

**This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 10 March 2020.**

# 11. Inspections

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# Introduction to inspections

## 11.1 Scope of this chapter

This chapter provides guidance on carrying out inspections and tracing inspections both at the early stages of a case and later on during the course of the official receiver's investigation, for example where a director or bankrupt has failed to cooperate in the proceedings. The former is generally called a 'trading' inspection, and the latter a 'tracing' inspection.

## 11.2 Definition of an inspection

An inspection may be defined as a visit by the official receiver to one or more premises owned or occupied by an insolvent, or at which they are or have been trading or have their registered office. A tracing inspection may be defined as a visit by the official receiver to an address that has been disclosed in the order, or discovered by the official receiver, for the purpose of ascertaining the whereabouts of the director or bankrupt, and establishing initial contact.

## 11.3 Purpose of inspection

The primary purpose of a trading inspection is to protect the property of the insolvent. For a tracing inspection, there is an element of property protection but also the aim is to secure the cooperation of the director/bankrupt.

When an official receiver becomes liquidator or provisional liquidator of a company, they are required to take into their custody or control all property and things in action to which the company is or appears to be entitled<sup>1</sup>.

When a bankruptcy order is made the Official Receiver becomes trustee, unless another person is appointed by the Court. The trustee's function is to get in, realise and distribute the estate<sup>2 3</sup>.

1. section 144(1)

2. section 291A

3. section 305

## 11.4 What is property?

Property includes; money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property<sup>1</sup>.

1. section 436

## 11.5 Official receiver's statutory duty to investigate

The official receiver has a statutory duty to investigate the affairs of insolvent companies against which a winding-up order has been made. In a bankruptcy case, the official receiver has a duty to investigate the conduct and affairs of each bankrupt unless an investigation is thought to be unnecessary<sup>1 2</sup>. The inspection of property owned or used by an insolvent may be an important part of the official receiver's administration and investigation of the insolvent's affairs. It may give the official receiver an opportunity to ensure that assets are disclosed and protected for the benefit of the insolvent's estate and an indication of the nature and scope of any business conducted. It may also provide the official receiver with their first contact with the insolvent.

1. section 132

2. section 289

# Deciding whether to carry out an inspection

## 11.6 Sources of information to be used in inspection decision

An inspection is an expensive use of time and resource and as such the official receiver should exercise care in deciding whether an inspection is necessary, based upon the information obtained from enquiries concerning the insolvent's affairs. Such information may be obtained from the following sources:

- a) officers of an insolvent company or the bankrupt
- b) the insolvent's accountant or solicitor
- c) the petitioning creditor or their solicitor
- d) other creditors
- e) any insolvency practitioner consulted by, or holding an office in respect of the insolvent
- f) any other persons the official receiver believes may hold relevant information about the insolvent

The official receiver should exercise care in their inspection decision where the only information available concerning the assets or activities of an insolvent is that provided by the officers of an insolvent company or the bankrupt.

## 11.7 Inspection not always required

The official receiver must consider whether an inspection (or more than one inspection) is justified and only undertake one if it is considered necessary with regards to the facts of the case. In making the decision the official receiver must weigh the potential advantages of carrying out an inspection against the cost and time involved. Weighing up the time and costs involved, alongside the complexity and cooperation of the insolvent, consideration can be given as to whether agents can be instructed to attend instead.

The official receiver will often be able to discharge their duties without the need for an inspection and thereby preserve resources for those cases requiring detailed investigation.

## 11.8 Occasions when inspections should not be carried out

An inspection should not usually be carried out where:

- a) it is apparent that the company or bankrupt is not trading
- b) an insolvency practitioner holds any office in relation to the insolvent
- c) any assets or books and papers can be promptly collected by the official receiver's agents or delivered up by the company officer or bankrupt
- d) the official receiver is satisfied that all available and relevant books and papers have been produced to them
- e) the company officers/bankrupt have surrendered to the proceedings and the official receiver has decided that the insolvency does not merit further investigation

## 11.9 Occasions when inspections should be carried out

An inspection should be carried out where one or more of the following apply:

- a) the company or bankrupt appears to be trading (excluding small scale sole trader bankrupts who have no premises or employees)
- b) the company or bankrupt has been trading immediately prior to the order (excluding small scale sole trader bankrupts who have no premises or employees)
- c) where no relevant information has been obtained despite exhaustive initial enquiries and the order gives the impression that trading activity is a possibility
- d) there are premises which need to be secured or silent (vacant) premises which need to be assessed
- e) there are known to be assets or third party goods which must be secured
- f) essential accounting records require collection and cannot be relied on to be delivered
- g) the company officer(s) or bankrupt have failed to surrender to the proceedings
- h) the official receiver believes that a full disclosure of assets may not have been made

Where any of the circumstances outlined above are present and the official receiver decides not to undertake an inspection, that decision should be recorded on the file with an explanation, citing key information used in reaching the decision.

## 11.10 Need to exercise judgment in deciding to carry out inspection

The situations referred to above are not exhaustive and the official receiver must exercise professional judgement on a case by case basis as to whether an inspection is necessary. The official receiver may from time to time encounter insolvencies which fall within one or more of the categories where an inspection is not necessary but find that there are valid reasons remaining for carrying out an inspection.

## Planning the inspection

### 11.11 Timing of inspection

Where an inspection is required to deal with a trading business and/or is essential in order to protect or secure assets, action must be taken to carry out the inspection(s) within 24 hours of the need becoming apparent to the official receiver. In some cases, more urgent action may be required as appropriate. Where an inspection is desirable in other circumstances, it should be carried out as soon as possible after the need for it becomes apparent.

Where the official receiver undertakes an inspection, details of the principal actions taken during that inspection must be noted and saved to the fileplan.

### 11.12 Location of inspection

An inspection will normally be carried out at the insolvent's trading address(es). The official receiver may consider it necessary that a company's registered office (if the premises belong to the company), a bankrupt's home, or other locations should be inspected if it is believed that assets or books and papers belonging to the insolvent or third party goods in the insolvent's custody may be found there.

An inspection of the bankrupt's home may be necessary if there are issues as to ownership, occupation or value of the home. Before undertaking an inspection of the bankrupt's home the official receiver should ensure that any occupants of the property, other than the bankrupt, give their consent to the inspection.

### 11.13 Inspections of more than one trading address

Where assets may be at risk and when the official receiver is aware of more than one address where trading is continuing, the inspections should be carried out simultaneously. This should minimise the possibility of advance warning being given of the inspecting officer's visit and afford greater protection to moveable assets. If the bankrupt or company director is not present when the inspecting officer arrives, they should attempt to contact them by telephone to arrange their immediate attendance.

## 11.14 Preparation before an inspection

Prior to going out on an inspection, the examiner should ensure that they are properly prepared for all possible scenarios that may be encountered. In particular they should:

- a) confirm with the assistant official receiver whether the inspection is needed, and which addresses should be visited
- b) prepare necessary documentation (see below)
- c) ensure that the assistant official receiver has full details of the addresses to be visited, contact telephone numbers for all attending staff members, details of vehicle they are travelling in and premises visited (where known), and an idea of the time expected back
- d) consider putting the official receiver's agents on notice that they may be needed, or arrange to meet them at the premises
- e) ensure that they have all necessary equipment to carry out the inspection
- f) consider whether any special arrangements need to be made, for example, if the individual is known to be violent the police may need to be contacted for guidance/assistance
- g) consider the environment that they are likely to be visiting, for example if they are visiting a farm, suitable footwear may be required
- h) consider general precautions and other health and safety requirements they may need to take (see below)

## 11.15 Documentary authority

A copy of the court order, or notification of a winding-up order, should be available for the inspecting officer to produce as evidence of the official receiver's appointment. The inspecting officer should also have their identity card containing a photograph available as additional evidence of identity and authority to act. Where an identity card is not held by the inspecting officer, authority to act needs to be obtained and signed by the assistant official receiver<sup>1</sup> If problems are envisaged on

the inspection, an inspection authority may be taken along with a identity card to make it clear that the inspecting officer has delegated authority from the official receiver.

