



The Insolvency  
Service

# **Guide to Insolvency Service Enforcement Outcomes**

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# 1. Introduction

This document aims to provide a comprehensive guide to the *Insolvency Service Enforcement Outcomes* release, focussing on the context of the statistics and definitions used.

The areas covered in this guide include;

- High-level descriptions of the enforcement options available;
- The data recorded and any associated data quality issues;
- Legislation coming into effect in the period covered by the statistics, which may affect comparisons over time.

Further information on statistics published by the Insolvency Service can be found in:

- The [Guide to Insolvency Statistics](#), which provides descriptions of the types of insolvency which apply to companies and people in the UK;
- the [Statement of Administrative Sources](#), which provides information on the operational datasets used to compile the statistics;
- the [Statement on Quality Strategy, Principles and Processes](#), which states what users of the statistics can expect for each dimension of quality;
- the [Revisions Policy](#), which sets out the Insolvency Service's policy for planned and unplanned revisions to the data; and
- the [Data Quality Assurance and Audit Arrangements](#), which document the data quality procedures which apply to each stage of the production of the statistics.

The Insolvency Service welcomes feedback on this guide. Please send comments to [statistics@insolvency.gov.uk](mailto:statistics@insolvency.gov.uk)

## 2. Coverage of Insolvency Service Enforcement Outcomes

The *Insolvency Service Enforcement Outcomes* is a quarterly statistical release that reports on the number of enforcement outcomes obtained as a result of the work of the Insolvency Service.

This includes enforcement outcomes obtained as a direct result of the work of Insolvency Service employees, as well as cases that have been referred by the Insolvency Service or where there has been significant involvement of the Insolvency Service in a case.

The geographical coverage of the statistics varies between the data being reported. A summary of the coverage of each section can be found in the table below.

<b>Section</b>	<b>Coverage</b>
Director Disqualifications	Great Britain
Companies Wound Up in the Public Interest	United Kingdom
Bankruptcy and Debt Relief Restriction Orders and Undertakings	England and Wales
Suspension of Discharge Orders	England and Wales

Further information on the coverage of each data series can be found in the relevant section of this document.

## 3. Experimental Statistics Status

*Insolvency Service Enforcement Outcomes* is currently designated as an Experimental Statistics release.

Experimental statistics are a type of Official Statistics that are undergoing development. They are defined in the [Code of Practice](#) as 'new Official Statistics undergoing evaluation that are published in order to involve users and stakeholders in their development as a means to build in quality at an early stage'.

Principle 4, Practice 5 of the Code instructs producers to release experimental statistics to achieve continuous improvement in statistical processes; Protocol 1, Practice 5 states that producers should 'involve users in the evaluation of experimental statistics'. There is an emphasis across the Government Statistical Service (GSS) to consult users during the review of statistics, and to make experimental series available during this period to assist in the quality assurance, development and familiarisation of the statistics.

Experimental statistics status is given at the discretion of the responsible statistician. Defining what is experimental is largely a matter of judgement, but will typically arise when statistics are new and still subject to testing in terms of their ability to meet users' needs.

The removal of the Experimental classification is likely to be a matter of judgement, but will take into account factors such as:

- When it is judged that the statistical methods are relatively stable
- When coverage reaches a good level
- When user feedback indicates that these statistics are useful and credible
- When the defined development phase has ended
- When it is judged that the statistics meet the quality standards of National Statistics, following assessment by the UK Statistics Authority

The Code promotes and supports the release of experimental statistics to involve users in their development at an early stage; however, it is likely that the statistics will not be fully compliant in all areas due to their nature as 'data being developed'.

## 4. Seasonal Adjustment

Seasonal adjustment is the process by which patterns in a data series that are due to seasonal or other calendar influences are removed, to produce a clearer picture of the underlying behaviour of the data.

The data series in *Insolvency Service Enforcement Outcomes* have not been tested for the presence of seasonality, and therefore no seasonal adjustment has been applied.

The commentary and tables in *Insolvency Service Enforcement Outcomes* include comparisons between the latest quarter and the same quarter of the previous year, because comparisons between adjacent quarters may be distorted by unidentified seasonality.

The [Office for National Statistics](#)' Time Series Analysis Branch recommends that in order to carry out an investigation into the presence of seasonality, a minimum of five years of data is required. Ideally a longer time span would be used to produce a more robust analysis of the time series.

A review of the seasonality of the data series in *Insolvency Service Enforcement Outcomes* will be included in the development programme for improving the release.

