

Corporate Insolvency

Administration

Company Voluntary Arrangement

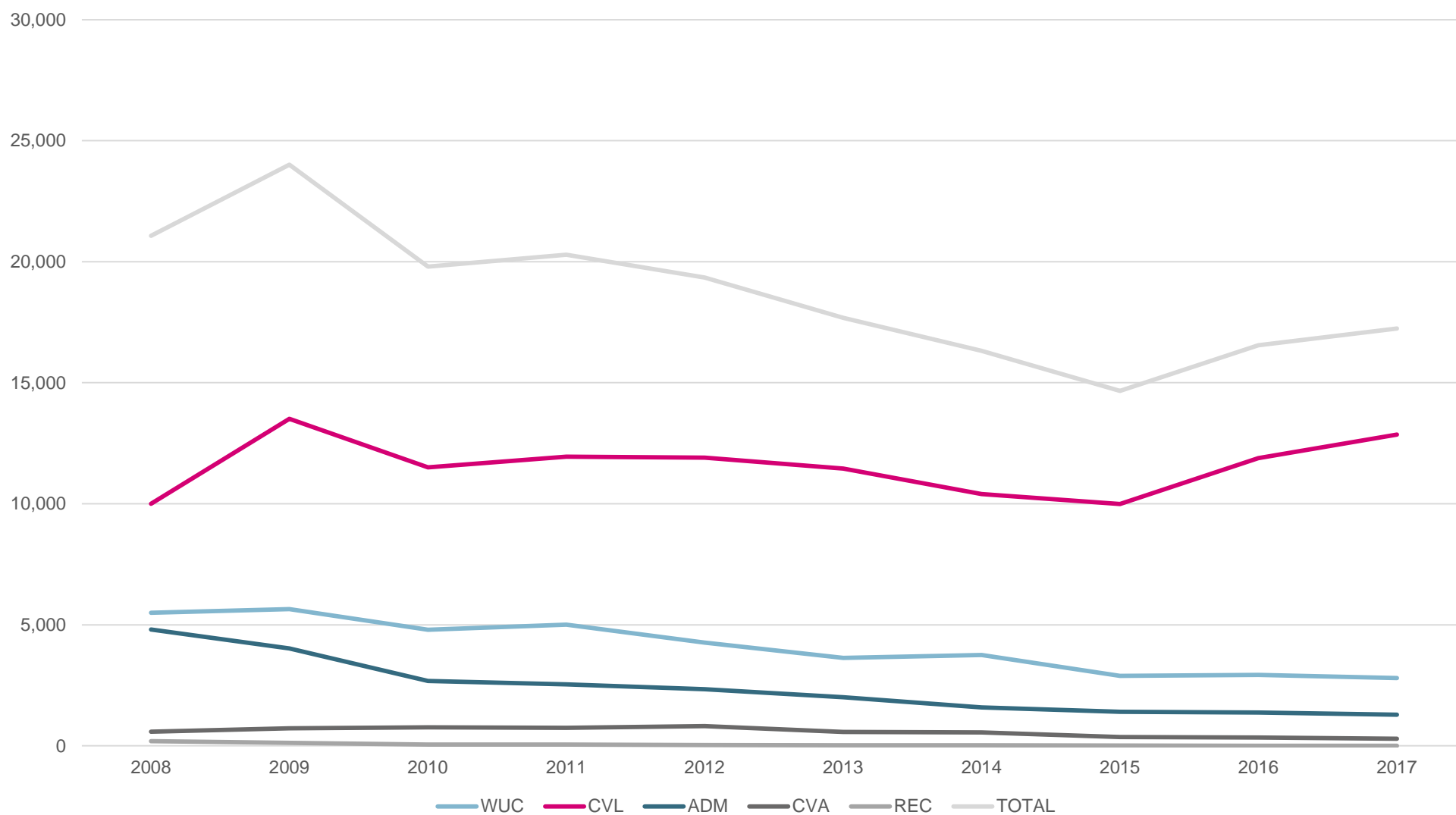
Fixed Charge Receivership

Creditors' Voluntary Liquidation

Compulsory Liquidation

Members' Voluntary Liquidation

Corporate Insolvencies in England & Wales



What an Insolvency Practitioner 'IP' does – Director instruction

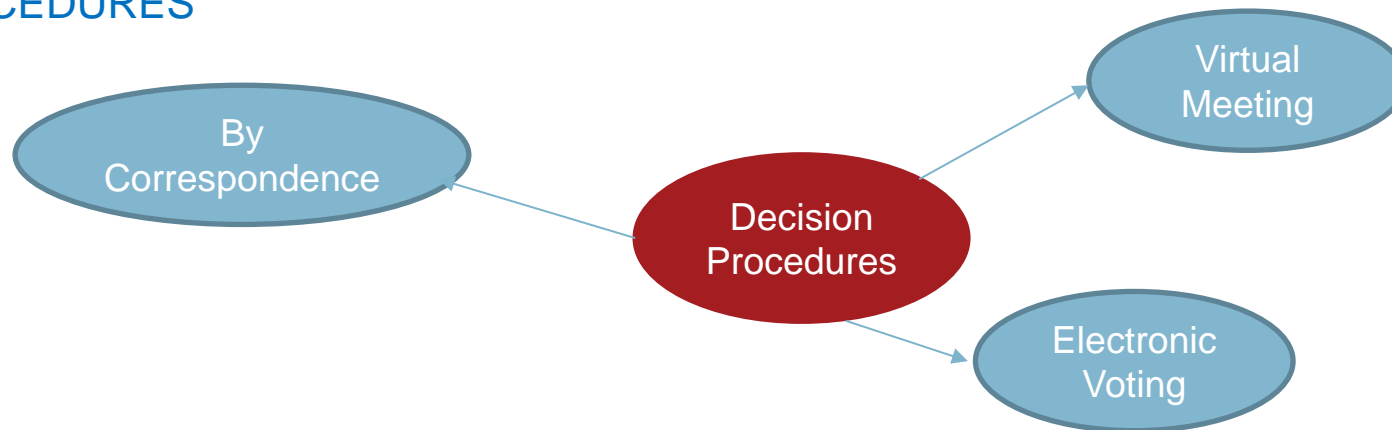
- First meeting with directors
 - Find out why they want to meet
 - What are the immediate pressures?
 - What is their aim?
 - Is there still a profitable business?

- Discuss the options
- Remind them of their duties as directors
- Explain your role as the IP
- Find out who are the key stakeholders



Insolvency Rules 2016

- This legislation came into effect on 6 April 2017 and was the single biggest change to the Insolvency rules in 30 years.
- It removed creditors' meeting as the standard appointment procedure and introduced **DEEMED CONSENT** and **DECISION PROCEDURES**



Deemed Consent

- Appointment of CVL Liquidator
 - Approval of ADM Proposals
- Creditors can object if they have more than 10% in value of total voting claims
- Creditors can requisition a physical meeting if they have "10/10/10"

Decision Procedures

- Approval of any fees
- Approval of CVA proposal
- Creditors can requisition a physical meeting if they have "10/10/10"

Company Voluntary Arrangement 'CVA'

Who can start this process?

- Directors
- Administrator
- Liquidator

Purpose

- Contract with creditors
- Compromise debt
- Company continues with current directors

Duration

- As required (usually up to five years)

Appointment/decision

- Must be sought by a decision procedure
- Acceptance or modification of proposals
- 75% by value of voting to approve
50% non-connected creditors
- Return for creditors in accordance with the terms of the proposals

Reporting after appointment

- Annual progress reports
- Final progress report

Exit

- Final report
- No dissolution

CVA - What is involved/What is the IP's role

What is involved for the company

- Basis of proposals prepared
- Cashflow forecasts prepared that underpin the CVA offering
- Secured creditor/funding support confirmed
- Major creditors (>25%) consulted; in particular HMRC.



