Companies, Damned Companies and Statistics – Corporate Insolvency Through The Years: Have We Got It Right With The Existing Regimes?

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I Introduction

A cruel fact of commercial life is that some companies will fall into insolvency. Some companies tend to move in and out of insolvency depending on trading conditions and others, while not regularly becoming insolvent, are able to make their way out of insolvency, perhaps because their financial position is not too serious. However, other companies may need to avail themselves of the various insolvency regimes that are provided by the law, in order to address their position. Over the years the UK legislature has seen fit to provide in statute different kinds of regimes in order either to permit an orderly conclusion to the trading of insolvent companies or to facilitate their restructuring so that they may trade on effectively. All of this means that companies and their creditors have several options to consider when companies are in challenging financial situations.

This paper examines the statistics that have been gathered in relation to company insolvencies in England and Wales and it focuses on the number of all of the formal corporate insolvency regimes that have been available for insolvent companies over the years.[3] This accords with the assertion that a way to assess whether a policy approach has been successful is to consider changes in the use of formal regimes over time.[4] The aim of the paper, in doing this, is first to analyse the statistics, and then to ascertain what can be learned from the statistics as far as the employment of the regimes is concerned. In the course of doing this, it is intended to consider the statistics in light of the many policy interventions that have occurred over many years and to determine whether they have been successful. The paper will also undertake this analysis in light of certain reviews of legislation that have been composed in order to correct perceived shortcomings with the law.

The paper is structured as follows. First, there is a brief explanation of the formal insolvency regimes that have been able to be employed in relation to insolvent companies and the period they were introduced. Secondly, the paper identifies and sets out both the methodology applied to the research for the paper and the relevant statistics that are

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[3] We have gathered into a single table, insolvency statistics from England and Wales up to the end of 2022 as were available to us as at 1 June 2023. The table is reproduced below in the Appendix. It is the product of information and statistics publicly available. We are most grateful for the assistance of the Insolvency Service in identifying a number of sources of such data.
[4] *Enterprise Act 2002 - Corporate Insolvency Provisions: Evaluations Report*, June 2008, 15, available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20110525171537mp_/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/EA02CorporateInsolvencyReport.pdf (accessed 21 June 2023)

analysed in the study. Thirdly, the paper analyses these statistics. It does this by considering the statistics in four time zones which have been selected based on extraneous circumstances and policy interventions. There then follows a section in which we reflect on the numbers of the various insolvency regimes over the years and pose several issues and questions that need to be addressed by policy makers. Finally, some concluding remarks are provided.

II Corporate Insolvency Regimes

The options open to an insolvent company have increased over the years.[5] A number of these options have been amended or restricted at various times. The following provides a bare outline of the available processes and when they came into effect as well as the timeline for some other significant policy decisions impacting upon their operation.

Liquidation, receivership and schemes of arrangement have been available since the nineteenth century.

The Insolvency Act 1986 ('the IA 1986') introduced the corporate rescue procedures, administration and company voluntary arrangement ('CVA'), which came into force in 1987.

The power of a secured creditor holding a floating charge over the assets of a company to appoint a receiver and manager over the company's undertaking has been gradually diminished since 2003. The ability of a fixed charge holder to appoint a receiver, usually referred to as a fixed charge or Law of Property Act ('LPA') 1925 charge, remains unrestricted by developments in insolvency law as does the jurisdiction of the court to appoint a receiver by way of equitable execution.

The Corporate Insolvency and Governance Act ('CIGA') 2020 introduced the new standalone corporate moratorium and the restructuring plan as from 26 June 2020.

The following discusses the relevant regimes in time zones which we use subsequently as the basis for examining the statistics.

a) Pre 1987

Since the introduction of companies registered under the Companies Acts in the nineteenth century, it has been possible for the court to wind up a company. The winding up order made by the court leads to what is usually called compulsory liquidation (or winding up). A liquidator will be appointed by the court to wind up (in effect close down) the company. A compulsory winding up order will follow a petition usually by a creditor of a company. The court will usually make the order if it is satisfied the company cannot pay its debts. It is common for a creditor to present a written demand for payment ('a statutory demand') to the company. The company's failure to satisfy the demand will serve as evidence that the company is unable to pay its debts. The court will usually appoint the Official Receiver, who is a public official, to act as the first liquidator. Depending upon the circumstances, the Official Receiver will remain as liquidator or be replaced by a private sector liquidator (who

[5] For a full account of the processes see, eg, A Keay and P Walton *Insolvency Law Corporate and Personal* (LexisNexis, 5th ed, 2020).

must be a licensed insolvency practitioner). Compulsory liquidation involves the company's assets being sold and the proceeds being distributed to creditors according to a statutory order with secured creditors and preferential creditors being paid ahead of unsecured creditors. Once the process has been completed, the company will be dissolved at which point it ceases to exist.

The possibility of a company entering a voluntary liquidation also dates from the nineteenth century. There are two kinds of voluntary liquidation: members' voluntary liquidation (MVL) – where the company is solvent and the directors have to make a statutory declaration of solvency; and creditors' voluntary liquidation (CVL) where the company is insolvent and so the directors do not make such a declaration. Both types of voluntary liquidation begin with a resolution of the shareholders but thereafter effectively the members decide who to appoint as liquidator in a MVL but the creditors control that decision in a CVL. As with a compulsory liquidation, the liquidator is appointed to wind up the company's affairs. Again, the liquidator does this by getting in and realising the company's assets and distributing the proceeds to creditors (and, if there is a surplus, to the members). Once the company's affairs are fully wound up, the liquidator sends a copy of the final account to Companies House and the company is dissolved three months later.

A scheme of arrangement (scheme) has also been available to companies since the nineteenth century. The current version of the scheme is found in Part 26 of the Companies Act 2006. It is not dependent upon the company being insolvent but is frequently used in such cases. A scheme requires two court hearings: 1) to convene meetings of different classes of creditors (and/or members); and 2) a sanction hearing to approve the decisions of the class meetings. Classes of creditors vote by a 75% majority in value and a majority in number to approve the scheme. The court has no power to cram down a class which has not voted in favour of the scheme.

Receivership in the context of the current discussion is a means by which a secured creditor may enforce its security against the assets of a company over which it holds security. The secured creditor will appoint a receiver who will usually have the power to receive income from the secured assets but also the power to sell them. Prior to the Enterprise Act 2002 ('EA 2002'), the most effective remedy available to a secured creditor (with the benefit of a floating charge over the whole or substantially the whole of a company's undertaking) was to appoint a receiver and manager over all the company's property including the power to carry on the business (this type of receiver and manager was later labelled an 'administrative receiver' by section 29 IA 1986). The appointment will not usually involve the court. The receiver's task is to realise sufficient assets to pay off the secured creditor who appointed them.

b) 1987- 2002

Administration was introduced by the IA 1986. It is an insolvency process by which a company is placed under the control of an administrator, who must act in accordance with certain statutory objectives. Administration is a temporary procedure intended to be used to rescue the company or to lead to a more beneficial result for a company's creditors than an

immediate winding up. Administration most frequently results in a company's business being sold and the proceeds used to pay off the company's creditors. When in administration, a company has the benefit of a moratorium which prevents creditors from taking legal action against it without the permission of the court. In a traditional administration, the administrator will prepare a proposal to achieve the identified statutory objective and the creditors will get to vote on whether or not to approve the proposal. If the proposal is not approved, the administration will usually have to come to an end.

The IA 1986 also introduced the CVA mainly due to the cost and delay involved in attempting to get a scheme approved. A CVA takes the form of a composition of debts or a scheme of arrangement agreed between a company and its creditors out-of-court by the unsecured creditors voting in favour by a majority of at least 75% in value. Secured creditors cannot be bound unless they agree. A CVA cannot bind preferential creditors unless the terms of the CVA recognise the priority that preferential creditors have over unsecured creditors. A short-term moratorium specifically available to small companies proposing a CVA was introduced by the Insolvency Act 2000 ('2000 Act').

c) 2003-2019

In cases where a floating charge was created on or after 15 September 2003, the EA 2002 effectively abolished the power to appoint an administrative receiver except in a number of very specific situations. The power to appoint an administrative receiver out of court was replaced by the EA 2002 with the power to appoint an administrator out of court.

Administration had been introduced by the IA 1986 but at that time an administrator could only be appointed by court order. The EA 2002 made the appointment of an administrator out of court possible either by a secured creditor or the company itself or its directors.

The EA 2002 amendments led to a new practice. It became accepted practice for a company to plan to enter administration and to pre-negotiate a sale of its business to a purchaser (sometimes a person connected with the company). Such administrations are called 'pre-packs' and usually on day one of the administration, the company's business is sold to the purchaser without the creditors being informed beforehand, or being asked to vote on any proposal to achieve the statutory objective identified by the administrator. The ability to appoint an administrator out of court led to the creation and development of pre-packs.

In addition to the virtual abolition of administrative receivership, the EA 2002, amongst other things, also abolished the preferential status of Crown debts (for example, those owed to HMRC).

d) 2020-2022

As from 26 June 2020, CIGA introduced a new form of standalone moratorium (which replaced the little used moratorium available to small companies only who were proposing a CVA) and the restructuring plan ('RP').

The moratorium allows a company's directors to file documents at court which creates an initial 20 business day stay (capable of extension up to a year) on creditor actions against the

company. The moratorium is a standalone procedure which may or may not be used in conjunction with formal rescue processes.

