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Insights

STANDOUT UK INSOLVENCY CASES OF 2025 AND THEIR IMPACT FOR INSOLVENCY PRACTITIONERS IN 2026

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Every year, the courts make a vast number of insolvency case law decisions. Many refine established legal principles; some are highly fact-specific (and distinguishable on that basis), whilst others reshape practice and procedure.

In this Insight, Richard Obank**, Restructuring & Insolvency Partner at BCLP**, takes a selective look at five standout insolvency cases from 2025 that, more than likely, will influence practice and procedure going into 2026 for insolvency practitioners in key areas, including:

- conduct of statutory investigations;
- pursuit of claims and litigation funding;
- management of statutory limitation periods;
- preparation of pleadings in litigation; and
- minimising the risk of personal liability.

Case One: Bilta (UK) Ltd (in liquidation) -v- Traditional Financial Services Ltd; Nathanael Eurl Ltd (in liquidation) and Anor -v- Traditional Financial Services Ltd [2025] UKSC 18

WHAT WAS THE CASE ABOUT?

In appeals involving five claimant companies in liquidation relating to a form of VAT fraud, known as 'missing trader intra-community fraud', whereby huge tax liabilities were triggered via the trading of EU carbon credits, the Supreme Court confirmed that liability for fraudulent trading, under section 213 of the Insolvency Act 1986 ('**IA**'), is not confined to company directors or managers.

Any third party who knowingly assists a company's fraudulent purpose can be ordered to contribute to the company's assets. Regular counterparties transacting with knowledge that the company is carrying on a fraudulent business may be held accountable under section 213 IA.

The court also addressed limitation where a company has been struck off, dissolved and later restored after the standard six year time limit for bringing a dishonest assistance claim had expired. It considered the effect of section 32 of the Limitation Act 1980 ('**LA**'), which delays the beginning of the limitation period where the claimant can show – the burden is on them – that they did not discover, and could not reasonably have discovered, the fraud.

Additionally, section 1032(1) of the Companies Act 2006 provides that the general effect of a company's restoration to the register is that the company is deemed to have continued in existence as if not dissolved or struck off the register.

The question which arose was whether, on the facts, the companies could reasonably have discovered the fraud – or could be deemed to have been able to do so – during the dissolution period. It was open to the claimants to establish the factual basis for postponing the running of time for limitation purposes, the onus being on them to do so; however, they failed to adduce any evidence on the point meaning the dishonest assistance claim was time-barred.

WHY THIS CASE MATTERS?

This unanimous decision affirms the pool of targets as 'any persons' who might be held accountable for fraudulent trading under section 213 of the IA, while also providing clarity on the application of limitation in the context of claims involving restored companies. In this case, the fraud involved a broker introducing counterparties and negotiating terms on which carbon credits were traded in circumstances where the companies were likely fronts for illegitimate activities.

It also emphasises that the 'triggering events' for postponing the start of limitation periods for claims involving fraud are not an automatic entitlement for claimants to invoke in court proceedings. The court requires claimants to plead their cases properly and with evidential precision, so as to discharge the burden of proof, the onus falling squarely on their shoulders to do so.

PRACTICE POINTERS

Insolvency practitioners need to consider potential claims beyond company directors or managers to a wider pool of third parties such as professional advisers, intermediaries and counterparties who knowingly participate in a fraudulent scheme and/or dishonestly assist directors or managers to breach their duties by engaging in fraud.

Case Two: Pagden & Others as Liquidators of Core VCT IV plc and Core VCT V plc -v- Soho Square Capital LLP & Ors. [2025] EWHC 1918 (Ch)

WHAT WAS THE CASE ABOUT?

The claims in the proceedings principally related to disposals of assets (e.g. portfolio companies) at an alleged undervalue to the detriment of investors.

Replacement/new liquidators of various venture capital trusts sought, in the context of summary judgment and/or strike-out applications, to amend their particulars of claim against the former liquidators (and others) by advancing ‘new’ claims founded upon deliberate concealment or breach of duty, instead of relying upon the 'wrongdoer control argument', as originally pleaded. The effect of giving permission to amend would have enabled the claimants to avail themselves of section 32(1)(a) of the LA (whereby time does not begin to run for limitation purposes until the claimant has discovered the fraud, concealment or mistake (as the case may be), exercising reasonable diligence).

The court rejected the applications. It held the existing pleadings and evidence did not support a properly arguable case of deliberate concealment. Permission for late amendments was refused and the normal limitation period applied; the claimants had failed to show that fraud was not, and could not with reasonable diligence have been, discovered earlier. The court noted the claimants had directors in office at the relevant time who were not ‘wrongdoers’, through whom discoverability of the fraud could have been ascertained.

WHY THIS CASE MATTERS?

This case is a clear reminder that procedural discipline at the outset of litigation is critical. Courts are reluctant to permit any late re-engineering of claims to exploit the postponement of limitation periods.

Even strong claims can fail if statements of case and limitation arguments are not properly framed and evidentially supported from launch.

