The Insolvency Service

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DEAR INSOLVENCY PRACTITIONER
Issue 165 – July 2024
Special edition

Dear Reader,

Please find enclosed the latest articles from the Insolvency Service:

In this issue

83) Impact of the R v Palmer judgement on the office-holder's duties under TULRCA

On 1 November 2023, the United Kingdom Supreme Court handed down a judgment on the *Appeal of R (oao Palmer) v Northern Derbyshire Magistrates' Court,* ruling that an administrator, and by extension any other insolvency officeholder, is not an "officer" of the company under s. 194(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), as they are appointed under the Insolvency Act 1986 rather than as a part of the company's constitution.

Effectively, this means that administrators and other insolvency officeholders cannot be prosecuted as a secondary party under the mentioned provisions.

Practitioners should note that:

- The judgment only affects the officeholder's individual criminal liability and, specifically, the liability under s. 194(3).
- The company, as employer and regardless of insolvency, remains liable to notify the Secretary of State (SoS) under s. 194(1) TULRCA, subject to s. 130 of and para 43(6) of Schedule B1 to the Insolvency Act 1986.
- Officeholders **should take all reasonable steps to continue to comply with s. 193 TULRCA** in any future appointments.

Failure to notify the SoS could justify misconduct procedures by the officeholders' respective regulatory bodies, leading to potential regulatory and disciplinary action.

The information included in these notifications is crucial to the Government's ability to process employees' applications for statutory redundancy pay. Timely notifications enable the Redundancy Payments Service to deal with claims efficiently, and also assist the relevant government agencies responsible for managing the re-deployment of staff, or increased benefit applications.

Enquiries regarding this article may be sent to:
RPS.Stakeholder@insolvency.gov.uk

70. Leasehold and Freehold Reform Act: New requirements in relation to insolvency

The Government has placed new requirements on Insolvency Practitioners in England, which came into force on 24 July 2024.

Section 125A has been inserted into Part 5 of the Building Safety Act 2022, through an amendment introduced through the Leasehold and Freehold Reform Act 2024. The building safety amendments can be found in Part 8, Sections 118 and 119 of the Leasehold and Freehold Reform Act, which can be found here: Leasehold and Freehold Reform Act 2024.

You must comply with new legal requirements.

Insolvency Practitioners will need to notify relevant regulators if they are appointed to the insolvency of an accountable person with repairing obligations for a 'relevant' or higher-risk building as defined in Section 65 of the Building Safety Act 2022.

The regulators that must be notified are: Local Housing Authorities and Fire and Rescue Services as well as the Building Safety Regulator where a higher-risk buildings is affected. A local authority, or fire and rescue service, need to be notified about buildings, or registered estates or interests in buildings, in their area.

Insolvency Practitioners are required to submit information to:

- Chief Executives of all Local Authorities in the geographical area(s) which capture the relevant building(s). Relevant Local Authorities can be found via gov.uk by entering the postcode of the relevant building at Find your local council.
- Fire and Rescue Services in the geographical area(s) that capture the relevant building(s). Contact details for FRSs can be found by entering the postcode of the relevant building via the Fire England website: Fire England.
- in the case of higher-risk buildings, the Building Safety Regulator via gov.uk: Contact the Building Safety Regulator. Practitioners are advised to use the 'Submit a Question' option via this link.

Information must be provided within 14 days of an Insolvency Practitioner's appointment.

The purpose of this new duty is to make sure resident safety is prioritised, should the responsible person of a residential building of at least 5 storeys or 11m in height (a "relevant building") become insolvent. This will allow the

relevant regulator to consider any significant building safety issues (such as unsafe cladding), enabling them to exercise their functions with regard to the safety of residents.

For the purposes of this amendment, a "responsible person" is:

a. in the case of a higher-risk building, the accountable person for the building (as defined in section 72 of the Building Safety Act);
b. in the case of a relevant building that is not a higher-risk building, this would be the accountable person for the building if section 72 of the Building Safety Act were read as applying to such a building (and as if the reference in that section to a residential unit were a reference to a dwelling).

The information that must be provided within 14 days of an Insolvency Practitioner's appointment is as follows:

a. the name and address of the person in relation to whom the Insolvency Practitioner is appointed;
b. the address of each higher-risk or relevant building for which the person is a responsible person
c. an official copy of the register of title and title plan relating to each registered estate or interest the person holds in such a building, if any;
d. the nature of the practitioner's appointment;
e. the practitioner's name, address, telephone number and email address (if any);
f. so much of the information set out in the table in rule 1.6 of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) as is known to the practitioner.

For the purposes of this duty, the term 'Insolvency Practitioner' refers to an administrator, an administrative receiver, a receiver appointed by the courts or by a mortgagee, a liquidator or a trustee in bankruptcy.

Insolvency Practitioners should also be aware that the Government has made a further amendment to the Building Safety Act 2022 by repealing section 125 of Part 5 of the Act.

Section 125 was intended to allow Insolvency Practitioners to approach the relevant insolvency court for an order to seek to recover costs for remediation. The repeal is due to a potential conflict with insolvency law, under which remediation funds recovered could potentially be redirected to creditors.

The Ministry of Housing, Communities and Local Government will continue to provide further information through future editions of 'Dear Insolvency Practitioner' if there are any further changes.

Enquiries regarding this article may be sent to*:*
buildingsafetyandreformcorrespondence@levellingup.gov.uk