



The Insolvency
Service

Enforcement Framework 2024





The Insolvency Service

Delivering economic confidence



Contents

1	The Role of the Agency	3
2	Enforcement Purpose and Powers	4
3	How we use our Powers	6
4	Collaborative Working and Partnering	9
5	Recovery and Compensation	11
6	Director Education	12
7	Bankruptcy Restrictions	13
8	Insolvency Practitioner Regulation	14

1

The Role of the Agency

- 1.1 The Insolvency Service is an executive agency of the Department for Business and (DBT) and is the government agency that provides public services to those affected by financial distress or failure.
- 1.2 In a dynamic economy, entrepreneurialism and a drive for business growth will, inevitably, be accompanied by financial failures as well as successes. We provide the structures that deal with insolvency and the financial misconduct that sometimes accompanies or leads to it, and we aim to deliver a corporate and personal insolvency regime that is regarded as fair, giving investors and businesses confidence to take the commercial risks necessary to support economic growth.
- 1.3 Our work is fundamental in supporting the Department's strategic priorities for creating a fair business environment in which business can flourish.

2

Enforcement Purpose and Powers

2.1 We deliver and promote a range of investigation and enforcement activities, both civil and criminal in nature, to support government objectives of ensuring confidence and trust in the UK's economic environment. We will continue to help make the UK one of the best places in the world to do business by working to maintain a fair business environment and uphold the integrity of the insolvency regime through our enforcement actions.

2.2 These enforcement activities serve our overriding purpose to deliver economic confidence, which, in an enforcement sense, will be achieved by tackling financial wrongdoing. The actions we take are driven by the need to act in the public interest, particularly in consideration of the following strategic factors:

- i. The prevention of financial harm.
- ii. The maintenance of a level playing field for business by preventing abuse of the corporate and insolvency regimes.
- iii. The promotion of confidence and trust in the UK economy, thereby supporting economic growth.

We will continue to help make the UK one of the best places in the world to do business.