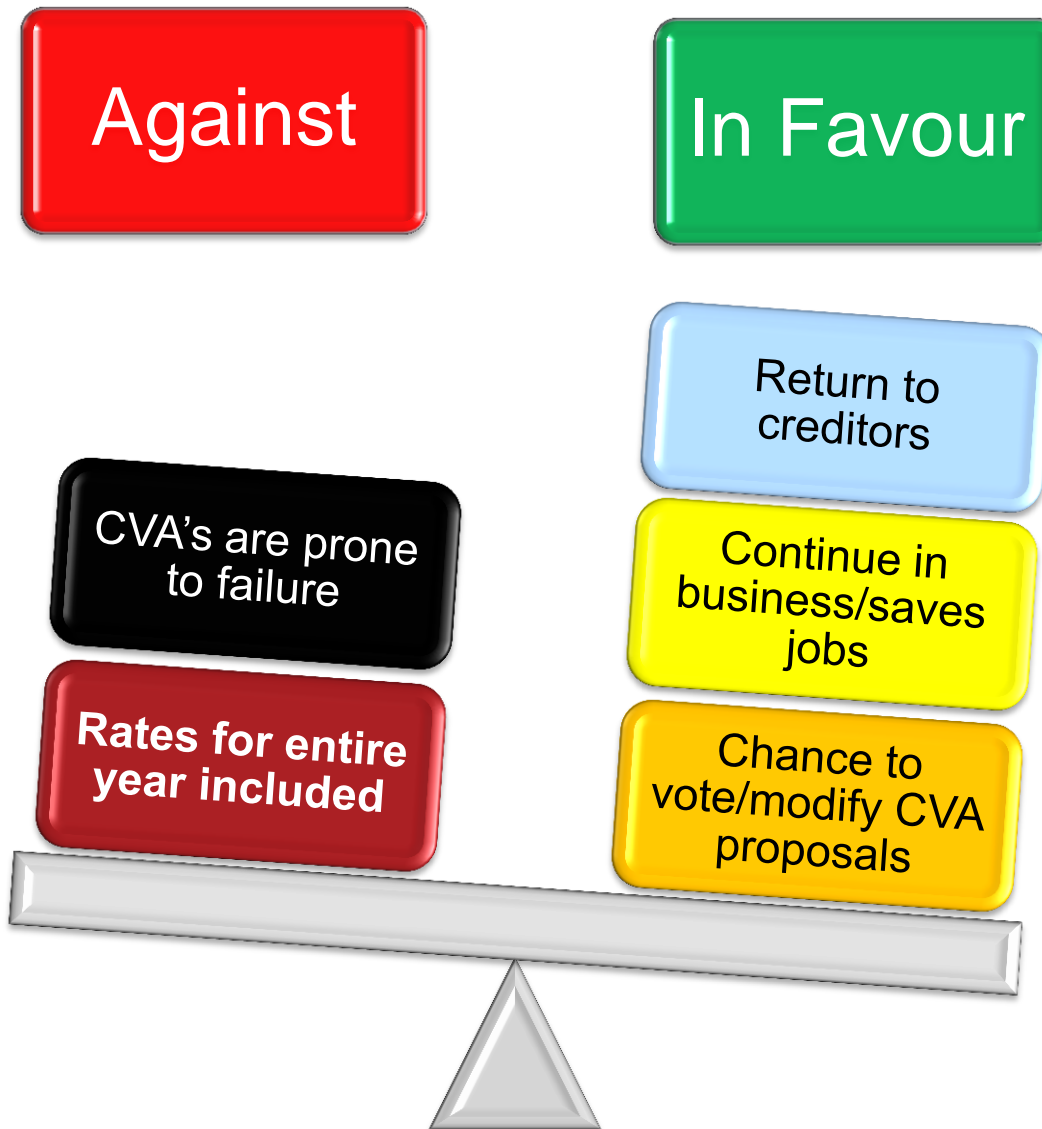
What is the IP's role

- Review the proposals to make sure these comply with the rules and the facts disclosed are accurate; "*FIT, FAIR & FEASIBLE*".
- Review the cashflow and the drilldown behind the numbers. Comparison statement between CVA and WUC – p/£
- Become Nominee and provide a report on the proposals. The IP needs to confirm that they are recommending that creditors consider the proposals



Company Voluntary Arrangement - Points for the Council to consider

Did you know?
An IP is monitored by his regulating body on how many CVAs (as well as IVAs) fail in the first year



Administration

Process

- Directors/company
- Floating charge holder
- Creditor

Purpose

- Rescue company
- Better return to creditors
- Pay secured/preferential creditors

Duration

- 12 months
- Extended 12m by creditors
- Court Order - indefinite

An Administrator can now distribute the prescribed part to unsecured creditors

Reporting

- Proposals within 8 weeks
- 6 monthly progress reports
- Final progress report

Decision Procedure on Proposals

- Within 10 weeks
- Can use deemed consent
- Can object and force a physical meeting

Exit

- 12 months – automatic end unless extended
- CVL/CVA
- Dissolution

Administration – What an IP needs to consider pre Administration

- Is there a debenture holder?
- Is there a viable business that can be rescued/sold?
- Have the directors already been marketing the business for sale?
- To prepack or not?
- Is there value in continuing to trade as Administrators to complete orders while the business has been marketed. Will realisations be enhanced?
- How would the trading on be financed?
- Is a moratorium needed to protect company from action
- Formulate plan to achieve the maximum value for all stakeholders
- What is the Statutory purpose? We must achieve at least ONE:
 - Rescuing the company as a going concern
 - Achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration).
 - Realising property to make a distribution to one or more secured or preferential creditors.



