

## **A Guide to Creditors - The Company Liquidation Process**

When a company enters liquidation, creditors often have understandable concerns regarding repayment prospects, the conduct of directors, and the role of the Liquidator. This Guide is designed to address the most frequently asked questions we receive and to explain, in straightforward terms:

- What creditors can realistically expect once a company enters liquidation, including how asset realisations and distributions are made
- The statutory role, duties and powers of the Liquidator
- The legal responsibilities and obligations of company directors before, during and after insolvency
- How concerns or allegations regarding director conduct are reviewed and reported
- The distinction between the role of the Insolvency Practitioner (and insolvency practice) and the role of the Government's Insolvency Service

The purpose of this guide is to provide general guidance and clarity during what can be a complex and sometimes frustrating process. It is intended to assist creditors in understanding how the liquidation process works and how different responsibilities are allocated within it.

This guide is general in nature and does not relate to any specific company or case. If you require information about a particular liquidation, you should contact the appointed office holder directly.

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## **Will Creditors Recover Their Money?**

When a company enters liquidation, any repayment to creditors is referred to as a dividend. Whether a dividend will be paid, and how much, depends entirely on the specific circumstances of the case.

The documents you have received from the Liquidator will indicate whether a dividend is anticipated. If you are unsure, please contact our office, and we will confirm the position for you.

## **How Dividend Prospects Are Determined**

Dividends depend on:

- The value of assets the Liquidator can realise (sell)
- The total costs and expenses of the liquidation
- The level and type of creditor claims
- The statutory order of priority for payment

## **Order of Payment**

Funds are distributed in a strict legal order:

### **1. Costs of the Liquidation**

The fees and expenses of administering the liquidation are paid first.

### **2. Secured Creditors (if applicable)**

Some creditors hold security over specific assets (for example, a fixed or floating charge). Secured creditors are typically paid from the proceeds of the assets over which they hold security before other creditors.

### **3. Preferential Creditors**

If sufficient funds remain after costs and secured claims, certain creditors are paid in priority. These typically include:

- Employees (for certain wage and holiday pay arrears)
- The Redundancy Payments Service (if it has paid employee claims)
- HMRC (for specific taxes such as VAT and PAYE)

### **4. Unsecured Creditors**

Only once the above claims have been satisfied (paid in full) will funds be available for distribution to unsecured creditors. This group usually includes:

- Trade creditors and suppliers
- Landlords
- Customers and contractors

In many cases, substantial realisations are required before unsecured creditors receive a dividend. It is not uncommon for there to be insufficient funds to reach this level, particularly where employee claims and tax liabilities are significant. In some situations, unsecured creditors may only receive a partial dividend, or in rare cases, no dividend at all.

## **Proof of Debt**

If a dividend is to be paid to your class of creditor, you must submit a Proof of Debt form. This formally lodges your claim in the liquidation and makes you eligible to receive a dividend.

If you are unsure whether you need to submit a Proof of Debt form, or require assistance completing it, please contact our office for guidance.

## **Timing and Updates**

Dividends are paid only after the Liquidator has realised sufficient assets and completed the necessary administration. This process can take time, and updates will be provided to creditors regarding payments or changes in circumstances.

## Can Directors Set Up a New Company After Insolvency?

Directors are not automatically prohibited from acting as directors of other companies, whether these are existing companies or newly incorporated entities. However, there are important legal restrictions that may apply depending on the circumstances of the liquidation and the conduct of the director.

### 1. Disqualification or Restrictions

A director may be prevented from acting as a director if they are subject to:

- Disqualification orders issued by the court under the Company Directors Disqualification Act 1986
- Director restrictions imposed by the Insolvency Service or the courts as part of the liquidation process

If a director has been disqualified or restricted, they cannot legally act as a director or be involved in the management of a company during the period of their disqualification.

You can check whether a director is subject to a disqualification order or restriction by carrying out a search of the public register maintained by the Insolvency Service, which lists individuals who are currently disqualified from acting as company directors. This register is available online and can be searched by name. In addition, Companies House records may indicate if a director has been disqualified. Where there is any uncertainty, further due diligence may be undertaken, including obtaining written confirmation from the individual concerned or seeking independent legal advice to verify their status.

