

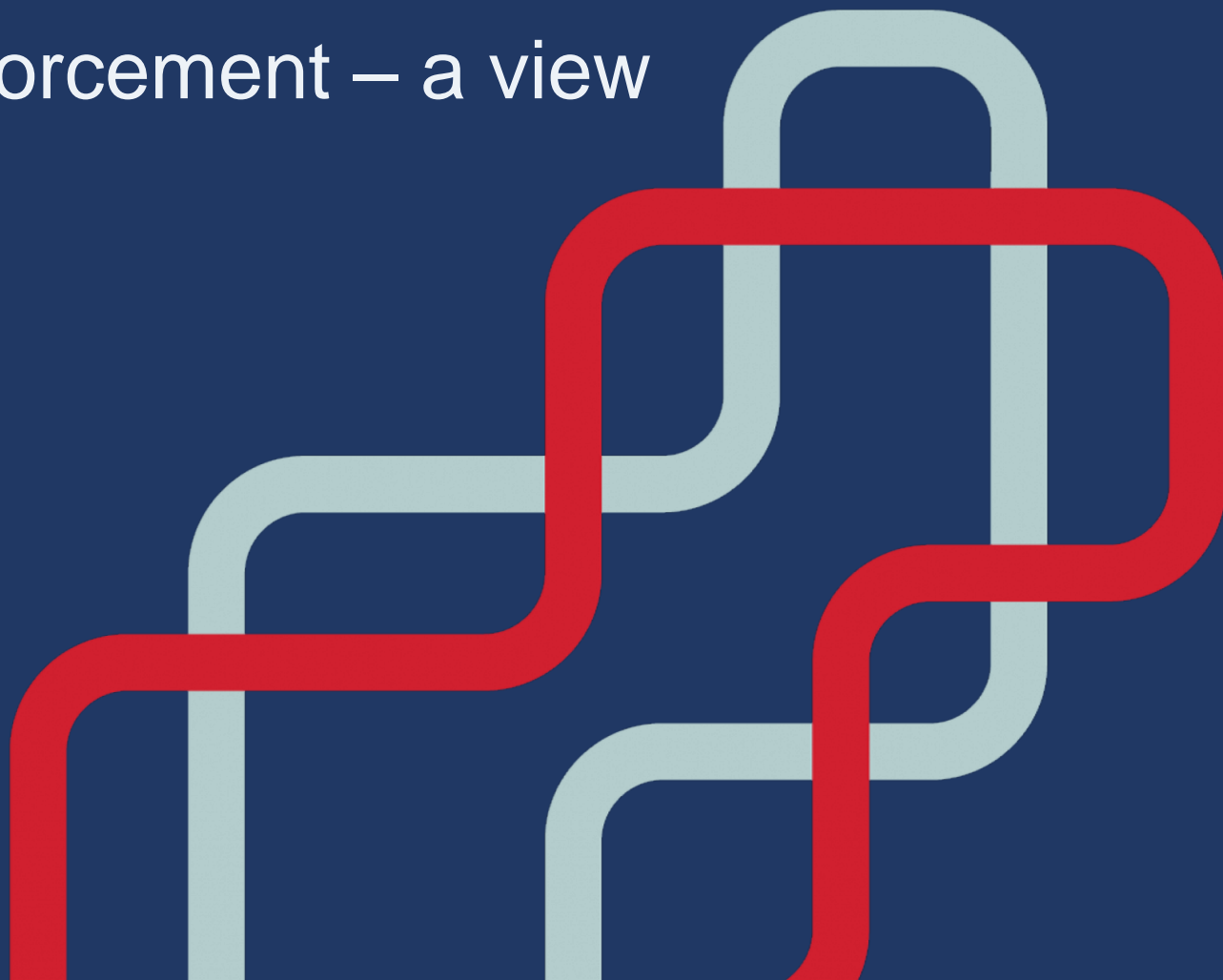


The Insolvency
Service

Insolvency & Corporate Enforcement – a view from the UK.

