

The below sets out key considerations when dealing with an extension of an administration at the end of the first-year anniversary.

If you intend to extend the administration by consent, then you will need to consider whether any/all of the secured creditors have been paid in full since the start of the administration. The approach you take to obtaining consent is likely to differ depending on whether you have paid or unpaid secured creditors.

You may also need the consent of the unsecured or preferential creditors depending on whether a paragraph 52(1b) statement has been given or a distribution to preferential creditors is envisaged.

Secured Creditors

Although the cases of *Pindar Scarborough*¹ and *Toogood*² concluded that administrators did not need the consent of paid secured creditors to an administration extension by consent, there was still some concern about relying on these decisions, particularly in a different factual context.

Helpfully, the Insolvency Service confirmed in “[Dear IP 168](#)” that it is a matter of professional judgment for an office-holder “with reference to the specific circumstances of the insolvency case” to determine whether a “creditor” is a creditor for the purposes of any insolvency law provision – reframing its previously held view that a creditor was classed as such at the point of entry into the insolvency process.

This means that, for the purposes of deciding which creditors need to consent to an administration extension, it is up to the administrator to decide if a creditor, at the start of the administration, is still a creditor for the purposes of consent at the point of extension.

Questions to consider:

- **Have some (but not all) secured creditors been paid in full?** If yes, only the consent of the unpaid secured creditors is required to extend.
- **Have all secured creditors been paid in full?** This requires more careful consideration.
 - If the only consent required is the consent of the secured creditors (i.e. a paragraph 52(1)(b) statement has been made but the administrator does not think there will be a distribution to preferential creditors), there is no class of creditor who can consent. In such a case, the prudent approach is to apply to court for an extension at the end of the one-year anniversary.
 - If consent of other creditors is required (either preferential creditors or unsecured creditors) along with the consent of secured creditors, the position is less clear. The reading of the legislation suggests you need the consent of both secured creditors and preferential/unsecured creditors, but, if there are no secured creditors, it is unclear if you can rely solely on the consent of preferential or unsecured creditors (as appropriate). The cautious approach is to apply to court to ensure a valid extension at the end of the one-year anniversary. More recent case law suggests the time for considering who should consent is the time when an extension is sought, and therefore if at the time that consent is required the only creditors who can consent are preferential or unsecured creditors, there may be justification for proceeding with their consent alone. Take advice on the best way to proceed.
- **Do you need consent from secured creditors who are about to be paid?** This will depend on the specific factual circumstances. Following [Dear IP 168](#), officeholders can use their professional judgment to decide on whether a creditor is a creditor for the purposes of obtaining consent. There might be situations where it is appropriate for an office holder to conclude that consent is not required, and others where they should reasonably conclude it is. Take advice.

¹ *Re Pindar Scarborough Ltd (in administration)* [2024] EWHC 908 (Ch)

² *Boughey and another v. Toogood International Transport and Agricultural Services Ltd (in administration)* [2024] EWHC 1425 (Ch)

Other Procedural Considerations

- Do not forget about lien holders and those that hold “other security” – you will need their consent (s248 Insolvency Act 1986 (Act)).
- If in doubt about whether a lien holder has a valid lien, or whether a creditor falls within the definition of someone who holds “other security” consider obtaining their consent in any event – it is often quicker and more cost effective to do that, than work through legal arguments about, for example, what constitutes a valid lien.
- Ensure all necessary consents are obtained before the administration period expires.
- Do not use a qualifying decision process or rely on deemed consent to obtain consent.
- Obtain written consent where possible.
- Consent cannot be obtained retrospectively – or late.
- Do not get consent “just in case”.
- Do not get consent too early (unless you can give reasons), but you will need to consider whether you can comply with para 78(5) of Schedule B1.

Preferential/Unsecured Creditors

- You do not need to deliver notices to paid creditors (Rule 15.11(1) Insolvency Rules 2016 (Rules))
- You can obtain consent using a qualifying decision procedure/deemed consent process (Para 78(2A) Schedule B1 and s246ZE of the Act)
- Notices must contain the prescribed information set out in Rule 15.8, although you can depart from this if appropriate/immaterial (Rule 1.9)
- Ensure you explain the reasons why an extension is required in the notice (Rule 3.54(2))
- Do not get consent “just in case”
- Do not get consent too early (unless you can give reasons) but you will need to consider whether you can comply with para 78(5) of Schedule B1

If in doubt, do ask your lawyers whether you should apply to court for an extension, rather than rely on consent, but do not leave that question until the last minute – leave time for an application to court in case one is required.

Extend or Convert to CVL?

Para 83 of Schedule B1 provides that an administration can be converted to CVL when

- Secured creditors have been paid or sufficient funds have been set aside to pay them
- A distribution will be made to unsecured creditors (which is not a distribution of the prescribed part)

The case of *Hobson* interprets “unsecured creditors” in this context to include both ordinary and preferential unsecured creditors.

Practitioners may have previously relied on para 83 to justify an extension where there was going to be no payment to ordinary unsecured creditors outside of the prescribed part – however this decision gives scope to move a company to CVL where:

- Secured creditors have been/will be paid in full
- Preferential creditors will receive a distribution but have not yet been paid
- There will be no payment to ordinary unsecured creditors

When Should You Convert?

Para 83 is qualified by the word “thinks” – therefore an administrator is not obliged to move a company to CVL just because secured creditors have or will be paid, and there are only the preferential creditors to pay.

An office holder is given latitude when making decisions, which will only be wrong if they are perverse.

There may be reason why an administrator might wish to move the company to CVL earlier than they may have done in the past – for example to pursue a s212 claim or for costs reasons (i.e. the insolvency is expected to last longer than another year). Or there might be reason why it is appropriate for the company to remain in administration – and this can be justified.

It would be reasonable for an administrator to decide based on the specific facts which is the best course of action.

If a court on hearing an application to extend decides that it is more appropriate for the company to go into CVL, rather than extend, provided the administrator made a reasoned decision as to why they applied to extend, rather than convert, they should not be criticised for making such an application.

Equally if an administrator converts the administration to CVL and they have come to that decision based on the *Hobson* decision, it would seem reasonable for them to have relied upon that (and legal advice) to do so.



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