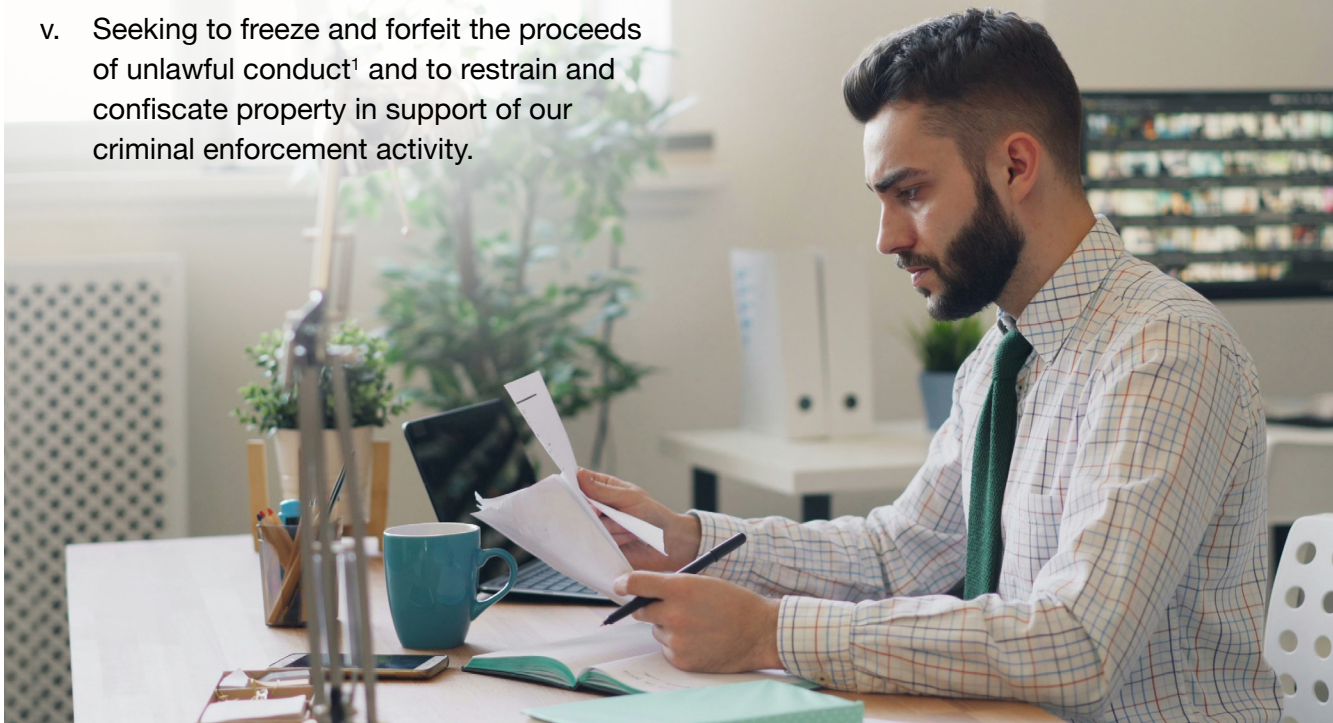


2.3 We contribute to wider objectives through partnering and collaboration with other government departments, agencies and regulators across the enforcement and regulatory landscape to most effectively join up with others to meet common objectives (see also section 4 – Collaborative Working and Partnering).

2.4 The cases we investigate and enforcement actions we pursue are aimed at disrupting ongoing harm, protecting against likely future harm, or prosecuting for harm caused. We use our powers to pursue the most effective outcome and in a way that addresses financial wrongdoing at all levels, promoting economic confidence for consumers, business and across the corporate and insolvency regimes. Not all investigations commenced will result in an enforcement outcome in the form of e.g. a director disqualification or prosecution. That supports our objective of making the right enforcement decision, even if that is to close down an investigation with no litigation or court action.

2.5. We have a range of enforcement tools at our disposal. These include:

- i. Investigating and winding-up companies trading contrary to the public interest.
- ii. Investigating and acting to disqualify directors of companies (including dissolved companies) who have shown themselves unfit to manage companies.
- iii. Acting to disqualify directors based upon investigative material provided by other government departments and regulators.
- iv. Undertaking criminal investigations and prosecutions for insolvency and corporate-related criminal offences.
- v. Seeking to freeze and forfeit the proceeds of unlawful conduct¹ and to restrain and confiscate property in support of our criminal enforcement activity.
- vi. Seeking Compensation Orders against directors, where misconduct for which they have been disqualified has caused loss to creditors.
- vii. Acting to prolong restrictions on bankrupts, who have acted improperly or abused the insolvency regime.
- viii. Imposing sanctions against Recognised Professional Bodies if there are breaches of statutory objectives and taking direct action against individual Insolvency Practitioners in public interest cases.



¹ Forfeiture powers are not currently being used but is something we have under review.

3

How we use our Powers

3.1 In common with other agencies there are choices to be made as to where we put our effort for optimal impact. These choices are influenced and underpinned by the agency's annual Strategic Assessment, strategic drivers, wider objectives, case strategies and how and where we join up with partner organisations.

Prioritisation

3.2 The prioritisation of our investigative work and decisions about which of our powers to use are informed by one or more of the following factors (not weighted):

- i. **Harm:** will the action proposed reduce or mitigate ongoing or future harm to victims of crime, or those who have been adversely impacted by the misconduct of others?
- ii. **Impact:** what effect will the enforcement intervention have? Higher priority may be given to cases with wider impacts (e.g., on supply chains) and which carry reputational risks to confidence in the overarching framework.
- iii. **Strategy:** does the decision fit in with our objectives and is the action proposed the most appropriate way to achieve the desired outcome? Are external agencies better placed to investigate and/or act?
- iv. **Risks:** what are the prospects of meeting our objective and within what timescale?
- v. **Resources:** what resource we have available and where it should be applied in order to achieve the best impact.
- vi. **Public interest considerations:** these can take many forms – for example, the need for deterrence or to address government priorities – but must be kept under review on an ongoing basis.

3.3 In practical terms this means identifying the right cases for investigation at the right time, choosing the most effective tool or combination of tools to achieve our aim, and undertaking professional investigations and fair enforcement in the public interest.

3.4 Throughout the life of an investigation, and any subsequent follow up action, we will keep under active review the approach taken on a case-by-case basis for addressing the wrongdoing. Where justified, we are prepared to adjust the investigative resource committed to the case or change the approach to the investigation, based on new information or any change in the public interest assessment. For example, we may scale the resource up or down, deploy external experts to support our investigative work, or discontinue a case if it is no longer in the public interest.