## 5. Director Disqualifications

The statistics on director disqualifications relate to individuals that have acted as the director of a company in Great Britain, or a company that has an interest in Great Britain.

An individual is disqualified from being a director under the [Company Directors Disqualification Act \(CDDA\) 1986](#) if they have failed to fulfil their duties as a director of a company or companies or their behaviour as a director has fallen short of the high standard that is required of them. This applies to individuals formally appointed as a director and those deemed to have acted as a director even though they were not formally appointed.

Behaviour that could lead to a disqualification includes:

- Allowing a company to continue trading when it can't pay its debts.
- Not keeping proper company accounting records.
- Not sending accounts and returns to [Companies House](#).
- Failing to comply with their statutory obligations
- Using company money or assets for personal benefit rather than fulfilling their obligations as a director.

More detailed information on the behaviour that can lead to disqualification from being a director can be found in [section 5.4.1](#).

Disqualification proceedings can be issued by the Insolvency Service (acting on behalf of the Secretary of State for Business, Innovation and Skills), or by the official receiver, who is part of the Insolvency Service.

[Companies House](#) (acting on behalf of the Secretary of State) the [Competitions and Markets Authority](#) or (rarely) an insolvency practitioner can also issue disqualification proceedings; these are not included in the *Insolvency Service Enforcement Outcomes* unless there has been significant involvement of the Insolvency Service in a case.

A court may also make a disqualification order against a person who is convicted in connection with forming, marketing or running a company.

Whilst disqualified from being a company director, an individual is subject to a number of restrictions:

- The individual may not act as a director of any company registered in the UK or an overseas company with connections to the UK without permission from the court.
- The individual may not be involved in forming, marketing or running a company.
- They may not sit on the board of a charity, school or police authority.
- They may not be a pension trustee.
- They may not be a registered social landlord.
- They may not be a solicitor, barrister or accountant.
- They may not act as an insolvency practitioner.

If the restrictions are breached, the individual may be prosecuted. If found guilty, this could result in criminal penalties, such as a fine or imprisonment. The individual could also be made personally liable for debts incurred by the company while they acted as a director of the company.

An individual is automatically disqualified from being a director if they are subject to a bankruptcy or debt relief order and the corresponding restrictions orders and undertakings. However, the disqualifications shown in the *Insolvency Service Enforcement Outcomes* do not include these cases. More information on the trend in bankruptcies and debt relief orders can be found in the [Insolvency Statistics](#).

## 5.1. Data Sources

With the exception of disqualification orders made under Section 2 of the CDDA (see [section 5.2](#)), all disqualification data is collected from administrative systems owned by the Insolvency Service.

The remaining data is collected from administrative systems owned by the Department for Business, Innovation and Skills. More information about the specific data sources can be found in the [Statement of Administrative Sources](#).

The Insolvency Service has previously published annual statistics on its enforcement outcomes in the Annual Report and Accounts. Information accompanying the annual report up to and including 2013/14 is not consistent with the headline figures reported here, as the data in the Insolvency Service Enforcement Outcomes has been through a validation and quality assurance process. Information reported in annual reports and accounts from 2014/15 onwards will be based on the Official Statistics where possible.

## 5.2. Types of Director Disqualification

A director can be disqualified under a number of different sections of the Act, depending on the circumstances.

[Companies House](#) maintains a register of all directors disqualified under the [Company Directors Disqualification Act 1986](#) and publishes annual statistics on the number of directors disqualified. This includes directors disqualified under sections of the Act that are not represented in the *Insolvency Service Enforcement Outcomes*.

The Insolvency Service pursues director disqualifications under three particular sections of the Act:

- **Section 2** – Following a conviction for an indictable offence in relation to the promotion, formation, management, liquidations or striking off of a company.
- **Section 6** – For unfit conduct in relation to an insolvent company.
- **Section 8** – Where it is considered expedient in the public interest, arising from investigative material.

The Section 2 disqualifications presented in the *Insolvency Service Enforcement Outcomes* are only those that are a result of a referral or significant input from the Insolvency Service, and therefore will not be consistent with the Section 2 disqualifications recorded by [Companies House](#).

It is also possible that Section 2 disqualifications where the Insolvency Service has had a significant input will also be reported by the relevant prosecuting authority that secures the conviction.

All Section 2 disqualifications will be reported to Companies House; including those with which the Insolvency Service has had not had significant input.