A RP is available under Part 26A of the Companies Act 2006 to a company that has encountered or is likely to encounter financial difficulties. Based largely upon the Companies Act's scheme it too requires two court hearings: 1) to convene meetings of classes of creditors (and possibly members); and 2) a sanction hearing to approve the decisions of the class meetings. Classes of creditors must vote by a 75% majority in value to approve the RP. At the sanction hearing the court may still approve the RP even if one or more classes have voted against the RP by exercising its power to cram down the dissenting class(es) as long as those classes would be no worse off under the RP than they would be under the most likely relevant alternative (usually administration).

The Crown's preferential status was largely reinstated by section 98 of the Finance Act 2020 which applies to formal insolvencies entered on or after 1 December 2020.

The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 came into force on 30 April 2021. These Regulations generally require any pre-pack administration sale to a party connected to the company to be either consented to by the company's creditors or to have been the subject of a qualifying report by an independent evaluator.[6]

III The Statistics/Methodology

The Insolvency Service said in its published evaluation of the changes made to the corporate insolvency provisions by the EA 2002 that: 'A simple way to assess whether the EA has achieved the policy aim of restricting the use of administrative receivership and encouraging the use of administration is to consider changes in the use of these and other corporate insolvency procedures over time.'[7] In more recent times the Insolvency Service's *Post Implementation Review* of the permanent measures introduced by CIGA highlighted that the evaluation of those measures looked to include evidence such as data collection from Companies House filings, official statistics and monitoring data from Companies House and HM Courts & Tribunals Service.[8]

Following the lead of the Insolvency Service, this paper examines insolvency statistics dating back to when such statistics were first recorded. Although we have winding-up statistics dating back to 1960, we do not have statistics for receiverships going back that far. The receivership statistics we do have from 1991 – 2013 combine administrative receivership with other types of receivership. We have separate statistics for administrative receivership from 2000 to the present day. We have statistics for administration and CVAs since their

[6] Up until 2021, most of the controls or restrictions on the use of pre-packs were voluntary (see Statement of Insolvency Practice 16).

[7] *The Enterprise Act 2002- Corporate Insolvency Provisions: Evaluation Report*, January 2008, 15, https://webarchive.nationalarchives.gov.uk/ukgwa/20110525171537mp_/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/EA02CorporateInsolvencyReport.pdf

[8] *Post Implementation Review Corporate Insolvency and Governance Act 2020,* 26 June 2023, DBT008(PIR)-23-INSS https://www.legislation.gov.uk/ukia/2023/69/pdfs/ukia_20230069_en.pdf at page 1, point 2. See also paras [2.3] and [2.14-2.18].

introduction in 1987 and we have some more recent statistics specifically for pre-pack administration.

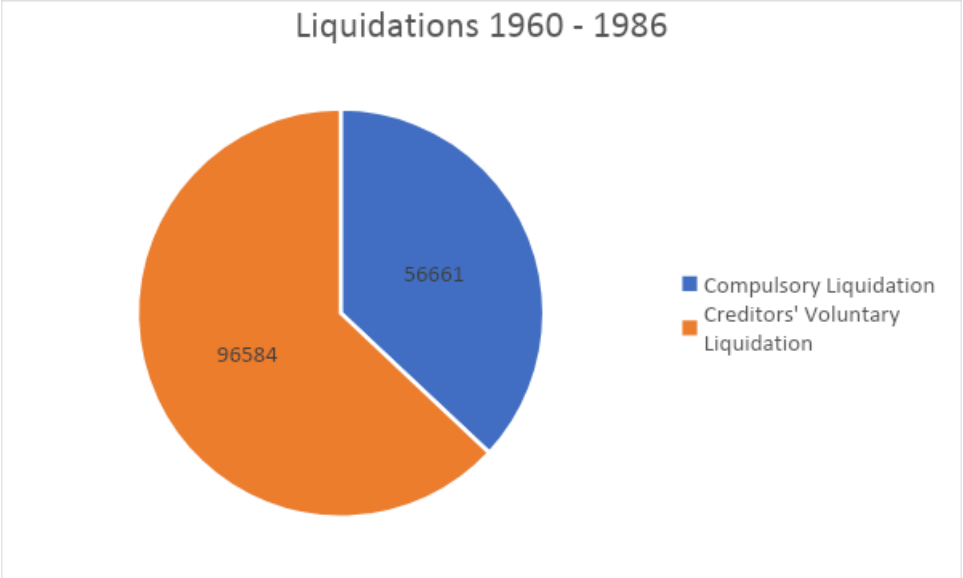
With the above in mind, we will now move on to consider what these statistics can tell us about the success or otherwise of legislative interventions at various junctures since the second half of the twentieth century. We will also point out where relevant the general economic conditions which may go some way to explaining certain statistics. The Appendix to this paper contains a compendium of the statistics we will consider but we also replicate certain individual statistics or present them in the form of a pie chart where appropriate to assist in our exposition.

IV The Time Zones

With each of the time zones we have identified, we insert a chart with the total number of regimes that commenced during the zone. With the first time zone, statistics were only available from 1960.

a) Pre-1987

Year	Total Liquidations	Compulsory Liquidations	Creditors' Voluntary Liquidations
1960	1,563	525	1,038
1961	1,846	612	1,234
1962	2,196	718	1,478
1963	2,154	729	1,425
1964	2,104	724	1,380
1965	2,595	805	1,790
1966	3,250	934	2,316
1967	3,535	1,230	2,305
1968	3,165	1,108	2,057
1969	3,510	1,181	2,329
1970	3,689	1,269	2,420
1971	3,506	1,166	2,340
1972	3,063	1,150	1,913
1973	2,575	1,080	1,495
1974	3,720	1,395	2,325
1975	5,398	2,287	3,111
1976	5,939	2,511	3,428
1977	5,831	2,425	3,406
1978	5,086	2,265	2,821
1979	4,537	2,064	2,473
1980	6,890	2,935	3,955
1981	8,596	2,771	5,825
1982	12,067	3,745	8,322
1983	13,406	4,807	8,599
1984	13,721	5,260	8,461
1985	14,898	5,761	9,137
1986	14,405	5,204	9,201



This period ends in 1986 with the enactment of IA 1986 which, as we explain below, introduced some important changes to insolvency, particularly as far as the options available for insolvent companies were concerned, and in light of the delivery of the Cork Report in 1982.[9]

During this period liquidation was the main and, we can say for the most part, the only option for an insolvent company by way of formal regime. Schemes of arrangement were another possibility, but we do not have any figures for them, and the general view was that they were infrequently employed for a number of reasons, including cost and time.[10] We only have statistics for liquidations and these date from 1960 onwards. They show that the total number of liquidations progressively increased during the period, save for a few occasions where a year showed fewer liquidations than the immediately preceding year. This occurred in the following years: 1962-1964, 1970-1973 and 1978-1979.

The reduction in liquidations in the early 1960s may be due to the effects of the economy recovering from the recession in 1961. The early 1970s was a time of economic uncertainty but did see the UK adopt a decimal currency and join the European Economic Community. The economy entered a recession in 1973 due to the worldwide oil crisis and so the sharp increase in liquidations from 1974 onwards may be partly attributable to that. It is not readily clear why there was a dip in liquidations in 1978 and 1979 as the economy was struggling at that time and largely due to economic problems the UK saw a change of government in 1979. The change of government coincided with a general increase in the number of liquidations, but this was during a period when the number of incorporations was increasing markedly too and so one might expect a concurrent increase in insolvencies. The

[9] *Insolvency Law and Practice,* Cmnd.8558, HMSO, 1982.
[10] See the comments of the Cork Committee *Insolvency Law and Practice,* Cmnd.8558, HMSO, 1982, paras 404-422.

number of incorporations of companies did in fact grow quite significantly during the 1970s and 1980s, so that while the number of incorporations was, in 1960-69,335,000, in 1971-79 it was 521,000 and in 1980-89 the number was 1,032,200.[11]

CVL numbers have always been higher than compulsories and, 1973 apart, they have been substantially higher. In many years they have been double or close to double the figures for compulsory liquidations. Leaving aside 1973, we can say that CVLs were at least 50% higher throughout this period. The reason for this could be that CVLs involved less investigation of the company's affairs, and the directors, therefore, embraced this process rather than waiting for a compulsory liquidator to be appointed. Also, some of the numbers might reflect the use of 'centrebinding.' This process derived its name from the case of *Re Centrebind Ltd*.[12] In this case the company's members resolved at a members' meeting to enter liquidation and appointed a liquidator who immediately, and before a creditors' meeting had been held, acted so as to restrain the revenue authorities from proceeding with a distress. The action of the liquidator was taken in good faith, but the case led to some companies appointing unscrupulous liquidators and delaying the holding of the creditors' meeting, which was able to appoint a different liquidator, until after the liquidator appointed by the members had disposed of the assets at a very low price to a company which was controlled by the members of the company being wound up. The creditors could do nothing about it.

It is likely that the recession in the early 1980s itself caused more liquidations in total, but it is striking that from 1981 onwards the number of CVLs started to outstrip significantly the number of compulsory liquidations. This may have been partly due to the popularity of 'centrebinding' during this period which was a concern recognised by the Cork Committee in its report in 1982[13] and which may have inadvertently opened the eyes of the business world to the practice (to the extent that it was not already generally known). The numbers of CVLs were nearly double that of compulsory liquidations in 1985 and 1986, but the difference began to diminish in 1987 when the restriction on 'centrebinding,' found in ss 114 and 166 of IA 1986, came into force and the difference reduced noticeably and more sharply in 1988, the first full year of the restriction being in effect.

