal is unfair in certain cases due to health and safety, employee representative, trade union, or occupational pension trustee reasons, will increase from £5,970 to £6,203.

The new rates take effect where the 'appropriate date' for the claim (such as the date of termination in an unfair dismissal claim) is on or after 6 April 2018.

Where the appropriate date is before 6 April 2018, the old limits will still apply, even if compensation is awarded after 6 April.

Insolvency Service Statistics

	2017	2016	Change
Corporate			
Compulsory Liquidations	2,799	2,930	-4.5%
Creditors' Voluntary Liquidations	12,861	11,890	8.2%
Administrations	1,289	1,374	-6.2%
Company Voluntary Arrangements	292	346	-15.6%
Administrative Receiverships	2	5	-60.0%
	<u>17,243</u>	<u>16,545</u>	4.2%
Personal			
Bankruptcies	15,082	15,044	0.3%
Debt Relief Orders	24,894	26,196	-5.0%
IVAs	59,220	49,417	19.8%
	<u>99,196</u>	<u>90,657</u>	9.4%

Corporate insolvency numbers were inflated by two "bulk insolvency" events: large numbers of connected companies entering insolvency following changes to claimable expense rules. Excluding these bulk insolvencies the increase in corporate insolvencies was 2.5%.

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If you would prefer to receive your newsletter by email please contact claire.woodman@richardjsmith.com

Website: www.richardjsmith.com

Contact Details

53 Fore Street, Ivybridge, Devon PL21 9AE
Tel: 01752 690101 Fax: 01752 690808

Norfolk House, 16 Lemon Street, Truro TR1 2LY
Tel: 01872 261132 Fax: 01872 261134

24 Southernhay East, Exeter, EX1 1QL
Tel: 01392 424063

Partners

Giles Frampton giles.frampton@richardjsmith.com
Hamish Adam hamish.adam@richardjsmith.com
Sam Bailey sam.bailey@richardjsmith.com

Managers

Ken Cole ken.cole@richardjsmith.com
Sue Proudfoot sue.proudfoot@richardjsmith.com

Administrators

Karen Quant karen.quant@richardjsmith.com
Becky Cox becky.cox@richardjsmith.com
Shaun Rowe shaun.rowe@richardjsmith.com

Cashier

Mandy Swainson mandy.swainson@richardjsmith.com