Recovery

R3, the Association of Business Recovery Professionals / Spring 2026

LAST ORDERS

To the rescue of hospitality businesses

WHERE ART MEETS SCIENCE
Valuing intellectual property

BILTA SUPREME COURT JUDGMENT
Implications for the profession

WHO SHOULD BE AN IP?
Why human qualities matter

A new look for *Recovery*

Welcome to the new-look *Recovery* magazine. Following a brief hiatus, R3 has relaunched the magazine in partnership with a new publisher, Think, and given it a refresh.

While *Recovery* may look different from before, the quality of the content hasn't changed. You can still expect to read thoughtful, in-depth analysis of some of the most topical issues affecting the restructuring, turnaround and insolvency profession. We will also bring you insights into careers, technology and international developments, along with the latest policy and technical updates from R3.

As the news headlines continually remind us, we live in uncertain and turbulent times. What's more, the economic climate remains challenging and the rising cost of living is forcing people to cut their discretionary spending, both in the UK and other countries. This has knock-on effects for businesses in many sectors, but those operating in retail and hospitality are among the most affected.

Research by EY-Parthenon found that a third of UK-listed retailers issued profit warnings last year. Meanwhile, R3's own *Annual Business Health* report found that both the wholesale and retail sector, and the accommodation and food services sector, continue to see elevated insolvency numbers. (For more on the R3 research, see page 6.)

Neil Smyth is a partner at Mills & Reeve and is the editor of *Recovery*

"In this volatile operating environment, the role of the restructuring, turnaround and insolvency profession is more important than ever"

Tell us what you think
Want to share your thoughts on *Recovery* or write an article for a future issue?
Email: editor@r3.org.uk

The Spotlight section in this issue focuses on the specific challenges facing retail and hospitality, and examines how insolvency practitioners can make proactive interventions that deliver positive outcomes for distressed businesses. On page 34, you can read about some of the key legal developments that are shaping retail and hospitality restructurings in 2026. The outlook for the hotel sector is explored on page 39, where you will also find some pointers on conducting a strategic hotel review.

Other topics explored in this issue of *Recovery* include strategies for valuing and monetising intellectual property assets (page 18), the risks associated with HMRC joint liability notices (page 26) and the implications of the Bilta Supreme Court judgment (page 42). We also consider the important connection between environmental, social and governance matters and insolvency on page 31.

In this volatile operating environment, the role of the restructuring, turnaround and insolvency profession is more important than ever. So, it is vital that we exchange the ideas, opinions and best practice that will enable our profession to keep excelling. A great opportunity for us to do this will be the R3 Annual Conference taking place in Budapest from 6–8 May.

I hope you enjoy reading this issue of *Recovery*, and I look forward to hearing your feedback.

Recovery is the quarterly magazine of R3, the Association of Business Recovery Professionals,
3rd Floor (East), Clerkenwell House,
67 Clerkenwell Road, London EC1R 5BL
T 020 7566 4200
W r3.org.uk

Editor
Neil Smyth, Mills & Reeve LLP

Consultant editor
Sally Percy
E sally.percy@thinkpublishing.co.uk

Group art director
Matthew Ball

Art director
James Kratz

Managing editor
Rica Dearman

Associate director, Think:
Anna Vassallo

Advertising
Jon Salvoni / Tom Fountain
T 020 3771 7231
E jon.salvoni@thinkpublishing.co.uk
E tom.fountain@thinkpublishing.co.uk

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London W1W 7EH
T 020 3771 7200
W thinkpublishing.co.uk

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R3 Contacts

Executive
Caroline Sumner
Chief executive officer
T 020 7566 4207
E caroline.sumner@r3.org.uk

Technical
Beth Redfern
Technical manager
T 020 7566 4228
E beth.redfern@r3.org.uk

Training Academy
Alexander Carver
Senior training coordinator
T 020 7566 4238
E alexander.carver@r3.org.uk

Communications
Dawn Boyall
Communications manager
T 020 7566 4203
E dawn.boyall@r3.org.uk

Amani Keynan
Communications executive
T 020 7566 4214
E amani.keynan@r3.org.uk

Policy and Public Affairs
Céara Roopchand
Policy and public affairs manager
T 020 7566 4212
E ceara.roopchand@r3.org.uk

Lyle Horne
Senior policy and public affairs officer
T 020 7566 4202
E lyle.horne@r3.org.uk

Membership
Andrew Heffernan
Head of member services
T 020 3869 1034
E andrew.heffernan@r3.org.uk

Freddie Webster
Membership engagement manager
T 020 7566 4230
E freddie.webster@r3.org.uk

Shemin Varma
Senior membership officer
T 020 7566 4211
E shemin.varma@r3.org.uk

Events
Nicola Pogson
Head of events
T 020 3987 9918
E nicola.pogson@r3.org.uk

Richard Broekman
Senior events organiser
T 020 3989 8774
E richard.broekman@r3.org.uk

Miya Hukins
Senior events organiser
T 020 7566 4229
E miya.hukins@r3.org.uk

Amina Undre
Events organiser
T 020 7566 4227
E amina.undre@r3.org.uk

Lily Wood
Events organiser
T 020 7566 4220
E lily.wood@r3.org.uk

Marketing
James Fitzgerald
Marketing manager
T 020 7566 4219
E james.fitzgerald@r3.org.uk

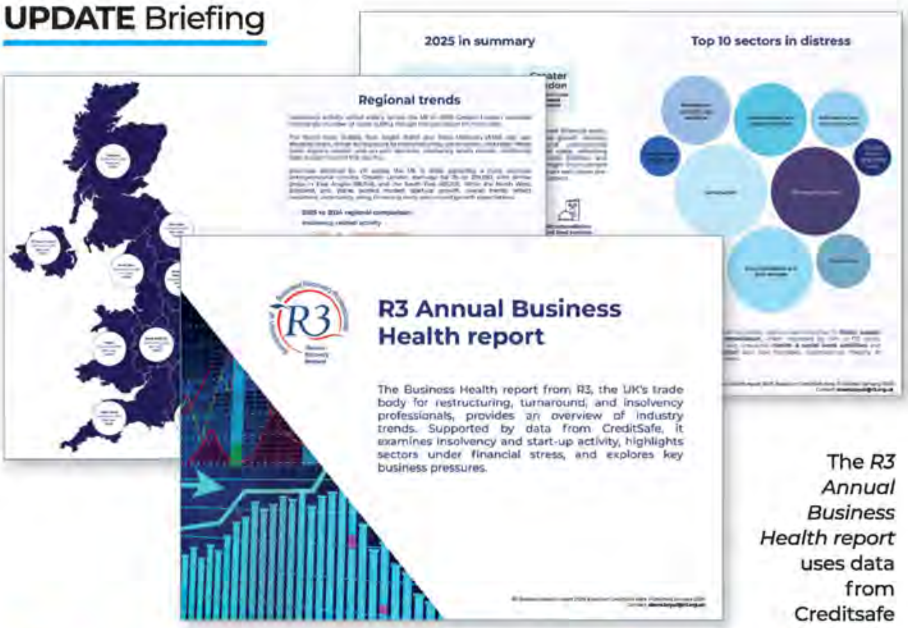
Ella Curle
Senior marketing executive
T 020 7566 4209
E ella.curle@r3.org.uk

Office
Harvinder Kular
Head of finance and operations
T 020 7566 4213
E harvinder.kular@r3.org.uk

Zuzana Kyselova
Accountant
T 020 7566 4226
E zuzana.kyselova@r3.org.uk

Fiona Connor
Office coordinator and credit control
T 020 7566 4231
E fiona.connor@r3.org.uk

R3 Association of Business Recovery Professionals
3rd Floor (East), Clerkenwell House, 67 Clerkenwell Road, London EC1R 5BL
T 020 7566 4200 **E** editor@r3.org.uk **W** r3.org.uk



The R3 Annual Business Health report uses data from Creditsafe

Corporate insolvency levels remain elevated

The scale of the financial pressure facing UK companies has been highlighted by the *R3 Annual Business Health report*. The report, which uses data from business intelligence expert Creditsafe, revealed that corporate insolvency levels remained elevated in 2025 despite falling interest rates. In total, there were 28,616 insolvency-related activities in the UK last year, only 2% down on 2024. Greater London was the region with the most distressed businesses, being home to around one in five insolvency cases.

At a sector level, construction experienced the highest number of insolvency activities in 2025, with 4,584 cases. This was, however, a modest reduction of 6% compared with the previous year. The construction sector is exposed to numerous pressures, including rising material costs, delayed payments, skills shortages and weak investor confidence.

Other sectors that continued to experience elevated numbers of insolvency activities were wholesale and retail (4,124 cases) and accommodation and food services (3,831 cases). These findings reflect the pressure on margins as households rein in discretionary spending and businesses struggle to absorb or pass on higher costs.

Manufacturing insolvencies remain historically high. Overall, the sector recorded 2,188 cases due to high energy costs, supply chain disruption and subdued export demand. The water supply, waste management and remediation sector saw a 14% year-on-year increase in insolvency activity, rising to 172 cases in 2025. This finding highlights the impact of regulatory pressure and rising costs on the sector.

It is not just insolvency trends that are a cause for concern. The research also found that new business formation slowed across much of the UK in 2025, suggesting a more cautious entrepreneurial environment. Greater London start-ups fell by 3% to 259,092 on the previous year. The East Midlands, Yorkshire and Humberside region and Northern Ireland saw the largest declines in start-up activity, however.

Commenting on the findings, R3 president Tom Russell said: "2025 was a year in which UK businesses struggled to regain their footing after several years of economic challenges. While inflation has eased, the cumulative impact of higher costs, tighter credit conditions and weak demand continues to place significant pressure on cash flow, particularly for smaller and mid-sized firms with limited financial headroom."

Access the report at **lnkd.in/ecCJamFG**

Listed retailers warn on profit

A third of listed retailers (34%) issued a profit warning during 2025, according to EY-Parthenon's latest *Profit Warnings* report. Furthermore, the report highlights that difficult trading conditions continue to weigh on even the largest UK retail businesses.

"The retail sector began the new year under sustained pressure caused by weak demand and rising costs," said Silvia Rindone, EY partner and UK and Ireland retail lead. "Although sales were up in 2025, this only tells part of the story, with many businesses still struggling to absorb cost increases or pass them on to customers given ongoing price wars among competitors."

Rindone added that retailers were also racing to keep pace with rapidly evolving artificial intelligence (AI), "which continues to create a widening gap between those able to invest in digital, AI and operational agility, and those struggling to hold their ground amid increasing market share of fast-moving, tech-savvy competitors".

Retailer Pets at Home issued multiple profit warnings during 2025

The research also found that geopolitical uncertainty is making it hard for companies to hit their forecasts. More than two in five (42%) profit warnings issued by UK-listed companies in 2025 cited policy change and the uncertain geopolitical environment as a key factor.

For more on the challenges facing the retail sector, see **page 34**

SHUTTERSTOCK

School's out

In this Q&A, **Rebecca Andrews-Walker** discusses the important role played by IPs as the independent education sector navigates the fallout from VAT on fees

Just over a year has passed since VAT was introduced on independent school fees. *Recovery* caught up with Rebecca Andrews-Walker, head of restructuring and insolvency at Penningtons Manches Cooper, to find out how insolvency practitioners (IPs) are supporting schools.

What is causing financial strain at independent schools?

A significant driver is the falling UK birth rate. Initially, this was felt by prep schools, but it is now filtering through to senior schools as pupil numbers decline.

Cost-of-living pressures are also having an impact. Families are choosing to have fewer children and, in some cases, opting for state education rather than stretching to meet independent school fees. The effects of Covid-19 continue to linger, particularly where reserves were depleted during that period.

Mid-range schools tend to be hardest hit. They often rely on middle-income families who are most exposed to economic pressures and least able to absorb fee increases.

How has the introduction of VAT on fees affected school finances?

The impact has depended on how much of the cost each school chose to pass on to the parents and, most importantly, the resilience of the school's finances before the VAT change.

In my experience, VAT has acted more as a catalyst than a root cause of financial distress. The additional burden has brought issues to a head and prompted earlier engagement with IPs.

Which structural issues do you often see in distressed schools?

Many independent schools are charities and are not run with a commercial mindset or inhouse accounting expertise. Senior leadership teams and governors may lack business experience and therefore miss early-warning signs of difficulties.

> **Senior leadership teams and governors may lack business experience and therefore miss early-warning signs of difficulties**

Governors are often volunteers, motivated by altruism and a focus on pupil and staff welfare. Discovering that the school is operating at a loss can therefore come as a shock, making conversations about cost-cutting and restructuring challenging.

I have seen some examples where spending priorities were misaligned, for example, a school running a petting zoo at a significant cost, while essential building maintenance was neglected because the focus was on pupil experience.

How can IPs help schools avoid these issues?

Early intervention is critical. I work with schools to help leadership teams better understand financial health and risk. IPs can work with their audit and accountancy contacts to identify schools in need of support and guidance before problems become irreversible.

There is also an opportunity for R3 to continue raising awareness. Sharing experiences and best practice is essential if the profession is to support this sector effectively.

What else should IPs be aware of when working with schools?

Schools may not fully understand the need to segregate charitable funds from operational monies. IPs should seek legal advice early to confirm whether any monies are restricted funds or held on trust for third parties and therefore unavailable to a liquidation. Practitioners must also be mindful of charity law. The Charity Commission provides guidance, but legal advice is advisable.

What are the challenges when a school has to close?

Closing a school is fundamentally different from closing a typical business. There are safeguarding considerations for the children affected alongside the need to support continuity of education. Local education authorities need to be engaged early to help manage pupil transitions and fulfil statutory obligations.

Schools hold significant volumes of sensitive data, including pupil records, photographs and safeguarding information, which must be managed carefully and in compliance with data-protection requirements. Parents can be understandably distressed, while teachers and staff face uncertainty.

Overall, school closures are complex and emotionally charged, and require careful planning, clear communication and specialist advice.

This Q&A is based on insights shared by Rebecca Andrews-Walker at R3's Smaller Practice Group forum in November 2025. **See page 53 for details of forthcoming R3 events.**

The strategic value of public affairs

How R3 is influencing positive policy outcomes for the restructuring, turnaround and insolvency profession. **Céara Roopchand** explains

Restructuring, turnaround and insolvency professionals play a vital role in maintaining economic confidence, preserving value in distressed businesses and protecting creditor interests. Yet the effectiveness of their work is inextricably linked to the legal and regulatory framework in which they operate. Here, the ability to influence legislative and policy developments through public affairs and lobbying is not just beneficial, it is essential.

The UK's insolvency framework is driven by economic cycles, political priorities and international influences. From the Corporate Insolvency and Governance Act 2020 to ongoing discussions aimed at reducing regulatory burdens, the pace and breadth of change demand active engagement from the profession. New legislation – whether it relates to director disqualification or the role of the Insolvency Service – can alter the landscape for the profession. Without early and consistent engagement, the risk is that legislation will be shaped without the technical expertise and real-world insight of those responsible for delivering its outcomes.

Strategic engagement

In practice, public affairs encompasses strategic engagement with government departments, parliament, regulators (notably the Insolvency Service and the Financial Conduct Authority) and other influential stakeholders. Effective public affairs offers multiple benefits:

1. Shaping legislative reform. Whether it's input on the future of the Personal Insolvency Framework or the regulation of the insolvency profession itself, constructive lobbying ensures reforms are workable, proportionate and aligned with the public interest.

2. Promoting professional standards. As pressure mounts to increase transparency and reduce costs, the profession must articulate the value it delivers and defend against ill-conceived reforms that risk undermining professional integrity.

Having a real-word impact

Recent examples of R3's effective lobbying

1. Influencing the Courts and Tribunals Judiciary's consultation on the Practice Statement for schemes of arrangement under Part 26 and restructuring plans under Part 26A of the Companies Act 2006, ensuring the Judiciary's approach is informed by practitioner experience.

2. Championing the role of insolvency practitioners in creditors' voluntary liquidations, evidencing their ability to deliver meaningful returns for creditors through data and analysis drawn directly from our membership.

3. Working with peers in the House of Lords to influence the Employment Rights Act 2025 and address tensions between insolvency law and collective redundancy consultation requirements. This work was supported by real-life case studies from the R3 Employee Working Group.

4. Advocating for pragmatic, workable reforms to the Personal Insolvency Framework with expertise from the R3 Personal Insolvency Committee.

5. Briefing parliamentarians on real-world insights on fraud, illustrating how fraud erodes returns to creditors, with evidence and insight from members of the R3 Fraud and Asset Recovery Group.

6. Responding to the Business and Trade Select Committee inquiry titled '2026 Priorities'. The response urged for action on reducing regulatory burdens for the profession, modernising the Insolvency Rules and investigating barriers to financial institution cooperation.

R3 plays a key role in shaping fair, effective insolvency policy

Member views

"In my experience, the opportunity that R3 provides for its members to collectively lobby government on matters that affect the insolvency and restructuring market is highly valued and taken very seriously, particularly given the direct impact it can have on reform efforts."
Sophia Harrison, partner at Addleshaw Goddard and R3 Policy Group chair

"The R3 policy team's understanding of the insolvency and restructuring landscape, combined with their proactive engagement with stakeholders, ensures that members' voices are not only heard but genuinely influence policy outcomes. The team helps members stay ahead of the curve. Their work strengthens the profession's credibility and ensures it remains at the forefront of economic and legal developments."
Felix Connolly, partner at BTG Advisory and R3 Special Situations M&A Faculty co-chair

3. Managing political risk. High-profile insolvencies attract political scrutiny. Public affairs ensures that policymakers understand the role of insolvency practitioners and avoid knee-jerk legislative responses that can do more harm than good.

4. Influencing reputation and narrative. The insolvency profession is often viewed through the lens of failure and cost. Proactive engagement helps reposition it as an enabler of business rescue, fair creditor outcomes and economic renewal.

