Summer 2025

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RECOVERY

New ways of working

Outsourcing: Technology risks commodification

PI agencies: Tougher privacy laws set high bar

Bankruptcy: Creditors cannot rely on foreign judgments

Tax: Renegotiated leases could trigger unexpected charge

Misfeasant trading: Scope widens to challenge director conduct

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> **The current economic uncertainty is undoubtedly driving advancements in AI for businesses looking to save time and cost**

From the editor

Recent geopolitical and economic events have affected various sectors across the UK, and this edition examines a range of areas where financial distress is being felt and the new ways of working needed to tackle them.

Before I talk about all of that, welcome to the new R3 president, Tom Russell, who I think will have an interesting tenure if the first few weeks are anything to go by. Tom provides us with his first president's column and participated in our interview.

As businesses struggle, the importance of good and clear advice on duties will come into focus. Jude Howson of AAB looks at this in the context of last year's BHS decision.

The current economic uncertainty is undoubtedly driving advancements in AI for businesses looking to save time and cost. Michael Conway of Moore Kingston Smith looks at the importance of compliance as the technology develops.

As if the construction industry does not have enough to contend with at the moment, the impact of the Building Safety Act on group companies is an added worry. Robert Paterson and Natalie Pilagos of Wedlake Bell review the legislation.

In addition to economic instability, government policies are also other affecting sectors. Kristine Scott of HCR Law looks at the importance of good governance in private schools in light of the buffetting that they are receiving as a result of the introduction of VAT on school fees and the withdrawal of rates relief.

If struggling businesses need funding, what are the options? These, and the challenges in respect of real estate funding, are reviewed by Stephen Jacobs of Christie & Co.

Matt Webb at Teneo explains why recent tax changes could lead to charges when renegotiating leases and what this means for restructuring.

R3 Southern and Thames Valley chairman Neil Stewart summarises R3's Southern Forum and R3 CEO Caroline Sumner reviews the recent Insol International Conference in Hong Kong.

On that international theme, in our legal update, Simon Jerrum of Russell-Cooke reports on the recent Court of Appeal decision on *Drelle* as to whether a bankruptcy order can be made in respect of an unregistered foreign judgment, while Paul Milton of Clumber Consultancy looks at ERA claims.

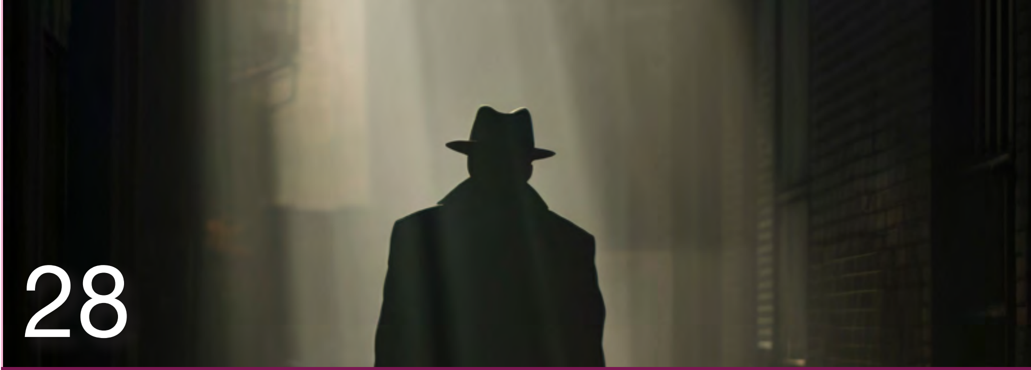
Instead of a survey, our special focus articles are on private investigation agencies and outsourcing.

Hopefully your read will provide some clarity in our brave new world.

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

Regulars

R3 matters

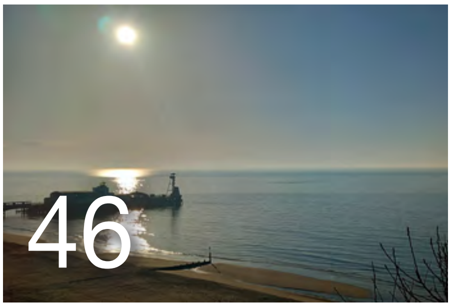


Special Focus:

Outsourcing

Employee rights

Private investigation agencies



Dates for your diary

Legal updates

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Theme:
New ways of working

Please also see our special focus section, pages 20-26, which connects to the theme.

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Embracing change – shaping the profession to be fit for the future

New technology and demonstrating the profession's economic value to government: R3's new president **Tom Russell** discusses his aims for his term of office

My year as vice president went by very quickly – much faster than I expected. In that time, R3 has evolved considerably and it is this evolution that I am keen to build upon during my year as president.

Before I discuss my plans for my year in office, I would like to pay tribute to the president whose term has just concluded. Tim Cooper steered R3 through a year of change. His 12 months as president saw a general election and a new Labour Government take office, as well as the reappointment of Donald Trump in the US and his surprise imposition of tariffs that created turmoil worldwide. Closer to home, R3 introduced new Articles of Association and By-Laws, bringing to a close a long-standing project to modernise our member value proposition and opening up our membership to anyone with an interest in the restructuring, turnaround and insolvency profession.

> **"I see the Government's stated ambition to deregulate and reduce unnecessary red tape as an opportunity for us to ensure that changes to the legislative and regulatory framework are to the benefit of the work of the profession"**

Tim met every challenge head-on, bringing endless energy and enthusiasm to the role. Whether meeting members at various regional events, chairing council meetings, or representing R3 and the profession in the press, in Westminster, or on an international stage, he has never seemed to pause, tire or give anything less than 100% of his energy and focus to the task or the issue at hand. I am grateful for his continued support as he moves into the role of immediate past president.

Evolving members' experience

Building on the theme of the Annual Conference, it will not surprise anyone to know that my first priority is members, whether that is welcoming new members to R3 or making sure we continue to deliver for our existing members. From new professionals through to fellows, we aim to provide real value to you.

I shall be working with the R3 team to look at how we can use technology to improve the member experience at R3. We have plans to implement a new website by the end of the year, ensuring a seamless experience for members whatever you are looking for from your engagement with R3.

I know from talking to you that you want to be able to access information wherever you are so we will be looking at how we communicate with you, ensuring that we are using every available channel to get information out to you. This might involve an app, short podcasts or even videos. New technology should be utilised to make our lives easier, and I am keen to hear about what you want from us as your member association.

Shaping the future

I plan to use the existing constructive relationships R3 has with key stakeholders to continue to drive improvements for the profession and build new strategic partnerships that extend our capabilities and reach. I see the Government's stated ambition to deregulate and reduce unnecessary red tape as an opportunity for us to ensure that changes to the legislative and regulatory framework are to the benefit of the work of the profession and that, as far as possible, the regulatory burden is reduced overall, which will particularly benefit those operating smaller practices.

We understand that the Audit Reform and Corporate Governance Bill, due to be published this summer, will contain proposals to introduce firm regulation for the profession and to give the Insolvency Service the power to introduce a single regulator should they deem it necessary. Details have not been published yet, but I will be working on your behalf to ensure that your views are reflected in the legislation that results.

> **"R3 last delivered its 'Value of the Profession Report' in 2021 and it is time that we repeated that work, providing tangible evidence of jobs saved and created and value added to the economy through the work that you all do"**

I will also be keeping a close eye on the Insolvency Service's planned reforms to the personal insolvency framework, though there seems to be little progress on when these will be announced.

The value of the profession

A key role of any president is that of ambassador, promoting the value of the profession and ensuring that the valuable work done by the restructuring, turnaround and insolvency profession is understood. R3 last delivered its 'Value of the Profession Report' in 2021 and it is time that we repeated that work, providing tangible evidence of jobs saved and created and value added to the economy through the work that you all do. An effective restructuring and insolvency framework should, and does, support the Government's growth agenda.

These aims are ambitious ones for a year-long term, but I have a great team working with me in my fellow council members, the many national and regional R3 committees and the team at R3, and I am determined to make the most of my time as president, delivering value for you, our members.

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

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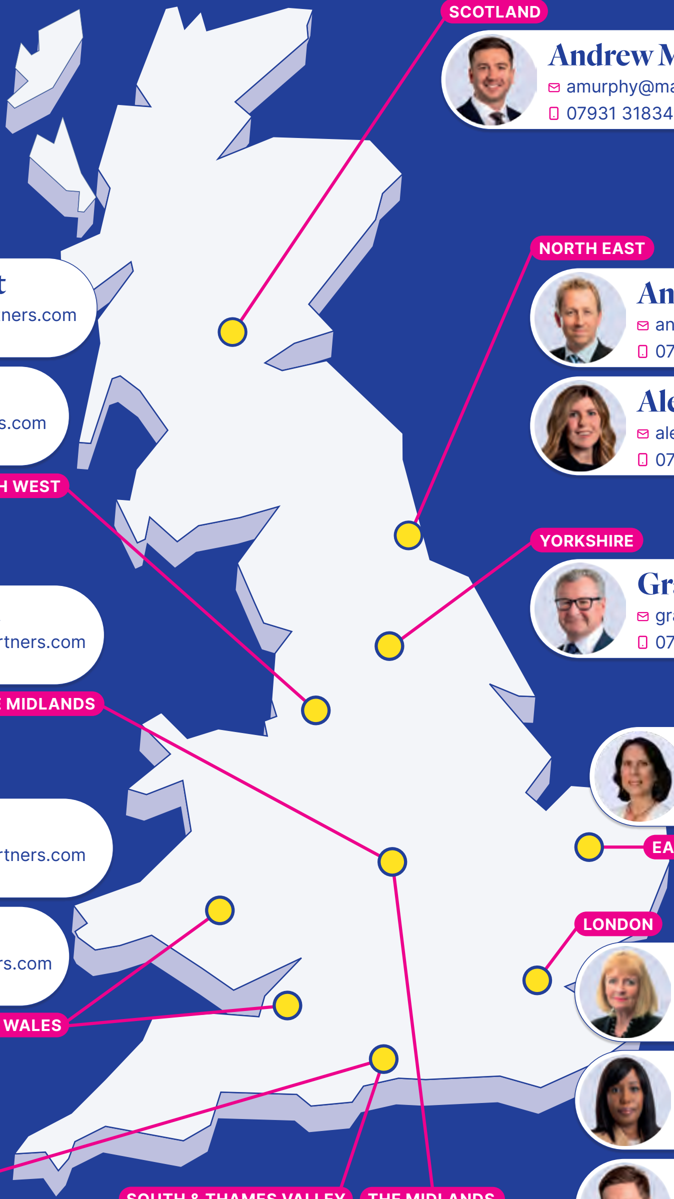

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Legal Q&A

Hannah Edwards and Francesca Heath-Clarke answer your insolvency queries

Q Does litigation privilege apply to documents created by an IP and their team in the course of investigating claims against third parties?

A Litigation privilege (LP) allows a litigant or potential litigant to investigate and prepare for litigation without fearing the disclosure of internal communications to the opposing side. For LP to apply, the material must be created for the dominant purpose of litigation and relate to litigation which is pending, reasonably contemplated or existing.

The applicability of LP to documents produced by IPs during investigations into claims against third parties was scrutinised in *NMC Health Plc (in administration) v. Ernst & Young LLP [2024] EWHC 2905 (Comm)* where the administrators of NMC Health brought a claim against the auditors alleging negligence over a period of seven years. This case concerned the discovery of significant fraud and focused on documents generated by the administrators, specifically 140 witness interviews and five witness statements.

The claimant resisted disclosure of these documents in the wider trial, invoking LP. It argued that litigation was reasonably contemplated, evidenced by instructing a litigation firm the day after the claimant went into administration, and the interviews and witness statements were obtained for the dominant purpose of litigation. The defendant contended that initial correspondence suggested the administrators' primary purpose was urgent investigations into the insolvency circumstances, not litigation. However, the court found it "unreal" to suggest that the dominant purpose of these interviews was anything other than potential litigation.

The court differentiated between contemporaneous documentation, which should be disclosed, and documents created as part of the administrators' investigation, such as evidence supporting the fraud's magnitude, which were deemed not relevant and therefore did not invoke LP.

This case underscores the importance of documenting the purpose of the investigations clearly. Engage legal advisers early to establish a litigation-focused framework and ensure that communications reflect the anticipation of litigation. Regularly review and update documentation to align with the evolving litigation strategy. This proactive approach can strengthen claims of LP and protect sensitive materials from disclosure.

While the court has broad discretion regarding disclosure, interviews and witness statements obtained in contexts beyond routine administrator functions are likely to attract LP. By clearly stating the purpose of investigations from the outset, particularly in determining whether claims can be pursued against third parties, IPs bolster their prospects of successfully relying on LP.

However, care should be taken to ensure that in bolstering the chances of attracting LP, IPs are not putting themselves in a position whereby it would be difficult to deploy s236 powers (the power to obtain information not owned by the company) against a third party, on the basis that a decision has already been made to commence litigation and therefore the use of s236 would be oppressive. A careful balancing act.

Q What criteria must a trustee in bankruptcy meet to suspend a bankrupt's discharge, and when is the appropriate time to apply?

A A bankrupt is automatically discharged from bankruptcy one year after the commencement date per s279(1) of the Insolvency Act 1986 (IA86). However, a trustee in bankruptcy can apply to suspend the discharge of a bankrupt if the bankrupt has failed, or is failing, to comply with their obligations under part 9 of IA86 and rule 10.142 of the Insolvency (England and Wales) Rules 2016.

To suspend discharge, the trustee must demonstrate that the bankrupt has not fulfilled their duties, particularly under s333 IA86. This section outlines the bankrupt's general duty to cooperate with the trustee and to perform all reasonable actions required for the trustee to carry out their functions effectively.

Examples of non-compliance by a bankrupt under rule 10.142 include:

1. Failure to disclose assets. Not delivering or disclosing full details of all property that falls within the bankruptcy estate and any disposals.
2. Documents misconduct. Concealing, destroying or falsifying any documents related to their property or making false or fraudulent statements about their affairs.
3. Income and asset reporting. Not informing the trustee of income increases or acquiring property that falls within the bankruptcy estate as after-acquired property.

The trustee must show that the bankrupt has not done all that was reasonable to comply with requests for cooperation.

The application to suspend discharge should be made to the court before the first anniversary of the bankruptcy order. The suspension can be for a fixed period or until the fulfilment of a specified condition. Given its penal nature, the court must be satisfied that the bankrupt has failed or is failing to comply with their obligations before exercising discretion to suspend discharge.

When preparing an application, trustees should gather comprehensive evidence of non-compliance and document all attempts to secure cooperation from the bankrupt. This evidence is crucial for convincing the court that suspension is warranted. Additionally, consider whether suspending the discharge serves the public interest, particularly in light of the debtor's failure to comply with their statutory obligations.

Hahn Nguyen, a partner at Charles Russell Speechlys, also contributed to this article.

Hannah Edwards and **Francesca Heath-Clarke** are associates at Charles Russell Speechlys

Creditors cannot rely on foreign judgments for bankruptcy

Unrecognised foreign judgments have ‘no direct operation’ under English law and must undergo formal recognition before they can be used as a ‘sword’, says **Simon Jerrum**

In *Servis-Terminal v. Drelle*, the Court of Appeal held that a foreign judgment cannot be used as the basis for a bankruptcy petition unless it has first been recognised in this jurisdiction.

Servis-Terminal, a Russian company in liquidation, obtained a judgment from the Arbitrazh (arbitration) Court of Yaroslavl Oblast against Mr Drelle for approximately 2 billion Rubles (around £16 million). The Russian judgment was upheld following a number of unsuccessful appeals by Mr Drelle in Russia.

The company subsequently served a statutory demand on Mr Drelle at his home address in London. When that statutory demand went unpaid, the company issued a bankruptcy petition on 14 October 2020.

A bankruptcy order was made against Mr Drelle on 31 March 2023. Notably, at first instance Mr Drelle did not challenge the use of an unrecognised foreign judgment as the basis for a bankruptcy petition. Instead, he argued that the underlying debt was disputed on substantial grounds.

However, on appeal, Mr Drelle sought to argue that the Russian judgment should have first been recognised by the English courts. Richards J dismissed the appeal, holding that the foreign judgment still constituted a “debt” for the purposes of s267 of the Insolvency Act 1986.

> “The judgment does not prevent the underlying debt from being the subject of a bankruptcy petition”

In a unanimous judgment, the Court of Appeal reversed the High Court’s decision. The Court of Appeal held that, under English law, foreign judgments must be recognised in this jurisdiction before they can be relied upon for the purposes of a bankruptcy petition.

Lord Justice Newey, delivering the leading judgment, held that: “While an unrecognised judgment may be determinative for certain purposes, it will have ‘no direct operation’ in this jurisdiction and so cannot be used as a ‘sword’, whether as regards ‘direct execution’ or as the basis of a bankruptcy petition.”

