

## **Pre-Pack Pool - annual report 2018**

### **Foreword**

The Pre-pack Pool (the Pool) was launched on 1 November 2015 and implements one of the recommendations of the Graham Review of 'pre-pack' administrations.

The aims of the Pool are to increase the transparency of connected party pre-packs and to provide assurance for creditors that independent experts have reviewed a proposed connected party pre-pack transaction before it is completed.

In its third year, the Pool has reviewed 24 applications and delivered the following opinions:

- 18 positive
- 3 qualified positive
- 3 negative

### **About pre-packs**

A pre-pack is an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator and the administrator effects the sale immediately on, or shortly after, appointment.

Alongside the increased focus on company voluntary arrangements during 2018, pre-packs continue to attract comment and interest as one of the most visible aspects UK's insolvency and restructuring framework. There was reference made to the Pool's activities in the House of Commons emergency debate covering the Johnston Press pre-pack, although it's worth noting that this particular pre-pack was not eligible for referral to the Pool.

Pre-packs are an effective business and job rescue tool and, importantly, a way of maximising returns to creditors. But, pre-packs continue to attract criticism from creditors and other stakeholders, particularly where the pre-pack involves the sale of an insolvent company's assets to individuals or businesses connected to the insolvent company. Often the basis for this criticism is an apparent lack of transparency in the process with some creditors often only finding out about the transaction after the deal has been done.

Given some creditors only find out about a pre-pack after the event, it is understandable that they will want reassurance that a pre-pack was the right thing to do. The administrator is there to provide this assurance; the Pool provides additional assurance. It may be that an expedited sale to a connected party was the best available options for returning money to creditors.

It's worth noting that pre-packs are not a common occurrence. There were only 450 pre-packs in 2018, out of a total of 1,464 administrations. And of those 450 pre-packs, just 241 were connected party sales. To give these figures context there were 12,501<sup>1</sup> creditors' voluntary liquidations in 2018. Administrations make up around 8% of all corporate insolvency proceedings.

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<sup>1</sup> England and Wales figures

Despite the attention they attract, formal complaints about pre-packs are not common. In 2018<sup>2</sup>, only four complaints about pre-packs were referred to regulators by via the Insolvency Complaints Gateway to the RPBs, out of a total number of 429 referrals.

### **About the Pre-pack Pool**

The Pool is a body of experienced business people who will provide an opinion on the proposed sale of a company's business and/or its assets to a connected party via a pre-pack. A list of the Pool members is included at [Appendix 1](#) to this report. This opinion is available to creditors. One member of the Pool will review an application and they will offer one of three opinions on the proposed sale:

1. The case for the pre-pack is not unreasonable;
2. The case for a pre-pack is not unreasonable but there are minor limitations in the evidence provided;
3. The case for the pre-pack is not made.

The Pool's opinion is available to creditors as part of a 'SIP16' report. It is the responsibility of the connected party purchaser to submit an application to the Pool. Referral to the Pool is voluntary.

Not all connected party sales need to be referred to the Pool. The Graham Review specifically scoped out certain sales to secured lenders to avoid causing unnecessary damage (and so lead ultimately to more business failures) to the restructuring of larger companies (and groups of companies) where a lender may have voting rights associated with their debt.

When a pre-pack sale to a connected party is proposed, an insolvency practitioner should inform the purchaser of their ability to approach the Pre-pack Pool. The insolvency practitioner should then include statements in a SIP16 report to explain whether the Pre-pack Pool has been approached by the purchaser or not, and that, if it has, a copy of the Pool's opinion has been requested from the purchaser. If a copy of the opinion is provided by the connected party, it should be included within the SIP16 statement. Ordinarily this will be provided to the insolvency practitioner directly via the online Pre-pack Pool portal.

As well as going to creditors, SIP16 reports have to be sent to the insolvency practitioner's Recognised Professional Body (RPB) to review the compliance of the reports with the requirements of SIP 16 more widely. This review role for the RPBs was another of the recommendations of the Graham Review.

There are five RPBs:

- Association of Chartered Certified Accountants (ACCA);
- Chartered Accountants Ireland (CAI);
- Insolvency Practitioners Association (IPA);
- Institute of Chartered Accountants in England and Wales (ICAEW); and
- Institute of Chartered Accountants Scotland (ICAS).

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<sup>2</sup> 2018 Review of Insolvency Practitioner Regulation

The Pool is operated by Pre-Pack Pool Limited, a limited company which is independent of the government and insolvency and restructuring profession. An Oversight Group supports the work of the Pool. The members of the Oversight Group are listed in [Appendix 2](#).