### 2. Section 216 of the Insolvency Act 1986 – Company Names

Even if directors are free to act as a director again, there are restrictions on the use of company names under section 216 of the Insolvency Act 1986:

- A director of a company that has gone into liquidation cannot use the same or a “similar” name for a new company without the permission of the court or the Secretary of State.
- The term “similar” is interpreted broadly and can include names that may cause confusion among creditors, customers, or the public.
- This restriction is designed to prevent the misleading appearance that a new company is the same as the insolvent company, thereby protecting creditors and other stakeholders.

However, there are three exceptions to the restriction on using a prohibited company are as follows:

#### 1. Court Permission

A person may apply to the court for permission to use the prohibited name. If the court grants leave, the individual may use the name (or be involved in a company using that name) in accordance with any conditions imposed by the court. The application must usually be made within seven days of the liquidation, and the applicant may continue to act in the meantime until the court determines the application.

## 2. Acquisition of the Business from an Insolvent Company

The restriction does not apply where the whole, or substantially the whole, of the business of the insolvent company is purchased from a liquidator or administrator, provided that:

- Proper notice is given to creditors in the prescribed form; and
- The notice is published in the Gazette within the required timeframe (generally within 28 days of completion of the purchase).

This exception is subject to strict procedural compliance.

## 3. Existing Use of the Name by Another Company (12-Month Rule)

The restriction does not apply if the new company has been known by the prohibited name for at least 12 months prior to the liquidation of the insolvent company, and has not been dormant during that period. This is intended to protect genuinely established businesses that happen to share a similar name.

### Role of the Liquidator in respect of 'Section 216' the restriction of a similar name

It is the duty of the Liquidator, upon the commencement of the liquidation, to notify the directors and any individuals who have acted as a director within the preceding 12 months of the statutory restrictions relating to the use of a prohibited or similar company name under section 216 of the Insolvency Act 1986.

Where a director acts in breach of these provisions, and none of the statutory exceptions apply, the Liquidator is under an obligation to report the matter to the Insolvency Service. The Insolvency Service will then consider the circumstances and determine what action, if any, is appropriate.

It should be noted that the Liquidator does not have the legal authority to compel a new entity to cease trading, even where there appears to have been a breach of section 216. Enforcement powers rest solely with the Insolvency Service.

The Liquidator will undertake appropriate investigations, including reviewing Companies House records, websites, social media platforms, and other publicly available information. However, creditors are still encouraged to notify the Liquidator if they become aware of any potential breach, so that the matter can be properly reviewed and, where appropriate, reported. Creditors should be aware that while such reports are appreciated and will be considered carefully, the Liquidator does not have the power to take direct enforcement action against the new company; this responsibility lies with the Insolvency Service.

### 3. Practical Implications for Creditors

- If you notice that a director has set up a new company after liquidation, it does not automatically mean any wrongdoing has occurred.
- It is important to differentiate between:
  - Directors acting within the law and complying with disqualification/restriction orders and section 216
  - Directors breaching restrictions, which could lead to further investigation or enforcement action by the Insolvency Service or Court

- Creditors should be aware that a director's ability to set up a new company is separate from the liquidation process of the old company. The Liquidator's role is to realise the assets of the insolvent company and distribute them to creditors, not to prevent directors from starting new ventures.

#### **4. Summary**

- Directors can act in other companies unless they are disqualified or restricted.
- They cannot reuse the same or a similar company name without permission, as restricted by section 216 of the Insolvency Act 1986 unless the three exceptions apply.

## **Sale of Company Assets Before Insolvency**

Directors are not automatically prohibited from selling company assets prior to a formal insolvency appointment. However, any disposal of assets in this period must therefore be carefully considered and be capable of justification.

## **Directors' Duties When Insolvent or Near Insolvent**

When a company is insolvent (on a cash-flow or balance sheet basis), or insolvency is probable, directors must act in the best interests of creditors as a whole. This means that asset sales should:

- Be at proper market value;
- Be undertaken for legitimate commercial reasons;
- Not unfairly prejudice creditors; and
- Be properly documented and supported by evidence (e.g. independent valuations where appropriate).

If directors dispose of assets at less than market value, or on terms that are not commercially justifiable, this may give rise to challenge in a subsequent insolvency.

## **Transaction at an Undervalue**

Under section 238 of the Insolvency Act 1986, a company enters into a transaction at an undervalue if it:

- Makes a gift;
- Otherwise enters into a transaction on terms that provide for no consideration; or
- Enters into a transaction for consideration that is significantly less than the value of the consideration provided by the company.

