



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Information Handbook

Rights and Remedies Available to Employees Facing a Collective Redundancy Situation

(Updated August 2024)

Contents

Summary	4
1 Introduction	7
1.1 Who is this Information Handbook for?	7
1.2 What is this Information Handbook about?	7
1.3 Other languages	7
1.4 Disclaimer	7
2 Redundancies and Collective Redundancies	8
2.1 What is a redundancy?	8
2.2 What is a collective redundancy?	8
2.3 Am I protected in a collective redundancy scenario?	8
2.4 What are my rights as an employee in a collective redundancy scenario?	9
2.5 What does the employee consultation involve?	9
2.6 Who are the employees' representatives?	10
2.7 What does notifying the Minister involve?	10
2.8 What are my rights if my employer fails to comply with the Act?	11
2.9 Am I eligible for a payment if I am made redundant?	11
2.10 How is my statutory redundancy payment calculated?	12
2.11 Who pays me my statutory redundancy payment?	12
2.12 Am I entitled to an enhanced redundancy payment??	13
2.13 What happens if I am made redundant and I have an employment permit?	14
3 Employer Insolvency	15
3.1 What does insolvency mean?	15
3.2 What does a liquidation involve?	15
3.3 What are my rights as an employee in an insolvency situation?	16
3.4 What does Preferential Creditor Status mean?	16
3.5 Who pays my statutory redundancy payment if my employer is insolvent?	18
3.6 What is the Insolvency Payments Scheme?	18
3.7 Am I protected by the Insolvency Payments Scheme?	19
3.8 What types of debts are covered by the Insolvency Payments Scheme?	19

3.9	What happens if the collective redundancy is because my employer is insolvent?	20
3.10	What exactly is the role of the Liquidator?	20
3.11	What is my right to information as a creditor in a liquidation?	22
3.12	How can a creditor intervene in a liquidation?	23

Version Control

Date published	Changes
20 December 2021	First version published.
13 August 2024	Reflects amendments introduced in the Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024. Revised into Q&A format throughout. Additional questions added.

Summary

Redundancies and Collective Redundancies

A redundancy occurs where you are let go and are not replaced because your job no longer exists. This is called being made redundant. This can be because the business is closing, or the business decides to reduce the number of staff. This is a normal part of business, but it can be a difficult experience for employees.

There are specific rules for collective redundancies. Collective redundancies are situations where, during any 30-day period, the number of redundancies is:

No of proposed redundancies	Employees normally employed
5 or more	21 – 49
10 or more	50 – 99
10% or more	100 – 299
30 or more	300 or more

In a collective redundancy, your employer must do two things:

1. They must consult with employees' representatives (a trade union or employees elected by their colleagues) about the planned collective redundancies for at least 30 days. This includes providing information about the collective redundancies.
2. They must write to the Minister for Enterprise, Trade and Employment to say they are planning collective redundancies.

Your employer cannot give you notice of redundancy until at least 30 days after the consultation starts. Your employer cannot make you redundant until at least 30 days after they notify the Minister.

You can complain to the Workplace Relations Commission (WRC) if your employer fails to consult with or provide information to your representatives, or if they make you redundant without waiting for at least 30 days after they notify the Minister.

You must make a complaint within 6 months of the event (or up to 12 months if you can prove reasonable cause). The WRC can award you up to 4 weeks' wages as compensation for each claim if they find in your favour.

Statutory Redundancy Payment

If you are being made redundant, the law says you must get a once-off payment – called a statutory redundancy payment – if you are eligible. To be eligible, all the following must apply:

- You must have worked with your employer for at least 104 weeks (2 years), excluding any period of employment with that employer before the age of 16 years;
- Your employment must be fully insurable under the Social Welfare Acts. In general this means paying Class A PRSI; and
- Your job must no longer exist.

The statutory redundancy payment is 2 weeks' pay for every year of service (over the age of 16) plus 1 additional week's pay. This payment is capped at €600 per week. [Estimate your statutory redundancy on MyWelfare.ie](#).

