

RESCUE ME...INSOLVENCY ISSUES FOR EMPLOYMENT LAWYERS

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1. The policy aim behind the legislation governing insolvency is that of facilitating the so-called 'rescue culture' by making insolvent employers more attractive to prospective purchasers. The policy aim behind employment protection legislation is to provide valuable rights for employees. It is unsurprising that, when these two policy aims collide, problems arise.

2. For example, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE 2006") were introduced with the promise that they would facilitate the rescue culture by relieving prospective purchasers of onerous TUPE liabilities. The introduction of the insolvency provisions of TUPE 2006 was less than promising; they narrowly survived a debate in the House of Lords to rescue them from their impenetrable and confusing drafting (*see HC Hansard 3 May 2006 : Column 536ff*). Since then, we have had conflicting EAT decisions on their application.

3. This paper considers recent case law on the following questions:
 - (1) What is 'insolvency' in the employment law context?
 - (2) What does insolvency do to the contract of employment?
 - (3) Which employment claims are protected, prioritised or guaranteed in insolvency?
 - (4) How do you claim against an insolvent employer?
 - (5) How far does TUPE apply in insolvency?

WHAT IS INSOLVENCY?

4. Starting with the basics; what is insolvency? There are five types of insolvency proceedings in British law.

5. Just to make life interesting, there are also two, different, statutory definitions of insolvency found in employment legislation, ERA and TUPE 2006.
6. The five types of British insolvency proceedings can be categorised by reference to their end-results as follows–
 - Termination of the existence of a corporate body whether solvent or insolvent (liquidation and some administrations);
 - Enforcement of security by a creditor (usually under a receivership arrangement);
 - Breathing space to attempt a company rescue (administration);
 - Arrangements between creditors to keep a company going (voluntary arrangements);
 - Termination of an insolvent undertaking (corporate or individual) and equitable division of the assets amongst creditors (bankruptcy or insolvent liquidation and some administrations)¹.
7. This focus on the end-result of the insolvency proceeding is also found in the first statutory definition found in employment legislation, namely the concept of “relevant insolvency proceedings” in regulation 8 (6) TUPE 2006. This statutory definition is considered below.

¹For the statutory underpinning for these insolvency proceedings, see

- Liquidations

- court (compulsory) liquidations - see Chapter VI of Part IV of the Insolvency Act 1986 (“IA 1986”)
- voluntary liquidations - members’ and creditors’ - see Chapters II to IV of Part VI of IA 1986

- Receiverships

- court (interim) receiverships under a court order
- contractual receiverships (provided for under security documents, usually fixed/floating charges) – includes administrative receiverships (in part codified under ss 33-41, 71 IA 1986) and other receiverships (Law of Property Act 1925)

- Voluntary arrangements, creditors’ and members’ – Part I IA 1986

- Administrations – (schedule B1 to the IA 1986), administrations are used where receivership is not available (no existing security) and/or to freeze the enforcement of a security or the presentation of winding-up petitions to give a breathing space for negotiations to take place to see if a company or its business can be saved.

8. However, the second definition of insolvency found in employment legislation does not depend on the end-result of the insolvency proceedings but on their form. Certain claims by employees of insolvent employers are guaranteed by the state from the National Insurance Fund under ERA (and the Pension Schemes Act 1993). This requirement to guarantee certain employee claims in insolvency comes from the European Employment Insolvency Directive EC/80/987 as amended by Directive 2002/74/EC.
9. What must happen to trigger these guarantee payments?
10. For statutory redundancy payments, by section 166 (5) ERA –

(1) Where an employee claims that his employer is liable to pay to him an employer's payment and either -

(a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or

(b) that the employer is insolvent and the whole or part of the payment remains unpaid

11. What does insolvent mean here? Subsections 166 (6) – (8) ERA define the various procedural steps which must have occurred before an individual, company or LLP is insolvent for the purposes of guaranteeing state redundancy payments. This is a precise and mechanistic definition which turns on whether or not particular appointments or court orders have been made.
12. In England and Wales an individual is insolvent if they have been adjudged bankrupt or have made a composition with their creditors. Where the employee is a company it is insolvent if:

(1) There has been a winding up order or a resolution for a voluntary winding up;

