

# Country Reports

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Updates from UK, Czech Republic, Latvia, Turkey, USA



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## UK: PPI in IVA cases – Green v Wright

**The decision in this case has been long awaited by IPs who deal with IVAs.**

The decision from the Court of Appeal was handed down on 1 March 2017 and has confirmed that if a trust is created by an IVA that trust will continue in the absence of specific terms to bring it to an end. This is despite a debtor having received his certificate of discharge and confirmation that he has no liability to IVA creditors.

### Facts of the Case

- The debtor entered into an IVA with his creditors which was concluded in January 2013.
- The IVA created a trust which comprised all assets save for any which were specifically excluded.
- The debtor complied with all obligations under the arrangement and received his certificate of completion.
- The IVA was silent as to what would happen to the trust on completion.
- Some months following completion two PPI claims were paid.
- Those funds were paid to the former supervisor of the IVA who then issued an application to the court for guidance as to who was the



correct recipient of those monies – were they to be repaid to the debtor or retained by the supervisor for distribution to creditors?

### Court of Appeal

The two lower courts had ruled that the funds were due and payable to the debtor but this has been overturned by the Court of Appeal. The judgment confirms that a trust created by an IVA does not terminate on completion unless there is specific provision within the IVA terms for that to happen. In the absence of those specific terms the trust continues.

The Court of Appeal has also confirmed that the effect of the completion certificate is to release the individual debtor from his/her liability to the IVA creditors but those creditors can still have a claim on assets within the trust. The judgment has considered the core issues of what it meant by “creditor” and “debt”.

The Court of Appeal was keen to draw a parallel between

the certificate of completion in an IVA and the discharge from bankruptcy and the attempt to align the effects of these two regimes.

It remains to be seen what the real impact of this will be on the profession, but it seems clear that there will be thousands of cases which have been closed, yet a trust still exists. This has implications for debtors, insolvency practitioners and banks alike. This issue is undoubtedly to be compounded by the fact that the FCA has set a deadline of August 2019 for PPI claims. It is predicted such claims will increase significantly and those making the claims, and paying out on them, need to be aware of the issues surrounding any ongoing IVA trusts, not just for those currently in IVAs, but for those who have been even years before.

Debtors would reasonably have taken “completion” certificate to mean exactly that, but it seems matters are not so straightforward.



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