Dean Beale and Dave Magrath

The Insolvency Service of England
and Wales



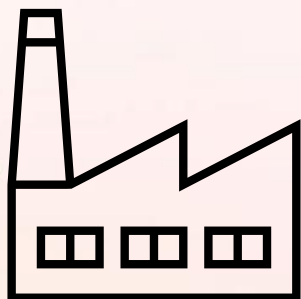
INSOLVENCY SERVICE PURPOSE

**To deliver economic
confidence by:**

- Maximising returns to creditors
- Supporting those in financial distress
- Tackling financial wrongdoing

PURPOSE OF OUR ENFORCEMENT REGIME

- Prevention of future harm, by tackling abuse of the UK's corporate and insolvency frameworks
- Act as a deterrent, driving good corporate governance, improving director standards and legal compliance
- Bring offenders to justice and seek redress/recovery where appropriate
- Support a level playing field and confidence in business

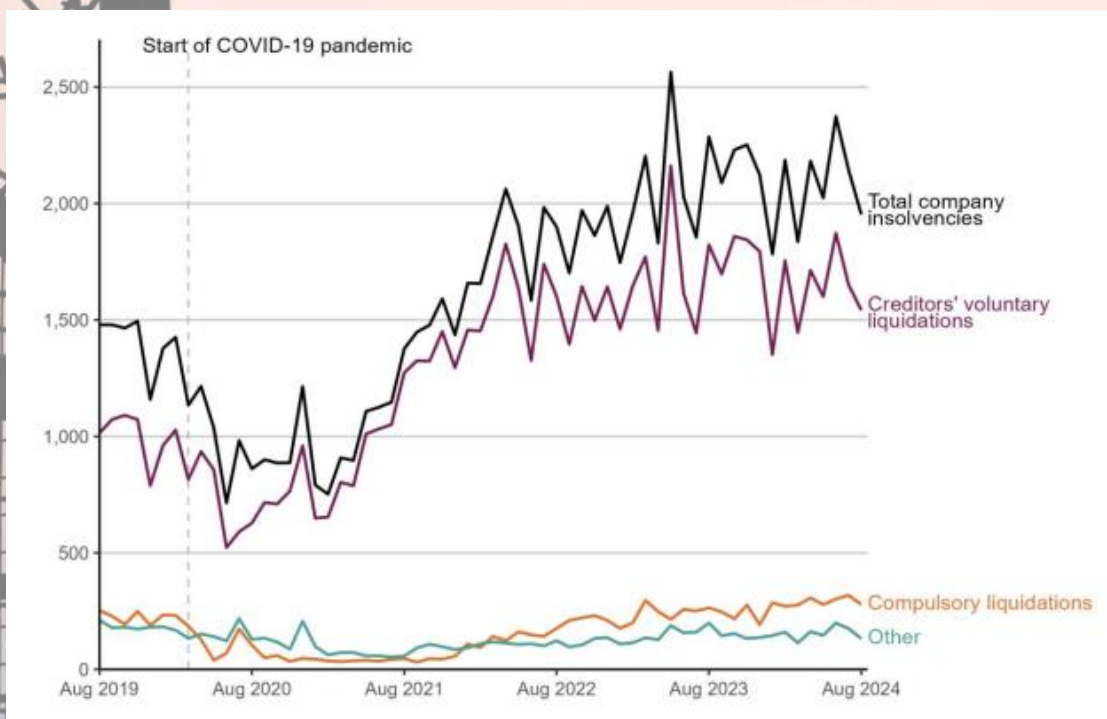


5.5 million private sector businesses in the UK

5.45 million businesses were small (0 to 49 employees)

37,800 businesses were medium-sized (50 to 249 employees)

8,250 businesses were large (250 or more employees)



25,000 company insolvencies

35-40,000 directors

The corporate regulatory and law enforcement landscape

COMPANIES HOUSE

- Incorporates companies
- Requires information on the company and publishes on register
- Queries information on the register
- Investigates and enforces breaches of Companies Act (civil)

INSOLVENCY SERVICE

- Investigates live companies and can apply for companies to be wound up in public interest
- Disqualifies directors (civil proceeding)
- Investigates, enforces/prosecutes breaches of Companies Act (civil and criminal)
- Investigating and prosecuting authority re. redundancy notifications

SERIOUS FRAUD OFFICE

- Investigates and prosecutes limited number of cases involving serious or complex fraud, bribery or corruption, which often involve companies

