

Engaging as a creditor in insolvency processes

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When the 2016 Insolvency Rules were brought into force they were intended to modernise the existing provisions from 1986, and reduce the burden of red tape.

Among the changes was the relaxation of the rules requiring physical creditor meetings in preference to resolutions and decisions being made remotely; typically via a decision procedure known as deemed consent. At the same time, insolvency practitioners were encouraged to streamline their methods of communicating with creditors. Where, previously, a series of letters would have been sent to creditors to provide updates on a case, nowadays creditors can expect to receive a solitary letter inviting them to access an online portal to which all information about a case will be posted. Whilst these were long overdue and welcome changes, their effectiveness still depends heavily on the engagement of creditors.

Creditors who do not avail themselves of that initial invitation to register on the portal in question, risk being left even more in the dark about the conduct of a case than they would have been under the old rules. What is more, with the portal being the only practical way for insolvency practitioners to communicate with creditors, they can be left having to take costly countermeasures if creditors do not engage during the process. For example, if an insolvency practitioner seeking a resolution to approve his/her fees receives no reply from creditors, they may be forced to apply to court for that same approval. If that is simply a product of bystander behaviour or, worse, of creditors being wholly unaware that fees were even up for discussion, it will result in far higher fees being incurred and paid from funds in the estate that might have otherwise been available for creditors.

Registration on a portal typically takes less than 5 minutes and will afford creditors the option of being notified whenever new information is posted; removing the need to trawl through endless reports or remember to keep checking back for updates.

A creditor who has a genuine interest in the outcome of a case (financial or otherwise) would be wise to find the time to complete this one simple step. Doing so will help you keep abreast of realisations, investigations, fees and the overall likely return to creditors. That information could be significant but it may also unlock opportunities to influence the conduct and outcome of a case. Where cases are numerous or complex you may consider outsourcing this role. We have, on occasion, taken on this monitor role in order to provide a concise summary, advice and alerts of matters of note. Please do let us know if you would like any more information on this topic or if there is any way in which we can help you further.

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