1. INAUTH

## 11.16 Documentary authority in High Court cases

If an urgent inspection is required in a case where the order was made in the High Court, it is possible that this will be prior to a copy of the court order being received. Petitions and transfers team are responsible for sending the order on to the local official receiver on receipt from the court. If the order has not been received, a phone call to petitions and transfers team should be made so that they can check with the High Court that the order has in fact been made, and so they can request an urgent copy of the order. If the court can send this through, a copy can be emailed to the local official receiver in time for the inspection as evidence that the official receiver has been appointed liquidator/trustee.

## 11.17 Items to take on an inspection

When an inspection is undertaken, the inspecting officer may need certain items to carry out an effective inspection depending on what is found. Consideration should be given to taking the following items:

- warrant card or inspection authority<sup>1</sup> (see above)
- business cards (if held)
- provisional receipt book (for any cash/valuables)
- money bags (if visiting a business where cash likely to be found)
- 2 x receipt for books and papers<sup>2</sup>
- initial interview pack with appointment letter, or appropriate interview letter depending on how many appointments have already been missed to deliver by hand
- copy winding-up order or bankruptcy order
- inspection report (a printed booklet available in all offices)
- a printed copy of '[your rights if your employer is insolvent](#)' if appropriate
- stationery for any notices needed, or notes of conversations
- pens
- calculator
- mobile telephone
- contact numbers for the office, and all premises to be visited (where known)
- map for addresses to be visited
- satellite navigation system (if available)



- boxes for any records to be collected (if applicable)
- another member of staff for safety or assistance
- digital camera (if applicable and possessed by the office)
- letters addressed to “the occupier” or “the landlord” which may be left at premises to request that they contact the office for tracing inspections

It is understood that it used to be common practice for examiners to take certain papers from a case file on an inspection. In light of recent developments regarding the security of personal information, this practice should no longer take place as a matter of course. If specific information from the case file is required, the matter should be discussed with the assistant official receiver prior to the inspection, and their authorisation obtained. The whereabouts of information assets that are [security protected](#) should be known at all times and their movements auditable. A record should be made of all information removed from the office and when it is returned.

1. INAUTH

2. BPRCT

## 11.18 Requests for assistance from other official receivers

If premises are located within an area covered by another official receiver’s office, a request should usually be made to that official receiver for assistance. As much advance notice as possible should be provided and any verbal requests for assistance should later be confirmed in writing. Specific instructions regarding dealing with matters of an unusual nature should be provided to avoid confusion and to ensure synchronisation of actions by the official receivers where there are several addresses to be inspected.

# Safety of staff on inspections

## 11.19 Prior to inspection

Managers are responsible for the safety of their staff and consequently it is essential that managers know the location and situation of their staff at all times while they are working away from the office, particularly when out visiting an insolvent’s premises. Any person undertaking an inspection who does not already have an Insolvency Service issue mobile phone should be issued with a mobile phone for the duration of that inspection. If an examiner uses a personal mobile phone for this purpose the cost of reasonable telephone calls may be reclaimed.

## 11.20 Examiner/officer normally to be accompanied on any inspection

It would not normally be expected that a member of staff should carry out an inspection unaccompanied. It is a matter for the judgement of the local manager on a case-by-case basis, whether from the information available and the particular circumstances, the examiner/inspector might be able to carry out.

Two or more inspecting officers should carry out any potential problem inspections, e.g. where it is believed that the director/bankrupt has threatened violence.

## 11.21 Precautions to take when on inspection

When attending an inspection in a vehicle it is good practice to ensure that the vehicle is parked in such a way that an easy escape can be made if necessary, e.g. reverse into a space, or ensure your vehicle is facing the way out if you are in a cul-de-sac. Ensure your keys can easily be located if needed, and don't get out of the vehicle if you feel threatened in anyway. When on foot avoid going down badly lit or isolated walkways alone, if you feel threatened try to head for a busy public place. Further information on personal safety generally may be obtained from [The Suzy Lamplugh Trust](#) web site. Lone worker training is also available, contact the People and Capability Team for more information.

## 11.22 General health and safety

Staff should pay particular attention to their safety when on visits to premises that may have been used for industrial purposes. Those previously responsible for health and safety matters at those premises may not have fully discharged those responsibilities. More information can be found in the Service's [Health and Safety Policy](#).

## 11.23 Restrictions relating to crossing the threshold

No male inspecting officer should cross the threshold on a domestic inspection if the only current adult occupant is a female and no female inspecting officer should cross the threshold on a domestic inspection if the only occupant is a male. Neither should an inspecting officer make entry if the only occupant is a child. If the purpose of the inspection is a tracing exercise, any discussion must occur at the front door, even if invited in. If the purpose is purely to collect books and records, a request should be made that the books/papers are brought to the front door for collection. If it is not

possible to bring the items to the door, or if the person refuses to give any information, except in private i.e. not in the doorway, arrangements must be made for contact by telephone or alternatively a visit with another officer as necessary. The purpose of this is to limit any risk against an inspecting officer's safety and to minimise the possibility of unfounded complaints of impropriety against inspecting officers.

## 11.24 Officer to report conclusion of inspection to manager

On conclusion of the inspection, the inspecting officer should report back to the manager that they have left the site, even if they are going to return to the office that day.

In the event of the inspecting officer not returning/telephoning, local management should attempt to contact the inspecting officer by mobile phone. If it is not possible to make contact in this way, consideration should be given to attempting to phone the address visited/person to be visited. It is a matter for local management on a case-by-case basis as to whether the police should be contacted.

# Process for an inspection

## 11.25 Who should carry out an inspection?

Apart from in relation to London (see below), it will be the examiner whose case requires an inspection that is the appropriate person to carry out that inspection. In certain circumstances it may be appropriate for a colleague to carry out the inspection. These reasons may include a training need of an examiner.

## 11.26 Who should carry out an inspection? – London

In relation to London, there is one outdoor inspector who carries out inspections when one need is identified. The [outdoor inspector](#) should be emailed with full details of the inspection requirement, for which there is a form available (Annex A). Sufficient details of the case should be provided to enable the inspector to carry out an informed inspection. If there is significant reason to believe that a case is trading an AOR in London should be contacted, in the first instance, to discuss a case transfer.

## 11.27 When an agent can carry out an inspection

It may be appropriate to allocate an inspection to the official receiver's agents. This is likely to be when there has been full cooperation by the company officer or bankrupt, who has ceased to trade or agreed to cease to trade, and agreement can be reached on handing over the assets and/or accounting records. It may also be appropriate when there are known to be third party assets that the insolvent has agreed can be secured until collection can be arranged, or when there are vacant premises that need securing. The decision as to whether to accompany the agents on such an inspection needs to be considered carefully on a case-by-case basis. Consideration should be given to the travelling distance and if the benefit gained from attendance outweighs the time/costs of attending. If there is a possibility that full cooperation may not be gained on the inspection, the examiner should also attend so that they can provide information to the officer or bankrupt regarding their duty to cooperate and the consequences of failing to do so.

If an agent is instructed to carry out an inspection without the attendance of the official receiver, clear and precise instructions must be given on what is required of the agent. A contact phone number for the instructing examiner or assistant official receiver should also be given (and they should be available), in case further advice is required by the agent whilst carrying out the inspection.

## 11.28 Information security on inspections

Staff should take responsibility for all information that they handle (whether paper or digital), and all information that they instruct agents to handle on their behalf, and should take the necessary precautions to ensure its safety from unauthorised disclosure. Staff should note there is a marked difference in the risk to the records of a sole trader for example, compared to that of a company employing 50+ employees. Where the risk is considered greater, agents should be used to move accounting records to ensure safe delivery and to ascertain who is responsible for the records at all times. Reference should be made to any recently issued security notices when planning an inspection to ensure current information security guidance is followed. Particular attention should be paid to instructing the agents on what to do with any sensitive data recovered, such as wage records, customer credit card details, etc. Such material needs to be physically conveyed in accordance with current security protocols and the official receiver's specific instructions.

# Trading inspections – overview and initial actions to take

## 11.29 General awareness of inspecting officer

Prior to attending trading premises the Official Receiver's local agent should be contacted and where possible the agent should attend the trading premises with the inspecting officer.