In the UK, lobbying is a regulated and legitimate activity – when conducted ethically and professionally. For restructuring and insolvency professionals, it offers a means of shaping the legal and regulatory landscape. Through bodies such as R3, the profession's collective voice is heard in parliament, select committees and government consultations.

Looking ahead, R3's 2026 *Value of the Profession* report will provide a clear, evidence-based assessment of the economic contribution made by the restructuring, turnaround and insolvency profession to the UK economy. It will quantify the profession's impact through authoritative metrics, including jobs preserved and viable businesses rescued.

The report will be central to R3's ability to champion the profession with credibility and influence. Insights provided by members directly enhance our capacity to articulate the profession's value, strengthen engagement with politicians and policymakers, and supply the robust, real-world evidence required to argue for meaningful and effective legislative reform.

HEI Faculty

Members have been clear that the growing financial and operational pressures facing universities require a more coordinated and specialist approach. R3 has established a dedicated Higher Education Institutions (HEI) Faculty, bringing together restructuring and insolvency professionals, and others with experience of working in the sector.

The pressures facing universities are increasingly acute. In the absence of a tailored insolvency framework, managing distress within HEIs demands specialist restructuring and turnaround capability to protect stakeholders and preserve institutional viability.

R3's Policy Group met last year to assess the scale and urgency of the challenge. Members reached a broad consensus that R3 is well placed to lead in this area. The establishment of the HEI Faculty is an outcome of those discussions, enabling R3 to promote stronger contingency planning, advocate for proportionate and workable legislative reform, and develop constructive, evidence-based policy recommendations grounded in real-world experience.

Without this advocacy, reforms run the risk of proceeding based solely on political expediency, media narratives or incomplete economic assessments – leading to frameworks that are harder to implement and less effective for businesses and creditors.

From optional extra to necessity

Public affairs and lobbying are no longer optional extras, they are core to the profession's ability to enhance its mandate, improve outcomes and shape a future-fit insolvency framework. As the UK economy faces continued uncertainty and pressure to reform, those who influence the system will be best placed to lead within it. By making public affairs a strategic part of the profession, R3 helps shape restructuring and insolvency policy that is fair, effective and grounded in economic reality – giving our members the confidence that their interests are well represented and supported.

Céara Roopchand is policy and public affairs manager at R3

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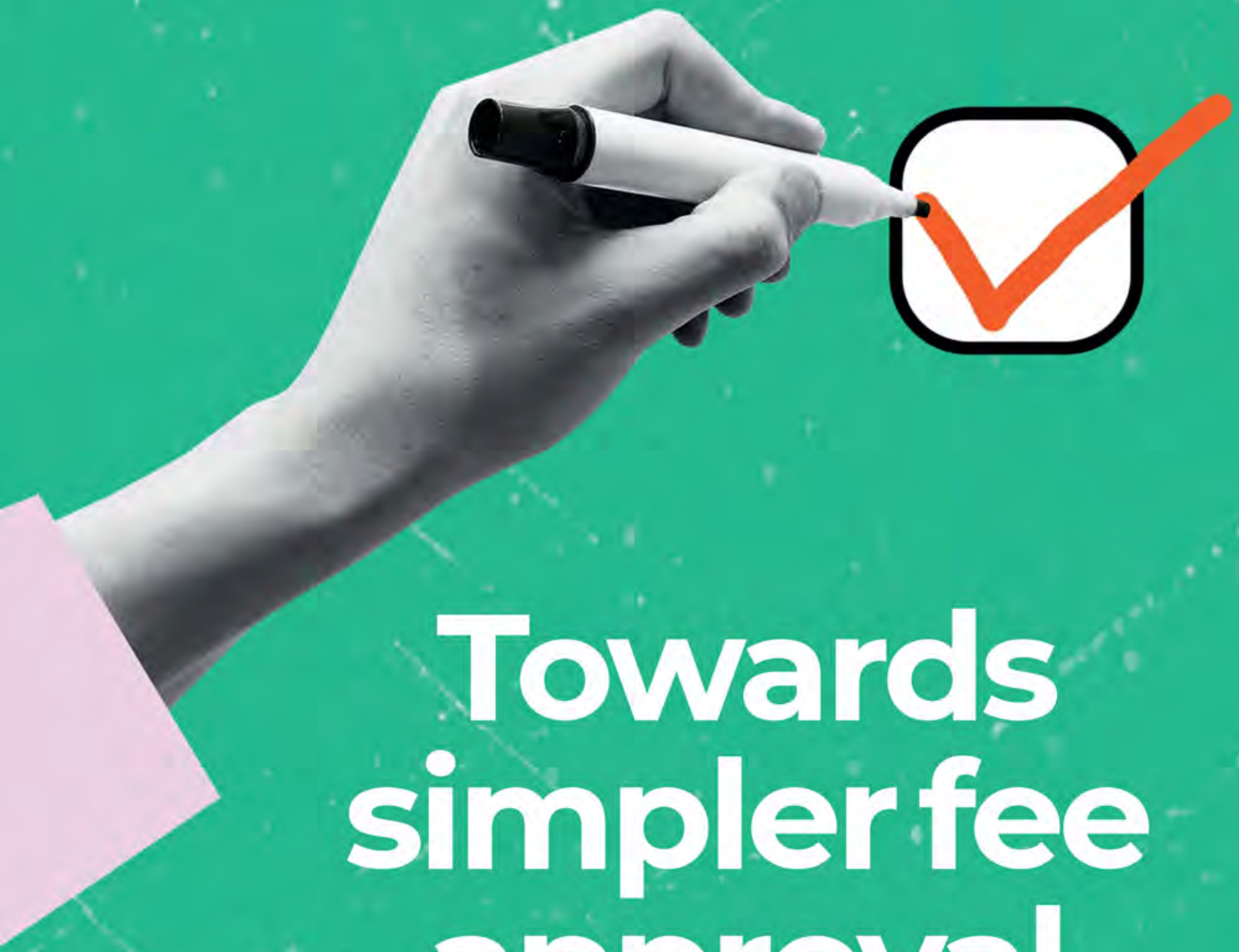

Towards simpler fee approval

An R3 proposal aims to tackle creditor disengagement concerning remuneration. **Beth Redfern** explains how

With new electronic communication and remote procedures, creditors are increasingly disengaged with liquidation processes, making fee approval difficult. At the end of last year, R3 submitted a proposal to the Insolvency Service to improve efficiency and engagement. This article outlines the details of the proposal, its background, advantages and safeguards.

The conundrum

In April 2017, the Insolvency (England and Wales) Rules 2016 came into force (IR16). The goal of the new rules was to reduce regulation, increase efficiency and improve returns for creditors. An expansion of the possible use of electronic communication with creditors reflected changing communication methods in society. The rules also implemented the Small Business, Enterprise and Employment Act (SBEEA) 2015, which removed the use of physical meetings as the default decision-making process for creditors. Instead, it provided officeholders with a variety of alternatives for seeking creditor approval that were more in line with today's society.

Yet the removal of physical meetings, combined with information overload and complex decision-making processes, has led to high levels of creditor disengagement and disinterest with insolvency processes.

This apathy is leaving insolvency practitioners (IPs) in limbo, particularly when seeking creditors' approval for remuneration in a creditors' voluntary liquidation (CVL). At the R3 Smaller Practice Forum in November 2025, 86% of delegates polled said creditor disengagement was the most pressing challenge IPs face when securing fair fees in smaller cases.

In November 2025, CVLs accounted for 78% of all corporate insolvencies, according to statistics published by the Insolvency Service. IPs are entitled to reasonable remuneration for their services; in fact, it is codified in legislation. Unfortunately, however, the mechanism by which IPs' remuneration is approved is failing due to lack of creditor engagement. Levels of creditor apathy are high, with the situation being further compounded by HMRC. HMRC rarely votes in fee request decision procedures, particularly if there is no dividend expected.

An R3 member survey found that nearly 30% of respondents had fee approval fail at the first attempt in 11–25% of cases. A second attempt to secure fee approval is often combined with contacting specific creditors to encourage them to vote, which is both time-consuming and inefficient.

IPs are left with limited options:

- Rerun the decision process at a cost of approximately £1,000–£2,500;
- Apply to court for fee approval, with the cost estimated at £5,000–£10,000 for the application and solicitors' fees; or
- Close the case without fee approval and pass funds to *bona vacantia*, depleting the funds meant for creditors.

The answer

R3's General Technical Committee took up a mantel laid down by past president Nicky Fisher to formulate a rescue plan to combat creditor disengagement. The proposal moves towards a more structured, predictable statutory fee model rather than relying on active engagement from creditors.

The proposal, which was submitted to the Insolvency Service by R3 at the end of November, turns the existing process upside down and introduces a new rule in IR16. The rule establishes a prescribed statutory fee for CVL liquidators of a maximum of £10,000 plus VAT. This amount was chosen as a reasonable figure to cover the essential work completed in every CVL process, regardless of asset values. To future-proof the rules, the proposal allows the Secretary of State to adjust the amount through future regulations.

Advantages of the proposal

When a fee decision procedure is unsuccessful, the result can be liquidators spending thousands of pounds, in both time and money, chasing creditors or applying to court. This makes the current mechanism for IPs to receive approval for remuneration costly, inefficient and burdensome. R3's proposal streamlines the existing process and significantly reduces the need for costly court proceedings to approve remuneration. It is therefore a benefit not only to the insolvency process, but also to the courts.

> **R3's proposal streamlines the existing process and significantly reduces the need for costly court proceedings**

Court proceedings are intended to be a source of dispute resolution, which fee approval is not. The proposed statutory fee acknowledges that fee approval is primarily an administrative task and should not involve the court unless a dispute arises.

The appointment of multiple liquidators is explicitly acknowledged by fairly apportioning the fee as a single total to be shared.

Safeguards

For the proposed rule to be fair to both creditors and practitioners, some safeguards are needed, which are in line with the fee-approval process. As a result, the proposal also includes:

- Rule 18.19B, which allows a liquidator to request that the basis of the remuneration is fixed under rule 18.20 of IR16, enabling the liquidator to seek a higher fee in cases that are particularly complex and where the statutory fee is insufficient. In this instance, any of the statutory fee already drawn would be treated as 'payment on account' towards a newly determined fee basis.
- Creditors retain the ability to challenge the IP's remuneration under rule 18.34 of IR16 if they believe that the remuneration is excessive or inappropriate.
- Cases that are converted from administration, and where liquidators are swiftly replaced by a creditor nominator liquidator, are not eligible to use the statutory fee to prevent misuse of the provision.

Considering the wider impact

Rule 18.29 of IR16 currently requires a 'material and substantial change in circumstances' before a fee basis can be altered. R3 has proposed that this restriction be removed to not only allow changes to apply to work already done, but to expand the scope of the rule by enabling adjustments. This will provide much-needed flexibility for evolving cases and resolve the issue of a liquidator being forced to work for free until a new fee basis is agreed.

Feedback

Feedback so far has been overwhelmingly supportive of the proposal. One member said: "I think it's better for the UK insolvency profession that we can show we can get CVLs completed far quicker with less cost as well."

Another member described the proposal as "excellent and well-structured", saying it thoroughly addresses both the current fee-approval requirements and proposed changes.

By implementing these changes, R3 believes the profession can move towards a more efficient, inclusive and realistic model – one that acknowledges the reality of modern creditor apathy, while ensuring that liquidators are fairly compensated for their vital role in the UK economy.

More information

See the full proposal on the R3 website and LinkedIn page:
r3.org.uk/technical-library/england-wales/technical-guidance/statutory-fee-proposal

linkedin.com/company/r3-the-association-of-business-recovery-professionals/posts

Beth Redfern is technical manager at R3

Looking to the future

Forty years on from the Insolvency Act 1986, **Tom Russell** reflects on the profession's evolution and how R3 is changing with the times

This year marks 40 years since the Insolvency Act 1986 came into force, making it an opportunity to reflect on just how different the world was in 1986. It was the year of the Chernobyl nuclear disaster and the space shuttle *Challenger* tragedy. The World Wide Web had not yet been invented, personal computing was in its infancy and mobile phones were still the preserve of a small minority.

Few could have predicted the pace or scale of change that would follow, or how insolvency and restructuring work would evolve over the subsequent four decades. The complexity of cases has increased, regulation has expanded and expectations of practitioners have grown. The pace of change shows no sign of slowing. Developments such as forthcoming case law on restructuring plans and members' voluntary liquidations are just the latest examples of a legal and commercial landscape that continues to shift.

Technology has been one of the most powerful drivers of change. Many of us began our careers in a profession built on paper files, letters and in-person meetings. Over time, we have embraced email, digital working and virtual engagement as standard practice. Artificial intelligence (AI) represents the next major opportunity and challenge. R3's AI survey, in association with Alph4, will help shape understanding of how members are using AI tools, where the risks lie and how to support their responsible adoption.

Improving the member experience has been a consistent focus throughout my year as president. Our new website,

"As my year in office draws to a close, I feel very glad that I've had the opportunity to meet so many members at regional forums

due to launch in spring, will provide the foundation for how we communicate with, and deliver services to, members in the years ahead. Alongside this, investment in new training software is already enhancing the quality and accessibility of R3 courses.

Constructive engagement with stakeholders has also remained central to R3's work. We welcome the new chief executive of the Insolvency Service, Duncan Beach, and look forward to continuing our collaborative relationship with the agency. The recently announced review of the Insolvency (England and Wales) Rules 2016 is encouraging, and we hope it will lead to meaningful modernisation. R3 will continue to present practical, balanced proposals and respond to consultations, as demonstrated by our recent creditors' voluntary liquidation statutory fee proposal (see Policy & Technical Update on page 10). This seeks to deliver benefits for officeholders, creditors and government alike.

The launch of our *Value of the Profession* report will reinforce the essential contribution that restructuring, turnaround and insolvency professionals make to the economy and to society, often in the most challenging circumstances. I am grateful to Turnkey for its assistance in helping us streamline the data-collection process.

As my year in office draws to a close, I feel very glad that I've had the opportunity to meet so many members at regional forums and national and international events. I am looking forward to the upcoming Southern forum, and the INSOL International conference in London. It has been a particular pleasure to meet the next generation of professionals and provide support and encouragement through our professional initiatives, mentoring, bursary schemes and new leadership course.

As I hand over to my successor, Sonia Jordan, I do so with confidence in the strength, professionalism and adaptability of our membership. These qualities will be vital as the pace of change continues. I know the profession is in excellent hands.

Tom Russell is president of R3 and a director at James Cowper Kreston


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Enduring impact

INSOL International is a powerful and interconnected ecosystem that creates meaningful opportunity for its members, partners and stakeholders, says **Scott Stuart**

Having completed my first 100 days as CEO of INSOL International, I'm writing this column to reflect on this time and the clarity these 100 days have brought as we move forward. This initial period has been defined by listening, learning and engagement across our global community. Furthermore, it has sharpened both my understanding of INSOL's strengths and my conviction about where we are headed.

Scott Stuart reflects on his first 100 days as CEO of INSOL International

For me, these first months have been more than an introduction to the organisation. They have reaffirmed INSOL's standing as a globally respected leader in cross-border insolvency and restructuring, while also revealing the extraordinary depth of resources, expertise and relationships that underpin our work. Taken together, these elements form a powerful and interconnected ecosystem, one that creates meaningful opportunity for members, partners and stakeholders across jurisdictions.

Looking ahead, 2026 will be a year of focus and articulation. We will sharpen INSOL's points of distinction, align our people and purpose, and strengthen the strategic thread that binds our ecosystem with greater clarity and cohesion. We will also unveil a refreshed brand for INSOL International, one that reflects our evolution and presents our work not as discrete initiatives, but as a single, integrated ecosystem encompassing knowledge, technical programmes, education platforms, support for emerging economies and thought leadership developed in partnership with global institutions.

> **I plan to use the wealth of experience I have accumulated over my career to support INSOL International to achieve its objectives**

The INSOL International of today, and of the years ahead, will continue to be defined by the richness and diversity of its resources: from NextGen and diversity initiatives to environmental, social and governance-focused and socially aligned programming (events tailored to meet the needs of our diverse membership, considering aspects of accessibility, culture and diversity). My confidence is rooted in the insight gained during my first 100 days and in the strength of our global community. Our priorities are clear: to deepen support for member associations, extend our reach into new and emerging economies, and ensure that INSOL remains as accessible to emerging professionals as it is indispensable to the most experienced practitioners.

Becoming CEO of INSOL International is the pinnacle of what has been an enjoyable career in restructuring, distress investing, legal technology and non-profit leadership spanning more than three and a half decades. Prior to this role, I was CEO of the Turnaround Management Association, where I supported the organisation to expand its reach, enhance member engagement and elevate its role as a convening force across jurisdictions and types of restructuring professionals. I plan to use the wealth of experience I have accumulated over my career to support INSOL International to achieve its objectives. I also intend to remain a strong advocate for diversity and inclusion – a cause I have championed passionately for many years.

I know there will always be more to learn and more to build, but a strong foundation is in place. I am committed to working alongside our member associations, partners, volunteers, jurists, educators and global leaders to shape the road ahead, one defined by clarity of purpose, collective strength and enduring impact for INSOL International in 2026 and beyond.

Scott Stuart is CEO of INSOL International

Challenging times

Restructuring, turnaround and insolvency professionals will need to manage distressed assets and safeguard value in 2026 amid testing economic conditions. **Luke Mayberry** explains

We anticipate another subdued year for the UK economy in 2026, marked by low growth, a weakening labour market and declining inflation. Against this backdrop, we see the recovery and restructuring market becoming increasingly critical in 2026, as businesses look to secure liquidity, manage refinancing pressures and protect asset values in a challenging corporate environment.

The UK economy grew by 1.4% year-on-year (YoY) in 2025, with strong first-half momentum in the services sector offset by elevated global uncertainty and concerns around the Budget. These factors weighed on activity and left overall growth relatively weak. Looking ahead to 2026, we expect modest GDP growth of around 1.3% YoY, reflecting subdued business investment and limited productivity gains.

