

Insights

PRE-PACK 2.0: HAS THE UK FOUND THE RIGHT BALANCE BETWEEN RESCUE AND CREDITOR PROTECTION?

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A question that has changed shape

For most of the last two decades, the debate about pre-packaged administration sales (**'pre-packs'**) has been binary: are pre-packs good or bad? That approach is now out of date. Pre-packs have become so embedded into UK corporate rescue culture that the more relevant question is whether they have outgrown the regulatory architecture designed to constrain them, and whether that architecture still addresses ongoing concerns. Two developments make this the right moment to ask that question:

- a. First, the ICAEW published a review reflecting on seventeen years of regulatory scrutiny and reform of pre-packs, tracing the journey from oversight by The Insolvency Service of SIP 16 statements from 2009, through the Graham Review and the shift to Recognised Professional Body (**'RPB'**) monitoring from November 2015, to The Insolvency Service's decision from Spring 2026 that it will no longer collect SIP 16 data from RPBs, having concluded the area is now low risk.[1]
- b. Secondly, the wider legislative and regulatory landscape is under active review: The Insolvency Service's 2025 annual review of regulation confirms an ongoing programme covering SIP updates, the reform of standard-setting itself, and continued attention to the operation of the regime as a whole. Throughout 2025, the regulatory, policy, and legislative landscape saw significant developments, including ongoing work to update professional and ethical standards and Statements of Insolvency Practice and, in 2025, the Joint Insolvency Committee began reviews of SIP 2 and SIP 3.1 and continued its review of SIP 14, with the review programme continuing into 2026.[2]

Meanwhile, the alternative that was supposed to supersede the pre-pack for viable business rescues, the Part 26A restructuring plan, has developed a reputation among practitioners (**'IPs'**) for being slow, overly complex, highly adversarial and expensive, particularly where a dissenting class initiates cross-class cram-down litigation.

This article argues that, self-policed responsibly, the pre-pack remains a legitimate and (in the writer's view) often superior rescue tool, particularly for the UK corporate mid-market, and that the real reform agenda is not whether to permit pre-packs but how to make existing safeguards, such as the evaluator regime, SIP 16, creditor transparency and pre-administration funding structures, work as intended with minimal need for regulatory oversight.

The question posed in the title of this article comes in the wake of the high-profile pre-pack acquisitions by BT of TalkTalk's consumer and wholesale businesses on October 5, 2026 following a prolonged sale process which failed to secure a solvent outcome. The pre-packs facilitated the immediate transfer of the operational businesses rather than continuing to trade through a prolonged administration. Approximately 1.5 million retail customers and 1 million wholesale customers were covered by the rescue, and around 900 jobs were saved. The central justification for the pre-packs was that TalkTalk's services were too important to allow an uncontrolled collapse. Failure could have interrupted broadband and telephone services relied upon by vulnerable customers, hospitals, schools, emergency services and other critical infrastructure. The pre-packs offered continuity of services, preservation of value, transaction certainty and speed which enabled the buyer to acquire a viable operation without assuming a significant legacy debt burden. Notwithstanding these positives, the pre-packs have still managed to court controversy.[3]

Further, at the time of writing, we await news any day now about the fate of Poundland and whether a funded, whole-business, solvent rescue can be completed by management, or whether the outcome for Poundland, having implemented a Part 26A restructuring plan for its operational turnaround, following sanction in August 2025, will involve several smaller portfolio disposals potentially requiring pre-packs by an administrator[4]. If that transpires, the interesting question will be whether Poundland's plan merely postponed the inevitable, or whether it delivered sufficient value through continued trading and lease restructuring, having averted an imminent, value-destructive asset-realisation administration at the time of sanction (which reminds the writer of the type of criticisms previously level

ed against failed lease portfolio retail CVAs in the past). Another interesting question will be whether the plan's compromises and other provisions remain legally effective going forward, notwithstanding a subsequent administration, should that transpire. The answer more than likely will depend upon an analysis of the plan's terms, implementation and circumstances of any administration, all of which is way beyond the scope and purpose of this article.

Seventeen years of scrutiny and review: What the ICAEW review shows

The Insolvency Service's oversight of SIP 16 statements began in 2009; the 2014 Graham Review recommended that scrutiny of SIP 16 statements was best left to the RPBs and, from November 1, 2015, SIP 16 statements were sent to the lead IP's RPB instead of to The Insolvency Service, a move which the ICAEW supported on the basis that SIP 16 compliance would then be considered holistically alongside other aspects of an IP's work, rather than in isolation. Since RPB monitoring

started in November 2015, the ICAEW alone has received over 2,600 SIP 16 statements and, over time, the ICAEW moved to a risk-based review approach as its evidence base grew, an approach the other RPBs subsequently adopted.[5]

The headline finding from that decade of monitoring pre-packs is not a story of runaway abuse. In the past ten years, the ICAEW has seen relatively few significant SIP 16 deficiencies; while some extremely poor submissions have resulted in regulatory or disciplinary action, they have been very much in the minority, and the most serious issue identified was, in fact, an ethical one (i.e. where the same business was pre-packed several times to the detriment of HMRC).[6] That is a materially different picture from the one often painted in the media, where every connected party pre-pack is treated as 'suspect'.