Once at the trading premises the inspecting officer should ensure that the company or individual whom has been identified as such is in reality the person against whom the insolvency order has been made and, in cases where identity is in doubt, should proceed with discretion.

The inspecting officer should remember that there is a risk of accepting the unsupported statement of an officer of an insolvent company or a bankrupt. Wherever possible, documentary evidence should be requested to confirm the statement, particularly regarding ownership of assets or details of any business which is being carried on at the time of an inspection. The inspecting officer should be looking out for possible undisclosed assets and ensure that the company officers or bankrupt do not conceal, destroy or remove any of the property of the insolvent. This is particularly important where computerised records are encountered.

## 11.30 What to cover initially with the insolvent on the inspection

When the company officer or bankrupt is first encountered on an inspection, it is likely that they will have various questions. The inspecting officer should ensure they explain the following at an early stage:

- a) that the insolvency order has been made, and provide a copy of the order
- b) the official receiver's role in the proceedings
- c) the company officer or bankrupt's duties
- d) the purpose of the inspection
- e) that an interview will still be needed at a later date

## 11.31 Personal delivery of notice

If the inspection is the first occasion that a company officer or bankrupt has been seen, the inspecting officer should provide the appointment letter to the officer or

bankrupt and, if appropriate, make an appointment for their attendance at the official receiver's office.

## 11.32 What will take place on a trading inspection?

The main things to cover on an inspection are covered in detail throughout this section of the chapter. An overview of an inspection is provided here and may be for one or more of the following reasons:

- a) to identify and deal with assets
- b) to determine what the trading position is, and make a decision on the continuation of the business
- c) to determine the position regarding the premises (including insurance) and if appropriate, secure the premises, and collect any keys
- d) to dismiss any employees as at the date of the order
- e) to collect any accounting records
- f) to identify and protect third party assets
- g) to take an inventory of the contents of the premises

## Obtaining information from the insolvent on a trading inspection

### 11.33 Inspection report

The inspection booklet should preferably be completed with a company officer or the bankrupt in all cases where trading premises are found. If they are not present, the person in charge of any business premises should be requested to provide the information as far as it may be known. It is important that the person providing the information signs the inspection booklet as an acknowledgement of the details provided. This will be evidence of the assets, together with third party property, disclosed and should help to avoid subsequent disputes. If they refuse to sign the report, a note should be made on the report and signed by the inspecting officer.

### 11.34 Preparation of an additional report

In addition to completing the inspection booklet, the inspecting officer may, in appropriate cases, prepare an additional report to record matters not mentioned in the inspection booklet. The report should contain details of premises visited, date, persons seen, nature of enquiries made, results of such enquiries, and the action taken regarding the assets, including details of any items removed from the premises. A brief note of any telephone conversations made during the inspection should similarly be made. The report should be signed and dated by the inspecting officer and placed on the fileplan. The report should provide a written record of the decisions and actions taken on the inspection.

## 11.35 Preliminary information and statement of affairs

The inspecting officer may provide the preliminary information questionnaire to the company officers or bankrupt and may exceptionally consider it appropriate for the questionnaire to be completed during the inspection e.g. where the company officer or bankrupt for medical reasons may find it difficult to come to the office.

## 11.36 Obtaining an inventory

The inspecting officer/agent should prepare an inventory of any stock, plant and machinery, equipment, furniture, fixtures and fittings etc. belonging to the insolvent. This should usually be prepared with the company officer(s) or bankrupt to avoid later disputes concerning the assets comprised in the estate. The inventory should, wherever possible, state the make, type and any serial number of large items of plant, machinery, equipment, etc. The inventory should be signed by the company officer/bankrupt present to avoid any later disputes. If the officer/bankrupt refuses to sign the inventory, the inspecting officer/agent should record the refusal and sign and date the note.

## 11.37 Professional preparation of inventory

A professionally prepared inventory should be obtained if the inspecting officer cannot prepare an adequate inventory, and it is considered necessary due to the nature of the stock or quantities involved or their value. Consideration should be given to cost and benefit of the inventory. Reference should be made to chapter 41 regarding the employment of an agent to undertake an inventory.

# **Ascertaining the position regarding the premises to be inspected**

## **11.38 Ownership of premises**

The inspecting officer cannot insist on access to premises of which the insolvent has no right of occupation, e.g. is neither the owner nor the tenant, or of which they are the landlord with a right of entry only in specified circumstances.

The inspecting officer should therefore on arrival at the premises request to see a company officer, the bankrupt or other person in charge, as appropriate. If the premises are not owned or rented by the insolvent, then sight of documentary evidence to support this should be requested. If the insolvent has no interest in the premises, all the property which the insolvent owns, or is responsible for, should be removed as a matter of urgency.

Where the insolvent has a right of occupation but the premises are business and residential, the inspecting officer should attempt to secure the business side from the residential, if this is possible. Information should be sought regarding other possible administrative or trading premises, stores or sites.

## **11.39 Let or sub-let premises**

If the insolvent has let or sub-let the premises, the inspecting officer should obtain the name(s) and address(es) of the tenant(s) or sub-tenant(s) and ascertain as far as possible the terms of their occupation. A copy of any written agreement should be obtained together with details of the rent payable, any arrears and when it is next due for payment. Tenants should be advised that the official receiver will contact them shortly about their tenancy but that on no account should they pay rent to the insolvent. Neither should the inspecting officer collect or accept the payment of rent, as this could be interpreted as the official receiver affirming the right of the tenant(s) to occupy the premises; or, if the person in occupation in fact had no right to occupy, the acceptance of rent could create a tenancy.

# **Third party involvement, including partnerships**

## **11.40 Third party involved in business**



The inspecting officer should make enquiries regarding any third party trading from the insolvent's business premises. If a trading name is being used, details of the proprietor(s) should be sought and any documentary evidence (e.g. headed notepaper, VAT registration, insurance certificates) inspected to identify the person behind any trading style. If the business is one conducted by an associate of the insolvent, full details should be sought including the date when trading commenced and of any assets transferred by the insolvent to that business.

## 11.41 Partnership businesses

When carrying out an inspection on a bankruptcy order, if the bankrupt states that the business is run as a partnership, evidence of this should be requested. Evidence may include a partnership agreement, partnership accounts, VAT registration or tax return addressed to the partnership, invoices, business stationery, bank statements or chequebooks. If this is the case, details of the solvent partner should be obtained so that they may be written to for an account of the bankrupt's share of the partnership.

The official receiver cannot close down a partnership business unless a winding-up order has been made against the relevant partnership, that joint bankruptcy orders have been made against all members of that partnership, or an order has been made by virtue of article 14<sup>1</sup>. In the absence of any of these orders it is doubtful that the official receiver is empowered to deal with the partnership. See chapter 52 for more information.

1. Insolvent Partnerships Order 1994 article 14

## 11.42 Identification of third party items

The company officer(s) or bankrupt should be asked to identify all items on the premises in which third parties have an interest. The items may be subject to;

- hire purchase or lease agreements
- retention of title clauses
- on loan
- deposited with the insolvent for repair

The company officer(s) or bankrupt should produce all relevant documentary evidence, e.g. contracts, agreements, invoices etc. The inspecting officer/agent should keep a record of items where documentary evidence of the name and address, together with the nature of the third party interest, is not available for removal.

## 11.43 Separation of third party goods from insolvent's property

Where machinery or similar items are identified as third party property, the inspecting officer/agent should consider attaching a label with the name and address of the claimant. When an item of equipment is subject to a hire purchase or lease agreement, the name of the owner may be displayed on a plate affixed to the machine. If a large quantity of items is shown to belong to third parties, the items should be clearly separated from the insolvent's property and any agents subsequently instructed should be advised accordingly. Reference should be made to chapter 25 regarding subsequent action in relation to third party goods.

## 11.44 Ownership claim by bankrupt's relatives or friends

If a bankrupt's relative or friend claims any property, those items should be clearly identified in the inspection booklet. The relative or friend should be informed that they might be required to make a statutory declaration of ownership and produce documentary evidence in support of their claim and should be issued with letter ATPC.