Lastly, we should add that it is quite possible that there were many informal arrangements put into place by insolvent companies and their creditors during this period, but we have no statistics to indicate how many and their use is not within the scope of the paper.

b) 1987-2002

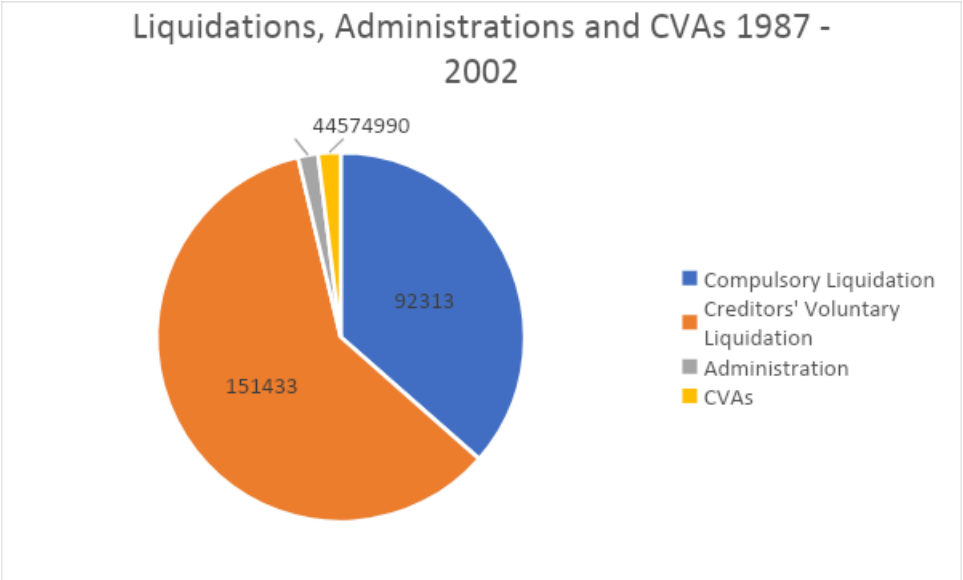
Year	Total Liquidation	Compulsory Liquidation	Creditors' Voluntary Liquidation	Total Receivership	Administrative Receivership	Administration	CVA
1987	11,439	4,116	7,323			131	21

[11] See the statistics on company incorporations available at https://webarchive.nationalarchives.gov.uk/ukgwa/20141104110623/http://www.companieshouse.gov.uk/about/companiesRegActivities.shtml.

[12] *Re Centrebind Ltd* [1967] 1 WLR 377, [1966] 3 All ER 889.

[13] *Insolvency Law and Practice,* Cmnd 8558, HMSO, 1982, paras 666-673.

1988	9,427	3,667	5,760			198	47
1989	10,456	4,020	6,436			135	43
1990	15,051	5,977	9,074			211	58
1991	21,827	8,368	13,459	7,815		206	137
1992	24,425	9,734	14,691	8,523		179	76
1993	20,708	8,244	12,464	5,362		112	134
1994	16,728	6,597	10,131	3,877		159	264
1995	14,536	5,519	9,017	3,226		163	372
1996	13,461	5,080	8,381	2,701		210	459
1997	12,610	4,735	7,875	1,837		196	629
1998	13,203	5,216	7,987	1,713		338	470
1999	14,280	5,209	9,071	1,618		440	475
2000	14,317	4,925	9,392	1,595	1056	438	557
2001	14,972	4,675	10,297	1,914	1192	698	597
2002	16,306	6,231	10,075	1,541	1038	643	651



The enactment of IA 1986 saw the advent of more options for insolvent companies. In order at least to allow for the possibility of rescue, companies could enter administration or a CVA. This was one area where the Government took to heart and implemented some of the recommendations of the Cork Committee.

Notwithstanding the introduction of administrations and CVAs, neither of the new regimes attracted as much use as the Government had hoped.[14] As far as the former was concerned the lack of use was put down to the fact that a court order had to be secured before a company could enter administration and this meant that there were both time and costs implications. No reasons have been given for the CVA numbers. Perhaps it could be that companies were not protected by a moratorium in the period leading up to a vote on a proposal, and so that might have put off some insolvency practitioners ('IPs') and lawyers

[14] *Insolvency – A Second Chance* White Paper (2001) CM 5234, [2.1].

from recommending them and some companies may have taken the view that proceeding to a CVA could be too risky.[15]

For the first few years after IA 1986 came into effect the numbers of both compulsory and CVLs dropped quite some way below pre-1986 figures. For instance, in 1985 there were 9,137 CVLs and in 1988 there were only 5,760. The falling off of numbers could not be due to the fact that companies were now widely embracing administration or CVAs, for, as mentioned above, administrations and CVAs were not high in number. We do not have the figures for administrative receivership for these years, but while they might have been substantial, it is unlikely that many insolvent companies would be rescued by receivership and so they would have to go into liquidation, either concurrently with receivership or following the termination of the receivership. Nevertheless, by 1990 the numbers of liquidations were back up to pre-1986 levels. This rise is likely to have been a consequence of the major recession that hit the UK in the early 1990s.

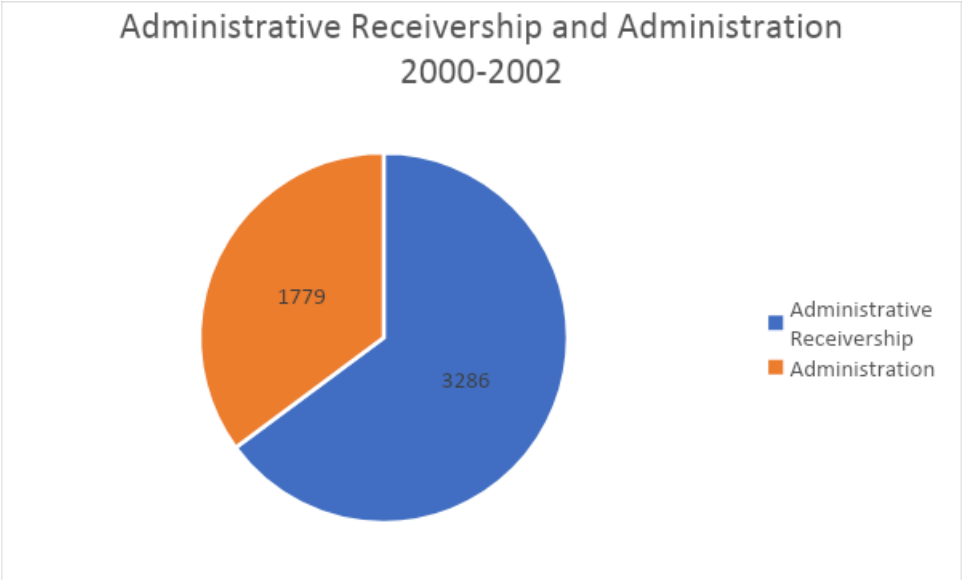
While the number of liquidations rose substantially in the period of 1990-1993 (and well above the figures for the years in the pre-1987 period), due, as suggested above, to the recession, in 1994 the numbers dropped until 1999 when they started to rise again. The drop is probably due to the fact that the country had come out of recession and was beginning to prosper again. The number of liquidations increased in 1999-2002, which is surprising given that in the wake of the election of a Labour government, good economic conditions existed, with low unemployment, low inflation and stable interest rates. After the ups and downs experienced during this period the number of liquidations at the end of the period were only 16,306 (in 2002) compared with 14,405 in 1986, which does not constitute a huge rise in the 15 year period (from 1987 to 2002). If one were to compare a 15 year period in our first time zone, say 1971-1986, one can see a much larger jump in total liquidations (3,506 to 14,405) than in the 1987-2002 period. The relatively small difference in liquidations between 1986 and 2002 is especially surprising because the number of incorporations totalled approximately one million in the 1980s but approximately one and a half million in the 1990s. Consequently, there were a lot more companies created but not that many more were going into liquidation. In earlier times when there were greater company incorporations there were more liquidations.

While there were never a high number of administrations during this period, there were a greater number at the end of the period compared with the beginning (643 versus 131), although it is notable, perhaps, that from 1992-1996 the numbers fell. One might have expected numbers to have increased in 1992-1994 as the country was suffering the effects of the early 1990s recession, but by 1995 numbers would, one might think, have begun to recede. Clearly, administration was not the success that the Government had hoped for and this led, together with the increase of liquidations in 1998, to the then Secretary of State for

[15] See, eg, the discussion in M Hunter "The Nature and Functions of a Rescue Culture" (1999) 104 *Commercial Law Journal* 426, 457.

Trade and Industry, Lord Mandelson, journeying to the United States to investigate ways of enhancing corporate rescue.[16]

Apart from 1989, 1992 and 1998 the number of CVAs increased year on year, however, they never constituted significant numbers. We have no way of telling what proportion of CVAs followed on from administration and how many were instituted 'from scratch.' CVAs did end on a high in 2002 in that the figure for that year was the highest during the period and over the period the number of CVAs outstripped the number of administrations.



The only figures that are available for administrative receiverships during the period are for 2000-2002. These years show substantial numbers of receiverships, and double or nearly double the number of administrations (e.g. in 2000 there were 1,056 administrative receiverships and only 438 administrations). This indicates that lenders were continuing to rely on receivership, for the most part, rather than embracing administration. The costs of an application to court for an administration are likely to have been a factor in secured lenders continuing to favour administrative receivership, as is the fact that if an administration order were made then the secured lenders would not have had control over the process, in the same way as they would with an administrative receivership.