Similarly, Snowden LJ noted: “A person should not be able to invoke the collective enforcement mechanisms of bankruptcy or winding-up proceedings in the English court unless and until he obtains an English judgment, or registers the judgment or has some other basis under a statute or treaty permitting such enforcement of the foreign judgment.”

The effect of the decision in *Drelle* is that creditors can no longer rely on unrecognised foreign judgments to initiate bankruptcy proceedings in England and Wales. While the decision does not expressly cover winding-up petitions issued in England against companies in reliance on a foreign judgment, it is likely that a similar approach will be taken, and that recognition of the judgment must first be obtained before a petition can be issued

Foreign judgment: Mr Drelle was served a statutory demand and, later, a bankruptcy order following a Russian court judgment against him for 2 billion Rubles

against a company solely on the back of that judgment.

Underlying debts

The judgment does not prevent the underlying debt from being the subject of a bankruptcy petition. Therefore, for certain debts, creditors may now wish to consider whether to initiate bankruptcy proceedings in England prior to obtaining a foreign judgment. However, in *Drelle*, the foreign proceedings related to a claim in damages rather than a liquidated debt that could be used as the basis for a statutory demand/bankruptcy petition.

> **Recent judgments make it clear that it is a matter for Parliament to enact legislation to provide further routes for foreign judgments or insolvency proceedings to have greater effect in this jurisdiction. However, whether any such legislation will be forthcoming in the near future seems unlikely**

The decision reinforces the principle that foreign judgments must undergo a formal recognition process before they can be used as a 'sword' in this jurisdiction. It also reflects what Snowden LJ described as "the fundamental principles of state sovereignty [which] mean that a judgment or order resulting from such exercise of foreign sovereign power has no direct effect in England and cannot be enforced for the individual benefit of the successful litigant using any of the processes of the English court. Instead, the successful litigant must either bring proceedings in England under the common law to obtain an English judgment, or seek registration of the judgment or rely upon some other statute or treaty permitting the enforcement of the foreign judgment in England".

It is a principle of English law, in a theme which runs through cases going back as far as *Ex parte Blain (1879) 12 Ch D 522*, that legislation, unless expressly stated otherwise, is territorial in scope. The courts therefore need to consider whether or not the legislation was intended to have extra-territorial effect. Accordingly, as noted by Parker LJ in *Owens Bank Ltd v Bracco [1992] 2 AC 443*, "[a] foreign judgment, in the absence of statute, could have no direct operation in England and Wales because of the principle of the territoriality of a court's jurisdiction".

In relation to English insolvency law, the Supreme Court in *Rubin v. Eurofinance SA [2012] UKSC 46* held that the recognition and enforcement of judgments is a matter for legislation. In particular, Lord Collins held that "The law relating to the enforcement of foreign judgments and the law relating to international insolvency are not areas of law which have in recent times been left to be developed by judge-made law".

Extra-territorial effect

In addition, in *Bakhshiyeva v. Sberbank of Russia [2018] EWCA Civ 2802*, the Court of Appeal refused to overturn the rule in *Gibbs*, despite recognising the criticisms of that rule (including that "the rule may be thought to sit rather uneasily with established principles of English law which expect foreign courts to recognise English insolvency judgments or orders"). Most recently, the recent Supreme Court decision in *Kireeva v. Bedzhamov [2024] UKSC 39* [See *Recognition conflict could sap UK status as restructuring forum*, p21, *Recovery* magazine, Spring 2025] held that, in the absence of express statutory provisions, a foreign court or foreign office-holder has no recourse to a debtor's immovable property situated in England and Wales.

One other area of comparison is the recent English jurisprudence on the extra-territorial effect of an insolvency office-holder's investigatory powers under s236 of the Insolvency Act 1986. There have been a number of conflicting decisions on whether or not an office-holder may seek information from respondents located out of the jurisdiction. The current position appears to be, following the decision of Sir Geoffrey Vos in *Re Akkurate Limited [2020] EWHC 1433 (Ch)*, that s236 does not have extra-territorial effect so as to summon a foreign respondent to provide information (save where the EU Regulation on Insolvency Proceedings applies). While this remains open to further authority (particularly from the appellate courts), in light of the recent decisions in *Servis-Terminal v. Drelle* and *Kireeva v. Bedzhamov*, it seems unlikely that the English courts, in the absence of legislation, will now revisit the decision in *Re Akkurate*.

The recent judgments mentioned in this article make it clear that it is a matter for Parliament to enact legislation to provide further routes for foreign judgments or insolvency proceedings to have greater effect in this jurisdiction. However, whether any such legislation will be forthcoming in the near future seems unlikely given the legislative priorities of the current government and recent geopolitical trends.

Simon Jerrum is a partner at Russell-Cooke

Scope widens to challenge director conduct after BHS

BHS highlighted the importance of what advice directors received and whether they adequately considered it in the years leading up to insolvency, says **Jude Howson**

June 2024 saw the landmark decision handed down by Mr Justice Leech in relation to wrongful trading and misfeasance pursuant to the provisions of the Insolvency Act 1986 (IA86) against the directors of the BHS Group of companies (the group) following the group's insolvency in April 2016 *(Wright v. Chappell [2024] EWHC 1417 (Ch))*.

> **The IP approached by a director with a view to commencing a creditors' voluntary liquidation process will need to consider carefully the advice given in light of the BHS judgment**

While decided in the English court, the insight that the hefty 533-page judgment gives IPs acting as office-holders in the UK is invaluable. The judgment widens the scope of being able to pursue directors not just in terms of the provisions of s214 IA86 (wrongful trading) but also introduces 'misfeasant trading' via a novel application of s212 IA86 (remedy against delinquent directors, liquidators), therefore expanding the tools in the office-holder's toolkit to challenge directors at an earlier stage than the provisions of s214 might allow.

The BHS judgment arguably fills the void left by the *Sequana* case (*BTI 2014 LLC v. Sequana SA [2022] UKSC 25*). *Sequana* set a really high bar for proof of wrongful trading and introduced a sliding scale of the balance between the interests of shareholders and creditors before insolvency became inevitable (known as the 'creditor duty' or 'shareholder duty' respectively). When insolvency is inevitable, creditor interests are paramount. Following BHS, the duty to creditors takes priority when insolvency is probable, and misfeasant trading will arise if directors continue to trade and are not thinking of the creditors' interests all of the time from that point onwards. Post-BHS, misfeasant trading is possible as soon as the creditor duty is engaged at a much earlier stage and at a time when there could still be a reasonable prospect of avoiding insolvency. Also, misfeasant trading does not have the strict knowledge test that liability for wrongful trading does.

High bar for proof

As an IP with almost 30 years of insolvency experience, 20 of those in Scotland, I can categorically say I have never seen a successful wrongful trading action proceed through the courts on one of my cases. The bar is too high and the legal costs are often prohibitive in an insolvency process of an owner-managed company, which are the insolvencies I typically come across. The provisions of s214 IA86 are often used as a threat against a director but the facts of the case would need to be cast-iron to be proven through the court, so often a commercial settlement is reached outside of the judicial system.

Looking at the BHS case, which was fact-specific, there was no requirement to take into consideration all elements of s214 IA86, which sets a high bar for proof of wrongful trading. Indeed, at the point the court determined misfeasant trading had taken place, 'insolvency was not inevitable' and the group was not insolvent on a cash flow or balance sheet basis (s123 IA86). This, therefore, arguably, gives office-holders a wider scope to challenge directors' conduct and actions in the lead-up to an insolvency at a much earlier stage and may result in more successful recovery action for creditors through the courts or via commercial settlement. Of course, though, every case turns on its own facts and is considered on its own merits.

> **On a practical level, investigations need to be framed around certain key considerations laid down in CA06 as well as IA86**

Insolvency-deepening activity

How the company enters insolvency also should be a consideration. For example, the IP approached by a director with a view to commencing a creditors' voluntary liquidation process will need to consider carefully the advice given in light of the BHS judgment. We cannot think purely in terms of IA86 considerations but need to consider in much more depth any potential contravention of the provisions of the Companies Act 2006 (CA06) and, especially if the directors' actions could be seen as 'insolvency-deepening activity' by not acting in the interests of creditors or adhering to their fiduciary duties. Directors need to be made aware of how certain actions could be construed as misfeasant trading long before insolvency is inevitable and the provisions of s214 IA86 are satisfied. IPs are well versed in record keeping but it is ever more important to keep contemporaneous records of meetings and discussions with directors prior to any formal insolvency as these could be scrutinised following an insolvency and the advising IP could be held to account.

What guidance does the BHS decision and this new concept of misfeasant trading give office-holders conducting investigations and building a case for the recovery of funds for creditors of an insolvent company? On a practical level, investigations need to be framed around certain key considerations laid down in CA06 as well as IA86. Office-holders are very experienced in conducting investigations with a view to litigation and submitting the directors' conduct report to the Insolvency Service. However, it might be worth giving a few examples from 'Chapter 2 of CA06 – General Duties of Directors', which should be considered in a bit more detail in light of the BHS judgment:

> **Secure books and records as soon as possible – both paper and electronic**

- S172 CA06 – duty to promote the success of the company. This is a consideration of when the directors should have realised that certain decisions were not in the interests of creditors and constituted 'insolvency-deepening activity'. An example could be paying shareholder dividends but not contributing to the company pension scheme or paying trade creditors. Another example could be taking out a 'risky loan' to continue to trade which was not going to benefit creditors in any way;
- S174 CA06 – duty to exercise reasonable care, skill, and diligence. This involves similar considerations to those laid down in s214 but is potentially challengeable at a much earlier stage and looks for evidence of commercially unviable decisions given the financial position of the company. Acting 'honestly' is not necessarily a defence, the court will scrutinise director actions and consider how much knowledge the directors had. A director cannot delegate powers and absolve themselves of responsibility. If they delegate they need to supervise who they delegate to, and if those actions do not consider creditors' interests once that duty is triggered, then they could be held liable for misfeasant trading;
- S175 CA06 – duty to avoid conflicts of interest. Here look for actions of the directors which advance their personal interests to the detriment of the company such as connected party transactions and large payments to directors.

At the point the court determined misfeasant trading had taken place at BHS, 'insolvency was not inevitable' and the group was not insolvent on a cash flow or balance sheet basis

What will help the office-holder to conduct these investigations and satisfy their statutory duties and the provisions of SIP2 (investigations by office-holders in administrations and insolvent liquidations)? Secure books and records as soon as possible – both paper and electronic. Important records would include bank statements, accounting records, management accounts, financial forecasts, board minutes, emails between the directors and shareholders/senior management (consider *de facto* and shadow directorships) and records providing the details of directors' remuneration and benefits.

> **There is a potential defence against misfeasant trading at s1157 CA06, if the court can be satisfied that the directors acted honestly and reasonably, and that having regard to all the circumstances of the case they ought fairly to be excused**

Most importantly, the BHS judgment highlighted the importance of what advice (legal/accountancy/insolvency) the directors received in the years, months and days leading to insolvency and whether they adequately considered and acted upon it. It sends a clear message to directors to follow professional advice at this crucial juncture.

Securing this information will allow the office-holder to scrutinise key transactions, decisions made and who benefitted. When all this investigatory work has been done, to bring a successful claim against some or all of the directors individually, the loss will need to be quantified and the merits of bringing the action reviewed by solicitors or, if the insolvency is bereft of funds, an insolvency litigation funder could be approached.

Director defence

There is a potential defence against misfeasant trading at s1157 CA06 if the court can be satisfied that the directors acted honestly and reasonably and that, having regard to all the circumstances of the case, they ought fairly to be excused. This could excuse the poor judgment of a director when taking a decision he or she thought was in the best interests of the company (s172 CA06) but turned out not to be – this is why record keeping and documenting decisions is so important. If directors can evidence that they considered the interests of creditors continuously as soon as insolvency was probable, for example after taking out a loan and continuing to trade, and that their actions were genuinely in good faith, they may have a defence. This is where minuting fully every step taken at this crucial stage and keeping detailed board minutes becomes essential. Caution must be exercised by directors when using standard board minutes and templates – the more detailed the documentation setting out thought processes and actions the better. And if directors took legal or other financial professional advice they need to document whether they followed it and, if they did not, why they chose not to.

To my knowledge, there have not been any further misfeasant trading claims brought before the court so only time will tell how this new concept will develop.

Jude Howson is a director at AAB

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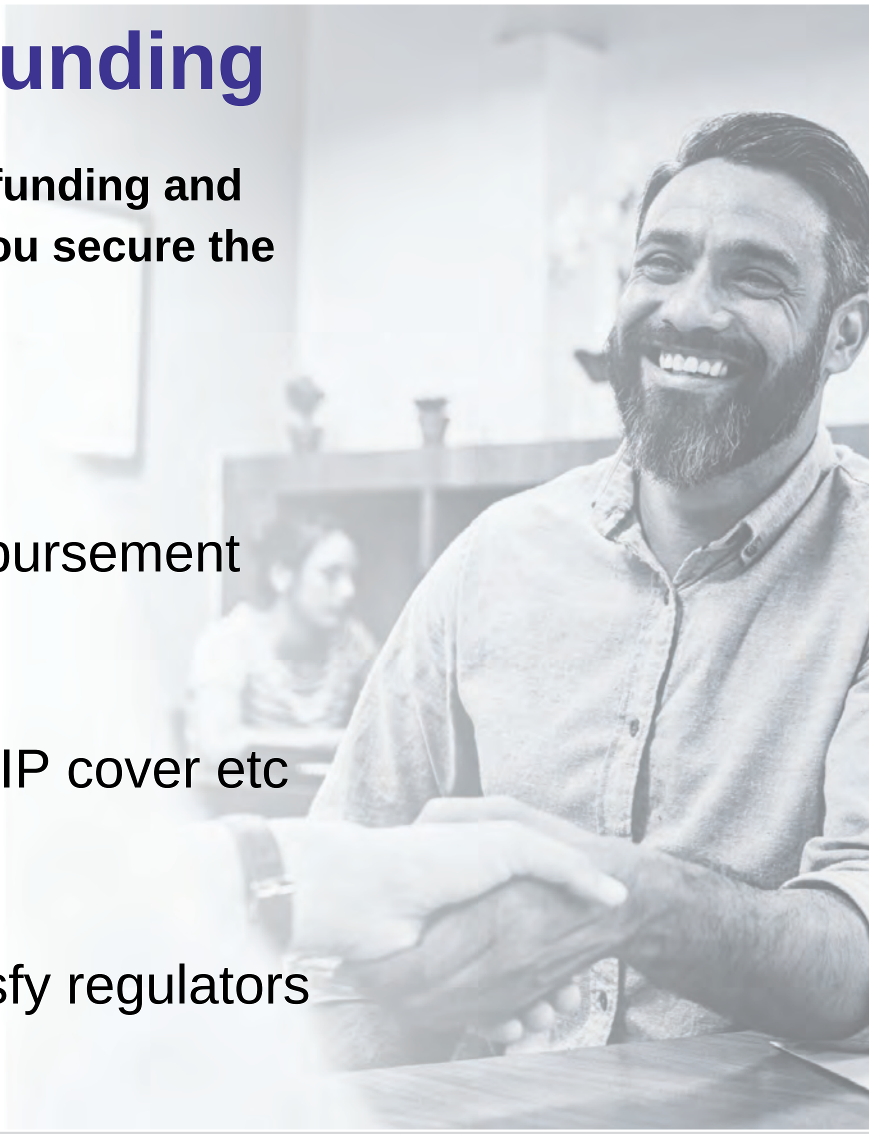

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A day will come when AI is one of our most reliable employees

The next five years may see Darwinian competition between firms for adoption of AI, but compliance needs to be at the heart of our strategies, says **Michael Conway**

So far, 2025 has been characterised by oppressive geopolitical and economic uncertainty, largely emanating from policy shifts and re-shifts in Washington. Among the many notable developments is that America's strategic gaze has moved decisively away from Europe and onto arguably the only other global superpower, China.

Silicon Valley's so-called 'tech bros' have been pumping billions of dollars into some of the most sophisticated AI models on the planet. Yet, America is not alone in its pursuit of AI excellence. Enter DeepSeek-R1, China's ambitious response to ChatGPT, boasting similar capabilities to its US counterpart at *allegedly* a fraction of the production cost. Its surfacing sent ripples through key US tech stocks, and President Trump described it as a 'wake-up call' for US companies.

Perhaps we are witnessing the 21st-century equivalent of the Space Race taking shape, as the US and China jostle for world dominance and to be the first to create artificial general intelligence (the theoretical stage at which AI matches or surpasses human intellectual capability).

Risk of being left behind

So, what has this all got to do with insolvency? Well, professional services will inevitably face some form of disruption by AI, and this will likely be accentuated by the breakneck speed at which the world's two biggest superpowers pursue this technology. The UK and other nations will have little sway over the direction of travel. Just as we could not ignore the personal computer or the internet, so too will we not be able to ignore AI. We will need to adopt it, or risk being left behind.

