Book Review

Corporate Insolvency: Employment and Pension Rights

David Pollard

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David Pollard is the male equivalent of the heroine in Allison Pearson's *I don't know how she does it*, the non-rom-com published in 2003. This is an astonishing book, incidentally demonstrating how publishing has changed over the last 15 years; it was published first by Tolley, then by Butterworths, then by Tottel and now by Bloomsbury – but by an unchanged publishing team regardless of the logo on the spine.

The preface reprises that of a thousand such similar works; it castigates the length and complexity of modern legislation but the difference is that, unusually and very sensibly, it attempts to draw together three separate areas of legal specialisms – pensions, employment and insolvency, each of them separately a byword for complexity. In practice, giving joined-up advice to insolvency practitioners and others in this horribly complex area is not easy, but David Pollard's book is a genuine and successful attempt to enable practitioners to write a decent letter of help. Since the previous edition, barely 2 years previously, there have been material changes in administration expenses, in tPR powers, in protective awards, in TUPE, and the employer debt provisions and a host of other matters (and shortly in equal treatment, which will inevitably drive a fifth edition).

There are over 40 chapters, covering virtually stand-alone topics ranging from the personal liability of insolvency practitioners to the impact

of insolvency proceedings on employees to the EU insolvency directive. It looks discretely at claims against the national Insurance Fund, a somewhat underreported issue, issues of set-off, what happens if the business is carried on, several chapters on TUPE and other employment contract issues, and of course the role of the Pension Protection Fund. Most helpfully, it deals in detail with one of the most intractable problems for advisers and clients, namely the impact of the debt on the employer law and regulations; it is so extensive that it demands three chapters on its own. Originally, it deals with pre-packs, those much praised and criticised responses to insolvency at which creditors wince, and entrepreneurs find is a happy way to fight again.

For practitioners the book is ideal; it is clear, well balanced, beautifully constructed and easy to read. It makes no pretence to be anything but a black-letter law book; that is not a criticism and it performs its objectives admirably.

Are there any minor whinges? Inevitably, there are perhaps two main niggles. First is the reluctance to make a subjective comment (other than in the preface) on the state of the law or practice, particularly in relation to those areas of regulation in which discretion is exercised by the authorities. The complexity of s75 obligations, especially in relation to multi-employer schemes, which have been added to by attempts to reform

the position, makes day-to-day management of pension funds unnecessarily expensive and difficult. Where there are ambiguities or awkward areas of law, David Pollard is reluctant to offer anything but bland advice, and is deeply reluctant to offer opinions of his own. In future editions, he should not be so reserved; he knows his material probably better than anyone, he has good judgement and he has status as one of the partners in a leading City law firm. We would all benefit from his personal opinions on how the courts might, or should, treat lacunae or ambiguities, and he is uniquely placed to offer such opinions, certainly better placed than some of the counsel involved in pensions work, and sadly a few of the judges. The author is perhaps excessively respectful of the decisions of many of the judiciary who, especially in pensions matters, occasionally nod.

Second, although the book is long, and concisely and efficiently written, it lacks a certain narrative sense, drawing together the several themes, which the book covers in a holistic manner, and with the overview that only the author can give. This of course is easier said than done; the law itself lacks a coherent policy direction, and therefore different objectives from the insolvency, pensions and employment legislators conflict in an expensive fashion. But if anyone can, it is the author.

And third, there is little attempt to place much of the law in a practising context; for example

penalties that can be imposed for, say, breach of compliance with negotiation procedures or regulatory requirements may sound excessive (for example up to £75 000 for breach of the rules on collective redundancies), but are rarely applied. This is very much a lawyers' book, with little effort to make the material accessible to, for example, pension scheme managers or other advisers.

But none of these observations can detract from the strength and professional quality of this work. It blends together a description of complex legislation, inconsistent case law, regulation, and information available both in legal articles and on the web in an encyclopaedic and rigorous fashion. He specialises in exotic case law reports from around the world, and where the authorial voice is (unfortunately rarely) allowed to peep through, there is both gravitas and humour. In addition, the writing is much improved than the earlier editions, where infelicities of style sometimes marred the thrust of the argument. And no one else has managed to marshal such an array of law in such a vital area of practice, even more vital now that we are about to enter a prolonged period of corporate insolvency. No one knows how he did it, but everyone working in the field should be profoundly glad that he did.

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