## **Ongoing trading – continuation of the business**

### 11.45 Consideration of continuing a business

Should an inspecting officer discover that a business is still trading, it will be necessary to assess whether it is likely to be beneficial to allow it to continue trading. Following assessment they should telephone the office to make their recommendations prior to taking action to close a business down.

As a general principle, a business must not be carried on unless the official receiver is satisfied that to do so will ultimately be beneficial to the general body of creditors and the estate is indemnified against any resultant loss.

### 11.46 Consideration of an urgent Secretary of State appointment

If the insolvent is trading at the date of the order and significant value in the estate will be lost if trading ceases, then it may be appropriate to apply for an urgent Secretary of State appointment for an insolvency practitioner to act as liquidator/trustee (see chapter 45). The insolvency practitioner could then give consideration as to whether to continue the business or realise the assets prior to closing it down. It is also possible that a bankrupt may wish to apply for an annulment on the grounds that an IVA has been approved to avoid the business being closed down. An insolvency practitioner would be needed to supervise the running of the business, whilst the IVA proposals were put to the creditors.

## Dealing with assets on an inspection

### 11.47 Seizure of assets

The inspecting officer/agent must take immediate steps to take possession of the insolvent's property on behalf of the official receiver<sup>1 2</sup>. Careful enquiries of the company officers or the bankrupt (or in their absence, the person in charge) should be made to discover all possible assets, which may require protection. In a company employees have a duty to co-operate with the official receiver and the official receiver may request current employees of the insolvent, or employees who have been in its employment within the last year, to provide information<sup>3</sup>. Cash and other easily moveable assets, e.g. jewellery and cameras, should be located and protected at an early stage of an inspection. Items in which third parties have an interest should be separately identified. The inspecting officer must issue provisional receipts to the company officer, bankrupt or other party in charge at the premises, for all moneys collected at the time of the inspection.

1. section 144(1)

2. section 287

3. section 235(3)(c)

### 11.48 Exempt property generally (bankruptcy only)

The inspecting officer should seek to identify any items that may be claimed as exempt property<sup>1 2</sup> and record brief details of such items in the inspection booklet so that the official receiver may consider any necessary action.

1. section 283

## 11.49 Execution or distress levied

The inspecting officer/agent should make enquiries to establish whether an enforcement officer or county court bailiff has taken 'walking possession' over all or any part of the insolvent's property, has levied distress or has removed goods. If execution has not been completed at the time when notice of the insolvency is given to the enforcement officer or bailiff, the official receiver can claim any goods seized<sup>1 2</sup> 3. If execution or distress has been levied, the inspecting officer/agent should obtain details of the enforcement officer or bailiff concerned, the items seized and the date of seizure. Reference should be made to chapter 12 for further information concerning executions and distress and other forms of action against the property of the insolvent.

1. section 184

2. section 346

3. section 347

## 11.50 Motor vehicles

If the insolvent is owner or lessee of any motor vehicle, it should be locked and, if possible, parked off the road, preferably in a garage, or similar. If a vehicle is left on a public highway, it must be taxed and insured (refer to chapter 14 regarding insurance). In any event it should not be driven, except by the official receiver's agents in the course of disposal. In no circumstances should a member of the official receiver's staff drive a vehicle without adequate insurance cover and the express permission of their senior officer. Such an occurrence should be a rare event, e.g. where essential to safeguard the asset.

If the official receiver is satisfied that a bankrupt needs a vehicle for use in their current employment, business or vocation, and it is not of excess value, they should be permitted to retain it as exempt property.

## 11.51 Food and drink

European legislation provides that a person who sells or offers for human consumption any food, which fails to comply with food safety requirements, shall be guilty of an offence. The inspecting officer should under no circumstances consider the sale of perishable food e.g. meat, milk, sandwiches, fruit and vegetables. The inspecting officer should arrange for the disposal of the food with the assistance of the local authority if necessary. Any frozen food should also be disposed of in the

same manner, as the official receiver is unable to verify its storage history. Further information may be found in chapter 34.

## 11.52 Firearms and explosives

If the inspecting officer encounters firearms or explosives during an inspection, they should not touch or move them and should immediately contact the police for advice, particularly if the circumstances are suspicious. The police will be able to confirm whether a firearm is registered and whether its owner holds other registered guns. Firearms should only be transported by the police or a licensed gun dealer, and likewise explosives would only be moved under the supervision of the police or other competent authority (. There are numerous regulations relating to the storage, transportation and sale of firearms and explosives and the official receiver should consider the early employment of a specialist agent.

Further information can be found in chapter 34

## 11.53 Gas bottles

Where a gas bottle containing oxy acetylene is discovered on an insolvent's premises (usually premises where welding has been carried out) immediate action should be taken to establish whether the bottle is empty or contains gas. This information is only likely to be available if the insolvent is available to provide all relevant details. Where the official receiver is unable to verify if the bottle is empty, or where the bottle still contains gas, immediate arrangements should be made to contact the supplier to have the bottle removed from the premises due to the fire risk it presents. The gas bottle should have a label fixed to it indicating the supplier.

# Dealing with animals

## 11.54 Animals including birds and fish – immediate action to be taken

Where the insolvent holds birds, fish or animals intended for sale, the inspecting officer should take an inventory of them and ensure that they are securely contained. If such creatures are not to be sold immediately, the official receiver should ensure that they will be fed and cared for until a sale can take place. Where necessary the official receiver may buy feeding stock and employ a manager (which may be the bankrupt or a company officer) to maintain the creatures until sale. Consideration

needs to be given to the practicalities and costs associated with caring for any animals pending a sale.

## 11.55 Animals including birds and fish – legal requirements

In the case of all animals, it should be remembered that there are legislative requirements concerning the welfare of animals and that the official receiver, as a keeper of those animals, will be responsible for ensuring that these requirements are not compromised. In the case of farmed species (cattle, sheep, pigs, poultry and, in some cases, horses and camelids), there are a range of disease control requirements that may be in place concerning the way in which they are kept or their movement, transport and method of sale. In a case where farmed livestock are involved, the official receiver should contact the Animal and Plant Health Agency (03000 200 301), choosing the 'other enquiries' option, in the first instance in order to establish their options.

## 11.56 Animals including birds and fish – disposal and realisation

If the costs associated with looking after any animals pending a sale are likely to result in no benefit to the estate, then the animals should be dealt with immediately. If the animals are farmed livestock then, prior to any action being taken, immediate contact should be made with the Animal and Plant Health Agency and also the relevant local authority animal health team. If the animals are companion animals, then contact should be made with relevant charitable bodies or private veterinary practices that may be able to offer some advice on possible courses of action. A bankrupt's pet will not usually have a realisable value but, where it is valuable, the official receiver should sell it. Such a sale may be to a relative or friend of the bankrupt; provided the official receiver is satisfied that they have obtained the market value of the pet.

## 11.57 Dangerous or exotic animals

Most animals that are considered wild, dangerous or exotic require a licence. This will be issued by the relevant local authority. If there are concerns regarding the legitimacy of a wild/dangerous animal or advice is sought on any possible actions, the local authority would be able to assist.

If any animal appears likely to be dangerous, consideration should be given to its immediate disposal/removal with the assistance of the appropriate organisation. The

keeper of an animal will be strictly liable for any damage caused by that animal if the animal belongs to a dangerous species (i.e. one not usually found domesticated in Britain) and also, in certain circumstances, for damage caused by an animal which is not of a dangerous species<sup>1</sup>. A keeper is the person who owns or is in possession of the animal. The official receiver will, as trustee, own the insolvent's animals, and could, as liquidator, be considered to be in possession of such animals.

If animals are of a species that may be considered endangered, then consideration should be given to contacting the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Unit at the Animal and Plant Health Agency (APHA) on 03000 200 301. To establish if an animal is an endangered species a check may be made on the [CITES database](#).

1. Animals Act 1971 section 2 to 5

## Dealing with drugs and medicines

### 11.58 Drugs/medicines (including controlled drugs) encountered on inspection - general

An inspecting officer may find drugs at a variety of premises including the premises of doctors, dentists, pharmacists, veterinary surgeons, private clinics and residential care homes. In addition, postal carriers, or a person collecting drugs on prescription for another may be in possession of drugs. Such drugs may be identified in the register that is required to be kept.