- (2) The company is in administration;
 - (3) A receiver has been appointed² on behalf of the holders of debentures secured by a floating charge;
 - (4) A voluntary arrangement has been approved under Part I of the Insolvency Act 1986.
13. LLPs are insolvent where:
- (1) A winding-up order, an administration order or a determination for voluntary winding up has been made;
 - (2) A receiver or manager has been appointed;
 - (3) A voluntary arrangement has been reached.
14. The same definition of insolvency is found in section 183 (1) ERA/section 123 PSA 1993 for guaranteed payments under those regimes.
15. The mere fact of insolvency (in the sense of not being able to meet debts) is not enough: *Secretary of State for Employment v McGlone* [1997] BCC 101. Nor is it enough that -
- (a) one partner in a partnership is bankrupt - *Secretary of State v Forde* [1997] IRLR 387);
 - (b) a receiver/manager has been appointed under a fixed charge - *Secretary of State for Employment v Stone* [1994] ICR 761);
 - (c) a company has been struck off the register - *Secretary of State v Walden* [2000] IRLR 168).
16. Further, the employer (even if a foreign company) must have entered insolvency proceedings in Great Britain.

WHAT DOES INSOLVENCY DO TO THE CONTRACT OF EMPLOYMENT?

17. A court winding-up automatically dismisses all employees with immediate effect. This gives rise to a claim for damages and for a redundancy payment. They then

² Or a manager of the company's undertaking

prove their dismissal debts in the liquidation (subject to a duty to mitigate). If the liquidator continues the business of the company, staff can agree that there is no termination and employment will continue (cf where a winding-up is converted into administration where there can be a waiver of the dismissal and re-engagement).

18. The effect of a court-appointed receivership will be to terminate all contracts of employment. Again it gives rise to redundancy and breach of contract claims.
19. A voluntary winding-up does not automatically terminate the contracts of employment but the company is likely to cease to trade.
20. Similarly a contractual receivership will not automatically terminate the contracts of employment (the receiver is an agent of the company so there is no change in the identity of the employer but there will be dismissals if the company ceases to trade).
21. The appointment of an administrator (as the agent of the employer) will not automatically terminate the contracts of employment.

WHICH EMPLOYMENT CLAIMS ARE PROTECTED, PRIORITIZED OR GUARANTEED IN INSOLVENCY?

22. Where a business is wound up, the money is applied to debts in accordance with a hierarchy determined by the Insolvency Act 1986, the first four elements of which are:
 - (1) Insolvency expenses;
 - (2) Preferential debts;
 - (3) Floating charges; and
 - (4) Ordinary unsecured debts.
23. Where an employer is insolvent it obviously pays to be as high up this ladder as possible. Subject to certain limited exceptions, discussed below, an employee who has not received what is due to him will generally find his claim falling into the fourth category.

Insolvency expenses

24. In order to be able to claim pay as an insolvency expense, the entitlement must arise after the appointment of the insolvency practitioner.
25. *Liquidators:* Where a liquidator agrees that an employee should continue providing his services, pay subsequently earned will usually fall to be treated as an insolvency expense. It is rather less clear whether claims that arise on the ultimate termination of the contract of employment also fall to be treated as an insolvency expense.
26. *Administrators:* If an administrator continues an employee's engagement beyond a 14 day grace period he will be taken to have "adopted" the contract.
27. Mere continuation of the contract is not enough to amount to adoption; the administrator must, through his conduct, elect to continue the contracts; see *Powdrill (supra)*. In *Antal International Limited* [2003] EWHC 1339 (Ch), some French employees were thought to be employees of a subsidiary company and remained employed beyond the 14 day period after which it was discovered that they were employed by the company in administration. This was not sufficient to amount to an election to adopt their contracts.
28. The effect of adoption is to give certain "qualifying liabilities" a "super-priority".
29. An administrator does not undertake a personal liability. However 'qualifying liabilities' for wages, salary and pension contributions after the adoption of the contract are given 'super priority' in that they are charged on the company's property in priority to most other charges and securities including the fees and expenses of the administration.
30. Contractual bonuses (and there is the usual scope for argument here as to what is contractual), employer's pension contributions and holiday pay for holiday actually taken are covered. Benefits in kind are not because they are not liabilities to make a payment. Statutory entitlements such as unfair dismissal or protective awards do not count as they are not liabilities under a contract.
31. In *Re Alders Department Stores Limited* [2005] ICR 867, the judge rejected an argument that, in the context of an administration, redundancy payments and unfair