PRACTICE POINTERS

Insolvency practitioners need to front-load their statutory investigation to ensure claims are fully particularised at the outset. They should assume that late amendments to pleadings designed to postpone limitation periods will face significant headwinds in the courts. Early investigation into the background circumstances of the case and careful formulation of claims remain basic essentials when litigating.

Case Three: Glint Pay Ltd & Ors -v- Baker & Rowley [2025] EWHC 2166 (Ch)

WHAT WAS THE CASE ABOUT?

Claims were brought against administrators on the basis they had been invalidly appointed by the floating charge holder; essentially that (1) there had been no event of default entitling the floating charge holder to appoint administrators; and (2) the appointment had been made for ‘an improper purpose’ because the secured debt had been acquired with the aim of buying the business and assets from the administrators, leading to allegations the appointment had been ‘manufactured’.

The court dismissed the claims and granted reverse summary judgment. The process of acquiring secured debt, calling a default, and then seeking to buy the business and assets from administrators was described as 'a common fact pattern' and 'at least as old as Wuthering Heights' [at paragraph 1]. The court found no arguable case that the secured debt acquisition was ineffective or that enforcement powers were exercised for an improper purpose.

A secured creditor, whether as an assignee or otherwise, 'is absolutely entitled to act in accordance with his own interests as he perceives them to be, and… is not to be subject to any requirement of rationality in pursuing his own interest for his own account' [at paragraph 85].

WHY THIS CASE MATTERS?

This decision reinforces the robustness of properly made insolvency appointments and provides reassurance to administrators operating in hostile or contested environments.

PRACTICE POINTERS

Insolvency practitioners need to stress-test appointment routes prior to taking an appointment to ensure they are robust enough to withstand attack. They should take comfort in situations where the appointor's rights are engaged appropriately. Early advice should be taken on validity of appointment and whether any additional/bespoke indemnity arrangements are required. Challenges based on 'manufactured defaults' should be anticipated and considered prior to appointment.

Case Four: Pagden, Baxendale, Sherry & Ors -v- Fry and Mather [2025] EWHC 2316 (Ch)

WHAT WAS THE CASE ABOUT?

The claims involved the former liquidators of the Core VCT group (see Case Two above) regarding alleged breaches of duty during the course of the liquidations, including alleged transactions at an undervalue.

The former liquidators' firm provided letters of engagement that included a financial cap on liability for the benefit of the liquidators, as well as for the liquidators' firm and employees working on the engagement. The court considered whether those limitations were enforceable.

The court held that a liquidator cannot limit or exclude personal liability for carrying out their statutory duties by contract (e.g. by a 'limitation of liability' provision in an engagement letter with the company which purports to impose a financial cap on the liquidator's liability).

The duties of a liquidator, which must be seen as fiduciary in nature (arising from the holding of assets on trust), are not duties owed to the company. They are obligations of a fiduciary to carry out the purposes of the statutory trust. They cannot, therefore, be waived by the company, either

through its directors or its body of shareholders. Accordingly, it is not permissible to modify the responsibilities or liability of a liquidator [at paragraphs 68 and 69].

However, it remains open to a liquidator's firm to limit its own and its employees' liability in connection with the wider engagement on which a liquidator is appointed. The court stated that there is no principle of law to be found which would stop such a firm benefiting from a limitation of liability [at paragraph 136].

WHY THIS CASE MATTERS?

Officeholders' statutory duties have 'hard edges' that contractual terms cannot soften. Engagement letters need careful drafting to delineate the officeholder's non-excludable statutory responsibilities from their firm's professional services and liability regime.

PRACTICE POINTERS

Insolvency practitioners will need to separate their statutory duties and obligations from those of their firm's and employees' services. Engagement letters will need to be mindful of not seeking to exclude or limit liability for breach of statutory duties and obligations of officeholders. PI cover and conflicts governance may need to be reviewed. Creditors need to be assured that insolvency officeholders can be held accountable for their acts or omissions and not limited or capped by engagement terms with the company or its shareholders.

Case Five: Stevens -v- Hotel Portfolio II UK Ltd (in liquidation) [2025] UKSC 28

WHAT WAS THE CASE ABOUT?

The Supreme Court confirmed that secret profits made by a director in breach of fiduciary duty are held on constructive trust for the company from the moment they are made. Third parties who dishonestly assist in the dissipation of such trust assets may be liable to compensate the company. The facts involved the sale of a hotel portfolio and a significant distribution characterised as an unauthorised profit obtained through dishonest assistance.

WHY THIS CASE MATTERS?

The decision strengthens remedies available to officeholders in breach of fiduciary duty cases, particularly involving constructive trusts, knowing receipt, and dishonest assistance. It supports the viability of tracing and proprietary claims and raises risks for those who facilitate asset diversion and/or involve themselves in connected-party transactions with a fraudulent design.

PRACTICE POINTERS

Insolvency practitioners need to consider the use of proprietary claims wherever available, including the potential use of freezing injunctions, and evaluate the extent to which third parties

can be included in claims for dishonest assistance/knowing receipt in order to swell recoveries for the insolvent estate.

