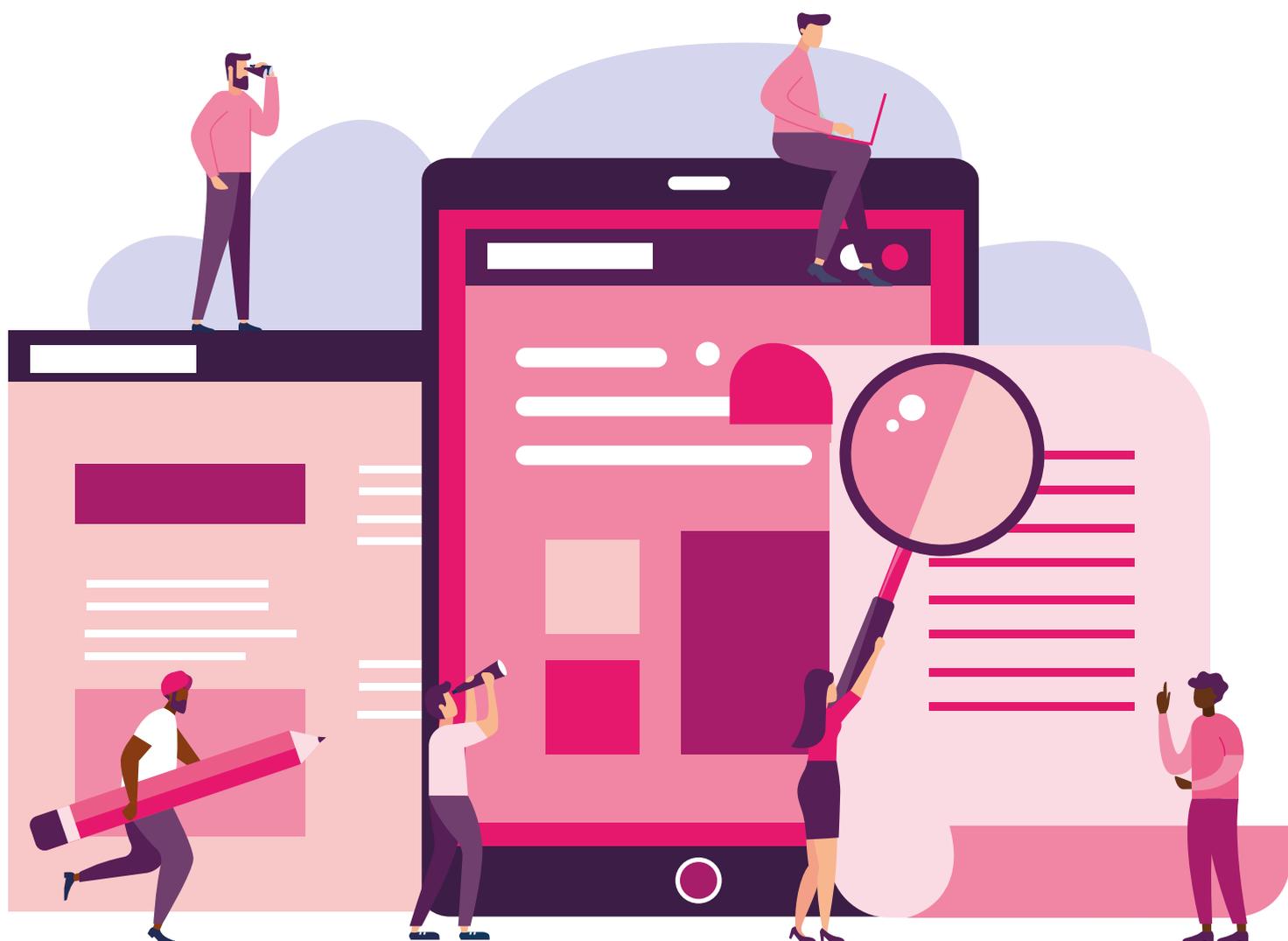


INSOLVENCY MONITORING AND RESCUING BUSINESS RECORDS **OVERVIEW**



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Introduction

This document provides an overview of the process of rescuing business records from the stage of research and monitoring up to the acquisition of records from an insolvent company. It includes guidance on corporate insolvency terminology, including the most important terms for archivists, and how to contact insolvency practitioners.

It is primarily intended for use for by archivists and archive services in Wales but may be useful to anybody with an interest in rescuing archives and records from insolvent companies.

This document has been produced as part of the Archives and Records Council Wales ‘Records at Risk Project’ which is supported by the National Library of Wales and funded by The National Archives’ Covid-19 Fund.

Archives and Records Council Wales
February 2022

1. Overview

What are business records “at risk”?

Archivists are familiar with a broad range of risks to records, including environmental and security hazards, natural disasters, and threats specific to digital records. Some of these risks may affect materials in the care of established archive services as well as those held in private hands, including businesses’ current and historical records.

This guidance document is concerned specifically with the risk that insolvency poses to business records in the care of their creators or an insolvency practitioner appointed to manage a company in financial difficulty.

