

# INSOLVENCY INSIGHTS

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EDITION 1



## WELCOME TO THE FIRST EDITION OF OUR INSOLVENCY INSIGHTS MAGAZINE!

It gives me great pleasure to introduce you to the first edition of our Insolvency Insights Magazine, aimed at those working within the credit community.

We understand that the world of insolvency can be a complex and daunting one, and so wanted to create a magazine that summarises the latest insolvency news in an easy to read, digestible format, whilst providing tips and best practice on what to do if you are faced with an insolvent customer.

Given the events of the last 3 years, it is no surprise that insolvencies are on the rise, with the levels of winding up petitions continuing to increase. It is therefore now more important than ever for credit professionals to know their customers and understand the pressures and risks they are facing. Spotting the warning signs early and understanding how you can maximise your recoveries if faced with an insolvent customer, is more important now than ever before.

We hope this magazine provides you with a deeper understanding of insolvency and are happy to answer any queries you may have. Additionally, if you'd like to collaborate or be featured in an upcoming edition, please do reach out – we'd love to hear from you.

We hope you find this resource useful.

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## INSIDE THIS EDITION:



Special measures to protect insolvent businesses are here to stay



New powers to stop abuse of dissolution process



Ask the credit manager



Covid-19 fraud: what could it mean for you?

**NEW**

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# SPECIAL MEASURES TO PROTECT INSOLVENT BUSINESSES ARE HERE TO STAY

An official review of permanent measures that were introduced during the pandemic to protect businesses that might be at risk of insolvency has now been completed, and the good news is that they are here to stay.

The Corporate Insolvency and Governance Act 2020 – Final Evaluation Report was published by the Insolvency Service on 19 December 2022. It includes an assessment of three ‘permanent measures’, which, when they took effect on 26 June 2020, represented the most significant changes in insolvency law since 2003.

☞ **With many businesses facing challenging trading conditions and significant macroeconomic headwinds, credit managers need to be alert to the new measures and understand how they might be affected.**

A summary of the special measures follows:

## **Restructuring Plans (Part 26A of the Companies Act 2006)**

A restructuring plan proposal can be proposed during early-

stage meetings with different classes of creditor. 75 percent of creditors in each class need to agree to the plan, however, the court may decide to sanction or approve the restructuring plan even if one of the creditor classes rejects the proposals.

It was originally thought that uptake of restructuring plans would be low as they can be costly and slow to implement, primarily due to the need for court involvement. However, they have proved more popular than expected, with 12 approved to 31 December 2022.

## **Company moratorium**

The measure known as ‘standalone moratorium’ is designed to protect businesses against legal action by creditors for a period of up to 20 days. This measure gives the business and its directors breathing space to consider their options. While the moratorium shouldn’t delay a decision to enter an insolvency process where the creditors’ interests can’t be met, it could be useful if the business is expecting the completion of a major contract, for example.

There have been 40 company moratoriums obtained to 31

December 2022, suggesting that they are seen as a useful tool and we may see more of them.

## **Restrictions on contractual termination**

These restrictions are designed to prevent suppliers from stopping or threatening to stop providing goods or services to the business after it has entered an insolvency process. Before the pandemic, such clauses were used by insolvency practitioners to prevent providers from terminating contracts related to necessary supplies. This has now been extended to other services. However, for smaller suppliers, there is the protection of the ‘hardship provision’, which means they can still issue a demand for monies owed.

It is too early to say how useful this measure has been as it has not been widely used, and credit managers should tread carefully if continued supply has been requested in an insolvency. However, it can be made a condition of the continued supply that the insolvency practitioner personally guarantees the payment of any charges in respect of it.

While these special measures are still relatively new, it is important that credit managers understand how they might be affected.



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# NEW POWERS TO STOP ABUSE OF DISSOLUTION PROCESS

The Insolvency Service has gained extended powers to investigate directors following the dissolution of companies and to recoup funds if evidence of abuse is found.