The guidance in the following paragraphs concentrates on controlled drugs, as it is to these drugs that criminal penalties apply where they are illegally possessed or stored. See <https://www.gov.uk/guidance/controlled-drugs-licences-fees-and-returns> for more information.

There are separate restrictions on the sale of medicines not subject to control, and guidance on this is covered in chapter 34.

### 11.59 Controlled drugs - where illegality suspected

Where it appears that controlled drugs encountered on an inspection are being held illegally, the police should be informed immediately. Under no circumstances should the drugs be moved or otherwise handled by official receiver's staff.

Similarly, the encountering of certain legally controlled drugs should also be reported to the police and guidance can be obtained from the local police Controlled Drugs Liaison Officer

## 11.60 Controlled drugs – general background

Many drugs are simply illegal to possess, produce or supply<sup>1</sup> except in very limited circumstances.

The legislation<sup>2</sup> provides that certain 'banned' drugs can be legally produced, possessed and/or supplied in certain circumstances and by certain professionals. There are five categories (schedules), under the legislation, which controlled drugs are divided into, depending on their usefulness and potential for misuse:

- Schedule 1 provides a list of drugs for which there is considered to be no clinical benefit and production, possession and supply of such drugs is limited to a small number of people – primarily those undertaking research in relation to the drugs. A licence is required to hold drugs listed under schedule 1. Where the official receiver is dealing with an insolvent with such a licence, they should immediately inform the police so that they can take custody of the drugs
- Schedule 2 details drugs which have agreed clinical benefits, but also are potentially open to misuse. The possession of such drugs is, therefore, controlled by regulations relating to storage and record keeping
- the remaining schedules contain drugs over which there are less stringent controls. Particularly, there are limited controls over storage and record keeping of these drugs, so immediate action by the official receiver is likely to be limited to ensuring the premises are secured and insured as normal

1. Misuse of Drugs Act 1971

2. Misuse of Drugs Regulations 2001

## 11.61 Storage of controlled drugs

The legislation<sup>1</sup> provides that certain drugs (primarily those in schedules 1 and 2), are stored securely. The official receiver is most likely to encounter such storage when dealing with drugs in schedule 2.

The relevant regulations specify the standard to be met in some detail, but essentially they require the cabinet in which the drugs are stored to be made of steel, with good locks, and to be bolted to either the floor or a wall.

1. The Misuse of Drugs (Safe Custody) Regulations 1973



## 11.62 Record keeping related to controlled drugs

All persons who possess and supply controlled drugs in schedules 1 and 2 are required to keep a register relating to the drugs, to show transactions relating to the drugs. The register is required to be broken down by drug stored and records must be kept chronologically. The register must be available for inspection at the premises on which the goods are stored at all times.

The record keeping requirements for drugs in schedules 3 and 4 are limited to those imported or exported.

The records must be kept for at least two years.

## 11.63 Dealing with controlled drugs

Guidance on dealing with controlled drugs is given in chapter 34. Suffice to say, it is likely that the official receiver, as liquidator or trustee, will find it necessary to issue a disclaimer of the drugs, served on the relevant drug control authorities.

# Dealing with employees

## 11.64 Dismissal of employees

The effect of a winding-up or bankruptcy order is to automatically terminate employees' employment on that date. Therefore, unless the insolvent's business is to be continued, the inspecting officer should confirm the dismissal of staff. If the business is to continue, employment will be terminated on the date of the insolvency order, but in effect employees who continue working will have commenced a new contract from that date forward. The inspecting officer should request all employees to assemble (if possible with company officers or the bankrupt in attendance), advise them of the insolvency proceedings, that the business is to cease and that they are dismissed. The employees should be informed that guidance to an employee's rights when insolvent is available at <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>.

## 11.65 Employee claims

Under the insolvency provisions of the Employment Rights Act 1996, if an employer becomes insolvent the Secretary of State may pay certain debts owing to employees

from the National Insurance Fund. See chapter 58 for more details. The most common of these debts are:

- arrears of pay
- holiday pay
- pay in lieu of notice

## 11.66 Collect details of employees claims

The inspecting officer should collect names, addresses, telephone numbers and email addresses of all employees. Employees should be informed that the official receiver will arrange for all employees to be sent a further letter explaining their rights under the Employment Rights Act 1996

The employees' names and addresses may be recorded on the schedule of employees which forms part of the preliminary information questionnaire (if completed at the inspection) or on any written additional report produced by the inspecting officer.

On return to the office an RP20 form is to be completed and sent by email to: [redundancypaymentsonline@insolvency.gov.uk](mailto:redundancypaymentsonline@insolvency.gov.uk)

This requests the case is set up with RPS. RPS will then send a spreadsheet to the OR to complete and return. When this is returned to RPS, RPS will send an EMPLET, a copy of RP1 Factsheet and RP1 Help form to the employee.

## 11.67 Other matters regarding employees

On no account should any of the insolvent's funds be paid to the employees in respect of any outstanding wages, salary, holiday pay, expenses etc. The employees must not be permitted to retain assets or cash in respect of such sums. PAYE and wages records and contracts of employment should be located and taken to the official receiver's office.

# Accounting records

## 11.68 Production of records

The company officer(s), bankrupt or person in charge should be requested to produce all the trading books and records of the insolvent and other documents relating to the estate, e.g. documents of title, cheque books, bank cards and correspondence. If they are not at the premises being inspected, the inspecting

officer should obtain details of their whereabouts. There are various powers of the official receivers and the courts under the Insolvency Act 1986 which can be used to ensure that the official receiver obtains such records<sup>1 2</sup>. Reference should also be made to chapter 16 regarding custody of the insolvent's records.

1. section 234(2)

2. section 311

## 11.69 Computerised accounting records

Where an inspecting officer encounters computerised accounting records, immediate action should be taken to protect the data stored on computer and preserve any other media on which data is stored (discs, flash drives etc.). It may be appropriate to request that the company officer/bankrupt print off a copy of the accounting records whilst the equipment is in situ. Only records dated from the last audited accounts should be printed, and consideration should be given as to how time consuming, and how costly the exercise will be before deciding to go ahead. For example, if the volume of printouts is likely to be large, it may not be worth printing every record, but consideration could be given to obtaining printouts of any management accounts, and other significant records. Care should be taken to supervise and ensure the information is not corrupted.

## Specific types of businesses

### 11.70 Public houses, tied houses, free houses, wines and spirits

If the insolvent is trading as a public house, the inspecting officer should immediately verify whether the public house is a tied house and obtain a copy of any tenancy agreement. If so, the brewery should be informed of the winding-up or bankruptcy order immediately. In such circumstances it is the responsibility of the brewery to either appoint a new manager or to close the premises.

If the public house is a free house, it is likely that the alcohol and soft drinks have been supplied on a sale or return basis. The inspecting officer should ascertain details of the supplier who should be notified as soon as possible.

### 11.71 Petrol stations

Where the insolvent is trading as a petrol station the inspecting officer should immediately ascertain whether the petrol station is held on a tenancy agreement. If so, the landlord should be informed immediately of the winding-up or bankruptcy order as it is likely to be their responsibility to either appoint a new manager or to close the premises.

Where the petrol station is independently owned by the insolvent the official receiver should establish as soon as possible whether the tanks in the petrol station are full or empty. Details of the supplier should be obtained and arrangements made for the tanks to be emptied. The official receiver should be aware that the emptying of tanks is not sufficient to deal with the fire risk. The petrol station and tanks will still contain fumes. Where the official receiver is unable to return a lease or deal with the premises immediately, specialist advice should be sought as to how best to deal with the premises to eliminate any fire risk. Initially contact, is likely to be made with the official receiver's agents.

The official receiver's insurers will need to be contacted to ensure any specific requirements are fulfilled in relation to the premises in order for insurance cover to be effected. The local fire officer can also be contacted for guidance on securing the tanks.

