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Who proves what? Burdens of proof when challenging officeholder decisions on creditor claims.

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In insolvency, when a legal challenge is made against an officeholder's decision to accept or reject a proof of debt, who bears the burden of proof? Two recent High Court decisions have cast light on the issue.

There are two potential answers to the above question.

1. The party applying to the court to overturn the decision bears the burden of proof. This logic is predicated on the basis that the party who brings the claim or application must prove its case.
2. The party asserting that it is owed the debt bears the burden of proof. This argument proceeds on the basis that it is for the party making a positive case that it is owed money must make good that assertion with evidence.

As a starting point, it is worth remembering that, when a court application is made to

challenge an officeholder's acceptance or rejection of a proof of debt, the court conducts a fresh re-hearing of the case. The merits of the case are considered from scratch. The court is not restricted to the evidence that was before the officeholder. It considers all the relevant evidence put before it and decides whether the creditor's claim is established: *Re a Company (no. 004539 of 1993)* [1995] BCC 116 at 120.

That being the case, the court in *Levi Solicitors LLP v Wilson* [2022] EWHC 24 (Ch) held that the second answer is the correct one. Fancourt J held at [20]:

"The rationale for a re-hearing on such an application is that the matter should be considered afresh in the light of any fuller evidence available to the court. The correctness of the supervisor's decision is not the issue: the issue is whether the disputed proof is established and the amount of the proof."

If the matter is considered afresh, it must logically be for the creditor asserting the claim to prove it. I do not see why the fact that the claim was admitted by the supervisor and challenged by a rival creditor makes a difference if there is a re-hearing of the relevant creditor's claim."

That logic was reinforced and applied in *Aldermore Bank plc v Lynch* [2022] EWHC 3050 (Ch) (in which **William McCormick KC** and **Oberon Kwok** appeared for the Respondent). At [117], Fancourt J agreed with the Respondent's submission and held that:

"The burden of proof on an appeal from a decision of an office-holder about a proof of debt lies on the creditor, regardless of whether the creditor, the debtor or a third party is the appellant... That is because the appeal is a full rehearing: the creditor must prove the debt."

It is now clear that, no matter who is trying to challenge the officeholder's decision, the burden remains on the creditor who claims it is owed a debt to prove its case to the civil standard of proof. These two recent cases therefore provide a welcome degree of clarity for insolvency practitioners, debtors, creditors and legal advisors.



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