

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

The winding up process explained

When one of your business clients can no longer pay its debts and needs to cease trading, the winding up process begins. Winding up can be either compulsory, initiated by a court order, or voluntarily initiated by the company's directors or creditors.

Compulsory winding up starts with a petition to the court, usually by a creditor, but sometimes by shareholders or the company itself. The petition must prove that the company is insolvent. Common evidence includes unpaid debts or an inability to pay due liabilities as they fall due. If the court grants the petition, it issues a winding up order. At this point, the Official Receiver (a civil servant) becomes the liquidator, although they may appoint an insolvency practitioner to act as liquidator.

Voluntary winding up, on the other hand, comes in two forms:

- Members' Voluntary Liquidation (MVL).
- Creditors' Voluntary Liquidation (CVL).



MVL occurs when the company is solvent, but the directors decide to wind up the company. The directors must then make a statutory declaration of solvency, affirming that the company can pay its debts within 12 months. Shareholders then pass a special resolution to wind up the company. An insolvency practitioner is appointed as liquidator to sell the company's assets, settle debts, and distribute any remaining funds to shareholders.

CVL happens when the company is insolvent and cannot continue operating. The directors convene a meeting of shareholders to pass a resolution to wind up the company.

This is followed by a creditors' meeting, where creditors can nominate an insolvency practitioner as liquidator. The liquidator takes control of the company's assets, sells them, and distributes the proceeds to creditors.

Role of the liquidator

The liquidator's primary role is to realise the company's assets and distribute the proceeds to creditors in a prescribed order of priority. Initially, they secure and value the company's assets.

This may involve selling property, equipment, and other assets. The liquidator also reviews the company's financial records to identify and pursue any claims, such as debts owed to the company or recoveries from transactions at undervalue.

Asset realisation and distribution

Creditors holding fixed charges over the company's assets are paid, as these take priority over all other claims. The liquidator's remuneration is then payable after the fixed charge is settled.

Next, floating charge holders are paid, followed by preferential creditors, such as employees wages and pension contributions.

Finally, any remaining funds are distributed to unsecured creditors. If there is any surplus after all creditors are satisfied, it is distributed to shareholders.

Investigations and reporting

The liquidator investigates the company's affairs to determine the cause of insolvency. This may involve examining transactions up to the insolvency, identifying misconduct or wrongful trading by directors, and recovering assets improperly removed from the company. The liquidator must report findings to the Insolvency Service, which may disqualify directors if misconduct is found.

Closure of the liquidation

Once all assets are realised and distributed, the liquidator prepares a final account of the winding up. This is presented to creditors and shareholders. In a compulsory winding up, the liquidator applies to the court for the company's dissolution. In a voluntary winding up, the liquidator files the final account with Companies House and the company is dissolved three months later.

Your role in winding up

As an accountant, your involvement in the winding up process is critical. Initially, you will need to ensure that all financial records are up to date and accurate. This includes preparing the final set of accounts, reconciling all outstanding transactions, and ensuring

all statutory filings are complete. You should work closely with an insolvency practitioner (IP) from the start to provide them with detailed financial information about the company, including management accounts, tax filings, and creditor lists.

Collaboration with the IP is key, particularly in identifying assets that can be realised and in understanding any complex financial transactions that might need further investigation. Your knowledge of the company's financial history will assist the IP in determining the best approach for asset realisation and distribution.

Additionally, you may be called upon to help clarify specific transactions or discrepancies in the records that could impact creditor distributions or trigger further investigations.

Throughout the process, maintaining open communication with both the IP and your client is essential. This ensures that the winding up proceeds smoothly and that your client understands the steps being taken and their implications.



If you'd like help navigating the winding up process, please get in touch with our team on **020 8357 2727** or email: insolvency@newmanandpartners.co.uk

Guide to employee rights during insolvency

Insolvency proceedings can be a tumultuous time for everyone involved, especially for employees. As an accountant advising your clients facing insolvency, you must ensure compliance with the laws and regulations governing employee rights.

However, throughout the proceedings, it's important to note that employees will likely have emotional reactions to the news of insolvency and liquidation. It's important that you go into this process with empathy and maintain good communications with all those involved. Often, a conversation can prevent tensions.

The key legal provisions that govern employee rights during the insolvency process are:

- **Employment Rights Act 1996:**

This legislation provides comprehensive protection for employees, including during insolvency. It outlines entitlements to redundancy pay, notice pay, and other outstanding payments such as holiday pay and unpaid wages.

- **Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE):**

TUPE ensures that employees' terms and conditions of employment are preserved when a business is transferred to a new owner. In the context of insolvency, special provisions apply, particularly in pre-pack administrations.

- **Insolvency Act 1986:**

This act sets out the procedures and priorities for distributing the assets of an insolvent company. Employees have preferential status for certain debts, such as unpaid wages and holiday pay, up to a statutory limit.

- **National Insurance Fund (NIF):**

In the event of insolvency, employees can claim from the NIF for unpaid wages, holiday pay, redundancy pay, and notice pay, subject to statutory limits.