## 11.72 Companies who deal with Ministry of Defence contracts

When the official receiver becomes aware that a company in liquidation has dealt with Ministry of Defence (MoD) contracts, then it is possible that they hold classified or secret information. If this is the case they will have been inspected and approved by the MoD, and the location of the premises (sites) used by these companies are referred to as "[List X](#)". Special treatment needs to be used when dealing with these companies to safe guard the classified or secret information, which will remain in the possession of the MoD.

## Other matters to be dealt with during inspection

### 11.73 Internet sites and e-mail

The inspecting officer should ascertain whether an insolvent has a web site on the internet to either advertise or sell products/services. The inspecting officer should

obtain details of the internet service provider (ISP), the web site address (also known as the domain name), account numbers and any password used by the insolvent. Details of any web site address are likely to be found on any advertising material produced by the company/bankrupt or any letterhead paper. It is important that any business web site is closed as soon as possible after the making of a winding-up or bankruptcy order, particularly if products can be ordered via the web site and if the site is receiving emails.

A registration certificate is issued by the internet service provider in respect of each domain name registered. This certificate should verify proper registration to a named person. The official receiver should endeavour to recover this certificate from the insolvent's records and if this certificate cannot be found, enquiries should be made from the relevant internet service provided. The ownership of a domain name may be established by reference to the web-site [www.who.is](http://www.who.is) (see also chapter 34).

## 11.74 Closing internet sites and email accounts

The official receiver should contact the ISP immediately and request that the site be closed or, alternatively, request that a notice is placed on the web site providing details of the date of the relevant insolvency order and the name, address and telephone number of the official receiver. Where a company is being wound up, all of its websites must contain a statement to that effect<sup>1</sup>. If a company does not have a web site but has an email facility, the inspecting officer should ascertain details of any email address(es) and arrangements should be made with the ISP to either cancel the email address or set up some form of out of office assistant providing details of the date of the relevant insolvency order and the name, address and telephone number of the official receiver. The ISP can usually be identified from the email address.

If the insolvent is a bankrupt the official receiver should take no steps to redirect the bankrupt's email. If the bankrupt is present and is co-operating with the inspecting officer they may be prepared to allow the inspecting officer to view any current business e-mails or e-mails stored on the system.

1. section 188

## 11.75 Insolvent in possession of retailer's credit account

If the inspecting officer becomes aware that the insolvent maintained a retailers' account with a bank for the processing of credit or debit card transactions, details should be obtained so that the bank can be notified of the winding-up or bankruptcy order (see <http://intranet/OROS/CaseMngment/Banks/BanksHome.htm> for details of

the major banks concerned). In addition, the inspecting officer should take an inventory of all chip and PIN devices as soon as practically possible and lock them away securely. Once in possession of the devices the official receiver should contact the relevant processing bank (usually identified on the device) and ask for their advice as to what to do with the equipment. Under no circumstances should these items be sold to third parties.

If a retailer still possesses the old style metal imprinting plate credit card machine, used when processing credit and debit card vouchers, either the metal plate or if this cannot be separated, the whole machine should also be recovered and dealt with in the same fashion.

## 11.76 Document exchange (DX)

The document exchange (DX) service is a delivery of business to business mail for professionals in the following industry sectors: legal and judiciary, financial services, retail finance, property and construction, government, health, utilities, optical and commercial. The Service is run by DX Network Services Ltd and operates via a network of local collection and delivery points known as 'exchanges'. Members post their mail into the nearest exchange and collect mail the following morning. An exchange may have a single user or a number of different users.

An inspecting officer should ascertain whether an insolvent has a DX address and obtain relevant details. If the insolvent has a DX address, they will hold a key to a lockable box in their exchange. The official receiver can search to see if an insolvent has a DX address by typing in a postcode or company/trading name onto the search facility on the DX website <https://www.dxdelivery.com/>.

## 11.77 DX - Company

Where the insolvent is a company, the official receiver should take possession of the key to the lockable box and ensure the box is emptied of mail. Arrangements should be made as soon as possible for the insolvent company's DX box to be closed and the DX service cancelled. A request should also be made for any post to be redirected to the official receiver via the DX system. DX will redirect post free of charge for one month. The official receiver should telephone DX Network Services Ltd to ascertain who the account manager is for the company in question, and then send the request in writing to that person, enclosing a copy of the winding-up order.

## 11.78 DX - Bankruptcy

In a bankruptcy case arrangements should be made for the DX service to be terminated immediately. A request should be made that any post sent to the

insolvent's DX address should be returned to sender. The official receiver should telephone DX Network Services Ltd to ascertain who the account manager is for the business in question, and then send the request in writing to that person, enclosing a copy of the bankruptcy order.

## **Securing and protecting premises**

### **11.79 Existing insurance cover**

Enquiry must be made in all cases to obtain details of any insurance policies in force and, wherever possible, possession should be taken of the relevant policy documents and any current certificates relating to those policies. Particular attention should be paid to any special hazards to ensure that any cover takes account of these risks. On return to the office, any policy documents recovered should immediately be handed to the cashier to record in the valuables register and placed in the safe.

### **11.80 Insurance cover required**

Where insurance cover is needed on trading premises, this should be attended to immediately on return to the office. Reference should be made to chapter 14 for advice on how to obtain cover under the AON insurance scheme.

The official receiver should ensure that the insurance cover is cancelled when no longer required.

### **11.81 Keys to trading premises**

The inspecting officer should ascertain details of all the parties who hold keys to the trading premises of the insolvent and their reasons for doing so. All the keys should be recovered without delay. Where this is not possible, or the officer cannot be certain all keys have been recovered, then the official receiver should consider changing the locks at the expense of the estate. Where a third party has a legal right of access to the premises which would be affected by changing the locks, that person should be informed of the official receiver's intention and arrangements made so that their right of access is not adversely affected without their consent. The keys to the premises received by the official receiver should be clearly labelled and marked with the address and the name and case number to which they relate and upon return to the office should be deposited with the cashier and placed in the safe until required again.

## 11.82 Display of notice of insolvency proceedings

Where the premises are to be left unattended, the inspecting officer should consider placing a notice, where it may be seen from the exterior of the trading premises, giving a contact point. Generally a notice should not be displayed where valuable assets remain on the premises. The notice should not refer to the official receiver but should be along the following lines:

‘CLOSED. All enquiries regarding [name of insolvent] should be made by telephoning ..... ext .....’. T

This may prove particularly useful where the official receiver needs to be contacted by a large number of third parties regarding their property. Any notice should be removed prior to disposal of the premises.

## 11.83 Locking of premises

In all cases the inspecting officer should make full use of all security locks etc at the premises. Before doing so they should ensure that no volatile substances, e.g. Oxy acetylene, or perishable foodstuffs are stored on the premises and that no animals are there. Consideration should be given to replacing locks, particularly where assets, including those owned by third parties, are left at the premises (it should be remembered that insurance cover for loss by theft is likely to be void if entry or exit was not by forcible means). If, for example, damaged windows might provide easy access, the official receiver should consider replacing them or boarding up the area at the expense of the estate. If a debit balance of over £2,500 would be incurred by such action, approval must be sought (see chapter 1). In securing premises, regard should be given to any duty of care to visitors to the premises or trespassers (see below). The official receiver should also consider informing the local police of their interest in unattended premises.

## 11.84 Use of alarm system

If valuable assets are left at unattended premises, the inspecting officer should, if possible, place them out of sight and consider making use of any alarm fitted to the premises. Where the alarm operates via a numbered keypad, consideration should be given to altering the alarm number combination to minimise the number of people who are aware of the combination. Where the alarm operates via keys there may be circumstances where the alarm keys remain with an officer of the company or the bankrupt following consultation with the official receiver. Where the alarm is to be used the electricity supply should not be turned off. Officers of the company or the



bankrupt should provide full information as to the operation of burglar alarms and give the name, address and telephone number of the appropriate alarm maintenance engineer. The police should be notified where a burglar alarm is set so that they are aware of the holder of the alarm key/combination number in case of any emergency or fault.