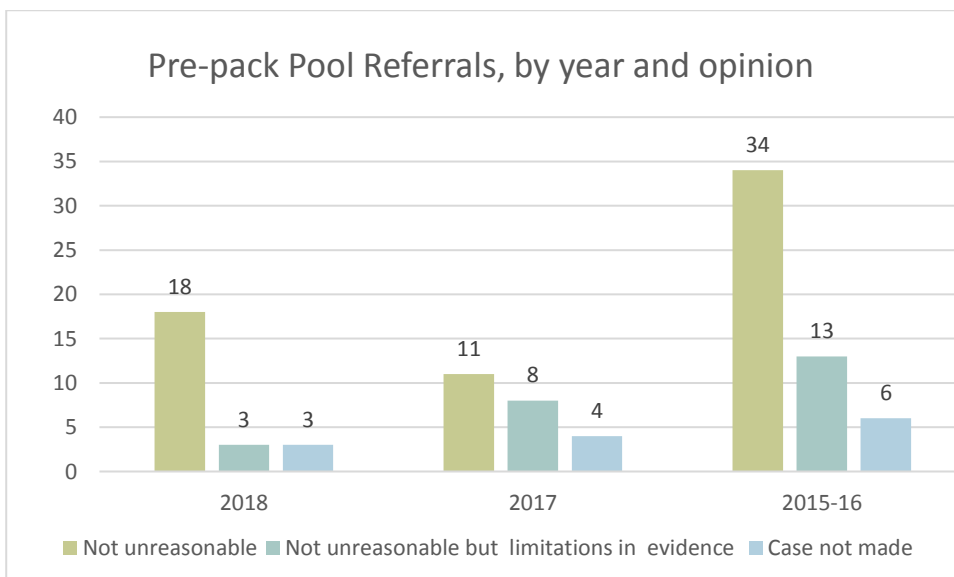
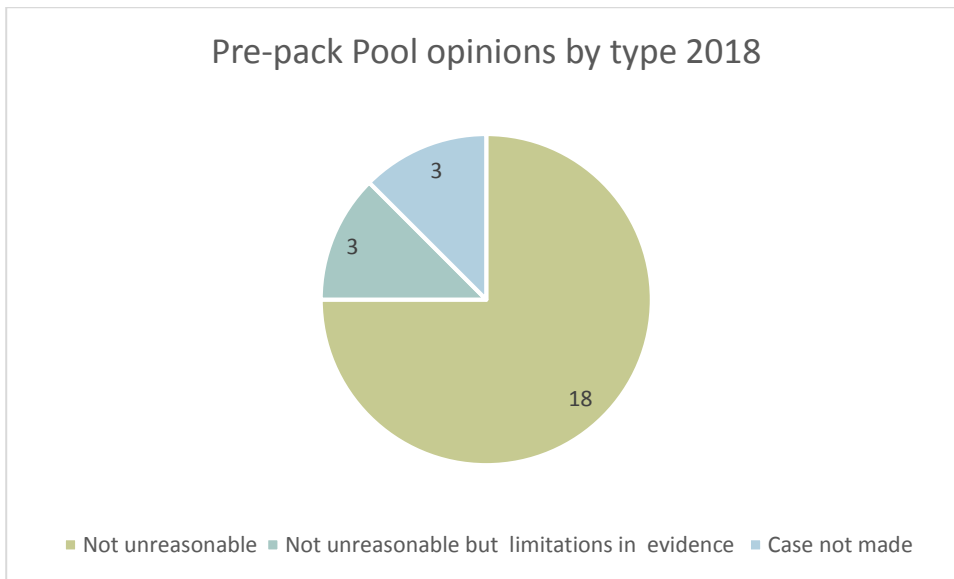
*What is 'SIP16'?*

Statement of Insolvency Practice 16 is part of the insolvency regulatory framework that sets out what insolvency practitioners have to do when a pre-pack has been proposed. The report to creditors following a pre-pack is known as a 'SIP16' report.

**Pool statistics for 2018**

In 2018, a total of 24 proposed connected party pre-pack purchases were submitted to the Pool for review. The value of the transactions referred to the Pool ranged from £25,000 to £17,000,000.

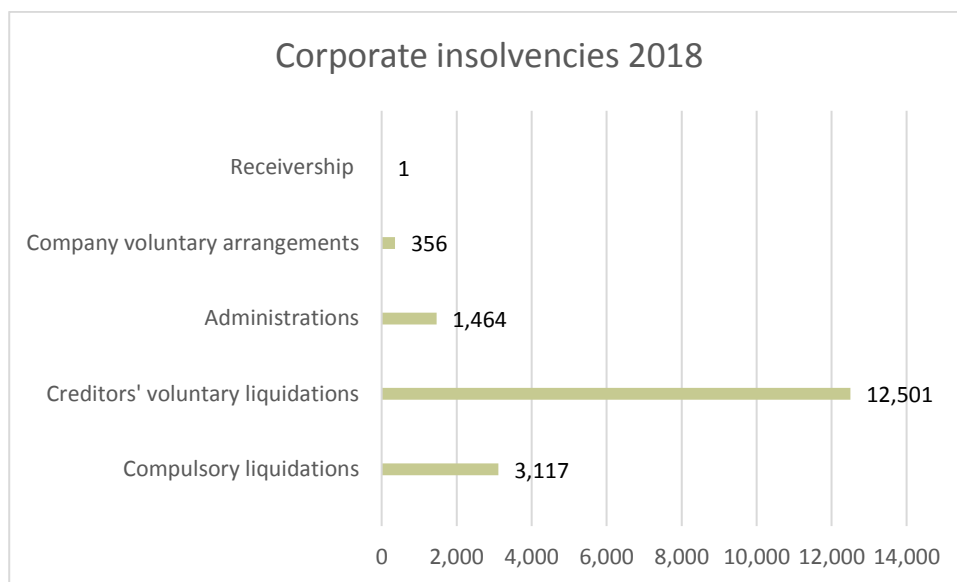
Of these 24 referrals, 18 received a 'not unreasonable' opinion (2017:11), 3 received a 'not unreasonable but limitations in evidence' opinion (2017:8), and 3 received a 'case not made' opinion (2017:4).



