

## SCOTTISH CORPORATE RESTRUCTURING + INSOLVENCY UPDATE

Summer 2016



Welcome to the inaugural edition of Shepherd and Wedderburn's quarterly Scottish CRI update. Our updates are aimed at providing regular insights and updates on Scottish restructuring and insolvency law in areas which impact on the UK and cross-border restructuring markets.

In this issue we consider some of the fallout from the Brexit vote, including the potential for a further referendum on Scottish independence. We also take a look at recent changes to empty property relief in Scotland, conflicting judgements on PPI claims and set-off, and explore some of the issues surrounding Scottish Limited Partnerships.

If any of the issues touched on below are likely to impact on you, your clients, or your customers, our Corporate Restructuring and Insolvency team are happy to discuss. We hope you enjoy reading.

**Hamish Patrick**  
Partner, Finance and Restructuring

### Brexit: the impact on UK restructuring and insolvency

As the Brexit vote in the EU referendum sinks in, we need to focus more clearly on its likely practical results for restructuring and insolvency, while remembering that nothing changes for at least two years. At the same time we need to take account of the possibility of a second Scottish independence referendum and what this might mean. So the highly effective UK cross-border restructuring industry has a number of issues to consider relating to the smooth operation of insolvency and restructuring regimes within the UK.

[Read more](#)

### The cost of voids

The empty property relief changes introduced in Scotland in April 2013 to encourage empty properties to be brought back into use are costly for landlords – and confusing for insolvency practitioners. This article clarifies the impact of the provisions in Scotland and comments on the possible effects of the regime in the current market and the possible outcomes of the Barclays Review.

[Read more](#)

### Contents

Brexit: the impact on UK restructuring and insolvency **1**

The cost of voids **1**

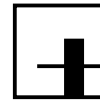
PPI claims and set off – opposing judgments create uncertainty in Scotland **2**

Limited partnerships – the Scottish view **2**

Did you know... **2**



**John Gallacher**  
Partner, Distressed Property  
T: + 44 (0)141 566 7242  
M: + 44 (0)771 503 8724  
E [john.gallacher@shepwedd.co.uk](mailto:john.gallacher@shepwedd.co.uk)



## PPI claims and set off – opposing judgments create uncertainty in Scotland

In *Green v Wright* [2015] EWHC 993 (Ch), the High Court in Manchester ruled that a debtor, in receipt of a certificate of completion following the successful conclusion of his IVA, was entitled to the proceeds of a PPI claim, even though the claim had been an asset of the arrangement. The decision is being appealed, although the hearing of the appeal listed for 18 May 2016 was vacated, with we understand a new hearing date being fixed for November 2016.

It will not come as any surprise that the Scottish Courts have also had to grapple with this same issue but with regard to Protected Trust Deeds. Unhelpfully conflicting decisions have been handed down and this has left Insolvency Practitioners north of the border uncertain as to the correct treatment of such claims.

In *Donnelly v Royal Bank of Scotland* [2016] SC GLA 13, the Sheriff determined that the right to payment had not reinvested in the debtor, allowing the Bank to apply set off against sums which were owed to the Bank. In *Dooneen Limited & another v David Mond* [2016] CSOH 23, Lord Jones held that the Trust Deed terminated on the making of a final distribution thereby allowing the debtor to receive the PPI claim in full.

The *Donnelly* decision has been appealed and so we should have greater certainty regarding the position in Scotland by the end of the year.

[Read more](#)

## Limited partnerships – the Scottish view

Over recent years, Scottish Limited Partnerships (Scottish LPs) have become an increasingly common feature in tax efficient investment structures, particularly in property investment. Unlike limited partnerships registered in the rest of the UK, the Scottish LP has a legal personality of its own, distinct from that of its partners. This makes a Scottish LP transparent for tax purposes. The tax authorities look through the Scottish LP and only tax the profits arising from the Scottish LP's activities in the hands of its partners. This tax transparency has resulted in the Scottish LP featuring in investment structures in order to deliver tax benefits to the underlying investors. This article considers the issues that those involved in restructuring or insolvency assignments need to be alive to when dealing with a Scottish LP.