Labour market challenges

Recent indicators also point to a softening labour market. The UK unemployment rate has risen to 5.2%, the highest since 2021, signalling a clear cooling in hiring conditions, while private-sector pay growth has also slowed to its lowest level in five years. At the same time, long-term sickness remains historically high, further constraining workforce participation. The mix of rising unemployment, cooling wage growth and stubbornly high inactivity is a clear early warning that corporate stress is set to show up more starkly in labour-intensive sectors this year, including in the construction, hospitality and retail sectors.

On inflation, 2025 was marked by a reacceleration in consumer price inflation (CPI), driven by higher energy prices, tax changes and renewed food price pressures. Looking ahead, however, lower energy bills and subdued economic growth should ease inflationary pressures over the coming months, with the Bank of England anticipating that CPI will move close to the 2% target by the end of the year. Recent government measures, including a freeze in rail fares and cuts to household energy bills, are also set to help moderate price growth.

"Looking ahead to 2026, we expect modest GDP growth of around 1.3% YoY, reflecting subdued business investment and limited productivity gains

For restructuring, turnaround and insolvency firms, easing inflation may help bring some stability to asset values after several volatile years. But weak economic growth means that values for second-hand assets, such as commercial vehicles, machinery and retail stock, are likely to remain under pressure, making efficient recovery processes and realistic valuations increasingly important.

Interest rate relief

With the labour market weakening, and inflation expected to fall back towards the Bank of England's 2% target, conditions should begin to support a gradual easing in monetary policy over the course of 2026. While interest rate cuts would offer some relief to households and businesses, borrowing costs are likely to remain well above pre-pandemic levels, meaning financial conditions will stay relatively tight even as policy becomes more accommodative.

Overall, a weaker labour market, a sluggish growth outlook and still-elevated borrowing costs suggest that 2026 could mark the beginning of a more pronounced rise in corporate stress in the UK. Many highly leveraged businesses, especially those that locked in cheap debt pre-2021, will continue to face refinancing difficulties. We expect restructuring and insolvencies to rise throughout 2026, elevating the worth of restructuring, turnaround and insolvency firms as they step in to manage distressed assets and safeguard value.

Luke Mayberry is an investment strategist at Barclays Private Bank

Manolete Partners PLC - Regions

SCOTLAND

Andrew Murphy
amurphy@manolete-partners.com
07931 318341

NORTH EAST

Andrew Cawkwell
andrew@manolete-partners.com
07702 319421

Alexandra Withers
alexandra@manolete-partners.com
07413 242320

NORTH WEST

Jean Boldero
jean@manolete-partners.com
07775 586469

Dominic Vincent
dominic@manolete-partners.com
07495 059999

YORKSHIRE

Graham Briggs
graham@manolete-partners.com
07775 586343

Chris Adams
chris@manolete-partners.com
07526 233756

Richard Fergusson
richard@manolete-partners.com
07950 036625

THE MIDLANDS

Rachel McCahill
rmccahill@manolete-partners.com
07570 788494

EASTERN

Alison Kirby
alison@manolete-partners.com
07502 650183

SOUTH WEST & WALES

Charlotte May
charlotte@manolete-partners.com
07572 157033

Brett Eeles
brett@manolete-partners.com
07958 650269

SOUTH & THAMES VALLEY

Andrew Murphy
amurphy@manolete-partners.com
07931 318341

Neil Stewart
neil@manolete-partners.com
07771 963975

LONDON

Mena Halton
mena@manolete-partners.com
0203 859 3495 / 07912 466695

Tanya Barrett
tanya@manolete-partners.com
0203 859 3494 / 07949 085933

Caleb Bompas
caleb@manolete-partners.com
07729 928336

Ronan Butler
rbutler@manolete-partners.com
07971 6288755

Stuart Lindley
stuart@manolete-partners.com
07950 328768

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When science meets art

What's the secret to valuing and monetising intellectual property assets? **Benoit Geurts** explains

Over the past 50 years, there has been a notable shift in the balance of assets that make up a company's value, away from tangible assets and towards intellectual property (IP) and other intangible assets. In today's fast-paced, innovation-driven economy, the most valuable companies often have a large patent portfolio, advanced software or artificial intelligence (AI) models rather than plants and machinery.

The significant potential value of IP assets (copyrights, industrial designs, patents, trademarks and trade secrets) often requires insolvency practitioners to engage with experts to determine and realise their value. The complexity surrounding IP results from the intrinsic uniqueness of IP assets, which are often at the intersection of technology, business and law.

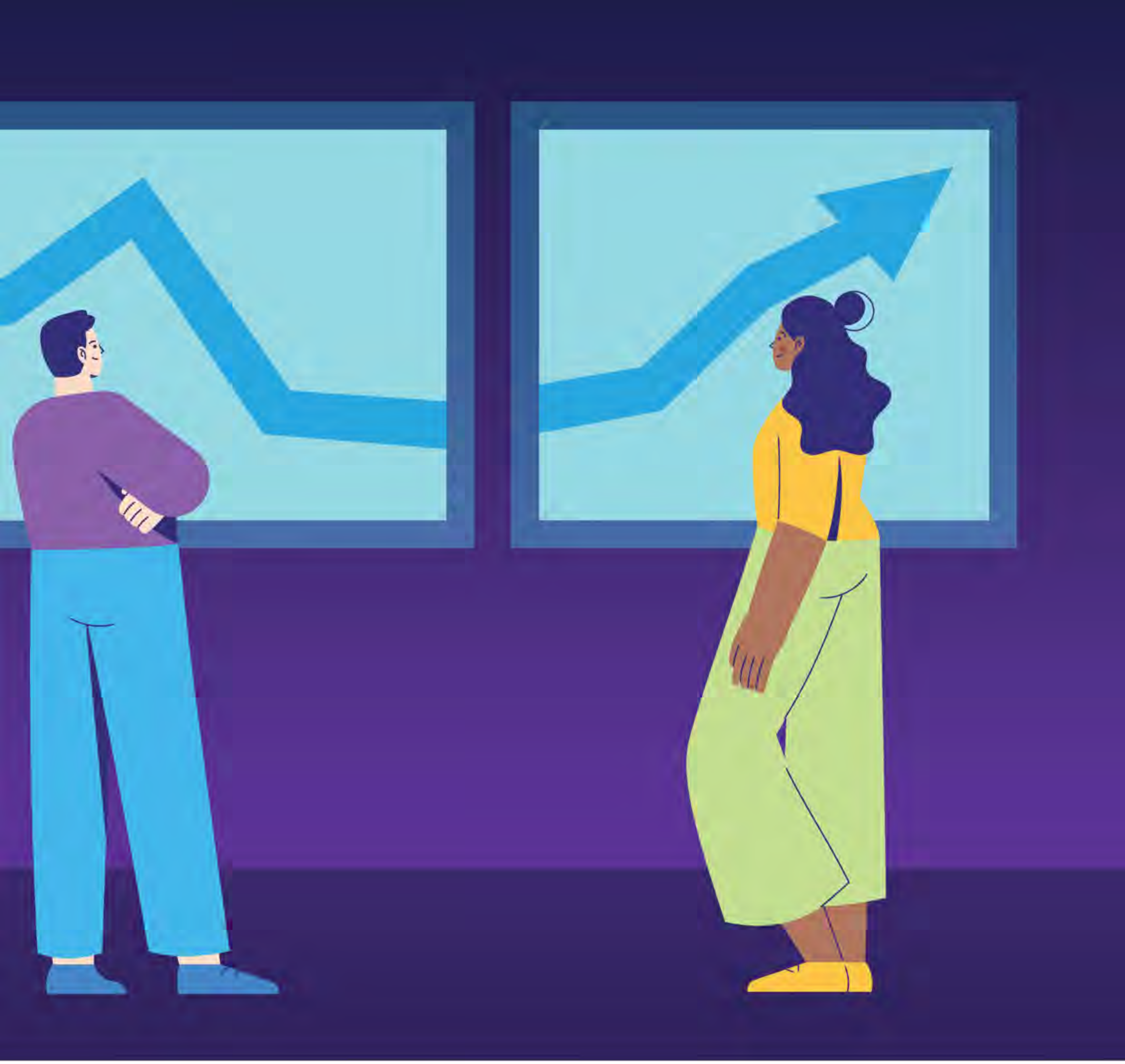
IP valuation is not a dark art, since there are some well-known methods for valuing IP. But what can be difficult to understand is an IP asset not having a single intrinsic value. The value of the asset depends on the context and role of the IP. So, a patent may have been filed by a company for marketing reasons, to position the company as innovative, but if the company falls into administration, the value of the patent to potential acquirers could be very different.

Steps for IP valuation in insolvency

When valuing IP assets during an insolvency, insolvency practitioners should follow these key steps:

1. Identify what the company actually owns. This can be easier said than done. The company's list of IP assets may not be well documented or up to date. It's possible that the person who was looking after the IP has been made redundant or that the lawyers who know about the company's IP are not being paid and will therefore not cooperate. IP valuers can search IP databases to find registered rights such as patents and trademarks, but this can be like detective work, since the assets could be registered under different entity names. Tracking down IP is also more complicated when it comes to unregistered rights such as copyrights or trade secrets, which are often not documented. In these situations, there is generally not enough time for the insolvency practitioner to hold a discovery call with the company's R&D or engineering team to get more information. Issues relating to joint ownership, which can result from a joint development agreement, also need to be identified. With software, there is often the complication of the company having used open-source modules with different licensing terms, so it's important to understand this context. My advice to insolvency practitioners is to involve the valuer early so they can help secure the cooperation of the insolvent company. That way, the insolvency practitioner is more likely to get better quality information to identify what the company owns and ensure that IP assets are protected.

2. Assess the extent to which the IP assets are currently in use. The value of IP assets is directly linked to



their use, current or future. A company may have 30 patents, for example, but only 10 are protecting inventions related to the manufacturing of their current products. Some are related to obsolete technologies while others are protecting future products, for example, the company could have previously generated a source code that is not used by anyone and has no value. It's also worth noting that since IP assets such as patents or trademarks are national rights, it can be the case that some IP assets provide protection in a country that the company exited years ago.

> **The complexity surrounding IP results from the intrinsic uniqueness of IP assets**

3. Determine the value of the IP assets. Typical methods are the cost, market and income approaches. IP valuation is part science and part art. When valuing IP assets, you are likely to use multiple methods depending on the situation. Unlike tangible assets such as real estate, IP assets don't have an intrinsic value. Their value is always context-specific. For that reason, it's necessary to consider potential scenarios for monetising IP assets. For example, some patents could help a potential acquirer to protect a unique feature on a device, allowing the acquirer to have a higher profit margin. Another monetisation scenario – if the patents are ▶

infringed by several companies – would be to litigate in order to get licensing income. The value will be different in each scenario. Ultimately, the valuation will depend on how a potential acquirer could use the IP assets and the benefits they would derive from those assets. Also, would the assets be included with the whole business, or with the machines, or sold purely as IP rights? It's essential to quickly determine how many potential acquirers there could be, since this will impact the valuation of the assets.

4. Monetise the IP assets. The task of recovering value from IP assets in an insolvency context presents specific challenges. The main challenge is the short timescale. Selling IP assets separately from the business usually takes more than three months, especially for patents. Another issue is that typically no representations or warranties will be provided in terms of ownership, validity, etc. As a result of these complications, potential acquirers will include discount factors in their own valuations,

> **It's important to remember that potential buyers of IP assets are often non-IP specialists**

and there is often only a small pool of potential buyers.

Methods for valuing IP

The different methods for valuing IP consider different factors. The cost method considers what it would cost to recreate and replace the IP. Some risk and discount factors are usually included to take into account the opportunity cost of not having the IP and IP risks such as theft, infringement and licensing disputes. The cost method doesn't reflect the market value of the IP and can be used to find the floor of the valuation range. It can work well for software or basic trademarks. Marketability and premium factors are added into the valuation.

The market method looks at comparable IP assets and considers how much they have been sold for. As IP assets are unique and can be very specific, it is impossible to find the perfect comparables, but some past transactions can provide a useful benchmark.

The income method estimates the present value of future income generated by the IP assets. It relies on assumptions of future revenue projections. This method can be used to build scenarios that estimate what the buyer would generate in income attributable to the IP acquired. It can work quite well for patents and trademarks in a proven market.

There are likely to be situations where you need to think outside the box to find the right method and apply some judgement.

Marketing and selling IP assets

Once a company is in an insolvent situation, the potential interested buyers of assets will invariably look for

Valuation approaches in practice

A patent portfolio with litigation potential

This portfolio could potentially be worth a significant amount and some investors will specifically be interested in this type of portfolio. The income method is appropriate for valuing the portfolio, but some qualitative analysis of the patents should be performed in case the patents are not as strong as the insolvency practitioner is told. It is important to engage with the company's head of IP, who can help highlight what is special about the inventions protected by the patents and who may be infringing on them.

Software assets such as a part-developed app

In this situation, you might have to deduct from your valuation the cost to finish developing the app. You should also consider technical risk factors and some IP risk, since the previous developers may have already tried to recreate something similar. The company's software engineer can explain how the code was secured, documented and managed – all essential for assessing the technical risk. The only interested buyers of the part-developed app would be people who have already been involved with the software.

Trade secrets, for example, data sets of testing data gathered over years

Trade secrets are often overlooked. Some software may not be very special, but the data set feeding into it could be. Understanding how the company's trade secrets have been protected is not easy and there is often not enough time to do a thorough analysis, which is why it's vital to engage with key individuals early. To be recognised as a trade secret, the asset must be identified and have commercial value. Reasonable measures to keep the asset secret must also have been taken.

a bargain. Ideally, you need to build some competitive tension to get the best price for the assets, but the pool of potential interested parties is often smaller than in other business situations.

It can be particularly time-consuming to market patents, since it is necessary to create marketing material that highlights the relevance of the patents to other companies in the same technology space. Relevance means the likelihood that a company or group of companies would potentially infringe the patents being sold with their current or future products.

In general, it's important to remember that potential buyers of IP assets are often non-IP specialists. As a result, you will need to highlight the positive aspects of the IP assets to them, for example, the validity of relatively old registered trademarks is less likely to be challenged compared with brand new trademarks. Also, buyers may not be as familiar with maintenance fees or renewal fees for IP assets. So, you would need to explain these fees to them while highlighting that no representations or warranties would be provided.

IP analytics tools can be a useful way of finding potential buyers. For example, companies that have cited the insolvent company's patents in their own patents will operate in a relevant sector and could be potential acquirers. These acquirers may not be just competitors but also customers. So, a certain software tool could be acquired by a customer to avoid paying the licence fees that they would have paid before and to avoid the disruption involved in having to find alternative software.

Secrets to success

The valuation of IP assets can be a complex and time-consuming process. By thinking ahead, following a plan and involving an IP valuer at an early stage, insolvency practitioners are more likely to secure high-quality information that enables them to accurately value and successfully monetise IP assets.

Benoit Geurts is managing director, intellectual property, EMEA at Gordon Brothers

Valuing intellectual property: key takeaways

- **Identifying owned IP assets can be challenging due to poor documentation and a lack of cooperation from former employees or unpaid lawyers.**
- **Assessing the usage of IP assets is crucial, since their value is linked to their current or future use.**
- **Valuation methods include the cost, market and income approaches, with the value of the asset being context-specific.**
- **Monetising IP assets in insolvency is difficult due to short timescales and a limited pool of potential buyers.**

Customer lists

Technically, customer secrets are not IP, but another type of intangible asset. They can be very valuable to acquirers (mostly competitors) who want to sell to the company's loyal customers and grow their own business through cross-selling. The value of a customer list depends on the quality of the data and the list must be up to date. It would be useful to find someone in the company, such as the customer data analyst, who can give a detailed update on its status.

A key issue with customer lists is the General Data Protection Regulation. In an insolvency situation, a potential buyer will need to check what consent has been given by the customers. Consent needs to have been given for marketing by third parties if the acquirer wants to market other products, which is often the acquirer's reason for buying the list in the first place. The methods used for valuation are income, market and cost. Calculations can be quite complicated and take more time than is usually available. The cost method can be a pragmatic approach. Overall, customer lists are tricky to value and lawyers may need to be involved in the valuation process.

Social media sites with numerous followers

Technically, social media handles do not belong to the user but can be transferred. When valuing these assets, ensure that access to the accounts has been secured. A high follower tally can be impressive, but the value depends on the engagement level. The value of having these accounts can be calculated based on the savings made by not having to pay influencers with a similar number of visitors and engagement level. Websites Socialinsider and Zebracat can help you calculate the value of social media sites.

Not so easily settled

The pursuit of claims against other parties can have specific tax consequences depending on what the claim relates to, says **Marcus Rea**

Insolvency practitioners (IPs) will be familiar with the challenge of pursuing a claim against another party on behalf of an insolvent estate – whether that be against a customer, a supplier, a professional advisor or a member of management. They will also be familiar with how time-consuming and expensive such pursuits can be. So, it will come as no surprise to them that IPs are also increasingly looking to litigation finance, insurance or the outright sale of a claim to another party in an attempt to secure the best value for the insolvency estate.

What may be more surprising is that the taxation of settlement receipts is far from straightforward and the choices IPs make may have significant tax consequences that should be factored in when determining which route to pursue.

The 'basic' tax position

If an IP receives a settlement in respect of a claim (whether as a result of a court ruling or an out-of-court negotiation), those proceeds are theoretically a taxable receipt. It should be possible to net off any directly attributable costs associated with pursuing the claim (for example, legal fees).

The precise tax consequence will depend on what the claim relates to, however, and whether it was derived in connection with a trade, from an underlying asset, a contractual right or a right of action.