Aston University has recently undertaken some analysis of the survival rates of the potential purchasers which approached the pool in its first 14 months of operation (2015 – 2016). Their research showed that 30 of the purchaser companies were still trading. This included one company where the Pool had given a negative opinion on the transaction, but all the others where the Pool had given a negative opinion had ceased to trade.

### **Pre-Packs in 2018**

Insolvency statistics for 2018 show there were 1,464 administrations in total. Administrations make up around 8% of all corporate insolvencies, with the majority of corporate insolvency proceedings being creditors' voluntary liquidations.



According to data published by the Insolvency Service, of the 1,464 administrations in 2018 there were 450 pre-packs, with 241 being connected party sales. This compares to 1,289 administrations in 2017 and reflects an increase of 13.5% in administrations generally. The proportion of pre-packs compared to total administrations in 2018 also appears to have increased slightly to approximately 30% (based on Insolvency Service data). All types of company insolvency increased in 2018 compared with 2017 except administrative receivership.

As noted above, the insolvency practitioner is required to send their SIP 16 statement to their authorising body (RPB) for review. The table below lists the number of SIP 16 statements received by the RPBs for review, identifying cases where the sale is to a connected party.

RPB	Number of pre-packs	Connected party pre-packs
ICAEW	231	124
IPA	193	98
ACCA	23	17
ICAS	3	0
CAI	0	0

## **Pre-pack pool Ltd – directors’ reflections on 2018**

There was increased awareness of insolvency procedures in 2018, prompted largely by a number of high profile cases. This increased awareness enabled the directors to raise the profile of the pre-pack pool as a source of independent scrutiny of sales to connected parties. However, for this independent scrutiny to be seen to be effective reference to the pre-pack pool needs to be seen as an essential part of the pre-pack administration process by both creditors and prospective applicants.

Proposals for legislative change (see below) will have a defining impact on the future of the pre-pack pool.

The directors are grateful for the continued support of its main stakeholders.

### **Proposals for legislative change**

Referral to the Pool is currently voluntary, as was recommended by the Graham Review. The review also recommended that the Government take a reserve power to legislate should the voluntary measures not achieve the aims of the review’s recommendations.

The Small Business, Enterprise and Employment Act 2015 introduced changes that could impact on administration sales to connected persons. The Act created a reserve power, as suggested by the Graham Review, for the Secretary of State to make regulations by way of statutory instrument prohibiting, or imposing requirements or conditions in relation to, the disposal, hiring out or sale of property of a company by the administrator to a connected person. As it is only a reserve power, it falls away if not exercised within five years and lapses on 26 May 2020

In its *2018 Review of Insolvency Practitioner Regulation* published in May 2019, the Insolvency Service stated: “We have carried out a review of the impact of industry measures on pre-pack sales in administrations in order to inform a decision on whether statutory regulation is required in this area... The Government hopes to be able to publish the findings and outcome from the review shortly”.

## **Appendix 1:**

### **Members of The Pool (Reviewers)**

Alec Sanderson BA, C Dir, FBCS, CEng  
Colin Coghlan C Dir  
David Abbott MSc, FCA, AMCT,  
David Blair MA, FCA, MBA  
David Newman C Dir, MBA  
Dr Simon Chapman C Dir  
Kevin Mouatt C Dir  
Len Jones BA (Hons), FCA, MBA, MSc  
Paddy Campbell FCA  
Philip Gardner BA (Hons), FCA, CDir, DipM  
Philip Long FCA  
Philip Oatley FCA, BA (Hons)  
Philip Walter BSc (Hons), C Dir, FCMI  
Rodney Hare FCA  
Simon Willis C Dir, BSc  
Tim Rose C Dir, MBA  
Tony Sanderson FCA, BA (Econ)  
Tony Wilkinson FCMA

## **Appendix 2**

### **Oversight Group (stakeholders)**

ACCA

British Printing Industries Federation

British Property Federation

Chartered Institute of Credit Management

Insolvency Practitioners Association

Insolvency Service

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants of Scotland

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