## **Potential Consequences for Directors**

The Liquidator can reverse the transaction if it is proved it is in breach of section 238 of the Insolvency Act 1986, and directors may face a claim for misfeasance or breach of duty by the Liquidator if it is in the interest of the creditors, and the Insolvency service may pursue disqualification proceedings; or personal liability in certain circumstances.

## **Conclusion**

Directors may sell company assets prior to a formal insolvency appointment, but such sale must be demonstrably for proper value and in the interests of creditors. Transactions at an undervalue are subject to scrutiny and potential challenge by the Liquidator.

## Concerns About Directors' Conduct

If I am appointed as Liquidator, any concerns regarding the conduct of the directors should be raised directly with me or any member of my team, in writing, together with any supporting information or documentation.

As Liquidator, I have a statutory duty to investigate the conduct of all individuals who have acted as directors in the period leading up to the company's insolvency. This includes reviewing matters such as:

- Transactions at an undervalue or preferences;
- The sale or transfer of company assets prior to liquidation;
- Misapplication or misuse of company funds;
- Trading whilst insolvent;
- Failure to maintain adequate accounting records; and
- Any potential breach of fiduciary or statutory duties.

All information received from creditors will be carefully considered as part of my investigations. I am required to submit a confidential conduct report to the Insolvency Service under the Company Directors Disqualification Act 1986. Whilst I cannot disclose the contents of that report or confirm the outcome of any review, any credible concerns raised will be assessed and, where appropriate, included in my reporting.

The Insolvency Service is responsible for determining whether further action is warranted, which may include disqualification proceedings, compensation orders, or other enforcement measures.

As Liquidator, I have statutory powers to investigate and, where appropriate, pursue recovery actions for the benefit of creditors. This may include bringing claims for transactions at an undervalue, preferences, misfeasance, breach of fiduciary duty, wrongful trading, or the recovery of overdrawn directors' loan accounts. I may also seek to set aside certain transactions or obtain repayment of monies or restoration of assets where it is established that creditors have suffered loss. Any such action will be considered carefully, taking into account the available evidence, the merits of the claim, and the proportionality and cost-effectiveness of pursuing recovery in the interests of the general body of creditors.

Creditors should note that not every unsuccessful business decision constitutes misconduct. My role is to assess whether the directors' actions fall below the standard expected and whether those actions have caused loss to creditors. If you have concerns, I would encourage you to provide them as soon as possible to ensure they can be fully considered as part of my statutory investigations.

## **The Role of the Liquidator and the Insolvency Service**

It is important to distinguish between the role of the appointed Liquidator, Molly Monks, and that of the Insolvency Service as they perform separate and distinct functions within the insolvency framework.

### **The Liquidator – Molly Monks**

As Liquidator, Molly Monks is a licensed insolvency practitioner appointed to administer the liquidation of the company. Her primary responsibilities include:

- Identifying, collecting and realising the company's assets;
- Adjudicating creditor claims and distributing funds in accordance with the statutory order of priority;
- Investigating the company's financial affairs and the conduct of its directors in the period leading up to insolvency;
- Reporting on director conduct to the Insolvency Service under the Company Directors Disqualification Act 1986;
- Pursuing recovery actions where appropriate, such as claims for transactions at an undervalue, preferences, misfeasance, wrongful trading, or recovery of overdrawn directors' loan accounts.

In considering whether to pursue any claim, the Liquidator must assess the available evidence, the legal merits of the case, proportionality, and the likely benefit to the general body of creditors. The Liquidator's duty is to act in the interests of creditors as a whole.

### **The Insolvency Service**

The Insolvency Service is a government agency operating under the Department for Business and Trade. It does not administer most corporate liquidations where a private Liquidator has been appointed.

Its role is regulatory and enforcement-based. Key functions include:

- Reviewing confidential conduct reports submitted by the Liquidator;
- Assessing whether directors' conduct renders them unfit to act in the management of a company;
- Bringing director disqualification proceedings where appropriate;
- Seeking compensation orders against disqualified directors in certain circumstances;
- Investigating serious misconduct, including criminal breaches of insolvency legislation;
- Enforcing breaches such as acting whilst disqualified or unlawful reuse of a company name under section 216 of the Insolvency Act 1986.