dismissal compensation fell to be treated as insolvency expenses. In *Krasner v McMath* [2006] ICR 205 the Court of Appeal concluded that an administrator's liabilities to employees of a company in administration for protective awards and payments in lieu of notice were not payable in priority to the expenses of the administration (save that any payments in lieu of notice where an employer did not require an employee to work during his notice period and paid his wages attributable to that period in a lump sum would be payable in priority as such payments constitute wages as per *Delaney v RJ Staples (t/a De Montford Recruitment)* [1992] 1 AC 687).

32. In *In Re Leeds United Football Club* [2007] ICR 1688, it was held that where administrators adopted the players' fixed-terms contracts of employment but dismissed them before expiry of the term, the damages for wrongful dismissal were not given 'super priority', again applying the *Delaney v Staples* definition of 'wages'.
33. *Administrative Receivers*: The regime is similar to that for Administrators. If a contract is adopted, payments must be made in respect of "qualifying liabilities". Administrative receivers are treated as being personally liable, albeit that they are entitled to an indemnity, so this is a difference in form rather than in substance.
34. *Other Receivers*: They too can be personally liable for adopted contracts. Their liability is limited to obligations arising during the course of their receivership; *Powdrill v Watson* [1995] 2 AC 394 HL. Their liability is not limited, however, to "qualifying liabilities".

(ii) **Preferential Debts**

35. Certain employment entitlements are given preferential status.
36. There are two principal categories of debt which are given preferential status (Insolvency Act 1986, sch 6):
 - (1) Remuneration; and
 - (2) Pension contributions.

37. *Remuneration*: An employee has a preferential claim for 4 months of arrears of remuneration (counting back from a “relevant date” which is defined in accordance with Insolvency Act 1986, s. 387). This is subject to a cap of £800.

38. Remuneration is very broadly defined (though the low cap takes away much of the point of the broad definition) and includes:

- (1) Wages, including contractual commission or bonus payments;
- (2) A guarantee payment under ERA 1996, Part III,
- (3) A medical or maternity suspension payment under ERA 1996, ss. 64 and 68;
- (4) A protective award;
- (5) Sick pay or pay for absence for “other good cause” (which may, therefore, include SMP); and
- (6) Pay for time off in accordance with the rights conferred by ERA 1996, ss. 53 (right to time off to look for work or arrange training) and 56 (right to time off for ante-natal care) and TULRCA 1992 s. 169.

39. Accrued holiday pay is treated separately and is not subject to a cap.

40. Notice pay, statutory redundancy pay and unfair dismissal compensation are not given the status of preferential debts.

41. *Pension Contributions*: **Very broadly**:

- (1) 4 months’ of arrears of employee contributions to an occupational pension scheme are preferential debts; and
- (2) 12 months’ of contributions due from an employer into a contracted out occupational pension scheme are treated as preferential debts but only insofar as they relate to the GMP or protected rights.

(iv) **Claiming against the National Insurance Fund**

42. As noted in paragraphs 8-10 above, if an employee is unable to recover what he is owed from an insolvent employer, he may be able to receive a payment from the National Insurance Fund. The two statutory schemes are:

ERA 1996 Part XI: Statutory Redundancy Payments:

ERA 1996 Part XII: Insolvency Payments.

43. The latter covers a wider range of payments. The most important is "arrears of pay". This includes:

- (1) Guarantee payments;
- (2) Remuneration of suspension on medical or maternity grounds;
- (3) Payment for time off in accordance with statutory entitlements;
- (4) Protective awards.

The employee can recover for an eight week period counting back from the date of insolvency. There is a further cap of £400 per week (section 186 ERA).

44. Six weeks of holiday pay is recoverable provided that that time off was actually taken in the 12 months immediately preceding the date of insolvency.

45. Also protected is:

- (1) Statutory notice pay (capped at £400 per week); and
- (2) An unfair dismissal basic award.

HOW DO YOU CLAIM AGAINST AN INSOLVENT EMPLOYER?