Recent case law has confirmed that a settlement agreement must be ▶

IPs need to understand the tax consequences of various types of claim

construed under normal principles and therefore, in the first instance, whether the claim is revenue or capital in nature.[1]

If, for instance, the claim relates to the underperformance of a trading business, it is entirely possible that a settlement (being compensation for the loss of revenues or profits) would be categorised as trading income. This would theoretically have the benefit of allowing losses accrued in that trade to be offset and mitigate any tax.[2] If the company has ceased to trade before the settlement is received, this might cause an issue (as losses associated with a particular trade cannot be carried forward after that date). Provided the receipt is within six years of cessation, however, an election can be made to treat the receipt as if it had been received on the date of cessation instead, thereby still allowing access to trading losses.[3] There would only be a problem if a receipt is more than six years after the cessation of trade.

> **The position may become more complicated if an IP seeks insurance, litigation finance or sells a claim to a third party**

By contrast, if, for instance, the claim relates to an actual asset (for example, due to it being sold at undervalue or its value being otherwise impaired by the counterparty's actions), then any settlement receipt would be capital in nature. Any base cost associated with that underlying asset may mitigate a gain and it may then also be possible to offset certain types of tax losses.

If a claim relates to an express contractual right, then it would remain important to determine whether any settlement receipt was revenue or capital in nature but, irrespective, the receipt is almost certainly taxable in principle. If simply a right of action, the very right is itself the capital asset (a '*chose in action*') and any settlement receipt is a sum derived from that asset.

Following the case of Zim Properties in the 1980s, HMRC

introduced Extra Statutory Concession D33 (ESC D33) to deal with what was thought to be an unintended result.[4] As originally promulgated, ESC D33 sought to avoid the confusion as to whether a settlement derived solely from a right of action and said that if there was clearly a related underlying asset, then HMRC would treat that as the asset that had been disposed (and thus the taxpayer would benefit from being able to access its base cost). ESC D33 went on to say that if there was genuinely no underlying asset (for example, the receipt of a settlement from suing a professional advisor for misleading advice), then the settlement would be exempt from tax.[5]

In 2014, ESC D33 was amended such that only a gain of up to £500,000 from a right of action with no underlying asset would be treated as exempt from tax. Any amount greater than £500,000 might be exempt but had to meet specific criteria.

Unsurprisingly, HMRC will carefully examine the details of a settlement agreement. This is particularly true where a taxpayer claims ESC D33 is available and, in practice, it is rare (though far from impossible) that the exemption will apply. If, say, an IP chooses to sue a company's auditors or lawyers, HMRC will view any settlement as being in respect of trading performance or goodwill.

Meanwhile, it is critical that IPs understand the potential tax consequences of how litigation funding is structured

Further complications

With all that in mind, the position may become more complicated if an IP seeks insurance, litigation finance or sells a claim to a third party. The tax consequences will be determined by how the matter is structured.

- **Insurance.** Should an IP take out an insurance policy against the possibility of not obtaining a favourable judgment in court (i.e. paying out in the event that no settlement is received), the proceeds from any insurance payment will broadly follow the treatment that any settlement receipt would have experienced. A tax deduction should be available for any premium paid on obtaining the insurance in the first instance.

There are specific rules that allow insurance proceeds in respect of capital assets to be non-taxable if those proceeds are applied in restoring the original asset. But it is unlikely that this scenario will be relevant to many IPs.

- **Litigation finance.** Litigation finance has become increasingly common. If simply structured as a non-recourse debt with an appropriate interest rate (or equivalent compensation), reflecting the level of risk involved and treated as a debt for accounting purposes, then litigation finance should have no particular impact on the taxation of the settlement receipt. The exception is that the interest incurred should be tax deductible and can be used to shelter any income or gain from the settlement. Yet there is a grey area where the finance provider's return is linked not to the amount borrowed, but to the amount of any settlement proceeds recovered. If the return received by the finance provider is a function of the settlement, then it increasingly looks like either a part-disposal of the right of action or perhaps even the IP entering into some form of derivative contract.

- **Sale of claim.** An actual disposal of the right of action to a third party for them to pursue the litigation in their own right will have an immediate tax consequence – so will borrowing that is structured so that the finance provider's return is directly linked to a settlement. The proceeds (or non-recourse 'funding') that the IP receives will be treated as a capital receipt and be subject to tax. As the 'right of action' itself will have been sold, it will almost invariably have no base cost associated with it and the proceeds from that sale will be fully subject to corporation tax on chargeable gains (irrespective of whether any related underlying asset might have a base cost).[6]

Be aware

Proceeds from a claim are likely to be taxable (or require some thought to be treated as exempt with ESC D33). IPs should therefore be cognisant of this when agreeing a settlement figure or arranging insurance. A taxable outcome will also almost certainly arise if the claim is sold to a third party for them to pursue. Meanwhile, it is critical that IPs understand the potential tax consequences of how litigation funding is structured. An awareness of all these considerations will hopefully mitigate against unexpected tax bills.

1. *Charlton Chauffeur Drive Ltd v HMRC [2021] TC08042*; *The Commissioners for HM Revenue and Customs v Dr Michael Charlton and Mrs Barbara Corfield (executrix of Mr J Corfield DECEASED): [2012] UKFTT 770 (TCC)*; 2. Subject to the normal rules around use of losses; 3. Under s.198 Corporation Tax Act 2009; 4. *Zim Properties Ltd v Proctor, 58 TC 371* – it was held that the settlement resulted from a right of action despite the underlying issue relating to a capital asset – no base cost of that asset was therefore available to mitigate the gain; 5. ESC D33 does not apply to express contractual rights. A legal action involving a breach of contract is not eligible for the concession; 6. Subject to there being other in-year expenses or appropriate unused losses that can be offset

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Marcus Rea is senior managing director, restructuring at FTI Consulting and chair of R3's HMRC Business Tax Working Group

Held to account

Insolvency practitioners should be aware of the risks associated with HMRC joint liability notices, argues **David Brindley**

Limited liability status companies and limited liability partnerships (LLPs) have always allowed for individuals to limit their exposure should the business eventually fail. In most cases, the corporate veil provides safety for individuals looking to invest in, or start, a business that creates growth and employment.

Yet some individuals have misused these corporate structures, accruing significant unpaid tax liabilities, either through:

- Phoenixing;
- Committing tax evasion or avoidance; or
- Facilitating tax evasion or avoidance.

To counteract this behaviour, the government has implemented joint liability notices (JLNs) in Schedule 13 of the Finance Act 2020. JLNs are a tool for recovering unpaid corporation tax, VAT, PAYE and certain penalty debts in extreme cases. They expand the scope of those liabilities from the insolvent company to the directors or other responsible individuals of the company, causing them to be jointly and severally liable for existing and future liabilities.

> **The individual may be held jointly and severally liable for the amount stated in the penalty notice**

For insolvency practitioners (IPs), understanding the implications of JLNs, the risks for directors and their role in the process is key to providing sound advice and managing insolvency cases effectively. Early risk identification and assessment is vital. This article uses the term 'company', but the legislation relating to JLNs also applies to LLPs.

Basic rules of the legislation

1. Phoenixing

The following conditions need to be met:

- **Old companies:** At least two companies that carried out a similar trade must have entered an insolvency procedure within the past five years. Each must have had debts to HMRC exceeding £10,000 and representing at least 50% of the total creditor value. This includes tax that would have been due but for omissions in returns or failure to submit returns;

- **New company:** A new company has been incorporated or is trading in the same or a similar line of business as at least two of the old companies; and
- **Same individual:** The same person was involved in both the old and new companies within the past five years – whether as a director, shadow director or shareholder of an associated company. For the new company, involvement in management alone is sufficient.

If all these conditions are satisfied, the individual may be held jointly and severally liable for the outstanding tax debts of all relevant companies – both old and new.

2. Committing tax evasion or avoidance

In these cases, the individual may be held jointly and severally liable for the amount stated in the penalty notice. This will apply where:

- The company has engaged in tax evasion or tax avoidance arrangements that result in a tax liability unlikely to be paid;
- The company is either insolvent or there is a serious risk of insolvency; and
- The individual was partly responsible for the decision to enter into the avoidance or evasion arrangements.

3. Facilitating tax evasion or avoidance

In these cases, the individual may be held jointly and severally liable for the amount stated in the penalty notice. This will apply where:

- The company has facilitated tax evasion or avoidance and has either received a penalty or is undergoing proceedings before the First-tier Tax Tribunal in relation to such a penalty;
- The company is either insolvent or at serious risk of becoming insolvent; and
- The individual was a director, shadow director or shareholder of a close

SHUTTERSTOCK

Case study: Hospitality

An example of phoenixing activity

In 2018, two brothers launched two pubs in Manchester and Leeds under different corporate entities. Both businesses initially thrived, but by 2021, due to Covid-19 and mounting tax debts, they began to struggle. By early 2022, the companies entered liquidation, one leaving behind more than £300,000 in unpaid VAT and the other £6,000 of PAYE, which made up more than 60% of their total unsecured debts.

Seeing that the market was recovering, in 2023, the brothers launched a new catering service for wedding venues, based in Sheffield. Both brothers were again involved in management, although only one was listed as a director.

JLN issuance

In 2025, HMRC started an investigation into the second old company, while it was in liquidation, and requested documentation from the liquidator. It identified that while the second company had been trading, it had failed to submit its final two VAT returns and automatic VAT assessments were raised for £60,000.

HMRC determined that:

- The two old businesses and one new business operated in similar trades within the last five years (hospitality);
- The brothers had been involved in two failed companies within five years, both with significant unpaid tax debts; and
- The former companies' accumulative tax debts were more than £10,000 and over 50% of the cumulative unsecured creditors' value.

Despite the brothers' appeals that the businesses were not similar in nature, HMRC concluded that, as all the companies related to food and provided a service, they met the phoenixing requirements under the legislation. The matter was lodged at the tax tribunal.

Outcome

HMRC issued a JLN, holding both brothers liable for the total £366,000 of unpaid tax debts of both old companies. Had the brothers been notified this was the case when liquidating the former two companies together, they could have avoided this position.

In this scenario, during the early stages of the tax tribunal, the tax advisor was able to work with the IPs and HMRC in order to remove the JLN, but the advisor needed detailed knowledge of the legislation and there were prolonged negotiations.

Key takeaways for IPs

- Early identification of potential JLN risks is crucial when advising directors.
- Those involved in multiple failed businesses with unpaid tax debts should be warned of personal liability.
- HMRC may seek to investigate and ask for documentation from the company while it is in liquidation (or the individual who receives the JLN may request information to defend an investigation).
- HMRC takes a broad view of 'similar trade', especially in sectors such as hospitality.
- JLNs can impact personal finances, should they be implemented.

company at the time the penalty was imposed or proceedings began.

The impact of JLNs on IPs

The ICAEW and R3 have encouraged early engagement with HMRC and thorough documentation of director conduct and decision-making. As such, one of the first steps in preparing for any appointment should now include assessing whether any individuals involved with the company could be at risk of receiving a JLN, be that through their historic conduct or if they have an intention to start a new, similar business.

> **Practitioners should ensure that directors are fully informed of the risks associated with JLNs**

JLNs don't create claims against the insolvent estate itself. Instead, they empower HMRC to recover directly from individuals, which can shift the creditor dynamic, especially in those liquidations where HMRC is the only creditor. If HMRC is able to recover funds from directors personally, it may alter any overall recovery strategy.

The long-term consequences of JLNs for directors can be severe. Such notices can damage a director's reputation and significantly limit future professional opportunities – particularly if the notice results in personal bankruptcy. Practitioners should ensure that directors are fully informed of the risks associated with JLNs, especially in cases involving repeated insolvency. It is also important to highlight that bankruptcy resulting from a JLN may trigger disqualification proceedings, with serious implications for a director's future career and ability to hold office.

In some instances, the recipient of a JLN will request information and documentation from the company or request that an appeal is made on behalf of the company. While there are exceptions, for most matters the individual themselves will be able to appeal directly to HMRC. There may be some requirement for the IP to provide information from company records as part of any appeal process.

IPs may also be required to assist HMRC with any investigations into the companies that may result in a JLN.

Risks and opportunities

For IPs, JLNs present both risks and opportunities. Understanding the potential personal liability of directors, and the procedural steps involved with JLNs, is essential to managing insolvencies effectively.

IPs must carefully balance the need to protect the interests of creditors and the insolvent estate while providing clear and pragmatic information to directors facing personal tax liabilities, including guidance on accessing professional advice. By keeping informed about HMRC's increasing powers, IPs can ensure they are well-equipped to guide clients through one of the most challenging aspects of insolvency administration.

David Brindley is a chartered tax advisor and associate director at inTAX, specialising in complex HMRC investigations and disclosures

Case study: Construction

An example of tax-evasive conduct

In early 2024, HMRC launched an investigation into a construction company run by three directors following discrepancies in the company's VAT returns. The enquiry revealed the company had been inflating input VAT claims by submitting invoices for materials and subcontractor services that were never purchased.

The total VAT liability identified by HMRC exceeded £1.2m, and HMRC concluded that two of the directors were aware of the irregularities and had personally approved the returns.

Insolvency and JLN issuance

Facing mounting debts and the prospect of enforcement action, the company entered voluntary liquidation in January 2025. With little left in the estate to satisfy creditors, HMRC issued JLNs to all three directors shortly afterwards.

The JLNs were based on the following criteria:

- The company had engaged in tax-evasive conduct (deliberate misreporting of VAT) and there was an unpaid tax liability as a result;
- The directors were knowingly involved in the conduct; and
- The company was insolvent, and the tax liability was unlikely to be paid.

Outcome

The JLNs made the directors liable for the unpaid VAT of £1.2m. Despite appeals, the tax tribunal upheld the JLNs, and all directors were required to repay the liability personally. The case also triggered a director disqualification investigation, and the two directors who had approved the fraudulent VAT returns faced restrictions on future company appointments.

Had any of the directors sought specialist tax advice earlier, there may have been statutory defences in place to challenge the liability, especially for the director who did not participate in the fraud.

SHUTTERSTOCK

The importance of people and planet

If directors fail to have regard for their ESG obligations, they are potentially in breach of their duties, writes **Vernon Dennis**

A company's social and environmental impact will have a wide range of consequences for its stakeholders, including customers, employees, investors, lenders and the community at large. The stance taken on this impact by the directors, the guiding mind of the company, should be influenced by the business's vision and purpose, and requires consideration of stakeholder interests, not just the interests of shareholders. It is far more than a matter of legal and regulatory compliance. Where directors have given insufficient regard, it will lead to an actionable breach of duty.

The acronym ESG – environmental, social and governance – was first coined more than 20 years ago. But when viewed solely as a panacea for environmental or social ills, such as preventing climate change and challenging social inequality, it can be easily misunderstood. This is to the point that, to some, ESG stands accused of subverting the profit motive of business.

ESG should instead be understood as part of the double materiality impact assessment process by which the directors of a company discharge their duty to promote the long-term success, or sustainability, of the company. This includes how the company's governance, reporting and review structures determine and implement a sustainable strategy, which manages and mitigates the company's environmental and social impacts. This strategy should secure the success of the business by analysis and determination as to the impact of such disruptive factors on the business.

ESG is not an opt-in or opt-out decision on specific issues according to what suits the business at the time. Indeed, huge reputational damage can arise from so-called virtue signalling or inauthentically promoting a particular agenda that has little, if anything, to do with the business's commercial activities. A business may also fall foul of regulations designed to clamp down on alleged greenwashing, rainbow washing or wellness washing. ▶

Unfortunately, virtue signalling and the overt association of ESG with only one, so-called 'progressive' side of any social and environmental debate, has led to the misuse and misunderstanding of ESG. It is a major reason why we have recently seen a backlash and weakening of ESG as an investment criterion. Shareholders are challenging ESG as non-financial 'woke' capitalism and a breach of the director's fiduciary duty to promote the shareholders' interests and produce a profit.

This anti-ESG sentiment requires a fresh perspective to be taken – non-political and non-ideological. ESG should be seen as an essential component in developing a sustainable business strategy, ensuring long-term success and profitability.

How is ESG relevant to insolvency?

The insolvency profession looks at business failure through the prism of financial loss and damage caused to the various impacted stakeholders. The Insolvency Act 1986 – which grants significant powers and rights of action to officeholders – looks at insolvency from a cash flow or balance sheet perspective. It is primarily a numbers game, where the underlying cause of business failure and director culpability are often secondary considerations after first establishing whether additional loss and damage have arisen past the point of insolvency. In instances of corporate failure, insolvency practitioners (IPs) will have been called upon to assess director conduct in relation to a business's ESG obligations, probably without even realising it.

In addition to Insolvency Act claims, IPs should have regard to the general duties owed to the company by the directors and which may form part

This anti-ESG sentiment requires a fresh perspective to be taken – non-political and non-ideological

of a claim pursuant to summary remedy afforded by the Insolvency Act s.212. This requires much deeper regard to the reasons for the business failure. Was a lack of consideration for the environmental or social impact of any action or inaction the cause of the company's demise? Was poor governance the reason the company did not appreciate and deal with the severity of the situation? These factors may go further back than the point of insolvency.

A director's duty to promote the success of the company (Companies Act 2006 s.172) requires consideration of a variety of factors that fall squarely within the field of ESG, including the interests of employees, suppliers, customers, the community and the environment, all underpinned by governance and applicable standards of business conduct and ethics. Post-Sequana[1], it has been made clear that a director's duty to creditors is a modification of this general duty to the company. Accordingly, where a business has suffered loss or damage as a result of directors failing to have regard for ESG obligations, there is a potential breach of duty under s.172.

Failure to have regard for the company's impact on the environment or society (including employees, suppliers, customers and the community) could result in a claim that the directors are in breach of s.172.

