



*“Help! My employer has gone into administration what happens now?”*

## A Guide for Employees Made Redundant In An Insolvency Situation

**hmv.com**

**NOTICE OF ADMINISTRATION**

On 15 January 2013, Nicholas Guy Edwards, Neville Barry Kahn and Robert James Harding of Deloitte LLP were appointed Joint Administrators of HMV Group plc, HMV Music Limited, HMV UK Limited, HMV (IP) Limited and Fopp Entertainments Limited (together the “Companies”). The affairs, business and property of the Companies are being managed by the Joint Administrators. The Joint Administrators act as agents of the Companies only and contract without personal liability. The Joint Administrators are authorised by the Institute of Chartered Accountants in England and Wales (ICAEW). All licensed Insolvency Practitioners of Deloitte LLP are licensed in the UK

The website HMV.com has been suspended following the appointment of the Joint Administrators. No purchases can be made online until further notice.

Administrators’ helpline number - 020 7303 0700

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**Legal notice**

On 9 November 2013, Neville Barry Kahn, Nicholas Guy Edwards and Christopher James Farrington each a partner in Deloitte LLP were appointed Joint Administrators, and now manage the affairs, business and property of, Comet Group Limited.

The Joint Administrators contract as agents of the Company only and without personal liability. The Joint Administrators are authorised to act as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales (ICAEW).

Comet Group Ltd In Administration



## Introduction to the Guide

**This programme includes “all you need to know” about what happens when you are made redundant in an insolvency situation.**

We have set out the programme to be as user-friendly as possible. It cannot cover 100% of all insolvency situations as they are so diverse, but we have tried to be as comprehensive as possible.

We know it is a deeply worrying time to lose a job, but please note we **cannot** respond to individual questions on email or by telephone. We are not experts on unemployment benefits or tax credits and we cannot answer specific questions on entitlements.

You may be able to get such information from the Citizens Advice Bureau, your union or the Department of Work and Pensions, if losing your job causes you major financial problems.

KSA Group, February 2020

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## **Have you recently been made redundant due to your employer entering CVA, receivership, liquidation or administration?**

This can be a real shock to you and we know that many people get very little help from the liquidator, CVA supervisor, receiver or administrator. So read our guide below and or download this guide from DBEIS [guide for employees](#)

### **DBEIS HELPLINE**

There is a helpline to answer your questions. The number to ring is 0845 145 0004 (calls are charged at local rates).

## **What is Insolvency of A Company?**

Many companies have problems with collecting in cash from their customers. Or perhaps they cannot borrow enough money from their lenders or investors. This can lead to a situation where the company cannot pay its own suppliers, its bank loans or wages and salaries. This situation is known as the “cashflow test of insolvency”.

Sometimes the company may also have fewer assets like property or stock than it owes out to creditors. This is known as the “balance sheet test of insolvency”.

Finally a creditor (someone the company owes money to) takes legal action to try and get paid quicker. This can lead to the failure of the business and is called the “legal actions test of insolvency”.

In simple terms the company can and often does just run out of cash. This leads to insolvency, the inability to continue and then experts need to be brought in to try and save the company or close it down. These experts are known as insolvency practitioners (IPs).

IPs are often accountants or lawyers, with huge experience and they have to hold a licence to practice, they are heavily regulated by the law and the government. The medical comparison is doctors, specialists and undertakers. IPs can be all of those things!

Under United Kingdom Insolvency legislation there are several insolvency “events”, we know this seems like a lot of information, but please read the descriptions below, until you find the one that sounds like your situation.

We do not provide a long explanation of each insolvency option or event, but we do provide a live link to our guides on our website [www.companyrescue.co.uk](http://www.companyrescue.co.uk) for you to click and learn more.

## Company Voluntary Arrangements (CVA)

A very powerful way to rescue and restructure a failing business. This CVA option allows the company to cut costs, close down shops or factories and make employees redundant.

The company “goes into a CVA” only when its creditors (people who are owed money) agree a “deal” to pay some or all of the company’s debts back. Employees can be made redundant without any payment of redundancy entitlements or lieu of notice. This can happen before the creditors agree the CVA plan.

Usually wages and holiday pay will have been paid before you lost your job. These are known as preferential payments.

Directors remain in control of the business, but have to convince expert advisors, IPs and creditors there is a viable business plan.