NATIONAL CRIME AGENCY

- Investigates corporate structures linked to serious and organised crime

CITY OF LONDON POLICE

- As national lead force for fraud, investigates corporate structures linked to fraud

OTHER POLICE FORCES

- May investigate companies as part of broader law enforcement work

FINANCIAL REPORTING COUNCIL

- Sets Corporate Governance and Stewardship codes for large companies
- *If reformed into the AUDIT, REPORTING AND GOVERNANCE AUTHORITY as proposed, would gain new powers to tackle breaches of directors' duties relating to corporate reporting and audit*

FINANCIAL CONDUCT AUTHORITY

- Regulates financial services firms
- requires those firms to have controls to mitigate financial crime risks
- powers include imposing financial penalties, prohibiting individuals from carrying out regulated activities, public censure and prosecution

HMRC

- Collects tax from companies (often a creditor)
- Investigates companies linked to tax and customs avoidance, evasion/ fraud

OTHERS WITH A REGULATORY / QUASI-REGULATORY ROLE

Including Trading Standards, Information Commissioners Office, Environment Agency, sector-specific regulators, Competition and Markets Authority

THE COMPANY

DIRECTORS

SHAREHOLDERS & PEOPLE WITH SIGNIFICANT CONTROL

Authorised corporate service providers

Insolvency Practitioners

Auditors

Professional advisors

Creditors

Key:

- **DBT partner organisations**
- **Law enforcement bodies**
- **Other government bodies**
- **Key private sector actors with influence over the company**

Note that a full analysis would also cover other legal forms e.g. partnerships, regulation of corporate professions, and the devolved picture in Scotland, NI.

The work of the Insolvency Service

Civil investigations

- Insolvent
- Dissolved
- Live/trading

Resulting in:

- Disqualification of directors
- Compensation orders
- Companies wound up in the public interest
- Referrals to other enforcement agencies for action

Criminal investigations

Investigating breaches of:

- Company law
- Insolvency law
- Insolvency-related fraud

Resulting in:

- Prosecution
- Confiscation orders

Relevant Legislation:

The Insolvency Act 1986, The Company Directors Disqualification Act 1986, the Companies Act 2006, Employment Agencies Act 1973; Trade Union and Labour Relations (Consolidation) Act 1992; Economic Crime and Corporate Transparency Act 2023.

History of our enforcement functions and powers

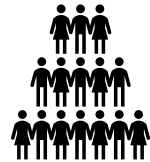
- **1883** The role of Official Receivers is created – to independently investigate the causes of bankruptcies. Covered company liquidations from 1890
- **1967** Powers introduced allowing for investigations into live companies. Soon after a ‘Companies Investigation Branch’ established in the then Dept for Trade and Industry.
- **1976** Civil regime introduced to allow for disqualification of company directors
- **1990** INSS (host organisation of the Official Receivers) becomes an executive agency of DTI
- **2006** Companies Investigation Branch moved from DTI into INSS
- **2017** Criminal enforcement teams (who take forward criminal prosecutions on behalf of the SoS) moved from BEIS into INSS: Official Receiver, live investigations, disqualifications and criminal enforcement functions now all sited within INSS
- **2021** INSS secures powers to investigate directors of dissolved companies
- **2023** ECCTA creates 100+ new Companies Act offences and provides for funding of INSS investigation and enforcement through fees levied by Companies House

Changes to UK company law

Economic Crime and Corporate Transparency Act.