Nevertheless, it is more likely that environmental or societal harm caused by the company's operations will give rise to direct claims against the company as the tortfeasor. In such a scenario, it is possible that the company – through its shareholders or an insolvency office holder (if the company is insolvent) – could bring a claim against the directors under s.174 of the Companies Act 2006 (the directors' duty to exercise reasonable care, skill and diligence in managing the company). Directors may be held accountable for their failure to manage the company properly if it suffers losses or damages due to direct claims from injured third parties. They may also be held accountable if the company has failed to comply with legislative and/or regulatory environmental requirements resulting in liability or has experienced reputational damage and subsequent business loss.

An assessment of the reasonableness of the directors' conduct will consider compliance with industry standards, codes of conduct and regulation. The consideration of the regulatory regime specific to the company's industry or sector is something that an office holder may need to pay close attention to when determining whether there is a breach of s.174 by the directors.

Fresh perspective

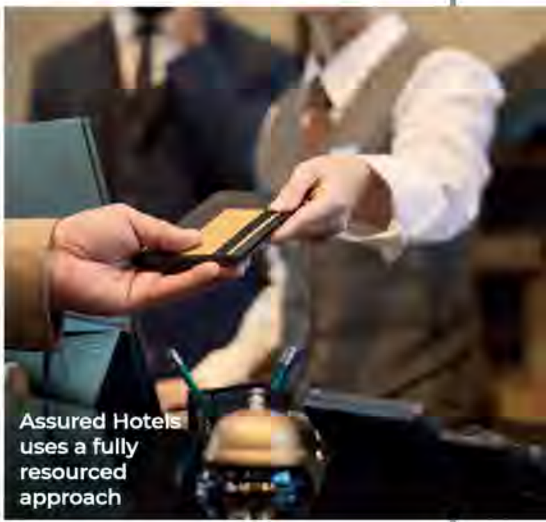
While an argument can be made that ESG (as we have come to know it) is on the wane, instead it is time to look at ESG afresh. As part of the director's duty to promote the long-term success of the company. A duty to consider people, planet and the strategic disruptive factors impacted by, and impacting on, the business. The aim should be to avoid causing direct loss and damage to the company or loss to stakeholders that may cause indirect loss to the company. Failure to discharge these ESG obligations will be policed by the insolvency profession.

1. *BTI 2014 LLC v Sequana SA and others [2022] UKSC 25*

Vernon Dennis is head of business advisory at Howard Kennedy

A way to restore control, credibility and value

Fully resourced hotel turnarounds provide the clarity to support refinance, restructuring or exit


Assured Hotels uses a fully resourced approach

Underperforming hotels need decisive action, not theory. Assured Hotels delivers a fully resourced turnaround solution that aligns commercial strategy, operational discipline and financial control to rebuild performance quickly. Each client referral begins with a no-obligation review to identify immediate value opportunities.

Our integrated approach across revenue, sales, operations, cost control and back-office governance provides the structure and commercial engine needed to improve owner options. We also bring capital-backed solutions through trusted finance partners to fund essential investment and unlock sustained value growth.

Recent case studies showcase our operational capacities.

Revenue management: rebuilding visibility, demand and rate strength
A 31-bedroom hotel in administration suffered from weak pricing, poor digital visibility and over-reliance on leisure trade. Assured Hotels implemented a focused revenue strategy:

- Improved online travel agent visibility through structured room types, refreshed photography and clearer rate plans;
- Introduced dynamic pricing;
- Expanded distribution, including global distribution system onboarding and renewed corporate agreements;
- Strengthened direct bookings through clearer offers and streamlined user journeys; and
- Developed segmented products for corporate and leisure markets.

This repositioned the hotel to attract higher-value guests and strengthened occupancy and room rates.

Sales and marketing: putting the hotel back on the map
With no active sales plan, corporate accounts lacked awareness and meetings, incentives, conferences and exhibitions (MICE) planners had no visibility of facilities. Assured Hotels delivered:

- Audit of lapsed and potential accounts;
- Re-established preferred agreements;
- Targeted outreach to MICE planners;
- Campaigns to drive business and leisure demand; and
- Improved rate parity and booking pathways.

The hotel regained visibility, credibility and market share across key segments, driving rapid top-line growth.

Operational oversight: cost control and efficiency
A 150-bedroom West Country hotel lacked systems to control payroll, food and beverage cost, and purchasing. A system review introduced:

- Forecast-aligned payroll models;
- Purchase order controls and supplier nominations;
- Menu and pricing reviews; and
- Regular stock and variance checks.

Results included payroll aligned to benchmarks, stabilised cost of sales, improved cash margin and increased profitability without compromising guest experience.

Strengthening kitchen management
An internal audit score of 44% highlighted weak compliance and food safety practices. Targeted training, improved documentation, reorganised storage and monthly audits quickly improved scores and restored safe trading conditions.

Back office support: financial control and governance
For a remote estate in the far north, Assured Hotels provided bookkeeping, management accounts, forecasting, human resources support and capex oversight – ensuring clear reporting, achievable projections and confident decision-making for owners and lenders.

Conclusion
A hotel turnaround succeeds when commercial focus, operational discipline and financial control move in lockstep. These case studies show how a fully resourced approach can quickly restore stability and rebuild performance. By combining hands-on leadership with clear reporting and achievable forecasts, this model helps owners and lenders regain confidence and protect asset value – while our targeted, cost-effective expertise gives management the support needed to drive immediate returns.

Mathew Griffin is managing director of Assured Hotels

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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.

> **These two sectors account for almost a third of company insolvencies in the 12 months to November 2025**

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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.

In both the Poundland and River Island cases, the restructuring plan applied different treatments to groups of landlords

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.

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


Tim Carter is a partner and **Helen Martin** is managing associate in the finance, restructuring and insolvency practice at Stevens & Bolton

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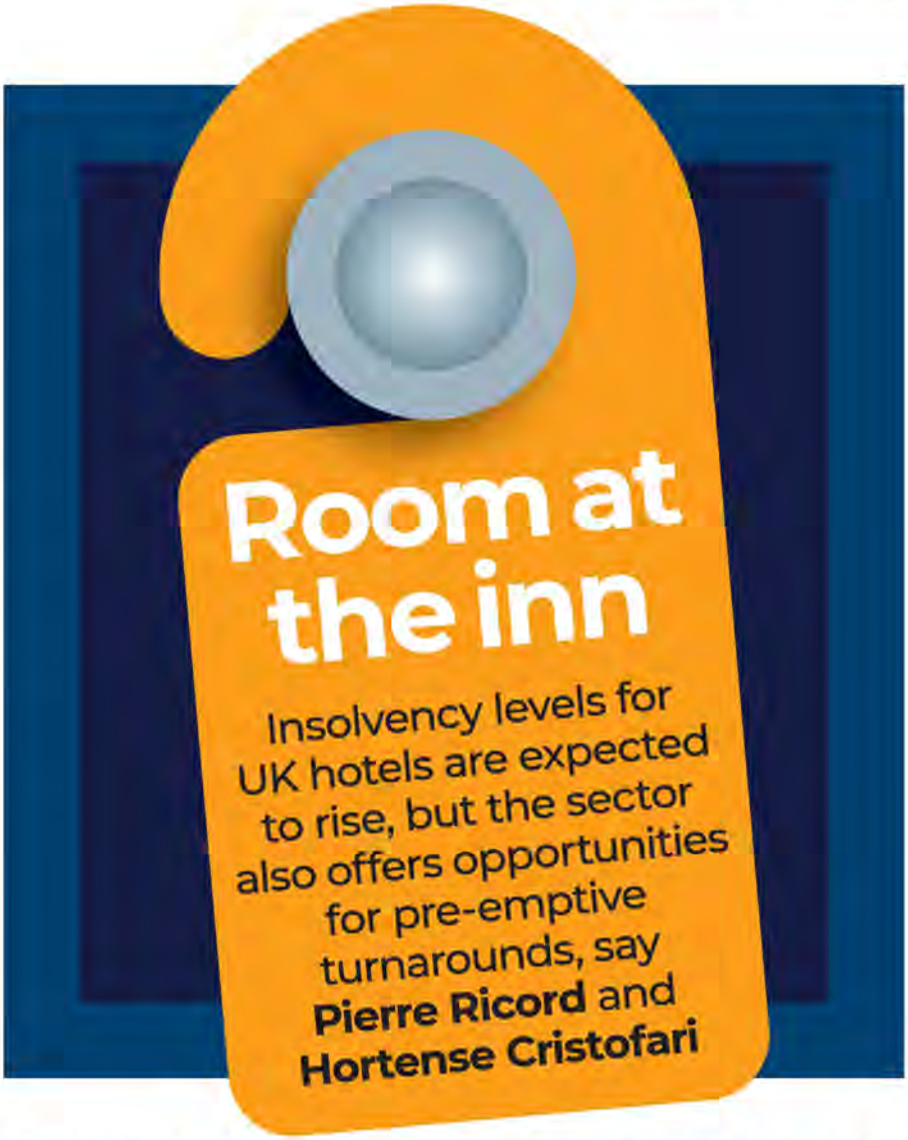
Impact of increased employment risk

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.



Room at the inn

Insolvency levels for UK hotels are expected to rise, but the sector also offers opportunities for pre-emptive turnarounds, say Pierre Ricord and Hortense Cristofari

After a record-breaking 2024, the UK hotel sector entered 2025 with a steadier rhythm. Global uncertainty and persistent inflation tempered momentum, yet the market remained resilient. London saw a marginal dip of 0.5% in revenue per available room (RevPAR) in 2025, according to hotel data platform CoStar with STR Benchmark, while RevPAR in the UK regions grew by 1.4%. Nevertheless, a changing operating landscape meant that occupancy levels became more fragile.

Deal activity mirrored the moderate levels of revenue growth. Following the surge of deals in 2024, there was a shift to selective single-asset transactions in 2025, led by domestic investors with private capital, while institutions remained cautious. Increased costs meant that margins became tighter, but liquidity remained stable due to better financing options.

A tale of two subsectors

Data for the first three-quarters of 2025 show a nuanced picture for UK hospitality insolvencies. Accommodation and food services insolvencies fell 3.6% year-on-year (YoY), the Office for National Statistics (ONS) found, hinting at easing financial distress, yet this aggregate figure masks contrasting subsector trends.

Accommodation insolvencies increased by 7.4% YoY, driven by the withdrawal of post-Covid-19 business rates relief, slowing revenue growth, rising labour costs and higher debt servicing. In contrast, the food and beverage sector recorded a 4.4% YoY decline in insolvencies, indicating relative resilience supported by stabilising consumer demand, tighter cost control and the continued appeal of experiential dining.

While the overall contraction in insolvencies is encouraging, the divergence between accommodation and food and beverages underscores the need for differentiated strategies. Hotels remain vulnerable to structural headwinds, whereas food and beverage operators appear better positioned to adapt to evolving consumer behaviours and operational pressures.

Medium-term outlook

The Office for Budget Responsibility has forecast inflation of 2.5% for 2026 and 2% for 2027. Meanwhile, UK hotel RevPAR is expected to grow by only 3.5%–4% over the next 24 months, reports CoStar with STR Benchmark. As a result, the business outlook for the hospitality sector appears challenging. Insolvency risk is set to rise as businesses that have already been weakened by years of elevated costs face new pressures. The increase in employer National Insurance contributions, brought in from April 2025, has pushed labour costs up, while the implementation of a new business rates revaluation in England and Wales, from April 2026, will add further strain. Margins will remain under pressure, making cost efficiency and strategic planning critical for navigating this turbulent period.

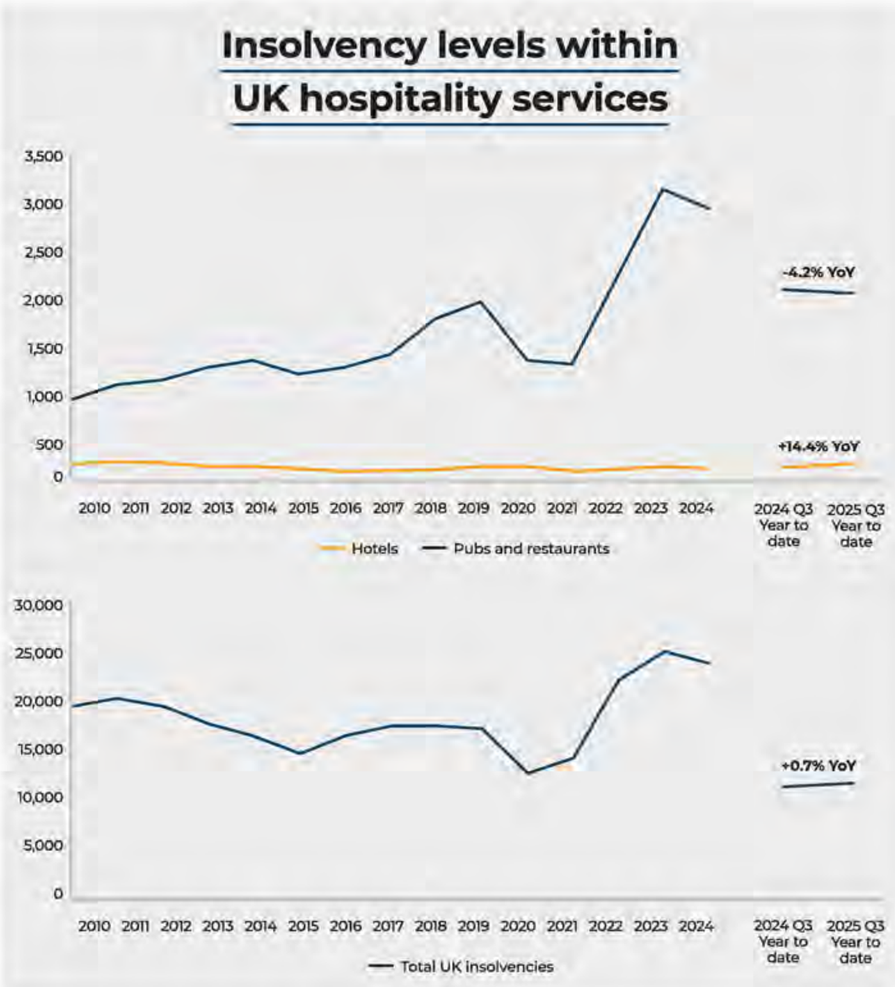
Over the next 12–24 months, hotel demand and profitability will be shaped by several pressures. Asylum-seeker housing contracts will taper by mid-2026, returning rooms to the competitive market and reducing guaranteed occupancy for some operators. As spending power continues to be eroded, leisure travellers may shorten trips or stay domestic. Meanwhile, economic slowdown and geopolitical tensions could reduce business travel and overnight stays. A key concern is a potential decline in American leisure travel to the UK, a major driver of high-end demand. Furthermore, energy prices remain elevated. With modest RevPAR growth ahead, operational agility and diversification will be essential to sustain profitability.

Strategic hotel review

While challenging trading conditions will drive some hotels to enter formal insolvency proceedings, insolvency practitioners (IPs) will have the opportunity to intervene earlier in many cases. In fact, pre-emptive involvement offers broader options and typically better results. ▶

By conducting a strategic hotel review, IPs can focus on the quickest, most effective routes to boosting income, cash surplus, profit and asset value. This may involve cutting non-essential costs, optimising staffing or renegotiating supplier terms. These actions can support lenders to consider a turnaround before a consensual sale, especially when alternative investments are likely to yield limited returns.

A strategic review should give a clear picture of the commercial, operational and asset performance of a hotel, highlighting strengths, gaps and opportunities. It should consider:



SOURCES: OFFICE FOR NATIONAL STATISTICS, CHRISTIE & CO ANALYTICS

1. Market positioning and commercial strategy

The IP should understand the business mix of the hotel, its client base and ability to shift demand. This involves analysing trading conditions and outlook, benchmarking performance against competitors and assessing revenue management opportunities. It is also important to evaluate the hotel's online visibility, distribution mix (approaches used to sell rooms) and strategies for growing its average daily rate (average revenue earned per occupied room).

2. Operations and performance management

The IP should examine the hotel's staffing levels, leadership capability and outsourcing commitments and address customer experience using feedback and market comparisons. They should also review the hotel's physical condition and any opportunities to repurpose underused spaces. Additionally, it is key to analyse operating statements and ratios against benchmarks, and check the competitiveness of supplier contracts and agreements.

3. Real estate and other physical assets

The IP should verify the hotel's energy performance certificate rating and its compliance with environmental and social regulations. As part of their assessment, the IP should identify both immediate and long-term capital expenditure needs. In the case of a hotel chain, the IP should also assess individual hotels' compliance with the chain's brand standards and estimate the likely costs of a property improvement plan (PIP) to bring hotels in line with those standards.

Franchising and management contracts (bringing in specialised operators to run daily operations) can potentially provide struggling hotels with new commercial channels, global distribution, loyalty programmes and booking platforms, expanding their visibility and unlocking new customer segments. These benefits come with royalty and system fees, however, plus potential capital or PIP obligations. So, it is essential to assess net profit impact. Simulating incremental revenue against associated costs can help to determine whether alignment with an established brand enhances profitability or compresses margins.

When involved pre-emptively, IPs will need to consider and compare the option of an exit alongside the option of continuing operations. So, they will need knowledge of active buyers' profiles as well as a robust narrative that highlights the upside potential of the hotel and any projects that are likely to deliver a solid return on investment should capital be deployed.

Positive signs

The EU's Recovery and Resilience Facility is directing funding into infrastructure, sustainability and tourism, which should stimulate the European economy and boost travel demand – to the benefit of UK hotels. While global travellers remain important, Europe's strong domestic base continues to provide resilience against external shocks. Overall, there are good reasons to stay positive about the UK hospitality sector, but early engagement by IPs will be key to supporting the sector's short-term recovery, medium-term vision and long-term success.

Pierre Ricord is head of consultancy – hotels, and **Hortense Cristofari** is senior consultant – hotels at Christie & Co

Liable or not?