46. By paragraph 43(6) of Schedule B1 to the Insolvency Act 1986 no legal proceedings may be instituted against a company in administration otherwise than with the consent of the administrator or with the permission of the court.

47. Time limits in employment tribunal claims will often have expired before a decision is forthcoming from an administrator. What should claimants do? Issue the claim and ask for it to be stayed pending the consent of the administrator. The effect of the statutory moratorium is not that proceedings brought against a company in

administration are a nullity, only that they are likely to be stayed; see *Carr v British International Helicopters Ltd* [1994] ICR 18 as applied in *Unite the Union v Sayer (in administration)* UKEAT/0513/08.

48. What if the administrator refuses consent? Often he will consent where the claim is one which will be picked up by the Secretary of State (such as for a protective award) but refuse consent for 'money claims' such as for PILON, wages or discrimination as happened in *Unite the Union v Nortel Networks UK Ltd (in administration)* [2010] IRLR 1042. The union applied to the Court (High Court in Northern Ireland) for permission to bring the claims. Permission was refused on the grounds that –

(a) where the claims are simply monetary, the appropriate test is whether they are "exceptional" so as to warrant the grant of permission for their continuation, not whether the claims have a real prospect of success such that it would be inequitable not to allow them to proceed.

(b) In that regard, employment law claims for expenses, breach of contract, unfair dismissal and discrimination are all "debts" or "liabilities" for the purposes of an administration or liquidation, and it is not necessary to pursue them to judgment before any claim provable in the administration could arise.

49. What other options are there where the employer is insolvent? If there is another, solvent, potential respondent to a discrimination claim under the Equality Act 2010, proceedings can be issued against that individual respondent for their primary liability under section 110 or secondary liability under section 112. Such a claim can be brought against the individual respondent alone and may result in the same award where the loss is 'indivisible'; see *London Borough of Hackney v Sivandan* [2011] IRLR 740.

HOW FAR DOES TUPE APPLY IN INSOLVENCY?

50. TUPE has been the main front in the conflict between the competing aims of the rescue culture and employment protection. The aim of the TUPE Regulations is plain: where an employer is disposing of a business or part of a business, the

employees should have not just their jobs but their terms and conditions protected. However, TUPE's protective regime can make buying a business a less compelling proposition for a potential transferee. Where an employer is insolvent, failing to find a purchaser can leave employees with no job at all. There is a case, therefore, for reducing the protections with a view to increasing the prospect of employees remaining in employment.

51. Pre-TUPE 2006, this compromise was found in the ECJ case law under TUPE 1981 which held that the Acquired Rights Directive did not apply to the transfer of a business in the course of insolvency proceedings – *Abels v Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie* 135/83 [1985] ECR 469.

52. The ADR did apply where -

(c) the undertaking is being wound up if it continues to trade – *Jules Dethier Equipment SA v Dassay* C-319/94 [1998] ICR 541;

(d) the undertaking is being wound up voluntarily – *Europieces SA v Saunders* [1998] ECR I-6965.

53. The distinction was between an 'irretrievable insolvency and cessation of business' and 'the sale of a business as a going concern': *Donaldson v Perth and Kinross Council* [2004] ICR 667.

54. This distinction was made express in Article 5 of the 2001 ADR which provides that, unless member states provide otherwise, Articles 3 and 4 of the ADR, shall not apply in the following circumstances of insolvency –

Any transfer of an undertaking, business or part of an undertaking or business where the transferor is the subject of bankruptcy proceedings or any analogous proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority (which may be an insolvency practitioner authorised by a competent public authority)

55. When implementing the 2001 ADR (TUPE 2006), the government simply 'copied out' this Euro-definition of insolvency without translating it to reflect the five different types of British insolvency proceedings set out above. The difficulties this caused are considered below but it is first necessary to identify why the definition matters.

What is the significance of whether or not a transferor is in insolvency proceedings within the exemption in Article 5 ADR 2001?

56. The answer lies in regulation 8 (6) and (7) TUPE 2006 –

(6) In this regulation “relevant insolvency proceedings” means insolvency proceedings which have been opened in relation to the transferor not with a view to the liquidation of the assets of the transferor and which are under the supervision of an insolvency practitioner.

(7) Regulations 4 [Transfer for rights and obligations] and 7 [Protection against dismissal for a transfer-related reason] do not apply to any relevant transfer where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of an insolvency practitioner.

