

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

Case sets precedent for creditors chasing outstanding legal fees

A landmark case in the Supreme Court has set a precedent for creditors hoping to reclaim outstanding legal fees. In the case of *Coventry v Lawrence* the Supreme Court has handed down its long-awaited decision on whether conditional fee agreement (CFA) uplift is recoverable from the losing party.

They have ruled that that the entitlement to recover the uplift is compatible with Article 6 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol to the Convention and so is not in breach of the paying party's human rights. But what was the background to the case? And what impact is it likely to have? The claimants, Coventry and others, were the owners of a Suffolk house and brought an action for nuisance against Lawrence and another, the defendants, who operated a motorsports venue nearby.

In an earlier hearing, the claimants won and obtained damages of £20,750 and the defendants were ordered to pay 60% of the claimant's costs on a standard basis. The defendants accepted their liability to pay the claimants fees for the action, but challenged their obligation to pay the additional fees to pay for the claimants CFA success fee and After The Event (ATE) insurance premium, arguing that this was incompatible with their rights under Article 6 of the ECHR (right to a fair trial) and Article 1 of the First Protocol to the Convention (right to enjoyment of possessions).

However, after much deliberation, the Supreme Court found that the claimants' right to recover the additional costs was not incompatible with the ECHR. They held that where the costs had been necessarily incurred, they would be deemed proportionate, even if those costs were disproportionately high to the value of the damages recovered. Lord Mance said: "It is difficult to conceive of any solution



that would cater for such cases, without imperilling the whole system ... Litigants and their lawyers have justifiably relied on its validity."

The CFA regime changed in April 2013, with the result that CFA uplifts and ATE premiums are no longer recoverable from the losing party, save for the few listed exceptions to that rule, such as insolvency practitioners. Many litigants who had relied upon CFAs and ATE policies feared that a decision in favour of the defendant could have made them liable to substantial costs,

so this decision will be welcomed by those currently chasing outstanding fees through the courts.

At Newman and Partners we appreciate the difficulty that claimants can face trying to recover costs and outstanding payments from defendants, and the effect it can have on them and their business. Our insolvency practitioners can help your clients look at the various options open to them and find the solution that meets your client's requirements. For more information, please contact us.

One in four SMEs suffer from significant debt

A quarter of small and medium-sized enterprises (SMEs) in the UK have suffered from debt issues during the last 12 months, according to a new study. The latest SME Confidence Tracker from Bibby Financial Services has shown that as many as 1.3million SMEs may have been affected by insolvency or the inability to pay one or more of their key suppliers during the last year.

The proportion of SMEs affected by debt has remained largely unchanged since the Tracker was launched in the first quarter of 2014, suggesting that debt continues to be an issue within SMEs. Those SMEs with revenues of £1m or more seemed the worst affected, with more than a third saying they had experienced problems with bad debt during the 12 month period.

David Postings, chief executive of Bibby Financial Services said, "Bad debt is a serious issue affecting a large number

of businesses in the UK. The issue is particularly problematic for smaller firms who have often footed the bill for upfront costs even though they don't have sufficient cashflow to survive. SMEs need to be aware of the implications of bad debt and how such losses can have an impact on their businesses.

"A bad debt can occur for a number of reasons, including customer insolvency or protracted default. Often business owners don't have the financial resources or

access to advice to pursue legal action."

The SME Confidence Tracker also revealed the effects of bad debt had caused small businesses multiple issues, with 27 per cent facing lower profits than they expected, around five per cent delaying investment plans and four per cent saying they faced insolvency as a result of outstanding debt. If your clients are concerned about outstanding debt and would like advice about the options open to them, please contact us.

National Living Wage causes solvency fears at SMEs

Earlier this year the Chancellor announced the introduction of a new National Living Wage in his Summer Budget, which will see wages paid by employers increase dramatically over the next five years.

Under the new policy, employers will have to pay employees over the age of 25, £7.20 an hour from April 2016, followed by more increases up to £9 an hour by 2020.

This sudden increase in wages for a large majority of the UK workforce, while welcomed by some, has received harsh criticism from labour intensive industries that rely on lower wages to maintain an effective workforce within their organisation. In fact, many business organisations have gone as far as to say that it could lead to the closure of some of the nation's smaller businesses.

One of the sectors most affected by the proposals for the National Living Wage is the care industry. Following continuing cuts to public expenditure, many care businesses are already struggling to maintain growth and financial stability, but many feel that this increase to wages will be unsustainable.

Five of the UK's largest care providers, Four Seasons Health Care, Bupa, HC-One, Care UK and Barchester, have said that the National Living Wage will cost the care sector up to £1bn by 2020 and could cause the closure of many homes and smaller care groups. Martin Green, the chief executive of Care England, which

represents the industry, said: "Without adequate funding to pay for the National Living Wage, the care sector is at serious risk of catastrophic collapse."

Charities are also likely to be significantly affected by the introduction of the National Living Wage. While many workers in this sector are unpaid volunteers, there still remain a large proportion of people receiving low wages for the work they do within charitable organisations, especially if they are providing vital services to the public. Caron Bradshaw, chief executive of the Charity Finance Group, said: "The National Living Wage is to be welcomed, but it begs the question of whether the government will increase its payments to those providing public services. If not, this could seriously squeeze the budgets of those providing services to the most vulnerable in our society.

"We think it is unlikely that contracts and grants will be increased to make up for this. So, in effect, charities will have to find savings to pay for this within their existing budgets – a pretty difficult task."

However, the biggest number of employers to be affected by the proposed changes to wages could be the retail sector. Store executives and industry experts have

said that the retail sector, which employs a vast number of staff on or just above the national minimum wage, could be forced to make redundancies, reduce staff working hours or pass on the additional cost to customers.

James Lowman, the chief executive of the Association of Convenience Stores, said: "The introduction of a compulsory living wage will have a devastating impact on thousands of convenience stores ... to introduce this undermines the independent Low Pay Commission and is a reckless way to impose a massive burden on small businesses."

It seems then that the introduction of the new National Living Wage will have a significant impact on employers, especially some small businesses that are reliant on low-skilled low-paid workers. Many of these businesses could face the prospect of insolvency and almost all businesses will have to look at their spending to ensure that their services remain cost effective.

If your clients are concerned about the prospect of the National Living Wage and would like advice about maintaining their solvency following its introduction, please contact us.

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