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## A Huge Sigh of Relief for Administrators Making Redundancies

### Case commentary:

#### [R \(on the application of Palmer\) v. Northern Derbyshire Magistrates Court & another \[2023\] UKSC 38.](#)

Administrators across the nation will breathe a sigh of relief at the recent Supreme Court clarification that they won't be criminally liable for the failure of a company to comply with redundancy notification rules.

A previous decision of the Magistrates Court decided that an administrator was an "officer" for the purposes of s.194(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (**TULRCA**) and may be found personally and criminally liable if they, or the company over which they are appointed, failed to notify the Secretary of State of proposed redundancies prior to making them.

TULRCA requires employers to notify the Secretary of State if they propose to make 20 or more employees redundant within 90 days, and to notify at least 30 days before the redundancies take effect. Failure to give notice is a criminal offence, and where an offence has been committed with the consent or connivance of, or can be attributed to neglect on the part of, any director, manager, secretary, or other similar officer of the

company, that individual will also be guilty of an offence.

The administrators concerned were appointed over the retail chain USC on 13 January 2015. The day after their appointment, they made a number of employees redundant. Notice of the intention to make redundancies was not provided to the Secretary of State until the relevant form was emailed to the Secretary of State three weeks later.

Criminal proceedings were commenced by the Secretary of State against the administrator who signed the redundancy letter and notification, alleging that he committed an offence under TULRCA by failing to notify, at least 30 days before the redundancies took effect. The Magistrates Court found him personally liable for a failure to notify, and the Divisional Court dismissed his subsequent claim for judicial review.

The case went to the Supreme Court, which has now (thankfully) confirmed that an administrator of a company is not an "officer" for the purposes of TULRCA and therefore cannot be personally liable for a failure by the company to comply with redundancy notification requirements.

When an administrator is appointed, they must determine the appropriate purpose of the administration, with reference to the prescribed statutory purposes. To achieve one of them, they may decide that the business must immediately cease, with the result that employees are immediately redundant.

The Secretary of State's case and the Magistrates decision failed to properly understand that; and placed administrators in an impossible position with regard to redundancies – where their obligations under TULRCA would wholly conflict with their general duty to the act in the best interests of the creditors.

The Supreme Court decision is welcome and, in my view, a sensible resolution to a flawed initial decision that wholly failed to understand the context and statutory insolvency framework within which administrators work. A sadly all too common demonstration of one arm of government not working with, or understanding, the other.

If you would like to discuss any restructuring and insolvency matters, please contact, Frank Bouette, by email:

[frank.bouette@dmhstallard.com](mailto:frank.bouette@dmhstallard.com).

## Meet the team

### Frank Bouette

Frank is recognised as an expert in restructuring and insolvency law, and one who provides decisive practical solutions. He is an experienced and highly regarded restructuring & insolvency lawyer.

Frank's experience is in transactional and contentious insolvency, acting for lenders, investors, creditors, directors, OMBs, borrowers and office holders on a wide range of transactions. He often represents a wide range of well-known firms in the market.

He specialises in providing managed solutions in financially distressed scenarios to assist OMBs, companies, directors, lenders, investors and other stakeholders, as well as insolvency office holders.

He makes it his business to understand and explore the needs and ultimate aims of clients, before delivering clear advice and practical solutions.

His particular strengths are assisting lenders and investors with managed exits from distressed lending / investments in a way that minimises losses and (where possible) preserves viable businesses; and assisting OMBs and directors navigate choppy waters and minimise their personal risks while trying to safeguard their business.

Frank has particular experience assisting with the restructuring of care homes & dental practices and assisting with financial distress in the education and charities sector.

### Oliver Jackson

Oliver is a Partner in the Dispute Resolution team, based in the Gatwick office. He is a specialist in insolvency and business recovery and advises directors, individuals, security holders and investors on all aspects of insolvency, corporate recovery and reconstruction.

Oliver has acted for insolvency practitioners throughout the South East, instigating formal insolvency processes and in the protection and realisation of assets for creditors. Oliver is an expert in contentious insolvency, specialising in corporate fraud, claims against directors and directors' disqualification. He advises clients in relation to director misfeasance, antecedent transactions, claims

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for the recovery of dividends and directors' loans, and wrongful trading.

Oliver also advises on personal insolvency, assisting individuals and trustees in bankruptcy in relation to all aspects of bankruptcy. His work includes investigations, interviewing bankrupts, the protection or realisation of assets, and bankruptcy annulment.

More broadly, Oliver has experience of advising on commercial contract disputes, shareholder disputes, partnership disputes and professional negligence, and also advising on disputes involving the joint ownership of land and the Trusts of Land and Appointment of Trustees Act 1996. He also has expertise in contentious trusts and probate and on claims by disappointed beneficiaries under the Inheritance (Provision for Family and Dependents) Act 1975. Many of his cases have a cross-border element raising questions over the enforceability of Wills in respect of assets in different jurisdictions.

Clients appreciate Oliver's calm, practical and decisive approach. He provides clear and pragmatic advice which combines depth of legal knowledge with an awareness of the client's objectives, commercial needs and their desire for a cost-effective solution. He has been acknowledged by both leading legal directories. Legal 500 2021 notes: "Oliver Jackson stands out as being highly knowledgeable and well respected; he takes a commercially pragmatic approach to all of his cases and is confident in dealing with private client matters".

## **Michael Lynch**

Michael is a Partner in the Dispute Resolution team, based in the London office. A pragmatic lawyer, Michael is a Restructuring and Insolvency specialist, acting for parties subject to complex and high-value disputes within the distressed/insolvency arena, often with a cross-border element.

Having previously worked in the restructuring team at a major clearing bank, Michael also brings real commercial insight into distressed/insolvency positions from a lender perspective, providing a multi-faceted understanding of business failure from across the distressed spectrum.

Michael has acted for corporates, shareholders, insolvency practitioners, directors, and individuals across a broad range of complex insolvency-related restructurings, issues and disputes.

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