Overview of Insolvency Claims

UK – 2025

An insolvency practitioner (IP) can pursue a wide range of claims when appointed as the administrator or liquidator of a company.

These include claims that already existed at the point that the company entered an insolvency process (**Pre-existing Company Claims**), and ones that arise on insolvency (IP Claims see below).

An IP pursues Pre-existing Company Claims as agent for and in the name of the company, and these types of claims typically include claims for debt, breach of contract, breach of duty or recovery of property.

Other claims arising on insolvency can be brought by the officeholders under the Insolvency Act 1986 **(IA86)**. These fall into three categories:

- Claims that only exist in an insolvency process and which can only be pursued by the officeholder themselves (i.e. s213, s214 IA86) (**Officeholder Claims**)
- Claims that an officeholder can bring in their own name and which existed prior to the insolvency (i.e. s212 IA86) – these claims can also be brought in the name of the company (**Officeholder or Company Claims**)
- Avoidance claims (i.e s127, s245 IA86) (**Avoidance Claims**)

(together **IP Claims**)

IP Claims essentially give an IP power to challenge transactions, or conduct, which occurred before the company entered an insolvency process and which, in broad terms, have reduced the company's assets and/or caused loss to the company's creditors.

This quick guide gives an overview of the most common IP Claims.

Office Holder Claims

Transactions at an Undervalue (TUV) (s.238 IA86)

In simple terms a TUV occurs where prior to insolvency the company makes a gift without receiving any consideration in return for the gift; or it enters a transaction where it receives no consideration or the consideration the company receives is significantly less than the value of what it provided.

Types of transactions that might be a TUV

- Selling an asset (e.g. property, vehicle or equipment) at less than market value
- Transferring assets into trust
- Writing off an intercompany debt or director's loan
- Entering a supply or service contract at an uncommercial price

There are several points to consider when seeking to establishing a TUV:

Did the transaction occur at the "relevant time"? The relevant time is two years before the onset of insolvency (but see s240 of the IA86 for the full definition).

At the time of the transaction, was the company insolvent or rendered insolvent as a consequence of the transaction? Is there evidence of insolvency? If the transaction was with a connected person[1], the company is presumed to be insolvent at the time of the transaction, but this is a rebuttable presumption and therefore needs to be considered when weighing up the merits of the claim.

What consideration was provided? Consideration includes money's worth – for example, giving up a claim – how do you value that? Where no consideration was provided establishing, a TUV will be easier, but where something was paid, an IP needs to consider whether that was "significantly less" than the goods or services provided in return. This is a matter of fact. There is no definition as to what amounts to "significantly less" and therefore, whether proper consideration was given, will need careful thought.

1 Connected persons are defined in the IA86. The definition is complicated but also very wide. It includes directors and persons connected to those directors but also connected companies and their connected parties.

Office Holder Claims

TUV (s.238 IA86) continued

There are possible defences to a TUV claim, which an IP will need to consider ahead of pursuing a claim, such as:

- The company entered the transaction in good faith for the purposes of carrying on its business reasonably believing that the transaction would benefit the company (s238(5) IA86)
- The directors acted honestly and reasonably, and should be excused (s1157 of the CA 2006)

Assessing the value of consideration provided and evidence of insolvency are important considerations when assessing the merits of this type of claim. Having a clear understanding of who is a "connected person" is also important because that will determine whether you can rely on the presumption.

If there is evidence of a TUV, an IP may also wish to consider whether there is also a s423 claim (see below) which requires elements of TUV for this to be established.

Who Can Bring a Claim?

Administrator and Liquidator

Office Holder Claims

Preference (s.239 IA86)

A preference is given where the company does something before the company enters insolvency, that puts a creditor or guarantor into a better position than they would have been, had that thing not been done.

Types of actions that might be a preference

- Paying a creditor in full before payment is due, while other creditors whose debts are due remain unpaid
- Writing off a director's loan account
- Repaying an inter-company debt
- Granting security (such as a debenture or charge) to a previously unsecured creditor

These types of action are perhaps easier to spot than others. The key points to consider are (a) the outcome of the action taken – does it result in a creditor or guarantor being in a better position than they would otherwise have been on insolvency, and (b) the purpose behind it – was there an intention to put that person in a better position. Even if the outcome is a creditor or guarantor being put into a better position, that does not automatically mean that the transaction can be challenged. There must be an intention to have put them in that position (i.e. a desire to prefer them). If there is a commercial justification for the transaction, it may not meet the required criteria for it to be preference.