57. The significance of whether a particular type of insolvency proceeding falls within Article 5 ADR 2001 is that, if it does, by regulation 8 (7) of TUPE 2006, regulations 4 and 7 of TUPE 2006 do not apply.
58. This means that, save for the obligations to inform and consult in regulations 11-16 TUPE, the substantive effect of TUPE is disapplied in that liabilities do not pass to the transferee.
59. However, even for those types of insolvency proceedings where regulation 8 (7) does not apply (administration and other non-terminal insolvencies), the TUPE liability is reduced. In such cases, where the business is in 'relevant insolvency proceedings', regulation 8(2)–(6) provides that liability for certain debts (covered by the two statutory schemes set out in paragraphs 8 *et seq* above such as unfair dismissal basic awards, statutory redundancy payments and payments in lieu of notice) do not transfer to the transferee in the usual way under regulation 4. Instead, they become

payable by the Secretary of State for Business, Innovation and Skills out of the National Insurance Fund.

60. Both the 'strong' bail out from TUPE liabilities in regulation 8 (7) and the 'weak' bail out in regulation 8 (2) - (6) will make an insolvent transferor more attractive to potential purchasers and so facilitate the 'rescue culture'. Or at least it would if potential purchasers, vendors, employees, the government, employment lawyers and EAT judges could agree on what the regulation 8 (7) definition means.
61. Of the five types of British insolvency proceedings summarised in paragraph 6 above, which fall within the Article 5 definition of "bankruptcy proceedings or any analogous proceedings which have been instituted with a view to the liquidation of the assets of the transferor"?
62. The government's view (as expressed in the DTI's June 2006 guidance on TUPE and redundancy and insolvency payments (URN 06/1368)) is that the following categories of insolvency proceedings fall within the definition of "*bankruptcy proceedings or any analogous proceedings which have been instituted with a view to the liquidation of the assets of the transferor*" -

Regulation 8 (7)

- bankruptcy
- compulsory liquidation
- creditors' voluntary liquidation

63. Significantly, the government took the view that administration fell outside regulation 8 (7) and so regulations 4 and 7 TUPE 2006 would continue to apply to businesses bought out of administration. Were they right? Yes, but it took a while to get there. This was particularly unfortunate as administration is the form of insolvency proceedings best suited and most commonly used to 'rescue' a business. The position is now however as clear as it can be with two conflicting EAT authorities on the point.
64. First, in *Oakland v Wellswood (Yorkshire) Ltd* [2009] IRLR 250, the EAT held that whether or not Regulation 8(7) applies to a particular transfer is a question of fact that depends on the intentions of the administrator. This 'fact sensitive' test (a) ignored

the statutory priorities of every administrator and (b) rendered it impossible for those caught up in an administration to know whether or not they would the full force of TUPE would apply. This point was not appealed to the Court of Appeal but it nevertheless expressed strong doubts as to its correctness at [2010] IRLR 82.

65. Secondly, in *OTG Ltd v Barke* [2011] IRLR 272, the EAT returned to the point in consolidated appeals listed to 'obtain an authoritative decision... on the correct approach'. The EAT held that, as the primary statutory object of an administration is to rescue the company as a going concern, that purpose is inconsistent with the liquidation of the assets of the company so that an administration can never fall within regulation 8 (7) of TUPE. It held that regulation 8(7) does not apply to the purchase of a business or assets from a company in administration, including sales using pre-pack arrangements, so that in such a case the employees of the insolvent transferor will transfer to the purchaser.
66. It is of course unsatisfactory to have two conflicting EAT decisions on the point but the *OTG* approach should now be followed. It has at least the benefit of the certainty of a 'bright line rule' that all administrations are to be treated in the same way so that regulations 4 and 7 of TUPE will apply.

Two time points

67. Two further EAT cases on timing issues in the 'bail out' provisions of TUPE 2006 are worth mentioning.
68. When and how does the bail out start? To get the benefit of regulation 8(6) the insolvency proceedings must have been "opened" in relation to the transferor prior to the transfer. To come within regulation 8(7), the proceedings must have been "instituted" prior to the transfer. This was considered by Elias P in *Secretary of State for Trade and Industry v Slater* [2007] IRLR 928 where he held that in order to determine whether the relevant insolvency proceedings have been commenced, one has to identify the particular proceeding and then determine, in accordance with the statutory provisions relating to that particular proceeding, whether it has commenced or not. The concept of when the proceedings begin has to be the same under TUPE as it is in the legislation defining the relevant statutory proceedings. There is no basis in law for fixing a different starting point for TUPE purposes than for any other purposes.

