

Insolvency 'pre-packs' save jobs says leading academic

A leading academic who has been evaluating the strategies of insolvency practitioners in 'pre-pack' deals says her research indicates strongly that they are the best vehicle for saving jobs. A pre-pack is a deal for the sale of an insolvent company's assets which is put in place before the company goes through the insolvency process – but such deals have been the cause of controversy over the last few years.

The research by Dr Sandra Frisby, Baker & McKenzie Associate Professor and Reader in Corporate and Commercial law at the University of Nottingham, was commissioned by the Association of Business Recovery Professionals in response to concerns raised about the pre-pack strategy. Dr Frisby's research is ongoing, but so far details of 459 business sales and 272 pre-packs have been recorded in the period between September 2001 and December 2004.

She said: "In 92 per cent of the pre-pack cases examined and for which this information was available, all employees of the insolvent company were transferred to the purchaser; the corresponding figure for business sales was 65 per cent."

"Business sales are four times as likely to result in the entire workforce being made redundant than pre-packs."

Among those who have endorsed Dr Frisby's interim research is leading debt recovery law firm Else Commercial Solicitors. Chris Else, founder of the firm, which has offices in Birmingham and Burton-on-Trent, said: "It is the generally accepted view of business recovery professionals that pre-packs perform better than business sales in preserving jobs."

"The fact is that when work in receivership-administration is taking place in the period before a sale scarce resources can result in cuts that are often reflected in job losses."

"If a pre-pack achieves an instant sale as a going concern then the issue might not arise."

The controversy is further fuelled because the sale is frequently made to the previous directors or managers of the insolvent business and then rapidly executed without it being offered on the market – and without unsecured creditor consultation.

Dr Frisby said: "Pre-packs deliver, at the very least, certainty of outcome."

"Attempting to sell an insolvent business once that insolvency is public knowledge, can be fraught with difficulty and uncertainty, particularly if the assets are predominantly its staff."

"Any premium that goodwill might attract is often lost, key employees may leave, again driving value downwards, and the costs of keeping the business trading during a marketing campaign may outstrip any added value that that company achieves."

Another issue examined by Dr Frisby has been that of transparency and here she has come up with an interesting conclusion. “Research suggests that the issues of transparency, while they certainly exist, are by no means exclusive to pre-pack sales.”

“In the first instance, three quarters of all business sales take place without consultation with unsecured creditors which is probably inevitable given the urgency attaching to any attempt to sell a business subject to an insolvency procedure.”

Some pre-pack deals have led to allegations of ‘phoenixing’. This is where the assets of an insolvent company are packaged up by the liquidator and sold to its owner or managers for a deliberately deflated price. Experts argue that serious conflicts of interest can arise if an insolvency practitioner, who has been acting as an adviser to the original company, to its directors or managers or to a third party, is subsequently appointed as the administrator to execute a sale, on which he or she may have previously given advice.



Corporate insolvency academic Dr Sandra Frisby of the University of Nottingham, with Chris Else, founder of Else Commercial Solicitors

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