

# **The role and value of insolvency practitioners in the UK economy**

Insolvency practitioners, and other insolvency and restructuring professionals, play a vital role in ensuring that the UK maintains its reputation as one of the best places in the world to do business. The insolvency and restructuring profession:

- Rescues businesses and jobs;
- Creates the confidence to trade and lend by returning money to creditors after insolvencies;
- Investigates and disrupts fraud; and,
- Helps indebted individuals get back on their feet.

There are approximately 1,600 licensed insolvency practitioners in the UK, supported by thousands of colleagues. The profession is a key part of the UK's insolvency and restructuring framework, which is ranked as one of the best in the world by the World Bank. The UK framework scores highly for its rapid outcomes for creditors, its cost effectiveness, and its ability to rescue businesses.

## What is insolvency and restructuring?

Insolvency practitioners work with financially struggling businesses and individuals, both inside and outside of statutory insolvency procedures. These processes help financially distressed and insolvent companies and individuals to repay what they owe – and to turn their fortunes around where possible.

### *Insolvency*

A business or an individual is considered insolvent when their liabilities outweigh their assets, or they are unable to pay their debts when they fall due. There are a number of different insolvency procedures to deal with different insolvency situations. For companies, these include: liquidation (compulsory or voluntary), administration, or a Company Voluntary Arrangement (CVA); for individuals, these include bankruptcy, an Individual Voluntary Arrangement (IVA), or a Debt Relief Order. All insolvency procedures are overseen by either the government 'Official Receiver' or by a licensed insolvency practitioner.

### *Restructuring*

When a company is experiencing financial difficulties, it can enter into a corporate restructuring process to address its issues in an attempt to prevent it from becoming insolvent. Restructuring can involve selling some of the company's non-essential assets, reorganising its debt (often by coming to an agreement with its key creditors), reorganising its operations, or a combination of all of the above.

***R3 members say they spend on average 40% of their time helping companies to avoid insolvency through restructuring.***

## Who are insolvency practitioners?

An insolvency practitioner is an individual licensed to act on behalf of financially distressed and insolvent companies or individuals. Alongside the Official Receiver, only a licensed insolvency practitioner can act as an Office Holder in an insolvency process (and there are many procedures which can only be handled by an insolvency practitioner). An insolvency practitioner will have a different title depending on the insolvency procedure in question: they may be a liquidator, administrator, nominee, supervisor, or trustee in bankruptcy.



Insolvency practitioners are officers of the court, and have a wide range of duties. Insolvency practitioners are responsible for the administration of their cases, and work to get the best possible outcome for creditors. This work must be balanced with their legal and ethical obligations to employees, directors and other stakeholders. The work undertaken by insolvency practitioners requires the ability to balance their various duties and handle pressure from concerned creditors, anxious or unhelpful directors, and distressed employees. It is important to remember that insolvency practitioners are responsible to an insolvent company or individual's creditors - not the insolvent person or company.

In order to become a licensed insolvency practitioner, they must pass a rigorous set of exams, the Joint Insolvency Examinations (JIEB), and meet certain criteria set out by the profession's regulatory bodies. The majority of insolvency practitioners have a background and qualifications in accountancy or law.



Insolvency practitioners are supported by teams of insolvency professionals who assist with the day-to-day running of their cases.

*Insolvency practitioners work in practices of all sizes, from large global accountancy and law firms, to small high street practices.*

## What do insolvency practitioners do?

Insolvency practitioners play a vital role in the UK's economy by helping to rescue businesses, overseeing the orderly wind-down of insolvent companies, and returning money to creditors in the event of insolvency.

During **liquidation**, an insolvency practitioner will be appointed to assume control of the company's affairs in order to wind the company's operations up. They are authorised to sell the company's assets in order to generate funds to be distributed back to the company's creditors. When appointed as **administrators**, insolvency practitioners will seek, where possible, to rescue the business as a going concern which may involve a sale of the business. In a **CVA**, they work alongside directors to agree the terms of the company's rescue and restructure. Some cases, particularly those involving large companies, can require significant resourcing: multiple sites and assets across the country may need to be secured and managed by the insolvency practitioner and their team. Insolvency practitioners may find themselves running a company almost overnight.