Proportionate Use of Powers

- 3.5 We make sensible resource-based decisions to optimise our enforcement outcomes and the impact we deliver for stakeholders. This means applying an appropriate amount and level of resource to any given case at the right time, having regard to complexity and the stage reached within the investigation process.
- 3.6 We use our powers in a complementary way to minimise unnecessary duplication of investigative effort (internally and with external partners) and avoid procedural difficulties. Whenever criminality is identified in a case, we consider how, on the facts of the case available at the time and alongside any public interest considerations, we can most effectively contribute to the agency's enforcement objectives. This same principle applies when working with partner organisations in deciding on the most appropriate multi-agency approach to any given case (see also section 4 – Collaborative Working and Partnering).
- 3.7. Our skilled staff use their judgment as to whether the onset of either a criminal or a civil investigation is the most appropriate way of meeting our objectives. On occasion we will undertake concurrent or consecutive criminal and civil investigations on the same case, although that will be the exception.
- 3.8 Whether a decision is taken to use our criminal or civil investigatory powers in any given case, the powers being used are kept under review throughout the investigation. For example, in circumstances where a decision is taken to pursue a disqualification investigation, but clear evidence of criminality subsequently comes to light from the civil investigation, a prompt and detailed reassessment of the case will be made by the lead investigator to ensure that the most appropriate action is being pursued.
- 3.9 When using our powers under the Companies Act to investigate a company, the investigation is pursued expediently so, where appropriate to curtail ongoing harm, early action may be taken to wind up the company on public interest grounds. Even there though, the merits of continuing the investigation will be kept under regular review to ensure that continuing that investigation remains the most appropriate action in the circumstances.

We make sensible resource-based decisions to optimise our enforcement outcomes and the impact we deliver for stakeholders.

*Across all our teams
we will continue to
develop our investigative
and legal capability.*



Complex and High-Profile Investigations

- 3.10 To prevent ongoing and future harm, we are committed to tackling financial wrongdoing across a range of activities and at all levels; this includes cases which will have the highest impact.
- 3.11 We have skilled investigators and with the expertise of our in-house legal team we have the capability across the agency to handle highly complex cases coming within our remit. In view of the potential for multi-agency interest and the need to manage wider operational and reputational risks, we ensure that our highest impact cases and investigation strategies relating thereto have appropriate levels of strategic oversight, governance and resource.
- 3.12 The agency is a collective member of the Government Counter Fraud Profession and accordingly all our investigators and investigation managers have the opportunity to broaden their knowledge and experience through participation as they grow into the profession and by participation at GCFP events and through networking opportunities.
- 3.13 Across all our teams we will continue to develop our investigative and legal capability to ensure we have the best skills we can to support our investigation and enforcement activity.

4

Collaborative Working and Partnering

- 4.1 Our primary focus is to support DBT strategies that support maintaining a fair business environment and which uphold the integrity of the insolvency regime, particularly those aimed at delivering economic confidence by tackling insolvency-related and corporate financial wrongdoing ([see section 2](#) – Enforcement Purpose and Powers).
- 4.2 We also play a key role in supporting wider government objectives, working collaboratively and proactively with other government agencies and departments (e.g. Companies House, National Crime Agency) and partner organisations in the regulatory and law enforcement landscape, to support wider economic crime initiatives, including efforts to combat serious and organised crime.
- 4.3 This includes sharing information and intelligence with other departments and agencies to ensure that the right bodies are using the right tools to obtain the most effective enforcement outcomes.

Director Disqualification

- 4.4 We are the lead agency for enforcing the director disqualification regime and acting to remove rogue directors from the marketplace. This is a cornerstone of our enforcement effort. In addition to the disqualification of directors of insolvent and dissolved companies, we act to disqualify directors in non-insolvency cases where information and evidence is provided to us following investigation by other departments and regulators and this warrants disqualification in the public interest.
- 4.5 In such cases, our partner organisation will be the prime authority for conducting any investigation they deem necessary, as we will generally not have investigatory powers ourselves, but we will use our knowledge and experience of the disqualification regime to decide whether on the facts and available evidence produced disqualification action is warranted.



