



Specialist Debt Advice Service

Monthly Ebulletin

May 2019 edition

Shelter

Service update

On 10th & 11th June the team will be attending the IMA conference in Manchester as exhibitors and to deliver a workshop on each day. We will therefore be operating a reduced service so please bear with us. If you are attending the conference, please come and say hello and help yourself to some treats on our stand!

For more information on the workshops please see the Networking & information Sharing section of this ebulletin, which includes information on how to access the training if you are not able to attend the IMA conference – we don't want anyone to miss out.

News and legal updates

DRO Newsletter – May 2019

The DRO Team has released their May 2019 newsletter, which should have been sent to DRO Intermediaries by their competent authorities.

The newsletter discusses how to deal with creditors chasing for debts, creditor address changes and more.

County Courts to have more flexibility setting when interest accrues on a judgment

Currently, [CPR 40.8](#) allows the court to order interest to run from the date of the judgment or a different date, including an earlier date. However, under [Article 2](#) of the County Courts (Interest on Judgment Debts) Order 1991, interest can only run from the date of the judgment or, if the amount of the judgment debt is to be determined at a later date, from that later date.

On 27 May 2019, [SI 2019/903 County Courts \(Interest on Judgment Debts\) \(Amendment\) Order 2019](#) will come into force to give the County Court the power to order judgment debt

interest to run from a different date from the date when judgment is entered, which could be from a date before the date of the judgment. This Order aligns the current provisions with those under CPR 40.8 as Article 2 above applies to the County Court.

Government issues statement on enforcement agent bad practice

A joint public statement has been [published](#) by the Cabinet Office's Fairness Group outlining how they will continue to work together with the debt advice sector (including the debt collection industry) to improve how government interacts with people in debt, specifically by:

- Understanding the impact that debt collection practices can have and how to improve them
- Implementing a joint programme of work to further examine practices in central and local government debt management which support vulnerable people, and make evidence based recommendations for change
- Applying Fairness Principles to government debt management, in line with sector best practice

Insolvency Service insolvency statistics Q1 Jan – Mar

The Insolvency Service has published insolvency [statistics](#) for January – March 2019 (Q1). One of the key points to come out of the report is that total individual insolvencies decreased in Q1 2019 from an 8-year high. The decrease in total individual insolvencies in Q1 2019 was mainly due to a decrease in IVAs, but IVAs increased by 23.7% compared to Q1 2018.

Financial Ombudsman Service Annual Review 2018/2019

FOS has released their [Annual Review](#) for 2018/2019 and discusses various themes FOS has seen in consumer complaints and trends.

Case law

Challenging a bankruptcy petition based on disputed liability orders

The case of *Tower Hamlets London Borough v Naris* [\[2019\] EWHC 886 \(Ch\)](#) concerns a High Court decision to allow the making of a bankruptcy order where the bankrupt claimed there had been a miscarriage of justice because liability orders were not properly served.

Background

Mr Naris was being pursued by Tower Hamlets London Borough Council for 8 liability orders totalling £85,053.82. Naris admitted liability for 5 of the orders which came to £9460.91, these orders were for 3 council tax accounts owing on a residential address and 2 accounts for non-domestic rates on a building known as Unit 3 100 The Highway.

Mr Naris was disputing the remaining 3 liability orders for non-domestic rates on the ground that the address stated did not exist nor had he occupied it. He argued this despite the fact he had already admitted liability for the 2 other orders which were based on occupation of the same address.

The bankrupt had previously made 3 appeals disputing the liability orders but these had been dismissed due to a failure to appeal promptly, within a reasonable time.

Part of Mr Naris's argument was that he had sublet parts of the building to companies that he owned, or majority owned and therefore, it was the business that should be liable as he did not occupy the premises.

Tower Hamlets London Borough produced evidence that the orders had been correctly served and that the bankrupt had had multiple opportunity to raise any issues he had with the listing of the address as a hereditament but had failed to do so.

It soon became clear from Mr Naris's witness statement, his conduct in court and evidence given against him, that his story was contradictive and was subsequently described as 'confused' by the judge. The bankrupt had even relied on a copy of the lease which confirmed the same address the orders had been sent to.

The court's decision

The judge held the evidence provided by Mr Naris was inconsistent and that his claim the address did not exist was not credible. It was also held that the London Borough of Tower Hamlets effected service in accordance with the relevant legislation and regulations and as result of this, the bankruptcy order was made.

The judge further commented on the fact that even where there had been a miscarriage of justice, he would not have found that less than £5000 was due and the order would have been made anyway.