Administration – pre-packs

What is a pre-pack Administration?

“...the sale of all or part of a company’s business or assets is negotiated with a purchaser prior to the appointment of an administrator.

The administrator effects the sale immediately on, or shortly after, his appointment”

Administration – pre-packs



Why the bad press!

- Questionable ‘done deal’ for acquirer
- IP picked by acquirer.....
- Motive for director – Job?



Insolvency Service promises hard line over prepack abuse

- Theresa Graham review 2014



Revised SIP 16

- 1 November 2015
- “Pre-pack Pool”

Administration – pre-packs

Who's done one?

faith

Whittard
OF CHELSEA



Stead & Simpson

ENVY

THE OFFICERS CLUB

Administration – pre-packs



What's good about them?

- More jobs preserved - 92% pre-pack / 65% business sale
- Better return for secured creditors - 42% pre-pack / 28% business sale
- Value of business retained
- Lower costs
- Monitored by Insolvency Service
- IP under scrutiny

Liquidation – Creditors Voluntary Liquidation ‘CVL’

Process

- Board meeting
- Shareholders’ resolution
- Conversion from Administration

Purpose

- Terminal process

Duration

- As required to realise assets and distribute the same to creditors

Decision Procedure

- Appoint a liquidator
- Can be by deemed consent but not if they want to agree fees
- Creditors can object and force a physical meeting to be held
- “10/10/10”

Reporting

- Annual progress reports
- Final progress report

Exit

- Final report
- Dissolution

CVL - What is the IP's role pre liquidation

- Notify all parties
- Make the workforce redundant
- Secure the company records
- Close the bank account
- Engage agents to secure and value any physical assets
- Arrange the shareholder meeting and decision procedure to put the company into liquidation and appoint a liquidator
- Assist the director(s) in preparing their report to creditors
- Assist with the preparation of the Statement of Affairs (Document which summarises the assets and liabilities of the Company)



Creditors' Voluntary Liquidation - Points for the Council to consider

Against

Directors start the process with IP of their choice

Directors may start trading under successor after writing off debts – S216 concerns

In favour

Creditors with more than 50% of the voting debt can appoint an alternative liquidator using a decision procedure

Liquidators' powers to investigate the directors and bring actions, if necessary

Transparency on liquidators' fees with fee estimates

Compulsory Liquidation

Usually the last resort (if the directors haven't already started an insolvency process)

Criteria

- Unable to pay debts as and when they fall due of more than £750

Process

- Application to Court –petition
- Court makes Winding Up Order
- Official Receiver deals with initially
- Director is requested to prepare a Statement of Affairs
- Official Receiver decides whether level of assets justifies the appointment of an Insolvency Practitioner as Liquidator
- Liquidator's role is to realise assets and pay costs
- Any surplus is paid pari passu to creditors

Compulsory Liquidation

Points for the Council to consider



Did you know?

Once you have petitioned for winding up, if a company starts a voluntary liquidation after this date, upon the making of the order for a Compulsory liquidation, this will supersede the Voluntary