[Read more](#)

## Did you know...

*Whilst Scots law has much in common with English law, there are a number of subtle and not so subtle differences which can catch out the unwary. Here we touch on some that are worth bearing in mind when dealing with Scottish entities and assets.*

## In Scotland, the original administration appointment forms need to be lodged in Court rather than copies

The only exception is where an out of hours appointment is being made by the holder of a qualifying floating charge, where the documents are submitted by fax with the originals to follow as soon as practical thereafter. This does mean some logistical planning may have to be considered, particularly when forms are to be signed off in England but lodged in Scotland.



**Andrew Scott**

Senior Associate, Contentious Finance and Insolvency

T: + 44 (0)131 473 5709

M: + 44 (0)759 565 5184

E [andrew.scott@shepwedd.co.uk](mailto:andrew.scott@shepwedd.co.uk)

*“Unhelpfully conflicting decisions have been handed down and this has left Insolvency Practitioners north of the border uncertain as to the correct treatment of such claims”*



**Gillian Carty**

Partner, Contentious Finance and Insolvency

T: + 44 (0)131 473 5138

M: + 44 (0)785 073 8370

E [gillian.carty@shepwedd.co.uk](mailto:gillian.carty@shepwedd.co.uk)



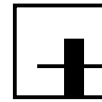
**Fiona McKerrell**

Partner, Corporate Recovery and Insolvency

T: + 44 (0)141 566 7260

M: + 44 (0)770 360 7008

E [fiona.mckerrell@shepwedd.co.uk](mailto:fiona.mckerrell@shepwedd.co.uk)



### **If a party could be sued in or wound up by the Scottish courts then lodging caveats in the relevant Scottish courts can be very useful**

A caveat may be lodged either (or both) of the Sheriff Court or Court of Session and entitles the party lodging the caveat on short notice to notice of certain interim applications being made against them and gives the opportunity to attend a hearing on the application, which they would not otherwise be entitled to. Notice is given for example for interim interdicts (i.e. interim injunctions) or winding up applications seeking the appointment of a provisional liquidator. If there is no caveat in place, certain orders can be granted without any prior notification and recall, while possible is neither immediate nor straightforward to obtain.

We recommend lodgement of caveats to clients as part of their risk management strategy. They are also often lodged on behalf of holders of floating charges, who are entitled to lodge caveats in relation to the granter of the floating charge. There is not a publicly searchable register of caveats. They are inexpensive and there is no down-side to having them.

### **In Scotland, we do not have the concept of a fixed charge receiver**

The holder of a fixed charge over freehold or leasehold property in Scotland will generally enforce their security by invoking the statutory calling-up process (which is significantly more cumbersome than appointing a fixed charge receiver in England) or by making an insolvency appointment. In certain circumstances where the debtor entity is a company or LLP with assets in different jurisdictions and a Scottish asset specific floating charge or floating charges have been granted, it may be possible to appoint receivers under the relevant floating charge(s) over those assets.

*“We recommend lodgement of caveats to clients as part of their risk management strategy”*

*“The holder of a fixed charge over freehold or leasehold property in Scotland will generally enforce their security by invoking the statutory calling-up process”*

---

## **About our Corporate Restructuring and Insolvency team**

Shepherd and Wedderburn has one of the largest and most established corporate, restructuring and insolvency teams in Scotland. All partners within the core team are ranked within their field by the legal directories and the team is led by Scotland’s Star Individual, Yvonne Brady (Chambers 2013, 2014, 2015 & 2016), placing the team in an unrivalled position within the market.

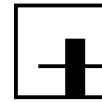
We act for a range of banks, insolvency practitioners and businesses on all issues arising in the restructuring and insolvency sector. We are the preferred provider for a number of our bank and insolvency practitioner clients, which include major banks, accountancy firms (including Lloyds Bank, Santander, Clydesdale Bank, KPMG, EY, PwC and Deloitte), as well as investment funds. We are also the partner of choice on cross-border matters for many leading English and foreign law firms. They choose to instruct us in relation to difficult, sensitive, high quality and high value matters

Our lawyers are known for their pragmatic, commercial approach, speed of response and first class strategic advice in complex projects.

For more information get in touch with any of the contacts overleaf.