Attitudes regarding the opportunity represented by AI run the gamut. Some think it is our ticket to solving humanity's greatest problems, others think it is a fleeting fad, like NFTs, and a cautious minority are rewatching *The Terminator* films for survival tips.

Personally, I sit on the optimist side of the fence. But if you are dubious about the potential benefits of AI, why not view it through the lens of Pascal's wager? If you go about your business as though AI will revolutionise the world, and it does, you stand to be handsomely rewarded as an early adopter. If AI fails to live up to the hype, then what have you lost? The risk of failing to keep up with the changing times is far greater than the risk of losing some time and money that you have invested into AI that does not bear fruit.

> **"ChatGPT very confidently pointed me toward rules 7.127 to 7.130 of the Insolvency (England and Wales) Rules 2016… rules 7.127 to 7.130 do not exist"**

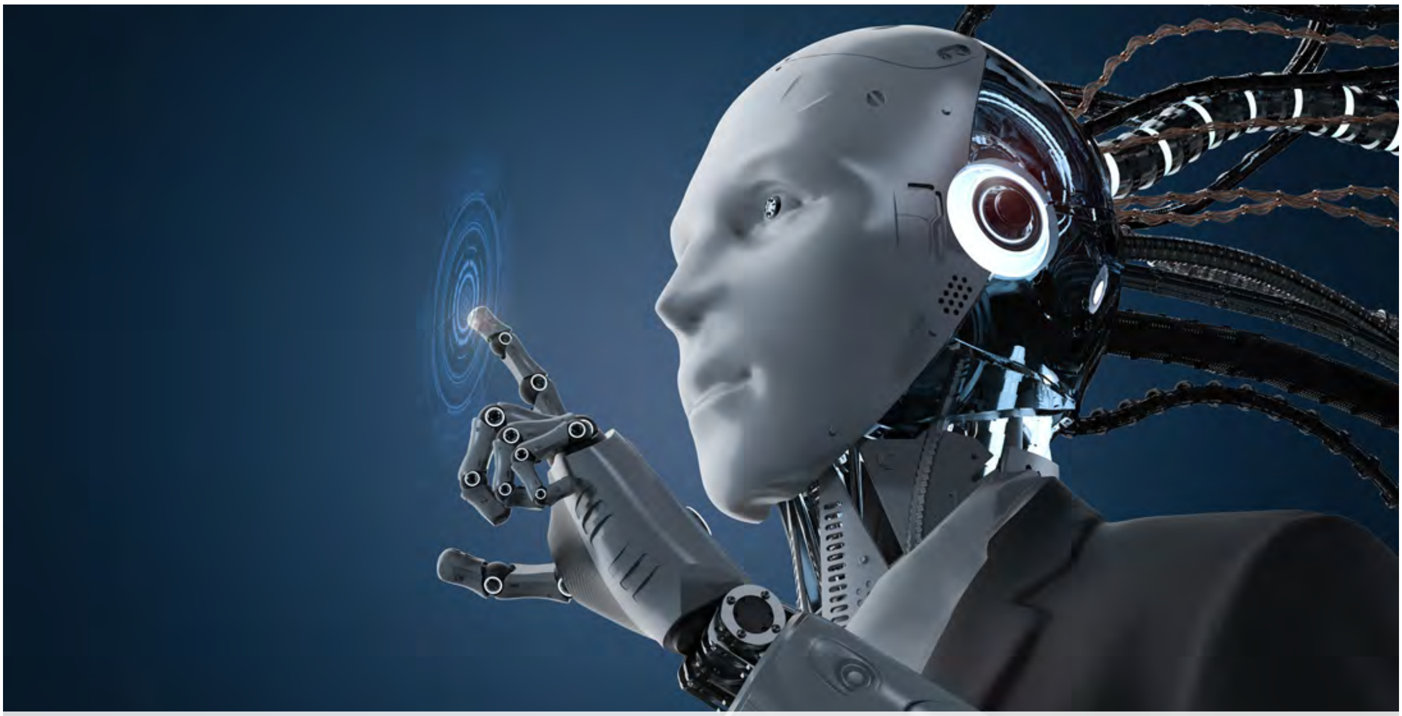
Lower write-offs

It is true that AI will create significant disruption in our industry as processes become increasingly more automated, but amid this disruption lies a profound opportunity. Imagine having a first draft of a progress report in three minutes rather than three hours. Imagine stakeholders having access to a 24-hour AI chatbot that fields their queries instantly. Imagine lower write-offs, enabled by significant cost reductions achieved through AI automation. This is what the future of the insolvency industry may look like. The next five years may see a Darwinian competition between IP firms, as they compete to adopt AI and stay relevant to stakeholders. It is a common complaint among IPs that the profession is becoming more and more administrative. We are being bogged down in checklists for checklists, hindering our ability to do the truly impactful work that we are capable of. Perhaps AI is the answer to putting the excitement back into insolvency and properly balancing the need for compliance with the need for results.

So, if AI is so great, then why is it not revolutionising everything right now? Well, how can it? It cannot write letters and fill in your progress reports. It cannot take calls from creditors or email your clients. It is locked out of the house and we are asking why it cannot hoover our carpets and cook us dinner. It is not integrated. The technical capability to do all of these things and more already exists, but without integration into the systems we use daily, it is impossible to unlock AI's potential. True integration will see AI treated as an employee. We will literally talk to it as we do with human staff. It will learn from its mistakes, and it will have access to all of the emails, documents and other digital information in our files. Then, it will change everything.

> **"There will come a day when this technology is fully integrated into our systems, such that it can consistently deliver accurate, high-quality textual and verbal outputs"**

And that change is on the horizon. They say that money talks, and our industry's software developers are certainly talking. Take one example, PE-backed Aryza, which has recently acquired a firm with proven, in-house capabilities to produce and train AI models for adjacent sectors. Aryza is already using AI to assist volume IVA providers in streamlining data processing between the client, the IP, and creditors. With its new acquisition, its vision is to eventually come to market with an off-the-shelf AI solution for IPs with agentic capabilities, such as learning from the data it receives and independently performing tasks for the IP as an employee would. Insolvency software provider Turnkey has also been very vocal that the future is automated. The company is actively working on making administrative tasks more streamlined by enabling the automation of various tasks via its IPS Cloud product.



Hallucination: AI can simply fabricate a piece of information and present it to the user as though it were two plus two equals four

Despite the tremendous opportunity that AI represents for us in the not-so-distant future, here in the present the need to exercise caution remains. AI is not a calculator, not yet at least.

I recently asked ChatGPT for help finding the relevant legislation concerning the treatment of litigation expenses in a creditors' voluntary liquidation. It very confidently pointed me toward rules 7.127 to 7.130 of the Insolvency (England and Wales) Rules 2016. "Perfect", I thought, as I flicked through the pages of my beastly *Butterworths*, until I realised there were a couple of slight problems. Firstly, part 7 of the rules relates to compulsory liquidations. Secondly (and more importantly), rules 7.127 to 7.130 do not exist. This is an example of 'hallucination', whereby the AI simply fabricates a piece of information and presents it to the user as though it were two plus two equals four.

Deep need for accountability

We operate in a heavily regulated industry, and this type of fundamental error rightly sets off alarm bells in the ears of IPs, who stand to potentially lose their hard-earned licences, or worse, should they sloppily churn out inaccurate statutory documents.

It is therefore crucial that compliance is at the heart of our AI-implementation strategies, to ensure we can extract the value of AI without compromising on quality. Thankfully, I think the common structure of many IP firms puts us in good stead to competently address this risk. An important piece of work rarely goes out of the door without passing through senior staff members. The same would be true for the work produced by AI. Everything is sense-checked and amended where necessary, but the administrative load is significantly lightened.

> **"Firms that want to get ahead of the game should start to think about how they will stop making horseshoes and start making tyres"**

Ultimately, there is a deep need for accountability in our industry, given the high stakes involved in what we do. AI is a tool and there remains a need for humans to be involved in the decision-making process. However, the conversation is changing about what we should expect from AI. Should we expect perfection before adoption? Or will it suffice for AI to be more accurate than any other employee? 'Hallucinations' have occurred in humans from time immemorial. We call them 'mistakes'.

It is easy to pick holes in the AI models we currently have and disregard them as useless. Their flaws are intuitive and well-known. As the example of my litigation expenses query exhibits, it has pointed me toward a section of the rules that does not even exist. How disappointing. However, it is crucial to remember that five years ago the AI that pointed me toward those rules also did not exist. AI models are rapidly changing and the error I have described at the time of writing may well not exist at the time of publication.

Game-changing

It is not about what AI can do right now, it is about extrapolating its progress a few short years down the line and thinking about what it might be able to do then. There will come a day when this technology is fully integrated into our systems, such that it can consistently deliver accurate, high-quality textual and verbal outputs, transforming it into one of our most reliable employees. That is worth factoring into our business plans.

I liken the AI we have access to now to the early automobile. It is new and exciting, but it is clunky and unreliable at times. We know how our horse and cart works and it gets the job done. But one day soon, we will have a sleek, powerful supercar, running on smooth roads. That will be unfathomably better than what we have now; it will be game-changing. Firms that want to get ahead of the game should start to think about how they will stop making horseshoes and start making tyres.

Michael Conway is an assistant manager at Moore Kingston Smith

Do due diligence and your own surveys before appointment

The new Act is still at an early stage, but the actions of an accountable person could leave an office-holder criminally liable, say **Robert Paterson** and **Natalie Pilagos**

The Building Safety Act 2022 (BSA) was the Government's decisive response to the Grenfell fire tragedy, based on Dame Judith Hackett's review of building safety. Aimed at improving the safety of people in and around buildings and improving building standards, the scope of the BSA is extensive, with 170 sections and numerous regulations requiring secondary legislation.

This article focuses on key provisions affecting IPs and receivers in real estate and construction situations.

The BSA aims to make buildings safe, creating the Building Safety Regulator (BSR) to oversee safety and standards, improve industry competence, and enforce the new regulatory regime. The BSR is now the sole authority for 'higher-risk buildings' (HRBs), playing a crucial role at all stages of these structures. If you are appointed over a company involved in HRB projects, engaging with the BSR and following procedures is essential.

New registers maintained by the BSR include:

1. Occupied higher-risk buildings
2. Building inspectors
3. Building control approvers (replacing approved inspectors)

The BSA also aims to persuade owners, developers, and construction parties to fix issues and punishes non-compliance, bringing major changes to roles and responsibilities in construction.

Higher-risk buildings

An 'in occupation' HRB is defined as a building that is at least 18 metres or seven storeys in height with at least two residential units. There is a slightly different definition for HRBs for entirely new construction work in that care homes and hospitals are also included. For in-construction HRBs, it is necessary to comply with the 'gateways' regime. However, a process similar to the gateways must be complied with for work to existing HRBs.

The gateways regime

The 'gateways regime' for in-construction HRBs refers to the three 'gateways' outlined in building safety regulations, and includes a series of 'hard stops' that need to be passed with approval at each stage of a project:

- Gateway 1 – As part of planning permission is granted
- Gateway 2 – Before work can start
- Gateway 3 – On completion and before the building can be occupied

Insolvency processes and due diligence

Office-holders will need to review whether the entity they seek appointment over will have obligations under the BSA – obligations which may not have existed on the last occasion they accepted a similar appointment. There are, for example, extensive obligations imposed on an 'accountable person'. There might even be more than one 'accountable person'. Such legal persons will be obliged to assess and manage risks of fire and structural failure in an occupied building. Proposed appointees will need to carry out due diligence. Will they have the time and resources to comply? What information/documentation will they need to assess the situation? Is an EWS1 (a certificate based on a risk assessment conducted by a fire engineer) necessary to satisfy mortgage lenders? A survey? How much extra cost and risk will be involved, and can they obtain adequate insurance, and ideally an indemnity?

Accountable person

Under the BSA, the accountable person (AP) is defined as anyone who has the obligation to repair and maintain the common parts of an HRB. These common parts can include shared areas like hallways, stairwells, and corridors within a building.

The AP should not be confused with the principal accountable person (PAP). The PAP is responsible for the outer structure of the building. This typically involves the maintenance, repair, and safety of the building's external elements, such as the facade, roof, windows, and other structural components. The PAP is often the landlord or the management company responsible for the building's overall upkeep. While APs and PAPs are rarely individuals, there must always be an identifiable legal person or entity assigned to these roles.

All PAPs will necessarily also be APs, but not all APs will be PAPs. It is not open to them to simply delegate their duties elsewhere, but of course they can engage a management company to assist and also seek professional advice.

> **"The BSA envisages solvent companies controlled by a board of directors and does not always translate well to distressed entities in a formal insolvency process"**

APs' duties include assessing and managing building safety risks, ensuring proportionate measures are in place to manage these risks, cooperating with other APs in different parts of a multi-tenanted building and providing information to the BSR, residents and certain other parties.

PAPs and their duties

PAPs are under the same duties as APs but are responsible for various additional duties including to:

- Register the HRB with the BSR
- Provide key information about the buildings to the BSR
- Apply for a building assessment certificate if directed by the BSR
- Produce a safety case report
- Establish and operate a mandatory occurrence reporting system
- Prepare a residents engagement strategy
- Establish and operate a complaints procedure.

Contravention of these duties is a criminal offence. The AP and PAP are likely to be the borrower or connected company rather than the office-holder, but nonetheless there could potentially be the risk of fault-based (tortious) liability and expense claims, so it should very much be in the office-holder's interests to take

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appropriate advice and ensure compliance with these specific BSA requirements.

Reporting requirements

Where an IP is appointed over a responsible person (RP) there are reporting requirements under s125A BSA.

Who is a responsible person?

• In the case of an HRB, the responsible person is an AP for the building

• In the case of a relevant building (a self-contained building, or self-contained part of a building, in England that contains at least two dwellings, and is at least 11 meters high or has at least five storeys) that is not an HRB, the responsible person would be an AP for the building if, effectively, the building was an HRB.

The reporting information to be provided within 14 days of appointment is:

• The name and address of the person in relation to whom the IP is appointed

• The address of each HRB or relevant building for which the person is a responsible person

• An official copy of the register of title and title plan relating to each registered estate or interest the person holds in such a building, if any

• The nature of the practitioner's appointment

• The practitioner's name, address, telephone number and email address (if any)

• As much of the information set out in the table in rule 1.6 of the Insolvency (England and Wales) Rules 2016 (SI 2016/1024) as is known to the IP. Readers will know that this rule contains a table setting out information identifying a person, company, office-holder or proceedings, such as name, address and registration number.

The IP must give the information to:

• The fire and rescue authority

• The local authority; and

• The BSR (if the IP is appointed over an AP for an HRB).

Relevance to IPs

As is often the case with legislation enacted in a hurry, however laudable the aim, the BSA envisages solvent companies controlled by a board of directors and does not always translate well to distressed entities in a formal insolvency process.

Different parts of the BSA have come into force gradually since June 2022 with the reporting requirement only coming into force on 24 July 2024. It is still at an early stage in terms of liability for an IP. To the extent that IPs are appointed over, and therefore in control of, the AP/RP, they may face liabilities as a result of not complying with the duties and obligations of the AP/RP under the BSA. There could be a potential financial impact on an IP who allows or causes an accountable person to breach their obligations, by way of fines, costs, or other unexpected outlays which could rank as an expense of the administration (for example) with ramifications on distributions and of course their own remuneration.

In extreme cases, it may be that the costs of compliance and renovation of a high-rise building are such that the property is sufficiently 'onerous' to warrant the liquidators' power of disclaimer under s178 Insolvency Act 1986

In terms of criminal liability, there is a possibility under the new legislation that an IP could be found criminally liable for the actions of the AP.

The last high-profile prosecution of an IP reached the Supreme Court in *R (on the application of Palmer) v. Northern Derbyshire Magistrates' Court and another [2023] UKSC 38.* The facts of the case concerned actions by one of the joint administrators to make the employees of the company's warehouse in Dundonald in Scotland redundant the day after it went into administration.

Section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) requires employers to notify employee representatives of potential redundancies, and failure to do so is a criminal offence. However, s194(3) provides an exemption for certain individuals, specifically those who are not considered 'officers' of the employer.

The Supreme Court unanimously allowed the administrators' appeal on the grounds that Mr Palmer, was not an 'officer' for the purposes of s194(3) of TULRCA.

In that case, the Supreme Court held that a person appointed as an administrator under the Insolvency Act 1986 does not meet the statutory definition of an 'officer' in that context. An administrator's role, the court noted, is distinct from that of a company director or other managerial roles that might typically be considered 'officers' under TULRCA.

This decision could also apply to s161 of the BSA, which provides for personal liability for offences under parts 2 and 4 of the BSA and uses the word 'officer' – albeit the context is very different.

