

Questions and Answers about the Pre-pack Pool

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Background

1. What is the Pre-pack Pool?

The Pre-pack Pool (the Pool) is an independent body of experienced business people. It has been set up in response to a series of recommendations contained in an independent review of pre-packaged administrations (The Graham Review). A Pool member will offer an opinion on the purchase of a business and / or its assets by a party connected to a company where a pre-packaged sale is proposed. Only one member of the Pool will deal with an application.

2. What is the Graham Review?

Teresa Graham CBE was asked to report on the pre-pack administration procedure and make recommendations for reform by the Secretary of State for Business Innovation and Skills (BIS) as part of the Government's wider *'Transparency and Trust'* agenda.

The report was issued in June 2014 and considered the full economic impact of the process. The report made six recommendations for reform. The creation of the Pre-pack Pool was a key recommendation of the Graham Review.

- [Graham Review Report into pre-pack administration – June 2014](#)
- [Government response to the Review Report – June 2014](#)

3. What is a pre-packaged administration?

Administration is a formal procedure under the Insolvency Act 1986 as amended. The administrator is a licensed insolvency practitioner (IP). Not all administrations involve a pre-packaged sale.

While there is no legal definition of a pre-packaged sale, the term is widely accepted to mean an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator and the administrator effects the sale immediately on, or shortly after, appointment.

Such sales are used in circumstances where it makes commercial sense and is in the creditors' best interests, to facilitate a sale of the company's business / assets quickly.

4. What is a connected party?

There is a legal definition of a connected party. Broadly speaking, it is those with a significant prior connection to the insolvent company, and will include directors, shareholders, and close family members of those persons and also companies in the same

group. The full legal definition can be found in the Insolvency Act 1986. If in doubt about whether the prospective purchaser is a connected party for this purpose, independent advice may be sought from an IP or a solicitor.

The Pre-pack Pool

5. Why does the Pool exist?

The Pool has been introduced as a result of concern being expressed in some quarters that pre-packaged sales, (which necessarily and quite legally are completed in a short period of time and without prior consultation with creditors), lack sufficient transparency. This lack of transparency is perceived as particularly acute where the purchaser has a significant prior connection to the company (i.e. is a connected party). BIS accepted the Graham Review's recommendation that for sales to connected parties, some of these concerns may be overcome by having an independent party review the proposed sale and offer an opinion on the appropriateness of the grounds for the sale. This may provide reassurance to creditors that an independent person had considered the reasonableness of the proposed transaction.

6. What does the Pool do?

The Pool, through its members, operates only to review and opine on applications made voluntarily by connected parties. It provides optional, external scrutiny of transactions, which may provide creditors with some additional reassurance that a proposed purchase by those previously connected to the insolvent company is not, in the Pool member's opinion, unreasonable. They may alternatively conclude that they have not seen sufficient evidence to be persuaded this is the case.

If the Pool member considers the sale to the connected party is not unreasonable, they will issue a response to the effect that it is not unreasonable to proceed. Alternatively they may state they have not seen sufficient evidence to be satisfied as to the grounds for the pre-pack transaction. The Pool member will not give reasons for his / her opinion. However, if the Pool member is minded to issue a not unreasonable opinion but is unable to do so due to a lack of supporting evidence in specific areas, then they may highlight this in the opinion issued.

7. What are the benefits of approaching the Pool?

Use of the Pool provides the potential for enhanced stakeholder confidence both in the transaction and in the purchasing entity. This may be valuable to a purchaser when endeavouring to preserve stakeholder relationships and mitigate potential reputational damage.

8. Who is on the Pool?

The Pool members are experienced and senior business people who have been selected following a public recruitment exercise. The names of the Pool members are published on the Pre-pack Pool website prepackpool.co.uk

9. What powers does the Pool have?

The Pool has no powers, as such. The Pool member will issue an opinion on the reasonableness of the grounds of the proposed pre-packaged sale outlined in the application. The opinion will not determine whether or not a sale to a connected party can or cannot proceed. Responsibility for a sale will rest ultimately with the administrator.

Making a submission to the Pool

10. How do I make a submission to the Pool?

Submissions to the Pool by prospective purchasers are made via the Pool's website prepackpool.co.uk

11. What does it cost to obtain a decision from the Pool?

£800 + VAT.

12. What does the fee cover?

The fee covers all costs associated with the provision of the opinion by a Pool member. This includes the Pool member's time to review and consider the application and supporting evidence supplied as well as the administrative costs associated with the application.

13. When should I make a submission to the Pool?

As early as possible and in advance of the proposed transaction with the administrator.