Then, in March 2026, came the announcement that reframed the debate. The Insolvency Service told RPBs it would no longer collect data on SIP 16, having assessed the area as low risk, and confirmed there was no longer an expectation that IPs would submit SIP 16 statements to RPBs.[7] On one level, this demonstrates regulatory confidence: a mature, low-incident area of practice being taken off the central reporting treadmill. On another level, it is precisely this kind of quiet regulatory de-escalation that fuels the suspicion that pre-packs have become too commercially important to the UK corporate rescue culture to regulate as tightly as its critics would demand.

RPBs will, however, still determine, through their own risk work, whether SIP 16 or pre-pack concerns exist in individual cases, will continue to monitor whether pre-packs are suitable, and will still review a SIP 16 statement if a complaint is received. The safeguards have not disappeared but have migrated from a centralised reporting obligation to a risk-based, complaints-driven model that depends on RPBs exercising their judgment. This should not, in the writer's view, be read as a loosening of underlying professional standards (SIP 16 itself is unchanged) but instead as a calculated bet that IPs' own quality controls can be trusted to catch transgressors without universal reporting.

Even so, the ICAEW's thematic review highlighted recurring quality issues that go to the heart of why creditors (and the media) distrust pre-packs. Common issues include valuations for goodwill not always being independently supported, with the IP expected to explain why not and how they satisfied themselves as to value if no valuation was obtained; deferred consideration not always supported by security, with the rationale for taking none needing explanation; delays in issuing proposals under paragraph 49(5) of Schedule B1 to the Insolvency Act 1986 and sometimes lacking an adequate explanation, including reliance on awaiting the directors' statement of affairs; and viability statements being relatively rare in practice despite the requirement to make buyers aware of the potential for enhanced stakeholder confidence from preparing one.[8] IP failings of this nature disproportionately erode creditor confidence, and they are entirely fixable by improved discipline rather than by new legislation.

Connected party sales and the evaluator regime

The most persistent criticism of pre-packs arises from connected party transactions: a business sold back to its existing management or shareholders through a new vehicle, shedding debts and liabilities whilst the underlying enterprise, brand and employment continue largely unchanged. Pre-packs often face criticism due to a lack of transparency towards creditors and the ability to transfer a business to a party connected with the seller whilst leaving certain debts and liabilities behind.

The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 ('**2021 Regulations**') were the direct legislative response. The 2021 Regulations prevent a disposal of a company's assets within eight weeks of commencement of its administration to a connected party without either the approval of creditors or a report from an independent evaluator opining on the reasonableness of the consideration offered and the grounds for disposal.

In practice, the evaluator route has become the default. The ICAEW's experience is that the overwhelmingly preferred option is seeking an evaluator's report over a creditor decision, and it has not seen any cases where either a qualifying report or a creditors' decision has not been obtained. [9] That is a genuine achievement: near-universal compliance with a mandatory scrutiny requirement is not something the pre-2021 voluntary Pre-Pack Pool ever managed. But universal compliance with the obligation to obtain a report is not the same as the report itself convincing its readers. There are cases where the qualifying report has not been provided to creditors or filed with the administrator's proposals as the Regulations require, with the SIP 16 statement sometimes describing the report as available on request, or referencing a positive evaluator's report without going further.

A report that exists but is not seen by the creditors it is meant to protect only partially discharges the transparency function which the 2021 Regulations were designed to achieve.

There is also a structural question about what the evaluator regime can realistically achieve. An evaluator opines on the reasonableness of consideration and the grounds for disposal at a single point in time, typically very close to an administration appointment, often on the basis of information and marketing already substantially shaped by the administrators-in-waiting and the connected buyer. It is not equivalent to an independent, contested valuation process, and it does not replicate the discipline and rigour of an open market exercise. Where the underlying complaint about pre-packs is that insiders capture value that should have gone to creditors, an evaluator's report is a useful check on process but a comparatively weak check on outcome. This is because it rarely has the leverage, time or comparator evidence to challenge a valuation range which the administrators-in-waiting have already formed a view on.