You can claim any redundancy due and lieu of notice from the Government’s Redundancy Payments Office (RPO), as per the calculations in on page 7 of this guide. But you must wait until the company has formally entered the CVA process.

If the company or the supervisor of the CVA has not provided a claim form, then you need to make a claim to the Redundancy Payments Office on the form RP1, see page 9 for more details.

See here for more details: [What is a CVA](#)

## Creditors Voluntary Liquidation

This is usually the end of the company AND the business. There is normally very little left and the company is “buried” by an undertaker called a liquidator.

The liquidator has statutory powers to terminate employment contracts as soon as he is appointed by the creditors to close down the company. The liquidator also has extensive powers to investigate the conduct of directors and if they have been grossly negligent or fraudulent they can request to have them banned from being directors and alert the appropriate authorities.

Often wages and holiday pay not will have been paid in full before you lost your job. These are known as preferential payments and can be reclaimed in part along with any redundancy due and lieu of notice from the Government’s Redundancy Payments Office (RPO), as per the calculations on page 7 of this guide.

See here for more details: [What is creditors voluntary liquidation?](#)

## Administration or Pre pack Administration

This is where the directors or the bank / lenders have decided that the company is not viable, or has too many shops, or employees to be profitable. Usually, the administrator will be “appointed” to find a buyer for the business. This might be a competitor, a new company owned by the old company directors or a completely separate non trade buyer.

In most cases employees will be made redundant before any sale of the business. In some cases jobs will be moved to the new company that has bought the business. This process is called “TUPE” or transfer of Undertaking Protection of Employees Rights.

Often wages and holiday pay not will have been paid in full before you lost your job. These are known as preferential payments and can be reclaimed from the administrator or more likely from the government along with any redundancy due and lieu of notice from the Government’s Redundancy Payments Office (RPO), as per the calculations on page 7 of this guide.

See below for more details:

[What is administration?](#)

[What is a prepack administration?](#)

## Compulsory Liquidation

Often this is the result of a supplier or the taxman (HMRC) taking legal action to recover debts. If these debts are not paid, then the creditor can issue something called a [winding up petition](#). This leads to the company being “wound up” by the High Court.

The most common issuer of winding up petitions is HMRC, for non payment of PAYE and other taxes.

This is usually the end of the company AND the business, particularly if the petition is advertised as the company’s bank will freeze their bank accounts making any payments impossible. At the end of the process there is normally very little left and the company is “buried” by the Official Receiver or a liquidator who is an IP.

The liquidator has statutory powers to terminate employment contracts, as soon as he is appointed by the court or the Official Receiver, to close down the company.

Often wages and holiday pay not will have been paid in full before you lost your job. These are known as preferential payments and can be reclaimed in part along with any redundancy due and lieu of notice from the Government’s Redundancy Payments Office (RPO), as per the calculations on page 7 of this guide.

See here for more details:

[What is a winding up petition?](#)

[What is compulsory liquidation?](#)

## Consultation on redundancies

Many people ask about whether it is right that they have not been consulted on redundancies.

Currently if a business is to make more than 100 people redundant then they will need to consult for 45 days. If a business is to make redundant less than 100 people then the consultation period is only 30 days. Less than 20 people and there is no need for any consultation period.

Whilst there is a duty to consult, an employer is not prevented from making redundancies if after meaningful consultation has taken place, no agreement can be reached. As such, it is difficult to argue unfair dismissal.

A claim made via the employment tribunal will be regarded as an unsecured creditors claim and any compensation is likely to be less than what is awarded. In the case of pre-pack administration consultation may be more of an issue and it is possible that the claim should be paid by the new owner under the (TUPE) rules. However, it is advisable to seek legal advice as this is a complex and difficult area.

There is no hard and fast guide that we can give on pre pack and trading administration redundancies, many lawyers can give differing advice. Case law is very fluid on this matter – with different outcomes in some cases than is expected, so each situation may have different outcomes.

Always talk to the administrators' staff and ask for guidance, or contact Citizens Advice Bureau if you have financial hardship as a result.

## **So how much will I get? Brief guide to the calculation of the employees claims in insolvency:**

Once the total claims have been worked out the employees can claim directly from the Department for Business Innovation & Skills, who may then stand in the employees' shoes and can claim against the company in insolvency.

The purpose is to guarantee minimum payments to the employees which may not (and often are not) paid out of the insolvency as a result of insufficient funds or to avoid preferences.

