

THE INFORMER



from the team at Professional Legal Collections Limited

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INSOLVENCY NEWS

High Court rules that Administrators to be prosecuted personally for failure to notify Insolvency Service of collective redundancies.

The High Court decision in R (on the application of Palmer) v Northern Derbyshire Magistrates Court declared that an administrator will be personally liable for failing to notify the Insolvency Service of collective redundancies as a result of a company being put into administration.

Section 193 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), obliges an employer proposing to dismiss 20 or

more employees at one establishment within a 90-day period to notify the Secretary of State in writing of his proposal. This notification must be provided prior to notifying the employee of the decision to terminate their contract of employment and at least 30 days before the first of those dismissals takes place. Failure to comply is a criminal offence.

In the above case Mr Palmer was a joint administrator of West Coast Capital (USC)

Limited. His responsibilities included 'preferential claims' and 'employees'.

In January 2015, USC filed a notice of intention to appoint Administrators, which resulted in the USC warehouse ceasing operations. On 13 January 2015 USC went into Administration and the following day the Administrators made all 84 warehouse employees redundant.

In an attempt to ascertain whether an HR1 had been sent, the Insolvency Service discovered that this had been overlooked and had been eventually emailed on 4 February 2015. Despite Mr Palmer signing and dating the HR1 on 14 January 2015, criminal charges were issued against him. In the eyes of the law he had failed to comply with section 193 TULSCA.

It was the High Court's finding that the original ruling was correct. An Administrator can indeed be prosecuted under section 194 TULRCA. This is because an Administrator is both an officer of the court and an officer of the company. Once they assume office, no one else can give statutory notice on behalf of the company without their direction. As a result of this ruling it is imperative that Administrators/Liquidators and companies



seriously consider whether future plans put in place for the company involve redundancies of more than 20 people. If this is the case, the office-holder should submit the HR1 without delay.

Amendments to the Directors Disqualification Act and the affect on dissolved UK companies

On 15 December 2021 the Directors Disqualification Scheme was updated through a new Act which is relevant to the directors of dissolved companies.

Prior to this Act, following the investigation of a live business, if the Insolvency Service deemed the standard of conduct of a director to be deficient it could apply to court to have that director disqualified. However this did not extend to a business that had been dissolved, as a prerequisite of an investigation into conduct was that the company must have been restored to the register.

The Company Directors Disqualification Act has been amended to allow the investigation of disqualification to proceed regardless of whether the company is live or dissolved. The

Act received royal accent on 15 December 2021 and will come into force two months after that date.

This long overdue amendment has been implemented by the government in an attempt to tackle the three main complaints which the Insolvency Service receives regularly with regards to dissolved companies. Firstly, it was of concern that directors could avoid investigation by dissolving their company. Secondly there is the problem of Phoenixism, which is the fraudulent practice of terminating a business as bankrupt while secretly using its assets to set up another business; this allows the business to drop its liabilities and avoid investigation. The third concern was that the dissolution process was being used in place of formal insolvency proceedings to avoid scrutiny of their conduct.

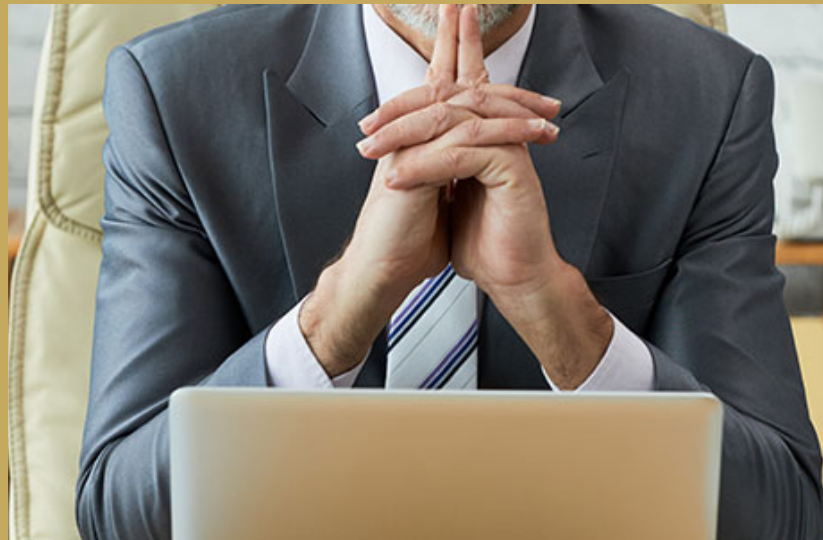
Whilst it is likely that the implementation of the Act will address the issues raised by the government, there is concern that companies will still be adversely affected by a prerequisite of the previous regime. Namely the need for the existence of an interested party to raise concern of the director's misconduct to the Insolvency Service. It is a requirement that directors inform the interested party, commonly creditors, of the company's intention to dissolve before such plans come into force. Due to reasons such as the company being unaware of creditors' existence or quite simply just ignoring the proper process, such practices are not always carried out. Once the company has been dissolved, it is highly unlikely that anything can be done. Unless, that is, the case includes significantly bad misconduct. In such cases the directors' dissolved companies may indeed be investigated.