14. What information do I need to include in my submission?

All documentation must be sent electronically. It is up to the applicant to decide what to submit, but it is expected to cover at least the following matters:

- Name of purchasing entity (where known)
- Names and addresses of beneficial owners of the old and new businesses
- Names of directors of old and new businesses
- Nature of any connection and nature of likely involvement in new business
- Details of any losses suffered by the owners/directors personally
- An outline of the proposed transaction – heads of agreement etc
- Name and email address of proposed administrator (where known)
- Latest financial information available re the old business
- Value of the assets being purchased and how that reflects going concern
- Details of any prior offers made and marketing undertaken (where known)

15. What additional information will assist my application?

Applicants are advised to think carefully about what they include. The quality rather than the quantity of documentation is important. The Pool member will consider issues such as:

- The circumstances and background to the financial difficulties.
- How well and widely the company has been marketed by the current owners in the recent past.
- How the market has been otherwise been tested in the past 12 months.
- The underlying valuation of the business and assets to which the connected party has access.
- The reasons why the business needs to be sold quickly by way of a pre-pack, rather than later on in the administration process.
- Any other available evidence that the proposed purchase consideration represents fair value.

A viability review can be provided by a connected party that wishes to make a pre-packaged purchase. It must state how the purchasing entity will survive for at least 12 months from the date of the proposed purchase. The connected party should consider providing a short narrative detailing what the purchasing entity will do differently in order that the business will not fail (the viability statement). A copy of any viability review and statement prepared by the purchaser will be of assistance to the Pool member, and is particularly encouraged to be provided where any part of the purchase consideration is to be deferred.

16. Is there any additional guidance for applicants?

Yes. A list of suggested evidence/information to submit with an application is available on the website and may be found via this link. <http://www.prepackpool.co.uk/>

17. How long will I have to wait for a response from the Pool?

The Pool aims to provide a response within two business days from the time the application papers and fee have been received.

18. Can I choose the Pool member?

No. Applications are submitted to the Pool members on a strict rotational basis. If an applicant believes any of the Pool members have a conflict of interest, this should be raised at the outset. There is the ability to highlight conflicts as part of the application process. A list of Pool members is published on the Pre-pack Pool website prepackpool.co.uk

19. Where can I get help with my application?

Prospective purchasers can submit an application directly, or they may wish to obtain professional advice or assistance in relation to their application or the process.

You may wish to seek advice from an IP (but see Q.26). Alternatively, you might decide to ask your accountant, solicitor, a Business Link / Business Gateway advisor or another qualified professional with experience of business or financial matters, including but not necessarily insolvency.

20. Can the Pool staff or oversight group assist me?

No. The web portal is automated and whilst email contact can be made for the purposes of notifying any problems with the website (via info@prepackpool.co.uk) this is not an advice service nor is it designed to provide immediate responses.

The Pool member's opinion

21. What is the Pool looking for when it issues an opinion?

The Pool member will take an independent view of the reasons for a pre-packaged sale to a connected party. They will consider whether the pre-packaged sale, as described to them, is an appropriate way to proceed in all the circumstances. The Pool member will consider the grounds given by the applicant for the pre-pack transaction, specifically with regard to the impact on creditors of the company in administration, and why there is a need to acquire the business through a pre-pack administration.

22. What will the Pool member base their opinion on?

The Pool member will base their opinion on whether there appears to be any grounds to question the merits of the proposed transaction in the context of the absence of creditor scrutiny. They will consider whether;

- a case is made for the necessity of a pre-pack,
- the creditors' position is adversely affected, and
- the Pool member is satisfied (on the evidence presented) that the proposed pre-packaged sale represents a reasonable method of disposal of the old company's business/assets.

23. What does the Pool member's opinion mean?

The Pool member will issue one of three opinions.

Nothing found to suggest that the grounds for the proposed pre-packaged sale are unreasonable

This means the Pool member has been provided with sufficient information and nothing within the information suggests the proposed pre-packaged sale to the connected party is unreasonable.

Evidence provided has been limited in some areas, but otherwise nothing has been found to suggest that the grounds for the proposed pre-packaged sale are unreasonable

This means the Pool member has been provided with information and there is nothing within that information to suggest the proposed pre-packaged sale is unreasonable. However some elements of the evidence presented or arguments made by the connected party (mostly likely to be considered by the Pool member as not being of major significance) were limited and not sufficiently made out.

There is a lack of evidence to support a statement that the grounds for the proposed pre-packaged sale are reasonable

This means the Pool member was not persuaded the grounds for proceeding through a pre-pack transaction were sufficiently made out, on the basis of the evidence presented or arguments made by the connected party.

24. Can a sale to a connected party proceed via a pre-pack if the Pool has not been satisfied with the evidence provided?