As far as the total for all receiverships (including administrative and LPA) is concerned, we only have statistics beginning in 1991. During the period from 1991-1993 there were high numbers. Although we cannot say whether they were higher than before 1991, it is likely that they were, given the decrease of receiverships after the worst effects of the early 1990s recession had receded and numbers may have gone back to pre-1991 levels. Clearly, during the aftermath of the recession, receivership was preferred to administration, with 1991 and 1992 seeing large numbers of receiverships (7,815 and 8,523 respectively). Although these figures are a combined number for LPA receiverships and administrative receiverships, the 2001 Government White Paper commented that: '[t]here was also widespread concern that

[16] Addressing the British-American Chamber of Commerce and also addressing the Annual Conference of the CBI reported in the Times, 14 October 1998.

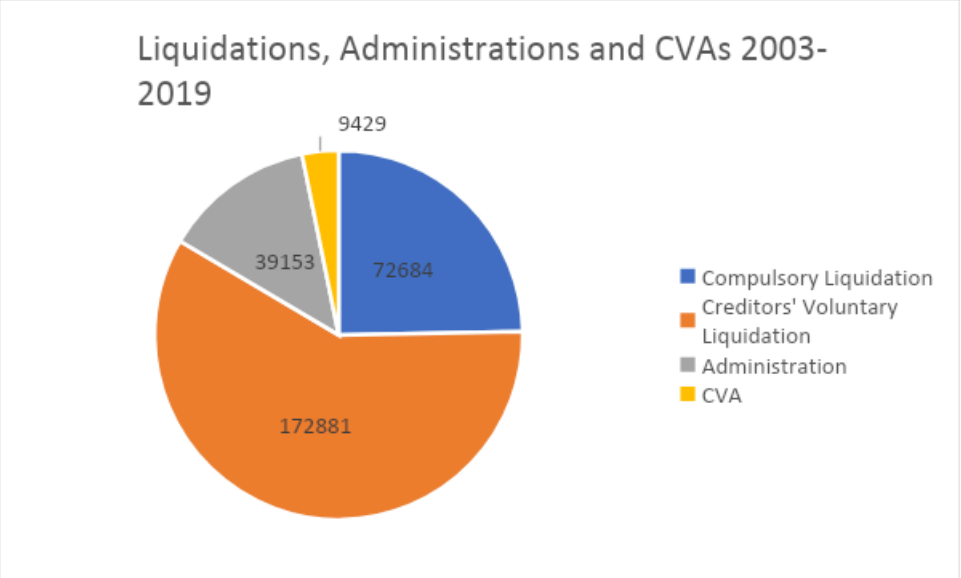
the large number of administrative receivership appointments in the early 1990s may have represented precipitate behaviour on the part of lenders, causing companies to fail unnecessarily.'[17] The Government concern was that lenders were using administrative receivership too readily which was impacting upon the ability of companies to be rescued.

In this period the number of incorporations grew, just as they did in the earlier time zone. In 1990-1999, the number of incorporations increased to 1,519,700, whereas, as mentioned above, in 1980-89 the number was only 1,032,200.

c) 2003-2019

Year	Total Liquidation	Compulsory Liquidation	Creditors' Voluntary Liquidation	Total Receivership	Administrative Receivership	Administration	CVA
2003	14,184	5,234	8,950	1,261	965	744	726
2004	12,192	4,584	7,608	864	579	1,602	597
2005	12,893	5,233	7,660	590	309	2,261	604
2006	13,137	5,418	7,719	588	206	3,560	534
2007	12,507	5,165	7,342	337	120	2,512	418
2008	15,535	5,494	10,041	867	199	4,822	587
2009	19,077	5,643	13,434	1,468	112	4,161	726
2010	16,045	4,792	11,253	1,309	56	2,835	765
2011	16,886	5,003	11,883	1,397	47	2,808	767
2012	16,156	4,261	11,895	1,222	35	2,532	839
2013	14,982	3,624	11,358	917	17	2,365	577
2014	14,068	3,716	10,352		22	1,601	559
2015	12,754	2,853	9,901		11	1,412	372
2016	12,974	2,886	10,088		5	1,346	345
2017	12,944	2,747	10,197		2	1,316	307
2018	14,231	3,088	11,143		1	1,463	355
2019	15,000	2,943	12,057		1	1,813	351

[17] *Insolvency – A Second Chance* White Paper (2001) CM 5234, [2.1].



The number of liquidations during the early years of this period remained fairly even. Then in 2008 and 2009 they increased by over 25% year on year. In 2009 we had the most liquidations for any year since records were kept (19,077). This is likely to be due to the advent of the Global Financial Crisis ('GFC'). Perhaps somewhat surprisingly, given the impact of the GFC, in 2010 numbers fell by about 15% to 16,045 and remained between 14,000 and 16,000 until 2015 when they returned to pre-GFC numbers. Throughout the period CVL numbers were substantially higher than companies entering liquidation via a court order. The percentage by which CVLs were higher than compulsory windings up varied. It is notable that for many years in this period the gap between CVLs and compulsory windings up grew much wider than in the two earlier periods.

The size of the gap between CVLs and compulsory liquidations started to become much larger from 2008 onwards. From just under a 100% rise in the gap in 2008 CVLs continued to grow more than the number of compulsory windings up and exceeded them by, for instance, roughly 150% in 2009, 250% in 2010, nearly 300% in 2012, over 300% in 2013-2018, and over 400% in 2019.

The number of compulsory windings up dropped in 2003 (from the 2002 numbers) and numbers continued to decline, with the occasional upturn (such as in 2009) right through until 2019. The reason for the slight increase in 2009 could have been due to the GFC.

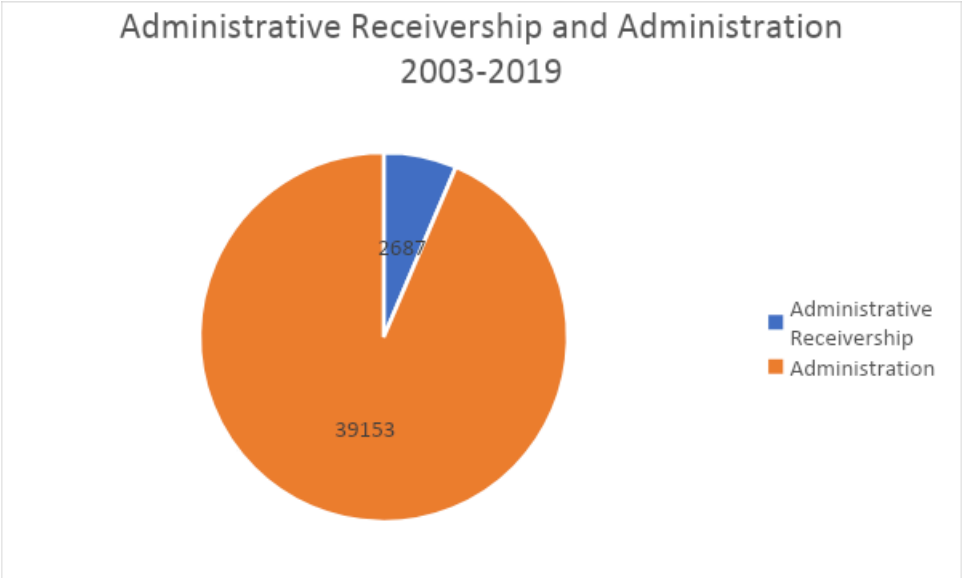
The reason for the reduction in compulsory liquidations in the early years of this period might be due, at least partly, to the terms of the EA 2002 whereby the Crown lost its status as a preferential creditor. This had two consequences. First, it is likely that HMRC was not so keen to petition for the winding up of companies as it would not do any better than ordinary unsecured creditors in a subsequent liquidation. HMRC might have been more ready to wait for payment, hoping it would receive more than it would in a liquidation, or to support some sort of restructuring with the hope, again, that it would be paid more than in a liquidation.

Secondly, up until the EA 2002, in order to retain its preferential status for pre-administration debt, HMRC would often ensure, when an administration ended in

liquidation, that the liquidation was a compulsory liquidation rather than a CVL.[18] It retained its preferential status for more debt in a compulsory liquidation than in a CVL. The issue of different treatment of preferential debt in this way was resolved by the EA 2002 introducing para 83 of Sch B1 of the IA 1986 and the problem became a non-issue as far as HMRC was concerned as it had lost its preferential creditor under the EA 2002. The upshot was that there was no reason to insist upon using the more expensive compulsory liquidation route out of administration. The cheaper CVL would be the default position from 2003 onwards.

These two likely consequences of the abolition of the Crown preference might explain at least to some extent why the numbers in this period for compulsory windings up flatline or go down whilst the numbers of CVLs increase.

Even so, the number of CVLs is still very high and suggestive, given that administration numbers were not very high, of the fact that many companies were entering CVL directly.



As we have already noted, the number of administrations were low in the last time zone, but they jumped in number after the EA 2002 was put into force. For instance, they increased from 643 in 2002 to 4,822 in 2008 and this meant that administrations went from representing 3.5% of the total insolvency procedures for 2002 to 22.9% in 2008. As the EA 2002 was not put into force until 15 September 2003, the number for 2003 cannot really be seen as an indication of whether the changes to administration in the EA 2002 had borne fruit. An increase in administrations, in 2005 onwards, might also be due to the effect of the decision in March 2004 of the House of Lords in the case of *Buchler v Talbot*,[19] as IPs might

[18] It is probable that the liquidation numbers would include those companies that transitioned to a liquidation following the conclusion of an administration. It is only the later numbers for administrations where this effect was expressly stated that there was not double counting, so by omission of such a rider they were double counted at this time.