In extreme cases, it may be that the costs of compliance and renovation of an HRB are such that the property is sufficiently 'onerous' to warrant the liquidators' power of disclaimer under s178 Insolvency Act 1986. The better approach is probably to do as much due diligence as possible before accepting an appointment. The prospective appointee will also want to ensure they have sufficient pre-appointment funding to obtain surveys/specialist reports to establish if the property falls within the BSA and HRB definition and, if so, establish the extent of remediation works required and the potential cost. The appointor and secured creditors will in addition need to understand the time and costs required to bring the development to market. Finally, the IP will want sufficient funding, comfort (indemnity) and insurance to satisfy themselves and their risk committees that the benefit of the job will outweigh the risk, albeit that the risks are still new and the BSA is still bedding in.

Solicitor apprentice Isabelle Burnett at Wedlake Bell also contributed to this article.

Robert Paterson is a partner in the insolvency and restructuring team at Wedlake Bell and **Natalie Pilagos** is a partner in the construction team at Wedlake Bell

Technology is key but risks commodifying the insolvency process

With AI forcing change in how the profession delivers services, the pressure to demonstrate value at competitive cost will continue, says **Eileen Maclean**

In my over three decades as an insolvency practitioner, the principles of insolvency and the role of the IP remain the same, but how we deliver the outcome has changed considerably. Technology has inevitably played a large part in that change, and we face a further revolution with more artificial intelligence and systematisation being introduced into professional services generally and insolvency specifically. It is against this background that we have seen an increase in outsourcing aspects of case administration. What does outsourcing look like now, what are the benefits and associated risks, and what further change may we see in this area?

Although outsourcing in insolvency may seem a relatively recent phenomenon, IPs have always outsourced – it is just that we have not called it that. We have always looked to third parties for advice and expertise. We have appointed solicitors to assist us with the legal aspects of a case; valuers and auctioneers to deal with asset realisation; agents to run hotels; and specialists to advise on tax recovery, to name just a few. Gradually, however, we have seen an increase in casework being outsourced and the rise of the 'back office'.

Back office

It may be counterintuitive to talk about outsourcing when referring to internal teams but arguably locating the centralised case management or delivery team in a lower-cost part of the country (in other words, not London or the southeast) has become common in national or larger boutique firms. This has the advantage of keeping costs down but centralises the case management skills in one team. Equally, trading and complex case resolution skills sit elsewhere in the firm. The challenge is to ensure that the delivery team is integrated with the client-facing teams, and that inter-firm engagement recognises that the strength of the relationship determines its success. The delivery team also has to be seen as an equivalent career option for staff versus the sexier client-facing role.

“There are downsides to outsourcing and like everything in insolvency, it comes with risk. You risk losing control of the case or aspect that is being outsourced, even though you are still ultimately responsible for the appointment”

Decision to outsource

The decision to outsource externally can be driven by a number of pressure factors, mainly resourcing, required expertise, and cost. These are not mutually exclusive.

We have seen a rise in specific elements of case administration being outsourced: case closure programmes; regular or complex case reviews; adjudication of claims and calculation of associated dividends and, perhaps most commonly, the outsourcing of employee claims to specialist Employment Rights Act (ERA) consultants. The decision to do so can be driven by a shortage of resources and capacity in the business at any given time, usually over the short to medium term. Some businesses will have an ongoing relationship with an outsourced service provider that is, in effect, part of their team. There may be a requirement to buy in expertise rather than replace it in-house over a long term, or conversely to support the development of that expertise within the business. The low-fee/fixed-fee model that dominates the IVA and increasingly the CVL and MVL markets means constant pressure on costs and the allocation of resources, and outsourcing to a low-cost base is a common feature in the volume IVA market.

Benefits of outsourcing

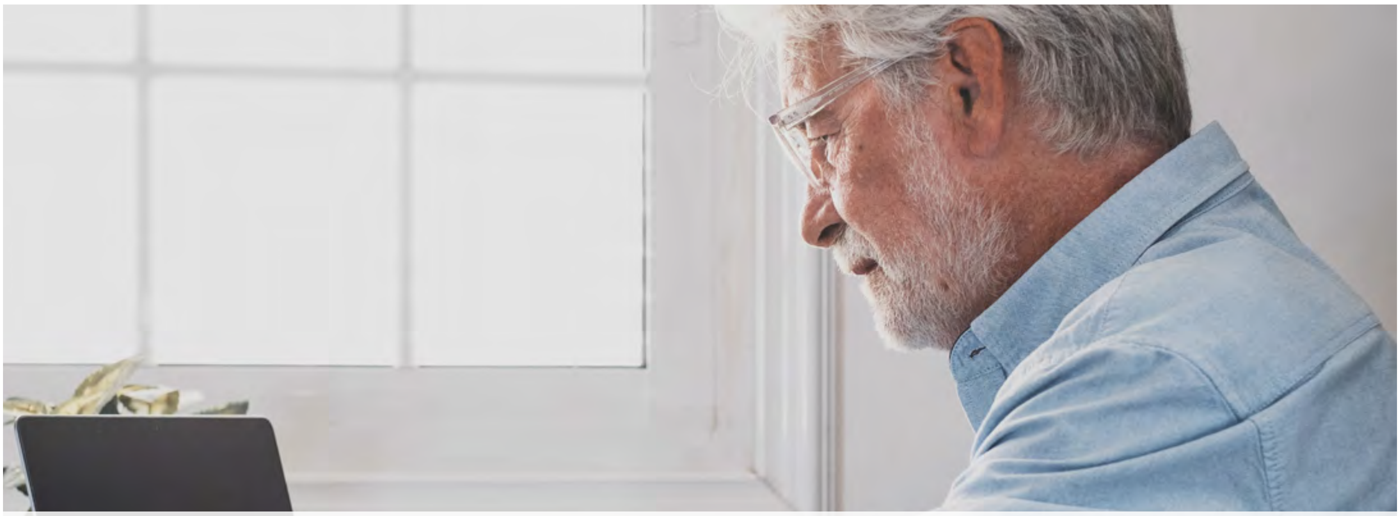
There are some clear benefits to outsourcing. A firm does not need to carry a permanent staff cost or overhead at a time when case levels are fluctuating. Outsourcing a distinct element of case administration allows backlogs to be cleared or avoided altogether. Expertise can be bought in relation to a particular aspect of a case. Employee claims are an increasingly complex area of law for example, and relying on regular external experience of dealing with the Redundancy Payments Service has its attractions. The calculation of holiday pay and a gig economy worker's right to holiday pay are recent examples of growing complexity, and likely further complexity (for example compensation for short-notice cancellations of shifts) will be added by the Employment Rights Bill when it clears Parliament.

Disadvantages of outsourcing

There are downsides to outsourcing and like everything in insolvency, it comes with risk. You risk losing control of the case or an aspect of it that is being outsourced, even though you are still ultimately responsible for the appointment. While outsourcing may be seen as a time and cost saver, in our experience it takes a bit of time to set up the client process, identify who in the client team is the main point of contact with the outsource supplier, and agree on KPIs and service levels. There is an evident risk in relinquishing or sharing control over estate funds, so the obvious advice is do not. Keep funds control in-house at all times, subject to your SIP 11 protocols and your regulator's client money regulations.

IT-enabled outsourcing

IT has been the key to off-site outsourcing, allowing case access to be shared across disparate parties with an interest or a role in a case. It has allowed outsourcers to upload and interrogate case records, diaries and cash books remotely and for the system controller to monitor that access. Case management systems are no longer for the exclusive use of IPs and their staff. Increasingly, creditors can



Insolvency appointments are personal to an IP: The 'control of cases' guidance paper by the JIC outlines risks to case management and progression that could be solved with outsourced help, but counter risks identified include an over reliance on AI and automation

upload proof of debt and supporting evidence via portal access. Microsoft SharePoint or an equivalent allows directors to upload the books and records of a company directly, open-source banking allows individuals to share bank account details for income and expenditure verification or director loan account analysis. The historic cost of a member of staff checking and chasing for information or contributions can be replaced with text and email alerts.

All of this is great in terms of the allocation of resources and associated costs to a case. Chicken and egg: has the reliance on systems and automated processes brought the cost of an insolvency down, or is there now an expectation that the cost will be lower as a result of automation? Arguably this focus on cost has diverted us from any discussion on value. From many perspectives, insolvency risks becoming just a process and as a result, just a commodity. The challenge for us as a profession is to bring discernible value for stakeholders, even while recognising our costs are under intense pressure.

Insolvency guidance paper – control of cases

The recently updated 'Control of Cases' insolvency guidance paper provided by the Joint Insolvency Committee addresses issues that may arise in an outsourcing context. It reminds us that insolvency appointments are personal to an IP, regardless of who is involved in case management and progression, and that we must ensure that cases are properly managed and controlled at all times. IPs should maintain overall management of their portfolio and have ultimate control over decisions, including how decisions are documented, and determine who has what level of delegated authority in relation to cases generally or a case specifically. IPs must be able to justify their decisions and demonstrate appropriate levels of control.

Helpfully the guidance paper identifies risk indicators and emerging threats to the effective control of cases. Many of these risks could be addressed by outsourcing: delays in, or lack of, case progression; failure to conclude cases in a timely manner; loss of key staff or changes in staff resources; focus on new work, or specific areas such as asset recovery, to the detriment of timely case progression. Counter risks in the context of outsourcing are also identified and include potential over-reliance on artificial intelligence or other automated processes and the use of external consultants without appropriate key performance indicators or reporting requirements.

> **"If you do decide to outsource, make sure that you have pre-agreed terms on recording information and record keeping in the context of the case or cases"**

If, therefore, you do decide to outsource, in whatever definition that form of outsourcing takes, make sure that you have pre-agreed terms on recording information and record keeping in the context of the case or cases. You may have limited control over the choice of IT systems in terms of their adequateness and robustness in processing high volumes of data and storage capacity, but if how your case information is stored, processed and transferred is an issue, make that clear at the outset. As an aside, most contracts will contain provisions surrounding data handling in terms of the Data Protection Act or its GDPR predecessor but, if not, a side agreement addressing those terms is recommended.

SIP 9

Statement of Insolvency Practice 9, 'payments to insolvency office-holder and their associates from an estate', makes mention of outsourced services. The outsourced activity should not duplicate an activity of the IP. If you are outsourcing to an associate, you should disclose all payments arising from an insolvency appointment to the office-holder or associates, and the form and nature of any professional or personal relationships between the office-holder and associate. Where an office holder sub-contracts work that could otherwise be carried out by the office-holder or their staff, this should be drawn to the attention of creditors and other interested parties with an explanation of why it is being done, what is being done and how much it will cost. If you are outsourcing to an associated business or entity, then specific SIP9 category 2 approval will be required. Even with a category 1 expense, where the provider is not an associated party, you should be prepared to demonstrate that the expense was reasonable in the circumstances of the case and did not duplicate any work completed in-house.

Looking to the future, AI will continue to force change in the way we deliver our services, and in ways that we have not yet imagined. The pressure to demonstrate value at a competitive cost will continue.

Eileen Maclean is the founding father of Insolvency Support Services

Good communication protects you and your firm's reputation

ERA claims can be daunting for those involved and employees value updates, even if there is no new information. Silence often leads to mistrust or panic, says **Paul Milton**

When a company enters insolvency, it is a stressful and uncertain time for everyone involved, none more so than for the employees. Alongside the emotional toll of potential job loss, they face the added challenge of understanding what they are entitled to and how to make a claim under the Employment Rights Act 1996 (ERA).

Poor communication during this period can lead to confusion, delays in claim processing, and damage to professional reputations. On the other hand, timely, honest, and well-structured communication can help employees feel supported, even in difficult circumstances.

Insolvency moves quickly, and employees are often the last to know. As soon as it is appropriate and legally possible, insolvency professionals should hold a meeting or issue a formal announcement to explain the situation. Be honest about the business's status and what will happen next. While it may be tempting to soften the message, clarity is more important. In my experience, employees will handle bad news but will always struggle with uncertainty. Employees deserve to know where they stand, and timely communication builds trust and avoids speculation.

The ERA claims process

For most employees, this will be their first experience of claiming through the Redundancy Payments Service (RPS), so it is important to provide a clear overview that covers:

- What the ERA entitles them to (for example, redundancy pay, unpaid wages, holiday pay, statutory notice), and the statutory limits that apply.
- Who pays what (the RPS via the National Insurance Fund – not the employer).
- How to claim (completing the RP1 form online).
- What documents or information they will need.
- The timescales from dismissal to payment.

An initial group briefing (in person or virtually) is beneficial using simple language and followed up by written guidance wherever possible. Tailored factsheets or FAQs can reduce the volume of follow-up queries your team receives. A dedicated contact line or inbox for employee queries and optional one-to-one sessions for complex or sensitive cases can also be really helpful.

Clarity and consistency across all channels of communication are crucial, ensuring everyone on your team (including third-party agents) is aligned on the process and messaging.

Employees are likely to have detailed questions about their rights, especially regarding how and when they'll be paid. Having someone from your team on hand to explain the process can go a long way to instilling confidence.

> **"Acknowledging the emotional toll and signposting support services such as ACAS, Citizens Advice, or mental health charities should always be a consideration. A little empathy goes a long way"**

This is not just good practice, it helps reduce the risk of incorrect data being submitted on RP14A forms, which can cause delays in RPS payments and unnecessary complaints. We have seen many instances of confusion and miscommunication around the production of a company's final payroll run. It is crucial to understand firstly, whether the final payroll has been run and, secondly, whether the required submissions have been made to HMRC. The circumstances here will determine whether the employees' claims for wage arrears should be submitted gross or net to the RPS. Getting this wrong will impact the employees' personal tax positions, and will create an additional problem for them to resolve at what is already a difficult time.

Upfront support saves time

While the process may be routine for an insolvency firm, it is anything but routine for the employees involved. It impacts livelihoods, families, and personal wellbeing. Acknowledging the emotional toll and signposting support services such as ACAS, Citizens Advice, or mental health charities should always be a consideration. A little empathy goes a long way.

For many employees, especially those who have not experienced redundancy before, the RPS claim process may feel daunting. Offering support with the data required to complete their online applications and providing clear guidance on the process can help to avoid missed deadlines, incorrect details, or misunderstandings about what can be claimed.

A small investment in upfront support saves time in correcting avoidable errors later.

Maintain communication

Communication should not end after the initial briefing. Employees value updates, even if there is no new information. Silence often leads to mistrust or panic. A brief update letting employees know what stage the process is at, and what happens next, is often all that's needed.

As an insolvency professional, you are not just administering the closure of a business, you are managing a human process that affects real lives, and good communication is not only a courtesy – it's a core part of the process that protects you, your firm's reputation, and the integrity of the outcome.

An ERA claim handled well reduces confusion, smooths claims to the RPS and reflects positively on your professional reputation. Above all, it ensures that employees are treated with the dignity they deserve at a time when they need it most.

Paul Milton is a director at Clumber Consultancy

Tougher data and privacy laws set high threshold for investigations

The professional toolkit has evolved, but GDPR and human rights laws mean that PIs and their IPs must operate with the utmost care, says **Mark Hodgson**

Insolvency procedures often require urgent, precise evaluation of a company or individual's situation. Just as insolvency practitioners operate under pressure to act before recoverable assets vanish, so too must those supporting them. Increasingly, private investigators (PIs) are engaged at the early stages of insolvency to help determine whether recovery efforts are viable. While their role is sometimes overlooked in mainstream insolvency discourse, it is of growing strategic importance.

This article explores the investigator as an extension of the insolvency team. It highlights their role in pre-litigation decision-making and the legal parameters within which they operate, drawing on real-world experience, particularly in cross-border investigations.

Investigators provide insolvency practitioners with preliminary analysis to determine whether a target has assets worth pursuing and whether the likely returns justify the costs involved. Early intervention can prevent unnecessary expenditure on cases with marginal prospects.

One of the persistent issues in insolvency practice is whether the cost and effort of recovery are proportionate to the value of the assets at stake. Through intelligence-gathering, investigators can uncover hidden assets or, conversely, help practitioners avoid significant costs in cases with limited recovery prospects. This is especially relevant in situations involving suspected corporate fraud or asset concealment. The investigator's function is not to determine wrongdoing but to provide IPs with the information needed to make informed decisions.

Restricted searches

Insolvency investigations typically rely on two legal justifications: trustee powers and the legitimate interest principle. Each inquiry must therefore have a lawful basis, and investigators should be aware of what information can legally be obtained. Where a trustee in bankruptcy is involved, investigators can access a broad range of financial information under statutory powers. For instance, name-based searches on the HM Land Registry are allowed for companies, but are generally restricted for individuals unless trustee powers are invoked.

When acting for a liquidator or administrator, and where there are suspicions of fraudulent activity, the Land Registry will not permit a name search for individual directors without statutory authority. This therefore requires more complex inquiries to be undertaken to ascertain if there are recoverable assets before incurring significant costs.

> "Misappropriation by directors or evidence of preferential payments may justify investigative activity, but only where it is proportionate, necessary, and fully documented"

In cases where statutory powers or the subject's consent are absent, investigators must rely on the legitimate interests basis under data protection law. Under English law (the Data Protection Act 2018 and GDPR), the legitimate interests basis (article 6(1)(f)) is recognised, but it may only be used after a balancing test is applied. Investigators must demonstrate that obtaining the data is necessary for the intended purpose and that it outweighs the individual's right to privacy.