If your employer refuses to pay you statutory redundancy, you can make a complaint to the WRC. You must make a complaint to the WRC within 1 year starting on the date you lose your job ("date of dismissal"). The WRC can extend this to 2 years if you have a good enough reason – called "reasonable cause". If it finds in your favour, the WRC can order your employer to pay you statutory redundancy.

[How to make a complaint to the WRC](#). You can also call them at (059) 9178990 or at LoCall 0818 808090.

[Find about more about redundancy](#).

[Read more about collective redundancy](#).

[Learn more about redundancy and insolvency on gov.ie](#).

Employer Insolvency

Insolvency is what happens when a company can no longer pay its debts as they fall due or when it has more liabilities than assets on its balance sheet. When a company is insolvent, a person known as an insolvency practitioner – liquidator – is usually appointed to help wind up the company.

If your employer is insolvent, you may be owed money by them and it is likely you will lose your job.

You have a number of rights and protections if your employer is insolvent. This includes:

1. The State, via the Insolvency Payments Scheme, will pay you some outstanding monies owed by your employer, such as arrears of wages or holiday pay.
2. The State, via the Redundancy Payments Scheme, will pay you statutory redundancy, if you are eligible.
3. You have preferential creditor status for certain monies owed by your employer.
4. You have the right to certain information during the liquidation.
5. You have the right to intervene in the liquidation process.

If your employer is insolvent, the liquidator will apply to the Insolvency Payments Scheme on your behalf. To be eligible, your employment must be fully insurable under the Social Welfare Acts. In general, this means paying Class A PRSI.

If your claim is accepted, the Insolvency Payments Scheme will cover arrears of wages, sick pay or holiday pay (capped at 8 weeks each), minimum notice and any awards made by the Workplace Relations Commission or Labour Court. Your salary is capped at €600 per week when calculating what you are owed.

Your claim is paid to the liquidator. The liquidator will deduct any tax owed and pay you your entitlements.

[Find out more about the Insolvency Payments Scheme.](#)

1 Introduction

1.1 Who is this Information Handbook for?

This Information Handbook has been written primarily for employees seeking information about their rights and remedies when facing redundancy, collective redundancies or their employer's insolvency. It may also be of relevance to employers looking to understand their obligations. [\[Go back to table of contents\]](#)

1.2 What is this Information Handbook about?

This handbook summarises the rights and protections available to employees when they are facing redundancy, collective redundancies or their employer's insolvency.

It sets out what an employee can do if they believe their rights have been breached, and what compensation they may be entitled to if they lose their job or their employment rights have been breached. It also provides a summary of employees' rights as creditors under company law if their employer becomes insolvent. [\[Go back to table of contents\]](#)

1.3 Other languages

[Access the Information Handbook in Irish.](#)

A Plain English summary of the information handbook is available at the start of this document. [Access this summary in multiple languages.](#) [\[Go back to table of contents\]](#)

1.4 Disclaimer

Please note that, while this handbook is intended to provide general guidance based on Irish law to employees in a collective redundancy situation, it does not contain legal advice and should not be relied on as a substitute for specific legal advice relevant to particular circumstances. This handbook reflects Irish legislation at the date of publication. [\[Go back to table of contents\]](#)

2 Redundancies and Collective Redundancies

Redundancies and collective redundancies arise in the normal course of working and business life. While they can be a difficult experience for employees who may be losing their job, the State ensures that employees receive certain protections during the process.

2.1 What is a redundancy?

A redundancy arises where you lose your job due to circumstances such as the closure of the business or a reduction in the number of staff. A redundancy occurs where an employee's position is no longer required by the employer and where that employee is not replaced by another. [\[Go back to table of contents\]](#)

2.2 What is a collective redundancy?

A collective redundancy is where, during any period of 30 consecutive days, the number of redundancies is:

- 5 or more employees, where 21-49 are normally employed in an establishment,
- 10 or more employees where 50-99 are normally employed in an establishment,
- 10% or more of the employees where 100-299 are employed in an establishment, or
- 30 or more employees where 300 or more are employed in an establishment. [\[Go back to table of contents\]](#)

2.3 Am I protected in a collective redundancy scenario?

The Protection of Employment Act 1977, as amended, protects employees during collective redundancies. The Act applies to employees where there are more than 20 employees in an establishment, regardless of their length of service with the employer.