### **Conclusion**

As Liquidator, Molly Monks does not have the power to disqualify a director, commence criminal proceedings, or impose regulatory sanctions. She cannot prevent an individual from acting as a

director, compel a new company to cease trading for breach of section 216, or independently pursue enforcement action in the public interest. Her role is to investigate, gather evidence, and report matters of concern to the Insolvency Service. The decision whether to pursue director disqualification, compensation orders, criminal investigation, or other enforcement action rests solely with the Insolvency Service (and, where appropriate, the courts).

## **7. How Directors' Conduct Is Investigated**

When a company enters liquidation, the investigation into directors' conduct is a practical and structured process that begins immediately upon appointment.

### **1. Initial Review of the Company's Position**

The investigation starts with understanding:

- Why the company failed;
- When it became insolvent; and
- What decisions were taken in the period leading up to liquidation.

This involves reviewing the company's financial records, bank statements, management accounts, creditor pressure, HMRC arrears, and correspondence. Establishing the timeline of insolvency is key, as directors' duties shift once insolvency is likely.

### **2. Directors' Information and Explanations**

Directors are required to:

- Provide the company's books and records;
- Deliver up company assets;
- Answer questions regarding company transactions and decisions.

In practice, this usually involves written questionnaires where directors are asked to explain matters such as:

- Significant payments made before liquidation;
- Asset sales;
- Repayment of loans to directors or connected parties;
- Increases in debt prior to cessation of trade;
- The reason trading continued despite mounting liabilities.

Failure to cooperate can result in an application to court to compel compliance.

### **3. Transaction Testing**

The Liquidator will specifically review transactions in the period prior to liquidation to assess whether any are challengeable. This includes checking for:

- Assets sold for less than market value;
- Payments made to certain creditors in preference to others;
- Repayments to directors or connected parties;
- Unusual withdrawals or transfers;
- Increases in directors' loan account balances.

Where necessary, independent valuations or forensic accounting analysis may be obtained.

#### **4. Assessment of Insolvent Trading**

A key practical question is whether the directors continued trading at a time when they knew, or ought to have known, that there was no reasonable prospect of avoiding insolvent liquidation.

The investigation considers:

- Cash flow forecasts;
- Attempts to obtain funding;
- Professional advice sought;
- Steps taken to minimise losses to creditors.

Directors are not expected to predict the future perfectly, but they are expected to act responsibly once financial difficulty becomes clear.

#### **5. The Conduct Report**

Within the statutory timeframe (usually three months from appointment), the Liquidator must submit a confidential conduct report to the Insolvency Service. This report outlines:

- The causes of failure;
- The directors' actions;
- Any evidence of misconduct or unfit behaviour.

Creditors do not receive a copy of this report, as it is confidential.

#### **6. What Happens Next**

The Insolvency Service reviews the report and decides whether further action is required. They may:

- Take no further action;
- Make further enquiries;
- Commence disqualification proceedings;
- In serious cases, consider compensation or criminal investigation.

Separately, if the investigation identifies recoverable claims (for example, misfeasance or transactions at an undervalue), the Liquidator may pursue civil recovery action for the benefit of creditors.

#### **In Practical Terms**

The investigation is evidence-based and document-driven. It is not about punishing directors for business failure, but about determining whether they acted properly once the company encountered financial difficulty. Where issues are identified, the matter is either pursued for creditor recovery by the Liquidator or referred to the Insolvency Service for regulatory action.

## **Possible Consequences for Directors**

If misconduct is identified during liquidation, the consequences fall into two distinct categories; civil recovery action pursued by the Liquidator (for the benefit of creditors) and regulatory or enforcement action pursued by the Insolvency Service (in the public interest).

It is important to clearly distinguish between these roles.

### **Action Pursued by the Liquidator**

The Liquidator's role is to maximise recoveries for the general body of creditors. Where evidence supports it, the Liquidator may bring civil claims against directors, including:

- Misfeasance or breach of fiduciary duty – where directors have misapplied company funds or failed to act in creditors' interests once insolvency arose.
- Wrongful trading – where directors continued trading when they knew, or ought to have known, that insolvent liquidation was unavoidable.
- Transactions at an undervalue – where company assets were transferred for less than market value.
- Preferences – where certain creditors were treated more favourably than others prior to insolvency.
- Recovery of overdrawn directors' loan accounts.

If successful, the Court may order the director to repay money, restore assets, or contribute financially to the company's estate. These actions are compensatory, they are designed to recover funds for creditors, not to punish directors.

