INSOLVENCY INSIGHTS

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EDITION 5

WELCOME TO THE FIFTH EDITION OF OUR INSOLVENCY INSIGHTS MAGAZINE!

The UK Government's spend remains high and sterling continues to face volatility. To say we are living in uncertain times may be an understatement, but are there some signs of stability? The latest Insolvency Service statistics suggest that while corporate insolvencies rose slightly in August, the pace has steadied compared to last year, though personal insolvencies have climbed further, particularly Debt Relief Orders. The cost-of-living crisis continues to bite, but there are glimpses of resilience in certain sectors, with restructuring opportunities beginning to emerge. Close monitoring of clients, spotting early warning signs, and swift recovery action remain essential.

This year has also seen significant regulatory and technological shifts. Companies House reform is progressing, with ID verification and transparency requirements being phased in under the Economic Crime and Corporate Transparency Act. At the same time, AI is playing an increasing role in insolvency, from fraud detection to recognising early signs of distress, supporting practitioners without replacing professional judgement. Restructuring plans are expected to be more widely used as businesses navigate inflationary pressures and higher costs, while pre-packs and ESG considerations are also becoming more prominent. We explore all of these trends and current activity throughout this edition, as well as introduce our new Creditor Services Manager, James Linton, and explore his role within Creditor Services and his hopes for joining the Menzies Creditor Services team.

We also feature a guest article from Alexander Muir, Associate Director at Hilco, who aims to shift the focus beyond balance sheets and explains what Insolvency Practitioners should be looking for.

We hope you find this resource valuable. If you have questions or wish to discuss your specific circumstances or have any insolvency-related questions, please let us know. And if you'd like to collaborate or feature in a future edition, we'd love to hear from you.

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INSIDE THIS EDITION:

LISTEN TO OUR RECENT PODCAST EPISODE

The art of being an IP

Our team discuss how to identify and unlock hidden value in distressed businesses, with a particular focus on intangible assets.

Scan here to listen online or on Spotify:

menzies.co.uk/podcast

CAN AI SPOT A FAILING BUSINESS BEFORE THE PAPERWORK HITS?

At a glance
Artificial intelligence ("AI") is allowing credit managers to spot signs of financial trouble long before they appear on Companies House. Bespoke, in-house tools are emerging as the new secret weapon for risk-savvy finance teams. But beware, over-relying on robots could land you in hot water if you forget to add a human touch.

Forecasting the future without a magic wand
If you've ever wished for a crystal ball to tell you which of your customers was about to go bust, good news, tech might be getting close. AI is fast becoming the Sherlock Holmes of the credit world, spotting clues in places the human eye just wouldn't be able to see.

Forget dusty ledgers and filed accounts. These days, it's all about real-time data, behavioural shifts, and patterns that scream something's up, even when everything looks squeaky clean on paper.

Retiring your old spreadsheets
Traditionally, credit checks have relied on historic data, such as last year's accounts, payment patterns, or whether a company had a director called Nigel who'd been bankrupt three times. All of which usually ends up dumped into a spreadsheet for someone to squint at once a year. But that's not enough anymore. In today's economy, things can fall apart faster than a wet cardboard box in the rain.

> **AI is transformational. It can analyse vast amounts of information in seconds, identifying everything from supplier payment timings to social media posts and red flags before they become full-blown disasters.**

Here's the twist, it's not always about what's there. Sometimes, it's about what's missing. If you notice a usually chatty customer has gone radio silent, it could be a flag that something isn't quite right.

Moral of the story? Ghosting is not just rude. It might be a warning sign.

Building better credit decisions – one tool at a time
Progressive firms are now developing their own in-house AI tools. Why? Because they are recognising that generic scoring models can't always differentiate between a wobbly business and one that's just had a slow quarter.

Custom AI systems look at sector-specific trends, distinct customer behaviours and internal financial and sales data. These systems adapt quickly.

When risks shift in sectors like retail, construction, or tech, you don't have to wait for a third-party platform to catch up. You should tweak your systems accordingly.

Automation that actually helps (for once)
The system crunches the data, spits out alerts, and the credit team can swoop in like financial superheroes.

This is particularly crucial given the sharp increase in company insolvencies since the start of 2025 and the domino effect this can have on even the strongest of businesses.