Director disqualification following conviction

4.6 As well as reminding the court of its powers to make a director disqualification order upon conviction in our own prosecutions, we urge other prosecuting authorities to ensure that their prosecutors remind the court of its discretion to disqualify any individual convicted of an indictable offence in relation to a company. To make the most effective use of our resources, where protection of the marketplace is likely via these means, we will usually refrain from taking separate civil disqualification action ourselves.

Criminal Investigations and Prosecutions

4.7 We investigate cases where the overwhelming thrust of criminality is concerned with insolvency related crime and corporate misconduct and criminal activity of Insolvency Practitioners whilst acting as such and which threatens the integrity of the insolvency regime. We do not investigate where the criminality or wrongdoing falls within the defined remit of other agencies which are better placed to investigate and prosecute the wrongdoing or Departments who have more effective statutory powers to investigate and prosecute.

Live Company Investigations

4.8 The unique power we have to investigate live companies meets an important public need within the enforcement landscape: taking investigatory action where ongoing harm, perpetrated through a company, is suspected. We frequently use this power to support DBT in maintaining the integrity of the corporate regime by investigating cases that fail to meet the evidential investigatory threshold of other law enforcement agencies or regulators. That may be where the allegations are niche or relate to unregulated sectors, or where amounts or impacts are too small to meet the prioritisation criteria of agencies like the Police or Serious Fraud Office.

4.9 We will continue, where appropriate, to use this power in such cases, which includes identifying opportunities to contribute to wider government objectives in the cases we undertake. When used in conjunction with investigatory powers of partner organisations, this can broaden the scope of high-profile complex director disqualification investigations where misconduct may span insolvent and live companies.



5

Recovery and Compensation

- 5.1 To support our criminal investigations, we take action to freeze and forfeit the proceeds of unlawful conduct. We also consider if it is appropriate to restrain and confiscate property through a proceeds of crime application.
- 5.2 In all cases we consider if it is appropriate to apply to compensate victims of our criminal prosecutions.
- 5.3 Where actions are taken to disqualify directors on behalf of the Secretary of State, we also consider whether action should be taken to pursue a compensation order where recoveries have not been made through the insolvency process.

In all cases we consider if it is appropriate to apply to compensate victims of our criminal prosecutions.



6

Director Education

6.1 Alongside our director disqualification investigation activity, we work to raise standards of corporate behaviour by publishing education materials for directors and will work across Government and with external partners to help directors understand their duties and know where to turn for impartial advice.

We work to help directors understand their duties and know where to turn for impartial advice.

