



The Insolvency
Service

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DEAR INSOLVENCY PRACTITIONER
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Message from the Insolvency Service

Dear Reader

Please find enclosed the latest updates from the Insolvency Service.

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28) Outcome of Insolvency Service’s review of pre-pack sales in administration

The power to regulate connected party sales in administration was introduced by the Small Business, Enterprise Employment Act 2015 and revived by the Corporate Insolvency and Governance Act 2020. The Government proposes to exercise the power to require mandatory independent scrutiny of connected person sales, unless there has been creditor approval of the transaction.

Government sought views from stakeholders to produce draft regulations which have been published alongside a report announcing the outcome of the Insolvency Service’s review into the impact of voluntary measures introduced in November 2015 following the 2014 review by Teresa Graham¹, to improve transparency and confidence in pre-pack sales in administration.

Regulations will be made as soon as Parliamentary time allows. The Government also proposes to work with industry on non-legislative reforms to strengthen the existing professional standards around pre-packs.

The full report on the outcome of the Insolvency Service review and the draft regulations can be found here:

<https://www.gov.uk/government/publications/pre-pack-sales-in-administration>

If insolvency practitioners wish to make any comments on the draft regulations, please e-mail these to Pre-pack.review@insolvency.gov.uk before 5 November 2020.

Enquiries regarding this article may be sent to:
Policy.Unit@insolvency.gov.uk.

¹ [Graham Review into Pre-Pack Administration](#)

36) Companies House – Request for assistance

Companies House is currently looking at ways to digitally enable filing of insolvency forms. In order to help develop the service to best suit customer needs, Companies House would be grateful if insolvency practitioners can complete a short user research survey which can be accessed via:

<https://www.surveymonkey.co.uk/r/RNCT9NX>

Any feedback received will help Companies House shape the development of the digital service.

Please note this proposed digital service is separate to the recently introduced 'Upload a document' service which allows forms to be uploaded digitally as a PDF that were previously completed on paper and posted.

Companies House thanks insolvency practitioners for their continued support.

68) Directors Using Claims Management Companies (CMC)

This article is being issued to clarify the existing position that was set out previously in Chapter 17 Article 46 and to ensure compliance with the Claims Management Regulator (CMR) set out in Chapter 13 Article 94.

The Redundancy Payments Service (RPS) receives claims from directors where assistance in completing those claim forms has been provided by a CMC. In doing so, a percentage of the amount the director receives from the National Insurance Fund is claimed by the CMC as their fee.

In the vast majority of cases there are no issues concerning directors' claims and they are paid accordingly. The RPS also takes the view that if anyone needs advice on completion of any claim form, they can get such help, without incurring any expense, from the RPS's [gov.uk pages](#), or from the insolvency practitioner.

Whilst there is no requirement to do so, where an insolvency practitioner is approached by a director for assistance in completing the claim form, the practitioner may refer such person to a CMC.

The office holder is responsible for validating the information provided by claimants in making any claim to the RPS (using forms RP14 and RP14A) with reference to the records of the company. To assist in this duty, an insolvency practitioner may choose to employ a CMC or other agents, or to retain payroll staff. Where an insolvency practitioner has used any agents for assistance in completing their validating information, the insolvency practitioner concerned remains responsible for the accuracy of the information provided. The insolvency practitioner should therefore take steps to ensure there are appropriate safeguards in place to confirm the accuracy and validity of all information provided.

If there is incomplete information or deficiencies in the records of the company, the insolvency practitioner should decide the level of claim that they are willing to validate, using their best judgement. In making this decision, the insolvency practitioner should consider all available means of obtaining relevant information. For example, by examining those records that do exist (including the claims made by the employees), by ensuring the directors comply with their duties to provide information or by employing or retaining specialist payroll or employment rights agents.

An insolvency practitioner should only engage CMCs, who fully comply with requirements of the CMR for assistance in performing their duties whilst also complying with section 2320 of the Code of Ethics.

An insolvency practitioner should also be able to evidence that they are satisfied that any CMC they engage complies with CMR requirements. A CMC should not act as both an agent of the insolvency practitioner and an agent of the claimant in the same case. This would present a conflict of interest within the statutory roles fulfilled by the insolvency practitioner.

The Insolvency Service will continue to report any potential CMR breaches or concerns over completed claim forms to the appropriate Recognised Professional Body for further consideration.

Enquiries regarding this article may be sent to:
RPS.Stakeholder@insolvency.gov.uk.

69) Code of conduct for large or high-profile cases with the Redundancy Payments Service (RPS)

On many large cases, the RPS works closely with the insolvency practitioner and together they create the initial communications for employees.

The RPS is seeking to develop a smoother working process for high profile cases (either employers who are in the public eye, or where there are expected to be 250 or more redundancies) which will benefit both parties – the RPS and the insolvency practitioner.

