The Insolvency Service

Insolvency Practitioner Regulation Section
16th Floor
1 Westfield Avenue
Stratford
London
E20 1HZ

Email: Dear.IP@insolvency.gov.uk
www.gov.uk/government/organisations/insolvency-service

DEAR INSOLVENCY PRACTITIONER
Issue 168 – June 2025

Dear Reader,

Please find enclosed the latest articles from the Insolvency Service:

In this issue:

40) The Information Sharing (Disclosure by the Registrar) Regulations 2024

The Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023) introduces several provisions aimed at tackling economic crime, improving corporate transparency, and strengthening the powers of Registrar of Companies.

One specific area of reform relates to the Registrar's power to disclose information to public authorities to assist with the discharge of their public functions. ECCTA also introduced a power to make regulations establishing further information disclosure gateways for the Registrar.

The Information Sharing (Disclosure by the Registrar) Regulations 2024 came into force on **20 December 2024**. The regulations introduce new powers for the Registrar to disclose non-public information to insolvency practitioners and official receivers for certain specified functions which are not considered to be of a public nature. This will also apply to Northern Irish and Scottish equivalents.

The Information Sharing (Disclosure by the Registrar) Regulations 2024

Insolvency Practitioners are required to complete a designated request form to obtain information.

If you have a request or any queries, you should email Law Enforcement Liaison leliaison@companieshouse.gov.uk.

The Registrar will only disclose information once satisfied that the request is proportionate and necessary for assisting the specified person in the course of their duties.

The Registrar will not supply any publicly available documents. Statutory documents can be freely downloaded from https://www.gov.uk/government/organisations/companies-house

84) Claims to Redundancy Payments Service – employment status checks by insolvency practitioners

The Redundancy Payments Service (RPS) has seen a steady increase of claims received where claimants do not have employee status in line with Section 230 of the Employment Rights Act 1996 and relevant case law.

The office holder is responsible for validating the information provided by claimants with reference to the records of the company when making any claim to the RPS (using forms RP14 and RP14A). The insolvency practitioner should therefore take steps to ensure that there are appropriate safeguards in place to confirm the accuracy and validity of all information provided.

As part of initial enquiries and due diligence checks, the insolvency practitioner should consider all available means of obtaining relevant information. For example, by examining those records that do exist, including copies of any employment contracts (including sample contracts), which should be reviewed.

Where a contract clearly states that it is for a contract for service, rather than a contract of service, it is extremely unlikely that these workers would have employee status and as such the RPS would reject claims on those grounds. Consequently, in this situation, claimants that are not subject to a valid employment contract should **not** be included in any RP14/RP14A that is submitted to RPS.

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 judgment.

The RPS has a duty to protect public funds and cannot pay out monies where there is doubt as to eligibility for payment.

Enquiries
Enquiries about this article should be sent to RPS.Stakeholder@insolvency.gov.uk.

123) FCA updated guidance - FG25/2: Guidance for insolvency practitioners on how to approach regulated firms

The Financial Conduct Authority (FCA) has published its updated updated non-Handbook guidance for IPs on how to approach insolvencies of regulated firms. The Guidance is aimed at insolvency practitioners (IPs) appointed over firms solely authorised or registered by the FCA. It may also be relevant for IPs appointed over firms that are dual regulated by the FCA and Prudential Regulation Authority.

This follows an earlier consultation in 2024 (GC24/1) on the proposed amendments to the original Guidance published in 2021. The FCA concluded it was necessary to update the Guidance given developments that had taken place since 2021, including the introduction of the Consumer Duty.

According to the FCA, consultation respondents were broadly supportive of both the Guidance and the proposed amendments to it. Respondents did however comment on specific amendments and suggested adding more information, detail, or clarity in certain areas, including in relation to existing text.

Summaries of significant areas of feedback received and the FCA's responses can be found in the FCA's accompanying feedback statement (FS25/3). These include the following issues:

1. Introduction of the Consumer Duty

Respondents commented on proposed amendments setting out the FCA's expectations that firms continue to comply with the Consumer Duty (the Duty) after entering insolvency, focusing on the relationship between an IP's duty to act in the best interests of creditors and the Duty's requirements. Some raised concerns about potential tension between the two and the need to find the right balance.

The FCA responded by noting that IPs must act in the interests of creditors, and ensuring that a regulated firm complies with the Duty does not conflict with this obligation. For example, clear communication and good customer service can reduce the number of queries an IP needs to address. As outlined in PRIN 2A.7.1R and the Consumer Duty guidance, the Duty is underpinned by reasonableness and interpreted based on the specific circumstances. While a firm's failure may influence this interpretation, the assessment of reasonableness will depend on factors such as the firm's financial position, whether it continues to trade during insolvency, the

characteristics/vulnerability of its customers, and the firm's influence on retail customer outcomes.

The FCA has retained the proposed amendments in the form consulted upon but added text clarifying that the Duty does not have retrospective effect.