The only exceptions are:

- Employees employed by the State, including local authorities,
- Employees with a fixed-term contract who are dismissed because the expiry date in the fixed-term contract is reached or the purpose in the specified purpose contract ceases. [\[Go back to table of contents\]](#)

2.4 What are my rights as an employee in a collective redundancy scenario?

An employer that proposes to create collective redundancies must do a number of things to comply with the Protection of Employment Act 1977:

1. Consult with employees' representatives for at least 30 days before any notice of redundancy is given,
2. Provide information to the employees' representatives about the proposed collective redundancies, and
3. Notify the Minister for Enterprise, Trade and Employment at least 30 days before the first redundancy occurs. [\[Go back to table of contents\]](#)

2.5 What does the employee consultation involve?

Employers must initiate consultations with employees' representatives at the earliest opportunity and at least 30 days before the first notice of dismissal is given. Employers must engage in the consultation "with a view to reaching agreement".

The employer must provide the employees' representatives with all relevant information relating to the proposed redundancies. Relevant information that is required by law includes:

- The reasons for the proposed redundancies,

- The number, and descriptions or categories, of employees whom it is proposed to make redundant,
- The number of employees, and description or categories, normally employed,
- Information on the number of agency workers engaged by the employer, including what part of the business they work in and what type of work they do,
- The period during which it is proposed that the redundancies will take place,
- The criteria proposed for the selection of the workers to be made redundant, and
- The method for calculating any redundancy payments over and above those methods set out in the Redundancy Payments Acts. [[Go back to table of contents](#)]

2.6 Who are the employees' representatives?

The employees' representative can be a trade union, staff association or another body that the employer normally consults with. Otherwise, it can be employee(s) who are elected by the group of employees to act as the representative. The employer must put in place an arrangement to facilitate this election. [[Go back to table of contents](#)]

2.7 What does notifying the Minister involve?

The employer must notify the Minister for Enterprise, Trade and Employment of the proposed collective redundancy at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect.

The notification must contain certain details as set out in S.I. 324 of 2024. [Access S.I. 324 of 2024](#). The Department of Enterprise, Trade and Employment has published a template form that you can use to help ensure that you provide all information required by law in the notification to the minister. [Access the template Collective Redundancy Notification form \(Form CRN1\)](#).

This notification can be sent to the Minister by electronic means, by registered post or by hand delivery to the Department of Enterprise, Trade and Employment.

The employer **must** give a copy of this notification to the employees' representatives. [[Go back to table of contents](#)]

2.8 What are my rights if my employer fails to comply with the Act?

You can make a complaint to the Workplace Relations Commission (WRC) if you believe that your employer has:

1. Failed to hold consultations with your employee representative,
2. Failed to provide your employee representatives with required information during the consultation, or
3. Dismissed you before expiry of the 30-day period following notification to the Minister.

Complaints must be made within 6 months of the date of alleged breach. The WRC can extend this time period to 12 months if you can demonstrate reasonable cause.

If the WRC finds in your favour, they can award you up to 4 weeks' remuneration for each breach of the Act.

[How to make a complaint to the WRC](#). The WRC can also be contacted by phone at (059) 9178990 or at LoCall 0818 808090.