Insolvency practitioners can also advise indebted individuals, and administer personal insolvency procedures by acting as a 'trustee' in **bankruptcy**, or as a 'nominee' or 'supervisor' in an **IVA**. In a bankruptcy, the insolvency practitioner will take control of an insolvent

individual's assets, and may sell them to raise money to repay the bankrupt person's creditors. When acting as a 'nominee' in an IVA, insolvency practitioners help with the drafting of a proposed payment plan that must be approved by creditors. The insolvency practitioner will then become a 'supervisor' who will oversee the individual's compliance with their IVA.

In some cases, both corporate and personal, insolvency practitioners may be required to trace and retrieve missing or hidden assets.

To ensure they are acting fairly and in the interests of creditors, an insolvency practitioner's work is closely governed by statute and regulation. Insolvency practitioners may work with other professionals, including lawyers and valuation agents, to fulfil their obligations.

Insolvency practitioners also provide advice to financially distressed companies to help them avoid becoming insolvent. This may involve advising on a restructuring.

## Main duties

### *Working with employees*

When a company becomes insolvent, there is a risk that some employees may be made redundant. This can be a distressing experience for those involved: some employees may be faced with redundancy for the first time, or they may be owed considerable arrears of wages. Insolvency practitioners will assist employees through the initial stages of redundancy, providing advice and helping them submit claims for wage arrears and redundancy payments to the Redundancy Payments Service.

This work can also involve consulting with employees and their representatives in instances of collective redundancies.

### *Working with creditors*

Insolvency practitioners work on behalf of creditors, not an insolvent company's directors nor an insolvent individual. While insolvency practitioners have many duties, the protection of creditors and their rights is one of their main responsibilities. Insolvency practitioners have a duty to treat creditors, who are repaid in an order set out in the Insolvency Act 1986, fairly and equally throughout the insolvency process. Insolvency practitioners are responsible for notifying creditors of any insolvency procedure, as well as keeping creditors informed about and engaged with what's happening.

When there is money to be distributed to creditors,

insolvency practitioners and their teams work with creditors to ensure that they have submitted the correct documents, so they can receive their repayment.

#### ***Tackling fraud and other wrongdoing***

An essential aspect of an insolvency practitioner's statutory duties, when appointed as an Office Holder of an insolvent company, is to investigate the director or directors' conduct. Insolvency practitioners will probe the behaviour of the director or directors to determine if their actions contributed to the company's failure or adversely affected the creditors.

The insolvency practitioner's toolkit for investigating wrongdoing and fraud is extensive. Among other powers, insolvency practitioners can search company files and bank records, and can summon witnesses to trace assets of the company. Insolvency practitioners will also investigate the conduct of the insolvent individual in a bankruptcy case.

Insolvency practitioners are required to submit a report on director conduct to the government's Insolvency Service. The Insolvency Service may then open an investigation into this conduct, possibly leading to a director disqualification or other sanctions. Insolvent individuals culpable of wrongdoing may find themselves subject to a Bankruptcy Restrictions Order.

***Insolvency practitioners play an important role in tackling fraud: approximately 1,200 directors are disqualified each year, as a result of the work of insolvency practitioners and various government agencies.***

## **Who regulates insolvency practitioners?**

Insolvency practitioners are licensed and monitored by Recognised Professional Bodies (RPBs), and are subject to regular inspections to ensure they are compliant and carrying out their duties to the expected standard. There are five RPBs: the **Association of Chartered Certified Accountants (ACCA)**, **Chartered Accountants Ireland (CAI)**, the **Insolvency Practitioners Association (IPA)**, the **Institute of Chartered Accountants in England and Wales (ICAEW)**, and the **Institute of Chartered Accountants of Scotland (ICAS)**. Should a creditor, debtor or other stakeholder feel an insolvency practitioner's work falls short of the expected standards, they can make a complaint to the regulators through the Insolvency Service's 'Complaints Gateway'.

Insolvency practitioners are bound by a Code of Ethics, to ensure their work upholds the six fundamental principles of insolvency: **integrity, objectivity, professional competence and due care, confidentiality** and **professional behaviour**. RPBs can also sanction insolvency practitioners for breaching the Code of Ethics.



R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. From senior partners at global accountancy and legal firms to practitioners who run their own small and microbusinesses, our members have extensive experience of helping businesses and individuals in financial distress.

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