If businesses are dissolved or under threat of closure, their historical records may be destroyed or lost. In some cases they may even be sold to pay off debts owed to the company’s creditors. If these records have archival value due to their historical or cultural significance, an archive service may be able to provide a permanent home to ensure their future accessibility to historians, researchers, and the wider public. Yet the process of acquiring records is not always straightforward as businesses can enter liquidation and be dissolved very quickly. In some cases the company or appointed insolvency practitioners

may be hesitant to donate their historical records due to concerns about data privacy, client confidentiality, or reputational damage.

Fortunately, as outlined in this guidance, there are ways that we can monitor the insolvency proceedings of companies in financial difficulty and steps we can take to engage with the insolvency practitioners who manage their assets, including the company’s archives.

The flowchart below provides an overview of these steps.



Process flowchart



2. What is insolvency?

Insolvency in general

A company or person is insolvent if they do not have sufficient assets to cover their liabilities (i.e. enough money to pay off their debts). Insolvency is a very broad term which covers everything from the administration or liquidation of a company to the bankruptcy of an individual person. Some of the different forms of insolvency are described in more detail below.

In the descriptions following:

A 'creditor' is a word for somebody to whom money is owed by a person or company.

A 'debtor' is a word for a person or company that owes money to one or more individuals.

Corporate and personal insolvency

Corporate insolvency is the term used to refer to a company which is unable to repay its debts as they fall due. It includes companies in different stages of insolvency such as administration or liquidation and winding-up proceedings.

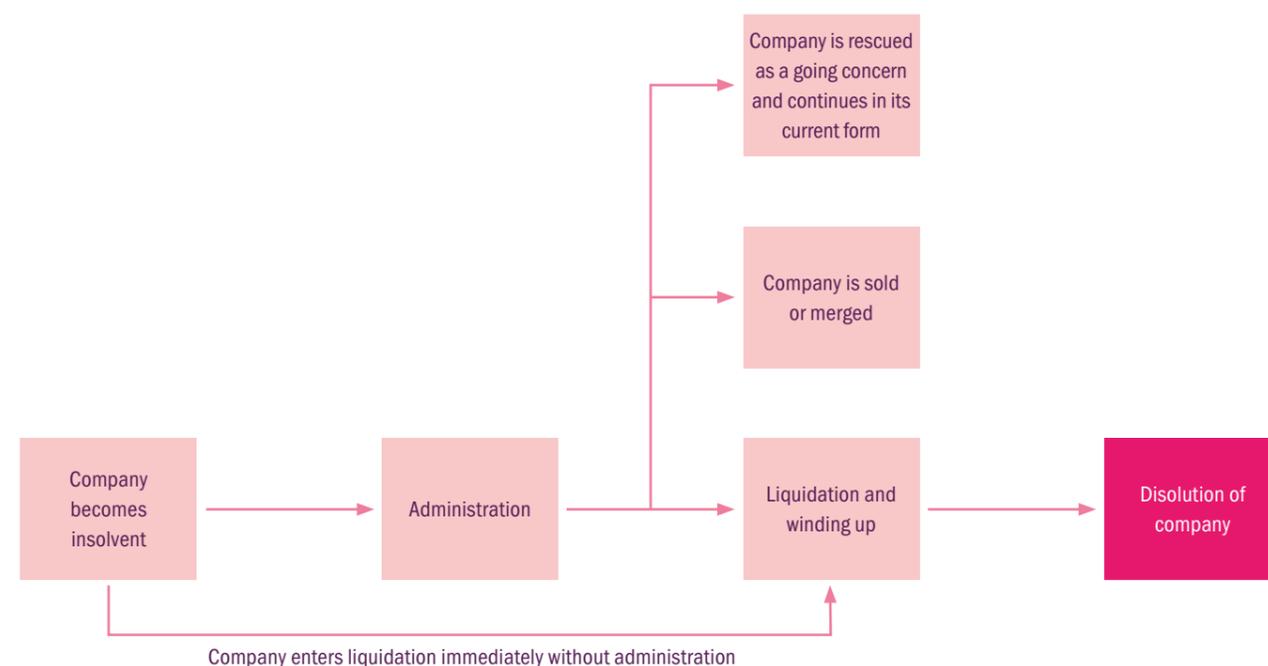
Personal insolvency is the term used to refer to individuals who are unable to repay their debts as they fall due. This may result in the person declaring "bankruptcy", or being declared bankrupt by the courts. Legally speaking, in England and Wales, bankruptcy is only applicable to individuals though you may come across references in the press and daily life to companies "going bankrupt". In other places, the term bankruptcy has different meanings.

In Scotland it refers to the formal process also known as sequestration; in the United States of America bankruptcy can also refer to corporate insolvencies.

As an archivist, you are less likely to be concerned with the records of insolvent individuals than insolvent companies. There may be exceptions, for example, when you acquire the personal papers of an insolvent individual. In general, though, when you are conducting insolvency monitoring for businesses which may hold records at risk, it is best to filter out personal insolvencies and focus on corporate insolvencies (see **Searching and Filtering in *The Gazette* online below**).