Employers may also be prosecuted and, if convicted, fined if they fail to comply with their obligations under the Act. [[Go back to table of contents](#)]

2.9 Am I eligible for a payment if I am made redundant?

The Redundancy Payments Act 1967, as amended, says all eligible employees being made redundant are entitled to a statutory lump sum payment. To be an eligible employee, you must meet all of the following conditions:

- You must have worked with your employer for at least 104 weeks (2 years), excluding any period of employment with that employer before the age of 16 years;

- Your employment must be fully insurable under the Social Welfare Acts. In general this means paying Class A PRSI; and
- Your job must no longer exist. [[Go back to table of contents](#)]

2.10 How is my statutory redundancy payment calculated?

If you are an eligible employee, then you are entitled to a statutory redundancy payment equivalent to 2 weeks' pay for every year of service plus 1 additional bonus week.

Your normal gross weekly wage is used in the calculation. If you do not have a normal weekly wage, an average is used to calculate the payment. Payment is subject to a limit of €600 per week.

[Estimate your statutory redundancy on MyWelfare.ie.](#) [[Go back to table of contents](#)]

2.11 Who pays me my statutory redundancy payment?

Your employer must pay statutory redundancy to you if you are eligible.

If your employer is unable to pay, the Department of Social Protection can pay your statutory redundancy from the Redundancy Payments Scheme. Your employer will make an application on your behalf and, if successful, the Department of Social Protection will make the statutory redundancy payment.

If an employer disputes that a redundancy situation exists or refuses to pay statutory redundancy, you can make a complaint to the Workplace Relations Commission (WRC).

Complaints must be made within 1 year of the date of dismissal. The WRC can extend this time period to 2 years if you can demonstrate reasonable cause.

If the WRC finds in your favour, they can make a decision that your employer must pay you statutory redundancy. If your employer refuses to pay you after the WRC makes an award, you can apply directly to the Redundancy Payments Scheme for payment.

[How to make a complaint to the WRC](#). The WRC can also be contacted by phone at 059 9178990 or LoCall 0818 808090.

Further information on the Redundancy Payments Scheme is available on the [Gov.ie](#) website. The Department of Social Protection administers the Redundancy Payments Scheme on behalf of the Minister for Enterprise, Trade and Employment. [[Go back to table of contents](#)]

2.12 Am I entitled to an enhanced redundancy payment??

The Redundancy Payments Act 1967, as amended, says all eligible employees being made redundant are entitled to a statutory lump sum payment. This statutory redundancy payment is equivalent to 2 weeks' pay for every year of service plus 1 additional bonus week. Weekly pay is subject to a limit of €600 per week.

It is the employer who is legally obliged to make this statutory redundancy payment to eligible employees. In certain circumstances an employer may offer a redundancy payment which is over and above the statutory amount. This is sometimes referred to as enhanced redundancy.

Your entitlement to an enhanced redundancy payment from your employer is a contractual matter between you and your employer and you may wish to get professional legal advice depending on your circumstances.

The State, through the Redundancy Payments Scheme, only guarantees your entitlement to the statutory redundancy payment, in situations where the employer cannot pay due to financial difficulties, insolvency or refuses to pay.

The Redundancy Payments Scheme cannot be used to pay enhanced redundancy payments or to supplement or "top-up" redundancy payments to honour any agreements between an employer and its employees. [[Go back to table of contents](#)]

2.13 What happens if I am made redundant and I have an employment permit?

There are specific rules in place for people who hold employment permits and are made redundant. [Access the rules governing redundancy and employment permits.](#) [[Go back to table of contents](#)]

3 Employer Insolvency

3.1 What does insolvency mean?

Insolvency is what happens when a company can no longer pay its debts as they fall due or when it has more liabilities than assets on its balance sheet. When a company is insolvent, a person known as a liquidator is usually appointed to help wind up the company. [[Go back to table of contents](#)]

3.2 What does a liquidation involve?

Liquidation, also referred to as winding-up, is the process at the end of which the company no longer exists. Liquidation is the legal ending of a limited company. In these situations, the company generally stops all activities, pays off its debts from any available assets and winds up in an orderly way. A liquidator is appointed to oversee this process.

Liquidators can be appointed by:

- the members (owners);
- creditors; or
- the court.