Other points to consider:

Did the transaction occur at the "relevant time"? The relevant time is six months before the onset of insolvency (but see s240 of the IA86 for the full definition).

If the transaction was with a connected person, the relevant time is longer – two years prior to the onset of insolvency. Also, there is a presumption that there was a desire to prefer where the transaction is with a connected person. However, this is a rebuttable presumption and therefore needs to be considered when weighing up the merits of the claim.

At the time of the transaction, was the company insolvent or rendered insolvent as a consequence of the transaction? Is there evidence of insolvency?

Was there a desire to prefer? Proving a "desire to prefer" and evidence of insolvency are important considerations when assessing the merit of this type of claim. Having a clear understanding of who is a "connected person" is also important because that will determine the relevant period of challenge.

Who Can Bring a Claim?

Administrator and Liquidator

Office Holder Claims

Wrongful Trading (s.214 and s246ZB IA86)

This is one of the more difficult claims to establish because an officeholder will need to be able to establish the point that the director(s) knew or ought to have known that there was no reasonable prospect of the company avoiding insolvent liquidation or administration, and yet they continued trading to the detriment of creditors. If the directors took every step they could with a view to minimising the potential loss to the creditors, they will not be liable for wrongful trading.

Although it is possible to make a claim based on different dates, proving what the directors knew or should have known, and assessing whether the directors took every step they could to avoid loss is difficult. This will be based on their *actual* knowledge, skill and experience (the company records will assist in showing what they actually knew), and what knowledge, skill and experience could reasonably be expected of someone in their position.

Even in the claim against the former directors of BHS[2], where the decisions of the directors were quite extreme, the liquidators were only able to establish one out of six possible dates that the directors knew or ought to have known that the company could not avoid going into insolvency.

Another difficult aspect of this claim is proving loss. Did the net deficiency to creditors increase as a consequence of continued trading? Even if the directors should not have continued to trade the company because they knew that administration or liquidation was inevitable, the claim will not succeed unless such trading increased the net deficiency to creditors. Robust forensic evidence will be required to prove the loss.

The concept of "misfeasance trading" – first introduced in the BHS case (see further below) – places a lower evidential threshold for a successful claim. This means that if the evidence is not strong enough to support a claim for wrongful trading, it may still support a claim for misfeasance trading where the remedies are similar.

Who Can Bring a Claim?

Administrator and Liquidator

Office Holder Claims

Fraudulent Trading (s.213 and s246ZA 86)

This claim is a step up from wrongful trading because it requires evidence of actual dishonesty or intent to defraud. However, the claim itself extends beyond claims against directors to include any person who was knowingly party to the fact that the company's business was being carried on with intent to defraud creditors, or for any fraudulent purpose. It could therefore potentially capture advisers or lenders, giving a wider pool of potential defendants.

Although such claims are few and far between, there are recent examples where the court has found that there was fraudulent trading, so such a claim should not be ruled out.

Who Can Bring a Claim?

Administrator and Liquidator

Transactions Defrauding Creditors (s.423 IA86)

This claim has many elements of a TUV claim. It requires there to be a gift or transaction where the company is receiving no or insufficient consideration than the consideration it provided. But unlike a TUV claim, there is no need to prove that the company was insolvent at the time of the transaction. It also captures transactions entered by "any person" not just the company.

However, there is an additional element to this claim, which can make it less attractive. An IP will need to show that when entering the transaction, the person intended to do so for the purpose of putting assets beyond the reach of those who may make a claim against them, or which might prejudice the interests of those persons (i.e creditors).

As with claims for a preference, there will need to be evidence of intention, but there is no need to prove fraud.

Who Can Bring a Claim?

Administrator and Liquidator, or victim of the claim

2 Wright & Ors v Chappell & Ors [2024] EWHC 1417 (Ch) (11 June 2024)

Officeholder or Company Claims

Misfeasance (s212 IA86)

Misfeasance claims can only be pursued by a liquidator. A claim for misfeasance can be brought against directors, or others involved in the "promotion, formation or management" of the company if they have:

- Misapplied or retained money or other property of the company
- Become accountable for money or other property of the company
- Breached a fiduciary or other duty owed to the company
- Are guilty of any misfeasance

The scope of the claim and who it can be brought against is therefore fairly wide, but this type of claim is typically framed around a director breaching their duties under the Companies Act 2006

Examples of conduct that might form the basis of a s212 claim include:

- Using company funds or assets for personal benefit (e.g. paying personal expenses from company accounts)
- Transferring company assets to a director, shareholder or connected person without proper value or authorisation
- Causing the company to enter uncommercial transactions or preferences that breach directors' duties
- Making payments or declaring dividends contrary to the company's financial position

A misfeasance claim is often made alongside some of the other claims set out in this guide, such as TUV or preference, but it can be a standalone claim.