This basis is particularly sensitive in suspected fraud or asset-concealment cases. Misappropriation by directors or evidence of preferential payments may justify investigative activity, but only where it is proportionate, necessary, and fully documented.

Access to sensitive personal data may be warranted in some cases, but only where the legal basis is solid, and the request is proportionate. Data controllers will require evidence that the legitimate interest balancing test has been satisfied.

> "Covert surveillance in insolvency cases is highly restricted and less intrusive alternatives must be exhausted first"

Strict legal constraints

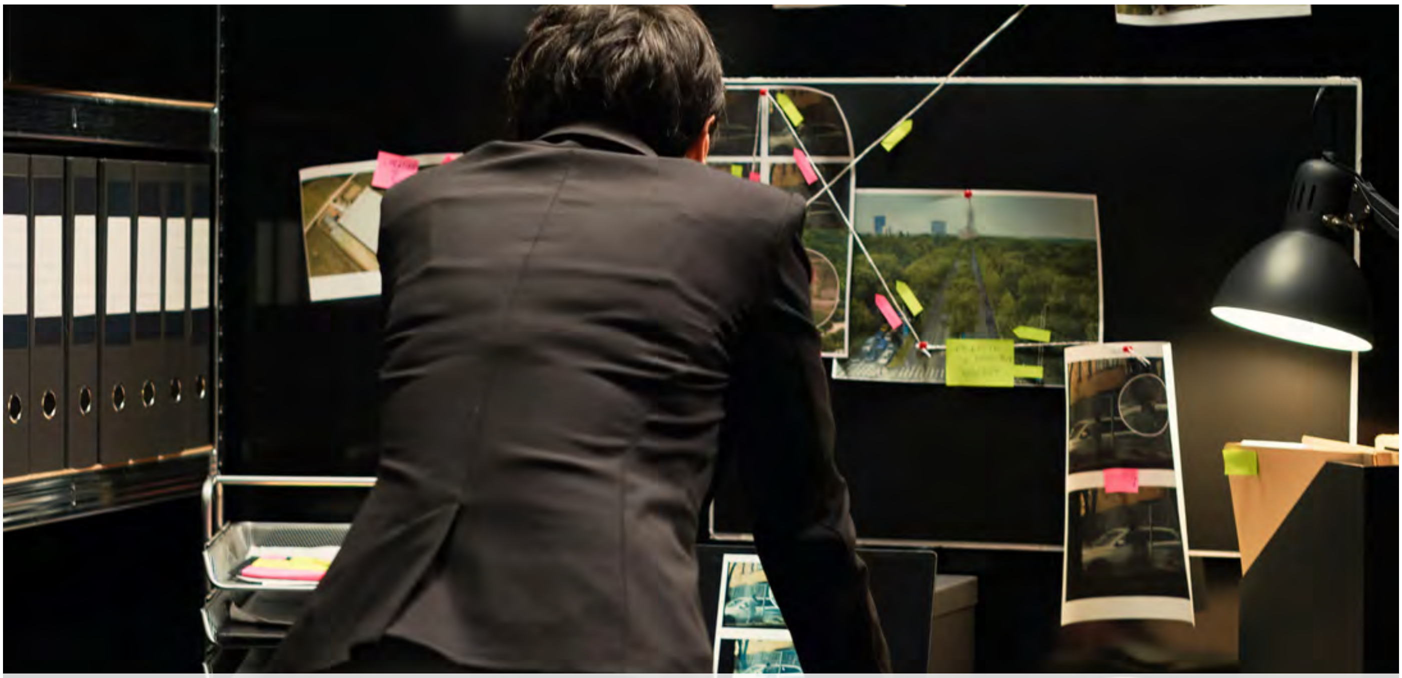
Surveillance and monitoring can play a role in insolvency investigations, but they are also subject to strict legal constraints. Both data protection law and privacy law apply. For example, covert monitoring of a person engages article 8 of the European Convention on Human Rights (through the Human Rights Act 1998), which guarantees a right to privacy. Such surveillance can only be justified if it is lawful, necessary, and proportionate to a legitimate aim.

Under GDPR and the Data Protection Act 2018, any personal data collected must have a lawful basis, and investigators are expected to minimise data collection and ensure it is securely stored. In practice, a data protection impact assessment is generally recommended for surveillance operations.

Covert surveillance in insolvency cases is highly restricted and less intrusive alternatives must be exhausted first. Only then should covert surveillance be considered, and even then only in a limited way.

Examples of actions that private investigators cannot carry out without specific authority include:

- Accessing financial or sensitive personal records. Investigators cannot directly obtain confidential data like bank account details, credit reports, medical records or telephone records without lawful authority. PIs have no special access rights.
- Obtaining criminal history information. Official criminal conviction data (for example, Disclosure and Barring Service reports) is not



Surveillance operations: investigators are expected to minimise data collection, and, in practice, a data protection impact assessment is generally recommended

publicly available. Private investigators are not licensed to request a subject's criminal record in the way the police or courts might. At best, a PI can search public court records and local media to see if an individual has had any court appearances and convictions but cannot procure a sealed DBS report without the subject's consent.

• Vehicle registration lookups. PIs cannot indiscriminately query the DVLA vehicle-keeper database. In practice, the law permits that a licence-plate inquiry can only be undertaken in defined circumstances (for example, if a vehicle is on a client's land or involved in an accident).

• Unauthorised surveillance or hacking. PIs must not trespass or intercept private communications. For example, installing a hidden camera on private property without consent, hacking into someone's computer or voicemail, or forging documents to impersonate officials are criminal offences. Likewise, using GPS trackers or covert methods without explicit legal justification would breach privacy and data laws.

> **Investigators must be able to link each item of information to a reliable source. Unreliable or improperly documented evidence may be excluded by the courts**

All information gathered must be meticulously documented and source-referenced. Investigators should keep detailed logs of how, when, and from whom data were obtained. Courts can exclude or strike out evidence that is shown to be illegally or unreliably obtained.

Similarly, asset tracing is not just a search for data entries, but an evidential process. Any asset information provided must have a clear chain of custody. Investigators must be able to link each item of information to a reliable source (for example, a registry document or witness testimony). Unreliable or improperly documented evidence may be excluded by the courts.

Obtained unlawfully

IPs and their legal representatives must source their investigators carefully to ensure competence and compliance. In one recent case, a London-based law firm instructed a locally recruited private investigator in West Africa to obtain land registry documents for a property to prove ownership by the respondent. The law firm was not aware that all formal requests within that jurisdiction for the documents mandated a minimum 21-day processing period. Keen to expedite matters, the investigator paid an 'additional fee' to a government official to obtain the documents immediately. However, the documents were later ruled inadmissible when the opposing legal team successfully argued that any request for the documents completed by the applicants in under 21 days must have been obtained unlawfully. The claim failed entirely, underscoring how even well-intentioned shortcuts can seriously damage both legal proceedings and client outcomes. This cautionary example highlights the vital importance of investigators fully understanding and adhering to local legal requirements.

As insolvency practice evolves, so does the toolkit available to professionals. The legal framework around data and privacy has also grown much stronger, with GDPR, the Data Protection Act 2018 and enforcement and human-rights standards setting higher thresholds for investigators to meet.

Fines of up to £17.5 million or 4% of turnover can apply to serious breaches of data protection, and Parliament has cautioned about the risks of an "unregulated investigative sector" (a concern echoed by industry leaders). In this environment, investigators must operate with the utmost compliance, proportionality and ethical care. By insisting on demonstrable competence and compliance for all actions thorough documentation and voluntary standards (accreditation, insurance, experience), IPs can help ensure that intelligence gathering is both effective and defensible. Ultimately, investigators who adhere to the rule of law will enable outcomes that are commercially sound and legally robust.

Mark Hodgson is the chairman and founder of Tremark Associates

Act now to adopt voluntary code that upholds accountability

Engaging professional investigators requires a strategic approach in order to safeguard IPs from reputational and legal liabilities, says **Tony Imossi**

The term 'private investigator' often conjures up images of a lone sleuth working in the shadows, evoking a stereotype of an individual in a trench coat and fedora engaging in covert surveillance and unravelling mysteries through cleverness, intuition and resourcefulness. In reality, there is a high level of professionalism in carrying out this crucial function and the sector is obligated to ensure that investigative methods and the scope of enquiries comply with data protection requirements.

Having worked in the investigation field for 45 years, I find the term 'private investigator' no longer accurately reflects the services we provide to the legal sector. I prefer 'professional investigator'.

Largely unregulated

I understand why legitimate agencies continue using the more widely recognised term, as their business models likely rely on visibility to potential clients. Unfortunately, this terminology is also used by less reputable and unaccountable elements in the largely unregulated industry. This highlights the importance of distinguishing between those who adhere to ethical investigative practices and those who engage in unscrupulous tactics. For simplicity, I will refer to all operatives in the investigative sector, as 'PIs'.

A significant portion of PI assignments arise from insolvency professionals. In insolvency practice and contentious business law, the engagement of PIs is often a pivotal component in navigating complex cases. Locating absconding debtors, tracing attachable assets, unravelling fraud scenarios and providing ongoing litigation support, such as process serving, interviewing witnesses or assisting with complex discovery issues, are just a few of the areas in which IPs benefit from investigative and litigation support services.

> **"Determining purpose and means for data processing is not always clear, and they are quite often interpreted for convenience without a legal basis"**

Yet, surprisingly, the PI sector is not regulated by statutory licensing. Despite being included in the Private Security Industry Act 2001, licensing of PIs has never been introduced due to insufficient political will. This creates a conundrum for insolvency practitioners that may rely on investigators' reports to meet their own strict regulatory conditions or provide evidence in legal cases.

Following the introduction of the UK GDPR, and the Information Commissioner's Office's (ICO) implementation of the Code of Conduct scheme (under article 40(5)), the Association of British Investigators (ABI) seized the opportunity to move towards establishing a regime of good order and accountability by developing a code of conduct for PIs. This initiative aims to protect the public and other stakeholders, such as insolvency professionals.

Working in collaboration with the ICO, the ABI developed the ABI UK 'GDPR Code of Conduct for Investigative and Litigation Support Services'. This good practice guide was approved by the ICO and published on 13 November 2024, the first of its kind in the UK, within one of the most complex sectors to regulate. Who would have thought that PIs would be the first to have achieved the ICO's approval?

Evaluated annually

Opting to sign up to the code allows PI agencies to demonstrate adherence to best practices, data protection compliance and accountability. Those companies will be evaluated annually by an independent monitoring body for the code, pending final approval from the ICO.

The ABI code represents industry-specific accreditation, forming a unique, government-supported self-regulatory framework. Professionals in the investigative sector who study data protection laws recognise that data protection laws govern PI activities. After all, processing personal data is the sector's core business activity.

While the code scheme is voluntary, due diligence remains necessary when selecting a service provider. However, the code register will offer a reliable source for identifying compliant agencies that have also met the strict fit and proper assessment by the independent monitoring body. Ideally, investigative agencies outside the scheme will at least adhere to the code's guidance.

The success of the code as an industry standard will depend on market forces encouraging investigative agencies to adopt it in order to earn the trust and credibility that the sector often struggles to achieve. The legal and financial services professions, including IPs as the primary source of assignments for investigators, will likely drive this adoption, given their reliance on investigators, process servers and related services.

The ABI seeks to motivate competent agencies to join the code scheme through the influential market pressures of client preferences, rather than excluding them.

Breaching rights and freedoms

Recent court cases highlight the increasing scrutiny of investigative techniques involving personal data processing.

- In one recent High Court case, the background of which concerned an allegedly fraudulent scheme said to involve misrepresentation, forgery and asset misappropriation, a law firm that presented its investigative service provider's report into evidence was later embarrassed to have to withdraw the report in its entirety when the factual accuracy of the information was questioned.
- In another pending case, the judge, unhappy with the lack of transparency, required an explanation of the data processing involved in a 'smoke and mirrors' investigation report on financial assets submitted into evidence by a man's ex-wife following private investigation. Everyone involved in the case is now shuffling to reposition their role to try to escape responsibility.
- In a case in Spain reported in the press, (and let's not forget the UK GDPR mirrors the EU regulation), an investigator's very helpful surveillance report commissioned by the defendant's employer was thrown out for breaching the rights and freedoms of the data subject. The investigator had been frequently recording the employee in a number of private settings.

Overturning the shadowy PI stereotype: The 'GDPR Code of Conduct for Investigative and Litigation Support Services' is a good practice guide for PIs, and is the first of its kind in one of the most complex sectors to regulate

> "The greatest risk emerges from the reckless activities of unaccountable PIs, some of whom could also be your service providers"

Call yourself what you like under GDPR (data controller or processor), but it is the data processing activity that will determine your position. Determining purpose and means is not always clear, and they are quite often interpreted for convenience without a legal basis. Had the investigators had the luxury of a code of conduct and adhered to it, they may have found themselves in a stronger and more authoritative position, and, of course, their professional clients would be in less discomfort.

There is now a noticeable show of interest within the investigative sector following the ICO's press release about the code's approval. The industry's realisation that the imminent implementation of the ABI UK GDPR Code of Conduct affords the investigative and litigation support service providers an opportunistic punctuation point. There has never been a better moment for all stakeholders to grasp the chance to be part of this legacy.

After 100 years of lobbying, 25 of which were conducted under the mistaken belief by the PI industry that statutory licensing held great significance, it is time to embrace a code of conduct to ensure compliance and reassurance. The voluntary scheme on the table potentially offers a better, and certainly more relevant, form of level playing field and accountability than a state licence was ever going to be capable of achieving.

I listened to Jonathan Hall KC on the radio recently. He is the UK's independent reviewer of terrorism legislation and state threats. He mentioned the dangers to the nation's security from the unchecked and unaccountable activities of some PI agencies when accepting assignments from hostile foreign governments, probably unwittingly. This threat, now covered in the National Security Act 2023, is currently being widely publicised by the Home Office. The greatest risk emerges from the reckless activities of unaccountable PIs, some of whom could also be your service providers. But this risk can be mitigated with the code's regulatory regime.

If the UK government were to be persuaded to revisit applying some regulatory control, it would only be to address the harm being caused to the public by poor or illegal practices. It has not escaped the attention of the officials looking at licensing that this is exactly what the ICO-approved code of conduct is designed to address by providing guidance on the area of the PI sector's activities causing harm (data protection abuse). Why would this not be important to the insolvency profession and other stakeholders?

Strategic approach

Engaging professional investigators in the fields of insolvency and contentious business requires a strategic approach. By choosing investigators who adhere to the ABI's UK GDPR Code of Conduct, insolvency practitioners can ensure compliance, maintain ethical investigative standards, and safeguard themselves from reputational and legal liabilities. It is crucial to act now to adopt a regulatory model that upholds accountability and professionalism, securing the integrity of the investigative sector for the future.

Tony Imossi is head of the secretariat at the Association of British Investigators

Clear understanding of governance and trustee duties is essential

Insolvency professionals can help clear a path for volunteer governors struggling with balancing commercial and safeguarding concerns, says **Kristine Scott**

Independent schools in England and Wales currently account for just over six percent of children in education. Such schools have been in the press recently, in part due to the introduction of VAT on school fees in January 2025. According to recent figures, the number of pupils in independent education has decreased slightly in the past 18 months. This article looks at the challenges schools are facing and what this means from a recovery perspective.

There are a number of headwinds for independent schools, some of which have been around for a few years and are having a cumulative effect, and others more recent or yet to have an impact. These include:

• Declining pupil numbers. These can partly be attributed to a decline in birth rate. However, affordability and the cost-of-living crisis are also taking their toll.

> **Of all those schools who responded to a recent ISBA survey, 115 say they will close**

• An increase in employer contributions under the teachers' pension scheme (TPS). Generally speaking, until 2019 the majority of independent schools were members of the TPS, a defined benefit scheme for teaching staff. Employer contributions for teachers significantly increased at the end of 2019 from approximately 16% to over 23%. Schools were anticipating an increase to a figure in the region of 19% so the additional increase was unexpected. In April 2024, there was a further increase in employer contributions to 28.68%. Independent schools can withdraw from the TPS (unlike academies and maintained schools) and offer an alternative qualifying scheme on a defined contribution basis. The latest available figures from the Independent Schools' Bursars Association (ISBA) who represent around 1,200 independent schools, is that 634 schools have withdrawn from the TPS and now offer a defined contribution scheme. Withdrawing from the TPS is not without consequence however, and we have seen heightened trade union activity taking place in independent schools over this issue, with strike action in a number of schools.

• Loss of mandatory business rates relief. It is currently anticipated such rate relief will be abolished with effect from April 2025.