[19] [2004] UKHL 9, [2004] 2 AC 298

have influenced the move to administration rather than to a CVL.[20] Although any increase that can be attributed to *Buchler v Talbot* would only be partial as the numbers in 2003 and 2004, before the decision in *Buchler,* both indicate that administrations were already increasing.

Overall, the figures for administrations in 2004 onwards manifest the fact that the changes to administration did appear to bear fruit. Administrations more than doubled in 2004 when compared with 2003 and earlier. The main effect is obviously likely to be due to the change to allow extra-judicial appointments and the fact that administrative receiverships could only be commenced where the floating charges on which they were based were created before 15 September 2003.[21] The statistics could also support the contention of Alan Katz and Michael Mumford that the 'greater part of the increase in administration case numbers over the period is in fact attributable to a decline in creditors' voluntary liquidation in favour of administration.'[22] Certainly from 2004, for at least three years, we can see a dip in the numbers of CVLs and, arguably, a corresponding increase in administrations. This increase appeared to support the suggestion made that administration had become the new liquidation.[23] It is also possible that around this time, pre-packaged administration was first being used and so part of the increase in overall administration numbers may have been due to the advent of the pre-pack.[24]

Administrations continued to increase until 2008 (4,822), when they reached their zenith. It seems surprising that they decreased in number after this time, especially given that by this time it is likely that many debentures that created floating charges over company property before 15 September 2003 would have become otiose as far as appointing a receiver and so lenders would have been forced to use administration rather than receivership. The numbers included in the 2008 statistics would have barely covered any effect produced by the GFC. One would think that the use of administration in 2009 and 2010 would increase as companies wrestled with the problems created by the GFC. From 2009 the number of administrations dropped year on year until 2018 when there was a halt to the downward spiral, with an increase of about 150 compared with 2017. While the number of administrations had increased in the period up until 2008, the Insolvency Service said in its 2008 evaluation of the EA 2002, as far as the corporate insolvency provisions were

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[20] The Insolvency Service noted in *The Enterprise Act 2002- Corporate Insolvency Provisions: Evaluation Report*, January 2008, p 21, https://webarchive.nationalarchives.gov.uk/ukgwa/20110525171537mp_/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/EA02CorporateInsolvencyReport.pdf, that it is probable that this case contributed to greater administration numbers.

[21] A Katz and M Mumford, 'Study of Administration Cases: A Report to the Insolvency Service,' 4, and available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20110525173706/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/corpdocs.htm (accessed 20 June 2023).

[22] A Katz and M Mumford, 'Study of Administration Cases: A Report to the Insolvency Service,' 2006, 5, and available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20110525173706/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/corpdocs.htm (accessed 20 June 2023).

[23] A Keay, 'What Future for Liquidation in Light of the Enterprise Act Reforms?' [2005] JBL 143.

[24] P Walton 'Pre-packaged Administrations—Trick or Treat'? (2006) 19 *Insolvency Intelligence* 113.

concerned, that: 'Overall outcomes, in terms of corporate and business rescue, from administration appear to be largely unchanged to those from administrative receivership and there appear to be proportionally fewer "rescues" than under the previous administration regime.'[25]

It is perhaps surprising that administration numbers throughout the period were not higher when one considers the high numbers of CVLs, as detailed above. This might mean that many companies decided in the years after 2009 to plump for the CVL option rather than administration. It is difficult to hypothesise why this is the case. There were indications in the early years after the enactment of the EA 2002 that administrations were effectively quasi-liquidations, that is, the regime was being used as a de facto liquidation process and there was no apparent statutory justification for the administration,[26] but after 2008 was this no longer the approach being taken? There was no change in the law between 2008 and 2019 that would, of itself, cause the reduction in administration numbers. Interestingly, when looking at the years where we have the numbers for pre-packs, anything from about 20-30% of administrations resulted in pre-packs. We do not have statistics for the time prior to 2014 so it is not possible to say if there were more pre-packs put into effect during the GFC years and this contributed to administration numbers.[27]

CVA numbers in this time zone varied, with no apparent trend evident. They peaked in 2012 at 839, but this is not much higher than many other years. We can say that the average number of CVAs in this period increased when compared with the 1987-2002 period. This is consistent with the fact that while not increasing at a high rate the number of CVAs gradually increased from 1987. One might expect this simply on the basis that insolvencies increased in number, as did incorporations. The Insolvency Service said in its evaluation report on the effect the EA 2002 had on corporate insolvency provisions that neither the 2000 Act, which introduced the possibility of a moratorium for small companies in connection with such arrangements, nor the EA 2002, to the extent that administration may be used to facilitate the implementation of an arrangement, appear to have been particularly successful in promoting the use of CVAs.[28] In the previous period considered above, the number of CVAs was greater than the number of administrations. This period

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[25] *The Enterprise Act 2002- Corporate Insolvency Provisions: Evaluation Report*, January 2008, p 6, https://webarchive.nationalarchives.gov.uk/ukgwa/20110525171537mp_/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/EA02CorporateInsolvencyReport.pdf

[26] See, A Keay, 'What Future for Liquidation in Light of the Enterprise Act Reforms?' [2005] JBL 143. Also, see A Katz and M Mumford, 'Study of Administration Cases: A Report to the Insolvency Service,' 2006, 5, and available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20110525173706/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/corpdocs.htm (accessed 20 June 2023). The researchers took one year, 2004, and studied the nature of the administrations. They found that in 29% of the administrations, it could be said that the statutory justification for administration was weak or non-existent.

[27] In 2011, the Insolvency Service estimated that 25 per cent of the 2,808 companies that entered administration in that year used the pre-pack procedure; and that nearly 80 per cent of pre-pack sales were to connected parties: The Insolvency Service, 'Annual Report on the Operation of Statement of Insolvency Practice 16', January/ December 2011.

[28] *The Enterprise Act 2002- Corporate Insolvency Provisions: Evaluation Report*, January 2008, p 17, https://webarchive.nationalarchives.gov.uk/ukgwa/20110525171537mp_/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/EA02CorporateInsolvencyReport.pdf

shows a reversal of that pattern largely due to the gradual replacement of administrative receivership by administration.

The most use made of CVAs occurred in 2009-2012 and the reason for that could be that they were employed by some companies to address problems created by the GFC. From 2013, however, numbers fell away (in the 300s) and CVA use fell back to what it was in the early 1990s. While numbers seemed to increase after 2000, when the 2000 Act was enacted which introduced a moratorium procedure for eligible companies (small companies[29]), they did not do so to such an extent to suggest that the changes brought by the 2000 Act made a lot of difference. The provision in the 2000 Act was not put in force until 1 January 2003[30] and the number of CVAs in 2003 (726), while an increase on the previous years, was not a lot higher (for example in 2002 there were 651 CVAs) and in 2004 the number fell back – to 597.

As one might expect with the EA 2002 coming into force in 2003, the number of administrative receiverships began to fall and generally speaking this fall has continued year on year. There was a bit of a comeback in 2008, which might have been due to the GFC. Obviously, as time has gone by the portion of floating charges created before 15 September 2003 will have reduced and so lenders will not have so many opportunities to appoint an administrative receiver. Indeed, in 2019 there was only one administrative receivership.

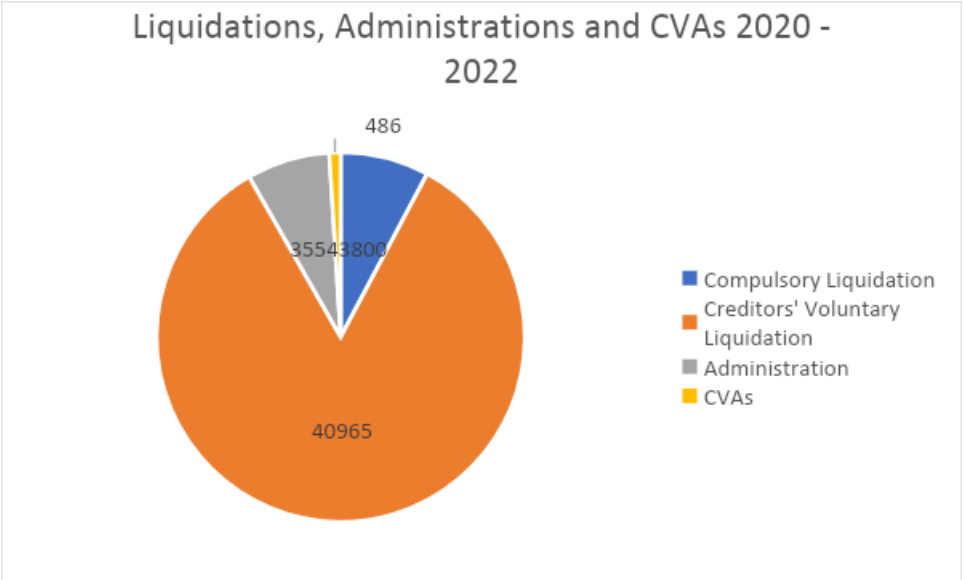
While in this period the 1990 receivership numbers were not reached, there were quite a high number of other (LPA) receivers appointed in 2009-2012 which probably reflects the fact that they were implemented in the aftermath of the GFC.

There were in 1990-1999 1,519,700 incorporations, but in 2000-2010, there were 3,715,400 and in 2011-2020 there were 5,706,078, another sizeable increase. As with other time zones the increase is likely to be one reason for the increase of overall insolvencies.

d) 2020-2022

Year	Total Liquidation	Compulsory Liquidation	Creditors' Voluntary Liquidation	Administrative Receivership	Administration	CVA
2020	10,841	1,353	9,488	3	1,527	260
2021	13,147	491	12,656	1	796	115
2022	20,777	1,956	18,821	1	1,231	111

[29] See Insolvency Act 1986, Sch A1, para 3 (now repealed).
[30] Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002 (SI 2002/2711).