If the members appoint a liquidator, it is known as a members voluntary liquidation. This type of liquidation usually involves a **solvent** company, that is, a company that can pay its debts as they fall due.

If the creditors appoint a liquidator, it is called a creditors' voluntary liquidation and the creditors as a group supervise the liquidation. This type of liquidation involves an **insolvent company**, that is, a company that cannot pay its debts as they fall due or has more liabilities than assets on its balance sheet. The company is obliged to ensure the creditors are made aware of their right to form and participate on a committee of inspection which represents the interests of all creditors of a company going into liquidation. There is a dedicated position for an employee representative on the committee of inspection.

If a court appoints a liquidator, it is called an official (or compulsory) liquidation. In this type of liquidation, the court supervises the liquidation with the help of a specially appointed court officer. A creditor may ask the court to appoint a liquidator. The liquidator is also obliged to ensure creditors are made aware of their right to form and participate on a committee of inspection established to oversee a liquidation; there is a dedicated position for an employee representative on the committee of inspection.

The Government cannot interfere with any liquidation process. The liquidator has a statutory responsibility to realise the assets of the company and distribute to creditors in accordance with law. [\[Go back to table of contents\]](#)

3.3 What are my rights as an employee in an insolvency situation?

You have a number of rights and protections if your employer is insolvent. This includes:

1. You have preferential creditor status for certain monies owed by your employer.
2. The State, via the insolvency Payments Scheme, will pay you certain outstanding monies owed by your employer, such as arrears of wages or holiday pay.
3. The State, via the Redundancy Payments Scheme, will pay you statutory redundancy, if you are eligible.
4. You have the right to certain information during the liquidation.
5. You have the right to intervene in the liquidation process. [\[Go back to table of contents\]](#)

3.4 What does Preferential Creditor Status mean?

A creditor is a person (such as an employee) or entity (like a company) to whom a debt is owed. In an insolvency, creditors can include the company's employees (who may be owed wages or other contributions), the State (which may be owed taxes and other statutory contributions), suppliers, and customers (where they have made deposits or other prepayments).

The Companies Act 2014 sets out the order in which all of these creditors are to be paid in an insolvent liquidation. Employees whose employer becomes insolvent are protected by being afforded preferential creditor status in this order. This means that monies owed to them are treated as more important than the debts of certain other creditors.

The following payments to employees have preferential status:

- Wages and salaries up to a maximum of €10,000 per employee,
- Holiday payment,
- Compensation and damages for uninsured accidents,
- Sickness and superannuation payments,
- Claims for unfair dismissal,
- Claims for minimum notice payments,
- Statutory redundancy payments, and
- Social welfare contributions.

These payments are to be paid ahead of ordinary and unsecured creditors.

Any *ex-gratia* or enhanced payments that an employer has promised employees beyond their legal obligations, such as under a collective agreement, is a private matter between the employees and the employer. Preferential creditor status only guarantees payment of what an employer is legally obliged to pay. It is important to understand that the liquidator is under a legal obligation to distribute any moneys as prescribed by company law. [[Go back to table of contents](#)]

3.5 Who pays my statutory redundancy payment if my employer is insolvent?

Where their employer is insolvent, eligible employees' statutory redundancy payments are protected by preferential creditor status. The liquidator must pay these before other debts.

Where the employer is insolvent, the liquidator cannot agree or pay enhanced redundancy payments. They can only make payments to creditors in the order and procedure set out in law.

In a situation in which the liquidation does not generate enough to pay all the redundancy entitlements, the liquidator will make an application to the Redundancy Payments Scheme on the employees' behalf. The Department of Social Protection will pay statutory redundancy payment directly to the employees.