Section 6 and Section 8 disqualifications registered at [Companies House](#) are not consistent with the *Insolvency Service Enforcement Outcomes* due to differences in the way cases are recorded – for example, [Companies House](#)'s statistics record disqualifications at the point at which they are notified, whereas the *Insolvency Service Enforcement Outcomes* record disqualifications based on the date of the disqualification result.

### 5.3. Disqualification Orders and Undertakings

A **disqualification order** is made by the court under the [Company Directors Disqualification Act 1986](#). This applies to individuals formally appointed as a director and those who have carried out the functions of a director and to shadow directors.

For an order made against an unfit director of an insolvent company, under section 6 of the Act, the disqualification order period is between 2 and 15 years.

It is possible for section 2 and section 8 disqualifications to be enforced for 0 to 15 years and the legislation does not specify a minimum period of disqualification.

As the number of cases with a disqualification period of less than two years is very small, they have been included in the 2 to 5 years category for simplicity. If at any point there are a substantial number of these cases, this will be noted in the accompanying data tables.

A **disqualification undertaking** has the same effect as an order but does not involve court proceedings.

Both section 6 and section 8 disqualifications can be made as either an order or an undertaking. As section 2 disqualifications are made following a conviction in the court, they are all orders.

### 5.4. Allegations Made in Director Disqualifications

*Insolvency Service Enforcement Outcomes* only reports on the allegations made in relation to disqualifications obtained under section 6 of the Act.

It is not currently possible to categorise the allegations for disqualifications made under section 2 or section 8 of the Act.

Allegations made in section 2 disqualifications tend to be far more varied. This is because a section 2 disqualification can be made, alongside other measures, such as a fine or imprisonment, as part of sentencing following the criminal conviction of an individual in court. A disqualification order can also be made as a result of a civil application by the Secretary of State for a disqualification order on the basis of the conviction.

The allegations made in section 8 disqualifications are not currently recorded on the administrative system. Some information is recorded in a 'notes' field, however this is not currently recorded in a



consistent manner. In general, allegations are based around fraud or unfair treatment of customers.

Information for allegations in section 6 disqualifications made before April 2011 has not been included in *Insolvency Service Enforcement Outcomes*, as the data available is not considered to be of sufficient quality to be meaningful.

Some information about the allegations made in section 6 disqualifications made before April 2011 is available on a financial year basis in the Insolvency Service Annual Report and Accounts. However, this information is not entirely consistent with *Insolvency Service Enforcement Outcomes* as a result of some differences in the way the information is recorded and quality assurance procedures.

It is possible for more than one allegation to be made in each director disqualification case. Therefore the total number of allegations made will not equal the total number of section 6 disqualifications obtained. Subsidiary allegations are not always recorded on the administrative system.

The allegations shown in *Insolvency Service Enforcement Outcomes* relate to the date the disqualification was made, rather than the date the allegation was made.

#### **5.4.1. Allegation Categories in Insolvent Disqualifications**

The fact that a company is wound up with debts does not on its own amount to unfit conduct. There needs to be something more, for example that particular creditors were unfairly prejudiced or that the company was trading whilst insolvent and the director knew, or should have known, this was occurring.

This section provides more detail about the types of behaviours that can lead to disqualification under the categories presented in *Insolvency Service Enforcement Outcomes*.

##### **Unfair treatment of the Crown**

This refers to the treatment of [Her Majesty's Revenue and Customs](#) (HMRC).

This allegation arises when a director has treated the Crown less favourably than other creditors. The courts treat a debt to HMRC as no different to a debt to any other creditor, and there is no special significance that a company owes money to the Crown rather than any other type of creditor.

However, unlike a normal trade supplier, HMRC have little or no control over the extent to which they are financially exposed to a company, and they are often referred to as an "involuntary" creditor. In addition, they rely on the company to inform them of how much they are owed, and it is these two factors that combine to create a potential area of abuse by directors.

Debts to HMRC typically arise in two ways: either as a result of tax due on profits, or as a result of the company collecting tax on behalf of the Crown. It is this latter type of debt which gives rise to most allegations of unfit conduct.

Allegations reported under this category may also include cases where unfit conduct with respect to the treatment of the Crown has amounted to criminal activity (for example the filing of false returns or Missing Trader Intra-Community Cases) and such cases will also be referred to the appropriate prosecuting authority.

The main taxes that most allegations are made in relation to are Pay As You Earn (PAYE), The Construction Industry Scheme (CIS), Value Added Tax (VAT) and Corporation Tax. More information about these can be found on the [HMRC website](#).