• VAT on school fees. This is currently subject to a legal challenge by the Independent in early April 2025. At the time of writing (April 2025) we are awaiting the Supreme Court judgment on the matter. Available data from schools indicates that while some plan to cushion the impact of VAT to parents immediately – that is, to not pass on the full 20% VAT charge – the median expectation is to pass on 15%–17.5% by 2027. The full cost of this government policy decision is not yet known. However it is causing concern for schools and may already be driving a surge in M&A.

• Parent buying behaviour. Schools are more aware than ever of the importance of understanding why parents choose their school over another. For some parents this may be legacy reasons (for example, every member of the family has been to the school). This is less likely to be the norm in today's economic climate.

In light of the above challenges, of all those schools who responded to a recent ISBA survey, 115 say they will close.

Why do independent schools close?

Although there have been closures in the past few months (and more are undoubtedly on the way), this is not simply the impact of VAT. These schools tend to have been on the decline for a few years, often with falling pupil numbers that result in the school not being viable. Lenders are also becoming less willing to support schools in the short to medium-term.

Reasons given for school closures consistently include:

• Insufficient cash. This can impact on repairs, maintenance and improvement programmes which may further impact pupil recruitment.

• Failure of governance to understand the strategic decisions needed to remain viable.

• A teaching body which is 'top heavy' in terms of staffing costs.

• High levels of fee remissions.

• Lack of access to bank funding.

• Selling assets to stay afloat. While this provides a solution in the short term, this approach is unsustainable in the long term.

These are just a few examples and, of course, there are layers of complexity making these decisions more difficult. For example, teaching staff generally have a one-term notice provision that has to coincide with the end of a school term, usually 31 December, 30 April and 31 August. If these dates are missed, this may result in an additional four months' pay, which, for a number of staff, may be considerable.

The majority of independent schools adopt similar terms and conditions as part of the parent contract that provides for one full term's notice to be given by a parent(s) if they wish to withdraw their child(ren) from the school. It is anticipated that some parents may have already provided notice before Easter to remove their children from the school at the end of this academic year 2024/25.

What does this change?

Many independent schools that are currently in a financial position of strength recognise that they are likely to be too small to survive alone and are joining larger school groups or entities to protect themselves. We have also seen growth in the UK's 'for profit' school groups as well as overseas investment alongside a significant increase in overseas school groups operating on a global basis with a number of schools on different continents. It is these groups that typically attract investment and are looking for future growth.

Parents can be expected to be even more discerning around their financial commitment to education. This may mean lower figures at the prep school end of the sector and parents looking to move their children at a natural breakpoint in education, such as at the end of year 6 (end of prep/junior school), year 11 (after GCSEs) and choosing an alternative for sixth form. It is true to say that presently it appears that prep schools (which often tend to be smaller in size and pupil numbers than a senior school) are being more impacted by the challenges in the sector.

What does this mean for recoveries?

It is important to understand that the majority of independent schools are charities and also companies limited by guarantee. As such, the schools are regulated by the Charity Commission (as well as the Department for Education) and the trustees/governors are also company directors. As charity trustees, governors have charity law duties and responsibilities that include ensuring the continued success of the school in accordance with its charitable objects. For anyone advising and/or operating in the independent school sector, a clear understanding of governance and trustee duties is essential. This may result in schools having a (small) number of advisers who are able to help with either remodelling a school business or a potential merger or sale.

Trustee duties under the Charities Act include the following:

- To comply with your charity's governing document and the law.
- Act in your charity's best interests.
- Act with reasonable care and skill.
- Ensure your charity is accountable.
- Ensure your charity is carrying out its purposes for the public benefit.
- Manage your charity's resources responsibly – including during an insolvency event.

A large number of independent schools are asset rich in that they own the school buildings. For a school that does not have sufficient cash flow generally there are three options:

- Carry on operating the school. This may result in continued losses and the erosion of charitable cash and/or assets. There may be some scope for cost cutting but long-term this is likely not to be a sustainable option.
- A charitable merger or sale to either another school or school group, either independent or commercial.
- Closure. We are seeing some schools in a solvent position being closed by an orderly wind-down to preserve charitable assets, which are then used to meet the school's charitable objective(s) via a different means.

> **"Announcing closure will have a direct impact on fee collections and may result in parents and/or staff leaving at short notice which will impact the school further"**

In any of the above instances, the trustees must have regard to their duties as fiduciaries of the school's assets and that they owe duties to all the key stakeholders, including the interests of the school's creditors. That obligation is heightened in the case of a school where there is a risk that its assets will not be sufficient to meet all its liabilities – including the costs of closure, which can be substantial and are often overlooked or underestimated by schools.

Boards of governors of schools should consider engaging with an insolvency professional on an advisory basis to understand and explore the options. Trustees are volunteers and are unpaid and may wish to understand in more detail their ongoing duties and responsibilities. We often hear of concern for personal liability if trustees do not seek professional advice at the 'right time' or an early enough stage. A controlled closure of a school is not without difficulty and cost. Announcing closure will have a direct impact on fee collections and may result in parents and/or staff leaving at short notice which will impact the school further.

Having said all of the above, we are seeing independent schools use any leverage they currently have to explore alternatives, including looking at the possibility of shared services and considering a merger or sale (or an acquisition if the school is the larger party). The sector is not without opportunity.

What does this mean for insolvency professionals?

As insolvency professionals, the role is often to clear a path through the myriad of complexities facing the school for the governors who, despite overwhelmingly having the best intentions, can often find it challenging to adopt a more commercial mindset and approach to the way that the majority of schools must be run in the current economic climate – particularly with other pastoral challenges around safeguarding and online safety. This direction can be as simple as ensuring that they are possessed with correct and up-to-date management information and financials to enable them to make decisions, as well as clear legal advice on their duties as directors and trustees.

Often the role of an IP will involve preparing an 'options' paper to assist the school's governors, which will likely include formal insolvency options as well as setting out how the school may trade out of present difficulties. Such options will also cover matters such as sourcing alternative funding solutions, consideration of disposal of assets to fund the school, suggested cost reductions and managing debtor collections and creditor pressure, all of which need to be handled carefully having regard to a school that may be insolvent or in significant financial difficulty.

After this period of consolidation, schools that weather the storm should be in a stronger position to continue to deliver the excellent education provision that the UK has become known for, and the insolvency profession can play an important part in creating that future.

'There are layers of complexity making these decisions more difficult': St Joseph's Park Hill in Burnley, one of the schools that has said it will close this year

Kristine Scott is a partner and head of the education and charities team at HCR Law

Compelling case needed to access non-traditional funding

Although alternative lenders offer valuable flexibility in restructuring situations, they are often quicker to enforce their security, says **Stephen Jacobs**

Since the global financial crisis (GFC), debt funding of operational real estate (going concern business funding, which takes into account the property and business) has seen increased demand for alternative lending. Traditional banks however, have become more risk averse and have sought to manage their balance sheets, avoid weaker sectors and shift to lower-risk property deals. More recent crises such as the Covid-19 pandemic, rising inflation and worries over the strength of the economy have escalated this trend.

These factors have resulted in access to traditional finance becoming more challenging for many, particularly for those looking to restructure debt where there is a greater level of distress.

For example, last year less than half of the debt-funded deals brokered by our sister company for the purchase of operational real estate in the SME and small corporate space were through mainstream traditional lenders, compared with over 80% before the GFC. This increased appetite and growth in funding for higher-risk debt has created more opportunities for restructuring professionals when assisting clients, as they can leverage alternative funding sources to address complex financial situations.

Moreover, higher-risk lending inherently carries a higher probability of default, which also presents opportunities for restructuring professionals.

Rapid access to funding

Alternative funders have a greater risk appetite, more flexibility around interest coverage and loan-to-value (LTV) covenants and can approve loans in a quicker timeframe than many of their peers. They offer tailored financing options, including whole loans, bridge loans and mezzanine financing. This has afforded flexibility and rapid access to funding, which is crucial in turnaround and restructuring scenarios, particularly when a business is on the brink of insolvency.

Their evolution has widened the pool of funders who can offer debt solutions outside of traditional risk parameters. However, practitioners will need to make a compelling case in order to access such funding, with a comprehensive business plan outlining the strategy for achieving financial stability, including detailed budgets, a line of sight as to how the funds will be used, and evidence that management is capable of delivering the change.

> **Loans not being repaid at maturity was the most common reason for default. The knock-on effect is likely to see increasing demand for restructuring and insolvency services from both debt funders and directors**

Lending against operational real estate where there is distress has been predicated by steeper pricing to reflect risk, with some borrowers holding assets financed through alternative lenders at higher LTV ratios than traditional lenders.

An era of ultra-low interest rates from mid-2009 saw the proliferation of fixed-rate loans that enabled businesses to lock in and enjoy the benefits of cheap money. According to M&G Investments' Global Real Estate Outlook 2024, nearly 40% of outstanding UK commercial property loans would mature in 2024 and 2025. Many of the loans that have matured were agreed at much lower interest rates than were available at expiry, and the outlook is that refinance rates will continue to be higher for loans maturing during 2025.

The maturity of fixed-rate loans has created challenges for businesses needing to refinance or restructure. Higher interest rates and inflationary pressures have eroded operating margins for many businesses and impacted profitability. This in turn has had an impact on the value of operational real estate whereby a decline in EBITDA has effectively pushed LTV ratios higher, making it harder for borrowers to meet the criteria of some lenders. This has created a funding gap between refinancing requirements and the availability of debt funding, limiting how much debt a borrower's underlying trading assets can support. For a funder to accept a level of risk with the upside of an equity stake in supporting the business, it is crucial for the restructuring professional to be able to demonstrate that there is a viable plan for the business to overcome its problems and restore financial stability.

For a restructuring professional, this could mean walking into a situation where if a refinance is not viable then an asset sale may be the only option. However, the erosion of EBITDA will have an impact on the value of a trading business. The practitioner will need to establish what the business will achieve if it is sold to ascertain if the debt can be repaid. Consideration may need to be given to the closing value of the asset after trading. The cost of running the business, if it is loss-making until a sale is completed, may return a lower recovery for creditors than if it is sold closed.

Kick the can down the road

According to the Bayes Real Estate Research Centre, the debt funding gap in the UK commercial real estate sector between 2022-2026 is estimated to be £27-37 billion. The report further states that the debt funding gap represents approximately the annual new lending capacity of UK debt funds.

Where trading property values have declined, we have seen less appetite from lenders to crystalise their losses through forced sales or foreclosure. One solution to bridging the gap is to extend existing loan facilities with the aim of resolving the situation later. At a time when the cost of capital is still relatively high, despite interest rates starting to come down from a 16-year high of 5.25%, an extension to pay off burdensome debt will kick the can down the road, particularly if the cost of servicing it does not reduce materially in the short to medium term. The speed and

pace of anticipated interest rate reductions will be critical for the survival of the most heavily indebted borrowers.

According to the Bayes Business School's Mid-Year 2024 Commercial Real Estate Lending Report, the volume of UK real estate loans in default or breach of covenants reached £7.3 billion at the start of the second half of 2024, of which £3.7 billion of loans were in default and a further £3.6 billion in breach, as elevated interest rates continued to put pressure on borrowers. The total default figure represented 4.9% of all outstanding UK real estate loans, up from 4% at the end of 2023, but is still significantly lower than the 2010 peak of 25%. Moreover, the report said that loans not being repaid at maturity was the most common reason for default. The knock-on effect is likely to be increasing demand for restructuring and insolvency services from both debt funders and directors. This will drive an increase in both turnaround and restructuring assignments, and company insolvency processes where rescue is not viable.

High cost of capital: the speed and pace of interest rate reductions will be critical for the survival of the most heavily indebted borrowers.

Large runway for borrowers

Loan facility extensions are often subject to valuation to ascertain whether trade and LTV will support an extension, and we have seen a rise in the number of valuations that we have undertaken in this scenario. In instances where funders will not lend due to a valuation not stacking up because of the level of borrower stress or distress, the only option may be to sell assets to repay debt.

> **2025 is likely to be particularly challenging for a swathe of SMEs already operating on the thinnest of margins as a hangover from inflationary pressures and the higher cost of servicing debt**

Notably, we saw an increase in the number of consensual sale mandates in 2024 where directors were actively attempting to refinance while marketing their businesses for sale. In some cases, the decision to sell was driven by the incumbent lender offering forbearance as leverage over a borrower to ensure the potential for more than one route to exit the relationship. This behaviour was most prevalent when confidence in the ability of a borrower to refinance was low.

We have seen different behaviours towards borrowers across the debt funding scene, with traditional lenders generally affording greater forbearance by providing a longer runway for borrowers to restructure or refinance compared to alternative lenders who have been quicker to appoint administrators or receivers to enforce their security and sell assets to recover their loans.

Despite enduring operational and cost challenges, SME and small corporate operators have shown resilience in recent years and looking forward, there are some good fundamental conditions to be positive about. The UK debt market is more diverse than it was during the GFC, with a much wider array of investor types and alternative funders offering creative solutions to adapt to market conditions and needs. The expectation is that interest rates will continue to fall during 2025, and inflation will stabilise, which has the prospect of boosting levels of activity. Although mainstream traditional lenders are still relatively cautious, it is hoped they will improve their lending appetite, and that alternative lenders and new entrants will continue to focus on niche areas of lending.

Double the liability

Looking at the macroeconomic landscape, 2025 is likely to be particularly challenging for a swathe of SMEs already operating on the thinnest of margins as a hangover from inflationary pressures and the higher cost of servicing debt. Any relief from interest rate cuts is likely to be afforded through reductions in small increments over a prolonged period and will therefore be burdensome to them in the short to medium term.

Businesses will be further challenged by the tax measures imposed in the Labour Party's November 2024 budget. These include, from April 2025, an increase in employers' national insurance contributions and the national living wage and minimum wage, and a reduction of business rates relief from 75 to 40%, which will effectively double the liability for retail and leisure operators.

These cost challenges will impact the operational viability of the weakest businesses leading to decreasing loan serviceability, business distress and failure. While the alternative funding market will be able to take up some of the refinancing slack, we will see more non-performing operational real estate coming to the market both consensually and through insolvency, as exit-by-asset sales will be the only viable option. This will create opportunities for well-funded and experienced operators, speculative investors and private equity waiting for distressed opportunities to emerge, driving both restructuring and deal activity.

Stephen Jacobs is director of bank support and business recovery at Christie & Co

Renegotiated leases could trigger unexpected charge

Upcoming financial reporting changes mean careful timing and documentation will be needed when remeasuring lease liability post-appointment, says **Matt Webb**

A significant change is coming for FRS 102 reporters with the removal of the distinction between operating leases and finance leases for lessees. As well as impacting the financial metrics that underpin matters such as debt covenants and the ability to raise finance, the change to accounting for leases could result in additional taxable income when varying or exiting a lease, which may create complications in restructuring or insolvency situations.

Care needed: without tax losses available, if a lease is terminated post-appointment, the resulting corporation tax could be an expense of the administration or liquidation

What is changing?

Currently, a lease is classified as an operating lease if it does not transfer substantially all the risks and rewards of ownership to the lessee. (For example, this could be the rental on an office building where there is no expectation of ownership at the conclusion of the lease). Where a lease is classified as an operating lease, the lessee recognises a rental expense in its profit and loss account.

> **Where a lease is onerous, under the new accounting approach a lessee is likely to record an impairment of its right-of-use asset**

A finance lease is one where substantially all the risks and rewards of ownership transfer to the lessee. For example, the lease of a lorry is likely to be a finance lease if the lease transfers ownership of the asset to the lessee at the end of the lease term.

Broadly, the amendments to FRS 102 require recognition of a lease by reflecting the right to use the underlying asset (right-of-use asset) and a lease liability reflecting an obligation to make lease payments. This change largely aligns with IFRS 16 and applies for periods of account commencing on or after 1 January 2026.

As with 'normal' tangible assets, the right-of-use asset should be depreciated in the lessee's accounts. The lessee initially measures the lease liability at the present value of the lease payments. Over time the lease liability is increased to reflect interest arising on the lease liability and reduced to reflect the lease payments made. The interest cost is included in the profit and loss account. The lessee's total 'lease expense' in its accounts therefore equals the depreciation plus the finance expense.

While the cumulative expense over the term of the lease should remain the same under this new accounting treatment, there is likely to be a significant timing difference. For example, the rental expense on an operating lease under the 'old' FRS 102 should be the same year on year, whereas the interest cost on the lease liability is likely to be higher in earlier periods and reduce as payments are made to reduce the lease liability (like a mortgage).

Taxation for lessees

In general, the corporation tax treatment should follow the underlying accounting. The new depreciation charge and finance expense should be deductible when calculating trading profits. This could provide a tax cash flow benefit, with the lease expense likely to be higher in earlier periods compared to the previous straight-line rental expense.

A key exception to the deductibility of the depreciation expense is where it includes amounts that are considered capital. This could include the capital element of a lease premium or a predicted dilapidations provision (for example amounts set aside to repair the asset at the end of the lease). The capital element is added back when calculating trading profits (HMRC have a worked example of this in their manual at BLM51015).