The Redundancy Payments Scheme can only pay statutory redundancy payments to employees. It cannot be used to pay enhanced redundancy payments or to supplement or "top-up" redundancy payments to honour a collective agreement between an employer and its employees. [\[Go back to table of contents\]](#)

3.6 What is the Insolvency Payments Scheme?

The Insolvency Payments Scheme in the Department of Social Protection ensures employees' pay-related entitlements are protected where their employer is insolvent and is unable to pay. This is set out in the Protection of Employees (Employers' Insolvency) Act 1984, as amended. [Learn what legally insolvent means for the purpose of the Scheme.](#)

While preferential creditor status means that an employee's entitlements must be paid before ordinary and unsecured creditors, sometimes either the amount of money generated in an insolvent liquidation is not enough to cover these entitlements or the liquidation process is lengthy delaying payments to creditors.

To ensure employees are paid their pay-related entitlements in a timely fashion, a liquidator will generally apply to the Insolvency Payments Scheme. When a liquidator is appointed, they are responsible for making the application to the Insolvency Payments Scheme on the employees' behalf. The liquidator will liaise with employees during this process, and employees should contact the liquidator if they have any questions.

When employees receive payment from the scheme, their rights as a preferential creditor in the liquidation for the amount of that payment transfers to the Minister. This is to make sure employee creditors don't receive a double benefit through receiving a State payment and a payment from the liquidation. They remain a preferential creditor for the outstanding amount not covered by the Scheme.

The Department of Social Protection administers the Insolvency Payments Scheme on behalf of the Minister for Enterprise, Trade and Employment. [\[Go back to table of contents\]](#)

3.7 Am I protected by the Insolvency Payments Scheme?

The scheme covers employees who are insured for all benefits under social welfare legislation. In general this means an employee who pays class "A" PRSI. You do not have to have any minimum length of service working with your employer to be covered. [\[Go back to table of contents\]](#)

3.8 What types of debts are covered by the Insolvency Payments Scheme?

The outstanding debts covered by the Insolvency Payments Scheme include:

- Arrears of wages and sick pay (capped at 8 weeks)
- Outstanding holiday pay (capped at 8 weeks)
- Unpaid statutory minimum notice
- Certain arrears of pension contributions

- Various statutory awards made by the Workplace Relations Commission (WRC) and Labour Court.

The liquidator or similar appointee will generally make an application on your behalf. Under this scheme, payment is made to the liquidator so that appropriate tax deductions (if applicable) can be made before the correct payments are paid to the former employee.

In most cases, the employee's gross weekly wage, subject to a limit of €600, is used to calculate the amount that can be paid under the scheme. The maximum payment for arrears of wages, holiday pay or minimum notice is €4,800 each.

[Find out more about the Insolvency Payments Scheme.](#) [\[Go back to table of contents\]](#)

3.9 What happens if the collective redundancy is because my employer is insolvent?

If your employer is insolvent, you are likely to be made redundant.

However, you will still receive the same statutory protections as in any other collective redundancy.

The only difference is that the liquidator or similar appointee who is managing the wind-up of your employer will undertake the statutory consultation and will notify the Minister, instead of your employer. [\[Go back to table of contents\]](#)

3.10 What exactly is the role of the Liquidator?

The role of the liquidator is to wind up the company. Their main duties are:

- to take possession of company property including its financial records;
- to list the people who are owed money and how much they are owed;
- to list the people who must contribute to the company's assets on its winding up and how much they have to pay;
- to investigate the company's affairs;

- to sell the company's assets;
- to pay the company's debts in the order the law states;
- to give any remaining money to the members in line with their entitlements;
- to report any suspected criminal offence by the company, a past or present director or company secretary, or any member to the Corporate Enforcement Authority (CEA) and the Director of Public Prosecutions.

Where a company is insolvent, the liquidator must:

- give the CEA – within 6 months of appointment – a report about the company directors' conduct in the period leading up to the liquidation, and
- ask the court to restrict the directors for a certain time from being involved in other companies.

A person can only be appointed as a liquidator if they meet one of the following conditions:

- they are a member of an accountancy body approved by the Irish Auditing and Accounting Supervisory Authority (IAASA), and hold an up-to-date practising certificate from that body;
- they are a practising solicitor and hold an up-to-date practising certificate from the Law Society of Ireland;
- they are a member of a professional body recognised by the IAASA and are authorised to act as a liquidator;
- they are qualified under the laws of another European Economic Area (EEA) State to act as a liquidator in insolvency proceedings in Ireland; or
- they have practical experience and relevant knowledge of winding-up a company and are authorised by IAASA to act as a liquidator.