The answer to whether the evaluator regime addresses the perceived problem with pre-packs is that it has done so, but only partially. It has professionalized the connected party process and created a paper trail; however, it has not, on the evidence to date, generated a meaningful number

of transactions being stopped, renegotiated or referred onward as a result of an adverse evaluator opinion.

SIP 16, creditor transparency and valuation evidence

SIP 16 remains the backbone of pre-pack transparency, and it is worth restating what it actually requires. SIP 16 governs the disclosure obligations in pre-pack sales, requiring administrators to provide creditors with a comprehensive statement including marketing history, valuations, and the rationale for the pre-pack. Deficiencies in SIP 16 compliance create a meaningful line of attack in any creditor challenge. SIP 16 has been amended repeatedly since 2009 precisely because each iteration has been found wanting in some respect, and the twin purpose which the ICAEW identifies is worth keeping in view: the statement must both contain the required disclosures and actually explain, to a reasonable and informed third party, why the pre-pack was the right course to take and that the administrator acted with due regard for creditors' interests, so the statement needs to both say and explain what it should.[10]

Valuation evidence is where this two-fold test can be failed. The ICAEW's review specifically flags weak practice around intangible asset valuation and deferred consideration left unsecured with no explanation. Without independent valuation evidence for goodwill, creditors may be concerned that goodwill has been sold without the IP getting proper value for it (although, query, the amount of goodwill attaching to a brand where a company has extensive debts and liabilities), or that consideration allocated to goodwill exceeds its value to enhance fixed charge realizations for secured creditors, and where deferred consideration is unsecured, the officeholder should explain why, including in some cases why a lower offer paid in full on completion was not accepted.

Every one of these deficiencies is a process discipline issue and can be rectified by a properly briefed valuer with professional indemnity cover, a documented rationale for accepting deferred or unsecured consideration, and a SIP 16 statement that anticipates creditors' questions rather than reciting a template.

None of this requires new law. It requires IPs to treat SIP 16 compliance as a substantive exercise in persuasion, not a box-ticking exercise assembled from a precedent bank.

Pre-administration funding: A structural weak point

One of the least discussed but most practically significant tensions in pre-pack practice concerns how the pre-pack is funded pre-appointment.

Administrators-in-waiting, understandably wary of personal and professional exposure, will typically require an interested buyer to fund pre-appointment costs (to cover trading-on, valuations, professional fees, the evaluator's report etc.) on an irrevocable, non-recourse basis. If the

transaction does not complete, the funder (invariably the buyer) has no route to recover that upfront spend, which can be significant in the writer's experience.

This asymmetry matters for the following reasons:

- a. first, it structurally favors bidders with the deepest pockets and the highest risk appetite, rather than necessarily the bidder offering the best outcome for creditors. A well-resourced connected party, often the incumbent management team, sometimes with the comfort of a secured creditor's backing, can absorb irrecoverable pre-appointment costs in a way that an arm's length trade buyer, uncertain of winning a competitive process, particularly if inexperienced in acquiring an insolvent business, may not be willing to risk (or even comprehend). That dynamic can quietly narrow the field of bidders before the administrators have formally tested the market, which sits awkwardly with SIP 16's emphasis on demonstrating that alternatives to a connected party sale were properly explored;
- b. secondly, the position changes markedly once the company is in administration. Funding provided after an administration appointment can be structured so that the funder benefits from the statutory administration expenses regime, effectively ranking ahead of most creditors and giving the funder real protection and priority for money advanced to support administration trading as a runway to a successful acquisition. If a secured creditor has a vested interest in the outcome of the administration, or is funding the buyer and/or carrying over some element of secured debt to newco, it is not uncommon for that creditor to provide funding for the administration trading period. Pre-appointment funders get no equivalent protection: they are gambling on a transaction closing, with no proprietary or statutory claim if it aborts. This is not a design flaw that can be fixed by tinkering with SIP 16 disclosure; it is a structural incentive problem baked into the opaque mechanics of how pre-packs are financed, and it deserves more attention in the current Insolvency Rules review than it has so far received; and
- c. thirdly, administrators and their advisers should think harder about whether funding agreements can be drafted to give a genuine, arm's-length trade bidder some conditional protection; for example, a break fee contingent on the administrators' decision not to proceed with that bidder for reasons unconnected with valuation, without compromising (once appointed) the administrators' independence or creating a fetter on their statutory duties.

Runway funding and the fettering problem

A related and more acute issue arises where a prospective buyer funds the company's trading runway into administration (covering payroll, critical supplier payments and rent in the weeks before appointment), so the business survives long enough for the pre-pack to be executed. This is commercially imperative as, without that funding, the business might collapse before a sale can be structured, destroying value for everyone. But it creates a genuine oversight problem for administrators on appointment.