Practical compliance strategies

When insolvency is imminent, it is important to inform employees immediately. As previously mentioned, transparency helps manage expectations and reduces anxiety. For large-scale redundancies, you must initiate a consultation process by law. If 20 to 99 employees are affected, you need to consult with employee representatives or trade unions at least 30 days before the first dismissal. For 100 or more employees, the consultation period extends to 45 days.

Ensure you calculate statutory redundancy payments accurately, considering age, length of service, and weekly pay (capped at the statutory limit). Employees are entitled to a statutory notice period or payment in lieu of notice if dismissed without proper notice. Prioritise these payments, as they fall under preferential debts in insolvency. Employees can claim up to eight weeks' unpaid wages and six weeks' holiday pay from the NIF.

You might need to assist employees in filing claims with the NIF for outstanding payments by providing necessary documentation, such as proof of employment and unpaid amounts.

TUPE considerations

If a business or part of it is sold during insolvency, TUPE regulations may apply. Ensure the new employer honours existing terms and conditions of employment. Engage in a TUPE consultation process, informing employees about the transfer, its implications, and any measures envisaged for the transferred employees.

Maintain meticulous records of all employee-related transactions, including wages, holiday pay, and redundancy calculations. This is essential for compliance and assisting employees with claims. Provide employees with necessary documentation promptly to facilitate their claims to the NIF or other relevant bodies.

Encourage your clients to speak with an insolvency practitioner to navigate the complexities of employee rights during insolvency. Insolvency practitioners are specialists and can provide tailored guidance to ensure compliance with all statutory obligations. We can help you stay abreast of any changes in legislation or case law that may impact employee rights during insolvency, ensuring ongoing compliance and informed decision-making.

By consulting with an insolvency practitioner, your clients can receive expert advice and support throughout the insolvency process, helping to protect the rights of their employees and manage the situation effectively.



If you'd like to speak with an insolvency practitioner yourself, or refer your clients to one, please get in touch with our team on **020 8357 2727** or email: insolvency@newmanandpartners.co.uk

Covid loan abuse: Implications for insolvency

The latest *Annual Report and Accounts for 2023/24* from the Insolvency Service highlights the ongoing efforts to tackle Covid loan abuse. As an accountant, you should be aware of the actions being taken and how they might affect insolvency proceedings, especially when it comes to clients who accessed these loans.

Government actions and the consequences

During the past year, 831 directors were disqualified for Covid loan abuse, and 22 criminal prosecutions were launched. The Government is taking the misuse of these pandemic funds very seriously. It's crucial to stay vigilant when examining the financial activities of clients who received these loans because the consequences of non-compliance can be severe.

Recovering funds is a major priority, with nearly £3 million being pursued to return to the taxpayer. This recovery process has a direct impact on insolvency cases, as assets and financial records are scrutinised to trace any misappropriated funds. Your role as an accountant is critical here – ensuring accurate and transparent financial reporting can help smooth the insolvency process and ensure that your clients stay on the right side of the law.

Broader insolvency implications and your role

Beyond Covid loan abuse, the Insolvency Service has handled over 85,000 redundancy-related payments, totalling £494 million. This underscores the broader economic impact of insolvency. As an accountant, you play a key role in helping your clients process redundancy claims accurately, which can help ease the financial burden on employees affected by insolvency.

The disqualification of 1,222 directors for various misconducts, 139 live company investigations, and 45 winding-up orders all point to the stringent measures in place to uphold public trust in the business world. It's essential to make sure your clients fully understand their responsibilities as directors and the potential legal consequences of misconduct. Advising them on good corporate governance and ethical practices can help prevent disqualification and avoid related penalties.

Because of the evolving laws around Covid loan abuse and insolvency, it's important to stay up-to-date on regulatory changes and enforcement trends. This knowledge is vital in

advising your clients on compliance and reducing the risks of financial mismanagement. Your proactive involvement in ensuring compliance supports the integrity of the insolvency process and contributes to economic stability.

Due to increased regulatory scrutiny, the key advice we would offer you includes:

- **Stay vigilant:**
Scrutinise the financial activities of clients who received Covid loans, as misuse can lead to severe consequences, including disqualification and prosecution.
- **Ensure accurate reporting:**
Transparent financial records are essential for smooth insolvency proceedings and compliance.
- **Support redundancy claims:**
Assist clients in processing redundancy payments accurately to alleviate financial strain on affected employees.
- **Advise on director responsibilities:**
Help clients understand the importance of corporate governance and the risks of misconduct, which can lead to disqualification.
- **Keep up-to-date:**
Stay informed about evolving laws and regulations related to Covid loan abuse and insolvency to provide timely and relevant advice.
- **Maintain rigorous standards:**
Uphold high standards in financial reporting and advisory services to protect clients from legal and financial risks.

 For further guidance or more information on the insolvency service's actions when it comes to Covid Loan abuse, please get in touch with our team on **020 8357 2727** or email: insolvency@newmanandpartners.co.uk



CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.

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