This period begins with 2020 as COVID 19 (coronavirus) hit the UK in late January of that year and it clearly has had a major impact on life (and commercial life in particular). It is interesting to analyse the numbers of regimes since COVID arrived on the scene.

CVLs, which have always been numerous and constitute a large portion of insolvencies, constituted an even larger proportion in this period. Of the insolvencies that occurred in 2022, 18,821 were CVLs, constituting 81.06% of the total insolvencies. Just comparing CVLs and compulsory liquidations we can see that there was a much larger gap between the former and the latter compared with the situation before the emergence of COVID. In 2020 there were roughly 700% more CVLs than compulsory liquidations, 2,500% more in 2021 and 960% more in 2022. This was possibly due to changes to the law that restricted creditors in proceeding against companies. In 2020 there were only 9,488 CVLs (down from 12,057 in 2019). This was probably due to the fact that the Government introduced various means to support business, namely employees being furloughed at the Government's expense[31] and the Government introduced, from March 2020, the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme and the Bounce Back Loan Scheme. As government support was withdrawn in 2021, the CVL numbers came back to pre-2020 levels and they spiked in 2022 with the highest number of CVLs in any year since records were kept, namely 18,821.

As stated above, compulsory liquidations were far fewer than CVLs and far fewer than prior to 2020. There were 1,353 compulsory liquidations in 2020, the fewest since 1973 and in 2021 there were only 491, which constituted the fewest annual number of compulsory liquidations on record. In 2022 the number of compulsory liquidations increased to 1,956, which meant that they were moving back towards pre-2020 figures. The drop in 2020 and the even bigger reduction in numbers in 2021 is likely to be due to the fact that the Government introduced temporary changes to IA 1986 via the enactment of CIGA and subsequent amendments by way of various pieces of secondary legislation in order to

[31] Coronavirus Job Retention Scheme (Furlough Scheme). See: https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme.

provide greater protection for companies. For instance, paras 2(1)(2)(3)(4) of Sch 10 of CIGA provided[32] that a petition could not be presented against a company on the basis that it was not able to pay its debts as defined in s 123(1)(a)-(e) and s 123(2) of IA 1986 unless the petitioner had reasonable grounds for believing that coronavirus did not have a financial effect on the company or the facts to which the ground on which the petition was based would have occurred even if coronavirus had no financial effect on the company. The burden of establishing that the virus had a financial effect was on the company, but it merely required the company to make out a prima facie case, and it was, therefore, not a heavy burden.[33] The increase in the number of compulsory liquidations in 2022 so that there was a return to the level seen pre-COVID is likely due, at least partly if not substantially, to the fact that the temporary changes to the IA 1986 that protected corporate debtors came to an end. The re-introduction of the Crown preference in December 2020 might be another factor as the HMRC might be inclined to seek to wind up companies and avail itself of its priority status rather than consider other forms of action.

While the number of administrations was not, in 2020 and 2022, much less than pre-COVID, in 2021, as with compulsory liquidations, the numbers had decreased to about half of what the pre-2020 statistics disclosed. As mentioned above, the number of CVLs was relatively high in 2021 and consistent with 2019 figures so this might suggest that companies were choosing to liquidate rather than to proceed down the administration path. Perhaps directors were determining that their companies had no chance of being rescued. It is not clear why administration was not used as a quasi-liquidation process, but it would seem that the tendency to use administrations in this way might well have been decreasing well before COVID.

Whilst the number of CVAs dropped in this period, compared with the last years of the 2003-2019 period, they had not fallen by the same proportion as administrations and liquidations. The introduction of the Crown preference appears to coincide with the number of CVAs falling by over 50%. It is quite likely that the insistence by HMRC for it to be paid its preferential debt in full prevented companies from considering a CVA during this period. However, one must note that the drop does not seem as dramatic with CVAs compared with other regimes as smaller numbers were involved.

The introduction of the standalone moratorium in CIGA might have led, if it was not for COVID, to more CVAs, as that was what was expected when the moratorium was introduced in 2020. The Insolvency Service said in its post implementation review of CIGA (dated 26 June 2023) that the moratorium may well be effective and did appear to be a useful

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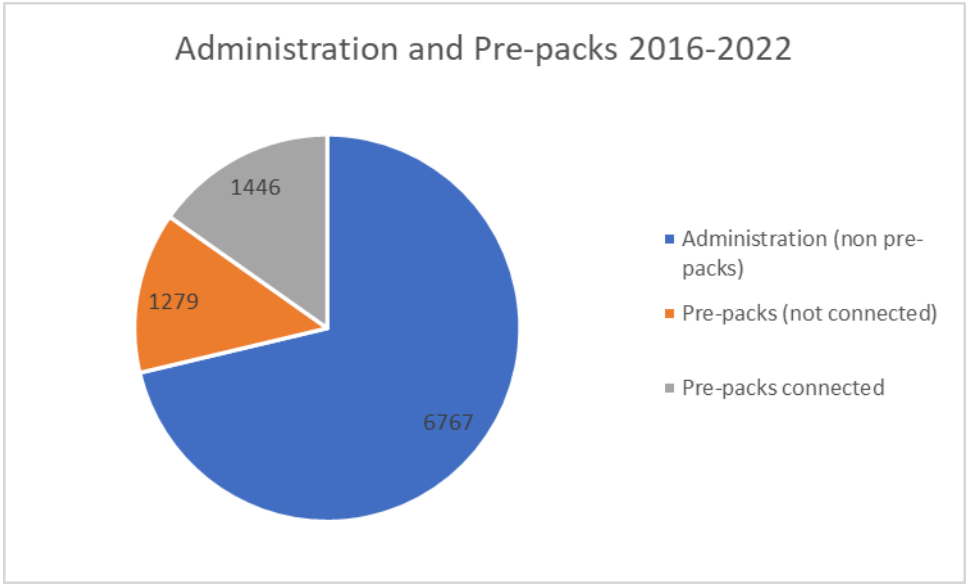
[32] As amended by The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020/1031, reg 2, The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2020 (SI 2020/1483), reg 2, The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021, reg 3(4) (SI 2021/375) and The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations, reg 2 (SI 2021/718)) that during the period between 1 March 2020 and 30 September 2021.

[33] *Re A Company* [2020] EWHC 1551 (Ch), [2020] 2 BCLC 307, [2020] BPIR 1100.

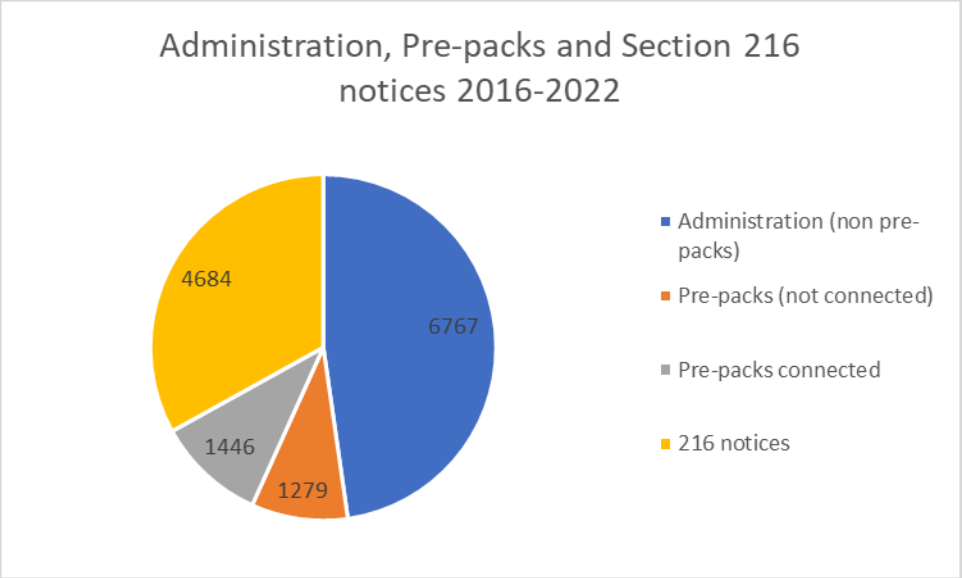
measure to be taken whilst a company was working towards a CVA.[34] Obviously, the introduction of the moratorium might have some effect on CVA numbers in coming years. What might be seen as a matter of some concern is that the 2022 numbers do not suggest that the use of the CVA is finding favour with companies as the country comes out of the COVID crisis and many companies struggle with their finances. This might suggest that more companies have opted to enter liquidation rather than attempting restructuring using the CVA form even though, for example, there is a freely available precedent CVA available to SME companies which have suffered financially due to the pandemic.[35]

Year	Total Administration	Pre-packs (connected party)	Section 216 notices	CVA
2016	1,346	405** (163)	687	345
2017	1,316	357 (203)	658	307
2018	1,463	450 (241)	753	355
2019	1,813	473 (260)	707	351
2020	1,527	481 (272)	665	260
2021	796	201 (106)	515	115
2022	1,231	358 (201)	699	111



[34] *Post Implementation Review Corporate Insolvency and Governance Act 2020,* 26 June 2023, DBT008(PIR)-23-INSS, [3.9] < https://www.legislation.gov.uk/ukia/2023/69/pdfs/ukia_20230069_en.pdf>

[35] This is available on the R3 website: https://www.r3.org.uk/technical-library/england-wales/technical-guidance/r3-standard-form-covid-19-cva-proposal/.