69. Further, the proceedings must in fact be being conducted by an insolvency practitioner acting in that capacity. In *Slater*, the tribunal had wrongly assumed that the IP was acting in that capacity at the time of the transfer when in fact he was only assisting the company at this stage and had not been formally appointed as the liquidator.
70. More recently, in *Pressure Coolers Ltd v Molloy* [2011] IRLR 630, the EAT held that, when regulation 8 (2) –(6) applies (the ‘weak’ bail out), the relevant debts had to arise before the transfer in order to come within the Secretary of State’s guarantee under ERA 1996 Part XII: Insolvency Payments. This is another example of how the balance is being struck between -
- (a) terminally ill employers who need the intensive care treatment of the regulation 8 (7) bail out and
 - (b) employers in administration (in particular pre-pack administrations where a ‘rescuer’ is already waiting in the wings) where the EAT held there was no pressing need to provide an incentive beyond that found in regulations 8 (2) - (6).

Other insolvency provisions in TUPE

71. It is important to remember that, irrespective of the position under regulation 8 TUPE 2006, the obligations to provide Employee Liability Information under regulation 11 and the inform and consult obligations in regulations 13-16 continue to apply without exemption under TUPE 2006 in insolvency situations.
72. Liability for compensation (capped at 13 weeks pay per employee) for failure to inform and consult is now joint and several on the transferor and transferee; regulation 15 (9). This can be a substantial liability for a transferee. Purchases out of insolvency are generally done in something of a hurry.
73. There is no exemption for insolvent employers under the collective redundancy provisions in TULCRA. Insolvency can be but will not necessarily amount to a ‘special circumstance’ within section 188 (7), 193 (7) TULCRA - *The Baker’s Union v Clarks of Hove* [1979] 1 All ER 152. A full 90-day protective award was awarded

where an administrator made employees redundant on the day after the administration – *TGWU v Morgan Platts Ltd (in administration)*.

74. Regulation 9(1) of TUPE 2006 provides that where the transferor is in relevant insolvency proceedings (regulation 8 (6) transferor or the transferee may agree 'permitted variations' to terms and conditions with appropriate representatives (essentially the same as regulation 13 inform and consult representatives) of the employees assigned to the organised grouping involved in the relevant transfer.
75. This is an unorthodox procedure as it purports to permit the variation of an individual contract of employment without express agreement from the employee (cf collective bargaining where the collective agreement as agreed 'from time to time' is incorporated into the individual contract).
76. A 'permitted variation' is one where, regulation 9 (7)
- the sole or principal reason for it is the transfer and is not an ETO reason entailing a change in the workforce (which of course would otherwise be valid— see regulation 4(5)(a));
- and
- (b) it is designed to safeguard employment opportunities 'by ensuring the survival of the undertaking, business or part of the undertaking or business' that is transferred. (Regulation 9(7)(a) and (b)).
77. It has a fundamental flaw in that it can be sabotaged where there is no trade union by the employees simply refusing to elect employee representatives. Cf regulation 13(11), there is no 'default' provision allowing individual consultation in regulation 9. If there is a union or employee representatives in place, regulation 9 may be useful but if elections are required this will take time as will negotiations to agree worse terms and conditions. Time is something an insolvent business rarely has.
78. If changes can be agreed, but the business fails subsequently will employees then be able to argue that they are not binding (so that they can claim on their old terms) as they have failed to satisfy the second limb of the definition of a permitted variation, that of 'ensuring the survival of the undertaking'? It will be relatively unusual for a

change to terms and conditions to have this miraculous effect on an insolvent business.

79. To benefit from all the insolvency provisions in TUPE, it is necessary for insolvency practitioners, vendors and purchasers, employees, trade unions, and their lawyers to get it right and to get it right in time. Time is the one thing employment lawyers rarely have on their side when advising on a TUPE transfer of an insolvent business.

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