



The Insolvency
Service

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DEAR INSOLVENCY PRACTITIONER

Issue 159 – June 2023

Dear Reader,

Please find enclosed the latest articles from the Insolvency Service:

In this issue

Information/Notes page(s):

Chapter 10 Disqualification

Article 56 Changes to Director Conduct Reporting Service

Chapter 11 Employment issues

Article 81 Update on Redundancy Payment Service (RPS) policy on directors' claims

56) Changes to Director Conduct Reporting Service

The Insolvency Service is currently working on some changes to the conduct report questions in the Director Conduct Reporting Service (DCRS).

The purpose of most of these changes is to obtain more information at outset so that the Insolvency Service can make a more informed decision based on the report and remove the need to request as much information about these matters after the report has been submitted, thus removing the need to revisit cases for both you and your staff and for the Insolvency Service.

Although a release date has not been finalised yet, the release of the new questions is planned during the summer. Further information regarding the release will be provided when the date is finalised.

The question relating to whether a company is registered overseas will be moved from Section 3, Director Details, to Section 2, Company Details, so that this question now only needs to be answered once, rather than multiple times if there is more than one director.

The question relating to the director benefitting directly or indirectly in an unreasonable or excessive manner will be moved from Section 3, Director Details, to Section 4, Company Insolvency, and amended slightly so that it asks if any director has benefitted. This will then be followed by further questions asking in what way a director benefitted, the period over which those benefits were received, and the sums involved. Each question will have a variety of options to choose from.

Section 4, Company Insolvency, will see the inclusion of an additional sum in the range of answers for the question relating to the company deficiency. The range £50,001 to £100,000 will be split into £50,001 to £75,000 and £75,001 to £100,000.

In Section 8, Director Conduct – Tax Affairs, the answers to the question about the percentage of unsecured liabilities that is made up by HMRC debt will be changed. The new options will be 50% or less, 51 to 75% and over 75%.

Finally, there will be changes to Section 13, Director Conduct – Financial Support Scheme. Where Covid Support Scheme is selected, this will open a further question to identify if this was a Bounce Back Loan (BBL) and if answered yes, further questions about the BBL will open for completion. These questions will ask for the information currently requested following the submission of the conduct report.

There will also be a change to the range of amounts in answer to the question on how much funding was received. The £10,001 to £25,000 will change to £10,001 to £15,000 and £15,001 to £25,000.

Enquiries regarding this article may be sent to:

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57) Update on Redundancy Payment Service (RPS) policy on directors' claims

N.B. This is an update on a Dear IP 138 article of October 2021 to provide greater clarity to IPs on RPS's determination of employee status when assessing claims made by company directors.

Director claims to RPS as employees

Only [employees](#) who are made redundant are entitled to payments from the National Insurance Fund (NIF).

A [director](#), who is an office holder, can also be an employee and be eligible for payment; however, directors applying to the Insolvency Service for monies owed will need to provide evidence to support their claim that they were an employee.

This updated article is intended to assist Insolvency Practitioners in understanding RPS's approach to assessing director claims for employee status.

An IP's approach to establishing a director's status before completing the RP14a will depend upon the specific circumstances of the case; however, if there are any areas of concern with regard to employee status, please contact RPS at the email address below.

RPS continually examines its processes and as a result of increased claims by ineligible directors, in October 2021, RPS introduced a more robust assessment process.

Directors applying to the Insolvency Service for monies owed will need to provide evidence to support their claim that they were an employee, and this may include the completion of a directors' questionnaire.

RPS will contact directors after they have submitted their claim to let them know what documents they need to provide. The additional information required will be based on the claimant's circumstances and may include (this is not an exhaustive list):

- Details as to the structure of the company in terms of directorships and shareholders.
- The last 3 years' P60s.
- The last 3 months' wage slips.

- Employer's bank statements for the last 12 months to review regularity of payments.
- A comparison of the contracted hours being claimed in relation to the work being undertaken.
- Compliance with national minimum wage.
- A copy of the contract of employment and whether the terms of the contract were enacted.
- Dividends received in the last 3 years.
- Holiday pay arrangements.
- Workplace pension arrangements.
- Sick leave procedures.
- Grievance and disciplinary procedures.

RPS will have to consider whether there was a contract of employment in place at the time (which can be express or implied).

From the information provided, RPS will determine, on the balance of probabilities, if they find the director to be an employee.

RPS will reject the claim and not make any payments if they cannot confirm that the director was also an employee of the company. If the claimant disagrees with the decision, they can make a claim to an [employment tribunal](#)

Enquiries regarding this article may be sent:
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