The other main exception is the corporate interest restriction (CIR), which restricts a company's tax deduction for its interest expense based on its tax-EBITDA (subject to a de minimis deduction of £2 million per annum, per group). When calculating its interest expense and tax-EBITDA for CIR purposes, the lessee is required to distinguish between finance leases and operating leases. Absent a change in the law to allow lessees to follow the amended accounting, lessees are likely to be required to maintain separate records solely for CIR purposes.

These changes therefore introduce new requirements and record-keeping obligations for a company and will be of interest to finance teams, accountants and tax advisers. However, a change such as this also has consequences for restructuring projects, which commonly include changes to leases.

An upside of onerous leases

Where a lease is onerous, under the new accounting approach a lessee is likely to record an impairment of its right-of-use asset (for example where the external market for retail space has declined and the value of a leased building to the retailer (the lessee) is lower). This impairment is effectively accelerated depreciation and, following the principles set out above, should be deductible when calculating trading profits (subject to any adjustment for capital elements such as a lease premium).

> **"When assessing the consequences of a restructuring project where a company has leases, attention needs to be paid to the relative values of the right-of-use assets and lease liabilities on the balance sheet"**

Therefore, where a company is in the unfortunate position of needing to impair a lease, the impairment testing approach is likely to result in a company receiving tax relief earlier.

Sting in the tail

While the right-of-use asset has been impaired, the lease liability is untouched. In a scenario where a company holds the lease to term, the impact of the impairment is effectively to accelerate tax relief by allowing an earlier tax deduction for the depreciation, though with reduced tax relief in later periods in the absence of that depreciation charge.

This may have limited implications if holding the lease to term, but what happens if a company is released from all or part of its liability under the lease?

If the leased asset is of lower value as implied by the impairment, a company may seek to vary the lease or terminate it early. Such a renegotiation is likely to result in an accounting credit recorded to the profit or loss account as the lease liability is remeasured or derecognised. This accounting credit should be taxable.

As a company receives a tax deduction for the impairment of the right-of-use asset, the corollary of clawing back the relief if the future payments are subsequently reduced seems reasonable.

However, there is a potential impediment to achieving parity in the form of the UK's corporate loss restriction rules. Very broadly, these rules limit the amount of brought forward tax losses a company can use in an accounting period to the relevant maximum of its deductions allowance (£5 million per annum per group), plus 50% of its qualifying profits above this amount. A company could therefore receive a deductible impairment expense in an earlier period resulting in carried forward trading losses and not be able to fully utilise these trading losses to shelter a taxable credit arising from a remeasurement of the lease liability in a later period.

Solutions and further complications

Following various representations via R3's Tax Committee, the rules were amended in 2017 (and consequentially tweaked in 2022 following the introduction of IFRS 16) to allow a company to increase its deductions allowance by an amount equal to the reversal of an onerous lease provision or a relevant remeasurement credit. To qualify for this extension the renegotiation of the lease has to be via either a "statutory insolvency arrangement" (including a CVA, restructuring plan or scheme of arrangement) or an insolvent administration or be part of a corporate rescue (broadly that there is a material risk that at some point in the next 12 months that the company will be unable to meet its debts as they fall due).

This legislative amendment resolves the issue for many parties, though in two respects is not a complete solution.

Firstly, attempting to renegotiate consensually outside a process may still cause significant tax liabilities. For example, if renegotiating multiple leases in succession with different underlying asset owners, is there a point when the company no longer meets the corporate rescue exemption with no increase in the deductions allowance for leases renegotiated after that time?

Secondly, the company may no longer have the tax losses from an earlier impairment either because it has already used them to shelter earlier taxable profits or because the losses have been extinguished (for example on cessation of trade). Without the tax losses being available, the variation or termination of a lease could result in an unexpected corporation tax charge, which the company might not have the cash to pay. Further, if the lease is terminated post-insolvency appointment, any resulting corporation tax could be an expense of the administration or liquidation.

To pick up the timing point, in an insolvency, the respective powers of an administrator and a liquidator may provide a potential solution. Where a lease is deemed 'onerous', a liquidator can disclaim it. While administrators do not have the same rights to disclaim a lease, the moratorium on legal action against the company by creditors and the requirement to pay a day rate if the administrators continue to use the property for the purpose of the administration are likely to result in a remeasurement of the lease liability.

Therefore, in both cases, there is an argument that the lease liability is remeasured at appointment and that any resulting taxable credit should fall in the accounting period that ends on either the company entering administration or the commencement of winding-up. This might help when a company ceases to trade at appointment and has unused trading losses at that time. It also may mean that any corporation tax liability arising is a pre-appointment liability.

The time at which to remeasure the lease liability will need careful consideration and documentation to support the corporation tax filings.

In short, when assessing the consequences of a restructuring project where a company has leases, attention needs to be paid to the relative values of the right-of-use assets and lease liabilities on the balance sheet. The renegotiation (or termination) of leases can result in accounting credits and care needs to be taken to ensure that this does not result in an unexpected tax charge that a company does not have the funds to settle.

Matt Webb is a director at Teneo and leads the firm's tax compliance team

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Avoiding SRA intervention paramount as insolvencies rise

With a law firm entering an insolvency process every week, a tailored, flexible restructuring solution is needed to ensure orderly closures, says **David Johnstone**

The Solicitors Regulation Authority (SRA) has significantly ramped up its analysis of law firms' financial health following the collapse of Axiom Ince Ltd. The law firm's closure was particularly high-profile and exposed some severe regulatory gaps.

Axiom Ince fell into financial turmoil due to an alleged large-scale fraud involving misappropriated client funds. The fallout has triggered a broader regulatory response, with the SRA introducing stronger financial monitoring on firms in the hope of mitigating the risk of similar incidents.

A key change includes conducting unannounced spot checks to assess law firms' financial status and their compliance with the rules governing client accounts. These checks aim to identify potential warning signs. These may include liquidity issues, improper use of client funds, and financial mismanagement before they spiral out of control.

Additionally, the SRA has issued updated guidance reminding firms of their obligations to replace any shortages in client accounts immediately upon discovery. This warning signals a stricter approach towards firms that fail to maintain financial integrity.

Financial strain

The SRA's crackdown comes at a time when law firms are already grappling with rising financial pressures. Recent increases in national insurance contributions will add to firms' operating costs. This could make it even more challenging for small and medium-sized practices to maintain profitability.

At the same time, the upcoming professional indemnity (PI) insurance renewal period is expected to cause issues for some. While commentators report the market has continued to soften, for an element of the law firm market the recent collapses of firms such as Axiom Ince have led insurers to become more cautious about offering terms to firms undertaking some types of work. This could potentially lead to stricter underwriting criteria and higher costs for some law firms. Many firms have already struggled with rising PI premiums in previous years, and this trend is likely to continue as insurers assess risks more conservatively.

SRA process

If the SRA identifies financial risks within a law firm, they may choose to intervene. The SRA intervention process involves the appointment of an intervention agent who takes control of the firm's client files. Their primary responsibility is to ensure that client files are secure and will advise clients to seek representation from another law firm to whom they will, with the client's authority, transfer the file.

The SRA's priority is client focused and is not about protecting the firm's creditors. From everyone's perspective, avoiding an intervention is paramount.

How can firms avoid intervention?

Law firms can avoid SRA intervention by maintaining strong financial controls, ensuring compliance with the SRA's accounts rules, and handling client funds with complete transparency. This includes obtaining accountant reports within the required timeframes and submitting them when necessary, particularly if any findings suggest financial risk.

> "Unless dual-qualified as a solicitor, an IP cannot take control of a law firm post-appointment"

Retaining an experienced IP and tackling underlying issues promptly can demonstrate to the SRA that intervening in the practice is unnecessary. In some instances, this may involve voluntarily closing or restructuring the firm to address challenges.

Legal firms represent a growing market for the restructuring profession. According to figures from the Insolvency Service more than one law firm was entering an insolvency every week, with 61 firms entering a formal process in the year up to 31 March 2023.

Delivering prescribed legal services means that, unless dual-qualified as a solicitor, an IP cannot take control of a law firm post-appointment. In addition to dealing with the SRA, handling law firm clients, file archiving requirements, client monies and disbursement providers all add to the challenges an IP faces when seeking to ensure a sale at undervalue is avoided.

IPs could look to collaborate with a niche service provider to discreetly facilitate the sale of a firm's cases to other solicitors. This approach minimises risks for the purchasing firms while maximising the value recovered from work in progress and ensuring compliance with the SRA. It is important to determine costs, such as those for legal agreements. Structuring a bespoke suite of legal agreements will be expensive, and partnering with an outsourced service will minimise costs through the use of existing legal architecture.

The transfer of electronic data and paper files requires careful handling of law firm client data, so knowledge of, and a relationship with, those granting IT licences for legal firm matter management and accounts packages can help avoid being held to ransom. It may be possible to avoid expensive upfront broker fees by partnering with a service provider that defers their fees and aligns them with a successful outcome.

In many situations, there will be a need for IPs to involve a solicitor manager to work alongside, dealing with client issues, client account balances and the SRA, all of which a niche partner can advise and assist on.

In this new and highly scrutinised environment for law firms, a flexible and tailored restructuring solution will be needed to ensure that firms can be closed in an orderly manner and without the difficulties inherent in SRA intervention.

David Johnstone is managing director at Recovery First, david.johnstone@recoveryfirst.co.uk, 07887 796 989

Buying time with funders could create more options

Amid increased levels of distress and potential insolvency in the hotels sector, if an exit is prepared for, then value can be preserved, says **Mathew Griffin**

The enforced lockdowns and government interventions of March 2020 do not feel like five years ago. It is easy to remember the assumptions made about mass distress and hotel closures, but those did not happen due to government initiatives and unintended factors such as the considerable growth in forced staycations into 2022 and 2023. Additionally, approximately 300 hotels remain 'offline' for government use to house asylum seekers, which in some locations has reduced capacity and artificially increased demand.

Hotels and the wider hospitality industry remain a key sector for the UK economy, making direct contributions of over £90 billion in revenue and holding status as one of the top five employers in all regions. In general, hotels have enjoyed a better time during the post-internet decades than, say, retail or pubs and restaurants. A combination of freehold equity, better margins from accommodation revenues and direct benefits from online sales have added value to the industry, notwithstanding the high cost of the monthly Booking.com invoice.

Despite seemingly perpetual challenges, the data points to the number of hotels in administration remaining flat to 2019. So, accommodation providers have mainly come through the challenges of the last five years unaffected. However, we are now starting to see signs of increased distress. To focus closer attention on where we see this – we are talking mainly about small privately owned and operated groups, or standalone assets with conventional bank loan funding where, during the pandemic, the bank's covenant letter was filed in the bottom draw and any breaches mutually written off. Within that subset of assets, there are many branded and franchised operations.

What are the challenges?

So why are we now starting to see increased levels of distress and potential insolvency? And, more importantly, what are the solutions to protect all stakeholders and benefits, including the nationwide employment?

The factors influencing an increase in distressed hotel trading and potential insolvencies will not come as a huge surprise to the *Recovery* readership:

- Inflationary cost increases across all supply lines, despite slowing inflation.
- Payroll increases (national minimum wage, national living wage, and maintaining the differential to supervisory staff), national insurance contributions increase, and the secondary threshold decrease from 6 April, which is ongoing annually.
- Volatile top-line revenues and pressured consumer discretionary spending. This means that building the climbing costs into pricing where demand is poor is not always possible.
- Built up arrears/losses from the last five years. With covenant breaches often mutually ignored, normalising balance sheet distress by the re-introduction of financial tests will create pressure.
- Hotels that have been in government contracts for several years are returning to conventional use, which is location-specific, but this could create almost instant competition and further dilute demand.
- Over the next 18 months, there will be very high hotel loan maturities.

In addition to these new and immediate pressures, we see a desire from funders (banks, challengers and alternatives) to grow their loan market share in the sector, which is positive if refinancing is achievable and sustainable.

However, many businesses have benefited from funder lethargy and patience – a legacy of the pandemic support culture. Where loans have been supported either by payment breaks to capital only, or government-backed packages (bounce back loans, coronavirus business interruption loans) are coming to the end of term, the client will likely see a very different attitude towards, and metrics for, refinancing. This new reality from the incumbent lender will be mirrored in any alternative options, and a business with losses and underinvestment will not be seen as attractive or viable.

Solutions to these pressures?

The positive outlook is that there are several asset managers in the market today who specialise in distressed hotel turnaround and workouts, and are adept at assessing the situation and detailing a feasible trading or closure plan.

There are several options that can mitigate the challenges, if undertaken in a timely fashion. For example, the seasonal uplift is now upon us. Key to successful action will be a review of management forecasts and implementation of robust reporting and ongoing monitoring. Cost increases can be mitigated over the next few months as revenues and margins peak, allowing for a medium-term view over winter and the next 12 months, linked to business planning, forecasts and cash flows, which will increase options.

A third party engagement would instantly bring broader service expertise and outsourcing opportunities without a long-term commitment to payroll and contracts for the trading business. For example, finance/bookkeeping/payroll and HR can typically be outsourced for half the cost of an employed team.

All executive and director disciplines could be reviewed, from sales and marketing to safety/regulatory compliance, which would assist in taking a lot of emotion and reactive behaviour out of decision making.

We are seeing an appetite from new acquirers in the sector. If an exit is prepared for, then value can be preserved. This is not an overnight process; however, action towards stated objectives and timelines will give a funder comfort and buy time to create options.

Mathew Griffin is managing director at Assured Hotels, info@assuredhotels.co.uk, 020 3916 5658

Fraud and the profession's role in tackling financial wrongdoing

R3 Fraud and Asset Recovery Group (FARG) members share with **Lyle Horne** their experiences of using insolvency powers to recover huge sums for victims

Fraud and financial wrongdoing might not be the first thing that comes to mind when considering the profession's day-to-day activities. However, many R3 members play an important role in uncovering fraud, disrupting criminal activity and returning money to victims.

IPs and their lawyers use forensic accounting, asset tracing and legal powers to recover misappropriated funds and hold fraudsters accountable while restoring dissolved companies, pursuing litigation and securing freezing orders to help reclaim losses. Their expertise is essential in tackling corporate fraud, VAT scams, and investment frauds.

HMRC is often the main victim, prompting a recent government crackdown on 'phoenixism', which involves the use of contrived insolvencies to evade taxes and other liabilities. The chancellor's spring statement and last year's Budget both mention plans to tackle phoenixism by increasing coordination between HMRC, Companies House and the Insolvency Service.

R3's policy and public affairs work is vital to promoting the profession's role in this space. Recent engagement with the All-Party Parliamentary Groups (APPGs) for fair banking and investment fraud, as well as R3's own Public Sector Faculty, have revealed the importance of data sharing between organisations, something that has come into sharp focus with the Government's drive for closer interagency collaboration.

Central to this work is the R3 FARG, which meets quarterly to discuss the profession's role in fraud disruption. Co-chaired by Frances Coulson and R3 council member Malcom Weir, the group is made up of IPs and lawyers who have extensive experience in this area.

We asked members of the group to tell us more about some of the fraud cases they work on. Here are just some of their experiences:

Malcolm Weir, former director of Restructuring & Insolvency at the Pension Protection Fund was responsible for managing the fraud compensation fund on behalf of the Department for Work and Pensions. His team collaborated with insolvency professionals in the UK and overseas to recover pension funds misappropriated by dishonest trustees. Many victims were lured into transferring their secure pensions into high-risk, illiquid investments – including speculative developments and storage pods – while incurring excessive fees. One of the most prominent cases is Norton Motorcycles, a scandal that has drawn parliamentary scrutiny. Malcolm's work ensured that pensioners who fall victim to fraud receive some level of compensation.

> **Enough funds were recovered to cover reduced fees and provide victims with a dividend**

Frances Coulson, head of insolvency and restructuring at Wedlake Bell, recalls a case where elderly victims were defrauded into paying large sums for non-existent or substandard roof repairs. The fraudsters laundered £1.5 million through two companies before dissolving them to avoid liability. With support from Trading Standards and their families, some victims allowed insolvency professionals to petition for the companies to be restored and wound-up. Working with a liquidator, Frances' team successfully pursued the directors, who had hidden assets in Ireland. Despite the Irish authorities having already imposed confiscation orders, enough funds were recovered to cover reduced fees and provide victims with a dividend, offering both financial relief and validation of their experiences.

Jason Freedman, partner at Gowling WLG, is acting in one of the largest insolvency-related fraud cases in recent years. He represents Transworld Payment Solutions UK Limited (in liquidation) and its liquidator, Stephen Hunt of Griffins, in a £225 million claim against First Curaçao International Bank NV and others. The case involves MTIC (Missing Trader Intra-Community) or VAT carousel fraud, a scheme that exploited tax loopholes in the early 2000s. It is claimed that large volumes of mobile phones and computer processors were imported while VAT was evaded. It is alleged that First Curaçao International Bank knowingly facilitated fraudulent transactions by providing banking services to the companies involved, while Transworld Payment Solutions helped onboard these clients. The case is set for trial in March 2025 and will be a landmark in financial fraud litigation.