> **AI isn't just effective for flagging problems; it's also a great time saver. Some credit teams now conduct daily automatic check-ups on their key customers.**

Automation can monitor payment patterns, detect cashflow and escalate cases before they turn ugly. It's like having a dedicated colleague who never sleeps, never complains, and knows more Excel functions than you.

Even bots need supervision
However, here's where things can go wrong. AI is smart, but it's not infallible. AI models can only learn from the data they're given. If your data is outdated, incomplete, or just plain unreliable (and let's face it, sometimes it is), the predictions could be way off.

Over-relying on automated scoring carries risks. Human judgement remains essential, especially when you have a customer who doesn't fit the typical mould or sometimes, more importantly, when you get the gut feeling that something is not quite right. AI is a powerful tool, but it won't stand up in court with you when things hit the fan.

Brains and bots: a credit dream team
Insolvency rates are rising, risk profiles are shifting, and the margin for error is slimmer than ever. But there's a silver lining. Teams that combine AI tools with strong commercial instincts are far better equipped to dodge the disasters and safeguard their cash flow.

So, can AI predict the next insolvency? Not quite like a fortune teller, but it can provide valuable early warnings and, in today's landscape, that's often enough to keep you one step ahead.

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TRADING ON WHILST INSOLVENT; WRONGFUL TRADING

What is it and why should directors be concerned?

Directors have a fiduciary duty to promote the success of the business for the benefit of its shareholders. However, when a company begins to head towards insolvency, the directors' should redirect their focus towards protecting the creditors' position from worsening further.

Where a director ought to have known that the company was insolvent and failed to cease trading at an earlier point, a director can be personally liable for any resulting losses to the company and therefore, its creditors.

As an example, if an insolvent company had an amount owed to its creditors in the region of £2m at T0 but then trades on for a further 3 months where the losses increase further to £2.5m, then the directors can be personally liable for £500,000. The reason for this, is that they should have been taking steps to wind down the business and cease trading at a much closer time to T0, thus avoiding those increased losses.

A liquidator or an administrator may initiate a wrongful trading claim against an offending director.

Whilst all directors are expected to demonstrate a basic level of competence, and ignorance is no defence, those with a higher level of qualification will be held to a higher standard. Therefore, a qualified accountant serving as a director of a company, would be expected to recognise signs of insolvency at an earlier stage and, as a result, may face more severe consequences.

Directors need to tread carefully when they begin to have cashflow problems and they should make sure that if the position is expected to worsen in the short term, then it should really only continue trading in anticipation that in the long term, the company will return to a solvent position.

Seeking early independent advice from an Insolvency Practitioner is wise, as well as considering having Directors & Officers insurance in place.

What changed in 2022?

The Supreme Court's judgement in BTI 2014 LCC v Sequana marked a significant shift in how the insolvency profession approaches potential wrongful trading claims.

Before 2022, it was always felt there was a clearcut moment in time that when insolvency commenced, and creditors' interests prevailed.

However, in Sequana the Court found that there was no one point in time at which a real risk of insolvency could be placed, but that instead there was a sliding scale during which the risk of insolvency becomes more acute. As a result, the directors' obligations shift from shareholders to creditors, as the likelihood of insolvency goes from being remote to inevitable/irreversible/unavoidable.

As a result of this interesting judgement, Insolvency Practitioners are now more likely to scrutinise the events leading up to an insolvency, examining whether the directors ought to have taken appropriate steps to ensure that the position did not deteriorate further.

What does that mean for a credit controller?

When you start to have difficulties in recovering a debt, find out why and make a log of the communications. Consider also whether you want to continue providing credit to the company.

If you are a supplier, consider insisting on payment on delivery for future supplies.

Events leading up to an insolvency are crucial and maintaining a communication log could prove to be pivotal. This can be key in bringing a claim against an offending individual and shifting the timeline back to an earlier date, where directors should have known the company was heading towards an insolvency.

What does this mean if you are a director seeing cashflow difficulties?

If you're finding it difficult to meet payment obligations, you should seek independent advice from an accountant or Insolvency Practitioner sooner rather than later. The earlier this step is taken, the greater the options will be for you and it will help mitigate any wrongful trading allegations aimed at you.