2. Costs of directions applications relating to client assets

Respondents were critical of the proposed amendments setting out the FCA's view that it is inappropriate for clients to bear the costs of directions applications when Client Assets sourcebook (CASS) rules set out applicable requirements. Concerns were raised about lingering uncertainty on matters covered by CASS, including the interaction between CASS and insolvency law, with respondents arguing that directions may remain necessary.

The FCA responded by acknowledging that, in certain cases, seeking directions from the Court may be appropriate. The intention behind the amendments is to ensure IPs are aware of and apply the CASS rules where relevant, without requiring Court sanction. It was not meant to imply that seeking directions on matters covered by CASS is always inappropriate.

The FCA has responded by clarifying the position, adding text advising IPs that, where they have considered the CASS rules and concluded directions are necessary, they may discuss their prospective application with the FCA before proceeding.

3. Other issues

The FCA added text to the Guidance to help users improve search outcomes when using the FCA Register noting that a firm's name appears on the FCA Register exactly as registered at Companies House, including punctuation, parentheses, and numbers. This was partly in response to comments about confirming the regulatory status of firms for the purpose of establishing whether FCA consent is required for administrator appointments.

The FCA also added text setting out the information it finds helpful to include in notices required under Regulation 11 of the Payments and Electronic Money Special Administration Regime (PESAR), where a party proposes to place a payments institution or e-money institution into another type of insolvency procedure. This followed some recent engagement with the insolvency profession which highlighted uncertainty over how this process works.

In response to comments on Financial Services Compensation Scheme (FSCS) protection, the FCA added text reminding IPs that FSCS protection may cover redress claims. IPs should engage with the FSCS where appropriate.

In response to a suggestion from one respondent, the FCA added a reminder for IPs to obtain confirmation from the Financial Ombudsman Service that all claims are closed, before applying to cancel a firm's FCA permissions.

The updated guidance took effect on 28 April 2025.

IPs appointed over regulated firms should follow it to help them ensure firms meet their ongoing regulatory obligations following the appointment.

124) The use of the term ‘creditor’ in insolvency legislation

Practitioners will be aware of the court judgments *In the matter of Pindar Scarborough Ltd (in Administration)* [2024] EWHC 908 (‘Pindar’) and *Boughey & Anor v Toogood International Transport and Agricultural Service Ltd (in administration)* [2024] EWHC 1425 (‘Toogood’). These judgments related to extensions to the term of administration under paragraph 78 Schedule B1 Insolvency Act 1986 and both focussed on the definition of ‘secured creditor’ at section 248 of the 1986 Act.

The Insolvency Service has said in the past, most recently in the First Review of the Insolvency (England and Wales) Rules 2016, that in its view, the personality of a creditor is fixed at the entry into an insolvency procedure, regardless of subsequent payment. While the judgments only considered extensions to administration and the definition of secured creditor, the Insolvency Service’s previously stated view on ‘creditor’ applied to all usages of the term in insolvency law.

Following the Pindar and Toogood judgments, the Insolvency Service has reconsidered the legislation in relation to this issue, together with the underlying policy rationale of its earlier statements. In the light of this reconsideration and following advice received, the Insolvency Service has reframed its view on this issue.

The word ‘creditor’ is used throughout the Insolvency Act 1986, the Insolvency (England and Wales) Rules 2016 and other items of insolvency legislation. It is not possible – and it would be unhelpful to try – for there to be one blanket, fixed definition covering the term ‘creditor’ in all situations and in all insolvency processes, both personal and corporate. A better understanding of the term is that it is context-specific - on some occasions the term will detach from a creditor once they are paid, but in others it will remain.

As the court noted in the Pindar/Toogood cases, the secured creditors in question ceased to be creditors for insolvency law purposes once their charges had been satisfied. However, there will be other occasions where the term ‘creditor’ can only refer to a party that was owed a debt (including a contingent liability) at the entry to the insolvency process in question.

This will continue to be the case regardless of any subsequent payment. For example, where a bankruptcy is annulled on grounds of payment in full (s282(1)(b) Insolvency Act 1986), rule 10.139 Insolvency (England and Wales) Rules 2016 (notice to creditors) would make no sense if the use of the word ‘creditor’ in that rule excluded those who had received payment. In that instance, the term ‘creditor’ must apply to a creditor whose debt had since been paid or the notice, where necessary, could not be issued to anyone.

Accordingly, it will be a matter for the professional judgment of the office-holder, with reference to the specific circumstances of the insolvency case in question, to determine whether an interpretation of the word 'creditor' in an insolvency law provision will exclude a creditor whose debt has been repaid. Particular consideration should be given to whether the creditor in question may be prejudiced or disadvantaged by losing their status upon full repayment (as in the rule 10.139 example), in which case their creditor status should not be detached from them.

This view replaces any previously stated by the Insolvency Service.

Any enquiries regarding this article should be directed towards Insolvency Service Policy Team - email: policy.unit@insolvency.gov.uk