Key Themes

Key themes emerge from these five cases for insolvency officeholders to consider:

- **Looking beyond directors:** liability can extend to advisers, intermediaries, counterparties and other third parties who knowingly assist wrongdoing, especially under section 213 IA and under equitable doctrines.
- **Procedural precision is key:** courts demand well-particularised pleadings at the outset, especially where limitation periods are a live issue. Delaying the running of the standard limitation period by relying upon section 32 LA requires the claimant to discharge the onus of proving that the alleged fraud, concealment or mistake (as the case may be) is not discoverable with reasonable diligence. Insolvency practitioners would be well-advised to consider use of limitation standstill agreements, wherever possible, or assignment of claims, and not leave the issue of proceedings 'to the last possible moment' where they might be criticised and/or respondents with deep pockets can exploit such delay to good effect.
- **Broadening range of fiduciary duty remedies:** constructive trusts, account of profits and dishonest assistance remain powerful tools to recover diverted value, including proprietary routes that improve recovery prospects.
- **There are hard limits on contractual protections:** officeholders cannot contract out of their statutory duties with the company or its shareholders. However, the officeholders' firm and/or employees may still rely upon properly structured 'limitation of liability' provisions when providing non-officeholder services. Letters of engagement require careful drafting at the outset.

Litigation Funding after PACCAR

The Supreme Court's decision in *R (on the application of PACCAR Inc) -v- Competition Appeal Tribunal [2023] UKSC 28* held that certain percentage-of-proceeds LFAs are Damages-Based Agreements ('**DBAs**') and, if non-compliant with the 2013 DBA Regulations, unenforceable.

The Court of Appeal has since clarified that capped 'multiple of investment' LFAs not calculated by reference to damages can remain workable.

PRACTICE POINTERS

Insolvency practitioners should expect there to be a continued drift to multiple-based or hybrid returns funding models and more robust scrutiny of funding documentation by respondents

(seeking to challenge funding arrangements as unenforceable, leading to potential strike out applications, security for costs applications etc.).

The Ministry of Justice announced in December 2025 an intention to legislate to reverse PACCAR's effect prospectively to support access to justice and England & Wales' litigation market. There is no firm timetable for implementation and questions remain on any retrospective effect, which creates interim uncertainty for insolvency practitioners planning litigation.

Funding arrangements will increasingly form part of the scrutiny of officeholder conduct, reinforcing the need for careful structuring and approvals ahead of litigating.

What Insolvency Practitioners Can Expect in 2026?

- **A More Sophisticated Claims Environment:** fewer but larger, multi-party actions targeting a wider pool of targets with deeper pockets coupled with the potential for more complexity and cost risks.
- **Front-Loaded Investigation and Procedural Precision:** greater forensic work to be undertaken prior to the launch of claims; more carefully-framed causes of action; early limitation analysis; clearer funding disclosure/analysis and well-articulated recovery strategies for creditors, where appropriate. Practitioners should expect the courts to remain intolerant of weak and/or poorly drafted pleadings.
- **Increased Scrutiny of Conduct:** whilst the decision in *Glint Pay* (see Case Three above) supports robust insolvency appointments, challenges will increasingly target officeholder conduct, conflicts of interest, valuation evidence, fees and remuneration, governance, pre-appointment engagement/planning with appointors, and whether there is sufficient process transparency and creditor engagement, especially in connected-party transactions.
- **More Fraud-Driven, Cross-Border and Sector-Specific Work:** economic/business pressure, digital assets, cryptocurrency and complex group structures will continue to generate fraud-linked and cross-border insolvency work. Construction, real estate, energy and retail remain vulnerable sectors, with antecedent transaction and breach of fiduciary duty claims likely to feature prominently.
- **More Litigation-Led Insolvency Cases:** taken together, these developments point to a future in which insolvency practitioners can expect to operate not merely as administrators or liquidators of estates, but as 'strategic litigants'. They will need, more than ever, to balance commercial judgment with procedural rigour and statutory compliance in order to satisfy creditors that all avenues are being pursued effectively and cost-efficiently. The courts will not grant any leeway to insolvency practitioners where cases are ill-prepared. Nor will the courts uphold limitation of liability protection for insolvency practitioners in their engagement terms.

Overall Reflections

These five decisions reinforce the view held by the author that:

- successful recoveries depend as much on procedural discipline and strategic planning by insolvency practitioners, as they do on the merits;
- directors and third parties face expanding risk and exposure to liability following a corporate financial collapse; and
- insolvency practitioners must operate within firm boundaries when discharging their duties and obligations.

Insolvency practitioners who combine early forensic investigation of claims; use of robust proprietary and fiduciary remedies; obtain the benefit of sound funding arrangements; and apply rigorous self-governance when discharging their statutory duties will be best placed to deliver optimal outcomes for creditors in 2026.

One thing is for sure: the challenges facing insolvency practitioners in 2026 won't be getting any easier or less risky.

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