The Liquidator does not have the power to disqualify a director, impose fines, or bring criminal proceedings.

### **Action Pursued by the Insolvency Service**

The Insolvency Service acts in the public interest. After reviewing the Liquidator's confidential conduct report, it may decide to pursue regulatory or enforcement action, including:

- Director disqualification proceedings under the Company Directors Disqualification Act 1986, where conduct is deemed unfit.
- Compensation orders against disqualified directors where creditor losses have resulted from misconduct.
- Criminal investigation and prosecution in cases involving fraud, dishonesty, or serious breaches of insolvency legislation.
- Enforcement action for breaches, such as acting whilst disqualified or unlawful reuse of a company name under section 216 of the Insolvency Act 1986.

If a director is disqualified, they may be prohibited from acting as a director or being involved in company management for between 2 and 15 years, depending on the severity of the conduct.

## **Clear Distinction**

- The Liquidator pursues financial recovery claims for the benefit of creditors.
- The Insolvency Service pursues disqualification, compensation (in certain cases), and criminal enforcement in the public interest.

Both processes may arise from the same underlying conduct, but they are legally separate and serve different purposes.

## **Complaints or Actions Concerning the Liquidator**

Molly Monks, as Liquidator, is a licensed insolvency practitioner and is subject to statutory duties, professional regulation, and strict ethical standards. If a creditor has concerns regarding her conduct or the manner in which the liquidation is being administered, there are formal processes available to address those concerns.

### **Raising a Concern**

In the first instance, creditors are encouraged to raise any concerns directly with Molly Monks in writing. Many issues can be resolved promptly through clarification of the legal framework, the scope of the Liquidator's powers, or the commercial considerations influencing decisions taken during the liquidation.

If a creditor remains dissatisfied, a formal complaint may be made to Molly Monks' regulatory body. As a licensed insolvency practitioner, she is authorised and regulated by a recognised professional body, which has the authority to investigate complaints and, where appropriate, take disciplinary action.

### **Keeping Creditors Informed**

Complaints made to a regulatory body are generally confidential between the complainant and the regulator. Accordingly, Molly Monks would not ordinarily be permitted to disclose the existence or outcome of a regulatory complaint to creditors.

However, if any court proceedings, regulatory findings, or other actions materially affect the administration of the liquidation, creditors will be informed in accordance with statutory reporting obligations. Regular progress reports will continue to be issued to ensure transparency regarding the conduct and status of the liquidation.

### **Summary**

Concerns should initially be raised directly with Molly Monks. If necessary, matters may be escalated to her regulatory body or, in appropriate cases, to the court. While individual complaints remain confidential, creditors will be kept informed of any developments that materially impact the liquidation process.

## **8. What Happens Next for Creditors?**

Creditors should be aware of how and when they will receive updates, and the respective roles of the Liquidator and the Insolvency Service.

### **Updates from the Liquidator**

Molly Monks, as Liquidator, is required to provide formal progress reports to creditors, typically on an annual basis. These reports will outline:

- The assets realised to date;
- Investigations undertaken;
- Any recovery actions pursued or contemplated;
- Costs and receipts of the liquidation;
- The current position regarding potential distributions to creditors.

Creditors will also be notified of any dividend declarations, significant developments, or applications to court where required by statute.

Outside of formal reporting periods, updates are generally provided where there is a material development in the case. The Liquidator is not permitted to disclose confidential matters, including the content of director conduct reports submitted to the Insolvency Service.

Creditors may also check Companies House for updates on the company's status (for example, when the liquidation concludes and the company is dissolved).

### **Role of the Insolvency Service**

The Insolvency Service does not administer the liquidation and does not routinely provide updates to creditors regarding director conduct investigations or potential disqualification proceedings. Conduct reports submitted by the Liquidator are confidential.

If the Insolvency Service decides to commence disqualification proceedings and an order is made, this will usually become a matter of public record. Creditors can check the Disqualified Directors Register, which is publicly searchable.

It should be noted that the Insolvency Service's processes can be lengthy, and investigations or disqualification proceedings may take a considerable period of time. Creditors are not typically kept updated during this process.

If creditors wish to make enquiries directly regarding enforcement matters, they may contact the Insolvency Service. However, due to confidentiality and data protection restrictions, detailed updates are not usually provided.