The extended powers have been introduced as part of The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act. Prior to this, directors of dissolved companies fell outside the scope of the Company Directors Disqualification Act 1986 (“CDDA”), meaning that the Insolvency Service couldn’t investigate their conduct if the company had been dissolved off the register. The company had to be restored to the register before this could happen. This barrier to investigation allowed some directors who should have been subject to disqualification proceedings to slip under the radar.

## Closing the ‘dissolution loophole’

The process of restoring a company to the register can be costly and whilst it can be advantageous in some circumstances, it can also be seen as throwing good money after bad. The new legislation will help to close the ‘dissolution loophole’, with directors subject to sanctions if evidence of misconduct is found. The Act

takes effect retrospectively, so companies dissolved prior to its commencement may also be affected.

**“The new legislation has been welcomed, as it provides more confidence and certainty. However, creditors and other stakeholders will still have to report their concerns about the conduct of directors to trigger an investigation.”**

## Tackling coronavirus-related fraud

The Act was initially accelerated by the UK Government following widespread concern over the number of fraudulent Bounce Back Loan claims made during the pandemic, and HMRC is carrying out investigations to recoup funds from businesses suspected of abusing this and other coronavirus-related support schemes.



In January 2023, a House of Commons Committee Report (“the Report”) stated that the UK Government is disappointed that HMRC only expects to recover around

a quarter of the £4.5 billion it estimates was lost due to fraudulent support claims.

Whilst legislation can only go so far to recoup funds, the UK Government has simultaneously increased the number of Compensation Orders issued against directors. With the Government and HMRC fully focused on fraud, it is hoped that more funds taken unfairly will be returned to the public coffers.



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# ASK THE CREDIT MANAGER



I discovered credit management almost by accident after leaving school and not knowing exactly what I wanted to do. I have found it so satisfying that I can't imagine ever leaving. It challenges me every day to keep learning and growing.



**YVETTE GRAY**  
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In this edition of 'Ask the Credit Manager' we are speaking with Yvette Gray, the regional manager for the UK and Ireland at Atradius Collections, on what she wished she had known when starting out in credit management.



## IS THERE A KEY PIECE OF ADVICE THAT YOU WISH YOU HAD KNOWN WHEN BEGINNING YOUR CAREER?

Without doubt the most important piece of advice is to develop your stakeholder engagement and communication skills from the start of your career.

Most people think that credit management is just a very data-based, analytical role that acts as a control function, but the reality is that you will be in constant liaison with team members across the business, from sales teams to operations and the board of directors. Being able to present your thoughts and ideas in a positive way and win stakeholder support and trust is a crucial part of what we do.

I don't think that anyone really 'plans' a career in credit management, which means expectations can be low – this is no bad thing as because of this, the credit management professionals you meet are often incredibly interesting, from diverse backgrounds and with a range of skills. The people I have met are great to work with and learn from – they are a perk of the job to me.

I'd also say that a big surprise for me was just how much my role touched other parts of the business, as well as the breadth of knowledge needed around macroeconomic issues, legislation and markets – something that makes every day interesting. Everything that we have been through recently, with regards to the Covid-19 pandemic and global supply chain issues for example, have shown just how central this role is to the running of the business.

Building strong relationships with your colleagues is vital in any career, and I am proud of the culture that we have at Atradius, where we have created a safe space in which to challenge and be challenged. Diversity of thought is encouraged across the business, and the knowledge that this comes with the support of colleagues, some of whom I've known from the start of my career, gives me the confidence to navigate the wide range of situations that I face within my role and come up with solutions that work for everyone.

I would encourage everyone to keep an open mind about the direction of their career and continue to work on their communication and stakeholder management skills. Credit management roles can lead to interesting and rewarding careers – they are what you make them.

**If you would like to contribute to a future edition of Insolvency Insights, please get in touch as we would love to hear from you!**

# COVID-19 FRAUD: WHAT COULD IT MEAN FOR YOU?



There's no doubt about it – Covid-19 fraud investigations are affecting businesses of all sizes, across all sectors, and credit managers need to understand how it could impact them.