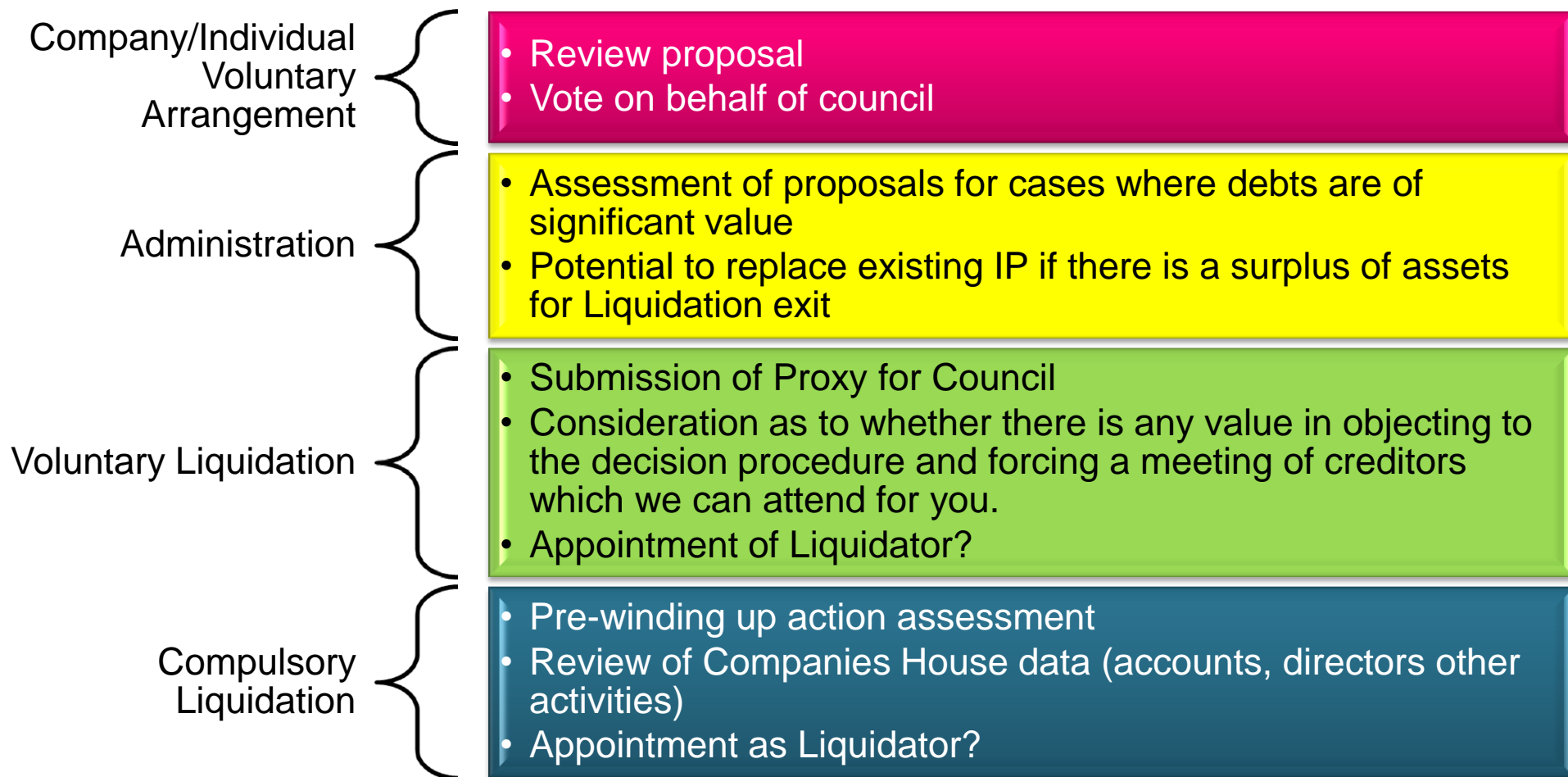
Post petition disposition
Payments made between the petition and order are automatically void unless a Validation Order is obtained.

Corporate - Case Studies

- Storage company due to be placed into CVL
- Had failed to pay any business rates, but had paid other creditors.
- Several phoenix operations prior to this entity
- Each time incurring considerable Council debts.
- The Council wanted full investigation into directors and company.
- Concern over the integrity of the IP calling meeting and willingness to fully investigate due to minimal assets
- We were asked to take the appointment, funded by the Council, as they were majority creditor
- Proxy form submitted with Mazars as alternate Liquidator
- Upon appointment, we completed a full investigation
- Antecedent transactions identified
- Our investigations lead to director being disqualified
- Ultimately protected the Council from incurring any further arrears in relation to any other companies under his control.
- This is one example of many where we have provided assistance to a Council on a corporate insolvency.



How can an Insolvency Practitioner support Local Authorities?



Contact details



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About Mazars:

Mazars is an international, integrated and independent organisation, specialising in audit, accountancy, advisory, tax and legal services. As of 1st January 2018, Mazars operates throughout the 86 countries and territories that make up its integrated partnership. Mazars draws upon the expertise of 20,000 women and men led by 980 partners working from 300 offices worldwide. We assist clients of all sizes, from SMEs to mid-caps and global players as well as start-ups and public organisations, at every stage of their development.