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(UK) The Issue With Hybrid Insolvency Claims Rumbles On

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Should a claim be struck out where the applicant has failed to comply with the procedural requirements relating to “hybrid” claims? In the recent case of *Park Regis Birmingham LLP* [2025] EWHC 139 (ch), the High Court held that it would be disproportionate to strike out the claim on that basis.

Hybrid Claims

Hybrid claims are those that include claims under the insolvency legislation (e.g. “transaction avoidance” claims), as well as company claims (e.g. unlawful dividends or sums owing under a director’s loan account). Previously, it was common practice for such claims to be issued as a single insolvency act application, rather than as a Part 7 claim.

Since the *Manolete Partners plc v Hayward and Barrett Holdings* case in 2021, applicants have been required to issue these claims separately, with the insolvency claims being issued as an insolvency application, and the company claims being issued as a separate Part 7 claim. The applicant can then issue an application to request that the separate proceedings are managed together e.g. at a single trial. This has meant that the costs of issuing such claims have increased, as the issue fee for a Part 7 claim can be up to £10,000, whereas the issue fee for an insolvency application is £308.

Facts

In the *Park Regis* case, the applicants had incorrectly issued a hybrid claim as a single insolvency application, without issuing the separate Part 7 claim for the company claims. However, when issuing the application, the applicant’s lawyers had informed the Court that the issue fee for the application would be £10,000, as the claim was a hybrid claim, and therefore the £10,000 fee was paid.

The respondents applied to strike the claim out, on the basis that the applicant had failed to comply with the *Hayward and Barrett Holdings* case and argued that the applicant’s approach constituted an abuse of process.

The judge held that the applicant had failed to comply with the procedural requirements regarding hybrid claims. However, in exercising her discretion about whether to strike out the claim, the judge held that striking out the claim would be too severe a penalty for that failure. The judge therefore

exercised her discretion (under CPR 3.10) to waive the procedural defect and allowed the claim to proceed as if it had been properly issued.

Commentary

While the judge in this case declined to strike out the claim, the judge was clear that the applicant's attempt to issue the claim by way of a single insolvency application, but paying the higher Part 7 issue fee, was procedurally incorrect. Had this approach been endorsed it would have made issuing such applications more straightforward for practitioners, but the judge noted the *absolute* requirement for separate proceedings.

We understand that this decision has been appealed – so watch this space for further comment. In the interim practitioners should continue to apply the *Hayward and Barrett Holdings* approach and issue two sets of proceedings to avoid the risk of a claim being struck out. Although the procedural defect was waived in this case, the power to do that is a discretionary one!

The Insolvency Service in the *First Review of the Insolvency Rules* has reported that they are considering whether an amendment to the Rules is required to address the *Hayward and Barrett Holdings* case which would hopefully see a return to previous practice – one set of proceedings with one court fee. But to date there has been no indication from the Insolvency Service when (if) they will progress that and unless further clarity is provided on appeal it seems the sensible approach for practitioners is to follow *Hayward* when pursuing a claim.

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