## **Accounting matters**

Allegations made under this category are mainly made as a result of the failure to properly maintain and preserve accounting records – an obligation placed by the [Companies Act](#) upon every company, whether insolvent or not.

When a company fails its outstanding affairs need to be dealt with, and its trading history and the decisions of those controlling it come under scrutiny. Without records this process is hampered. Where the consequences of not having these records are significant, those responsible should be censured.

It is expected that accounting records cover information on assets, liabilities, payments to and from the director, and dealings with associated companies.

It could be argued that a company continued to trade not knowing it was insolvent as a result of poorly kept accounting records.

Also included in this allegation are instances where records have been destroyed by a third party, a landlord say, and the individual under investigation was given ample opportunity to prevent the action.

## **Transaction to the detriment of creditors**

A transaction to the detriment is any transaction or series of transactions which adversely affects the interests of creditors. Detriment can be to creditors generally or just to a particular creditor or group of creditors.

Although a transaction may happen to be a preference (as defined by [section 239](#) of the Insolvency Act 1986), a transaction at an undervalue (as defined by [section 238](#) of the Insolvency Act 1986), or a void disposition (as defined by [section 127](#) of the Insolvency Act 1986), in disqualification it is the effect of the conduct and the director's motivation which are important.

A transaction to the detriment of creditors can only be alleged if the company was insolvent at the time of the transaction or became insolvent as a result of it. It also needs to be shown that the director knew or ought to have known that the company was insolvent at the time of the transaction or would become insolvent as a result of it.

The value of the detriment to creditors also has to be quantified, including the amount of money, or the realisable value of an asset, lost to the estate.

## **Criminal matters**

Criminal matters include instances of an individual acting as a director of a company whilst disqualified, either by virtue of an undischarged bankruptcy or debt relief order or a current disqualification, bankruptcy restrictions or debt relief restrictions order or undertaking. Similarly, any director who allows such an individual to act, whilst aware of their disqualified status, may also be disqualified.

Other criminal matters include fraud, falsification of records and other breaches of law relating to the operation of the company; although this list is not exhaustive.

## **Misappropriation of assets**

Asset misappropriation happens when a person entrusted to manage the assets of an organisation steals from it.

This can include the theft of cash or cash equivalents, such as credit notes, or company data or intellectual property.

## **Technical matters**

Technical matters include persistent breaches of regulations regarding the duty to file accounts or returns with [Companies House](#) as well as persistent failure to file tax returns. Other matters covered by this allegation are breaches of regulations, such as those relating to financial services, employing illegal workers or failing to safeguard tenants' deposits.

## **Trading at a time when knowingly or unknowingly insolvent**

Allegations of insolvent trading involve the identification of a date when the director knew, or should have known, that the company was insolvent, after which the director caused or allowed the company to continue to incur liabilities so that creditors were bearing all the risk of the company's trading in a situation where there was a real likelihood that the company's business would collapse entirely or that the debts being incurred would never be paid.

Indicators of insolvency include overdue invoices, unpaid cheques, exceeding overdraft limits, creditor demands, county court judgements or refusal of further credit.

Some of the circumstances that lead to a conclusion that a company was insolvent at a particular point may be perfectly genuine trading difficulties, or market conditions, as opposed to evidence of non-payment of creditors but they are, nevertheless, crucial to the assessment that the director knew, or should have known, of the company's position.

## Phoenix companies or multiple failures

Cases of trading through a successor company allege that the current company was set up in a way which was the same as or similar to that of a previously failed company and that the director has not learnt from the preceding failure.

The misconduct is that the individual has not learnt from their mistakes or changed their ways and that the new company has effectively continued the trading of the insolvent business with no reasonable prospect of success.

The allegation can only be made against an individual with an active involvement in the management of both companies whether that individual was formally appointed or not.

## 6. Companies Wound Up in the Public Interest

The statistics on companies wound up in the public interest relate to companies, including United Kingdom and foreign companies registered at [Companies House](#) and companies which should be registered as they carry out business in the United Kingdom.

Following an investigation into the corporate abuse by a limited company or limited liability partnership, particularly one that is **actively trading**, the Insolvency Service can apply to the court to have the company put into compulsory liquidation, with the official receiver appointed to investigate and wind up its affairs. The purpose of liquidation is to protect and sell the company's assets and distribute the proceeds to its creditors. However, the official receiver also has a duty to investigate the affairs of the company and may report any misconduct to either the Insolvency Service or the relevant prosecuting authority and this may lead to director disqualification proceedings, or a criminal investigation or both. In the case of a company that has been wound up in the public interest, the official receiver's investigation will build upon the previous Companies Act enquiry. At the end of the process, the company is dissolved – it ceases to exist.