**Yvonne Brady**  
Partner, Head of Corporate  
Restructuring & Insolvency  
T: + 44 (0)141 566 8504  
M: + 44 (0)784 195 1061  
E [yvonne.brady@shepwedd.co.uk](mailto:yvonne.brady@shepwedd.co.uk)



Your key Corporate Restructuring and Insolvency contacts



**Yvonne Brady**  
Partner, Head of Corporate Restructuring and Insolvency  
T + 44 (0)141 566 8504  
M +44 (0)784 195 1061  
E [yvonne.brady@shepwedd.co.uk](mailto:yvonne.brady@shepwedd.co.uk)



**Fiona McKerrell**  
Partner, Corporate Restructuring and Insolvency  
T +44 (0)141 566 7260  
M +44 (0)770 360 7008  
E [fiona.mckerrell@shepwedd.co.uk](mailto:fiona.mckerrell@shepwedd.co.uk)



**Gillian Carty**  
Partner, Contentious Finance and Insolvency  
T +44 (0)131 473 5138  
M +44 (0)785 073 8370  
E [gillian.carty@shepwedd.co.uk](mailto:gillian.carty@shepwedd.co.uk)



**Hamish Patrick**  
Partner, Finance and Restructuring  
T +44 (0)131 473 5326  
M +44 (0)781 466 8536  
E [hamish.patrick@shepwedd.co.uk](mailto:hamish.patrick@shepwedd.co.uk)



**John Gallacher**  
Partner, Distressed Property  
T +44 (0)141 566 7242  
M +44 (0)771 503 8724  
E [john.gallacher@shepwedd.co.uk](mailto:john.gallacher@shepwedd.co.uk)



**Paul Hally**  
Partner, Corporate Finance  
T + 44 (0)131 473 5183  
M +44 (0)779 864 6898  
E [paul.hally@shepwedd.co.uk](mailto:paul.hally@shepwedd.co.uk)



**Andrew Scott**  
Senior Associate, Contentious Finance and Insolvency  
T +44 (0)131 473 5709  
M +44 (0)759 566 55184  
E [andrew.scott@shepwedd.co.uk](mailto:andrew.scott@shepwedd.co.uk)



**Allanna Sweeney**  
Associate, Corporate Restructuring and Insolvency  
T +44 (0)141 566 7215  
M +44 (0)791 240 6092  
E [allanna.sweeney@shepwedd.co.uk](mailto:allanna.sweeney@shepwedd.co.uk)



**Suzanne Knowles**  
Associate, Corporate Restructuring and Insolvency  
T +44 (0)131 473 566  
M +44 (0)770 347 0215  
E [suzanne.knowles@shepwedd.co.uk](mailto:suzanne.knowles@shepwedd.co.uk)



**Tom Swan**  
Senior Associate, Corporate Finance  
T + 44 (0)131 473 5438  
M +44 (0)784 195 1087  
E [tom.swan@shepwedd.co.uk](mailto:tom.swan@shepwedd.co.uk)



**Al Frood**  
Partner, Contentious Finance and Insolvency  
T +44 (0)141 566 7281  
M +44 (0)788 581 3639  
E [alastair.frood@shepwedd.co.uk](mailto:alastair.frood@shepwedd.co.uk)



**Alison Blair**  
Solicitor, Finance and Restructuring  
T +44 (0)131 473 5779  
M +44 (0)770 347 1259  
E [alison.blair@shepwedd.co.uk](mailto:alison.blair@shepwedd.co.uk)



**Neil Campbell**  
Solicitor, Finance and Restructuring  
T + 44 (0)131 473 5416  
M +44 (0)779 322 3981  
E [neil.campbell@shepwedd.co.uk](mailto:neil.campbell@shepwedd.co.uk)



**Chris Garden**  
Solicitor, Contentious Finance and Insolvency  
T +44 (0)141 566 8572  
M +44 (0)751 531 5581  
E [chris.garden@shepwedd.co.uk](mailto:chris.garden@shepwedd.co.uk)



**Gina Johnston**  
Solicitor, Contentious Finance and Insolvency  
T +44 (0)131 473 5317  
M +44 (0)791 279 9606  
E [gina.johnston@shepwedd.co.uk](mailto:gina.johnston@shepwedd.co.uk)



**Serena Weir**  
Solicitor, Contentious Finance and Insolvency  
T +44 (0)131 473 5682  
M +44 (0)770 347 1757  
E [serena.weir@shepwedd.co.uk](mailto:serena.weir@shepwedd.co.uk)