It is an offence under the Companies Act 2014 to act as a liquidator without the appropriate qualification. [[Go back to table of contents](#)]

3.11 What is my right to information as a creditor in a liquidation?

An employee, as a creditor, has rights to certain information during a liquidation.

When a petition for the winding up of a company is made to the High Court or where a provisional liquidator is appointed, employees and, where applicable, their representatives must be notified.

Where a court has made a winding-up order or appointed a provisional liquidator, a statement on the affairs of the company must be made out and filed with the court within 21 days. This statement outlines the financial position of the company and details the company's assets, debts, and liabilities, among other items. Creditors of the company are entitled to inspect and be provided with a copy of this statement. This statement of affairs is made available free of charge to employees and, where applicable, their representatives, by the liquidator.

Employees can also apply to the court for a determination on any question arising from the insolvency and the winding-up of a company. They may also apply to court to request an inspection of the accounting records, books and papers of the company.

Where the winding-up of a company is not concluded within 12 months after the date of its commencement, the liquidator must present an interim report and provide updates on the progress of the liquidation. These reports (Form E4) must be filed with the Companies Registration Office (CRO). [Access the form on the CRO's website](#). [[Go back to table of contents](#)]

3.12 How can a creditor intervene in a liquidation?

The Companies Act 2014 contains provisions which may be used by a liquidator or a creditor (including an employee) of an insolvent company in appropriate cases. These options are in addition to other protections available under employment rights legislation.

IMPORTANT! These protections involve taking legal action (litigation). Any creditor should seek independent legal advice before deciding whether to take legal action.

- On the application of the liquidator or any creditor or contributor, the court can hold a related company liable for the debts of a company being wound up in circumstances where the related company was involved in the management of the insolvent company or in other misconduct or the extent to which the circumstances that gave rise to the winding up are attributable to the acts or omissions of the related company. This means that the related company may be ordered to contribute to the debts of the insolvent company in order to provide a fairer outcome for creditors.
- The powers of the controllers of the company to dispose of assets before it is wound up are restricted. This is intended to deal with situations where a company pays a particular creditor in the period before it is wound up in order for this creditor to be treated more favourably than others and therefore to be given an unfair preference.

A transaction that is an unfair preference that is made within 6 months of the winding-up of the company is invalid. Furthermore, if the preferential transaction is made in favour of a connected person, it is invalid where it is made within 2 years of the commencement of the winding up. A “connected person” is defined in the Companies Act to include a spouse, a civil partner or relatives of a director such as brothers or sisters or a child. The High Court has the discretion to disregard these hard deadlines where the actions point to a deliberate attempt to evade the law.

- Where the liquidator can establish that the effect of the transfer of assets has been to defraud the creditors, the company or its members, the court can order the return of those assets which have been improperly transferred. The liquidator, a receiver of the property of the company or any creditor or contributory can make an application to the court where they consider an officer of the company or other person has been party to the conduct of the business in a reckless manner. The court then has the power to declare that such a person will be personally obliged to pay these debts. A “contributory” is a technical term that is defined in the Companies Act to mean any person who is legally obliged to contribute to the assets of the company in a winding up.
- An application can be made to the court by the CEA, the liquidator or any creditor (including an employee) seeking that the court examine the conduct of the promotor, officer, liquidator, examiner, or receiver.

Where a person has been guilty of any wrongdoing, the court can order that person:

- a) to repay or restore the money or property or any part of it respectively with interest at such rate as the court thinks just, or
 - b) to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.
- The court also has the power to assess damages against a director of the company’s holding company where they have been guilty of wrongdoing in relation to the assets or affairs of any subsidiary. [[Go back to table of contents](#)]