Winding up in the public interest can also be a powerful tool to disrupt fraudulent or criminal behaviour by removing the companies used to perpetuate the crimes.

Corporate abuse could include serious misconduct, fraud, scams or sharp practice in the way the company operates.

The number of companies wound up in the public interest is included within the statistics on total new compulsory liquidation cases in the quarterly [Insolvency Statistics](#), which reports on the number of new insolvency cases in England and Wales.

Investigations into live companies are confidential until a winding-up order is made. Some investigations do not result in the company being wound up, and are not included in the *Insolvency Service Enforcement Outcomes*.

The power to investigate live companies is provided by Part XIV of the [Companies Act 1985](#).

## 6.1. Data Sources

Information on the number of winding up orders in the public interest is obtained from administrative sources owned by the Insolvency Service. More information about the specific data sources can be found in the [Statement of Administrative Sources](#).

## 7. Bankruptcy and Debt Relief Restrictions Orders and Undertakings

These statistics relate to individuals that are subject to a bankruptcy or debt relief order in England and Wales, where the individual is considered to have been dishonest or blameworthy.

There are enforcement measures in Scotland and Northern Ireland for insolvent individuals. They are not represented here as they are enforced by [Accountant in Bankruptcy](#) for Scotland and [Department for Trade and Investment, Northern Ireland](#).

Bankruptcy restrictions orders and undertakings are carried out under the [Insolvency Act 1986](#).

Debt relief orders and the associated restrictions orders and undertakings were introduced by the [Tribunals, Courts and Enforcement Act 2007](#), with effect from April 2009.

The application for a bankruptcy or debt relief restrictions order or undertaking has to be made within 12 months of the bankruptcy order or debt relief order being made. If discharge from bankruptcy is suspended (see [Suspension of Discharge](#)) the time permitted to apply for a restrictions order is extended to the length of the suspension.

Conduct both before and during the bankruptcy or debt relief order is taken into account when considering whether to apply for a restrictions order or undertaking. However, as a result of the introduction of the [Enterprise Act 2002](#), conduct before April 2004 can not be used as evidence of misconduct.

Behaviour that could lead to a restrictions order being sought includes:

- Hiding assets
- Incurring debts knowing there was no reasonable chance of repaying
- Preferential payment of certain creditors
- Gambling, rash speculation or being unreasonably extravagant
- Fraud or fraudulent breach of trust
- Causing debts to increase by neglecting business affairs
- Carrying on a business with the knowledge that debts could not be paid

The restrictions placed on an individual subject to a bankruptcy or debt relief restrictions order or undertaking are the same as those restrictions an individual is subject to under a bankruptcy order or debt relief order. These are:

- The individual must disclose their status when applying for credit over £500.
- The individual must disclose to those they wish to do business with the name under which they were made insolvent.
- They may not act as a director of a company or take part in its promotion, formation or management unless permission is obtained from the court.
- They may not act as an insolvency practitioner.
- They may not act as a Member of Parliament in England and Wales

If these restrictions are breached, the individual may be prosecuted. If found guilty, this could result in criminal penalties, such as a fine or imprisonment. Additionally, if the individual has engaged in the management or otherwise of a company without the court's permission, they may be held personally liable for any debts of the company that arise throughout the time they acted in breach.

If it is considered appropriate, it is possible to apply to the court for an interim bankruptcy or debt relief restrictions order to be applied. If granted, restrictions will take effect from the date of the interim order until the court considers the application for a bankruptcy or debt relief restrictions order. These are not included in the *Insolvency Service Enforcement Outcomes*.

Details of a restrictions order or undertaking are made available online on the [Individual Insolvency Register](#) and are available until 3 months after the order or undertaking expires.

If the bankruptcy order is annulled because it ought not to have been made, any restrictions order or undertaking will also automatically be annulled and details will be removed from the public register.

If the debt relief order is revoked because it ought not to have been made, the circumstances of the individual changed or the individual has not cooperated with the official receiver, the debt relief restrictions order or undertaking will still apply unless the court decides otherwise.

## 7.1. Data Sources

All data relating to bankruptcy and debt relief restrictions orders and undertakings are obtained from administrative systems owned by the Insolvency Service. More information about the specific data sources can be found in the [Statement of Administrative Sources](#).

