

## How Jersey's Viscount came to handle a cross-border insolvency claim worth £1.3 billion

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### How Jersey's Viscount came to handle a cross-border insolvency claim worth £1.3 billion and the implications for creditors of insolvent Jersey companies

For the first time in around 40 years, Jersey's Viscount looks likely to be recognised by the English High Court to administer a major cross-border insolvency case.

The case concerns a Jersey GP and a Jersey-registered company which have both been declared en désastre (bankrupt) by the Royal Court of Jersey, and which face claims in the combined sum of £1.3 billion.

In recent decades, the typical practice has been for creditors to seek to place an insolvent Jersey company into administration in England.

In the proceedings against Dr Gail Cochrane and Orb a.r.l. (a company of which Dr Cochrane was the sole director and shareholder) the Royal Court declined to follow that route, instead deciding to declare them en désastre in Jersey, and then following an application by the Viscount, seek the English High Court's judicial cooperation to recognise the Viscount (the official responsible for enforcing the orders of the Jersey courts) and authorise her to exercise certain powers and functions as administrator of the désastres within England and Wales.

The recent trilogy of decisions concerning this matter, which were handed down in Royal Court between late September 2016 and mid-February 2017 - means that creditors and practitioners in the field of cross-border insolvency should no longer assume that the option of placing a Jersey company into administration in England will always be open to them, and they will need to carefully consider whether the case is one that the Viscount could administer under Jersey's insolvency regime.

The background to the proceedings covers the theft of around £35 million from a company called Izodia

by Dr Cochrane's former husband Dr Gerald Smith in late 2002 – most of the proceeds of the theft were misapplied to the benefit of Orb. Once the theft had been discovered, Orb sold a substantial proportion of its assets to a third party, who transferred them into a complex structure – it is asserted that there was an oral agreement between Orb and the third party, not reflected in the sale agreement, that Orb would continue to benefit from the assets that it had sold and the proceeds of their development.

Following an investigation by the Serious Fraud Office in the UK, Dr Smith pleaded guilty to a number of charges and was sentenced to an eight year prison term, and was the subject of a £41 million confiscation order.

The proceedings before the courts arise from litigation funder Harbour's efforts to recover money and assets from Dr Cochrane and Orb.

The implication of the decisions in the case of Cochrane and Orb is that, after nearly 40 years in which insolvent Jersey companies have been placed into administration in England as opposed to the Jersey *en désastre* route, that path is no longer guaranteed.

On examination of the facts the Royal Court found there was no advantage to using English administration in favour of *Désastre*, particularly in circumstances where there was no expressed desire to maintain Orb as a going concern – and stated that it was important that Jersey, as a well-respected financial centre, discharged its responsibility for dealing with the affairs of a Jersey company and its own resident

The trilogy of cases has provided a salutary reminder to the international insolvency community and to creditors of Jersey companies that Jersey has a sophisticated insolvency regime which will be utilised in cross border insolvencies.

It is not clear whether these decisions will buck the trend of placing insolvent Jersey companies into English law administration, but it certainly demonstrates that it cannot be assumed that the door to UK administration is always going to be open. What is clear is that the court will closely examine the facts in order to determine whether English law administration is in fact suitable for a Jersey company in all the circumstances.

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