Yes. If the administrator decides to accept an offer from a connected party and proceed with the sale, they will have to explain to the creditors why they felt the sale was appropriate.

An administrator is obliged to provide a clear explanation and justification for the sale in accordance with Statement of Insolvency Practice 16 ([SIP 16](#))

25. Why won't the Pool give reasons for its decision?

The Pool has been set up to provide quick responses to applications. Providing detailed reasons for the Pool's decision would add to the delay and the costs.

26. Can I appeal an opinion of a Pool member?

No. Cost and speed are key factors here, and neither the Pool member nor the Pool directors will enter into correspondence on the opinion given. There is no appeal mechanism.

27. When will I know the identity of the Pool member?

The Pool member's identity will become known to the applicant only when the Pool member's opinion is received. The Pool member's opinion will also be provided to creditors in the administrator's SIP 16 statement where the connected party has provided this to the administrator. The administrator's SIP 16 statement is also filed at Companies House.

If the administrator has requested a copy of the opinion and this has not been provided by the connected party this will be stated in their SIP 16 statement also.

The role of the insolvency practitioner (IP)

28. Can the IP acting (or likely to be acting) as administrator for the company advise the connected parties on the approach to the Pool?

As IPs work within a Code of Ethics, the proposed administrator is unlikely to be able to provide advice and assistance in connection with the application. However, the IP may be able to offer general information regarding the Pool and their reporting obligations.

29. What is the regulatory consequence of an IP proceeding with a sale to a connected party if the Pool member has issued an opinion that there is insufficient evidence that the grounds for the pre-packaged sale is reasonable?

An opinion that there is insufficient evidence that the grounds for the pre-packaged sale is reasonable doesn't prohibit the sale. It is for the IP to decide whether to proceed with such a sale or not.

Ips are subject to regulation and authorised to act as IPs by recognised professional bodies. The insolvency regulators look at practitioners' conduct through complaints received and proactive monitoring. Where systemic problems are identified, the regulators have the ability to take appropriate action.

A complaint would not be well founded solely on the basis that a pre-packaged sale transaction was entered into when an opinion had been issued that the evidence was insufficient to support the grounds for a pre-packaged sale.

30. What is the duty of the IP or the company to provide details of valuations, marketing and interest in the business, unknown to the applicant connected party but relevant to the application?

The IP has no such duty. The IP has no relationship with the Pool and the Pool will not be seeking any third party verification of facts or presumed intentions of relevant parties engaged in the sale. However, where an applicant is closely connected, some elements of this information may be available to them and they may be able to obtain the appropriate permissions to use it in support of their application.

Further information for applicants

31. How are cases allocated to the Pool members?

Cases are allocated by rota, excluding those with a known conflict of interest.

32. Are there any specific conditions attached to the application?

All applications are submitted to the Pool on the basis of terms and conditions. Applicants must accept these terms and conditions. If an applicant is in any doubt about the effect of the terms and conditions they may wish to seek legal advice prior to submitting an application.

33. What is the purpose of a viability study?

The viability of the purchaser, while of interest to its future trading partners, would not ordinarily be a major consideration for the Pool member, as its focus is on addressing concerns of creditors of the insolvent. However, the provision of a viability review may be of considerable benefit to the Pool member, especially where the payment of the purchase consideration is deferred and therefore is dependent upon the success of the new company. The viability review should cover the greater of 12 months or the period over which any consideration is to be deferred. It should be noted that in providing their opinion, the Pool member is not warranting the viability of the new business, they are merely considering the prospects for the purchase consideration being fully discharged.

34. Is the purchaser's application to the Pool confidential?

Yes. The Pool website is appropriately secure and data is held in accordance with prevailing data protection requirements.

As part of the application, the applicant will be asked to give consent to the Pool member's opinion that is sent to the administrator or intended administrator. Where no proposed administrator is identified in the application, the subsequently appointed administrator will approach the connected party to request a copy of the opinion from the applicant.

The administrator will not see the application, but the opinion will list the documents provided with the application.

The purchaser's application to the Pool is not a public document as the information it contains is likely to be market sensitive.

35. How can I be sure my submission is reviewed by someone familiar with my kind / size of business?

Industry specialism will not be a part of the Pool member allocation process. Applications are submitted to the Pool members on a rota basis. All Pool members are experienced business people with the appropriate skills to consider applications from any sector or size of business. The opinion is based on the documents provided. Should there be any industry specific information which will assist the Pool member in considering the application this should be provided as part of the supporting evidence submitted.