Types of Corporate Insolvency

Typical processes and outcomes involved in a corporate insolvency



Administration

During administration, insolvency practitioners (acting as administrators in this case) are called in to manage the insolvent company in place of its directors. The aims of the administration process, in descending order of usual preference, are:

- i. to rescue the company as a going concern, which means the company continues in its current form;
- ii. to find new owners for the company (e.g. company buyout); or
- iii. to close down the company and sell its assets in order to return money owed to creditors. So the company then enters liquidation and winding up proceedings.

During administration, the company is protected from legal action being taken by the creditors including any petition to wind-up the company. In practice, in the majority of cases it is not possible to rescue the company and the administration process ends with the company entering into liquidation and winding-up proceedings. However, the process of administration itself often results in a better outcome for creditors than if the company were to have immediately entered liquidation.

In administration, control of the company and all its assets are transferred to the administrators which means that they hold the legal title to all of the company's property, including its historical records. It is important to remember that the administrators may be less inclined, or able, to approve the donation of records during administration because, if the company is merged or bought out, its archives may form part of the assets transferred to the new company. This may happen in particular where the archives of a company form part of its "brand". An example of this is the archives of Laura Ashley which were transferred to its new owners, Gordon Brothers, when it was rescued out of administration.

Liquidation and winding up

Liquidation and winding up are terms that are sometimes used interchangeably. They are processes that generally occur together when it has been determined that a company cannot be rescued and will be dissolved.

Liquidation is the specific process in which a company's assets are sold off in order to pay the creditors, so that the company may be closed.

Winding up is the process of bringing to a close all of the affairs of a company, including the liquidation process itself.

There are different ways that a company can enter liquidation including:

Creditors' Voluntary Liquidation (CVL) which occurs when the directors of an insolvent company decide to liquidate it with the agreement of its shareholders in order to repay the company's creditors;

Members' Voluntary Liquidation (MVL) which occurs when a solvent company (i.e. one which has sufficient assets to cover its debts) decides to cease trading;

Compulsory liquidation which follows a winding-up order issued by the court on the petition of the company, its directors, creditor(s), and/or shareholders.

When reading through insolvency notices in *The Gazette*, you may come across references to these different types of liquidation. In practice, it may make little difference what form of liquidation takes place when rescuing the records of a company. What is more important to remember is that in any type of liquidation, you should contact the insolvency practitioners quickly as the company could be soon be dissolved.

Review: Important points for archivists

Corporate vs Personal Insolvency: It is helpful to filter out personal insolvencies when searching in *The Gazette* online otherwise you will receive thousands of results which are not relevant to businesses.

Administration and Liquidation: In both cases you should try to contact the insolvency practitioner as soon as possible. However, more urgent intervention may be necessary if a company has reached the liquidation stage as its dissolution may follow quickly.

Different outcomes of administration: Unlike liquidation, administration has more than one possible outcome. It may result in a company buyout or merger in which the company's assets, including its archives, may be transferred to a new company. This is especially likely in cases where a company's heritage is considered part of its 'brand', such as the archives of a creative design company. In other cases, the company may be able to continue in business as a going concern and may wish to retain all of its historical records. Administrators may therefore be unable to determine which, if any, records are available for donation until the outcome of the administration is clear.



3. Monitoring and research

Searching *the Gazette* Online

The Gazette: Overview

The *London Gazette* is an official public record of the Government of the United Kingdom and is published on behalf of Her Majesty's Stationery Office (HMSO) by The Stationery Office.

The *Gazette* publishes notices of royal assent for bills of the Westminster and Scottish Parliaments, the granting of honours and royal proclamations, and corporate and personal insolvencies.

Regions: The *London Gazette* publishes notices for England and Wales. The *Edinburgh Gazette* and The *Belfast Gazette* publish notices for Scotland and Northern Ireland respectively.

Publication dates: The *London Gazette* is published every weekday, The *Belfast Gazette* each Monday, and The *Edinburgh Gazette* each Monday and Wednesday. Notices published in each of them are accessible online at: www.thegazette.co.uk.