A Supreme Court judgment on the Bilta case has addressed the important question of who falls within scope of the Insolvency Act 1986 in the event of fraud. **Russ Parkin** explains

To be liable, or not to be liable, that is the question... Or, at least, that was the question in the Bilta case before the Supreme Court (*Bilta (UK) Ltd v Tradition Financial Services Ltd [2025] UKSC 18; [2025] 2 WLR 1015*). The court handed down its judgment in this matter last May, addressing the question as to which persons fall within the scope of s.213 of the Insolvency Act 1986. The case is a welcome and important decision for insolvency practitioners (IPs).

The unanimous judgment has confirmed how most, if not all, of the insolvency profession, and the judiciary, has understood and interpreted s.213 for many years. On the one hand, it confirms the status quo. On the other, it is interesting to consider the background and implications, because a finding in the alternative would have represented a seismic shift and rowing back of the applicability of s.213.

Background to the claim

The Supreme Court was tasked with considering whether, as contended by the defendant Tradition Financial Services Ltd (TFS), claims brought by liquidators pursuant to s.213 could only be brought against those involved in the management or control of an insolvent company and, accordingly, could not be brought against an 'outsider' such as TFS.

The background to these claims is the participation of Bilta and other companies in a European-wide operation to defraud revenue authorities, including HMRC, through a missing trader intra-community (MTIC) VAT carousel fraud. These companies traded EU emissions allowances (EUAs), or carbon credits, during 2009. The companies' directors caused them to import EUAs free of VAT in huge volumes, sell the EUAs on applying VAT in the UK, then pay the VAT away to third parties as opposed to HMRC. The companies were subsequently liquidated or dissolved/struck off. For Netflix fans, the documentary *Lords of Scam* has a more detailed story of the fraud and participants. The VAT losses of the Bilta claimants extended to tens of millions of pounds, and overall tax revenue losses were in the billions.

TFS did not enter into transactions directly to buy or sell EUAs with any of the claimants. Instead, TFS brokered and earned commission on the sale of a substantial volume of EUAs in transaction chains involving the companies and certain financial intermediaries. The claims issued by the liquidators sought, among other things, compensation from TFS pursuant to s.213 for the claimants' VAT losses.

TFS argued it fell outside the provisions of s.213, which it said applied only to those involved in the management or control of a fraudulent business.

The Supreme Court decided that the scope of s.213 is not restricted as TFS contended, and while to be liable it is necessary for a person to be involved in the carrying on of the fraudulent business, that does not restrict its application to directors or managers.

> **The claims issued by the liquidators sought, among other things, compensation from TFS pursuant to s.213 for the claimants' VAT losses**

Implications of the judgment

The judgment aligns with how s.213 has previously been interpreted and applied by IPs bringing claims against persons outside of a wrongdoer's corporate governance structure. Indeed, Bilta and its co-claimants' liquidators alone have previously issued various other claims pursuant to s.213 against a number of third parties.

The Supreme Court's judgment is particularly useful for these three key reasons:

1. Clarifying the meaning of 'any persons'. While confirming the understanding of many, the Supreme Court's judgment was necessary because, perhaps surprisingly, the applicability of s.213 to outsiders has not previously been determined by the courts. In part, that may well be because it has widely been understood that 'any persons' means what it says, and indeed the Supreme Court's judgment makes clear that the words should be taken to have their natural meaning. The judgment ensures the section remains a key tool in an IP's kit against 'any person'.

2. In illustrating the importance of s.213 affording an IP the ability to seek compensation for creditor losses from any person knowingly party to the carrying on of a fraud. As IPs dealing with similar scenarios will be well aware, companies engaged in MTIC VAT fraud had very young, inexperienced and/or stooge directors, operated from serviced office addresses, with limited share capital, and yet entered into transactions worth millions of pounds. Those responsible were typically untraceable foreign nationals not residing in the UK.

Such individuals are not promising commercial targets for substantial multimillion-pound legal claims. Claims against them are therefore not attractive propositions for IPs to present to funders or after-the-event insurers. For an IP, it is not possible to overstate the importance of being able to look outside the immediate corporate management to pursue any person for compensation where they have been involved in the carrying on of a fraud. Whether to grant an order pursuant to s.213, and in what sum, is of course a matter at the discretion of the court.

3. In exemplifying the advantage of the liquidator over company claims when considering limitation. As s.213 is a claim only capable of being brought by a liquidator, time does not start to run for limitation purposes until a liquidator is appointed. Two of the Bilta claimants had been dissolved and struck off by Companies House. HMRC later took steps to restore the companies and wind them up, but s.213 claims were not issued until 2017. The dishonest assistance claims (as set out overleaf) were adjudged out of time with reference to the underlying 2009 transactions, but the liquidators' s.213 claims were brought within six years of the date of the winding-up order and thus within the relevant time. ▶

When dealing with frauds, there will almost always be a need for an independent IP to spend time carrying out investigations, particularly where issues are complex, span multiple companies, persons, bank accounts and jurisdictions, and those investigations may be limited by commercial constraints.

A liquidator may well have sufficient time in which to carry out investigations before bringing company claims for dishonesty that are not time-barred. If not, they are reliant upon s.213 which, but for the Supreme Court's finding, would restrict claims to pursuing fraudulent directors or managers, who are unlikely still to be around or to represent good targets to secure meaningful recoveries.

It is often the case that the true extent of a fraud and its participants only becomes clear some time after the event. By its nature, where fraud occurs there will typically be steps taken to deceive and delay or obstruct its subsequent discovery. The additional time in which to bring officeholder claims and the ability to pursue any and all persons who are party to the carrying on of a fraud are paramount when seeking to recover money for creditors.

Interplay of dissolution and limitation periods

The claimants also brought claims for dishonest assistance against TFS, mirroring the s.213 claims in the underlying facts and quantum of damages. Two company claimants appealed against earlier decisions of the High Court and Court of Appeal that their dishonest assistance claims were time-barred.

> **When dealing with frauds, there will almost always be a need for an independent IP to spend time carrying out investigations**

The Supreme Court, where the Bilta case was decided

The claimants' position was that upon their restoration, pursuant to s.1032 of the Companies Act 2006, the companies were deemed to have continued in existence as if they hadn't been dissolved, and in that time they were either under the control of the previous fraudster directors in situ when dissolved or, alternatively, they had no directors at all. The claimants argued that in accordance with s.32 of the Limitation Act 1980, time should not run against them during the period of their dissolution as there was no non-fraudster third party in charge of the companies who with reasonable diligence could have identified the fraud, until their restoration and the appointment of a liquidator. No direction pursuant to s.1032 had been sought by HMRC when restoring the companies, or subsequently by the claimants or by TFS; the claimants contended that was not required as they were within the requirements of s.32.

The Supreme Court determined that the claimants had not satisfied the burden of proof to extend time for limitation purposes.

This specific interplay of s.32 and s.1032 is again not something previously considered in detail before the court, likely because of the somewhat unique circumstances. What is clear is that where a claimant seeks to satisfy the relevant burden of proof to extend time for limitation purposes under s.32, if restoration following dissolution is a relevant factor, then thought should be given to seeking an appropriate direction under s.1032 at the earliest opportunity.

What does Bilta mean for liquidators?

As demonstrated in Bilta, a liquidator's ability to apply s.213 to 'any persons' knowingly party to the carrying on of a fraudulent business, with time running from the date of a liquidator's appointment, means they are not prejudiced by time running against them. This is in contrast, for example, to a dishonest assistance claim that could potentially become time-barred even before a liquidator is appointed. The findings mean s.213 will continue, with clarity, to be a crucial part of a liquidator's arsenal.

As the Supreme Court endorsed in its judgment as a reminder to all, "a man who warms himself with the fire of fraud cannot complain if he is singed".

Russ Parkin is joint liquidator of Bilta and a partner in Grant Thornton's insolvency and asset recovery team

NETFLIX

Transactions defrauding creditor claims given healthy boost

The High Court's recent decision to extend the limitation period for transactions defrauding creditor claims will be a very welcome decision for insolvency practitioners and solicitors, says **Chris Adams**

We are all familiar with the provisions of s.423 of the Insolvency Act 1986, more typically referred to as "transactions defrauding creditors". Nevertheless, this provision is often overlooked and can be a very useful recovery tool. The requirements are straightforward – there has to be a transaction, at an undervalue, the purpose of which was to put assets beyond the reach of a person who is making, or may make, a claim against the individual or business, or to otherwise prejudice a person's interests in relation to such a claim.

In a recent case[1], the High Court has further broadened the useful application of s.423 in confirming that where a claim is brought by a victim, the limitation period runs from when the cause of action arises and the creditor becomes a victim of the transaction, not from when the challenged transaction occurred. In this case, this was when the claimant became unable to enforce a costs order against shares previously owned by the first defendant.

The essential facts of the case are that the first defendant transferred his entire shareholding in a company to his wife through transactions in 2014 and 2016 by way of gifts. The claimant's position was that the purpose of these transactions was to put the shares beyond the claimant's reach, preventing recovery of costs from the first defendant.

> **Limitation runs from when the cause of action arises, namely when the creditor becomes adversely affected**

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The High Court extended the limitation period in a recent case

The defendants attempted to argue that the claim was time-barred, as it was issued in July 2024, more than six years after the transactions in question occurred. The court did not agree, determining that in any event, a 12-year limitation period applied, as the claim sought to enforce an obligation under statute and was therefore a claim on a specialty.

On the specific issue of limitation, the court went further in its judgment, stating that where a victim brings such a claim, limitation runs from when the cause of action arises, namely when the creditor becomes adversely affected.

In the context of the case, this was when the security for costs paid into court by the first defendant had been depleted and the claimant had no recourse to the transferred shares to recoup the remaining costs owed to them.

This decision will be welcomed by insolvency practitioners and solicitors, since it confirms that transactions may remain vulnerable to challenge by victims for an indeterminate period. As limitation runs from when a creditor's cause of action arises and they become a victim of the transaction, such creditor could, in theory, become a potential claimant under this provision at any time after a challenged transaction has occurred.

Litigation is never without risk, especially when limitation becomes a factor. It is always sensible to consider all forms of financing (and its costs, risks and benefits) so that an informed decision may be made as to what is in the best interests of the creditors.

1. *Riley v Aidiniantz and another [2025] EWHC 3222 (Ch)*

Chris Adams is an associate director at Manolete Partners, with a wealth of experience in both contentious and non-contentious insolvency law

Legal Q&A

David Garner answers your questions on after-acquired property

Q Can a bankrupt argue that they are entitled to keep property received while bankrupt?

A 'After-acquired property' refers to any property (excluding income) that is acquired by a bankrupt during their bankruptcy. This covers the period between the making of the bankruptcy order and the bankrupt's discharge.

The bankrupt has a duty to notify the trustee in bankruptcy (TiB) or the official receiver of the after-acquired property within 21 days of becoming aware of its existence.

The Insolvency Act 1986 (the Act), specifically s.307, entitles a TiB to make a claim on after-acquired property, the effect of which is that the property vests in the bankrupt's estate and would be factored into any distribution to creditors. A TiB's title to that property vests from the date the property was acquired by the bankrupt.

Importantly, there are strict time frames for a TiB to act – the Act requires a TiB to (unless the court permits otherwise) serve a notice of any claim on after-acquired property within 42 days of their first knowledge of its acquisition by the bankrupt. This is a short period of time in the context of a bankruptcy, particularly if enquiries need to be made.

What constitutes 'knowledge' is fact dependent, but *Right Honourable Rhodri Viscount St Davids v Lewis [2015] EWHC 2826 (Ch)* confirmed that this will be when it has become clear to a TiB on cogent and verified evidence that the bankrupt has acquired the property.

The definition of 'after-acquired property' is widely construed – it is only in exceptional circumstances that a bankrupt could argue that such property should not vest in their TiB. It includes, for example, National Lottery winnings, redundancy payments (which are compensatory rather than income-related) and property awarded under matrimonial proceedings.

One scenario that is likely to be commonplace is where the bankrupt receives an inheritance under a will – the key consideration here is the date of the death of the person who made the bequest. Provided this occurred during the bankruptcy period, the TiB will be able to lay claim to the inheritance (subject to limited exceptions).

In practice, the most common argument a TiB is likely to face is that a third party is beneficially entitled to the relevant property such that it cannot form part of the bankrupt's estate. This would ultimately involve an analysis of the circumstances and evidence, and the burden would be on the bankrupt to prove that this is correct. It is not an easy burden to overcome.

It is often the case that a bankrupt will seek to conceal after-acquired property. Such conduct would represent a breach of their duties under s.291 of the Act and a failure to comply without reasonable excuse can constitute contempt of court. S.291 can operate as a useful tool for a TiB where they face an uncooperative bankrupt.

Q How will the court approach disputes concerning after-acquired property?

A The court does not hear disputes over after-acquired property particularly often. Such cases are, however, heavily fact dependent and the court will focus on the nature of the disputed property and the circumstances in which it came into the bankrupt's hands.

The issue was considered in the recent case of *Hyde and another v Djurberg and others [2024] EWHC 1188 (Ch)*. In summary, Mr Djurberg was made bankrupt in September 2021. At the time, he and his son lived in a property known as the Chalet. The Chalet was sold in February 2022 and a dispute arose with the buyer. A settlement was subsequently reached, under which Mr Djurberg and his son were to be paid around £217,000 and would vacate the property. The settlement agreement postdated the bankruptcy order.

Mr Djurberg's TiB found out about the settlement payment and promptly served a notice claiming the settlement proceeds as after-acquired property. Mr Djurberg's son sought to argue that he was beneficially entitled to the entire settlement sum and he should therefore keep it. The court rejected this argument on the basis of the vague evidence put forward.

The factors the court considered included:

- Who the settlement sums actually belonged to;
- The nature of the property;
- The bankrupt's conduct – he had a track record of failing to cooperate;
- The respondents' conduct following receipt – attempts were made to dissipate the settlement monies almost immediately; and
- The reliability of the respondents' evidence – there were issues over credibility and late/selective disclosure.

There was also some focus on s.307 (4) of the Act, which provides a defence if a third party received the relevant

> **‘After-acquired property’ refers to any property (excluding income) that is acquired by a bankrupt during their bankruptcy**

property in good faith, for value and without notice of the bankruptcy. Mr Djurberg’s son was found to have been aware of the bankruptcy at the time the settlement payment was made.

This is not an exhaustive list of factors the court will consider. Nevertheless, one common theme in such claims is that the bankrupt has a history of concealing matters from their TiB.

Should a TiB find themselves in this situation, they should consider making use of their investigatory powers under the Act, including s.366. S.366 enables the court to order a third party believed to have property that falls within the bankrupt’s estate, or have information concerning the bankrupt’s affairs, to provide disclosure.

In practice, where third parties are in receipt of property that a TiB believes to be after-acquired property, the TiB should consider whether an alternative claim is available under s.423 of the Act (transactions defrauding creditors). This is because there will often have been no or inadequate consideration, and there could be evidence (by inference or otherwise) suggesting that the bankrupt has sought to put the relevant assets out of their creditors’ reach.

David Garner is principal associate, commercial disputes at Capital Law

Order on the Rock

Gibraltar's Insolvency Act 2011 effectively facilitates the management of insolvent estates, says **Joanne Wild**


The Insolvency Act 2011 allows Gibraltar to manage insolvent estates effectively

Anyone who knows of the liquidation of collapsed law firm Marrache & Co in 2010 must marvel at how far Gibraltar insolvency law has evolved since then. Asset realisation in the Marrache liquidation and associated bankruptcies continue, but under the (now repealed) Companies Act 1930 and Bankruptcy Act 1934. It is fair to say neither were fit for purpose in today's world of cross-border insolvency.

Happily, the Insolvency Act 2011 (the Act) has since found its way onto the statute books, and while it didn't come into force until 2014, when the Rules were available, the ink was dry in time for high-profile, high-value cases such as the liquidation of Kijani Resources Limited (prompted by the appointment of officeholders in the Cayman Islands), the bankruptcy of Gregory King (a Scottish lawyer whose misdemeanours started life in the Isle of Man) in 2017 and, most recently, the 'Globix' affair, where the corporate entity behind the trading platform was seated in the British Virgin Islands but the centre of main interests was Gibraltar.

The Act gave Gibraltar the necessary tools to facilitate orderly management of insolvent estates, but with the necessary teeth to allow officeholders to pursue recovery from erstwhile directors or others who contributed to, or caused, the events that ultimately led to the insolvent position.

It also introduced the user-friendly framework of the company voluntary arrangement (CVA) and individual voluntary arrangement (IVA). While the CVA and IVA are commonplace in the UK, they don't seem to share that popularity in Gibraltar. There has, to our knowledge, only been one CVA since the Act came into force. The lack of uptake of CVAs may simply be the nature of the economy – Gibraltar's wealth is generated from regulated enterprises providing international services.

The Act brought with it administration, which has been a useful process in the case of distressed regulated entities. Examples include an insurance company in 2019, a trust and company manager in 2023 and, most recently, a group of pension operators in 2024. The appointment regime in Gibraltar is more restricted than that of the UK – an administrator can only be appointed over a company by a qualifying floating charge holder or the court; it is not possible for an administrator to be appointed on resolution alone.

Prepack sales to connected persons are not precluded under the Act, but there are no regulations in place to govern how those are managed. The majority of administrations have been regulated entities, however, and it is likely that all avenues of business rescue or sale will have been properly explored with the regulator and actioned while the company was still in good standing. It also seems likely that administrations for regulated entities will generally be in pursuit of a better result for creditors, with an orderly liquidation being the exit strategy.

What about solvent liquidations?

Solvent liquidations are conducted under the Companies Act 2014, but a solvent company can equally be placed into liquidation under the Insolvency Act if the court considers it to be "just and equitable" to do that, or it is in the public interest for it to be so. The former is useful if, for example, the directors are no longer in contact to make the necessary declaration of solvency, or the company is part of a structure that is tainted and cannot be properly onboarded.

