Shutting up shop

Some key legal developments are influencing retail and hospitality restructurings in 2026. **Tim Carter** and **Helen Martin** explain

At the time of writing, 2025 is already in the rear-view mirror. Nevertheless, the year-end insolvency statistics for 2025 (published in January) remain a helpful reference point. They show that levels of corporate distress remain elevated and persistent: broadly unchanged from 2024, and significantly higher than pre-pandemic averages.[1] This is not a sudden 'tsunami' of failures; it is a steady tide, driven by well-rehearsed structural pressures that continue to impact businesses of all sizes.

Retail and hospitality remain particularly exposed – margins are tight and there are limits on businesses' ability to reduce overheads and transfer costs to increasingly cautious consumers. For cases where industry is recorded, these two sectors account for almost a third of company insolvencies in the 12 months to November 2025.[2]

The dominant theme continuing from 2025 into 2026 is cost. Trade body UKHospitality has estimated that the sector absorbed around £3.4bn of additional annual costs from April 2025, driven principally by increases in wages, employer National Insurance contributions and business rates.[3] This is now feeding directly into operational decisions (pricing, headcount, opening hours) and, in turn, into the shape of restructurings. So, the key question for the coming year is not whether the high level of distress continues, but more how restructurings can be executed under tighter timetables and with increasing creditor pressure. Against this backdrop, we highlight some of the key legal developments shaping retail and hospitality restructurings in 2026.

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Reshaping the leasehold estate

The restructuring plan under Part 26A of the Companies Act 2006 remains the tool of choice for major multi-site operators. In 2024 and 2025, approved high street retail and hospitality Part 26A plans included those for Revolution Bars and retailers Poundland, River Island and Superdry. Restructuring plans have proven to be a powerful means of addressing leasehold liabilities across large property portfolios – territory traditionally occupied by the company voluntary arrangement (CVA) – while also enabling wider financial restructuring and the injection of new funding.

In the cases of both River Island and Poundland, the restructuring plan applied different treatments to groups of landlords, driven by a granular assessment of each store's performance and strategic value. Where a plan departs from equal treatment of creditors who would (in the relevant alternative insolvency process) rank *pari passu*, the distinctions must be justified by transparent, evidence-based criteria. In River Island, a detailed analysis of retail sites compared trading performance, current rent (versus estimated market rent) and the physical condition of each unit to arrive at seven classes of landlord. A similar exercise was carried out in relation to Poundland's large leasehold estate. In each case, the court accepted that the methodology was rational and supported by evidence, and was therefore willing to exercise its discretion to cram down dissenting classes and sanction the plans.

Key to the exercise of the cram-down power is that there must be "a fair sharing of the burden of the restructuring plan amongst those whose rights are compromised and a fair allocation of its benefits (the value preserved or generated by the plan) to and between them".[4] In both River Island and Poundland, unsecured creditors benefitted from an uplift on the return they would have received in the relevant alternative insolvency process, as well as the opportunity to share in any future upside. That allocation of benefits was supported by detailed expert reports, reflecting the higher evidential standard now expected by the courts in these cases (although, in Poundland, judge Sir Alastair Norris noted the "limitations" of such a report).[5]

New procedural requirements will shift the goalposts in 2026, following the introduction of the revised Practice Statement for schemes and restructuring plans[6] (applying from 1 January 2026). The revised Practice Statement is intended to force earlier identification and management of contested issues and a proportionate allocation of court resources. In practical terms, it removes the informal ability to secure hearing dates without issuing proceedings – a claim form must now be issued before dates are arranged, and a listing note must be filed, setting out (among other considerations) time estimates, an indicative timetable and likely contested issues. The Practice Statement also includes guidance as to evidence to be filed by applicants, and the court's case management powers. Longer lead times, the risk of challenge and high costs mean that Part 26A is likely to continue to be reserved for the most complex restructurings.

CVAs may therefore come back into play in 2026, particularly in consumer sectors where pressure is concentrated in leasehold liabilities and unsecured trade debt. Although the Insolvency Service's December 2025 figures indicate that overall CVA volumes remain low relative to historic levels,[7] they continue to have an important ▶

Managing public-sector creditors

Public-sector creditors are likely to be key stakeholders in any consumer-sector restructuring. Recent Part 26A case law suggests a pragmatic approach from HMRC where the economics justify it. In *Re Enzen Global Ltd [2025] EWHC 852 (Ch)*, the court described HMRC's constructive engagement in shaping a plan it could support as a "welcome development". HMRC also voted in favour of a plan in *Re OutsideClinic Ltd [2025] EWHC 875 (Ch)*, after initial opposition and subsequent negotiation secured it an improved dividend.