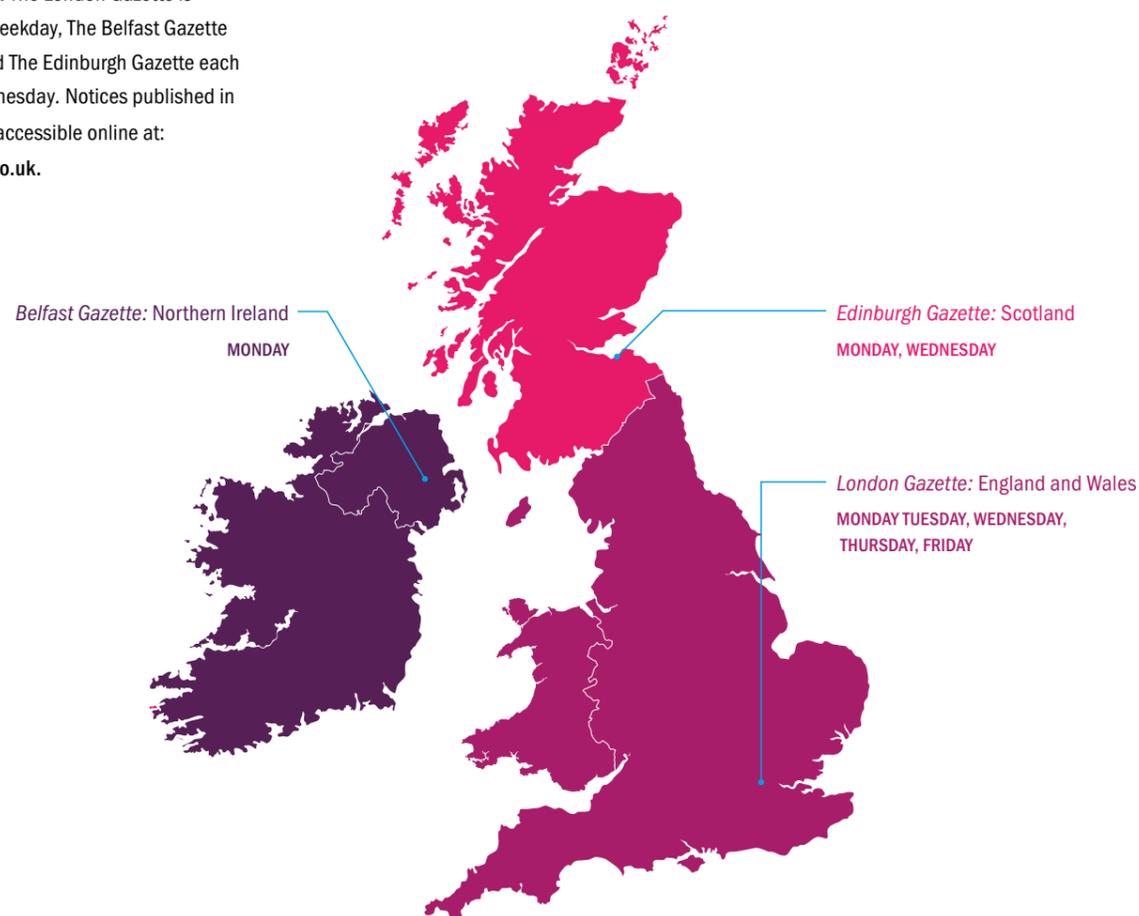
Insolvency notices in *The Gazette*

The *Gazette* is the official source of corporate and personal insolvency notices. It is a useful tool for both monitoring the types of companies entering insolvency proceedings and finding out how to contact the insolvency practitioners for specific companies. The notices for corporate insolvencies provide information on:

- **the company** itself including its official name, Companies House registration number, and the type of business it operates;

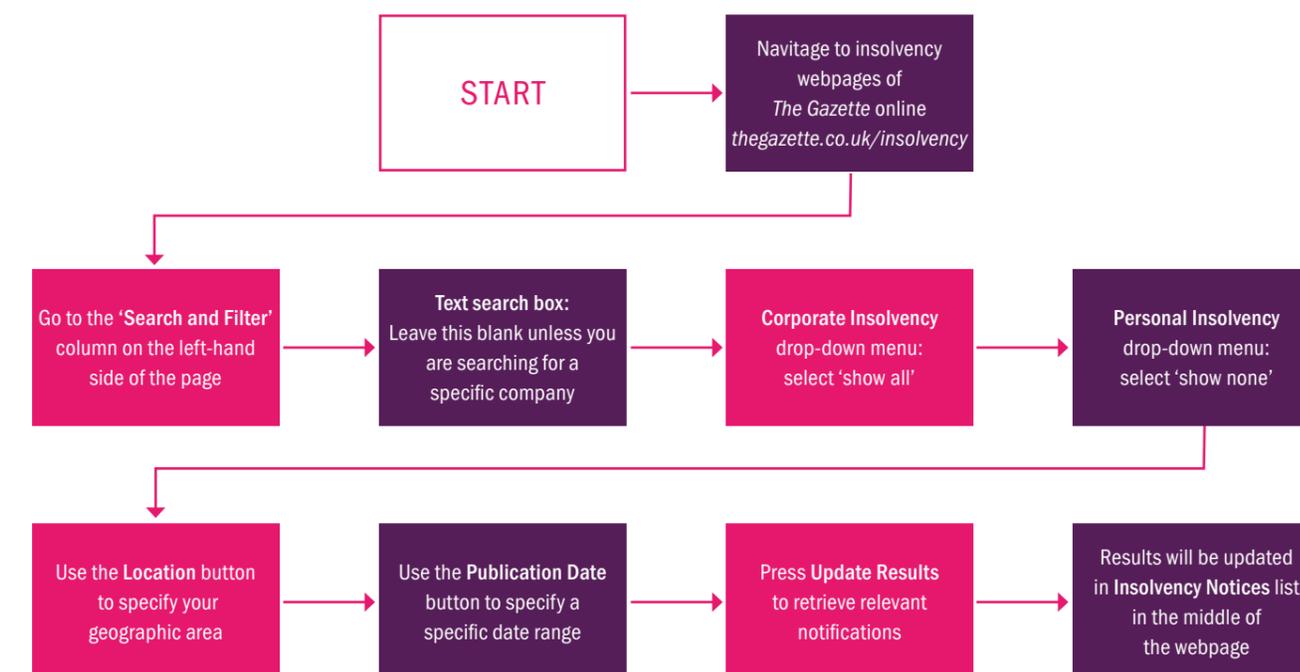
- **the stage of insolvency** which has been reached (e.g. administration); and
- **contact details** for the insolvency practitioner who is acting as administrator or liquidator for the company.

