

Term	Insolvency Act ref.	Notes
Definitions:		
Insolvent	- s123(1)(e)	“Inability to pay debts as they fall due”. Care re restricted reserves. (Most common definition.)
	- s123(2)	“Assets less than liabilities including contingent and prospective liabilities.” (Rarely used in practice as too wide a definition - although may be used in wrongful trading action.)
	- s214(2)(b)	“Knew or ought to have known that there was no reasonable prospect of avoiding insolvent liquidation.” (Definition for Wrongful Trading Purposes)
Going Concern		Ability to continue in operation for the foreseeable future, even if this means curtailing some of the charity’s operation, provided that the primary purpose can be continued.
Wrongful trading	- s214	A director can be ordered by the court to contribute to the deficiency if, when they ought to have known that the company was going into liquidation, they did not take all steps to protect the creditors.
Preference	- - s239	Where a creditor has been paid in preference to other creditors. Gives the court the right, on application by the liquidator, to make an order restoring the position.
Director	- s251	Any person occupying position of a director "by whatever name called".
Shadow Director	- s251	Any person "in accordance with whose instructions the directors are accustomed to act".
Staff claims:		
Preferential – if funds exist = payable before general claims	- s175	<i>With limits on amounts & period accrued ..Arrears of pay, holiday pay, pensions contributions</i>
General – ie ranking alongside rest of creditors		<i>Rest of staff claims, inc. redundancy pay, and arrears in excess of preferential limits</i>
Department of Employment – In practice = source of most payments to employees in an insolvency.	- Under Employment Protection Act	Will pay statutory entitlement of staff. Briefly: - <i>Arrears of wages</i> to 8 weeks @ £538 pw (2020) - <i>Holiday pay</i> for the current tax year - <i>Pay in lieu of notice & redundancy pay</i> – dependent on age and length of service

Charity specific:

Restricted Funds or Reserves. Where assets are held under a condition imposed from outside and have to be held or used for a particular purpose. Per CC12 = “separate charities”

Charity Commission - guidance CC12 “*Managing Financial Difficulties and Insolvency in Charities*”, “*Charity governance, finance and resilience - 15 questions trustees need to ask*”