## 7.2. Restrictions Orders and Undertakings

A **bankruptcy or debt relief restrictions order** is made by the court after considering the evidence against the individual. The length of the restrictions order can be 2 to 15 years, depending on the severity of the misconduct.

If the individual accepts the allegations, they may offer to enter into a **bankruptcy or debt relief restrictions undertaking**. This has the same effect as an order, but does not involve court proceedings.

## 7.3. Allegations made in bankruptcy and debt relief restrictions orders and undertakings

It is possible for more than one allegation to be made in each bankruptcy or debt relief restrictions case. Therefore the total number of allegations made will not equal the total number of restrictions obtained. Subsidiary allegations are not always recorded on the administrative system. The allegations shown in *Insolvency Service Enforcement Outcomes* relate to the date the bankruptcy or debt relief restrictions order or undertaking was made, as opposed to the date the allegation was made.

### 7.3.1 Allegation categories in bankruptcy and debt relief restrictions orders and undertakings

The fact that an individual becomes insolvent does not on its own amount to unfit conduct. The primary purpose of bankruptcy or debt relief restriction is to protect the public and deter future misconduct. Hence it needs to be shown that the bankrupt's or debtor's actions were reckless, culpable or dishonest, and that they caused real loss to creditors.

This section provides more detail about the types of behaviours that can lead to a bankruptcy or debt relief restrictions order or undertaking under the categories presented in *Insolvency Service Enforcement Outcomes*.

The allegations made in relation to bankruptcy and debt relief restrictions orders and undertakings are more varied than those made in [director disqualification cases](#). This is to allow for the provision of misconduct by trading and non-trading individuals.

#### **Failure to preserve or keep proper accounting records**

Although the requirement on a bankrupt to keep accounts was repealed by the [Enterprise Act 2002](#) with effect from 1 April 2004, the bankrupt is still required to account to the official receiver for the loss of any substantial part of their property, and deliver to the official receiver, on request, any records in their possession or control.

The bankrupt is required to allow the official receiver to comply with their statutory obligation to investigate their conduct and affairs by providing the official receiver with possession of all books,

papers and other records. An individual must also maintain sufficient records to deal with their tax affairs.

The falsification, concealment, failure to maintain and destruction of books, papers and other records by a bankrupt is likely to be conduct which gives grounds for the making an application for a restrictions order

### **Preferences or transactions at undervalue**

These are examples of transactions which cause loss of assets that would otherwise be available to pay creditors.

A transaction at undervalue is where an asset is transferred to another person at less than its worth or is gifted to them, although this would not automatically be grounds to apply for a restrictions order. However, if it can be shown that the intention of the transfer was to place assets beyond the reach of creditors, other aspects such as non-disclosure of the transfer, providing misleading information about the transfer, making the transfer at a time when the individual knew that he or she was insolvent, or evidence of knowledge of the value of the asset this can be used as evidence of misconduct.

A preference is where a bankrupt has assets available and uses them to repay one or more creditors rather than other existing creditors.

### **Excessive pension contributions**

This is an example of a transaction to the detriment of creditors.

By making excessive payments into a pension, the individual has been placed in a better position and the body of creditors has been disadvantaged at a time when the individual should have known that debts were outstanding. This is because money placed in a pension is not usually available to creditors<sup>1</sup>.

### **Failure to supply goods or services**

Prepayment in full or in part for goods or services is a common element in many business models, and any business which takes deposits or prepayment in full as part of its trading activities and becomes insolvent is likely to have some claims arising from deposits for goods or services which have not been supplied.

Sometimes prepayments may have been made by customers that are not for specific goods or services. Examples include gift vouchers, Christmas clubs and savings schemes.

The existence of claims for prepayment for goods or services which have not been supplied will not in itself amount to unfit conduct. Additionally, if the individual had a reasonable expectation of

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<sup>1</sup> see *Horton v Henry* [2014] EWHC 4209 (Ch), [2014] All ER (D) 193 (Dec) – case subject to appeal



being able to avoid insolvency, by trading out of financial difficulty or a proposed refinance, there would be no misconduct.

However, the presence of certain behaviours may lead to the application of a restrictions order, such as:

- the bankrupt took deposits on contractual terms or gave assurances that the deposits would be held in a separate trust or client account until the goods or services were supplied but failed to do so
- the bankrupt took deposits without any intention of supplying the goods or services
- the bankrupt continued to take deposits when there were no reasonable grounds to believe that the goods or services would be supplied
- the bankrupt continued to take deposits when they knew or ought to have known that they were insolvent and that there were no reasonable grounds for believing that they would be able to provide the goods or services before bankruptcy

### **Trading at a time when knowingly or unknowingly insolvent**

This allegation type applies to sole trader bankrupts. Similar allegations can be made against an individual subject to a debt relief order or one or more bankrupt partners in an insolvent partnership.

