What Lies Behind Diverging US And UK Insolvency Trends

By **Thomas Curran** (May 13, 2024)

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Recent individual bankruptcy and insolvency filing trends in the U.K. contrast with those in the U.S. and globally, suggesting that differing economic conditions and policy responses between the two countries — as well as differences in new provisions — are influencing consumer behavior and financial outcomes.

England and Wales Insolvency Trends

The U.K. recently released insolvency statistics for England and Wales for the 2023 calendar year.[1]

In the U.K., there are two types of insolvency filings: bankruptcy and individual voluntary arrangements, or IVAs.[2]

Bankruptcy in the U.K. is akin to Chapter 7 in the U.S., whereas IVAs are more similar to Chapter 13. England and Wales experienced a decrease in individual insolvency rates in 2023, marking the lowest levels since 2017.[3]

The overall rate of insolvency filings, which include both IVAs and bankruptcies, was 21.7 per 10,000 adults in 2023, down from 24.9 in 2022.[4] 2022 saw the highest number of IVAs on record.

Bankruptcy rates increased slightly from the record low in 2022.[5]

U.S. and Global Trends

Trends in the U.S. and globally appear to be moving in the opposite direction.

In 2023, consumer bankruptcy filings in the U.S. increased 18% from 2022, with similar increases in both Chapter 13 and Chapter 7 filings.[6] The total number of nonbusiness bankruptcy filings in the U.S. in 2023 was 436,064, the highest since 2020.[7]

Chapter 11, Subchapter V, filings, which are small business reorganization bankruptcy filings, also increased in the 2023 fiscal year.

Subchapter V filings often would otherwise be individual or family filings, given they are small business filings, and many fall into the category of family-owned businesses or what's often referred to as mom and pop businesses.

The total amount of Subchapter V filings in the 2023 fiscal year was 1,987, up from 1,592 in the 2022 fiscal year.[8] By Feb. 29, there had already been 1,029 Subchapter V filings in the 2024 fiscal year.[9] There were 233 Subchapter V filings in April alone, up from 146 in April 2023.[10]

If filings were to continue at that rate for the remainder of the fiscal year, it would mark another increase from fiscal year 2023. However, the Coronavirus Aid, Relief, and Economic Security Act had increased the debt limit for filing for Subchapter V from $2.75 million to $7.5 million.[11]

The increase took effect on March 27, 2020, and has been extended through June 21.[12] The limit will revert to $2.75 million next month, unless Congress votes again to extend it.[13]

On April 17, a bill was introduced in Congress to extend the threshold increase for two more years.[14] It is currently under review by the Senate Judiciary Committee and has bipartisan co-sponsors.[15]

The American Bankruptcy Institute's Subchapter V Task Force has advocated that Congress go even further and make the increase permanent.[16]

U.S. Policies That Appear to Be Influencing Factors

The trend in the U.S. is thought to be the result of higher interest rates, increased standards for lending and the end of the pandemic relief that had been granted in previous years.[17]

Michael Hunter, the vice president of bankruptcy information services platform Epiq AACER, stated that the increase was expected and will likely continue, given "the runoff of pandemic stimulus, increased cost of funds, higher interest rates, rising delinquency rates, and near historic levels of household debt."[18]

The U.S. monetary policy, as reflected in the Federal Reserve's interest rate policy over the past year, has held interest rates at their highest levels in several years in an effort to thwart increased inflation. After raising the interest rate 11 times between March 2022 and July 2023, the Fed decided to keep the federal funds rate at 5.25% to 5.5%, where it has held since July 2023.[19]

Mark Zandi, chief economist at Moody's Analytics, projects that the Fed will likely need to see two to three consecutive months of inflation numbers trending closely to their 2% target before we see any rate cuts.[20]

Despite earlier projections in the first quarter of the year citing three rate cuts by year-end, some Bank of America economists are now concerned there is a real risk that the Fed may not make any cuts until March 2025.[21]

The lack of access to lower interest rate credit, primarily in the home mortgage refinance and home equity loan space, appears to be cutting off a historically available and widely used escape valve for consumer debtors that has long been used as a counterbalance to high levels of consumer debt.

Because variable-rate home equity lines of credit and new home equity loans often have interest rates tied to the Fed's rate, interest rates for home equity borrowers have also increased.[22] The average HELOC interest rate reached a 20-year high in November 2023 when it surpassed 10%.[23]

These high interest rates likely make refinancing a mortgage or taking out a HELOC a less attractive method of handling individual debts, causing more people in the U.S. to turn to filing for bankruptcy. Given the risk that the rates will not be cut any time soon, high interest rates are likely to continue to contribute to increased bankruptcy filings.

The influencing factors set forth above, coupled with the demonstrated popularity of

Subchapter V filings, show that the trends in the U.S. appear to be on a stable-to-upward path, at least during the short term.

The global landscape mirrors the U.S. trend, with bankruptcies expected to rise by 21% in 2023, according to Allianz.[24] This indicates broader economic challenges beyond individual country policies or conditions, possibly influenced by global economic shifts and challenges.

U.K. Policies That May Explain Disparity

The introduction of the debt respite scheme in England and Wales may have played a significant role in mitigating insolvency rates.

The debt respite scheme had its first full year in effect in 2022.[25] The scheme's breathing space registrations allow individuals to pause enforcement actions, and freeze interest and charges on debts, providing relief to struggling debtors.[26] The debtors are still expected to make debt repayments during the breathing space period.[27]

Two types of breathing space registrations are available. The first involves temporary protection for up to 60 days.[28] An individual can apply for one breathing space scheme every 12 months.[29]

The other type of breathing space is for people receiving mental health crisis treatment. When a person is receiving mental health crisis treatment, their breathing space protection lasts the length of their treatment, plus 30 days.[30]

The mental health crisis breathing space is not limited to one every 12 months.[31]

In 2023, 18.5 per 10,000 adults in England and Wales registered for breathing space, which was up from 15 per 10,000 in 2022.[32] This could potentially have prevented many individuals from having to file for insolvency.

The debt respite scheme is modeled after Scotland's moratorium system, which has been in effect since 2015.[33] A moratorium in Scotland is similar to a breathing space in England and Wales.

In Scotland, total personal insolvencies dropped from 11,148 to 8,474 between 2014-2015 and 2015-2016.[34] Total personal insolvencies increased from 2016-2017 to 2019-2020.[35]

Moratoria similarly decreased during each of those periods.[36] Between 2019-2020 and 2020-2021, personal insolvencies dropped from 13,491 to 7,594.[37]

The number of personal insolvencies in Scotland has hovered around 8,000 per year for the past three years recorded.[38] This is likely due to the Coronavirus Act 2020 in Scotland extending the duration of a moratorium from six weeks to six months, as well as a major increase in the applications for moratoria.[39]

Key Takeaway

The contrasting trends between the U.K. and the U.S. highlight the importance of policy interventions in shaping consumer financial outcomes and economic recovery.

While the U.K.'s approach seems to have mitigated insolvency rates, the U.S. faces challenges exacerbated by economic conditions and policy transitions post-pandemic.

The U.S. does not have any options similar to the debt respite scheme that would allow people to potentially avoid filing for bankruptcy. Moreover, the continued growth and popularity of Subchapter V in small business Chapter 11s has likely contributed to the U.S. trend.

Overall, the data underscores the complex interplay between economic conditions, policy measures and consumer behavior in shaping insolvency rates. It also emphasizes the need for targeted interventions to support financial resilience and recovery in different economic contexts.

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