Insolvent liquidations can be commenced under the Act by way of members' resolution appointing a liquidator, or by court order. The words 'creditors' voluntary liquidation' do not appear in the Act, but the creditors can resolve to replace the liquidator if the liquidator is appointed by shareholder resolution rather than the court. Gibraltar has very few practitioners licensed to accept an appointment under the Act, so conflict can be an issue, particularly in the case of practitioners based in audit firms. Nevertheless, we have only encountered one (unsuccessful) application to replace a Gibraltar officeholder, which was made by a disgruntled connected creditor.

and has implemented an outreach programme consisting of informal one-to-one conversations and seminars.

The grey list and Gibexit

Compliance with anti-money laundering and counter-terrorist financing obligations under Gibraltar law are also within the remit of the Commission. In 2024, Gibraltar was removed from the Financial Action Task Force's (FATF's) 'grey list' of high-risk countries for money laundering, meaning it is no longer subject to increased monitoring by the FATF. A year later, the EU removed Gibraltar from its grey list, further boosting Gibraltar's status as a trusted and compliant international financial centre.

In June 2025, the UK and the EU announced a post-Brexit deal dubbed the 'Gibexit treaty'. By far the most anticipated head of agreement was the outcome of negotiations in respect of increased fluidity of the land border between Gibraltar and Spain. Not only is fluidity at the border extremely important for the frontier workers (of various nationalities) who travel from Spain into Gibraltar on a daily basis, it is also vital for the businesses that employ them. Without those staff, businesses would be subject to significant disruption.

While it was confirmed in December 2025 that negotiators had completed their work on the legal text of the future agreement, it has not, at the time of writing, been made public. We can only share the sentiment expressed by many, which is that "the devil is in the detail". We look forward to reading the text, voluminous as it may be!

Closing thoughts

The insolvency regime in Gibraltar is strong, and local practitioners do not shy away from pursuing claims against malfeasant directors. For my part, I look forward to seeing other tools being used, such as disqualification proceedings, to put a stop to bad actors and deter future wrongdoers.

> **Gibraltar has very few practitioners licensed to accept an appointment under the Act, so conflict can be an issue**

Other well-known processes feature in the Act, including the appointment of a receiver, administrative receiver and, of course, a trustee in bankruptcy. Gibraltar has not legislated for the appointment of a monitor in a moratorium, but being a small jurisdiction, feedback on any lacunas, or suggestions on how legislation may be usefully matured, are capable of being relayed efficiently and effectively.

Insolvency practitioners (IPs) in Gibraltar are licensed by the financial services regulator, the Gibraltar Financial Services Commission and, as expected, it is a licence in the practitioner's own name. If the practitioner is employed by a firm, the firm itself does not require a permission as it is not, of itself, providing regulated services. One of the conditions placed upon a licence holder is that they must be resident in the jurisdiction. A foreign IP can be appointed, however, along with a full licence holder, if the appointment would enable the company's or individual's business, affairs, assets or liabilities outside Gibraltar to be dealt with more conveniently or efficiently. This is coupled, of course, with the requirement that they would not otherwise be precluded on other statutory grounds.

Insolvency supervision is therefore within the purview of the Commission, and quality assurance reviews are performed by the ICAEW, working with the Insolvency Sector Supervisor at the Commission. The Commission is keen to engage with the insolvency sector

Joanne Wild is an insolvency practitioner who co-leads Begbies Traynor's insolvency practice in Gibraltar

Search for simplicity

Global trends in MSME insolvency reform are focused on making restructuring and liquidation processes more straightforward, says **Sonali Abeyratne**

The global economy continues to face significant volatility. While headline inflation is beginning to stabilise, there are major downside risks arising from geopolitical tension, fluctuations in trade and other foreign policy positions, and the realignment of supply chains away from the market convergence of the past.[1] In its latest global growth forecast, the International Monetary Fund projects the global growth rate to remain resilient, but stagnant, at 3.1% in 2026.

In this state of fluctuation, uncertainty and change, effective restructuring and insolvency systems can help provide stability to distressed entities. Accordingly, there are flow-on benefits for the economy, including jobs maintenance and growth.

The economic challenges since the Covid-19 pandemic have sparked a continuous period of restructuring and insolvency reform over the past six years. A particular focus of reform has been on creating simplified processes for micro, small and medium-sized enterprises (MSMEs) to restructure and, where that is not possible, to liquidate. MSME insolvency reform is especially important because these entities, according to the World Bank, make up more than 90% of businesses and 50% of employment worldwide. Indeed, by supporting job creation and entrepreneurship, MSMEs ultimately sustain both the global economy and individual livelihoods.

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Insolvency proceedings and MSMEs

The formal restructuring and insolvency proceedings that exist today are often unsuited to MSMEs because MSMEs typically lack sufficient resources to cover the costs and fees of the proceedings. Simplified rescue and insolvency alternatives for MSMEs are therefore recommended as a core feature of insolvency and restructuring reform processes proposed by the World Bank and the United Nations Commission on International Trade Law (UNCITRAL).

> **The entire process is digital, with electronic platforms and communication designed to save time and costs**

Early MSME reforms were introduced during Covid-19 in the United States (under Subchapter V of Chapter 11 of the Bankruptcy Code) as well as in Australia, India, Myanmar and Singapore. Spain followed suit in September 2022 with a new simplified insolvency system for micro enterprises under the Insolvency Law. An important feature of this system, designed to minimise costs and preserve working capital for a distressed micro enterprise, is the use of standardised forms and online court communication (including hearings and summonses). Similarly, an online platform facilitates the filing of a realisation plan by the debtor and auctions designed to maximise asset sales in the interests of creditors in a liquidation scenario.

Chile also introduced a new simplified reorganisation procedure for MSMEs under Law No. 21,563, which came into force on 11 August 2023. The new process includes lower access costs, a separate list of supervisors with specific expertise in the simplified procedure (with lower fees), a longer financial protection period (during which liquidation cannot be requested or declared, and executions cannot be brought), and the absence of creditors' meetings unless requested by 30% of voting creditors. There is also a simplified liquidation process, which replaces the seizure phase with a voluntary asset handover and online auction platforms to enhance recoveries and lower costs.

EU countries could develop their own MSME restructuring and insolvency frameworks

MSME insolvency reform in Africa

In Rwanda, Law No. 022/2025 was enacted on 25 August 2025, and provides for simplified reorganisation and simplified liquidation options for MSMEs to take effect from late February 2026. A key feature of the Law is the focus on speed and efficiency. The entire process is digital, with electronic platforms and communication designed to save time and costs. Further, in an improvement to the MSME insolvency systems introduced in earlier years in other jurisdictions, the Law also expressly provides for debtors to raise business rescue finance during a simplified reorganisation process.

The reforms in Rwanda complement the Uniform Insolvency Act framework adopted in December 2015 by the Organisation for the Harmonisation of Business Law in Africa (OHADA) – which, to date, has 17 West and Central African Member States – with support from the World Bank. The Act includes simplified proceedings for small businesses, which can now make use of streamlined preventive settlements, judicial recovery and winding up with simplified commencement, and shorter durations compared with standard proceedings.

Activity in the EU

Simplified rescue and insolvency processes for MSMEs were originally proposed in the new draft EU Directive on the Harmonisation of Certain Aspects of Insolvency Law, released in December 2022. But over a two-year stakeholder consultation process, consensus on the form of the simplified processes could not be reached and these measures were excluded from the final text circulated by the European Parliament and the European Council in December 2025. Given the pace of global reforms, however, it remains possible that individual EU nations may elect to introduce their own bespoke MSME restructuring and insolvency frameworks in coming years.

Early-warning tools can serve as a valuable complement to MSME reforms. They help business owners to detect signs of financial distress at an early stage and take mitigating steps that may avert a slide into insolvency.

These tools are a feature of the EU Preventive Restructuring Directive. Member States are required to adopt the tools under Article 3 to "incentivise debtors that start to experience financial difficulties to take early action", with a view to avoiding insolvency.

In pursuit of that requirement, Malta introduced a new Self-Assessment Insolvency Tool – which allows businesses to proactively evaluate their financial condition with reference to cash flow, supplier relationships, payment practices and other measures – in November 2024. Additionally, Malta's Insolvency and Receivership Service introduced a new alert mechanism to indicate insolvency risk when a business falls into arrears on tax, social security or utility payments, fails to make timely fiscal filings or fails to submit annual financial statements.

INSOL International will continue to advocate for MSME restructuring and insolvency reforms as a key feature of best practice, working closely with our partner organisations such as the World Bank, UNCITRAL and the Asian Development Bank. The experience and technical capability of our member associations, including R3, can play an important part in the law reform process. It can also support the pursuit of capacity-building initiatives such as the judicial and practitioner training necessary to ensure the effective operation and administration of new reforms.

1. *Global Economic Prospects*, World Bank, January 2026

Dr Sonali Abeyratne is technical director at INSOL International

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To take advantage of your INSOL International membership, please visit insol.org/account/login and log in on the left-hand side of the screen using the email address you have registered with R3. If you have forgotten your password, or have not yet set one, click 'Forgotten password'. The INSOL International conference takes place in London on 20–22 April 2026. R3 members who register for the conference benefit from member rates. For more information, visit events.insol.org/website/17374/welcome

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Fatal incident

What should insolvency practitioners know about cyberattacks and cyber insurance cover? **Peter Hardy** and **Eleanor Ruiz** explain

The rising frequency of cyberattacks was highlighted by the flurry of headlines concerning attacks on large UK retailers in 2025. These cyberattacks were a reminder that the risks are not just confined to cyber businesses or organisations that specialise in managing data. Any organisation holding data that is critical to the functioning of its business is at risk.

The UK government has introduced a Cyber Security and Resilience Bill that is expected to expand and modernise the UK's cyber regulatory framework. This Bill demonstrates a renewed effort on the part of government to address the risks of cyberattacks.

Where organisations lack the financial reserves of the large retailers targeted last year, the financial and operational impact of a cyberattack can be so substantial as to be existential. Indeed, if a business has to be taken completely offline for weeks and possibly months, the financial impact can be so great that the disruption leads straight to insolvency.

In the event of such an insolvency, one of the assets that insolvency professionals will need to recover will be the value of the insurance cover.

Cyber cover

First and foremost, an insolvency professional should check whether the company had cyber insurance in place.

> **The proposed Cyber Security and Resilience Bill will further restrict which organisations are able to pay a ransom in a cyberattack scenario**

Cyber insurance is a type of specialist policy designed to mitigate the losses suffered by businesses arising out of the financial, operational and reputational consequences of a cyberattack. Some of the more common cyberthreats include autonomous cyberattacks, social engineering cyberattacks (for example, phishing scams) and data poisoning. Cyber policies are tailored to cover both the direct and indirect consequences of a cyberattack.

It is important to confirm the policy period (i.e. the period for which the cover was in place) and whether the policy was in force at the time of the cyberattack. An insolvency practitioner (IP) should also check the cyber policy details for any wording that might limit or exclude cover due to the company's financial position or insolvency status. It might also be advisable to check whether premium payments were up to date. Cyber policies will typically have both overall policy limits and certain specific sub-limits for areas of cover,

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such as legal costs. The aggregation provisions (contractual clauses that combine multiple related transactions) should also be considered, since some policies seek to aggregate multiple incidents into a single claim. This can affect the total recoverable amount and the value of the asset to the insolvency professional.

Types of losses covered

Cyber insurance is generally quite a broad spectrum of cover and can provide for a range of losses and costs, including both first-party losses and other liabilities. Cover will typically be triggered by a defined event such as unauthorised access, a malware infection or a data breach.

From the perspective of an IP, the relevant first-party loss cover could include several different relevant losses following a cyberattack. For example, it could include business interruption losses, which might include loss of income and expenses incurred due to the interruption of normal business operations following a cyber event. The policy might also include data restoration and system repair, which covers the costs of restoring or replacing data, software and/or hardware.

There can also be cover for incident response costs and potentially for ransomware payments. But if the consequence of the cyberattack has been the insolvency of the business, these may be of lesser interest. Policies will typically also include cover for third-party liabilities such as defence costs and damages arising from claims brought by customers, suppliers or other affected parties. Another area of cover to look for is civil or regulatory fines and penalties (where insurable by law) – such as a penalty imposed by the Information Commissioner's Office for data protection breaches.

Many policies contain specific exclusions, particularly for certain types of losses, for example, those that are 'acts of war' or state-sponsored attacks. Insolvency professionals should carefully review cyber policy wording to determine the scope of cover and any applicable exclusions or limitations.

Ransomware attacks

Where a ransomware attack or other cyberattack has led to insolvency, the availability of insurance coverage can be critical in maximising recoveries. Ransomware attacks pose a particularly unique set of challenges. They are attacks that involve an attacker encrypting an organisation's data and only agreeing to provide decryption keys in exchange for a ransom payment. Such an attack can have devastating consequences for an organisation, including operational and financial consequences.

If an organisation is insolvent, the opportunity to pay a ransom may have passed. But subject to legal restrictions (typically prohibiting payment of a ransom that conflicts with regulations on sanctions or terrorism), a policy may cover the cost of a ransom payment. If a cyberattacker is willing to decrypt the crucial data in return for a ransom payment, even after the organisation has become insolvent, then this could be of significant value. It is worth noting that the proposed Cyber Security and Resilience Bill will further restrict which organisations are able to pay a ransom in a cyberattack scenario.

Waiting periods

Most cyber insurance policies will include a 'waiting period', meaning the period of time that must elapse following a cyberattack before certain cover, in particular business interruption or loss of income, will become payable under the policy. A typical waiting period under a cyber policy might be between eight and 12 hours. This functions like a type of insurance deductible (out-of-pocket money that must be paid by the policyholder before the insurance company pays the rest of the claim). It ensures that the insurance is reserved for significant events rather than minor, short-lived disruptions.

A waiting period can, in itself, potentially cause insolvency if it is a lengthy stretch of time. A company might suffer significant uninsured ▶

losses before cover becomes available, exacerbating cash flow problems.

The length of the waiting period is of interest to an IP, since it directly impacts the amount of loss that can be claimed. Losses suffered during the waiting period are not covered and so the wording of the waiting period in the policy can materially affect the value and timing of any insurance recovery. For example, if a business is hit by a ransomware attack or other cyberattack, the company's management must decide whether to take the business offline to avoid further damage, or keep operations running.

It will also be important for an IP to be able to calculate which losses fall within the period of cover and which fall within the waiting period, in order to quantify the value of the insurance claim as an asset of the insolvent business.

A ransomware attack can have devastating consequences for an organisation

Other insurance cover

There is the potential for ancillary cyber coverage across other policies, for example, crime insurance, directors' and officers' insurance, general liability insurance, professional indemnity insurance and property insurance.

Many of these policies would now typically contain a cyber cover exclusion, however, reflecting the insurance market's desire to confine this risk to specific cyber insurance policies. The Lloyd's Market Association, the trade body representing managing agents at Lloyd's of London, has published a series of model cyber exclusions, which are now widely adopted. When looking at non-cyber policy wording, IPs should not assume that cyber cover is included in a policy unless there is very clear evidence that it is.

> **When looking at non-cyber policy wording, IPs should not assume that cyber cover is included in a policy unless there is very clear evidence that it is**

Key considerations

So, what are the key considerations for IPs looking to recover the value of cyber insurance cover? First, they should always check the notification provisions (clauses in insurance policies) and notify insurers promptly once they become aware of any circumstance or potential claim. Policies generally require prompt notification of claims in accordance with policy requirements and, in some instances, they set out a fairly prescriptive process for making a claim.

Where a business is insolvent, the typical reporting structures and individuals with responsibility for notification to insurers may no longer be available. An IP should make sure any potential notifications are made as quickly as possible, since failure to notify a claim promptly can potentially invalidate a claim.

It is also important to preserve any relevant forensic evidence of the cyberattack. Similarly, practitioners should maintain detailed records of all losses and expenses incurred, including business interruption and restoration costs. In fact, this should be a priority in a post-cyberattack insolvency situation.

Finally, it's crucial to follow claims procedures and cooperate with insurers as the policy dictates. Procedures may include seeking consent, where required, if negotiating a settlement or contemplating any admission of liability, or in the case of any significant decisions such as the instruction of legal counsel. IPs will also need to share information with insurers, as well as use approved vendors or incident response policies if prescribed. Specialist insurance advice may be required to navigate complex policy wordings and regulatory requirements.

The recent spate of high-profile cyberattacks may be just the tip of the iceberg. What's more, while significant players may be able to absorb huge losses, which can run into the hundreds of millions of pounds, there are many businesses for which these costs would be fatal. For this reason, it's crucial that IPs are aware of the particular challenges involved with post-cyberattack insolvency, and prepare their processes and policies to respond to these situations, since we might see many more cyber incidents in the future.