This is similar to allegations that can be made in relation to [director disqualification cases](#). It is defined as trading at a time before the bankruptcy commenced when the bankrupt knew or ought to have known that they were unable to pay their debts.

### **Incurring debt without reasonable expectation of payment**

Similar in concept to trading whilst insolvent, the allegation that an individual has incurred a debt without any reasonable expectation of repaying that debt is one that often forms the basis for bankruptcy or debt relief restrictions order. Examples of such behaviour include incurring credit card debt and only intending to make minimum payments, unreasonable expectations about increases in income or going against the advice of professionals.

Elements that may increase the severity of the allegation include the amount of debt incurred, the purpose that funds were put to (unreasonable extravagance), knowledge of insolvency (as opposed to being unknowingly insolvent) or a link with insolvent trading.

## **Failure to account for loss**

This is relevant where the individual fails to account for the loss of any substantial part of their property incurred in the 12 months before the bankruptcy petition or debt relief order application, or to give a satisfactory explanation of the manner in which such loss occurred.

There is a distinction made between those that can not account and those that will not account. Those that will not are considered to be non co-operative and will usually be subject to a [suspension of discharge order](#).

## **Gambling, rash or hazardous speculation or unreasonable extravagance**

Gambling is defined by the [Gambling Act 2005](#), and includes gaming (playing a game of chance for a prize), betting on the outcome of a race, competition or other event, the likelihood of something occurring, or whether anything is true or not and participation in a lottery. This excludes spread betting and participation in the national lottery.

Where an individual has been gambling when already insolvent or has become insolvent as a result of losses sustained as a result of gambling, they are considered to have taken risks with money owed to others. It is therefore in the public interest to prevent the individual taking further risks for the period of the restriction.

## **Neglect of business affairs contributing to the bankruptcy**

This allegation is based on the neglect of business affairs which may have materially contributed to or increased the extent of the bankruptcy. Neglect includes the failure to care for properly, to disregard, not pay proper attention to or a failure to do something.

The most common form of neglect is [unfair treatment of the Crown](#), which is also a common allegation in director disqualification cases. Also included is neglect of statutory and regulatory requirements placed on business and neglect relating to accounting records.

## **Fraud**

Under the [Fraud Act 2006](#), there are three ways in which a general offence of fraud can be made: false representation; failing to disclose information; and abuse of position. It also contains a new offence of fraudulent trading applicable to non-corporate traders.

The offences are conduct-based, as opposed to result-based, meaning that an offence can be committed even if there is no victim.

A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. Actual knowledge that the representation might be untrue is required - not awareness of a risk that it might be untrue.

Failure to reveal information is tantamount to fraud by conduct or omission. There is no requirement that the failure to disclose must relate to material or relevant information.

## **Non co-operation**

When a bankrupt fails to co-operate with the proceedings, the legislation provides a number of alternatives in both enforcing co-operation, penalising the non co-operator, and protecting the public from their behaviour.

The appropriate response to a failure to co-operate is to apply for a [suspension of the individual's discharge from bankruptcy](#) as quickly as possible. This is usually sufficient to obtain co-operation.

Non co-operation of an individual subject to a debt relief order would result in the debt relief order being revoked.

Should the individual later co-operate (thus giving reason for the suspension of their discharge to be lifted) but, as a result, information comes to light which suggests other misconduct then a restrictions order may be applied for on the basis of that information.

The most likely circumstance where the failure to co-operate will result in a bankruptcy restrictions order application is where there has been a loss to creditors. The most likely scenarios are where the failure to co-operate gives scope for the bankrupt to act in a manner which disadvantages creditors or where the failure to co-operate results in others taking action to their own detriment.

If, for example, the result of non-co-operation is to allow time for a bankrupt to dissipate assets which the official receiver could have claimed for the estate (say an inheritance or the balance in a bank account) the principle allegation will be the dissipation of the asset. The failure to co-operate is a contributing factor which may result in a longer period of restriction.

## **Second bankruptcy**

The [Enterprise Act 2002](#) says that the court shall consider whether the individual was subject to a bankruptcy or debt relief order at some time during the period of six years ending with the date of the bankruptcy or debt relief order to which the restrictions order application relates. A previous failure is 'a matter for consideration'. It is not included in the list of grounds for a restrictions order or undertaking.