The notices published via the online edition include a **search and filter** function which allows you to select specific types of notice, regions, and publication dates. The following pages provide an overview of how you can use these search and filter functions to pinpoint the types of organisations you are interested in.



Searching and filtering in *The Gazette* online

Here is an overview of the steps you can take to narrow down search results within the online edition of *The Gazette*. Try opening the webpage at thegazette.co.uk/insolvency and follow the steps below. For example, you could search for all of the corporate insolvency notices for companies registered in Conwy from 1 to 31 September 2021.



Description of steps:

1. Navigate to "Insolvency Notices" landing page: <https://www.thegazette.co.uk/insolvency>
 2. Find the "Search and filter" column on the left side of the page
 3. You can leave the "Text search" box blank, unless you are searching for details of a specific company
 4. Select "show all" under corporate insolvency to select all types of insolvency (administration, liquidation, etc). Or select only one insolvency type to narrow this down. If, for example, you only wish to view notices relating to companies which have already reached the liquidation stage, you can select the following options under the associated drop-down menu: Creditor's voluntary liquidation; Liquidation by the court; Members' voluntary liquidation. If you are only interested in companies which have not yet reached the liquidation stage, you can for example select "administration" within the same drop-down menu.
 5. Under Personal Insolvency select "show none". This will exclude insolvency notifications relating to individuals which it is best to remove if you are only searching for companies.
 6. Toggle the 'Location' button to specify your geographic area;
 - You can enter a specific place or postcode and a given radius of up to 30 miles;
 - You can select a local authority.
 7. Toggle down on "Publication date" to select a specific date range
 8. Press "Update results" to retrieve relevant notifications
 9. Results will be updated in the "Insolvency notices" list in the middle of the webpage.
- Tip:** Once the list of search results is populated in the centre of the webpage **DO NOT** use the 'Sort By' function, as this will remove the filters you have selected and return many results which are not relevant to your selection.

Search results

You can select individual search results to find out more about each company. Click on the name of a company in blue text or 'view full notice'. The following outline of an insolvency notice provides an example of the types of information they include, and highlights in bold those which may be most important for you.

Company number: A unique identifier produced on registration with Companies House; this can be used to find the company in the Companies House Register online (see 'The Companies House Register' below). Company numbers are registered chronologically so a lower Company number indicates an older firm. For example:

000[#####] is a company registered pre-1909

00[#####] is a company registered between 1908 and 1972

0[#####] is a company registered after 1972

Unfortunately, the insolvency notice does not tell you specific date or year of incorporation of the business. If you want to find this out, you need to access the company's details in the Companies House register, or you could try to see if the information is available on the company's website.

Registered office: The registered office is the official registered address for the company. In addition, a company may have a 'principal trading address' that indicates the main centre of operations for the company, which may be different.

Insolvency timeline: This indicates dates of key events in the insolvency process, with a link to the individual Gazette notification for each event. You can use this timeline to easily see which stage of insolvency (e.g. administration, liquidation) the company has reached.

Nature of business: This usually matches the ONS Standard Industrial Classification (SIC) code for the company, which can also be found in its Companies House listing.

Administrators/Liquidator's name and address: Contact details for the administrator(s) or liquidator(s) of the company.

For further details contact: Details of a specified individual who should be contacted regarding the insolvency are sometimes provided at the bottom of a notice and may be different from the named insolvency practitioners.

Notice Details		Notice timeline for [company]		
Type		Appointment of Administrators	Notices to Members	Appointment of Liquidators
Publication Date		Appointment of Liquidators		
Edition		Company Number		
Notice ID		Name of Company		
Company Number		Nature of Business		
Issue Number		Registered Office		
Page Number		Type of Liquidation		
		Liquidator's Name and Address		
		Date of Appointment		
		By whom Appointed		
		For further details contact		

The Companies House register

If you want to find out more about the company, including its age, you can search on the company's website or look it up in the Companies House register. Companies House is the body responsible for the registration of incorporation of limited companies such as public limited companies (plc) and limited companies (ltd). Their register of companies which is available online at:

<https://find-and-update.company-information.service.gov.uk/>

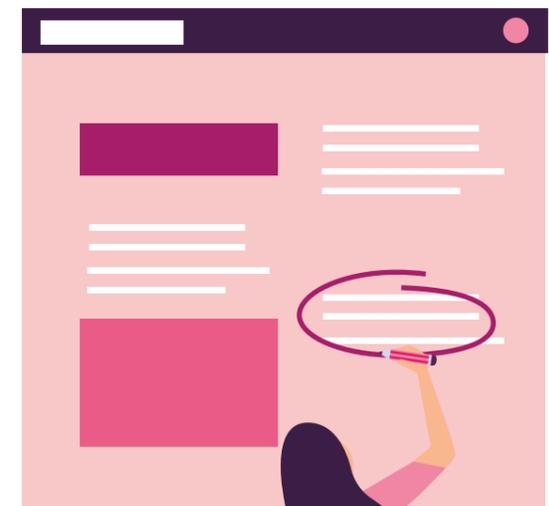
You can search for a company by name, but the most accurate way is to enter its Company Number which you can find in the relevant insolvency notice in *The Gazette* (see 'Search Results' above).

1. Enter the company number in the 'Search the register' searchbox.
2. Click on the company name in the resulting webpage.

The information which is populated includes:

- The incorporation date of the company. This is the date the company was formally registered with Companies House. However, the company may have been established several years preceding its incorporation.
- The type of company (e.g. plc, ltd)
- The nature of the business: This is the ONS standard industrial classification code, which usually matches the 'nature of business' listed in insolvency notice in *The Gazette*.

If you click on the additional tabs at the top of the page you can find further information including a register of the company's officers under 'People'. This may indicate the company Secretary's name and correspondence address which may be helpful if you want to contact the company directly.

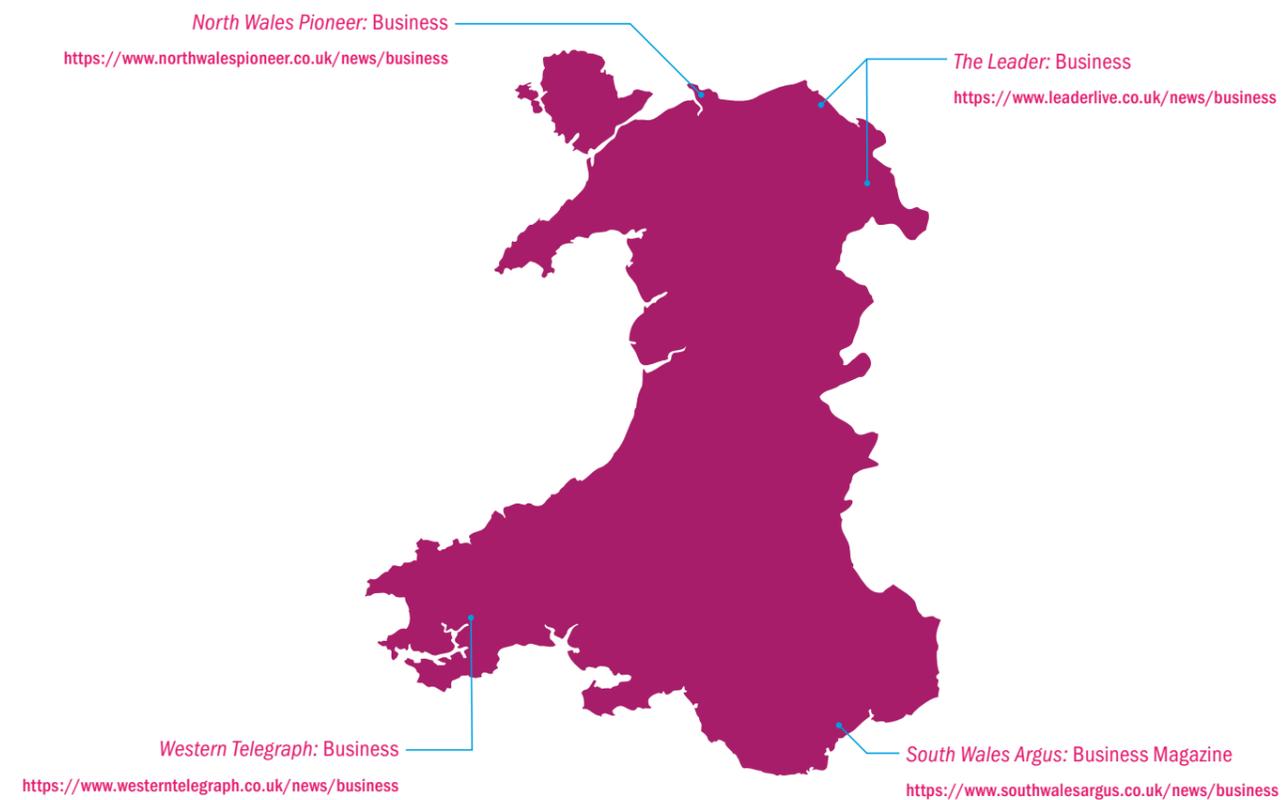


Research in newspapers and business publications

National, local and trade newspapers and magazines are a good source of information about insolvencies, especially for prominent businesses.