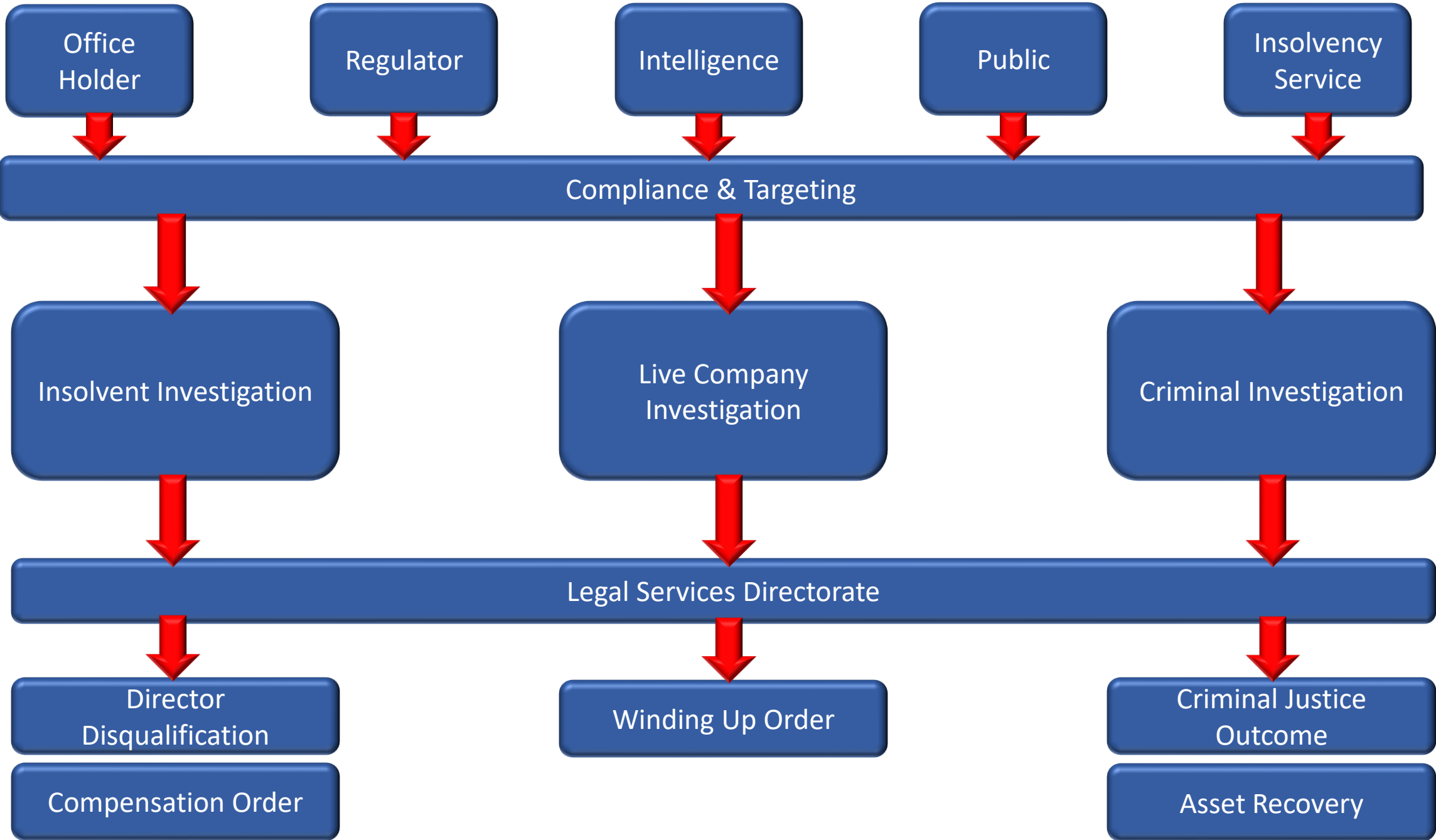
Fee funded



+ 200 growth



80 new offences





New Anti-Money Laundering Capability

- Identify and disrupt money laundering enacted through UK registered companies.
 - Dedicated Intelligence cell with embedded officers in National Economic Crime Centre & Companies House.
 - Utilise a range of civil and criminal powers to tackle wrongdoing.
-
- 50,000 companies involved in fraud
 - Identification of £83 million in criminal property in the UK.
 - 100 companies linked to an organised crime group for money laundering purposes.