HMRC has recovered or blocked £1.2bn of coronavirus-related fraud, and there are many more investigations pending. For credit managers, this situation could bring financial risks.

## Understanding the risks

For credit managers, the prevalence of Covid-19 fraud means there are significant financial risks to look out for when managing credit lines and overseeing payments from suppliers. For example, if a supplier starts missing payment deadlines, this could indicate that the business is facing cashflow difficulties and creditor debt could be mounting up.

If a customer subsequently enters an insolvency process, credit managers should be aware that if directors have obtained a Business Bounce Back Loan (BBLs) or Coronavirus Business Interruption Loan (CBILs), the bank or building society may offset the remaining amount owed against any funds held in the bank account.

## The role of insolvency practitioners

Insolvency practitioners have an important role to play in helping to tackle Covid-19 fraud. When a

business becomes formally insolvent, the appointed insolvency practitioner is tasked with reporting on the director's conduct. If this highlights civil recoveries or fraudulent activity involving one of the Covid-19 support schemes, HM Revenue & Customs and the Insolvency Service will generally be keen to take matters further. When reporting, insolvency practitioners will typically look for specific evidence of fraudulent activity, such as CBILs and BBLs being used to pay off personal debts or to buy assets for personal use or furlough claims being made when staff were still working.

Ultimately, the decision to pursue claims to recover any lost money will depend on the likelihood of success and will be a commercial decision for those affected. The recent prison sentences handed down to directors found guilty of Covid fraud is a warning to directors who may think they have got away with it, especially after dissolving the company.

## It's time to strengthen checks

Credit managers should aim to maximise their position without an insolvency where possible and take steps to strengthen credit line checks and

measures. For example, they should look out for warning signs such as a customer who has been avoiding recent communications. They should also take extra care when agreeing to supply goods or services on credit terms that have been previously agreed when the relationship was stronger.

Keeping communication lines open with key suppliers is vital and, if necessary, payment terms should be discussed and renegotiated. However, if communications with a specific supplier breaks down altogether and reasonable efforts have been made to contact the business, then credit managers may need to take matters further. If a decision is made to take legal action, credit managers should keep detailed records of attempts to contact the business.

Whilst insolvency practitioners play a key role in identifying and pursuing asset recoveries and reporting director conduct in insolvencies, credit managers should not rely on this as a recovery tool and should take every step to mitigate risk and exposure where possible.



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# MEET THE EXPERTS

The Menzies Creditor Services team can advise on the best way for you to protect your position when one of your debtors enters, or is approaching, insolvency proceedings. Utilising our extensive experience and expert insights, we work in collaboration with you, drawing upon our industry and insolvency sector knowledge, to improve your financial outcome.

For further information on our creditor services offering, please get in touch.



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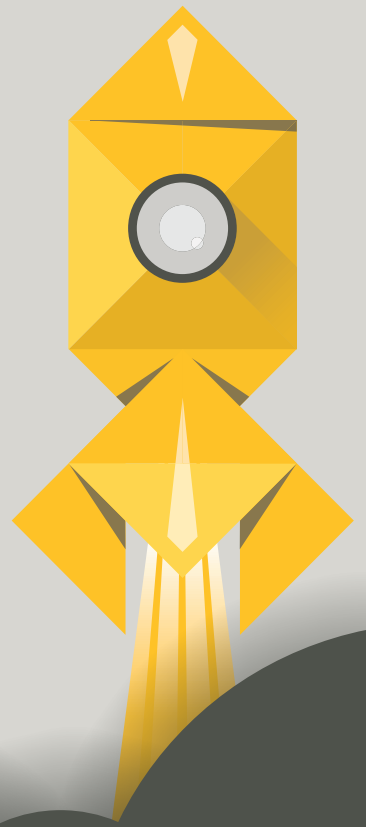
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