In the post-COVID period it seems that a larger proportion of companies have looked to enter liquidation rather than consider an administration (pre-pack or otherwise) or a CVA. The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 came into force on 30 April 2021. The Regulations contain a specific requirement where a company in administration intends to conduct a 'substantial sale' of its business to a connected person, either to obtain the approval of the creditors or the approval of an independent evaluator in order that such sales may go ahead within the first eight weeks of the administration. The numbers suggest that the Regulations have not had a significant impact in reducing (or increasing) the number of connected party pre-packs. In 2022 the numbers of administrations, pre-packs and connected party pre-packs, are very comparable to those from 2017. What is different between 2017 and 2022 is the near 85% increase in CVLs and a near 65% decrease in CVAs.

It has always been possible for companies to be placed into liquidation and for company participants to purchase the business from the liquidator – a practice often called 'phoenixing'. This practice is to some extent restricted by ss 216 and 217 of IA 1986, but the restriction may be side-stepped by the publication of an appropriate advertisement in the Gazette. Whilst traditional administration, pre-pack and CVA numbers have reduced but CVLs have increased, it might have been thought that a number of business rescues were being carried out via a phoenix sale out of liquidation. The numbers of s 216 notices recorded in the Gazette, however, suggest this is not the case with those numbers remaining fairly consistent year on year with the 2022 numbers returning to their 2019 level.

As one would expect there were few administrative receiverships in this period, with only five receiverships over three years.

It would, therefore, seem likely that the effect of the COVID pandemic (and its aftermath) has caused many companies to cease to trade rather than attempt some form of business or company rescue.

Finally, CIGA introduced the Restructuring Plan ('RP') under Part 26A of the Companies Act 2006 and while we do not have much in the way of statistics - between the implementation of CIGA and late July 2022 there were 12 RPs[36] - the Insolvency Service has indicated that the RP seems to have met the objectives which it was hoped to attain from its implementation and the Service appears to be optimistic about its usefulness in the future.[37]

V General Reflections

Over the periods which we have studied for this paper, the number of insolvencies has clearly increased and significantly so in many years or ranges of years. The increase might be expected, at least partly, on the basis that there has been a large increase in the number of new incorporations year on year; the more companies in the marketplace it is likely there will be more insolvencies. Also, and most importantly, there are clear economic reasons for some of the increases, such as recessions.[38] What is interesting is the regimes that have been embraced by insolvent companies at particular points of time.

Ever since records began CVLs have always been the most used insolvency regime. They have increased in proportion to compulsory liquidation for the vast majority of years in our study. Even since the introduction of extra-judicial administrations in 2003, CVLs have continued to increase significantly, although a reasonably small portion of the numbers would cover companies that had transitioned from administration to CVL following the completion of administration.[39]

While administrations increased in number following the EA 2002, particularly in the first years following the EA 2002 being put in force, administrations have not been as numerous as one might expect given some of the economic issues that the UK has experienced since 2003. It is difficult to ascertain what the reason is for this. Administrative receiverships have fallen in number since 2003, which was the intention of the Government in passing the EA 2002. These receiverships are now virtually non-existent and of little relevance. It seems odd that CVAs have never become really popular. In relation to the period pre-2000 the absence of a moratorium could be identified as the reason for the relatively small numbers. In the 2000 Act, provision was made for eligible companies to seek a moratorium prior to proposing a CVA.[40] However, even after 2003 (the moratorium provision only came into force on 1 January 2003[41]) the numbers did not pick up significantly. The reason might be that the moratorium was limited to certain companies.

Why have CVAs never really taken off? There is some anecdotal evidence that since the HMRC regained a partial priority status on liquidation that it has not been supporting the

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[36] *Post Implementation Review of CIGA*, para 3.22.
[37] *Post Implementation Review of CIGA*, para 3.18.
[38] In *The Enterprise Act 2002- Corporate Insolvency Provisions: Evaluation Report*, January 2008, p 19, https://webarchive.nationalarchives.gov.uk/ukgwa/20110525171537mp_/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/EA02CorporateInsolvencyReport.pdf,
the Insolvency Service noted that recessions can distort corporate insolvency statistics.
[39] A reasonable number of companies that have been in administration are likely to have entered dissolution as permitted by para 84 of Sch B1 to IA 1986.
[40] The moratorium was found in Sch A1 to IA 1986. It was repealed by CIGA.
[41] Insolvency Act 2000 (Commencement No 3 and Transitional Provisions) Order 2002 (SI 2002/2711).

acceptance of CVAs. But, HMRC did not have any preferential right between 2003 and 2020 when numbers were still low. Thus, it might be unreasonable to load all the blame for the few CVAs on HMRC. Another factor which might explain the relatively low numbers of CVAs is the advent of the pre-pack which often makes restructuring a business more straightforward as the historic debt is left behind and the purchaser starts again with a clean balance sheet.[42] Although pre-packs have been increasingly subject to various controls (voluntary and mandatory) their numbers have generally held up. It may be that it is often too difficult for a company to plan for a turnaround whilst retaining the obligation to meet its historic debt (or at least part of it).

One striking pattern in the statistics is that the 'rescue culture' introduced by the IA 1986 did appear to be having a slow but certain impact throughout the 1990s with, for example, over 600 administrations and 600 CVAs in 2002 the year of the EA. After the EA 2002 we see an increase in CVAs up until 2013 and administration numbers remain strong during the same period as it slowly replaced administrative receivership. From 2013 onwards we see a general decline in the numbers of all insolvency procedures including liquidation until the pandemic and subsequently when protective COVID provisions were removed. The post-pandemic period sees a marked increase in liquidations, driven by CVLs, but in 2022, it is the reduction in CVAs which is most striking. In normal trading conditions, before the pandemic, there is reasonable evidence to suggest that the rescue culture was having an effect.

Will the advent of RPs mean that CVAs will continue to struggle? One would not think that RPs would have a great effect on CVAs as the RP does not suit SMEs and, prima facie, CVAs do. Companies which are thinking of a CVA can now take advantage of the Part A1 moratorium. Thus far, however, the moratorium has not been used much, with the Insolvency Service in its post implementation review of CIGA (dated 26 June 2023) reporting only 40 moratoriums to the 30 September 2022[43] (an annual average of 18 moratoriums[44]) and this is fewer than anticipated.[45] Is there a problem with it? Is it likely that more CVAs will be employed eventually as parties become more familiar with moratoriums? The Insolvency Service stated in its post implementation review of CIGA that interview data showed that IPs who have used the moratorium have used it successfully as a tool for company rescue.[46] The Insolvency Service also said that of the moratoriums instituted:

> 'over half had led to the recovery of the company as a going concern and over a quarter resulted in the company going into a CVA. These are very high proportions of positive outcomes, especially when compared to outcomes following administrations highlighted in the IA'[47]

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[42] See generally P Walton, C Umfreville and L Jacobs *Company Voluntary Arrangement: Evaluating Success and Failure* May 2018 research report commissioned by R3 and sponsored by ICAEW.
[43] *Post Implementation Review of CIGA,* para 3.2.
[44] *Post Implementation Review of CIGA, p*ara 5.8.
[45] *Post Implementation Review of CIGA, p*ara 3.2.
[46] *Post Implementation Review of CIGA, p*ara 3.10.
[47] *Post Implementation Review of CIGA, p*ara 3.10

Nevertheless, the Insolvency Service noted, from interviews with IPs, that there were some things that might be problematic with the moratorium,[48] such as perceived reputational risk to the IP should the company not be successfully rescued following a moratorium.[49]

Has all the noise around the moratorium and RPs and their possible use by SMEs muddied the water for continued use of CVAs, especially in light of the availability of the R3 precedent which can be used by SMEs in proposing CVAs? Since the moratorium in Sch A1 to IA 1986 has ended and the Part A1 moratorium has been introduced we have not seen any increase, in fact there has been a reduction in pre-2020 numbers. However, the years in question involved the outbreak of the pandemic which saw all insolvency procedures used less, and it could well take time for the commercial world to accept Part A1 moratoriums and see how they can be used as a precursor to securing a CVA. It may be that if the changes to the moratorium regime highlighted by the Insolvency Service's post implementation review of CIGA can be made, the use and popularity of the moratorium may greatly increase.

Given the fact that the insolvency regime statistics for recent years have been affected significantly by the COVID pandemic, it is difficult to say what is likely to happen in ensuing years. It is probable that the total insolvencies for 2023 and following years will increase and possibly significantly. Indications are that businesses are now suffering the aftermath of COVID, higher interest rates and inflation. CVLs are likely to continue to be the leading regime in terms of numbers, and there is nothing to suggest that administrations will increase over and above pre-pandemic numbers. CVAs might increase in numbers if, as discussed above, the moratorium is more-widely accepted and employed in substantial numbers.

What is worth noting, as it might impact the number of regimes, is that since 2011-12 the number of dissolutions has increased substantially, from 267,200 in 2011-12 to 546,441 in 2021-22. Some of those dissolutions will involve companies that had previously entered liquidation or administration, but the numbers far outstrip the number of annual insolvencies. Consequently, the vast majority of dissolutions will involve either compulsory striking off the register by the Registrar of Companies under s 1000(1) of the Companies Act 2006 or striking off on the application of the company under s 1003(1) of the Companies Act 2006. It is quite likely that some unscrupulous directors have decided not to place their company in some form of insolvency regime and allowed their insolvent companies to be struck off the register of companies, or they have applied to the registrar to have their companies struck off, in order to avoid investigation of their companies' affairs by an IP and/or the official receiver where their company is subject to formal insolvency regimes. If a company is subject to a formal insolvency regime the officeholder has an obligation to submit a report to the Secretary of State for Business and Trade concerning the conduct of the directors. If the report discloses activity which appears to constitute misconduct, the Company Directors Disqualification Act 1986 gives the Secretary of State the power to investigate and apply to the courts for disqualification of the directors. If the

[48] *Post Implementation Review of CIGA, p*aras 4.9-4.13.
[49] *Post Implementation Review of CIGA, p*ara 4.10.

aforementioned unscrupulous practice has been embraced by some directors, then the number of insolvencies would be far higher than the numbers we have in official records.

