

## Rent in Administration

For a number of years Administrators dealt with landlords on the basis of full payment of rent for the time of occupation. In 2009 the 'Goldacre' case decided against the Administrator in that a whole quarter's rent became due and pre-payable at the quarter date, even if the Administrator was about to vacate. A custom and practice then apparently evolved whereby businesses delayed formal Administration until one day after quarter day thus effectively producing a 3 month rent free period.

According to press reports this month this has now been challenged by a group of landlords claiming millions of pounds in rent that went unpaid after retailer Game went into Administration last March. According to these reports, four landlords, together with Administrators PwC have asked the court to clarify whether rent should be paid as an Administration expense.

Game went into Administration on 26 March 2012, one day after the company's quarter rent payments were due. The timing meant that Administrators did not offer to pay a quarter's rent, despite continuing to trade from the stores. The landlords' representative stated "there is a strong feeling among landlords that a point of principle has to be made". "We would like to see a pay-as-you-trade arrangement for space which suits both landlords and retailers".

The general consensus is that rigid rules which result from the 'Goldacre' decision are inconsistent with the purpose of Administration. They are also unhelpful and have contributed to the recent trend in the retail sector for a large number of Administrations taking effect soon after each quarter day.

A return to "pay-as-you-trade" system as called for by the group of landlords and PwC is more appropriate to Administration.

Whether your client is a landlord or a tenant, this decision could have major repercussions.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.

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