

Insight: Real Estate

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Landlords- v – Insolvency Practitioners. Upcoming Government Review of Insolvency Practitioners' Fees

We have recently seen the announcement of yet another high profile retail chain's fall into administration, that of DVD rental firm Blockbuster. This follows the collapses of Jessops, HMV and Comet, to name just a few of the high street casualties of recent months.

Whether or not an administration is ultimately successful, with the business being sold to a purchaser as a going concern, or (and as is seen all too often), the business being unsalvageable and needing to be liquidated / dissolved, the level of the Insolvency Practitioner's (IPs) remuneration will always be of interest to unsecured creditors such as Landlords. This is because, under the statutory scheme created by the Insolvency Act 1986, the IP's fees will rank ahead of an unsecured creditor (such as a Landlord). Therefore, the level of the IP's fees could make the difference between a Landlord seeing some sales proceeds from a salvaged business / sold assets, and not doing so.

As a result, Landlords may look to mount legal challenges against insolvency practitioners if their fees are considered to be unreasonable or unconscionable, which will lead to greater pressure on IPs to justify their fees, and of course the deal they have struck with a purchaser.

With this in mind, the Government's Business Minister, Jo Swinson, announced on 20 December 2012 that a review will be carried out in the first half of this year to assess whether further changes need to be made to the statutory scheme, to provide confidence to creditors that IP fees are fair, and commensurate with work done for the benefit of creditors. It is also intended to assess whether further changes should be made to improve the speed and amount of returns for unsecured creditors. The intention is to build on a recent review conducted by the OFT, which concluded that the relatively weak bargaining power of unsecured creditors in insolvency situations can be highly detrimental.

The review will be carried out by Professor Elaine Kempson of the University of Bristol, who will hear views from members of the insolvency profession, as well as debtors and creditors. A preliminary report is expected by April 2013, with final recommendations by the end of June 2013. Professor Kempson is an internationally known and respected authority on financial issues, with over 30 years' experience in the field. She was appointed as the first independent reviewer of the UK Banking Codes in 2002, and was re-appointed to review the Codes again in 2004.



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The terms of reference for the review include an assessment of whether different provisions (e.g. an ability to restrict the level of fees charged) could provide better incentives to ensure that fees charged are fair and that work is done in the interests of creditors.

The interests of IPs and Landlords will not necessarily be aligned, and both will be keeping a keen eye out over the coming months to see the outcome of the review. Many IPs fear that the review is likely to favour the Landlord's position over the IP, with an improved position for Landlords as unsecured creditors looking likely to be set for the future. We will be watching with interest to see whether the outcome will produce any changes to the current statutory scheme, and the likely impact this may have on all parties.