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MEET OUR NEW CREDITOR SERVICES MANAGER

We are delighted to welcome James Linton to the Menzies Creditor Services team as a Manager. Read on to learn more about James and his role within our growing team.

Why did you decide to work in Creditor Services?

I already had a background in insolvency, having worked in an insolvency role for one of the major high street banks, so moving into a Creditor Services role felt like a natural progression when the opportunity arose.

What appealed to me most was the prospect of assisting creditors directly. Having experience of being a creditor within an insolvency process myself, I fully appreciate how complex and daunting the paperwork and processes can be. Understanding your rights and options as a creditor is invaluable, and I realised that I could apply my own experience to support others facing similar challenges.

What is your role within the Menzies Creditor Services team?

My primary responsibility is to help drive the continued growth and development of Menzies' creditor services offering across the UK. This includes building on the firm's already well established services to deliver even greater value to both new and existing clients. In practice, this means advising funders, trade creditors, and recoveries professionals on the full range of recovery options available to them. Guiding them through often complex insolvency and restructuring scenarios to help them achieve the best possible outcomes, whether that be through maximising dividend returns, investigations into insolvent entities to find hard to locate assets, or pursuing appropriate action in cases of misconduct.

Beyond direct client work, my role also includes growing Menzies Creditor Services market presence by representing the restructuring and insolvency division and wider firm at industry events, developing new relationships with external stakeholders such as lawyers, credit managers and recoveries professionals, and supporting the in-house team with securing new appointments.

Why did you decide to join the Menzies Creditor Services team?

Menzies is highly respected within the restructuring and insolvency industry, with a strong reputation for prioritising the interests of creditors.

Having previously worked alongside Menzies' appointment takers on joint matters, I was impressed by their consistent focus on achieving the best possible results for creditors. This ethos is completely aligned with my own professional values and background.

The firm already has a reputable Creditor Services team, but I saw a fantastic opportunity to build on this foundation. By contributing my own expertise and experience, I believe we can expand the team's reach and further enhance its offering. Menzies' principles and approach resonate strongly with me, and I am excited about the opportunity to be part of a firm that is committed to growing a successful creditor focused team.

What services do you provide to creditors?

The Menzies Creditor Services team offers an advisory service designed to support creditors involved in insolvency processes. Our role is to ease the burden by assisting with all aspects of the process, including completing paperwork, providing general advice on creditor rights and options, and delivering clear and accessible reporting, monitoring, and analysis of expected dividends and outcomes.

> We also act as creditor representatives, ensuring our clients' voices are heard and that they can make informed decisions on voting and procedural matters. Where appropriate, and in agreement with the creditors we represent, Menzies can also seek to appoint our own qualified Insolvency Practitioners.

What are the main issues facing UK businesses over the next 6 months that could tip them into insolvency?

The most immediate challenge for many UK businesses will be managing rising staffing costs following the increase to the National Living Wage and the rise in Employer National Insurance contributions introduced in April 2025.

These additional pressures are likely to erode profit margins, particularly in sectors such as hospitality and retail where margins are already tight.

As businesses attempt to absorb these costs, we may see a ripple effect in the form of higher prices for consumers, reductions in staffing levels, and in some cases, store closures or restructuring. When combined with other ongoing pressures, such as inflationary cost increases, higher borrowing and credit costs, recruitment difficulties, and ongoing logistical challenges, these factors could place significant strain on businesses and drive a higher risk of insolvency over the coming months.

What is your favourite part about working in Creditor Services?

The variety is what makes Creditor Services so rewarding - no two days are ever the same. I enjoy being able to assist clients not only in securing the best possible outcomes, but also in demystifying the insolvency process for them. This might involve helping creditors understand their rights, explaining procedural steps, or providing clarity around the options available. It's both challenging and fulfilling to see the positive results of this support, especially when creditors achieve outcomes they might not have thought possible at the outset.

I also genuinely enjoy the relationship building aspect, and meeting new people, sharing insights, and exploring opportunities to work together and assist each other.

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LOOKING BEYOND THE BALANCE SHEET

OUR GUEST ARTICLE

How "know-how" assets are driving real returns in insolvency

When a company enters insolvency, the spotlight naturally falls on physical stock, debtor books, and property – ultimately, the assets that are most prominent on that company's balance sheet at the time of the insolvency event. Time and again, we've seen that some of the most commercially valuable assets aren't listed anywhere in the accounts, but they drive real commercial value, if you know where to look.