Mr Naris had also submitted an argument that he had not had a fair trial as per [Article 6](#) of the European Convention on Human Rights as effected by the Human Rights Act 1998. This was swiftly rejected as Mr Naris had not stated why the liability order procedure is not independent, impartial or established by law. The judge stated that his breach of Article 6 argument was without foundation.

Comment

This case draws on the statements made in *Dawodu v American Express Bank* [2001] BPIR 983 and reiterates the fundamental requirement to have substantial evidence when facing the test for when a bankruptcy court would be prepared to look behind a judgment debt.

For advisers assisting clients to challenge bankruptcy proceedings on the ground there has been a miscarriage of justice, this case emphasises the need for clients to be able to clearly demonstrate, that an improperly conducted legal process has led to an amount being due which would not have been, if the process had been carried out correctly.

It will also be important to advise that even where a client can prove that part of their debt is not owed, the test is unlikely to be met where they admit other debts above the bankruptcy level.

Ardawa v Uppal and another 2019 EWHC

This case *Ardawa V Uppal and another* [\[2019\] EWHC 456 \(Ch\)](#) dealt with an Order for substituted service of a bankruptcy petition made retrospectively.

Background

Rajvinder Kaur Uppal (**U**) was married to Surjit Singh Ardawa (**A**). The marriage ended with an acrimonious divorce which resulted in monies owed to **U** by **A**.

U pursued the sum of £8834.80 by serving (21 September 2015) a statutory demand on **A** at an address (26 SA) it was assumed that **A** lived at. The [Insolvency Rules 1986](#) are applicable in this case.

The process server attempted to deliver the demand by way of personal service visiting 26 SA on three separate occasions and also sent a first class letter outlining the reasons for the visit. All visits were unsuccessful. On the third occasion the statutory demand was posted through the letterbox as personal service could not be done.

On 20th January 2016 **U** issued a bankruptcy petition on **A** and gave the address as 26 SA ([rule 6.7\(1\)9a](#)) but it did not give any previous/other addresses as per [6.7\(1\)\(e\)](#). The process server wrote to **A** by first class post at 26 SA to advise they will visit on 1 February to serve the bankruptcy petition. There was no reply and the petition was served ([rule 6.14](#)) in the same way as the statutory demand.

On 17 February 2016 an order was made (retrospectively) that the bankruptcy petition, posted through the letter box at 26 SA, was deemed service on **A** and no further steps were required regarding service. Subsequently, on 6 April 2016 the bankruptcy order was made.

A then sought to set aside the order made in February and annul the bankruptcy. He stated **U** ought to have known 26 SA was not his address, **U** was aware of **A**'s parents address and **A**'s telephone number and email address. This ultimately failed as the court believed on the balance of probabilities **A** was living at 26 SA and was aware of the attempts to contact him by the process server/bankruptcy proceedings. **A** appealed.

Courts decision

The primary obligation for service of a statutory demand is to do “*all that is reasonable for the purpose of bringing the statutory demand to the debtor’s attention*” ([rule 6.3\(2\)](#)).

Where a petition is served by substituted service, can the order be made retrospectively? The court held it cannot. [Rule 6.14\(2\)](#) states:

‘If the court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of the petition or other legal process, or for any other cause, it may order substituted service to be effected in such manner as it thinks fit.’

Nothing in the above or [CPR 3.1\(2\)\(m\)](#) or, even Insolvency practice direction, allows for discretion to allow retrospective substituted service. [Part 6 of the CPR](#) does not apply to the service of a bankruptcy petition.

Another issue raised was [rule 7.55](#). **U** failed to provide other addresses of **A** which she was aware of was and this constituted a formal defect. But not to the point of substantial injustice.

Therefore, the petition was not served correctly on **A**.

However, when considering annulling the bankruptcy ([s282\(1\)\(a\) Insolvency Act 1986](#)) the appeal failed. Although the improper service was indeed grounds for annulment, this was an undisputed debt, arising from orders in court proceedings between these parties, which **A** failed to pay. It is undisputed that he had the means to pay that debt, and while **A** stated in the proceedings that he will do so if the bankruptcy is annulled, his evidence gave no explanation as to why he had failed to do so before the proceedings commenced.

The court made a finding of fact that **A** was aware of both the statutory demand and the petition at the time, and untruthful in his evidence regarding his place of residence.

Comment

The decision is particularly significant because the court has no jurisdiction to make a retrospective order for substituted service of a bankruptcy petition under the Insolvency Rules 1986. Previous authority *Gate Gourmet Luxembourg Sarl v Morby* [\[2015\] EWHC 1203 \(CH\)](#) while to the same effect, had been strictly obiter.