It is important that there is clarity regarding the intention of the changes wrought by the new act. Dissolution can still be used in appropriate cases, such as cash flow insolvency and should be a viable alternative to end the life of a business when the circumstances dictate. However dissolution must no longer be seen as an substitute for formal insolvency proceedings.

Once in place the Act will take effect retrospectively, meaning that directors' conduct within dissolved companies can be investigated regardless of whether the misconduct occurred before the implementation of the Act or not. However, a ruling found in the current Company Directors Disqualification Act 1986 states that the investigation of a dissolved company can only be carried out retrospectively based on the three years from the date of company dissolution.

Now that the Act is written in law, anyone planning to take the dissolution path to avoid the consequences of any misconduct should be encouraged to map out a different route.

They may not enjoy where that journey could end.



COMPLIANCE

Did you know that Professional Legal Collections can also help you achieve your compliance goals? Read on to find out how we can help you.

We are now a licensed re-seller of a business management platform known as Activ. Whether you are a company looking to gain International Standards Organisation (ISO) certification for your business or whether you already hold ISO certification and are looking for a more dynamic streamlined approach to

managing the workload that comes with them, we can help.

We are here to help you in areas such as Quality (ISO 9001), Occupational Health & Safety (ISO 45001) and Environmental Management (ISO 14001). Activ can also be used as a tool to aid in any evidence based auditing process that you may need to go through to meet the high standards your industry demands.

Working collaboratively we will get you up and running on our business management system

and provide you with a bespoke level of support and consultancy; giving you peace of mind with regards to compliance so you can spend more time working on your business.

If you've read this far but are still unsure as to whether ISOs are right for your business let's delve a little deeper. Activ is not just for ISOs!

Working with Professional Legal Collections and implementing our business management system will, in the longer term, save you money and give you greater security.

If you are a small to medium business that is using a lot of paper or storing files on employee devices, we can help. Using Activ we will collate all of your files into one easily manageable, accessible cloud based solution. Not only will this prevent costly server purchases but it will also avoid the loss of

data if a computer goes down. Furthermore, Activ can be accessed from anywhere by anyone with a user account, even on their mobile phone. You will always be in control.



COMPLIANCE NEWS

COVID -19

With the ever-changing situation regarding COVID it can be easy to fall out of line with current recommendations, rules and policies. Follow the link below for the latest updates.

<https://www.gov.uk/coronavirus>

There has been much discussion and debate regarding getting vaccinated, how and when to test, working from home, how long you need to isolate for and whether 'it was a work gathering' as opposed to a party (you know who we are talking about!).

There is lots of other information that employers also need to be aware of pertinent to the current situation that we find ourselves in. One example is that since 10th December 2021 when an employee goes off sick, for any reason, their employer must wait until the employee has been absent for 28 days (including non-working days) before they can ask for proof of sickness such as a fit note (otherwise known as a doctors certificate).

ENVIRONMENTAL

Hot on the heels of the COP26 Climate Change Conference 2022 the Government have unleashed a raft of new legislation regarding environmental issues.

On 1st April 2022 these regulations bring into effect the provisions of the Finance Act 2021 that will implement the plastic packaging tax on producers and importers of plastic packaging products.

If this effects your business, full details can be found here:

[Finance Act 2021, Part 2 etc \(Plastic Packaging Tax\) \(Appointed Day\) Regulations 2021](#)

There are also new rules regarding what constitutes 'plastic packaging product'. These rules are also part of the Finance Act 2021 and are known as [The Plastic Packaging Tax \(Description of Products\) regulations 2021](#).

