

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Insolvency

Challenge to the administrator's conduct of the company

694. Paragraph 74 provides that any creditor or member of a company in administration may apply to the court, firstly, if he or she believes that the administrator has acted, or proposes to act, in a way that could unfairly harm his or her interests. Secondly, if he or she believes that the administrator is not performing his or her functions as quickly and efficiently as is reasonably practicable. The use of the expression "reasonably practicable" conveys the idea that one administration may be very different from another, where it may be practicable to act within a short time in the administration of a simple, small company, that may be entirely impracticable in the case of a large complicated case. Furthermore the courts would be unlikely to entertain claims under this provision relating to trivial delays or that are frivolous or unavoidable or cause no harm.
695. The court may grant relief, adjourn the hearing conditionally or unconditionally or make an interim or other order deemed appropriate. However, an order may not be made if it would impede or prevent the implementation of an approved voluntary arrangement or an arrangement sanctioned under section 425 Companies Act 1985, or proposals under paragraphs 53-54, where the challenge is made more than 28 days after the approval of those proposals.

Misfeasance

696. An interested party may apply to the court if he or she considers that the administrator has misapplied or retained the company's property, has become accountable for property, has committed a breach of a fiduciary, or other duty in relation to the company, or has been guilty of misfeasance. The court may order the administrator to repay, restore or account for the property, pay interest, or contribute by way of compensation to the company's property for breach of duty or misfeasance (paragraph 75).