One of primary defences to such a claim is that the directors acted honestly and reasonably (s1157 CA 2006).

Much will depend on what advice the directors took at the time, and how they applied it. A bad decision in hindsight does not mean it was the wrong one at the time. If the directors can show that they acted honestly and reasonably (including taking and following professional advice), the court does have power to excuse them from liability (s1157 of the CA 2006). For IPs the company records will be key to establishing whether there is sufficient evidence to substantiate this claim, which will also likely require forensic evidence to establish that there was a loss to the company as a consequence of the breach.

Who Can Bring a Claim?

Liquidator

Avoidance Claims

Avoidance of Floating Charges (s245 IA86)

This is not a claim as such, because if the elements of s245 are made out then a floating charge is automatically void to the extent that no new consideration was provided at the time it was created, but it is an area than can lead to dispute between an IP and the charge holder.

For s245 to apply, the floating charge must have been created within the 12 months before the onset of insolvency. This is extended to two years if the charge is in favour of a connected person (which is often the case if the company has a private equity lender). That charge will be invalid to the extent that no new consideration was provided at the time of its creation, and the company was insolvent or rendered insolvent as a consequence. The question of what consideration was provided, which would include goods, services and cash, but would also include giving up claims – is the question that will most likely be in dispute.

Who Can Bring a Claim?

Administrator and Liquidator

Void Disposition of Company Property (s127 IA86)

If a company disposes of its property after a winding up petition was presented against it, and the company is subsequently wound up on that petition, the disposition is automatically void entitling the liquidator to reclaim the property disposed of.

There are limited defences to a s127 claim, but one such defence is "change of position" (usually meaning the recipient no longer has the property). Therefore, pursuing these claims early in the liquidation is important. Although the recipient of the property could apply to the court for a retrospective validation order, such an order will only likely be granted if it's in the interests of the general body of creditors.

Who Can Bring a Claim?

Liquidator

Recoveries

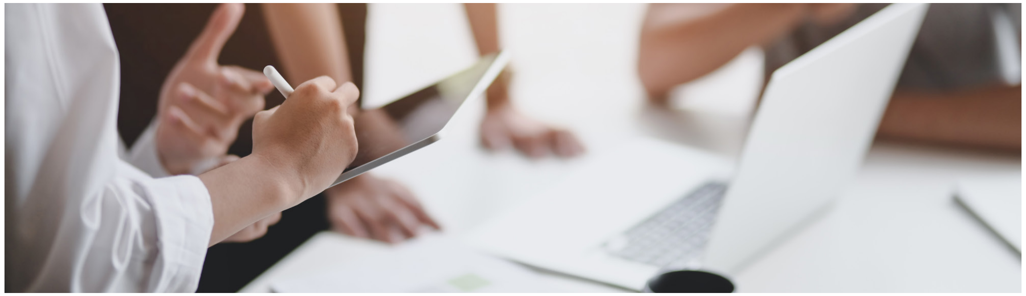
The court has broad discretion to make any order it sees fit, but usually with a view to restoring the company to the position it would have been in had the transaction or conduct complained of not occurred or compensating the company for the loss it suffered. The specific remedies depend on the nature of the claim, but common orders include:

- Repayment of money or contribution to assets
- Return or transfer of property
- Compensation
- Other equitable remedies

The ultimate beneficiary of any recoveries can differ depending on the nature of the claim, who is bringing the claim and the remedy ordered. For example, a secured creditor may not always be entitled to participate in recoveries if the recoveries are not treated as part of the general assets of the company. These may also be relevant considerations ahead of pursuing a claim.

There are several factors that come into play when assessing the merits of any of these claims, which in turn will determine how far an IP might pursue them.

With litigation, there is always an element of risk, no matter how strong the claim and that will need to be taken into account when deciding whether to issue/pursue a claim. Officeholders will also have to be mindful of personal risk when bringing an Officeholder Claim, because they can be personally liable for costs, but it might be possible to reduce risk by taking out adverse costs insurance. It is also quite common for claims to be assigned to litigation funders who will then assume the risk.



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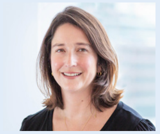

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