All employees claims are calculated as per the guidelines in the legislation but the actual payments made by the Government are subject to maximum "capped" payments. The limit on the amount of a week's pay under the insolvency provisions of the Act is currently £538 per week, the cap is reviewed annually.

### ***The claims and current statutory limits are as follows:***

NB; not all claims may be met by DBEIS. Rates can be varied by Government annually.

#### ***Arrears of pay:***

Most people are paid weekly or monthly in arrears. This claim is limited to 8 weeks at the statutory limit of £538 per week and includes salaries, wages and sales commissions.

#### ***Holiday pay:***

Holiday pay is limited to 6 weeks of holiday pay due or a maximum of £860, in the last 12 months, at the statutory limit of £538 per week.

#### ***Payments in lieu of notice:***

Under the contract of employment between employer and employee any required notice amount due from the employer is payable at the statutory limit of £538 per week. However, benefits and/or money earned obtained further employment during your notice period paid to you will be deducted from your compensation. It is important to claim benefits as these will be automatically deducted from your claim even if you have not claimed them.

If you had no contract of employment, then statutory minimum payment for lieu of notice is as follows:



- Once an employee has worked continuously for at least 1 month, he or she is then entitled to 1 week's notice for each completed year of service up to a maximum of 12 weeks' notice.
- So, from 1 month to 1 year - 1 week's notice; 2 years - 2 weeks' notice; 3 years - 3 weeks' notice etc.
- An employee who has been continuously employed for 1 month or more must give at least 1 week's notice of termination.
- These are the legal minimum periods. The contract of employment can provide for more notice from either party but cannot provide for less than the statutory minimum.

### ***Redundancy Payments:***

Redundancy is where the employer has ceased or intends to cease the business, or the business in the place where the employee is employed.

The requirements of that business for the employee to carry out his or her particular kind of work, or to carry out a particular kind of work in the place of the employee's employment have ceased or diminished, or are expected to cease or diminish.

Any amount payable is capped at a ceiling of £538 per week. This statutory redundancy payment is calculated by reference to the following factors

1. Length of the employee's continuous service at the relevant date and
2. The employee's week's pay at the calculation date,
3. The employee's age at the relevant date (if he is aged over 64 it is subject to reduction) and during his employment.

Here is a calculator to show how much MAY be owed to you.

<http://www.direct.gov.uk/redundancy.dsb>

The maximum number of years to be taken into account for the purposes of calculating a redundancy payment is 20 and the entitlement is calculated as follows:

1. One half week's pay for each complete year in which the employee was less than 22 years old;
2. One week's pay for each complete year in which the employee was less than 41 but not less than 22 years old;

3. One and a half week's pay, for each complete year of employment in which the employee was 41 years old or more.
4. If over 64 years of age the employees claim is reduced by one twelfth for each month over 64 to a maximum of 65 where there is no payment.

Employees must be able to show two calendar years of continuous employment at the relevant redundancy date, but any period of continuous employment before his 18th birthday does not count. Weeks count as weeks of continuous employment if an employee actually works 16 hours or more or works under a contract normally involving 16 hours' work or more.

As ever redundancy claims are complex and the brief outline here is not comprehensive or case specific.

Please be aware that DBEIS will seek to reduce payments to redundant employees by assuming that they are claiming job seekers allowance. Any pay received in the period between redundancy and claim payment will generally be deducted. So it's probably best practice to make those claims anyway to help relieve financial hardship.

You claim by filling out form RP1, which you can get by calling 0845 015 0010 and quoting URN 10/708.

## **What if I have really serious credit card and loan debts?**

Visit our sister site [www.debtless.co.uk](http://www.debtless.co.uk) for detailed help or seek advice from recognised debt advisors like StepChange <http://www.stepchange.org/>

## Summary

Losing a job is always a most worrying time, we hope that this guide provides answers to your questions.

Please use our website [www.companyrescue.co.uk](http://www.companyrescue.co.uk) to find out more about all of the insolvency issues or speak with the insolvency practitioner's offices to get more information

Above all make all your claims as fast as you are able to do them and make sure you visit the DWP offices immediately you have been made redundant to claim benefit.

***“Good luck with finding future employment!”***

Thank you for reading and using our guide.

Please email any comments to [info@ksagroup.co.uk](mailto:info@ksagroup.co.uk)



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Association