SIP 16 requires administrators to be, and to be seen to be, exercising independent judgement about whether the pre-pack is the best available outcome, including whether the connected or funding-linked buyer really is the right buyer at the best price. If that same buyer has already kept the company alive for weeks, or even months, through pre-appointment runway funding, the administrators inherit a *fait accompli*: the practical alternative to completing the deal with that buyer is often the immediate failure of the business (because no other funding is in place and there has been no time to arrange it). That is not necessarily improper, but it is a live fettering risk, both real and perceptual.

An administrator who finds, on appointment, that the only viable buyer is the party who has been bankrolling the company's survival is not in the same position as one who tests the market from a neutral starting point, even if both processes are conducted in good faith.

There are practical steps here that can reduce both the real and perceived risk for IPs. Runway funding agreements should be drafted so that the bidder acquires no contractual or equitable right to insist on being the eventual buyer and no right of veto over the administrators' ultimate decision over sale of the operational business. The agreement should expressly reserve the administrators' unfettered discretion to run a marketing process, consider competing bids, and decline to proceed with the funder (as buyer) without it acquiring a claim for anything beyond repayment of amounts actually advanced on an unsecured basis (or by way of reduction from the purchase price, if successful).

Advisers negotiating these funding arrangements should resist boilerplate that ties funding drawdowns to milestones only the eventual buyer can meet, since that kind of conditionality is precisely what creates the appearance of 'a done deal' dressed-up as an open process. None of this eliminates the underlying tension between the company needing the money immediately (in order to preserve value and protect the directors against the risk of wrongful trading) and preserving a genuinely open sale process later, but it materially improves the administrators' ability to demonstrate, in the SIP 16 statement, that their judgement was not in fact fettered.

'Pre-pack plus': How long is too long to negotiate pre-appointment?

A further variant that deserves more scrutiny is the 'pre-pack plus' transaction, where the substantive commercial terms of the sale are negotiated over many weeks, or even months, before an IP is formally engaged, let alone appointed. By the time the proposed administrators are instructed, the deal is not merely sketched out; it is substantially agreed, sometimes down to detailed heads of terms or a near-final sale and purchase agreement, with the administrators' role reduced to validating (not scrutinising) a transaction the directors have already negotiated for themselves or for a connected buyer.

This raises director duty questions that are more acute than in a conventional pre-pack negotiated over days or just a week or two under the proposed administrators' supervision. Directors of a

company in the zone of insolvency owe duties that shift towards the interests of creditors as a whole^[11], and those duties do not pause simply because a sale is being negotiated informally rather than through a formal insolvency process. When insolvency threatens, directors' duties shift from shareholders to creditors, and directors must consider creditors' interests as paramount. A protracted pre-appointment negotiation conducted principally by directors, without independent oversight, with a buyer who may be a connected party, risks locking in a transaction structure and price before any independent professional has tested whether it actually represents the best outcome available. The longer that negotiation runs, and the more its terms are fixed before an IP is involved, the harder it becomes for the eventual administrators to genuinely satisfy themselves, moreover satisfy creditors, that the sale reflects a proper exercise of judgement rather than a rubber stamp on a deal the directors had already decided to do.

The answer is not to prohibit early engagement with a prospective buyer: early engagement is often what makes a corporate rescue possible, and rigid time limits would simply drive the same practice further underground. The better discipline is procedural: IPs should be involved, even informally, from as early a stage as practicable in any pre-pack plus scenario, so that the eventual SIP 16 statement can genuinely describe an IP's engagement with the process from its early stages rather than a last-minute instruction to bless a pre-baked deal.

Directors and their advisers should keep a clear record of why the pre-appointment period took the length it did, what alternatives were considered, and what changed between the start of negotiations and completion, precisely the kind of narrative SIP 16 already demands, but which pre-pack plus transactions are structurally more likely to lack.

Speed versus protection: Is this a true trade-off?

The conventional framing, when it comes to pre-packs, is to treat speed and creditor protection as opposing values on a dial: more of one means less of the other. That framing understates how much of a pre-pack's value to creditors comes precisely from its speed. Pre-packs maximise the value of assets, preserve more jobs, and minimise business disruption caused by a drawn-out insolvency process. A trading administration that runs for months while a business haemorrhages cash, customers, staff and supplier confidence can destroy more value than it protects, leaving creditors worse-off than a well-executed pre-pack. The ability to pre-pack also negates some of the typical disadvantages associated with administrations, being the level of fees involved with trading on and the erosion of value in the process.

Seen this way, speed is not the enemy of creditor protection; in many distressed situations it is a pre-condition for there being meaningful value left to protect.