The Insolvency Service's Enforcement Activities 23/24

2,340 Investigation Outputs in 23/24 Up from 2,008 in 22/23

- 1,222 Director Disqualifications
- 298 Re-use of company's name rectifications
- 274 Criminal Referrals
- 182 Criminal Charging Decisions
- 139 Live Company Investigations
- 134 Bankruptcy and Debt Relief Restrictions
- 91 Non-Criminal Referrals



Director Disqualifications

- ✓ Average Disqualification Tariff - 8.6 years
- ✓ Disqualification Tariff > 10yrs - 50%
- ✓ Net benefit to the market from DQ activity in 23/24 - £122m to £197
- ✓ Compensation Orders and undertakings totaling £2,828,928 and costs awards of £1,552,174 were secured

Criminality

- ❖ Financial sentences - £762k
- ❖ Costs awards - £225k
- ❖ Sentencing Months - 2,520
- ❖ Convictions - 87
- ❖ Average time to charging decision – 15.8 months

Live Company Investigations

- 45 companies wound-up in the public interest.
- 25 Referrals made to other prosecutors and other regulators



62% of all Disqualification and criminal charging decisions in 23/24 were Covid Support Scheme abuse related



91% of authorised proceedings result in an outcome (target 85%)

Builder who overstated income to secure Covid loan sentenced for fraud



Covid Support Scheme

He overstated the income from his construction companies

- A north Somerset builder, submitted grossly inflated turnover figures to obtain two Covid Bounce Back Loans worth £50,000 each for construction firms which were not trading at the start of the pandemic
- The builder made the applications for the taxpayer funds knowing they were dishonest, but said he was desperate for the money
- His father also ignored the rules of the government scheme by applying for a second Bounce Back Loan just three days after an application had been submitted for the same business
- The builder was sentenced to two years in prison, suspended for 18 months and his father was sentenced to 16 months in prison, suspended for 12 months.

Timeshare advisers shut down over £3.75m fraud

Sara White, Editor, Accountancy Daily

 24 Apr 2024

**FRAUD
ALERT**

Advance fee
fraud

- Timeshare Legals was wound-up at the High Court in London on Tuesday 16 April following investigations by the Insolvency Service
- The company, which claimed to help people exit their timeshare contracts was shut down after misleading clients about the strength of their cases and convincing them to pay upfront fees of thousands of pounds.
- The business was set up in October 2018 for people wishing to terminate or claim for mis-sold timeshare agreements, mainly in Tenerife. Clients were charged upfront fees plus a percentage of any recoveries.
- However, many of the claims where upfront fees had been taken never had any realistic chance of being successful and were assessed without proper engagement from lawyers.
- The company provided very limited co-operation with our investigation, failing to produce any trading or financial records, resulting in investigators being unable to establish the legitimacy of, or the reasons for, the transfer of more than £900,000 to unknown accounts.

Rogue insolvency firm shut down

A Manchester company has been forced to close after it offered insolvency services when none of its directors were licensed to provide these services

- Winding-up order against a company that was offering unlicensed insolvency practitioner services. These actions put the integrity of the insolvency regime at risk.
- Save Consultants Ltd, Manchester - advertised itself as an alternative solution to formal insolvency proceedings, providing a brokerage service to assist directors in financial distress to sell their interest in companies and leave their debts behind.
- The company's strapline on its website promised to *help individuals get back in control of their finances and put their businesses on a more secure financial footing.*
- However, despite claims that they had worked in corporate restructuring and the insolvency industry for a number of years, none of the current or former directors of Save Consultants were licensed insolvency practitioners.
- Vital that licensed and reputable insolvency practitioners and directors play their part in creating that level playing field we all want.

Indian Restaurant iNaga Fined and Disqualified for Hiring Illegal Workers

- Long term partnership with Immigration Enforcement
- More than 200 directors disqualified
- 26% repayment rate
- Contribution to wider government priorities



Immigration Enforcement

Strengthen our reputation and impact in investigation and enforcement

Operational Response

- Companies House Reform
- Anti-Money Laundering
- Increase activity in Scotland
- Bounce Back Loan abuse
- Phoenixism
- Cross government collaboration

Technology & Data

- Enhance intelligence and targeting systems
- Artificial Intelligence
- Remote Interviewing
- System Integration with Police intelligence
- Forensic Services
- Civil Case Management System
- Data Analytics
- Private sector partnerships

Capability

- Intelligence Review
- High Profile/Complex Cases
- Civil Forfeiture
- Forensic Accountancy
- Communication
- Prevention & Education
- Policy development

Workforce

- Leadership development
- Expand Government Counter Fraud Profession membership
- Digital Investigation
- Disclosure/Legal Professional Privilege
- Diversify recruitment