Applications for bankruptcy or debt relief restrictions order purely on the grounds of a previous failure would be against the spirit of the Act, particularly if the earlier failure was 'honest'. Therefore, there must be unfit conduct in respect of the current bankruptcy, before an application can be made. However, if it can be shown that a bankrupt has failed to learn from previous mistakes, the court may consider a higher period.

## **Prosecutable matters**

Prosecutable matters primarily comprise breaches of the [Insolvency Act 1986](#), such as obtaining credit whilst an undischarged bankrupt. However, certain cases may indicate fraud or theft, and these, together with any insolvency offences, will be reported to the appropriate prosecuting authority. They may also form the basis of bankruptcy restriction or debt relief restriction proceedings.

## **Dissipation of assets**

Dissipation of assets is an example of a transaction to the detriment of creditors. Specifically, it is aimed at the situation when an individual is considered to have unreasonably disposed of assets without regard to existing creditors.

An example might be where the individual has received a sum of money and has chosen to spend it on something other than to pay back their debt.

The criticism is that when the individual received the money, they chose not to repay and had no reasonable means of otherwise paying their commitments, when a reasonable person would have used the funds to repay creditors. The individual's state of knowledge and expectations at the time they disposed of the funds is key to the allegation, as it is the decision not to repay existing creditors at that time that is being criticised, not what they spent the money on.

## **Non-disclosure of assets**

A bankrupt has a duty to disclose all property and other assets to the official receiver and/or trustee, and subject to a saving for legitimate business or domestic matters, to disclose full details of any past disposal of property that would otherwise have been included in the estate. Failure to do so may make the bankrupt liable to criminal penalties under the [Insolvency Act 1986](#) or to a bankruptcy restrictions order if the value of the assets is less than £4,000.

In order to make this allegation, it must be shown that the bankrupt had knowledge of the assets and they wilfully omitted the information, as opposed to innocent oversight as a result of genuine forgetfulness.

In the case of a debt relief order, if an asset is not disclosed that would have resulted in the debt relief order being declined, the debt relief order would be revoked. If it was felt that the omission was sufficiently serious, a debt relief restrictions order could also be applied for.

## **Disposal of goods subject to hire purchase agreements**

Once a person has been made bankrupt or has obtained a debt relief order, they commit an offence if, in the 12 months before petition or in the initial period, they have disposed of property obtained on credit and not paid for at the time of the disposal.

The definition of property includes money, land and things in action, as well as goods.

If the value of the property is higher than £500, a criminal referral may be made. It is also possible that disposing of goods subject to a hire purchase agreement could result in an allegation under the [Theft Act 1968](#).

## 8. Suspension of Discharge Orders

These statistics relate to individuals who are subject to a bankruptcy order and have had their automatic discharge suspended for failing to comply with their obligations.

When a bankrupt has failed or is failing to comply with the obligations imposed, particularly instances of non-attendance, obstruction, failure to provide the required information, delay or other serious misbehaviour of the bankrupt, the official receiver or trustee can apply to the court for the automatic discharge period of 12 months to be suspended, thus extending the date of discharge for as long as necessary, pending the bankrupt's full cooperation.

The data shown relates to the date the suspension of discharge order was made, as opposed to the date of the original bankruptcy order. The suspension of discharge order can be made at any time during the 12-month bankruptcy period.

Information for suspension of discharge orders made before April 2011 has not been included in *Insolvency Service Enforcement Outcomes*, as the data available can not currently be verified.

It is possible for a bankrupt to be subject to more than one suspension of discharge order. If the original order was lifted because of co-operation and there followed another period of non co-operation, a second suspension of discharge order can be sought.

These cases are shown as new suspension of discharge orders. Therefore there would be an element of double counting if trying to calculate the number of individuals subject to a suspension of discharge order.

It is possible for the details of non co-operation of a bankrupt to be used as evidence in the application for a [bankruptcy restrictions order](#) but it is not routine to pursue bankruptcy restrictions as well as suspension of discharge.

The equivalent to suspension of discharge in a debt relief order is for the debt relief order to be revoked. It is possible for a DRO to be revoked for reasons other than non cooperation, such as a change of circumstances. Therefore they are not currently included in *Insolvency Service Enforcement Outcomes*.

### 8.1. Data Sources

All information about suspension of discharge orders is obtained from administrative systems owned by the Insolvency Service.

More information about the specific data sources can be found in the [Statement of Administrative Sources](#).



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