They may even report on businesses experiencing financial difficulties which have not yet entered insolvency proceedings, so you may find out about them in advance of their listing in *The Gazette*.

Helpfully, most newspapers and publications which carry insolvency-related news are available online. Below is an overview of the types of news sources available, with examples of each.



National business news sources

- *BusinessLive*: Insolvency and Administration: www.business-live.co.uk/all-about/insolvency-and-administration
- *Wales BusinessLive*: www.business-live.co.uk/all-about/wales

Sectoral business news sources

- *WalesOnline*: Farming business www.walesonline.co.uk/business/farming/
- *WalesOnline*: Construction www.walesonline.co.uk/all-about/construction
- *Business News Wales*: Financial services businessnewswales.com/financial-services/
- *Business News Wales*: Transport businessnewswales.com/transport-news-wales/
- *Business News Wales*: Manufacturing businessnewswales.com/manufacturing-news-wales/
- *Business News Wales*: Food and drink businessnewswales.com/food-drink/

Insolvency news alerts

Several websites and apps provide alert services which you can also use to monitor news sources for information about companies entering insolvency. You can also set up news alerts to be sent to your email using Google Alerts:

1. Go to Google Alerts: <https://www.google.com/alerts>
2. Enter the search terms in the search box (e.g. "Powys" AND "liquidation")
3. Enter your email address
4. Select "Create Alert". You may be prompted to enter your email password.
5. You can select additional options under "Show More" to control the frequency of alerts you receive.

Further guidance is available at: <https://support.google.com/websearch/answer/4815696?hl=en>

Alert search terms

When entering search terms to set up news alerts, be aware that using overly general language can produce a large number of irrelevant results. For example, "Wales" may produce results about New South Wales in Australia, while "administration" produces alerts about government administration (e.g. "The Biden administration").

You can use Boolean searches (AND, OR and NOT) and wildcards using * in Google Alerts to refine your search.

An example may be:

"Flintshire" AND "liquidat*" which will produce results relating to Flintshire and the words liquidate, liquidated and liquidation(s).



4. Contacting insolvency practitioners

Why contact the insolvency practitioner?

As the administrators or liquidators of the company whose records you are interested in preserving, insolvency practitioners (IPs) play a vital role as the holders of the legal title to the company's records. Even if you have made contact with the company, it is crucial that you make contact with the insolvency practitioners as they are the only people who can pass on the legal title to any records donated to your service.

In addition, the IPs may be able to:

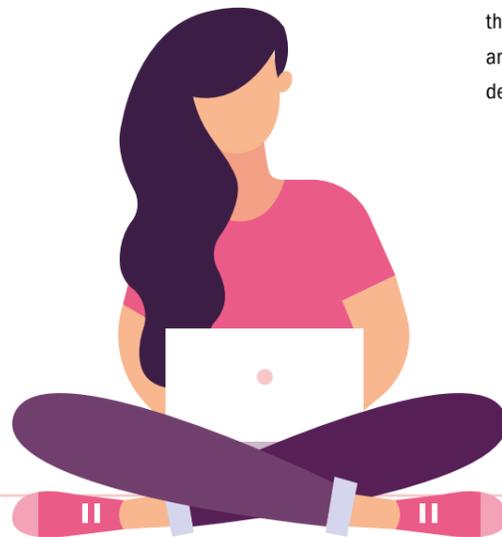
1. Put you in touch with somebody in the company such as a records manager or information officer who may have knowledge of the types of records the company holds, if you have not been able to make contact with the company personally
2. Advise you on the stage of insolvency which the company is in and the likely length of the proceedings; this should help to provide you with a timeframe for arranging the transfer of records.

Making contact

You can find the contact details of the insolvency practitioners (IPs) who serve as the administrators or liquidators, online via *The Gazette*. Guidance on where to pinpoint this contact information is available in this document (see 'Search Results' above).

It is important to remember that an insolvency practitioner's primary responsibility is to rescue the company as a going concern and/or to facilitate the best possible outcome for creditors of the company. The preservation of the historical records of the company may not be an immediately obvious priority from them, and IPs can be very busy with a heavy workload. The following tips may therefore be helpful in your communications with them:

- Be prepared to:
 - advocate for the historical significance of the company's archives
 - respond to concerns that the IPs may have about the transfer of records
 - contact the IPs more than once to obtain a response; as suggested by the Crisis Management Team, it is helpful to arrange a phone call (or online video call) wherever possible to speak about the potential transfer of records in person.
- Be positive and express your willingness to provide guidance on the preservation of the company's historical records throughout the administration/liquidation process, as well as your potential interest in their eventual donation to your service
- Ensure that you maintain regular contact (e.g. bi-monthly) with the IPs so that the preservation of historical records remains on their radar throughout the insolvency process and so you can keep up to date with any developments.



Example contact emails

The Crisis Management Team's 'Business Archives at Risk' webpages provide an example of an email/letter which can be sent to insolvency practitioners to express interest in supporting a company whose records are at risk, alongside general guidance on communication with IPs.

