

No limits: the indefinite suspension of a bankrupt's discharge – *Harris v Official Receiver*

KEY POINTS

- In *Harris v Official Receiver* [2016] EWHC 3433 (Ch) the court confirmed it may order a conditional indefinite suspension of a bankruptcy under s 279(3)(b) of the Insolvency Act 1986 having previously ordered a fixed-term suspension under s 279(3)(a), and may do so before the initial suspension has expired.
- Before doing so, the court must be satisfied that there are good grounds justifying such an order and that there has been a change of circumstances since the initial order was made.

BACKGROUND

A bankruptcy order was made against Mr Robert Harris on 9 August 2013. Mr Robert Knight was appointed as his trustee in bankruptcy on 20 November 2013.

The court suspended Mr Harris' automatic discharge from bankruptcy, which would normally take effect after one year, until 31 October 2014 under s 279(3)(a) of the Insolvency Act 1986 (IA 1986). It was explained to Mr Harris at the hearing by District Judge Green that the order was made with a view to Mr Harris assisting the Official Receiver ('the OR') with supplemental information, including details of his income and expenses. The order itself, however, was not subject to any express conditions requiring such cooperation.

A second application was made by the OR on 30 September 2014, seeking the indefinite suspension of the discharge on the grounds of his continued lack of cooperation. An order in Mr Harris' absence was made on 17 October 2014 suspending the bankruptcy discharge until 18 January 2015 to allow for the proper service of the OR's application, and the hearing of that application was adjourned to 5 January 2015.

At the hearing of the OR's application, District Judge Wilkinson ordered the indefinite suspension of Mr Harris' statutory

discharge under s 279(3)(b). His bankruptcy would continue until either the OR filed a report evidencing that he was satisfied the bankrupt had fulfilled his cooperation obligations (contained in s 291 of the IA 1986), or until either party obtained a court order terminating the bankruptcy.

Mr Harris was granted permission to appeal District Judge Wilkinson's order by Peter Smith J (although in doing so, the judge mistakenly observed that the original suspension had run out prior to the suspension application). HHJ Purle discharged the stay on District Judge Wilkinson's order pending the hearing of the appeal, and Mr Harris reportedly remained uncooperative with the OR and his trustee in the meantime.

The case on appeal challenged the court's entitlement to order an indefinite suspension of a bankruptcy under s 279(3)(b) before the expiry of the fixed-term suspension previously ordered under s 279(3)(a); the first order contained no conditions and was not appealed, and therefore ought *prima facie* to take effect. Mr Harris did not seek to contend the District Judge's finding that he had failed to comply with his s 291 obligations, or otherwise challenge the finding on the merits.

The appeal was heard by Andrew Simmonds QC, sitting as a Deputy Judge of the High Court. Mr Harris did not attend the hearing, however HHJ Simmonds QC

saw fit to consider the 'fairly short point of law' the appeal raised in his absence.

STATUTORY FRAMEWORK

Under s 279(1) of the IA 1986:

'A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.'

This automatic discharge is subject to s 279(3), which provides that:

'On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until –

(a) the end of a specified period, or

(b) the fulfilment of a specified condition.'

Pursuant to sub-s (4) of s 279:

'The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.'

The obligations referred to are contained, in part, in s 291(1) of the IA 1986, which requires a bankrupt to deliver up to the OR all books, papers and records under his possession or control. A bankrupt is also under a duty (contained at s 291(4)) to provide to the OR any other information and attend on the OR should this be reasonably required.

Feature

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KNOW NO LIMITS

Andrew Simmonds QC dismissed the appeal.

His first basis for doing so was the wording of the statute itself. Section 279 contains no express provision that only one application can be made under s 279(3), let alone specifying that the OR cannot apply for an order under s 279(3)(b) having already been granted an order under s 279(3)(a). In the view of the judge, reading in such a limitation 'would make the operation of the section inflexible'.

Of greater concern, however, would be the wider implications of such a reading, which 'would operate as a disincentive to the making of limited period orders under 279(3)(a)'. The OR would invariably apply for indefinite suspensions under s 279(3)(b) as a matter of course where faced with non-cooperative bankrupts, rather than risk being unable to sanction any ongoing lack of assistance after the initial fixed date. The

ordered, s 279(3)(a) would be drained of its use and purpose. In other words, the OR must be able to enjoy 'two bites of the cherry'.

STAYING GROUNDED

In reaching this conclusion, HHJ Andrew Simmonds QC acknowledged the concern that an order that was expressed unconditionally and was not subject to appeal should, on the face of it, be expected to take effect.

However, the answer to this could not be to prevent the OR from seeking a further suspension under s 279. Instead, it lies in the criteria required for such an order to be made by the court. The court must be satisfied that 'there is good reason to extend the suspension' in the circumstances of the case, and that there has been 'a change of circumstances since the original order which justifies making a different order under the section'.

this cooperation would be fulfilled by 31 October 2014. Mr Harris' failure to do so justified the further application and order.

Upholding District Judge Green's finding on the facts that further suspension was necessary, Andrew Smith QC accordingly dismissed the appeal.

CONCLUSIONS

This judgment has helpfully clarified the law on the operation of s 279 and the interaction of sub-ss 279(3)(a) and (b). It makes clear that the OR can obtain a conditional indefinite suspension while a fixed-term suspension remains operative, provided the court is persuaded that there is good reason and a change of circumstances to justify the order.

The decision should come as good news to creditors and insolvency practitioners. It serves to disincentivise non-cooperative behaviour and delaying tactics from bankrupts, and enables the OR to utilise the full toolkit of statutory options to enforce compliance with the duties contained in s 291.

More generally, the ruling illustrates that the court is willing to take a firm stance in the face of such intransigence. ■

'The judgment serves to disincentivise non-cooperative behaviour and delaying tactics from bankrupts, and enables the OR to utilise the full toolkit of statutory options to enforce compliance'

benefits afforded to the bankrupt by such fixed-period suspensions, which offer a 'sight of light at the end of the tunnel' should he or she comply with their obligations, would be lost.

Although not stated so explicitly in the judgment, it stands to reason that there would similarly be little incentive for bankrupts under a specified period suspension to cooperate should there be no risk of repercussion.

Without the option of using s 279(3)(b) after a fixed-term suspension had been

So while there is no statutory barrier preventing the OR from seeking a second suspension under s 279, good grounds must be made out in order to justify the order.

WAS THE INDEFINITE SUSPENSION OF MR HARRIS' BANKRUPTCY JUSTIFIED?

The order made in August 2014 suspending Mr Harris' bankruptcy was, in HHJ Andrew Smith QC's view, plainly made on the basis that he would comply with the OR's requirements. It was anticipated that

Further reading

- LexisPSL Restructuring and insolvency: Practice notes: Suspension of discharge from bankruptcy under section 279(3) of the Insolvency Act 1986
- RANDI Blog: Suspending a bankrupt's discharge from bankruptcy – *Wilson v Williams*, 30 June 2015
- The UK bankruptcy regime: a review of the automatic discharge and suspension of discharge provisions in the Insolvency Act 1986 (2015) 1 CRI 45B