By contrast, business rates creditors may be less engaged. In River Island, Sir Alastair Norris commented on the "regrettable" practice of some local authorities refusing to adjourn liability hearings even once they were aware of the restructuring plan.[8] Early, proactive engagement with local authorities may help to avoid background enforcement activity that could impact the restructuring timetable.

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role where a lighter-touch compromise is both achievable and sufficient.

Breathing space

While the restructuring plan has gained traction in recent years, the moratorium under Part A1 of the Insolvency Act 1986 remains underused. Despite this, it can be a practical option in the right circumstances. Where there is support (or at least tolerance) from key financial creditors, it offers a relatively low-cost breathing space and a bridge to a refinance or restructuring process – including a CVA or even a restructuring plan. One of its most practical benefits is the ability to block nuisance winding-up petitions from trade creditors, which can otherwise derail restructuring efforts.

Barriers to wider adoption include concerns about the 'super-priority' given to moratorium debts (and certain pre-moratorium debts) in a later insolvency, and the requirement for the monitor to be satisfied that rescue as a going concern is 'likely' – a demanding judgement call in trading volatility.

That said, one of the few reported moratorium cases provides some reassurance regarding the monitor's role. In *Re Corbin & King Holdings Ltd [2022] EWHC 340,* the court found that the monitor's decision will be open to challenge only if it was made in bad faith or clearly perverse. While the case concerned termination of, rather than entry into, a moratorium, the court's application of the 'irrationality' threshold to a monitor's decision-making is encouraging.

Flexible route forward

Retail and hospitality businesses continue to face sustained financial and operational pressures. For insolvency practitioners, this means working closely with directors to assess viability at an early stage. If needed, restructuring plans can offer a flexible route forward, but we expect to see increased use of the CVA for all but the largest players. In all cases, clear documentation, early stakeholder engagement and commercially realistic planning remain essential to managing risk and preserving value in what is a challenging and fast-moving environment.

Impact of increased employment risk

The Employment Rights Act 2025 (ERA25) is being phased in across 2026–2027 and adds a further layer of complexity to the operating environment for stressed businesses and officeholders.

While the ERA25 keeps the existing consultation trigger of 20 or more proposed redundancies at one establishment within 90 days, it also introduces a further organisation-wide trigger for redundancies across multiple establishments (to be set by secondary legislation following consultation). The practical effect is that smaller 'per site' reductions might, once the regulations are in force, aggregate to trigger collective consultation and the HR1 notification requirement.

Also, the financial stakes increase as a result of the ERA25. The government intends to double the maximum protective award for failure to comply with collective consultation requirements from 90 to 180 days' gross pay per employee, with intended commencement in April 2026. Beyond collective consultation, the ERA25 is expected to extend the time limit for employment tribunal claims from three to six months (effective October 2026) and to reduce the unfair dismissal qualifying period to six months while removing the compensatory cap (expected 1 January 2027), all of which point towards a higher volume of claims and potentially more costly outcomes.

Insolvency practitioners involved in contingency planning should factor in the increased financial risk associated with the ERA25, taking reasonable steps to mitigate exposure where full compliance isn't achievable. When marketing distressed retail or hospitality businesses, the potential for significant increased employment costs or liability may affect deal pricing and the risk appetite of potential purchasers.

1., 2. and 7. gov.uk/government/statistics/company-insolvencies-december-2025; 3. ukhospitality.org.uk/annual-cost-increases-hit-hospitality; 4. *Re River Island Holdings Limited [2025] EWHC 2276 (Ch)*, para 43; 5. *Re Poundland Limited [2025] EWHC 2755 (Ch)*, at para 72; 6. judiciary.uk/wp-content/uploads/2025/09/Revised-Pt-26-26A-FINAL-SEPTEMBER-2025.pdf; 8. *Re River Island Holdings Limited [2025] EWHC 2276 (Ch)*, para 10

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