The example on the CMT website is available in English at: <https://managingbusinessarchives.co.uk/getting-started/business-archives-risk/business-crises-how-an-archive-service-can-rescue-records/>

An example which has been used as part of the Records at Risk project is also included below.

Dear [Insolvency Practitioner name]

I am contacting you on behalf of [Archive Service]. I understand that you have been appointed as [administrator/liquidator] of [insolvent company's name (Company House number)] and our service would like to offer assistance to you in preserving any historic business records or archives which are associated with the company throughout the [administration/liquidation] process.

As [company name] is a leading firm in the sector with significant links in [community], their business records will be of interest and importance for academic and local historians in the future. If there is any possibility that the historic records of the company may otherwise be disposed of, the Archive Service may therefore be able to offer a permanent home where they can be maintained and stored subject to statutory access restrictions. Records of historical value may include any which evidence the activities of the company, such as governance records (constitution, certificates of incorporation), AGM and board meeting minutes, summary financial accounts, promotional materials, and photographs.

If you would be happy in principle to discuss the future of the company's records, I would be very grateful to hear from you and to arrange a phone call to discuss this further at your convenience. Additionally, if there is an individual or department within [company name] whom we may be able to contact in relation to their historic records, I would be grateful if you may be able to provide their details or to pass on this offer of support to them.

Thank you and I look forward to hearing from you.

[Signature]

Possible barriers to acquisition

Data protection

As data controllers, IPs have obligations under the UK GDPR with respect to the handling and disposal of the company's records throughout the insolvency process and they may be understandably hesitant to donate records which contain sensitive personal data. For this reason, it may be important to highlight the support for 'archiving in the public interest' provided by the UK GDPR, as well as your archive service's experience in handling sensitive data.

- You may wish to underline that UK GDPR (Article 9.2(j)) provides explicit permission for processing for the purpose of "archiving in the public interest", which supports the transfer of records to an archive service including those containing special category data.
- You can also state that your service is experienced in the appraisal of data sensitives and is able to apply a range of appropriate measures, including a standard closure period of 100 years for any records which include sensitive information.

Business sensitivity and client confidentiality

Insolvency practitioners may also express concerns relating to the business sensitivity or commercial confidentiality of the records. Client confidentiality may also be raised in the case of organisations such as law firms. In these circumstances, it is again important to note that archive services are experts in managing sensitive information and in the application of closure periods.

It may be helpful to provide IPs with a copy of professional guidance relating to data privacy and closure periods, such as the following materials produced by The National Archives:

- Guide to Archiving Personal Data:
<https://cdn.nationalarchives.gov.uk/documents/information-management/guide-to-archiving-personal-data.pdf>
- Closure periods:
<https://cdn.nationalarchives.gov.uk/documents/information-management/closure-periods.pdf>

Sources to help with advocacy

As the preservation of historical records is not the primary responsibility of insolvency practitioners, you may need to advocate for their significance. As an archive service, you will be experienced in donor advocacy, but the following resources may also be helpful in this regard:

- Case Studies of successful examples of rescuing records are available via:
 - the Crisis Management Team¹
 - The Business Archives Council of Scotland and Scottish Council on Archives Collecting in a Crisis²
- Endorsement and recommendations from experts, such as a business historian or other academic researcher in a related field.
- The Code of Ethics for IPs, which the Crisis Management Team has noted may be helpful in persuading practitioners to respond to advice from archivists and which proved helpful in their rescue of the Thomas Cook archive³.

Gift agreements

As noted above, when in administration or liquidation, insolvency practitioners hold the legal title to the company's archives and records. Any gift agreement for the donation of records with your archive service must therefore be signed by the insolvency practitioner acting on behalf of the company whose records you are acquiring.

Your archive service will likely have standard terms of deposit which you prefer to use. In addition, standard clauses for gift agreements which you may find useful have been drawn up by the Crisis Management Team. They are available online at:

<https://managingbusinessarchives.co.uk/getting-started/business-archives-risk/business-crises-how-an-archive-service-can-rescue-records/>



¹ Managing Business Archives (2021) *Archives in Crisis: Case Studies*. Available at: <https://managingbusinessarchives.co.uk/getting-started/business-archives-risk/case-studies/>

² Scottish Council on Archives (2020) *Collecting in a Crisis: A Guide to Rescuing Business Records*. Available at: <https://www.scottisharchives.org.uk/latest/news/collecting-in-a-crisis-a-guide-to-rescuing-business-records/>

³ The Insolvency Service (2020) *Insolvency Practitioner Code of Ethics*. Available at: <https://www.gov.uk/government/publications/insolvency-practitioner-code-of-ethics>; Managing Business Archives (2021) *Saved for the Nation: the survival of the Thomas Cook archive*. Available at: <https://managingbusinessarchives.co.uk/getting-started/business-archives-risk/case-studies/saved-for-the-nation-the-survival-of-the-thomas-cook-archive/>

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