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## Administration Rents: Next Step - Court of Appeal

By Steven Cox, Bonny Hedderly and Edward Smith

### Summary

A key legal High Court hearing on the “Goldacre Ruling”, which deals with how rent is paid during an administration (and often leaves landlords out of pocket), means that the Court of Appeal will now consider whether “rents accruing just prior to the appointment of administrators” should properly be treated as an “expense” of the administration. In “fast tracking” this case to the Court of Appeal, the High Court has taken a critical step towards determining what has been a very tricky issue for landlords.

### Background

The High Court had to consider an application led by the administrators of Game Group, and a consortium of landlords. Game became insolvent in March 2012, and had owned several hundred stores which it operated from a variety of leasehold premises. As is typical, the rent was payable on the usual quarter days, quarterly in advance. The administrators were appointed just after the quarter day and disposed of the business before the next quarter day. This meant that they were able to stay in the premises at the expense of the landlords, because existing law dictates that the quarter’s rent ranks as an unsecured claim. As administrators had been appointed shortly after the quarter day, it is understood to have avoided paying several millions of pounds in rent before selling the business on to the new buyer. The Court had to rule on whether the administrators had to pay rent “as an expense of the administration” in priority to the other unsecured debts.

### The Goldacre ruling and subsequent Luminar Ruling

Relevant background is that in December 2009, the High Court in the case of **Goldacre (Offices) Limited v Nortel Networks (UK) Ltd**, held that the administrators in that case had to pay to the landlord as an “administration expense” the full amount of rent which fell due under the insolvent tenant’s lease after their appointment for the period they had used the property for the purposes of the administration. Goldacre was controversial as it was contrary to then accepted practice, under which administrators paid rent as an administration expense, but pro rata, to the extent the premises were occupied and used by them.

Then in 2012, the Luminar decision, **Leisure Norwich (II) Ltd and others v Luminar Lava Ignite Ltd (in administration) and others [2012] EWHC 951 (Ch)** subsequently confirmed that, in applying the Goldacre approach, the timing of appointment of administrators can be strategic in its impact on landlords and other creditors. From a practical standpoint, it means that a tenant who is in difficulty may be able to secure a rent-free period, provided administrators are appointed after the date an advance rent payment is due.

The Goldacre principle can also operate in a landlord’s favour in cases when administrators are appointed before the quarter day, i.e. before rent falls due. A whole quarter’s rent will then be payable as an expense, regardless of the tenant’s occupation or use. This means that many trading insolvencies are not viable which seems contrary to the government’s stated intentions to promote a rescue culture.<sup>252</sup>

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### Court Decision

The Court in the Game application was obliged to follow *Goldacre* and *Luminar*, but the parties had already agreed to a “fast-track” to appeal if the Court agreed, which they did.

It is thought, although not yet known, that the landlords will be seeking to go back to the previous position, pre *Goldacre*, so administrators would pay for actual usage.

### Conclusion

The case is the latest in a number of decisions which followed the landmark *Goldacre* ruling, including last year's *Luminar Leisure* case. The issue is highly topical, particularly in a downturn, and the property press continue to report on yet more retailers on the brink of collapse; the most recent reports (Property Week 28th June) indicating that 220 stores across the UK are at “quarter rent day risk”. It seems unlikely that the Court of Appeal will hear the case until around 2014, so although many will welcome the fact that the issue is before the Court of Appeal, for now *Goldacre* and *Luminar* prevail.

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