Recently, Parliament sought to address this issue by enacting the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021.[50] This legislation is designed to prevent, inter alia, dissolution of a company, other than in the legitimate situation where there are no outstanding creditors, where it is open to abuse. Prior to this legislation, where a director has been involved in a company that has been dissolved, an application for his or her disqualification could only be undertaken by the Insolvency Service, no matter how bad the director's conduct may have been, by first having the company restored to the register.[51] This involved substantial time and cost. Now, the Insolvency Service can seek the disqualification of a director of a dissolved company. It is too early to determine whether the legislative initiate will see the reduction in the number of dissolutions.

VI Conclusion

The first thing to say is that liquidations are by far the most popular regime for insolvent companies. What is surprising is that they have continued to increase, and CVLs in particular, over the years, notwithstanding the introduction of administration and the CVA in 1986. Administration did not really take off until the EA 2002 permitted entry into administration through extra-judicial avenues, but even then, while its numbers increased (in the main) from 2003 to 2013, there was not as great a use made of it and certainly not as frequent use as was perhaps hoped, and from 2013 the numbers fell and in recent times have been up and down. At no time has the number of administrations got back anywhere near their peak, which was in 2008 and 2009.

The CVA has never attracted large numbers, again this is surprising given the fact that before its introduction in 1986 it was thought that it would be used frequently by SMEs which could not take advantage of the scheme of arrangement process because of the cost and time involved in securing an arrangement. It is probably too early to evaluate the effect of the introduction of the moratorium and whether the number of CVAs will increase in future years but as the number of CVAs did not grow much after the 2000 Act introduced a moratorium process for smaller companies, one wonders whether it will make a lot of difference. However, the post implementation review of CIGA published by the Insolvency Service does manifest some optimism as far as the moratorium being able to facilitate greater rescue, particularly as a precursor to the approval of a CVA.

The frequent use of CVLs (their numbers outstripping all other regimes by a long way in all time zones) might suggest that the efforts to encourage the rescue of companies have not been that successful. It is difficult to know why. Various governments have responded to the concern, over the growing numbers of insolvencies and the subsequent liquidation of most of the insolvent companies, with changes to IA 1986 in order to encourage rescue. The IA 1986 introduced administration and CVAs and then the 2000 Act and the EA 2002 sought to

[50] It was granted Royal Assent and came into force on 15 December 2021.

[51] This procedure had to be followed in many cases. See, for example, *Re Townreach Ltd (No. 2486190)* [1995] Ch 28.

react to the lack of the use of CVAs and administrations respectively by introducing changes. The EA 2002 did alter the focus of administration which in 1986 had been primarily a rescue mechanism. The changes introduced by the EA 2002 led to many administrations being a form of secured creditor enforcement (very similar to the effect of administrative receivership which it slowly replaced) or a form of liquidation. Even pre-packs, which were sometimes lauded as the way to proceed in order to achieve rescues, particularly where SMEs are concerned, have not, on the numbers which we have been able to access (from 2014 onwards), been used in great numbers; numbers have been flat generally speaking.

It would seem that over the years governments have endeavoured to use all of the tools that are available in the toolbox and have tried to tweak them at various points, where necessary, but we are still not seeing as many rescues as was hoped for. Does this simply mean that the vast majority of companies that are insolvent are in such a bad state that they are not able to be saved? Is this, as far as more recent years are concerned, because there are more and more companies that have few or no assets, relying on loans, factoring etc to continue to operate, and thus have little or no base for a restructuring? If the answer to this question is 'yes' then perhaps no procedure/regime could be introduced which would encourage rescue in the numbers which all would hope for. It might be that our current system (subject to continuous monitoring and improvement as suggested by the Post Implementation Review of CIGA) is as good as it can get. It does allow a wide choice of company and business rescue options. They are largely tried and tested and generally available whenever a company or its business can be rescued.

If administration is often used as a hybrid form of liquidation or receivership, does it need to be looked at again? If some form of moratorium is needed to encourage company rescue either using a CVA or a RP, will the CIGA moratorium be that encouragement? It may be time for a root and branch reconsideration of how our insolvency procedures should operate. With the convergence of liquidation and administration, it may be that we do not need both procedures anymore. If a moratorium would encourage rescue, it may be that a single gateway for companies, involving a moratorium, should be considered and, depending upon an initial assessment of the company's situation, a clear plan be made. That plan may be for an immediate liquidation but it may also be rescue in the form of a CVA or RP.

Finally, perhaps, the high number of CVLs, particularly in 2022, might suggest that the plethora of zombie companies[52] which were said to exist, pre-COVID, have finally collapsed and entered liquidation, being unable to restructure. Such companies might well not be viable propositions for rescue.

[52] See, eg, the KPMG Economic Insights paper May 2019 "Zombies in our midst – the rise of zombie firm in the UK could spell trouble ahead".

Appendix

	Total WU	Comp	CVL	Receiver	Admin Receiver	Admin	Pre-Packs (connected party pre-packs)	216 notices***	CVAs
1960	1,563	525	1,038						
1961	1,846	612	1,234						
1962	2,196	718	1,478						
1963	2,154	729	1,425						
1964	2,104	724	1,380						
1965	2,595	805	1,790						
1966	3,250	934	2,316						
1967	3,535	1,230	2,305						
1968	3,165	1,108	2,057						
1969	3,510	1,181	2,329						
1970	3,689	1,269	2,420						
1971	3,506	1,166	2,340						
1972	3,063	1,150	1,913						
1973	2,575	1,080	1,495						
1974	3,720	1,395	2,325						
1975	5,398	2,287	3,111						
1976	5,939	2,511	3,428						
1977	5,831	2,425	3,406						
1978	5,086	2,265	2,821						
1979	4,537	2,064	2,473						
1980	6,890	2,935	3,955						
1981	8,596	2,771	5,825						
1982	12,067	3,745	8,322						
1983	13,406	4,807	8,599						

1984	13,721	5,260	8,461						
1985	14,898	5,761	9,137						
1986	14,405	5,204	9,201						
1987	11,439	4,116	7,323			131			21
1988	9,427	3,667	5,760			198			47
1989	10,456	4,020	6,436			135			43
1990	15,051	5,977	9,074			211			58
1991	21,827	8,368	13,459	7,815		206			137
1992	24,425	9,734	14,691	8,523		179			76
1993	20,708	8,244	12,464	5,362		112			134
1994	16,728	6,597	10,131	3,877		159			264
1995	14,536	5,519	9,017	3,226		163			372
1996	13,461	5,080	8,381	2,701		210			459
1997	12,610	4,735	7,875	1,837		196			629
1998	13,203	5,216	7,987	1,713		338			470
1999	14,280	5,209	9,071	1,618		440			475
2000	14,317	4,925	9,392	1,595	1056	438			557
2001	14,972	4,675	10,297	1,914	1192	698			597
2002	16,306	6,231	10,075	1,541	1038	643			651
2003	14,184	5,234	8,950	1,261	965	744			726
2004	12,192	4,584	7,608	864	579	1,602			597
2005	12,893	5,233	7,660	590	309	2,261			604
2006	13,137	5,418	7,719	588	206	3,560			534
2007	12,507	5,165	7,342	337	120	2,512			418
2008	15,535	5,494	10,041	867	199	4,822			587
2009	19,077	5,643	13,434	1,468	112	4,161			726
2010	16,045	4,792	11,253	1,309	56	2,835		241	765
2011	16,886	5,003	11,883	1,397	47	2,808		867	767
2012	16,156	4,261	11,895	1,222	35	2,532		945	839
2013	14,982	3,624	11,358	917	17	2,365		968	577

2014	14,068	3,716	10,352	22	22	1,601	387	741	559
2015	12,754	2,853	9,901	11	11	1,412	336*	669	372
2016	12,974	2,886	10,088	5	5	1,346	405** (163)	687	345
2017	12,944	2,747	10,197	2	2	1,316	357 (203)	658	307
2018	14,231	3,088	11,143	1	1	1,463	450 (241)	753	355
2019	15,000	2,943	12,057	1	1	1,813	473 (260)	707	351
2020**	10,841	1,353	9,488	3	3	1,527	481 (272)	665	260
2021	13,147	491	12,656	1	1	796	201 (106)	515	115
2022	20,777	1,956	18,821	1	1	1,231	358 (201)	699	111

The above table deals with insolvencies in England and Wales only. It is the product of information and statistics publicly available. We are most grateful for the assistance of the Insolvency Service in identifying a number of these sources.

The 2015 figure (*) is based on 01 January 2015 to 31 October 2015 only due to responsibility of monitoring passing to RPBs from 01 November 2015 onwards. The 2016 figure (**) is therefore a figure from 01 November 2015 to 31 December 2016.

*** Based upon entries for London Gazette only – no entries appear available for the period prior to 2010.

**** The first UK lockdown was applied on 23rd March 2020 to slow the spread of COVID-19.