That said, speed without justification is dangerous, because creditors who only learn of a completed pre-pack after the fact have no meaningful opportunity to object, however positive the outcome. The real design challenge is not choosing between speed and protection but sequencing

disclosure so that it does not slow down the transaction: robust SIP 16 statements issued promptly after completion, evaluator reports actually circulated (not merely referenced) where the 2021 Regulations require them, and proposals issued which contain adequate disclosure. None of that needs to slow down any pre-pack by a single day; it simply requires IPs to treat post-completion transparency as a core discipline, not an afterthought.

Friend or foe? Pre-packs from a stakeholder perspective

The pre-pack's image problem is real, and it is not entirely undeserved. Unsecured creditors, who typically have no visibility of a pre-pack until the sale is announced, understandably experience the process as something 'done to them' rather than 'with or for them'. Unsecured creditors, in particular, often find themselves at the sharp end of a pre-pack and may have received little or no advance notice. That perception is not fixed by better public relations; it is fixed, if it can be fixed, by genuinely better disclosure practice of the kind which the ICAEW's thematic review shows is still inconsistently delivered.

From an employee perspective, the picture is more favorable, and this deserves more prominence in the debate than it typically receives. A pre-pack that completes over a weekend, with contracts of employment transferring automatically under TUPE to the buyer, very often preserves jobs that a slower, more public insolvency process would have destroyed through the collapse of customer and supplier confidence in the interim. Trade creditors who continue to supply the rescued business also benefit from continuity that a drawn-out trading administration would not have offered.

Landlords occupy an important position in this debate: a stakeholder group that, on balance, might 'prefer' a pre-pack where there is a credible buyer intending to continue trading from the premises compared to various alternatives used to restructure occupational leases (especially on a portfolio basis). However, there can still be a lot of variables for any landlord to weigh in its assessment of a pre-pack, including, for example, loss of pre-administration rent arrears, loss of guarantor liability and dilapidation claims, which are legitimate concerns.

The reason for this 'preference', if there truly can be one here given no landlord relishes a tenant insolvency event, is structural rather than sentimental. In a pre-pack, a landlord whose tenant has become insolvent typically deals with a buyer in occupation and trading the business solvently, often initially under a licence to occupy while a formal assignment or new lease is negotiated, with rent falling due for the licence period (typically for 6 months with rent payable monthly in advance to the company's administrators on a pass-through basis) treated as an expense of the administration, which ranks ahead of most other claims.

Structurally, this scenario can give a landlord genuine leverage as against a solvent occupier with improved covenant strength and seeking to remain in occupation of the premises: real conversations can take place with a real counterparty, albeit within the confines of the statutory

administration moratorium in paragraph 43(4) of Schedule B1 to the Insolvency Act 1986, which operates to restrain the exercise of forfeiture by a landlord absent consent of the administrator or court order, backed by the priority expense regime for rent referable to the period of beneficial occupation. It should also be acknowledged, however, that prepacks also present an opportunity for an insolvent tenant to shed unviable leases by “leaving them behind” on a sale, leaving landlords very aggrieved by the prospect of recovering possession of empty premises and/or disclaimer in a subsequent liquidation.

Whatever the theory, in contrast, a Part 26A restructuring plan that compromises lease liabilities on a massive scale offers no real seat at the table for individual landlords. The landlord's lease terms, rent, and often the right to forfeit are amended by a vote and, where a class dissents, by the court's cram-down power; a landlord's only lever to resist a Part 26A, in reality, is litigation (i.e. opposition through counsel at the plan sanction hearing). In the absence of any adversarial argument, a judge can do no more than take a ‘high level’ view of the restructuring plan and accept the evidence presented by the plan company on the relevant alternative (admittedly, the burden being on the plan company to persuade the court that the restructuring plan should be approved).

The recent restructuring of the former WH Smith high-street business, rebranded as TG Jones, illustrates this tension. By April 2026, TG Jones was forecast to run out of cash, with administration expected to produce around £64.9 million (against claims of almost £143.7 million) with landlords expected to recover between 6.3p and 15.3p in the £ so, rather than enter administration, TG Jones proposed a Part 26A restructuring plan that would keep over 300 stores trading while reducing its rent bill, dividing stores by profitability so that the least viable closed and landlords of ‘weaker performing outlets’ accepted rent reductions of 25% in Year 1 and deferred payments in Year 2 and 3 (calculated by reference to store profitability), with rent arrears being compromised for all landlord classes (except for Class A1 and A2) and dilapidations compromised where the relevant leases terminate over the rent concession period of 3 years.[12]