I'm talking about know-how: the technical knowledge, proprietary workflows, systems, or internal materials that underpin how the business operates. This is the intangible infrastructure that's critical to how services are delivered, or products are made, and that a competitor or trade buyer would pay to access.

What do we mean by "know-how"?

When people hear the phrase "intellectual property (IP)," their minds often jump to trade marks, patents or registered designs. Some of the most commercially valuable IP in an insolvency context isn't formally registered, but is often unregistered, informal, and embedded deep within how the business actually runs. This is what we refer to as know-how.

Know-how might take the form of CAD files, technical drawings, manufacturing specifications: tools that reflect how a product is made, installed, or maintained. In other cases, it can be proprietary internal processes: recipe formulations, testing protocols, or calibration routines developed in-house over time. Sometimes it's more practical still: historical project files that document work done for long-standing customers, including everything from design drafts to repair logs. These documents often aren't especially glamorous, but they do enable someone else to continue or adopt the company's operations, quickly and effectively.

In each of these examples, the asset isn't just valuable because of what it is but because of what it enables. In some cases, these materials can offer an immediate and incredibly valuable shortcut for a trade player looking to replicate or expand a service. That's why it's so important not just to identify this content, but to understand the context: how it was used, who it was used for, and what commercial role it played. Because in the hands of the right buyer, that context turns a forgotten folder into a revenue-generating asset.

Case in point: engineering know-how and ongoing support

In one recent case, the insolvent company was a design and engineering firm that specialised in bespoke infrastructure projects. Aside from the plant and machinery, the company had long-term clients who were reliant on ongoing tech support for legacy installations.

By preserving and mapping out the company's archived project files, schematics, support guides, and internal test data, we were able to approach trade buyers with a clear opportunity: acquire the know-how, support the existing customers, and pick up recurring maintenance revenue.

While the IP was not the key value driver of the insolvent company, it proved to be a commercially valuable part of the business and attracted a price that reflected its importance to the buyer.

What practitioners should be looking for

There are many reasons that a company's know-how could be clearly marketed as a strategic acquisition opportunity, for example:

- Does the company serve customers who need ongoing support? If so, there's likely a commercial angle in selling the project files and data to a buyer who could take over the support and associated revenue.
- Are there legacy technical systems or regulated installations involved? Know-how tied to compliance or industry standards can be hard to replicate.
- Could the data be useful to a competitor? Even if the business doesn't continue, the know-how might give another player a head start, enhance its existing operations, or protect it from further competition.

Why early engagement matters

You can't sell what you don't know about, and it's incredibly difficult to protect or recover knowledge once the people who hold it have moved on. Senior employees, long-serving staff, or technical specialists often carry key know-how that isn't documented anywhere else and may also be the only ones who know where it's stored or how it's used. We've seen entire knowledge bases disappear because no one asked the right question in time. Make sure you don't let potentially valuable IP walk out of the door.

We conduct IP audits to identify these types of intangible assets and support insolvency practitioners in identifying and protecting these potentially valuable assets. While the term might sound formal, an IP audit is often a short desktop review, combined with conversations with key stakeholders, to build a picture of what's proprietary, how it's used, and whether it can be preserved, transferred and sold. IP audits have helped our clients make informed decisions on a range of matters, such as whether to extend a trading period, negotiate employee retention, or ring-fence key documentation before systems are shut down – an IP audit provides the practitioner with the information necessary to make critical decisions in a timely manner, and can also support a decision not to continue incurring costs where the potential recovery is poor.

In a distressed scenario, time and attention are always limited. But taking action to preserve know-how can make the difference between a nominal asset realisation and a meaningful return.

The next time you use a balance sheet as a starting point for your planning, also ask:

- What proprietary knowledge might the company have?
- Could its customers or other market participants still need that knowledge?
- How can we preserve it before it disappears?

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NEED ADVICE?

The Menzies Creditor Services team can advise on the best way for you to protect your position when one of your debtors enters, or is approaching, insolvency proceedings. Utilising our extensive experience and expert insights, we work in collaboration with you, drawing upon our industry and insolvency sector knowledge, to improve your financial outcome.

For further information on our creditor services offering, please get in touch.

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