

Compulsory liquidation and creditor costs: When will non-applicant creditors recover their legal costs as an expense of the liquidation?

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In a recent judgment on costs, the Royal Court of Guernsey (the **Court**) has provided helpful clarification on the circumstances in which a creditor, other than the applicant creditor, may recover its legal costs as an expense of a compulsory liquidation.

The decision in *Pension Superfund Capital Holdings Limited* [2025] GRC103 will be of particular interest to insolvency practitioners and creditors considering whether, and to what extent, participation in winding-up proceedings may justify priority recovery of costs under section 418 of the Companies (Guernsey) Law, 2008.

Background

The company was placed into compulsory liquidation following an application by a major creditor, EJV Funding DAC (the **Applicant Creditor**), under sections 406 and 408 of the Companies (Guernsey) Law, 2008 (the **Law**).

The company had opposed that application and instead sought to be placed into administration under section 374 of the Law.

A further creditor, CIC GmbH (**CIC**), appeared at the substantive hearing. CIC did not actively support either the winding-up application or the administration application, but indicated that it wished '*something to be done*' and was neutral as to the form of insolvency process adopted.

Following the making of the winding-up order, CIC applied for an order that its legal costs, including the costs of attending the substantive hearing and the subsequent costs application, be treated as '*costs in the liquidation*', payable in priority under section 418 of the Law.

The issue before the Court

The narrow but significant question for determination was:

Whether, and to what extent, a creditor who is not the applicant creditor is entitled to have its legal costs paid as an expense of a compulsory liquidation.

In particular, the Court was required to consider:

- what constitutes costs '*properly incurred in*' a compulsory winding-up for the purposes of section 418; and
- whether a creditor who adopts a neutral stance, rather than actively supporting the winding-up application, can nonetheless recover its costs with priority.

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The statutory framework

Section 418 of the Law provides that:

'All costs, charges and expenses properly incurred in the compulsory winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.'

The Court noted that, while the provision does not specify whose costs may qualify, priority treatment represents a significant incursion into the proportion of assets available to unsecured creditors, and must therefore be justified.

The outcome

The Court reached a nuanced outcome:

- CIC was entitled, **in principle**, to recover some costs incurred after service of the winding-up application, reflecting its legitimate participation in the process and its non-oppositional stance.
- However, CIC was **not entitled** to recover:
 - costs incurred prior to the winding-up application; or
 - the costs of senior counsel attending the substantive hearing merely to convey neutrality.

The Court emphasised that attendance by senior counsel was unnecessary in circumstances where CIC's position could have been communicated at minimal cost, and that allowing such costs would unfairly prejudice other unsecured creditors.

Key takeaways

- **Priority recovery of costs is exceptional:** Section 418 of the Companies (Guernsey) Law, 2008 is not a general costs-shifting provision. Treating creditor costs as an expense of the liquidation is not the rule.
- **Cost-effective engagement matters:** courts will assess not only whether costs were incurred, but how and why.
- **Neutral creditors may recover some costs — but only narrowly:** A creditor who adopts a neutral, non-oppositional stance may recover limited costs where its participation does not increase the expense of the winding-up process. Neutrality alone, however, does not justify full recovery.
- **Attendance is not participation:** Simply appearing at a hearing, without advancing submissions or influencing the outcome, will not ordinarily justify priority cost recovery.
- **Protection of the creditor body remains paramount:** The Court remains alert to the dilutive effect of allowing additional costs to rank ahead of unsecured creditors and will resist orders that unfairly erode the assets available for distribution.

How can Collas Crill help?

When debt recovery and demands are ineffective, Collas Crill assists clients in preparing and lodging creditors' winding-up applications to achieve an orderly conclusion. We have strong relationships with insolvency practitioners in our offshore jurisdictions and beyond.

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We also assist shareholders and directors of companies facing cashflow difficulties. Through early engagement with our network of insolvency professionals, we help to find solutions to minimise risks and maximise returns.

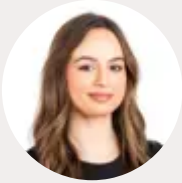
Our approach ensures that the process is conducted efficiently and with minimal disruption, helping clients navigate the legal and commercial risks involved. By intervening early, we support clients in managing stakeholder relationships and fulfilling their obligations with clarity and confidence.

If you need assistance with this, please contact a member of the team highlighted.

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