As reported in the judgment[13], one landlord in particular was concerned about landlords generally being asked to bear too much of the cost of the rescue while the private equity owner remained in control and stood to benefit from a successful turnaround. Only after negotiation produced changes, including better treatment for some landlords, a greater potential profit share, and the removal of fees for a non-exclusive licence to use the newly-minted name ‘T G Jones’ during the rent concession period, did the landlord withdraw its opposition and the judge concluded the revised plan was fair, holding that it was not enough to show creditors would receive more than in the relevant alternative; the court must also consider how the value generated by the plan over and above that alternative is allocated between different creditor groups. The judge also considered submissions about the treatment of future rent reductions/deferrals as ‘substantial contributions equivalent to new money’. Although the argument was made ‘attractively’, the judge preferred the counter-argument that rent is not ‘new’ money being advanced to the company: it is

instead a deferral of an obligation that already exists on which a dividend would be payable in the relevant alternative (so cannot carry ‘the same weighting’).[14]

TG Jones is not an isolated example of landlord friction being created in recent plans. In the River Island restructuring plan[15], facing a £43 million immediate liquidity shortfall, half of the landlord classes voted against the plan despite it promising higher creditor returns than a formal insolvency, with the court noting that opposition from certain large, sophisticated landlord classes may have reflected commercial motivations extending beyond their interests as landlords under the affected leases. It was also the case that seemingly ‘odd’ landlord voting may have been affected by ‘block voting’ against the plan across multiple sites (including Class A landlords).[16]

In the Poundland restructuring plan[17], creditors were offered recoveries 170% higher than estimated administration returns, yet a majority of creditor classes, mainly landlords, still voted against it, with low participation among general creditors pointing to either apathy or contingent claims with no immediate exposure.[18] In both cases, landlord opposition had largely evaporated by the time of the sanction hearing.

Despite dissenting votes, opposing creditors in both cases failed to substantively challenge the companies' evidence on the relevant alternative and did not appear in court to argue their case, leaving the judge to undertake the fairness analysis largely unaided. That pattern is telling: landlords vote ‘no’ because the restructuring plan process gives them no viable way to register or negotiate their objection, but relatively few are willing to fund the sustained litigation needed to make that objection count at sanction. A pre-pack, by contrast, may permit a landlord to stay more in control by negotiating out-of-court on the substance of a new lease directly with a buyer trading the recently acquired business and anxious to remain in occupation.

There is a structural point here worth making explicitly: the Part 26A restructuring plan was promoted as a more transparent and consensual alternative to the pre-pack but, from a landlord's perspective, can often feel less negotiable, not more. A landlord facing a Part 26A restructuring plan compromise of future rent has no real seat at the table in the way a landlord negotiating directly with a buyer in occupation under a licence to occupy might have; their only realistic recourse, as TG Jones, River Island and Poundland each show, is an expensive (and far riskier) challenge within a highly complex structural process, often mounted late in the day, against a company that has prepared its case for months with the benefit of specialist expert advice paid for by the company.

Both River Island and Poundland saw the deployment of expert-led “plan benefit reports” from PwC[19] and FTI Consulting[20] respectively, providing a quantitative comparison of the contributions made by each creditor class against the benefits they were projected to receive, and while the judge treated these reports with some caution, given their inherent limitations, he nonetheless found them useful in assessing fairness. That asymmetry of resource (i.e. time and money) and evidence is one reason why, in the writer’s view, an approach by policy-makers and IPs

to corporate rescue that has shifted distressed retail and leisure restructurings away from pre-packs and towards restructuring plans deserves some scepticism.

It is, however, only right to balance the above with the counterfactual where it has been argued in evidence as to why an accelerated M&A process might not be viable as a relevant alternative because of the size of the investment required, the scale of the turnaround needed, the level of distress, the compressed timeline and the non-availability of credit. These elements point towards a costly administration process as the relevant alternative with no certainty of a sale, as was presented to the court in the expert report of the plan company in Poundland. Of course, it is very difficult in practice for a disparate creditor group to challenge such evidence given the directors are best placed, from an evidential basis, to assess the company's options and will be looking to present the most compelling case to the court why a Part 26A restructuring plan is appropriate with the aid of specialist professional advisers. And, of course, if no one attends the sanction hearing to oppose the plan, the court is left with little alternative but to make a decision based upon the evidence before it.

The answer to the question posed is that even where a pre-pack is properly conducted, individual creditors, including landlords, may suffer significant losses. Transparency and valuation discipline are essential safeguards but even these cannot eliminate the economic consequences for stakeholders. Improving the image of pre-packs, however, does not require re-inventing the tool itself; it requires the entire IP profession to stop tolerating SIP 16 and evaluator-report shortcomings from a small minority that the ICAEW review continues to find, because those shortcomings are what supply the ammunition for every hostile headline or complaint.