## 11.85 Electricity, gas and water supplies

The inspecting officer should consider whether a post-insolvency order electricity supply is required. If so, then contact will need to be made with the relevant provider to arrange this. The supplier may require the official receiver to personally guarantee payment of the post-insolvency order supply<sup>1 2</sup>. Where supplies are not required, then all lights should be switched off, as should the power from the mains. Before doing so, the inspecting officer should ensure that the supply does not affect that used by other tenants of the building, or any refrigeration or computer equipment, or alarm system, which should be kept, switched on. The gas supply should be turned off at the meter, again, after ensuring that the supply to other occupants of the premises is not affected. Similarly the water supply should be turned off at the stopcock, provided it does not serve a hot water or heating installation, which is to be left in operation. Where appropriate, any fires or furnaces should be extinguished. In winter months it may be necessary to arrange for the drainage of any heating system so as to avoid leaking or burst pipes but regard must also be had to any fire sprinkler system installed.

1. section 233

2. section 372

## Duty to visitors and trespassers

### 11.86 Occupiers' liability duty to visitors and trespassers

A duty of care is owed between an occupier of premises and their lawful visitors<sup>1</sup>, and an occupier also owes a limited duty of care to trespassers<sup>2</sup>. The question of who is an occupier depends upon the particular facts of each case but generally it would be the person who is in actual occupation for the time being, or who has possession or physical control of the premises. Accordingly, unless and until an insolvency practitioner is appointed, the official receiver is likely to be the occupier of the premises of the insolvent, if they have been vacated by the insolvent.

## 11.87 Meaning of 'duty of care'

An occupier owes the 'common duty of care' to all their visitors. This is a duty to take such care (as is reasonable in the circumstances of the case), to see that the visitor will be reasonably safe in using the premises for the purposes for which they are invited or permitted by the occupier to be there.

The duty of care to trespassers arises only when the occupier is aware of a danger or has reasonable grounds to believe that it exists, knows or has reasonable grounds to believe that a trespasser may be, or come into the vicinity of danger and, in all the circumstances of the case, the risk of a trespasser coming into the vicinity of the danger is one against which the occupier may reasonably be expected to offer some protection.

The occupier's duty also extends to anyone who suffers injury as a result of any danger arising due to the state of the premises or things done or omitted to be done on the premises, even if the person suffers injury on an adjoining highway, private road or premises. There is further imposed a liability for damage to property brought onto the premises by a visitor, whether or not the property belongs to the visitor, but this liability is not imposed in relation to trespassers. Therefore, a trespasser or other uninvited entrant cannot make a claim for damage to property.

## 11.88 Duty to visitors and trespassers where property leased/rented by insolvent

In addition to the above duties of care and any other duty of care, there is a liability for defective premises, which could be relevant if the insolvent was a landlord in respect of any premises<sup>1</sup>. This provides that a duty of care is owed by a landlord to visitors, and possibly trespassers, where the premises are let under a tenancy which places the landlord under an obligation to the tenant for the maintenance or repair of the premises or where the landlord has the right to enter the premises and carry out such repairs.

The duty arises when there has been a breach of that obligation to repair (or failure to exercise the right of repair) which has led to the defect in the premises which caused an injury to, or damage to the property of, the tenant or visitor or any other person who might reasonably be expected to be affected by defects in the premises. This duty only applies if the landlord knew or ought in the circumstances to have known of the relevant defects. The duty cannot be excluded and the official receiver as liquidator, or trustee may become subject to it.

## 11.89 Action to minimise risk of liability

The official receiver should take steps to minimise the danger to visitors to the premises and to the public generally. Otherwise, they might face a claim if, being aware of the hazards of potentially dangerous property, or of any potential danger on the property, they took no steps to prevent injury to the unwary visitor or trespasser (particularly a child) or damage to property in the possession of a visitor. Any premises of the insolvent and any potentially hazardous assets, e.g. machinery, should therefore be adequately secured against trespassers and if there are any potential dangers on the property, visitors should be warned in advance.

## 11.90 Use of warning notices

With both visitors and trespassers, there is provision for the occupier to exclude their liability, e.g. by the use of warning notices, but the warning must be sufficient to enable a person to be reasonably safe in order to effectively exclude liability. Note that the ability to exclude liability is limited in the case of premises which are used by the occupier for business purposes<sup>1</sup>.

The official receiver should consider whether it would be appropriate and advisable to erect a notice at any premises where they are aware of an actual or potential danger or seek to warn visitors in some other way.

1. Unfair Contract Terms Act 1977 section 1 and 2

## 11.91 Insurance against liability under a duty of care

Insurance is not in itself an answer to the official receiver's possible liability in damages but they should ensure that adequate insurance cover, particularly public liability cover, is in force as a matter of urgency. Reference should be made to chapter 14 for further guidance concerning insurance cover. The official receiver should, however, also have regard to the resources they have available to reduce the risk of liability, including the funds available in the insolvent estate.

## 11.92 Duty to visitors and trespassers and the involvement of a mortgagee or other financially interested party

If the insolvent has vacated the premises and a mortgagee is in possession, either independently or through an agent, e.g. a receiver, it is likely that the mortgagee will be the occupier of the premises for the purposes of this part of this chapter. In any particular case it may be difficult to identify who is in occupation at any one time and, if there is any residual occupation by an insolvent, e.g. if property belonging to a bankrupt remains on the premises although the bankrupt has vacated those premises, the official receiver could still potentially be considered the occupier and be liable in damages to a visitor or trespasser.

Therefore, unless it is quite clear that the mortgagee is in sole possession, a clear understanding should be reached with the mortgagee as to the steps to be taken to secure the premises, to display warning signs and to hold the official receiver indemnified for any liability that might arise. Any oral agreement should, wherever possible, be confirmed in writing. It is unlikely that a mortgagee will be willing to indemnify the official receiver for any liability other than for the cost of securing the premises. However, the official receiver should seek to place as much responsibility as possible on to the mortgagee as the party with the principal beneficial interest. The official receiver should not normally insure fully charged assets.

## 11.93 Dealing with waste: duty of care upon the official receiver

The official receiver is under a duty of care imposed by environmental legislation to ensure that waste is dealt with in the correct way. It is a criminal offence to keep or dispose of controlled waste, i.e. waste from households, commerce or industry, in a manner likely to cause pollution of the environment or harm to human health. In all cases the official receiver must take prompt action to deal with the waste.

Accordingly, where an inspecting officer finds that the insolvent has created waste to which the duty of care applies, they should obtain details of its nature and location and inspect it (where it is safe to do so) to establish whether it poses any immediate threat to the environment or to human health. The inspecting officer should not put themselves in a position of danger by handling any dangerous substances and in the first instance assistance should be sought from the Environment Agency or a local environmental health officer. The inspecting officer may seek advice from the local authority responsible for waste collection in a particular area as to whether a particular waste may or will be collected by the authority as part of its normal public waste collection.

## Post-inspection actions

## 11.94 Action on return to the office

On return from an inspection, the inspecting officer should ensure that all outstanding matters are dealt with and that all paperwork is placed on the fileplan. In particular the following actions may need to be carried out:

- any cash, valuables or policy documents handed to the cashier with the provisional receipt book for placing in the safe
- any keys to the premises should be clearly labelled with the full case details, and address details, and handed to the cashier
- if insurance is required on the premises or other assets, this should be arranged without delay
- any accounting records collected should be recorded on the case file by the next working day, boxed up and labelled if not already done so (see chapter 16)
- write up the notes of the inspection and place on the fileplan.
- place the inspection report and other paperwork generated on the fileplan
- ensure any computers collected are secure, either at the agents or in the office, and if not yet collected arrange for the collection of them by an appropriate person (see chapter 16)
- contact any third parties either by telephone or letter regarding any further enquiries needed (Such as owners of third party goods, employees, accountants)

## 11.95 Delivery of cash and valuables to cashier

All money or valuables, e.g. jewellery, cameras etc. must be handed to the cashier on return from an inspection and a note made on the valuables register. The provisional receipt counterfoil should be produced for any cash and in the absence of the cashier, the official receiver or assistant official receiver should take the items into their custody, initialing the counterfoil as a temporary discharge to the inspecting officer in respect of the cash. The cashier must endorse the counterfoil with the date and number of the official receipt issued in substitution of the provisional one and must ensure that the previous counterfoil has already been dealt with in a similar manner. The cashier should send the official receipt direct to the bankrupt or other person from whom the money was received (not through the examiner or inspecting officer) within three days of receipt of the money.