Large cases process

For large cases, the RPS will work closely with the insolvency practitioner to follow the process below:

1. If the employer has not already submitted advanced notification of redundancies, the insolvency practitioner completes the [HR1 form](#) and sends it to HR1@insolvency.gov.uk.
2. The insolvency practitioner makes initial contact with the RPS (at RPS.stakeholder@insolvency.gov.uk) as early as possible to request a case set up and submits a completed template for setting up a new case.
3. The RPS and insolvency practitioner work together to agree employee communications with [standard factsheets](#) ready for sending out for furloughed and non-furloughed employees.
4. The RPS sets up the case and issues the insolvency practitioner with a case reference number.
5. The insolvency practitioner issues a factsheet from the RPS, with an information pack (if applicable), to the employees.
6. The RPS inspects the employer's payroll records and may agree to pay off the RP14A.
7. If there are any significant changes on the case, such as further rounds of insolvencies, practitioners should contact RPS.stakeholder@insolvency.gov.uk with details.

Following this process will enable the RPS to make payments quickly, and accurately, and ensures that employees receive good quality communications throughout.

To help this procedure run smoothly, this article sets out below:

- The importance of getting in touch with the RPS as early as possible.
- What information the RPS need at the first point of contact.
- What happens after insolvency practitioners contact the RPS.
- What is meant by paying off the RP14A.

Getting in touch early

The RPS does not share commercially sensitive information (other than with other government departments for the purpose of supporting employees). By getting in touch with the RPS before insolvency practitioners are formally appointed, the RPS can prepare to conduct an inspection and for processing claims.

Where needed, the RPS can also prepare a bespoke factsheet and employee communications in collaboration with practitioners, ready to be given to employees as soon as possible after dismissal. Bespoke factsheets can include information specific to that case in order to help reduce contact and questions from employees.

These ensure the information given to employees is accurate and has been agreed by both the insolvency practitioner and the RPS.

Insolvency practitioners should get in touch us by emailing RPS.stakeholder@insolvency.gov.uk.

Making initial contact: what the RPS needs to know

Separate to insolvency practitioner obligations under Advanced Notification of Redundancies (ANR), the RPS also asks that practitioners send the following information as early on in the appointment process as possible by filling out a template for setting up a new high-profile case.

The template requires information about:

- The industry sector.
- The employer's name.
- Whether staff are based in England, Wales, Scotland or a combination
- If the HR and payroll staff are being retained.
- When the insolvency practitioner expects to be appointed.
- The total number of employees working for the company.
- The total number of employees being dismissed and how many are currently furloughed.
- Whether the employer is planning to continue trading some or all the business.
- If the employer is planning to sell some or all the business.
- Whether we should expect to be paying all components for all employees, or if some are not applicable or have been paid.
- Any complicated areas e.g. employees with multiple rates of pay, bonuses or commission.
- Contact details for directing employee queries (e.g. any specialist webpages or email addresses that have been set up).
- If there is any media or political interest.

Please send the completed template to RPS.stakeholder@insolvency.gov.uk.

What happens next

Once the RPS receives the case set up template, an RPS inspector will contact the insolvency practitioner to discuss what communications are needed and if a bespoke or standard factsheet is most appropriate.

The RPS can also work with the practitioners to review any communications that have been drafted for employees by themselves or by the insolvent employer.

The RPS will then issue a CN number for each employer and the agreed factsheet(s). It is important that practitioners give the correct CN number and factsheet to each employee, as claims against the wrong case lead to delays and complications.

Going forward, the RPS will not set up cases or issue case reference numbers before this stage in the process. This is in order to limit:

- Employee confusion and claims being put in before the employees understand the situation.
- Claims being withdrawn and amended – creating additional rework and contact for the RPS and insolvency practitioners.
- Employees receiving overpayments.
- Significant delays in employees receiving the correct payments while we wait for payroll information.
- Employees contacting the press, their MPs and the insolvency practitioners with questions and asking to update and amend their claims.

Once redundancies have been made, an RPS inspector will visit the premises and inspect payroll records or may do so remotely. The purpose of the inspection is to see if the RPS can pay off the RP14A rather than adopting RPS's usual stance of using the lower figure of the RP14A or the RP1. Paying off the RP14A enables bulk (quick) processing of payments, using the RP14A information that the insolvency practitioner has established is accurate.

Paying off the RP14A

If RPS agrees to pay off the RP14A this means:

Redundancy pay

- Only paid if claimed by claimant.
- Years of service per RP14A.
- Age per RP14A.

- Rate of pay per RP14A.
- Date of dismissal per RP14A.
- Please confirm separately if any employees resigned, as the RP14A does not enable practitioners to inform the RPS that an employee is not entitled to a redundancy payment.

Arrears of pay

- Only paid if claimed by claimant.
- Rate of pay per RP14A.
- Period of arrears per RP14A.

Holiday pay accrued

- Only paid if claimed by claimant.
- Rate of pay per RP14A.
- Number of days (annual allowance, carry over, taken, leave year start date) – lower of RP1 & RP14A.

Holiday pay taken

- Only paid if claimed by claimant.
- Rate of pay per RP14A.
- Number of days taken – lower of RP1 & RP14A.

Compensation in lieu of notice

- Only paid if claimed by claimant – RP2 required (not just ticking RP1 box).
- Rate of pay per RP14A.
- Years of service per RP14A.
- Date of dismissal per RP14A.
- Date of notice per RP14A.
- Benefits/ notional benefits per RP2.

Once the RPS begin making payments, the inspector and stakeholder relationship manager will keep in touch about any developments on the case and any case decisions that could have an impact on insolvency practitioners.

Enquiries regarding this article may be sent to:
RPS.Stakeholder@insolvency.gov.uk.