The rise and rise of costs in part 26a restructuring plans

The Part 26A restructuring plan was introduced in 2020 with cross-class cram-down as its headline feature, allowing a plan to bind a dissenting class of creditors, including HMRC, provided the statutory conditions are met. In the writer's experience, the costs for the procedure can vary enormously depending upon the size and complexity of the case. Costs can jump significantly beyond IP and legal fees when pricing in the cost of a 'relevant alternative report', an 'allocation of benefits' report (of the kind now emerging in retail cases), a 'debt report' (to assess the terms and pricing of new money), the cost of town hall meetings, extended pre-plan creditor engagement (generating another report), expert report(s) on recognition in foreign jurisdictions, consideration of any alternative deals put forward and, in some cases, formal mediation that a contested plan increasingly requires.

The scale that costs can reach when a plan is genuinely litigated is best illustrated by example rather than by benchmark tables. The McDermott group's restructuring plan should be regarded as complex litigation from the outset: it involved interdependent parallel proceedings with two other group companies proposing Dutch WHOAs, successful applications for an extended timetable, a six-day trial, and without-prejudice negotiations conducted while the trial was under way, with one

unsecured litigation creditor owed approximately US\$1.3 billion opposing the plan at the sanction hearing. Although at the extreme end of the spectrum, the professional fees generated by that process drew direct judicial criticism. Justice Michael Green commented that he was “troubled” and “horrified” to discover that McDermott had spent around US\$150 million on professional fees in negotiating with its secured creditors and advancing the restructuring plan, describing that as “an enormous sum of money” even allowing for the fact that it included the costs of supporting creditors, and expressing concern that costs of that magnitude could be a barrier to the sort of restructurings Part 26A was meant to encourage. The Judge went on to state “that there seems to be something wrong with the restructuring industry, particularly in the US, where costs appear to be out of control” [21].

Recent case law indicates that this is not a one-off. In a decision handed down on 5 May 2026, the court sanctioned the restructuring plan of Waldorf Production[22], exercising the cross-class cram-down power under section 901G of the Companies Act 2006 against HMRC, in a case where the company's financial difficulties stemmed from unpaid Energy Profits Levy liabilities of approximately US\$94 million, and where three of four creditor classes voted unanimously in favour while HMRC, meeting alone as its own class, rejected the plan (not helped by the declaration and payment of a dividend in October 2022 of US\$76 million[23]). The litigation that followed was substantial. HMRC raised, for the first time in absolute terms, the contention that the court lacked jurisdiction to cram down where it had rationally resolved to reject the plan, an argument the judge rejected as inconsistent with the legislative intent behind Part 26A and the rescue culture underpinning English insolvency law.[24] HMRC's further argument that the no worse off test in section 901G(3) could not be satisfied because the buyer of the group to which the plan company belonged intended to use approximately US\$900 million of ring fenced tax losses to set off against future profits required expert evidence and a sensitivity analysis before the court concluded that, in all but one implausible scenario, the Exchequer would be better off under the plan than in the relevant alternative.[25] This was not a straightforward, low-cost process: it involved detailed expert evidence, a contested jurisdictional argument taken all the way to judgment, and a mediation HMRC declined to attend. HMRC's refusal to attend a two-day mediation in October 2025 drew measured criticism from the judge, who noted the tension with HMRC's own earlier complaint that the plan company had failed to engage meaningfully with unsecured creditors.[26]

Waldorf and McDermott are unusually large and high-profile cases, and TG Jones, River Island and Poundland sit somewhere between them and a typical mid-market restructuring in scale. But the pattern they illustrate together, involving contested classes, expert valuation and benefit-allocation evidence on both sides, formal mediation either offered or refused, and a fully litigated sanction hearing, is increasingly the norm rather than the exception for restructuring plans that need cram-down to work. That is precisely the scenario in which a restructuring plan's supposed cost and timetable advantage over other tools can evaporate. For a well-resourced global conglomerate, that cost might only be a balance sheet rounding error against the overall transaction value; for a financially distressed mid-market company it is often simply prohibitive.

The true costs analysis is not the initial benchmark fee quoted to launch a restructuring plan but the realistic prospect of facing a seven-figure fee the moment a single class, or a single well-resourced stakeholder, decides to litigate the plan in court.

In the writer's view, these factors make the case for a swing back towards pre-packs (which we may already be witnessing given there have been fewer plans in 2026 compared to 2025, so far), at least for the population of cases that do not need Part 26A's cram-down power because there is no realistic prospect of a genuinely dissenting, blocking class. Where a business has a willing buyer, a credible valuation, and creditors, including landlords, who can be brought to a negotiated position without a vote or a hearing, running a Part 26A process purely for the reassurance of court sanction is a disproportionate use of professional fees and management time that could otherwise be preserved for creditors.