## Tracing inspections - overview

### 11.96 What is a tracing inspection?

A tracing inspection may be defined as a visit by the official receiver to an address that has been disclosed in the winding up or bankruptcy order, or discovered by the official receiver during the course of their inquiries for the purpose of ascertaining the whereabouts of the director or bankrupt, and establishing initial contact.

## 11.97 Purpose of a tracing inspection

A tracing inspection is normally carried out in cases where co-operation from a director or bankrupt has not been achieved at the initial stages, and they have also failed to attend one or more interview. The purpose of the inspection is to ascertain the whereabouts of the director or bankrupt, and establish initial contact. The official receiver must attempt to trace a director or bankrupt to gather sufficient details to administer the case, and carry out their statutory duties.

## 11.98 When is a tracing inspection necessary? – Company cases

The aim of the initial contact with the officer(s) of a company is to obtain sufficient information to ensure that the official receiver is able to protect the estate and minimise risks without repeating the questions in the PIQC.

Where contact with the company's officers has not been made a tracing inspection may be necessary to establish the above information.

It may not be necessary to undertake a tracing inspection on other non-cooperative directors, if at least one director has co-operated, provided sufficient information, and there are no matters of concern.

## 11.99 When is a tracing inspection necessary? – Bankruptcy cases

In a bankruptcy case, a tracing inspection is most likely to be needed on an order made on a creditor's petition. In an adjudicator case, co-operation is likely to be offered by the bankrupt at the outset.

## 11.100 Tracing inspection to establish 'centre of main interest' (COMI) in cases of foreign nationals

The adjudicator will carry out thorough investigations into nationals of European Union Member States outside of the UK who may have moved to England or Wales

to file a bankruptcy petition and take advantage of more favourable insolvency legislation. The EC Regulation requires main proceedings to be opened where the debtor's 'Centre of Main Interests' ('COMI') is situated. The adjudicator will not make the order until satisfied the UK is the bankrupt's COMI. Therefore it is rare that an order will have been made against a foreign national whose COMI is outside the UK.

Where it is suspected that the debtor does not reside in the UK it may be necessary to inspect the residential/trading address given on the petition/bankruptcy order to ascertain whether the bankrupt is present or in control of that address. In some instances a debtor may be using an accommodation address provided by a company who is assisting them on becoming bankrupt in the UK.

## 11.101 Use of tracing agents

Consideration should be given as to whether it is more cost effective to instruct agents to carry out a trace inspection, when taking into consideration, number of staff required to attend, distance to travel, time out of the office, T&S claim. Timing of the instruction of trace agents should also be considered and should usually be instructed after the second missed appointment.

## 11.102 Instructing tracing agents

All new instructions for individual tracing inspections and service of documents should be made on a rota basis and sent via email using the instruction form template to: -

Strategic Intelligence & Risk Services (Europe) Ltd [Keith.stowell@sirseurope.co.uk](mailto:Keith.stowell@sirseurope.co.uk)

or

The Surveillance Group [info@thesurveillancegroup.com](mailto:info@thesurveillancegroup.com)

The appropriate forms and documentation required for instructing these agents are available on the [Trace Agent](#) intranet site, including a table showing the rates charged by the different agents. Once an agent has been selected on the instruction form should be completed, providing as much information as you have already ascertained, then emailed to that agent using the above contact details.

The chosen agent should confirm receipt of the instruction within 24 hours, where this has not happened confirmation of receipt should be obtained. A note should be made on the case file detailing the instruction provided to the agent. Invoices will be received and dealt with centrally.

## 11.103 Timing of tracing inspection

A tracing inspection should be carried out as soon as possible after a second missed appointment, if all desk based avenues have been exhausted and no contact made.

When a decision is made to carry out a tracing inspection, consideration should be given to the geographical area covered by the office and whether the distance to the trace address(es) makes it an effective use of resource for the office to conduct the trace inspection or whether a trace agent should be instructed instead.

## 11.104 Tracing inspections prior to public examination

If the whereabouts of an individual is uncertain, a tracing inspection should always be carried out prior to a public examination being held. This will ensure that the official receiver can demonstrate to the court that all possible action has been taken to trace the individual.

## 11.105 Location of tracing inspection

In a company case, a tracing inspection is likely to be at the address(es) of one or more of the directors as well as the companies last trading address(es) and registered office. It will not be necessary to visit the registered office if contact has already been made with that address, for example, when the registered office is also the address of the accountant or solicitor.

In bankruptcy a tracing inspection should take place in respect of the most recent address(es) for the bankrupt disclosed in the bankruptcy order or at an address determined by the official receiver during the course of enquiries made.

## 11.106 Research to determine locations for tracing inspection

Prior to carrying out a tracing inspection, the examiner should ensure that they have attempted to contact the individual concerned through all available means. This is likely to include, but should not be limited to the following sources of information:

- a) an Equifax search which will give details of address history, telephone numbers, voters roll information and outstanding judgements, including an advanced Equifax search
- b) a land registry search on all addresses available for the insolvent and/or officers to ascertain ownership of the property
- c) the petitioning creditor and/or solicitor



- d) any accountant and/or solicitor traced for the insolvent
- e) an IIR search and/or companies house search
- f) contacting the local authority in which it is believed the bankrupt/director resides
- g) ISCIS case and party searches
- h) regulatory bodies

This is to ensure that all potential addresses are discovered prior to the inspection, and to minimise the possible need for a further inspection at a later date. It will also increase the chances of locating the insolvent or officer whilst on the inspection.

## **Carrying out a tracing inspection**

### **11.107 Action to take at each address**

When attending each address discovered for the insolvent or company officer, an assessment should be made of the premises and the area, prior to getting out of the vehicle if possible. Notes should be made on the type of property, condition, whether it appears to be occupied (for example are there lights on or windows open), if it is for sale details of the estate agents should be taken from the 'for sale' board. A note should also be made of any vehicle parked at the address, including the vehicles registration marks, make and model, so that a HPI/DVLA search may be conducted on return to the office if considered necessary.

The examiner should then knock on the door of the address visited. If there is no answer, an appointment pack or letter (as appropriate) should be posted through the letterbox, and the neighbours visited as well (see below).

### **11.108 Contact with a company officer**

If a company officer is found, initial enquiries must be undertaken. They should also be served with a copy of the winding-up order, and an appointment pack by hand. It should be ascertained whether they intend to attend the interview, and if not why not. If they are uncooperative and state they will not be attending the interview, the examiner should make them aware of the requirement on them to co-operate, and the possibility that a public examination may be held. The examiner might feel it appropriate to suggest that the officer seek some independent legal advice.

### **11.109 Contact with a bankrupt**

If a bankrupt is found, initial enquiries must be undertaken. They should be served with a copy of the bankruptcy order, and an appointment pack by hand. Enquiries should be made as to whether they are going to attend the interview, and if not why not. If they are uncooperative and state they will not be attending the interview, the examiner should make them aware of the requirement on them to co-operate, and the possibility that a public examination may be held. The examiner might feel it appropriate to suggest that they seek some independent legal advice.

## 11.110 Contact with neighbours

If there is no answer at the insolvent's address, then the examiner should knock on the doors of the nearest neighbours. If a neighbour answers the door, mention should not be made of the bankruptcy/liquidation, but the warrant card should be shown and the examiner should introduce themselves as an employee of the Department for Business Energy and Industrial Strategy. Enquiries should be made as to whether the bankrupt/company officer still lives at said address, and when they are likely to return, when they last saw them. It may also be useful to obtain a description of the officer/bankrupt if further addresses are to be visited. If they no longer live there, the examiner should enquire as to when they left and if they have a forwarding address, or phone number.

## 11.111 Action following tracing inspection

Immediately following the tracing inspection, the examiner should call the office to confirm they have finished and if/what time they expect to return to the office.

When next in the office the examiner should write up a report of the inspection detailing the addresses visited, what was found and who was spoken to. This should be signed and dated with both the date of the inspection, and the date of the report and saved to the Preliminary Investigation Papers on the fileplan.