It equally serves as a reminder that even a fundamental failure of service, which cannot be treated as a “formal defect”, may not result in the court exercising its discretion to annul a subsequent bankruptcy petition.

It is unlikely that the case would be decided differently under the [Insolvency Rules 2016](#). A creditor’s obligations to serve the statutory demand and the petition have not changed. Although the requirements for obtaining substituted service have changed under Insolvency Practice Direction 2018 ([PD 12.7\(2\)\(c\)](#)), this still implies that the order must be obtained first and there is no indication it can be served retrospectively.

Spotlight

In this month’s **Spotlight** we consider the relationship between instalment orders, charging orders and orders for sale and provide guidance on when an instalment order might be used to prevent enforcement of a charge.

For our previous 3 spotlight article topics here:

- **Apr 2019** - [Shared Ownership](#)
- **Mar 2019** - [IVA termination](#)
- **Feb 2019** - [Gambling and DROs](#)

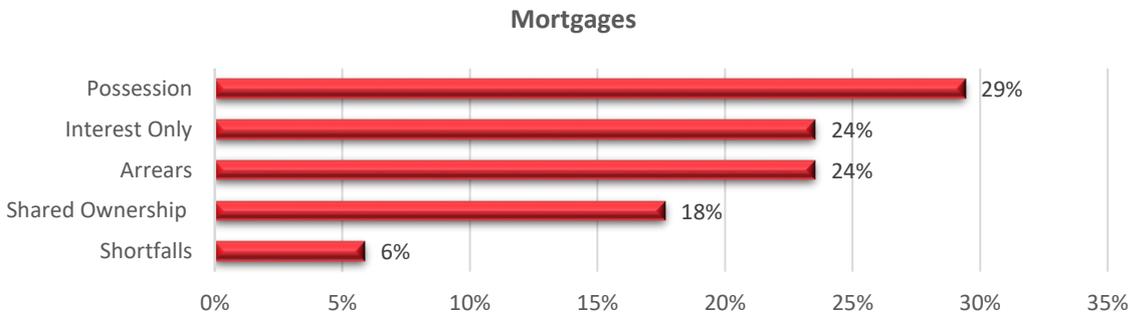
To see our other Spotlight articles please go to our [website](#).

Celebrating Success



If you have any successes that you've achieved for clients, we would love to hear about them and share them with other advisers. Please email us any success stories to SpecialistDebt@shelter.org.uk.

We have noticed a stark increase in enquiries relating to mortgage debts which was our 13th most popular enquiry topic in March. In April it was the 4th most popular topic with a threefold increase in volume. This has been raised with MAPS and a range of other advice agencies. The sub-topics recorded against our mortgage queries were:



Networking & information sharing project

As part of our Networking and Information Sharing partnership with the Institute of Money Advisers (IMA), the Specialist Debt Advice Service produce a range of resources which are available to free sector money and debt advisers. IMA membership is not required, and you can sign up or log in to access these resources via a dedicated area of the [IMA website](#). Under the '**Shelter resources**' section you will find our monthly ebulletins and spotlight articles, quarterly debt updates, video recordings, technical resources and webinars.

Resource document, webinar and workshops!

The SDA Team have developed a range of resources on the subject of *Dealing with Judgment Debts*:

- A comprehensive 40 page resource document, for reference by advisers, available now!
- A pre-recorded webinar with live Q&A, **at 11am on 3rd June 2019 – FULLY BOOKED**, a recording will be made available post conference
- A workshop on each day of the IMA conference 10th & 11th June – which will cover similar content to the webinar, with more activities and the opportunity for discussion around certain scenarios

The webinar is intended for those unable to attend the IMA conference workshops and will last for 60 minutes plus the Q&A. A recording will be available on the N&I section of the IMA's website after the conference has taken place.

Our updated DRO resource is now online. In addition, the DRO A-Z guidance produced by the Insolvency Service is located in the 'reference materials' section of the IMA [site](#).

The Networking & Information Sharing Project is funded by the Money and Pensions Service.

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Archived newsletters & spotlight articles

On [this page](#), you will be able to access our library of monthly e-bulletins and Spotlight articles.

Who we are

We help millions of people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that one day, no one will have to turn to us for help.



Web enquiries can be made 24 hours a day, 7 days a week.
Click on [this link](#) to submit a web enquiry



Our telephone service is open 9am – 5pm Monday to Friday.
Call us now on **03300 580 404**.

Find us at www.shelter.org.uk/debtadvice

Thank you for reading,

The Specialist Debt Advice team