

# Newman & Partners

Licensed Insolvency Practitioners

## FOCUS ON INSOLVENCY BULLETIN

Welcome to the latest issue of our Focus on Insolvency 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](mailto:insolvency@newmanandpartners.co.uk)

# Criminal Bankruptcy reconsidered as deterrent to fraudsters

**The Insolvency trade body R3 is calling on the Government to re-introduce criminal bankruptcy to help return money from fraudsters to their victims.**

A new report published by the group says re-introducing the law – abolished in 1988 – would help with the retrieval of funds from defendants in an insolvency case in a more effective manner than is possible under the current system of confiscation or criminal orders.

Re-introducing criminal bankruptcy will mean that all of an insolvent individual's assets could be realised to repay victims rather than just the proceeds of crime. It would also help with the retrieval of overseas assets that are currently offered greater protection under the law.

R3 said the change would also benefit the Government, who are finding it increasingly difficult to take action against fraudsters due to cuts to their budgets. The trade body pointed out that insolvency practitioners (IPs) already have the powers necessary to investigate fraud and that they should be employed widely to make up for cuts to public funding.

Under the current law, IPs' powers include the court-sanctioned ability to: interview under compulsion; search and seize property associated with fraud; obtain freezing orders on assets; overturn transfers of assets to third parties; obtain passport orders to prevent bankrupts from leaving the country; and order the delivery up of records.

Giles Frampton, president of R3, said: "Insolvency practitioners already have

significant powers to investigate fraud and find redress for victims. At the moment, these powers are only used in a limited number of situations: increasing the opportunities to use insolvency practitioners' powers would help bring fraudsters to justice and ensure victims are properly compensated."

"Given government spending and resource cuts, it's likely there are a number of cases involving fraud that government agencies just can't afford to pursue. Insolvency practitioners can provide much-needed extra capacity and additional powers to fight back against fraud."

Criminal bankruptcy – which would see those convicted of fraud put into bankruptcy where the loss or damage caused to others by their offence exceed £15,000 – was removed from the statute book in 1988 as part of legislative reforms.

Giles Frampton added: "Insolvency practitioners are Officers of the Court and are highly regulated and qualified. Extending the opportunities to use their powers would iron out existing inconsistencies, such as the fact that companies can be made insolvent in the public interest, but individuals can't."

Re-introducing these powers would place an extra burden on IPs, but would help individuals with the recovery of debt where once it would not have been



possible. This will be welcomed by a number of businesses and individuals who have found themselves in difficulty following a customer, client or supplier becoming insolvent.

While many will be left waiting to see if the law is re-introduced you don't have to. If you would like help recovering debt from another party the team at Newman and Partners can help. We have years of experience helping clients recover outstanding debts from businesses that have become insolvent or who are unwilling to pay. For more information, please contact us.

# Utilities companies must continue offering service to struggling businesses, says Government

Insolvent businesses are to be given a helping hand by the Government, who have brought in new measures to ensure their basic utilities continue to be supplied once they enter into recovery talks – a policy which is designed to help them back from the brink of bankruptcy.

The new Government guarantee protects the supply of essential services to business undergoing rescue talks for the duration of the recovery. The new policy covers water, gas and electricity supplies, as well as essential IT services for the first time.

Business Minister, Jo Swinson, announced the guarantee earlier this month. She said suppliers would be prevented from cutting off essential services during rescue talks or increasing charges to cover the risk. In order to protect suppliers of essential services, they will be guaranteed payment ahead of other creditors providing services during that time and can ask for a guarantee of payments from insolvency practitioners (IPs).

The new policy comes after the Government's earlier Enterprise and Regulatory Reform Act, which prevented

suppliers withdrawing essential services after a company entered administration, was found to not go far enough in providing balanced coverage to firms and suppliers. Under the original Act IT suppliers were not in the original safeguard list, but have been added to a new category of essential supplier along with 'on sellers' of utilities.

In order to get the support of suppliers they have been given the option to apply for additional safeguards. This includes the right to terminate business if post-insolvency supplies remain unpaid for more than 28 days. On top of this, suppliers running into difficulties themselves will be able to apply to the court to cancel contracts on the grounds of hardship.

The reforms to the Act are expected to come into force in October, although there remain some concerns among IPs



about the need to obtain a guarantee that may prevent the new policy from being completely effective. For more information, please contact us.

## Government extends 'no-win, no-fee' funding arrangements

After a long and protracted battle with some of the UK's largest trade bodies the Ministry of Justice (MoJ) has decided to extend the insolvency sectors exemption from 'no-win, no-fee' arrangements; ensuring that an estimated £160m can be reclaimed by creditors.

The U-turn by the MoJ means that insolvency litigation will still continue receive an exemption from the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act, which was due to expire in April. The decision comes after trade bodies and MPs put co-ordinated pressure on justice minister Chris Grayling to maintain the exemption.

Under the exemption, insolvency practitioners will continue to be able to use 'no-win, no-fee' funding arrangements to pursue business owners and third parties for outstanding creditors' money. It is believed that the decision will protect £160m of creditors' money a year, which may

have been kept by fraudulent or negligent directors or third parties if the exemption hadn't been maintained. This is because without the exemption many of the court cases against such parties would not have been economical for the majority of creditors.

Giles Frampton, president of R3, said: "We are absolutely delighted by the Government's decision. Insolvency litigation brings back millions of pounds every year to small businesses and taxpayers owed money by negligent or fraudulent directors. This money would have been put at risk if insolvency practitioners lost their ability to use 'no-win, no-fee' funding from April."

He added: "The decision is a big boost for the fight against business fraud and malpractice, and will help keep smaller creditors on a level playing field with those determined to withhold money from them."

This news will be welcomed by creditors who feared the worst when it was announced that the exemption would be removed. If you would like help pursuing debts from fraudulent or negligent directors or third parties then Newman and Partners can help. We have years of experience recovering debts through the courts and can help ensure the money you're owed is returned. For more information please contact us.

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