These regulations come into force on 1st April 2022.

CHANGES TO BUILDING REGULATIONS

As more and more people choose electric vehicles, it is apparent that many feel one of the biggest barriers to doing so is the charging infrastructure.

One of the many measures being put into place by the Government to help increase the uptake in electric vehicles are the changes to [Building Regulations etc. \(Amendment\) \(England\) \(No.2\) Regulations 2021](#). These regulations create a new 'Part S' in schedule 1 of the Building Regulations 2010. It sets out the requirement for electric vehicle charging points and associated cable works to be installed in all new homes, non-residential buildings and building undergoing major redevelopment where there is associated parking in England.

In addition to the installation of these new charging points there are also new regulations for the charging points themselves. Click the link for full details, [The Electric Vehicles \(Smart Charge Points\) Regulations 2021](#).



ISO 9001

WHAT IS ISO 9001?

ISO 9001:2015 is an internationally recognised standard in quality.

It is built around seven fundamental principles and sets out a frame work of best practice, not just in regards to the products and services you offer but also in how your business operates.

It gives clear methods of work on how to identify risk and opportunities in your business, turn these in to objectives and then manage your processes, people and resources to meet the quality objectives of the business.

Throughout all areas of the 9001 standards there is emphasis on the importance of continually reviewing all areas of your business and learning from the outcomes of these reviews to achieve continual improvement.

The customer is at the heart of ISO 9001. By following the standards set out, your business will increase its awareness of customer needs

and expectations and ensure that you achieve optimum customer satisfaction

WHY USE IT?

Today's market is becoming more and more defined by customer expectations.

They are better educated and more demanding when it comes to the service they expect from businesses, suppliers and associated partners too.

Add to this the ease with which the internet allows people to provide feedback or vent frustrations about a brand, possibly quickly damaging vulnerable reputations, they are even more influential than before.

ISO 9001 will give your business the tools to handle this.

HOW CAN MY BUSINESS GET ISO 9001?

We can support you through the process of implementing an ISO 9001 Quality Management System.

To enjoy the benefits that the ISO 9001 standard will bring to your business contact us for a free consultation and demo.

Embrace a fully supported, user friendly system of work that optimises customer satisfaction.



MEET THE TEAM

MARTIN KINGMAN - CEO



Martin qualified as a Legal Executive in 2006. He is a Fellow of the Chartered Institutes of Legal Executives and Credit Management. He also holds qualifications and professional memberships with CQI (Chartered Quality Institute), IEMA (Institute of Environmental Management & Assessment) and IOSH (Institute of Occupational Safety and Health)

·Martin's expertise is in worldwide debt recovery, insolvency, systems and legal drafting.

·His former debt recovery team was recognised by Legal 500 and Chambers and Partners Guide to the Legal Profession.

·His skills allow PLC Debt to offer a unique blend of practical, commercial and legally astute advice.

EMMA LEE - COO



·Emma is a solicitor with more than 14 years experience, specialising in commercial and civil litigation and employment law.

·She has headed a litigation department of a local solicitors firm.

·She was previously recognised by Legal 500 in Debt Recovery.

·She is a straight talking litigator with a commercial approach.

·Her vast experience provides her with the ability to adapt to difficult situations and empathise with clients

PETER PHILPOTT - COMPLIANCE



- Peter provides consultancy services to enable the client achieve the recognised standard to which they aspire.
- This service is tailored to each individual client's needs.
- His management experience in the hospitality sector provides him with the perfect skills for consultancy.

JANE BARLOW - ACCOUNTS



- Jane has vast experience of accounting, credit control, debt chasing and administration.
- Her main focus within the company is on accounts and she supports the team with debt recovery and credit control services.

MONIKA TOTMAN - DEBT RECOVERY



- Monika has two degrees in law providing her with the skills to support Martin and Emma with debt recovery and litigation.
- Her LPC enabled her to understand the practical side of law and develop commercial awareness. Monika has experience as a Supervisor in customer service which enables her to communicate well with clients and understand their needs.

MADELINE WHITE - DEBT RECOVERY



- Madeline has completed her A-levels and will shortly begin her LLB law degree.
- She supports Martin and Emma with debt recovery and Litigation which has enabled her to develop her practical legal knowledge and commercial awareness.
- Her previous customer service experience has provided her with the ability to communicate well with clients and understand their needs.