36. I am in England / N. Ireland / Scotland / Wales, will/can my application be reviewed by someone only from my area?

No. It is not considered that decisions will or should be influenced by regional or national considerations. If there are any specific regional or national considerations the applicant considers relevant, these should be included within the evidence submitted as part of the application.

About the Pool members

37. What qualified the Pool members to make these decisions?

The Pool members are experienced business people. Many will be chartered directors (of the Institute of Directors), others will be accountants or lawyers, and they can be former-IPs. They will adopt a commercial approach and use their business experience and acumen to form their opinion.

38. Who chose the Pool members?

The Pool members were selected following a public recruitment process. Applications were considered by a group of representatives from creditor bodies, the business community, government and the insolvency profession. A copy of the public advertisement can be viewed here <http://www.insolvency-practitioners.org.uk/regulation-and-guidance/pre-pack-pool>.

39. How do I apply to be a Pool member?

Applications may be sent to the administrative address of the Pool, info@prepackpool.co.uk, in response to announced invitations for new or replacement members, or at any time if you wish to register your interest. There are no current vacancies, as a full complement has been recruited.

Administration of the Pool

40. Who administers the Pool?

Pre-pack Pool Ltd (PPP), company number 09471155 which operates under the terms of a service agreement with the Oversight Group.

41. How is the Pool overseen?

The performance of the Pool will be monitored by an Oversight Group established to coordinate and oversee the creation, development and operation of the Pool. The Oversight Group shall report to the Insolvency Service (IS) and BIS.

The Oversight Group is made up of representatives from creditor organisations, business groups, government, the insolvency profession and insolvency regulators.

42. What is the role of the IS / BIS in the Pool system?

The IS / BIS as oversight department for business generally and the insolvency profession (and its regulation) is concerned to ensure that there is an effective system for administrations and specifically the use of sales to connected parties via a pre-pack where appropriate. It is not, however, directly involved in the Pre-pack Pool, but has encouraged

and endorsed its creation. The IS is part of the Oversight Group established to coordinate and oversee the creation, development and operation of the Pool.

General information

43. What is SIP 16?

[SIP 16](#) is the Statement of Insolvency Practice 16. It sets out the principles and compliance standards with which an IP must comply when dealing with a pre-packaged sale of a company's business when he has been appointed administrator.

44. Why is the Pool system voluntary?

At the current time the government wishes to see if a low cost, non-statutory approach can satisfactorily address concerns.

45. Why does the Pool only look at connected party pre-packs?

The Graham Review found it was sales to connected parties that caused most concern to creditors. It highlighted a need for additional transparency where a business is to be sold with little or no notice being given to its creditors.

46. I want to see a purchaser's application to the Pool. How can I obtain a copy?

The application is not a public document. It is therefore not available to third parties. However, the documents provided to the Pool will be listed in the opinion statement provided by the Pool member and circulated by the IP with the [SIP 16](#) disclosure statement.

47. I am a creditor, how do I know that a higher price might not be offered by someone else?

The underlying aim of the Pool is to ensure unsecured creditors feel reassured that a proposed sale to a connected party, on the terms offered, was not an unreasonable course of action in the circumstances.

It is not a function of the Pool to assess the likelihood of the connected party bid being the highest made to the administrator, nor prevent a situation where the administrator sells to the connected party at a price below a higher unconnected bid. Nor can it guarantee the connected party will not buy the assets of the old business at a price that someone subsequently might say they would have bettered. Those are considerations for the administrator to consider. The administrator must inform creditors, via the [SIP 16](#) disclosure, why they considered the pre-packaged sale was appropriate.

Complaints

48. I think I have lost money as a result of the pre-pack sale. Who can I complain to?

The existence of the Pool does not preclude the use of any of the existing avenues of query, challenge or complaint about the administrator's actions, which may include challenge through the courts, complaint to the administrator and / or their firm, or through the [Insolvency Service Complaints Gateway](#) (or in Northern Ireland to the administrator's authorising body).

49. I think the purchaser has acquired the company for too little. I want to complain/ seek redress. What can I do next?

If you believe the company was sold at below value, in the first instance, you should raise this with the administrator. If you are unsatisfied with their explanations, you can make a complaint through the [Insolvency Service Complaints Gateway](#) (or in Northern Ireland to the administrator's authorising body). Concerns about the new company and its management may be directed to [Investigations and Enforcement Services](#) at the IS.

50. I want to complain about the directors of the company who bought the company from the administrator. How do I do that?

If your complaint is about the directors' conduct before the administration then you should raise this. One option is to contact the administrator or the Director Disqualification Unit at BIS directly. If your complaint is about the directors' conduct after the acquisition of the company then you should complain to [Investigations and Enforcement Services](#) at the IS.