Peter Hardy and **Eleanor Ruiz** are partners at Reed Smith

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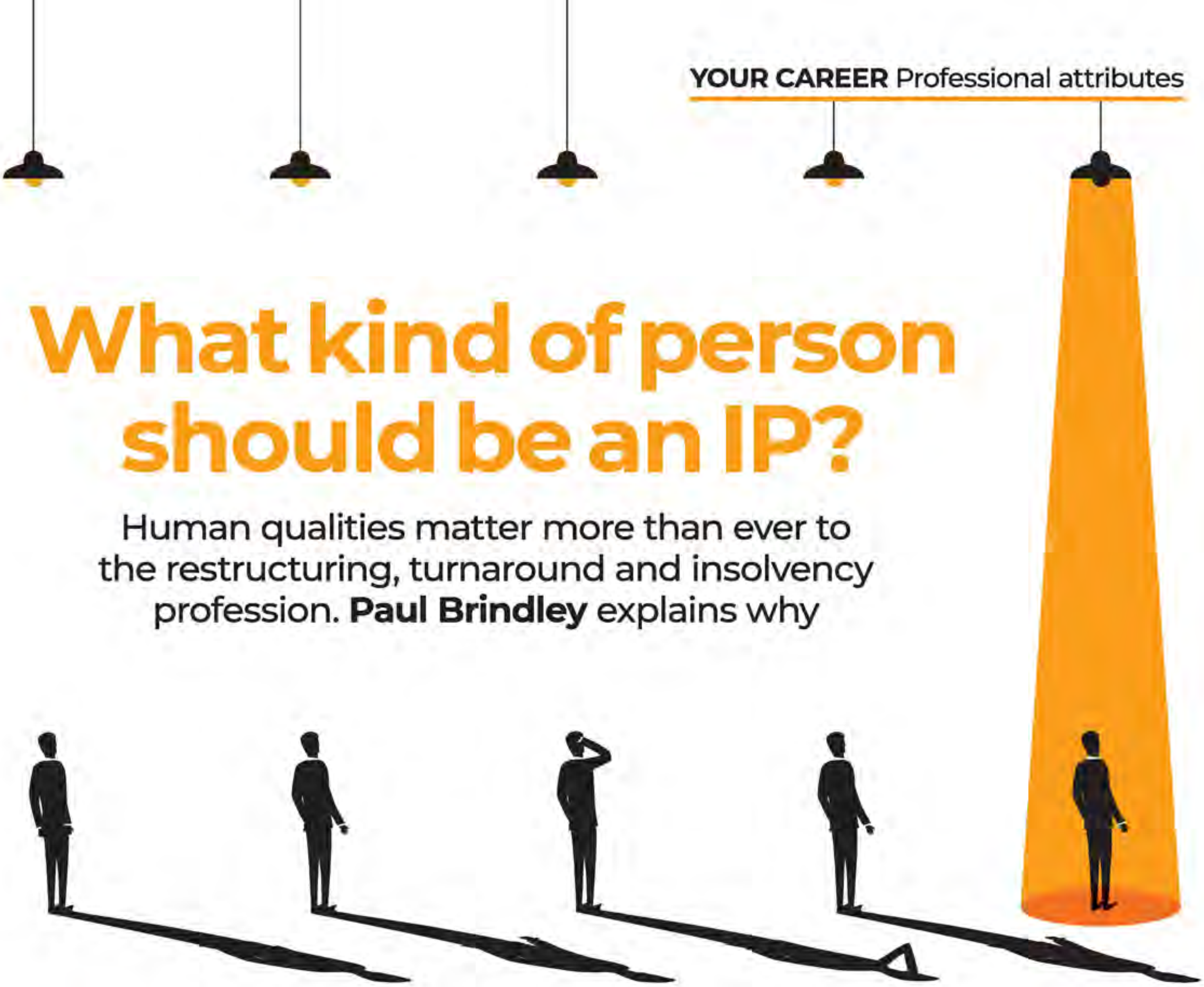
What kind of person should be an IP?

Human qualities matter more than ever to the restructuring, turnaround and insolvency profession. **Paul Brindley** explains why



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Since the Insolvency Act 1986 came into force 40 years ago, the world has transformed. Technology has revolutionised how we live. Entire industries have redefined themselves multiple times. Meanwhile, in insolvency, many core processes remain largely the same. We still rely on old-style, slow-moving procedures. Our tools and culture often feel rooted in the past. It's not that we haven't changed at all. But we've changed slowly, often reluctantly. And often only under pressure from outside.

Resistance to transformation

Other professions have moved slowly, too, especially in the UK. It's almost as if the more a profession is based on *personal service*, the harder it is to evolve.

Why is that? Is it because these professions are seen as traditional? As safe, sensible career choices? Or because they attract people with a certain kind of mindset – structured, conservative, risk-averse?

Or is the issue something deeper, something structural? Are our regulators, trade associations and policymakers inadvertently designing in delay? Is our approach to professional identity tied more to stability than adaptability?

It's worth asking. Because while the world accelerates, we risk standing still.

Needed, but not always appreciated

Insolvency practitioners (IPs) are still seen by most stakeholders as necessary.

> **But integrity isn't only about following the law, it's about doing the right thing when the right thing isn't convenient and when no one else is looking**

But we're not always seen as helpful, responsive, innovative or even human. And we are not particularly well trusted. I think much of that mistrust stems from our slow pace of change, not just in systems and technology, but in people.

Because at the heart of every insolvency, there isn't just a process, there's a person trying to navigate a crisis. That brings us to the question at the heart of this article: what kind of person should be practising as an IP, in this world, right now?

People skills

When a director is in tears because they've just realised their company is insolvent, they aren't looking for a legal technician. They need someone who can listen without judgement, guide without superiority and help them regain control of their next step. Some of the finest IPs I've worked with over the years weren't the loudest or the flashiest people, or even the best billers. But they had a way of *being* with people in moments of high stress, ▶

and how they went about their job changed outcomes. They didn't just close cases. They closed chapters of people's lives in a way that made space for healing and recovery. And they didn't learn that from the Joint Insolvency Examination Board syllabus.

Too often in our profession, I fear we reward commercial drive over compassion, compliance over common sense and technical speed over emotional awareness. We celebrate those who 'get things done', but are we asking, 'How do they do it?' and, 'At what cost to themselves, to clients or to our profession's reputation?'

Integrity under pressure

We all operate under immense pressure: budgets, billing targets, regulatory scrutiny. But integrity isn't only about following the law, it's about doing the right thing when the right thing isn't convenient and when no one else is looking.

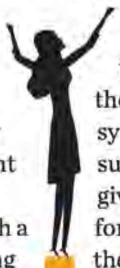
That means exploring alternatives when the easy option is to charge a director for a creditors' voluntary liquidation they can't afford. It means pointing a client in the right direction when another professional would provide them with a better solution. And it means showing empathy when a client is struggling under the weight of blame and shame rather than retreating into procedure.

Wellbeing matters

It's hard to offer care, balance and judgement to others if you're running on empty yourself. Too many IPs and their staff are burning out, quietly, professionally, invisibly. Long hours, growing workloads, emotional strain and the relentless treadmill of marketing and compliance take their toll. And while some of that pressure is structural, some is cultural.

We've all seen the norm: late nights, alcohol-heavy networking, pride in endurance. But we rarely ask, 'Is it really working?' It's vital that leaders in the profession give their teams all the tools and support they need, whether that's efficient IT systems, clear processes or emotional support. Roles must be structured to give insolvency professionals space for a fulfilling life. If we want IPs and their teams to engage with humanity, integrity and clarity, we need to give them the conditions to thrive.

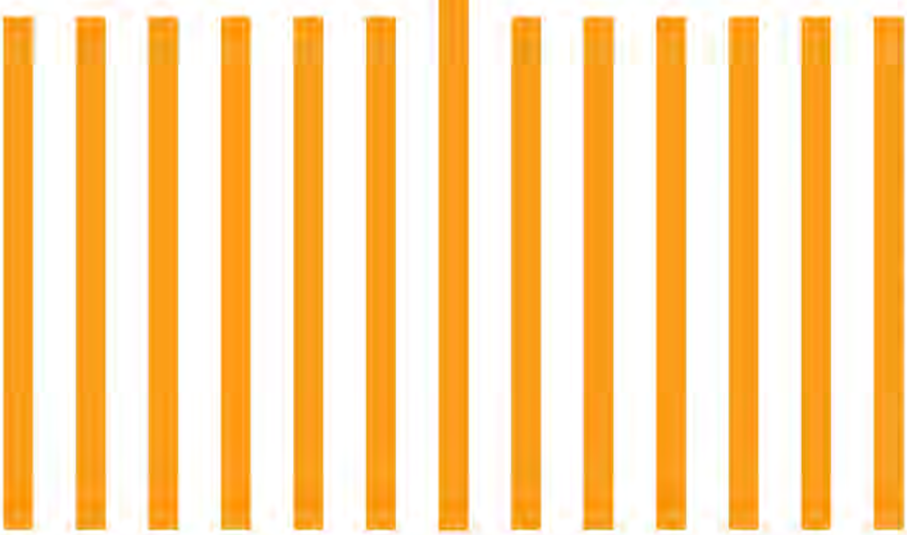
> **This isn't about other people. It's about *us*. Who do *we* want to work alongside in this profession? Who do we trust in the trenches when things get tough?**



Talent attraction

If we truly want to serve clients across all industries, all financial structures and all emotional states, then we need to attract and retain IPs with a broad mix of skills. These IPs will have the skills of an empath, an innovator, a litigator, a strategist, a turnaround expert and a technician.

Too often, we focus almost exclusively on the technician – the person who knows the rules, ticks the boxes and never misses a deadline. Sure, they're valuable, but they're not enough on their own. If we promote based only on those technical strengths, we end up with people at the top who may be brilliant at running a case file, but aren't necessarily equipped to lead the profession into its future. Unless we widen our skill sets, we risk becoming ever more precise at doing only a narrow part of what clients now expect from us – and becoming ever less relevant in today's fast-changing, demanding world.



The right kind of person

Ultimately, this isn't about other people. It's about *us*. Who do *we* want to work alongside in this profession? Who do we trust in the trenches when things get tough?

Personally, I'd want colleagues who are:

- Curious – not just about rules, but about people;
- Grounded in ethics, not just compliance;
- Brave enough to say, 'That might be legal, but is it right?';
- Willing to challenge poor practice – even quietly, even internally; and
- Committed to taking care of themselves and their teams so they can do this work well, for the long haul.

The world has changed and so have the needs of the people we serve. If we want to be not just necessary, but trusted and relevant, then we have to evolve faster, and with more intention. So, perhaps now's the time to pause and ask not just, 'Are we compliant?', but 'Are we the kind of people this profession needs next?'

If the answer is 'yes', brilliant. If it's 'not yet', then what an exciting place to begin.

Paul Brindley FCA is principal of Midlands Business Recovery

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The right thing

What do insolvency practitioners need to know about the revised Insolvency Code of Ethics? **Dawn Boyall** explains

The Insolvency Code of Ethics applies to all insolvency practitioners (IPs), irrespective of their authorising body. It applies to all professional work relating to an insolvency appointment and to any work that may lead to such an appointment. The Code is based on the International Ethics Standards Board for Accountants (IESBA) Code.

The new Insolvency Code of Ethics of 2020 was rewritten using the IESBA methodology of requirements and application material, following the format used in the ICAEW's Code of Ethics. Subsequently, the Joint Insolvency Committee, together with the Recognised Professional Bodies – ICAEW, ICAS and IPA – approved and issued an updated Code of Ethics applicable to IPs (the revised Code), which came into effect on 1 October 2025.

The revisions relate to:

- Professional behaviour;
- Role and mindset;
- Technology; and
- Consequential amendments as a result of the withdrawal of Chartered Accountants Ireland as a Recognised Professional Body and the withdrawal of ICAEW and ICAS as accountancy bodies in the Republic of Ireland.

Summary of key revisions

The revised Code brings requirements on IPs more closely in line with other professional ethical standards, such as those set by the Solicitors Regulation Authority. It places greater emphasis not only on meeting technical standards but also on professional behaviour, workplace culture and public confidence in the profession. For example, the ICAEW has expanded its definition of professional behaviour to explicitly include the prohibition of bullying, harassment and discrimination.

The revisions focus on three key areas:

1. Professional behaviour;
2. Role and mindset; and
3. Technology.

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1. Professional behaviour

The revised Code provides clearer guidance on how IPs are expected to behave in their professional lives. Key updates include:

- **Reasonable and informed third-party test.** A new test will set expectations for acceptable behaviour: *"A reasonable and informed third party would expect that an insolvency practitioner, in their professional life, treats others fairly, with respect and dignity and, for example, does not bully, harass, victimise or unfairly discriminate against others."*
- **Scope of professional life.** The Code applies to all aspects of an IP's *professional life*, including in any situation where the IP represents their employer or the profession.
- **Social media conduct.** IPs whose professional status is visible on social media must ensure their posts reflect the standards of professional conduct. This is particularly relevant for LinkedIn, but any post where an IP's profession is identifiable may fall within the Code's expectations.
- **Maintaining professional reputation.** IPs must not engage in behaviour that could discredit the profession and must comply with all relevant laws and regulations.
- **Private life considerations.** While the Code does not generally extend to private life, actions that could bring the profession into disrepute may breach the Code.

Overall, IPs need to consider not only how they act within their roles but also the broader implications of their conduct while treating others with fairness, respect and dignity at all times. ▶

2. Role and mindset

The revised Code reinforces the profession's public interest responsibilities and encourages IPs to demonstrate the behavioural characteristics expected of them. Key changes include:

- A clearer focus on complying with the Code and understanding its link to acting in the public interest.
- An expectation that IPs comply not only with the letter but also the spirit of the Code.
- A requirement for IPs to maintain an inquiring mind when applying the conceptual framework – assessing the source, relevance and sufficiency of information and remaining alert to the need for further investigation.
- A strengthened emphasis on integrity, highlighting the importance of having the strength *of character* to act appropriately, even under pressure.
- Greater focus on objectivity, professional competence, due care and professional behaviour, including considerations related to technology.
- Guidance on being aware of bias in professional judgement, supported by eight examples of common biases.
- Recognition of the IP's role in fostering positive organisational culture and promoting ethical behaviour within their firm.

Under the revised Code, IPs are expected not only to avoid misconduct but also to promote trust and confidence in the profession. This includes exercising sound judgement, acting with integrity and modelling ethical behaviour within their teams and to the public.

As the trade association for insolvency, turnaround and recovery professionals, R3 supports its members in understanding and applying ethical standards. Test your knowledge of the revised Insolvency Code of Ethics on the R3 Training Academy website, where you can complete R3's ethics training course. The course provides a clear and practical introduction to the topic. For more, visit r3training.co.uk

3. Technology

The revised Code also addresses the impact of technological change and digitalisation, including the use of artificial intelligence (AI). Many IPs now use technology to analyse data or draft documents more efficiently.

The Code recognises these developments but outlines important considerations when using technology.

When applying technology, IPs should consider:

- The purpose and nature of the activity being performed.
- The intended use and reliance on the technology.
- Whether they (or an expert they can access) can understand, explain and assess the technology's appropriateness.
- Whether the technology has been properly tested and evaluated.
- Prior experience with the technology.
- The firm's oversight of its design, development and implementation.
- The controls and safeguards in place for its use.
- The appropriateness of inputs, data and resulting decisions.

A new, broader definition of confidential information has also been introduced. It now includes: *"Any information, data or other material, in whatever form or medium (including written, electronic, visual or oral), that is not publicly available."*

The updated guidance ensures that ethical principles such as confidentiality, professional competence and due care remain relevant and robust in the digital age.

Steps for insolvency practitioners

As the revised Code is now in force, IPs who have not yet reviewed it should familiarise themselves with it to ensure their conduct aligns with it. They should also review and update internal policies to reflect the revised standards.

Additionally, they should undertake continuing professional development in ethics, as well as other areas, to ensure that professional standards are upheld.

Dawn Boyall is communications manager at R3

Member spotlight: Orvedi Kalenga

Recovery meets **Orvedi Kalenga**, associate solicitor with Morgan Phelps Solicitors

What gets you up in the morning?
The excitement of new challenges. In our line of work, every day is different. There is no way to tell whether the day will be spent drafting letters before action or preparing an injunction. Also, knowing that the core results of our job have a real-life impact is a great motivation to not just do the work, but do it properly.

What's been your biggest career achievement to date and why?
Mentorship of paralegals. As I have only recently qualified myself, I appreciate the worries of paralegals and I aim to provide a tailored and personal answer to their enquiries. We all require assistance at some stage in our lives, and I am always grateful to be of use and to provide assistance to others. Additionally, I am very proud of assisting and leading on certain matters that have received some publicity. One of these is *Bourne & Anor v Manukyan & Anor (Re MM Apartment Letting Ltd) [2024] EWHC 832 (Ch)*, where the Court reinforced the principle of s.212 of the Insolvency Act 1986, in particular, that once the liquidator proves a payment was made, the director must justify its legitimacy. Another is *Kieran Bourne & Tunluk Ltd v Tunaru and others [2025] EWHC 1762 (Ch), [2025] 3 WLUK 832*. In this case, the court found that the director was guilty of fraudulent trading and misfeasance. It also found that a third-party letting agent was guilty of transaction at an undervalue and ordered the agent to repay the rental sums involved, since it was adjudged that the company received no benefit from the transaction.

Which professional challenges are keeping you awake and why?
The introduction of artificial intelligence (AI). While AI is a great tool, I believe it is doing work that was previously performed by paralegals and legal assistants. As many law firms now use AI to assist with legal research and drafting, we are losing vital skills within our workforce.

> **We all require assistance at some stage in our lives, and I am always grateful to be of use and to provide assistance to others**

What is the most important career lesson you've learned?
Understanding and appreciating the commercial reality of legal matters. As a solicitor, you must have a legal mindset as well as a business mindset. It is important to understand your clients' strategic goals and be able to provide creative solutions that reflect their goals. Another key lesson was to own my mistakes early and seek help as soon as practicable. Mistakes don't tend to be a problem when we own up to them promptly and seek assistance. The issues come when we attempt to 'sweep things under the rug' and cover them up.

How do you keep developing your knowledge and skills?
By engaging with mentors and attending legal conferences. As a result of communicating with, and observing, senior practitioners, I am able to gain diverse perspectives and career guidance.

How do you maintain a good work-life balance?
I try my best to meet up with my friends at the weekend and go hiking or paintballing. I enjoy walks and I have established boundaries that allow me to switch off from my professional life, both physically and mentally.

Why are you passionate about the insolvency profession?
I find deep fulfilment in assisting individuals and creditors to navigate turbulent times. The profession is a hybrid of accounting and law. I enjoy the variety involved with investigating misconduct and uncovering fraudulent activities.

What do you value about being an R3 member?
As an R3 member, I have the privilege to network with other members who also work in recovery. I am able to gain immense knowledge of the profession and make connections that will last a lifetime.

Would you like to feature in our member spotlight?
Email editor@r3.org.uk

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