



## The prescribed part: Disapplication should be the exception, not the rule

The High Court has again refused an application to disapply the prescribed part on the basis that the cost of making a distribution to the unsecured creditors would be disproportionate to the benefits.

In *Re International Sections Ltd (in CVL)*, the Court refused the application despite the fact that after deducting the costs of agreeing the unsecured claims and making the distributions, there would only be £3409.09 left to be distributed amongst the 66 unsecured creditors and that the majority of those 66 unsecured creditors would receive a maximum dividend of £14.80 each!

Key points arising from the judgment are as follows:-

- In deciding whether to disapply the prescribed part, the Court must be satisfied that the cost of making the distribution would be disproportionate to the benefits and that it is right to disapply the prescribed part on that ground. The Court may well take the view, even where the cost of making the distribution to the unsecured creditors would be disproportionate, that unsecured creditors should still receive the “remaining crumbs”.
- The proper approach is to look at the benefits to the creditors as a body. The Court should not analyse the benefit to individual creditors.
- The disapplication of the prescribed part should be the exception and not the rule. The Court should not be too ready to disapply the prescribed part merely because the dividend would be small. That, sadly, would often be the case irrespective of the costs of making any distribution.

Given the comment that the prescribed part should only be disapplied in exceptional circumstances, office holders must now think more carefully before making a Court application. Ultimately, if the Court considers that an office holder has brought an application unreasonably, it has power to order the office holder to bear the costs of the application personally rather than recovering them as an expense.

On the plus side for office holders, however, the Court has clarified that it is legitimate for an office holder to deduct his professional time costs and those of his staff in identifying who the unsecured creditors are and in distributing the prescribed part in addition to the disbursements he incurs in connection with that process.

For a more detailed report on the case, please see Insolvency update case study 6 February 09.

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