Briefing

BURGES SALMON

# Corporate Turnaround and Insolvency

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## Can a bankrupt be subject to an income payment order in addition to an income payment agreement

This update considers the recent High Court decision in *Thomas and Another v Edmondson (12/05.2014)* concerning the court's ability to make an income payment order against a bankrupt who is already subject to an income payment agreement.

### The background

An undischarged bankrupt, Edmondson, had entered into an income payment agreement (**IPA**) with the Official Receiver under which he agreed to pay additional income he expected to receive as a result of a change in tax code (HMRC usually set tax to a nil rate, after bankruptcy has been declared, for that tax year).

The Joint Trustees in Bankruptcy (**JTIBs**) subsequently took over the appointment from the OR and sought to agree a new IPA for any surplus income over and above the tax code gains. The bankrupt refused on the grounds that he had a pre-existing IPA. The JTIBs decided to apply to court for an income payment order (**IPO**) before the bankrupt became discharged and the opportunity to do so lost.

### The issues

The primary issue here hinged on the interpretation of legislation concerning IPAs and IPOs (Sections 310 and 310A of the Insolvency Act 1986). The bankrupt argued that a literal interpretation of the Act would mean that once an IPA had been made, the court had no jurisdiction to make an IPO.

The bankrupt also argued that a contrary decision also raised the possibility that (if the IPA and IPO regimes are not mutually exclusive) that a repayment regime could be in place for more than three years. The Act gives IPAs and IPOs a maximum duration of three years (Sections 310(5)(b) and 310A(5)(b)) – the question was whether it was Parliament's intention to give income payment requirements an absolute three year time limit.

### What did the court decide?

Having been through the historical legislative context and debate, the court rejected the bankrupt's interpretation of the Act (overturning a prior County Court decision to the contrary) The court decided that IPOs and IPAs are not mutually exclusive regimes, that Parliament did not intend an absolute three year limit for income payment arrangements (of whatever description) and that a combination of both repayment regimes could indeed exist.

Even if legislative intention was that bankrupts should not be required to pay for more than three years, the court considered that any such anomaly would be countered by the court's discretion as to whether and for how long an IPO should be made.

### What does this mean for practitioners?

Trustees would be wise to undertake a further review of a bankrupt's income and expenditure before their discharge from bankruptcy, as an IPA and IPO combination would extend the time in which repayments could be collected. However, once the bankrupt is discharged, a new IPA or IPO cannot be made.

This decision is to be welcomed as it allows a second bite at the cherry, and a contrary decision would have allowed bankrupts to benefit from any windfalls they might receive prior to their discharge (whether that be an increase in salary, lottery wins etc.). It would be absurd to defeat a regime intended to enhance returns to creditors from a bankrupt's estate on the basis that a prior IPA prohibited the recovery of further gains. The court will obviously use its discretion when sanctioning an IPO, but this decision at least gives practitioners the whip hand when it comes to negotiating with bankrupts in order to secure the best recovery for their creditors.

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