The Part 26A restructuring plan should be reserved for the situations it was designed to solve involving multi-class capital structures with a genuinely intransigent stakeholder that needs to be crammed down. For everything else, a well-executed pre-pack, with disciplined SIP 16 disclosure and, where relevant, a properly evidenced evaluator's report, remains (in the writer's view) the more proportionate and effective rescue tool.

Has the pre-pack become too important to the UK rescue culture to regulate?

This brings the debate back to the question this article opened with. The evidence from seventeen years of SIP 16 oversight of pre-packs does not support a picture of an unregulated free-for-all; it supports a picture of a tool that has been regulated fairly consistently, with the intensity of central regulatory oversight easing as the evidence base has grown and reported abuse has proven to be the exception rather than the rule. The ICAEW's decade of monitoring found relatively few significant SIP 16 deficiencies, and The Insolvency Service's own assessment, reflected in its March 2026 decision to stop collecting SIP 16 data, was that the area is now low risk. That is a rational regulatory response to genuine improvement, not evidence of significant concerns.

But the underlying suspicion in the question, that pre-packs have become too important to the UK rescue culture to risk restricting further, is not baseless either. The Insolvency Service's own 2025 annual review shows a regulator explicitly re-orienting itself towards smarter, more selective oversight across the whole IP regime, moving away from universal reporting and towards targeted intervention. During 2025, the Insolvency Service continued to strengthen its approach with a sharper focus on outcomes and public confidence, describing a shift from oversight of the profession to greater system leadership involving a more transparent, data-driven and proactive regulatory approach, and in 2025 it introduced a data-led, risk-based approach to monitoring RPB performance using quarterly data returns rather than universal case-level reporting. Whether that shift reflects confidence born of good outcomes, or a pragmatic recognition that closer, more expensive oversight cannot be justified for a tool the UK economy now depends upon to rescue

distressed businesses quickly, is ultimately a matter of perspective rather than fact. Both readings, it is submitted, are consistent with the same underlying data.

It's worth noting that The Insolvency Service published its five-year strategy on September 29, 2026 which goes beyond IP regulation and sets the direction of travel for the agency as a whole through to 2031. Its priorities include (1) addressing the greatest harms; (2) reducing administrative burdens (whilst maintaining high standards); (3) making insolvency processes simpler and more proportionate; (4) broadening enforcement, particularly in the context of abusive phoenixism; and (5) measuring outcomes rather than activity. The key test over the next few years will be whether this approach can translate into measurably lower administrative burdens for the vast majority of compliant IPs, without compromising creditor protection and professional standards. It is to be welcomed, however, that the agency recognizes the need to avoid unnecessary cost and regulatory friction with IPs, particularly where there is little evidence of risk, whilst directing resources to areas where intervention can make a meaningful difference to practice and behaviours to assuage concerns raised by creditors.

What this means for insolvency practitioners

The practical message for IPs is that the regulatory direction of travel rewards demonstrable rigour rather than punishing the use of the pre-pack tool itself. The specific, recurring weaknesses which the ICAEW has identified (i.e. unsupported goodwill valuations, unexplained unsecured deferred consideration, unexplained delays in proposals, evaluator reports referenced but not circulated, and viability statements rarely produced), are in fact the practical checklist for any firm wanting to protect both its clients and its own regulatory standing as central reporting recedes and risk-based, complaints-driven scrutiny takes its place. These deficiencies, together with qualifying evaluator reports not always being provided to creditors or filed with the proposals as the 2021 Regulations require, are the common issues identified through the ICAEW's regulatory reviews of SIP 16 statements.

On funding structures, IPs and their advisers should treat pre-appointment runway funding agreements as a discrete area of legal risk requiring careful drafting to preserve, and to demonstrably preserve, the administrators' unfettered discretion, rather than a boilerplate approach borrowed from the last transaction with little or no thought to the duties of administrators to act in the best interests of creditors as a whole.

On the wider policy question, the current Insolvency Rules review is the right forum to address the structural funding asymmetry between pre- and post-appointment funding, and to consider whether 'pre-pack plus' transactions warrant a specific disclosure expectation about the length and conduct of pre-appointment negotiations. Neither of those reforms requires curtailing the pre-pack as a tool. Given the cost and litigation risk now attached to Part 26A restructuring plans for anything short of a genuinely uncontested, single-class restructuring transaction, such as we have seen in McDermott, Waldorf, TG Jones, River Island and Poundland, the pre-pack is not a relic to be

tolerated pending something better coming along. It is, for the great majority of UK corporate rescues, still the best tool, provided IPs keep closing the disclosure gaps that give its critics their oxygen.

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