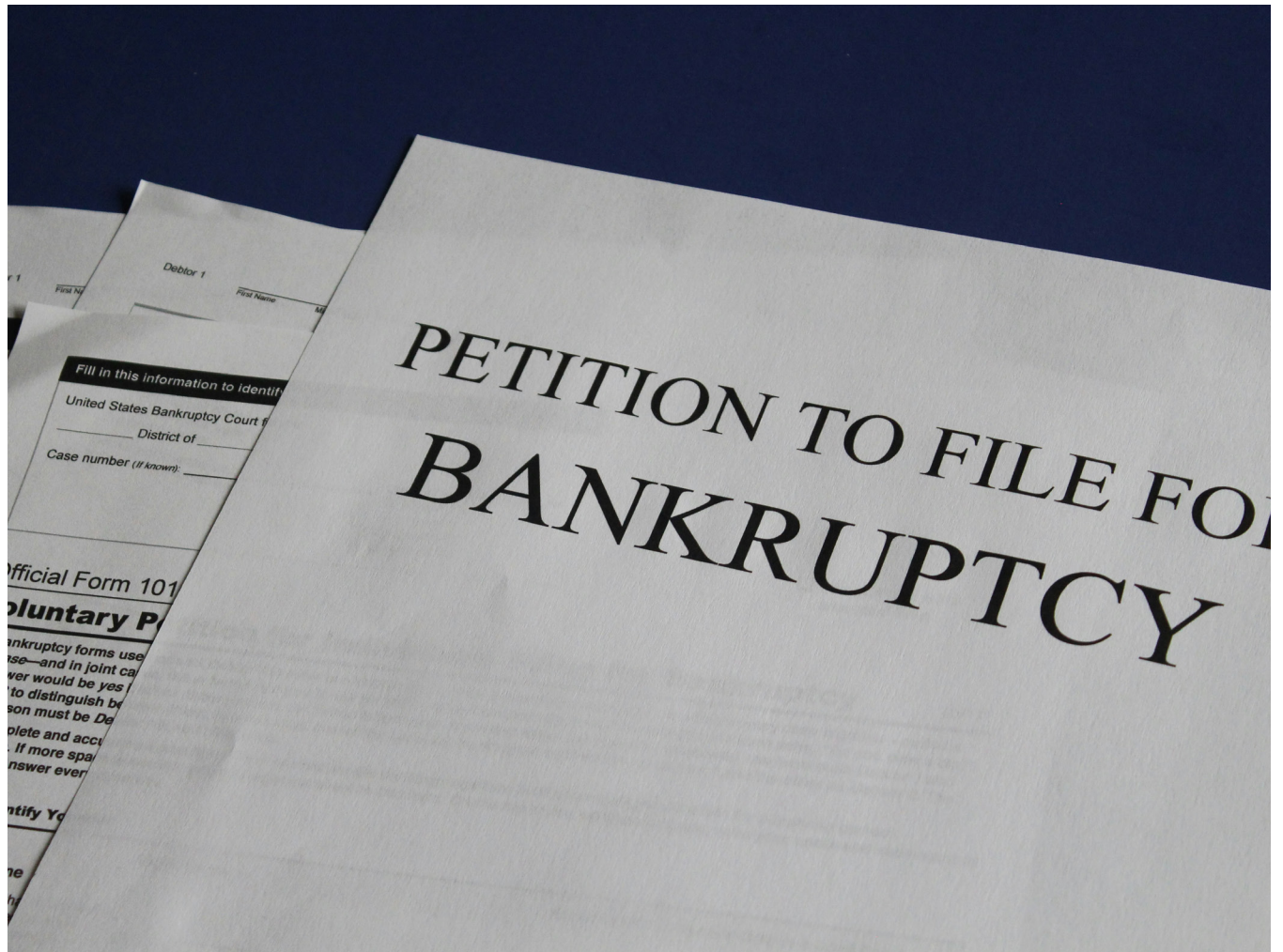


7

Bankruptcy Restrictions

7.1. The Official Receiver is the only party that has the power to seek an undertaking from the debtor, or an order from the Court, for a bankruptcy or debt relief restriction. The broad effect of the undertaking or order is to extend the restrictions that apply to an undischarged bankrupt for a period between 2 and 15 years.

The Official Receiver is the only party that has the power to seek and undertake from the debtor.



8

Insolvency Practitioner Regulation

8.1 The agency acts as the oversight regulator for each of the Recognised Professional Bodies (RPB) who directly license and inspect Insolvency Practitioners. The agency – acting on behalf of the Secretary of State – has a duty to have regard to statutory regulatory objectives, and as part of that duty it is charged with monitoring whether the RPBs discharge their regulatory obligations. We also act on behalf of the Secretary of State in considering whether use of the powers set out in Part XIII of the Insolvency Act 1986 (as amended) is warranted.

8.2 Acting on behalf of the Secretary of State, the agency may take action against an RPB if it is satisfied that an act of omission of such a body in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on achievement of one of the regulatory objectives that are set out in the Act. This may include directing an RPB, issuing a reprimand, imposing a financial penalty, and revoking RPB status (in full or in part). The processes and procedural requirements for each of these penalties are set out in the Act.

8.3 Acting on behalf of the Secretary of State, the agency may also apply to the Court for a direct sanctions order against an Insolvency Practitioner if it is in the public interest to do so. The considerations to be made, and procedure for seeking a direct sanctions order are set out in the Act. This is a regulatory action and may result in the withdrawal of an Insolvency Practitioner's licence or partial withdrawal of a licence; or it suspend an Insolvency Practitioner, otherwise require compliance with specified requirements, or require the Insolvency Practitioner to make a contribution to one or more creditors of a company, individual or insolvent partnership.

8.4 It is also a criminal offence to act as an Insolvency Practitioner when not qualified to do so. The Insolvency Service will consider the appropriate investigation and enforcement action against persons in these circumstances.





The Insolvency
Service