Louise Brittan, head of restructuring and insolvency at Azets, highlights a striking case involving an individual engaged in payroll fraud, illegal immigration of care workers, modern slavery, and operating as an unlicensed accountant. While Louise was appointed as an interim receiver, a search order was executed and funds were traced through a network of businesses and bank accounts. The debtor's non-cooperation led to an 18-month custodial sentence for failure to deliver up records and misleading the court. Funds were successfully traced into property interests, and a return to creditors is anticipated – showcasing how insolvency powers can halt ongoing criminal conduct.

Elizabeth Metliss, managing associate at Mishcon de Reya, led efforts to recover over €90 million (£78 million) for a client defrauded of €100 million. Through freezing orders, Insolvency Act applications, and cross-border litigation, her team secured convictions, including a private prosecution, and significant asset recoveries.

If you would like to get involved in FARG's work, please contact lyle.horne@r3.org.uk.

Lyle Horne is R3's policy and public affairs officer

Broadening horizons at the Insol conference in Hong Kong

The event provided rewarding discussion on the profession's ability to evidence jobs saved and boost the economy, but hard work still goes unseen, says **Caroline Sumner**

All R3 members are automatically eligible for Insol International membership. As R3 is the largest member association within Insol International, I, as its CEO, and the R3 president are in the fortunate position of being invited to attend the Insol International conference on behalf of members. And so, March saw us on a 15-hour flight to Hong Kong.

The conferences are delivered on a grand scale – over 900 delegates from 48 countries and multiple events taking place at the same time. The main programme this year, which ran over three days, included sessions on a range of topics from AI and its development as a tool for restructuring and insolvency professionals, to global perspectives on third-party releases.

A difficult sell

I was invited to take part in the 'Insol International and World Bank Group Legislative and Regulatory Colloquium' and to join a panel discussing whether the insolvency profession created, improved or preserved jobs. The consensus was that it did all three, but without data to support this, our claims of the value of the profession are a difficult sell to policymakers, economists and governments around the world.

Currently, the only report seeking to quantify the impact that the restructuring and insolvency profession has with regard to saving jobs is R3's 'Value of the Profession' report from 2021. This report is held in high regard worldwide as the only source of such data and we would like to repeat our research over the coming year, working with the profession to provide evidence of the value added to the overall economy.

The panel discussion concluded that saving jobs should not be a set policy aim of governments when devising effective restructuring and insolvency frameworks, nor a measure on its own when assessing the merits and effectiveness of insolvency processes such as administration and restructuring plans. We will be liaising with contacts from those countries in attendance over the coming year to identify common methods for data collection and protocols for future reports and studies.

> **"The challenge of getting legislators to recognise the importance of effective legislation, that works in practice, is a problem faced around the world"**

The Colloquium was an opportunity to mix with policy makers, legislators and regulators from across the globe.

Positive stories

The other key theme that stood out for me was a recognition that we need to ensure that those responsible for setting government policy understand the value of the work done by the profession. There seems to be a global reluctance by the profession to share positive stories to demonstrate the value of the work that goes on. Addressing that issue, and effectively promoting the hard work that currently goes on unseen, is something we need to achieve.

Tim Cooper and I also spent a day at the member association roundtable with 15 other associations to discuss common themes and challenges. The member associations represented ranged from newly formed groups of fewer than 100 members to those such as ARITA from Australia and CAIRP from Canada, with memberships similar to our own. Discussions included how to deliver value for members, ways to ensure effective lobbying, how to promote members' work and what makes an ethics code. I value the connections that I have made from previous roundtables and regularly catch up with my international counterparts, ensuring that you, our members, benefit from those discussions.

Pictured (left to right): Fiona Foong, Sophia Harrison, Dania Slim, Sy Nae Kim and Karen Petch take part in a panel at the International Women's Insolvency and Restructuring Confederation session

Finally, before I came home, I attended the International Women's Insolvency and Restructuring Confederation conference linked to the main conference. This was a further opportunity to hear from a range of expert speakers, including R3's Scotland Council member Sophia Harrison, and also a small but enjoyable opportunity to do some guided sightseeing in Hong Kong itself.

You may not be involved in international restructuring cases on a daily basis but the opportunity to raise our heads from our desks and look around us at what is going on within the profession on an international scale is something from which we can all learn.

Caroline Sumner is R3's CEO

Insol International membership for R3 members

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Influencing reform in a changing economic landscape

The Government is escalating the fight against fraud and seeking change to the personal insolvency framework. R3 stands ready to respond, says **Céara Roopchand**

As the UK continues to navigate a shifting economic landscape, the restructuring, turnaround and insolvency profession is playing an increasingly vital role in shaping national policy.

R3's Annual Parliamentary Lunch took place at a pivotal time, set against the backdrop of the UK Government's spring forecast and fresh tariff announcements from the United States. The event offered an opportunity for reflection on the economic challenges facing the UK and the profession's role in supporting national recovery and resilience.

Tim Cooper opened the event with a speech that was both reflective and forward-looking. He highlighted the profession's unwavering commitment to supporting businesses and individuals through times of financial difficulty.

The keynote address was delivered by *Financial Times* markets columnist Katie Martin, who examined the impact of changing US trade policy and how it is altering the UK's economic prospects. Her remarks offered a global perspective, underscoring the importance of adaptive economic and regulatory strategies in an increasingly interconnected world.

This year's attendees included a cross-party group of parliamentarians, such as shadow business minister Lord Sharpe of Epsom and Liberal Democrat treasury spokesperson Baroness Kramer. Their presence and engagement reflected a growing recognition in Westminster of the profession's importance – not just in times of crisis, but as a cornerstone of the UK's economic infrastructure.

The lunch reinforced the value of open dialogue between the profession and policymakers. It also demonstrated R3's continued commitment to promoting a profession that supports financial stability and economic regeneration across all sectors and regions.

Fraud climbs the agenda

In recent months, fraud has surged to the forefront of political and regulatory priorities. The spring statement included a significant escalation in HMRC's anti-fraud efforts, with a planned 20% increase in annual charging decisions for major tax fraud. The focus will be on cases involving wealthy individuals, large corporates, and organised crime.

HMRC, Companies House, and the Insolvency Service have launched a joint strategy to target those misusing insolvency processes to evade tax. Key measures include upfront payment demands and enhanced director liability.

Fraud minister Lord Sharpe of Epsom has since announced that an expanded fraud strategy will be unveiled later this year as part of the government's 'plan for change'. A central focus of the new strategy will be tackling tech-enabled fraud, including risks posed by AI and other emerging technologies.

R3 has been actively involved in these discussions. We recently participated in a roundtable hosted by the All-Party Parliamentary Group (APPG) on Fair Banking, which focused on the Authorised Push Payment (APP) Fraud Mandatory Reimbursement Regulation. With APP fraud now costing the UK economy £400 million annually, the session explored the regulation's current effectiveness and how protections for consumers and businesses can be further strengthened.

R3 also attended a parliamentary reception to mark the launch of a new report, 'APP fraud – who bears the burden?', which highlights the challenges and responsibilities across the financial services ecosystem. Looking ahead, we will be contributing to the upcoming parliamentary Fraud Summit and will continue to use our Fraud and Asset Recovery Group to provide expert input into the government's developing strategy.

Reviewing personal insolvency

Alongside efforts to tackle fraud, the government is pressing ahead with its long-awaited review of the personal insolvency framework – a system that has seen little structural reform in nearly 40 years.

The Government's 2023 call for evidence prompted strong engagement from the profession. The responses demonstrated a need for a personal insolvency regime that is clearer, more consistent, and better equipped to meet the challenges of the modern credit landscape.

With personal debt levels rising amid ongoing cost-of-living pressures, the review represents a timely opportunity to reform how individuals in financial difficulty are supported. It also raises important questions about how the system can better balance the needs of debtors and creditors alike.

> **"Our focus remains clear: ensuring that restructuring, turnaround and insolvency professionals have the tools, recognition, and support needed"**

Working with our Personal Insolvency Committee, members have fed directly into discussions with senior officials at the Insolvency Service. Their contributions are informing the development of policy recommendations to be presented to minister Justin Madders MP.

To support this, R3 is also drafting a comprehensive policy paper setting out our vision for a more effective personal insolvency framework – one that supports fair outcomes and ensures the system is fit for the future.

We now await the next phase of the review. An update from the Insolvency Service is expected this summer, after which proposals will be shared with the minister for consideration. A public consultation is likely to follow, and R3 stands ready to respond – drawing on the depth and breadth of expertise within our membership.

As the economic outlook remains uncertain, our focus remains clear: ensuring that restructuring, turnaround and insolvency professionals have the tools, recognition, and support needed to deliver positive outcomes for businesses and individuals.

Céara Roopchand is policy and public affairs manager at R3

Creating an inclusive environment

Covering everything from collective action to fintech insolvency, R3's events in early 2025 provided a forward-thinking platform for all, says **Amelia Franklin**

From dynamic discussions at our diversity and inclusion roundtable to new technical resources and upcoming events, R3 is continuing to create opportunities that support you, our members, at every stage of your career. Here is a closer look at what we have been up to and what is to come.

New guidance, new joiner

R3's technical team has collaborated with HMRC to publish a joint guidance paper. This guide sets out a clear approach for handling tax issues in personal insolvency for both HMRC and insolvency practitioners. The guide is the result of many years of work with HMRC and is an important resource for ensuring consistency in practice. You can find the guide to dealing with tax in bankruptcy on the R3 website.

> **The Contentious Insolvency and Creditors Forum returns this June with Mr Justice Leech delivering the keynote session**

In other technical news, we are pleased to welcome Beth Redfern as R3's new technical manager. Beth brings several years of experience from RSM's technical team, and her fresh perspective will make a real difference to our work. All technical inquiries should be directed to r3technicalteam@r3.org.uk, to help us make sure every request is handled quickly and efficiently.

Events that educate

We held our flagship event, the Annual Conference, in Malta in May, providing a platform for forward-thinking sessions on topics ranging from the challenges faced when fintech firms enter into insolvency and how AI is being used to transform the work that restructuring, turnaround and insolvency professionals do, through to proposed regulatory changes and shifts in the global economy. The conference provided a forum for discussion and debate

> **In the Eastern region, Cecilie Fjellhøy shared her inspiring story as a victim of romance fraud, discussing the power of speaking up and supporting victims**

under the theme of: "Embracing change – shaping the profession to be fit for the future". These conversations sparked a lot of interesting ideas and set the tone for a dynamic conference.

The Training Academy team are busy developing programmes for their upcoming forums. The Contentious Insolvency and Creditors Forum returns this June with Mr Justice Leech delivering the keynote session. In July, the 19th annual R3 and Insol Europe Conference will bring together UK and European professionals exploring trends and challenges in cross-border restructuring and insolvency. These events are usually a sell-out and we look forward to seeing you there.

Building on our support of our new professional members, we will be bringing the New Professionals Forum to Birmingham this July. We are analysing the results of our recent New Professionals Survey, so the timing of this event could not be better. The survey sought views of younger professionals on common entry routes into the restructuring, turnaround and insolvency profession through to the challenges of ongoing professional development. We will share a closer look at the results in the next edition of *Recovery*.

Celebrating International Women's Day

R3 celebrated International Women's Day in March with a number of events, each with its own unique focus. In the Eastern region, Cecilie Fjellhøy shared her inspiring story as a victim of romance fraud, discussing the power of speaking up and supporting victims. In the Northwest Seb Randle, head of allyship at Bloom North, spoke about how empathy and inclusion depend on collective action. Nearly 180 delegates also tuned in to our national webinar with Liesel Annible, who shared her insights and experiences gained throughout her career in forensic accounting.

As well as our events, we were pleased to secure an International Women's Day feature for R3 CEO Caroline Sumner in *Insolvency Insider*. The Q&A interview offered personal insights into Caroline's career, as well as exploring how barriers are being broken down in the profession and how firms can better support women throughout their careers.

Voices for change

Our focus on diversity and inclusion extends beyond our International Women's Day initiatives. In March, we brought together some of our diversity and inclusion champions for our third roundtable at Wedlake Bell's London office. The discussion covered a range of topics, from early access schemes bringing diverse talent into the profession to fair hiring practices. The ideas shared have set the stage for a further roundtable this autumn, as we continue to explore how we can create a welcoming, inclusive environment for everyone in our profession.

R3 in the media

As well as coverage from our International Women's Day campaign, our commentary on local business and insolvency trends has been featured across a range of media outlets since the beginning of the year. A story on rising liquidation debt levels in the Northeast featured in publications including the *Newcastle Journal, the Northern Echo* and *Business Link*, while stories on rising overdue invoice numbers in Scotland and Wales featured in the *i Paper, Scottish Financial News, the South Wales Argus* and *Insolvency Insider*, just to name a few.

Our comments on personal and corporate insolvency statistics have also been featured in a range of national, trade and regional publications over the past few months, including *The Times, Financial Times, The Independent*, the *Evening Standard, LBC News, The Daily Mirror* and more.

Amelia Franklin is campaigns and communications executive at R3

Southern Forum 2025

From an electrifying presentation on cyber resilience to an illuminating session on advising directors post-BHS, this year's forum was a great success, says **Neil Stewart**

From start to finish, this year's Southern Forum delivered thought-provoking insights and invaluable takeaways. Tackling today's challenges with a focus on the future, the event exemplified the power of collaboration, innovation and top-tier expertise. With the bonus of a spectacular view from the Bournemouth Highcliff Marriott Hotel on a glorious day in March, who could ask for more?

Starting with a bang

The forum opened with an electrifying presentation by William Taaffe of Lockdown Cyber Security, expertly blending entertainment with the stark reality of increasingly sophisticated cyber attacks. After terrifying us all about the rise of ransomware, he highlighted the need to have cyber resilience plans in place before you are subjected to an incident. You wouldn't plan your fire drill while the building is burning and cyber attacks are much more common than fires.

Closing the day on a similarly compelling note, former chair of the defence select committee and former government minister, Tobias Ellwood, captivated the audience with a far-reaching talk on geopolitics, with insights into the impact of alpha males such as Ivan the Terrible and … Donald Trump. He delved into UK Plc's vulnerability to cyber threats and warned of catastrophic consequences should our power or data infrastructures be compromised, thereby ending the day with a neat link between the first and final sessions, which was entirely fortuitous.

We woke the next morning to news of a fire at an electricity substation near Heathrow Airport, grounding all aircraft until midnight. Who could blame us for wondering?

Ingredients for a successful forum

William and Tobias, together, demonstrated that there is no substitute for top-notch speakers. Other features that made the Southern Forum a resounding success included:

1. Imaginative presentations. With tremendous dramatic effect, Caleb Bompas of Manolete hosted a Dragons' Den session with four contenders pitching for the audience's vote for their game-changing products. Congratulations to Michael Locke of Prism 339 on winning the coveted Champagne, with Monica Kapur and Chris Lester of IG Construct as impressive runners-up.

2. Relevant topics of practical application. The superb Joe Curl KC was joined by Kevin Parish of Evelyn Partners and James Prior of FRP, who brought to bear their wealth of experience and expertise in offering guidance, through two illuminating case studies, on how to advise directors post-BHS. A few of the key takeaways included: post-BHS, directors cannot hide behind advice; directors will be expected to test and interrogate advice; taking advice is not enough, and advisers must be fully and frankly instructed and advice must be followed if it is to be relied upon; and boilerplate is not an option – depth of understanding is essential for the adviser.

3. Concise sessions. Some speakers wanted longer but sticking to 30 to 35-minute sessions ensured presentations were focused and audiences remained engaged.

4. Diverse content. From Stephen Baister's sage advice on how to keep judges happy to Steve Baluchi's riveting first-hand account of simplifying the structure of and around The Body Shop during its extended trading and sale from administration, the forum's variety kept attendees captivated.

5. Empowering new professionals. Our new professionals at the event surpassed all expectations, with a group of them going so far as to design a pre-forum questionnaire that R3 decided was too good to restrict to the southern regions and was sent to the new professional membership nationally. Based on the results, in a well-coordinated team effort, the new professionals impressed the whole audience with their informative and thought-provoking presentation on the enhancement of communication in the workplace, career development opportunities, succession planning and much more.

6. Championing a charity close to our hearts. Just over £2,000 was raised at the evening drinks and dinner for the Ben Pavitt Legacy of Love Fund, with a wonderful update on the work of the charity by Ben's father, the inimitable Mike Pavitt.

7. Preserving time for networking. Strict timekeeping, with one or two minor exceptions, ensured ample breaks for all-important networking opportunities. James Potter, 'the LinkedIn man', encouraged us to replicate our in-person networking efforts digitally. Key message: make LinkedIn the digital version of the real you.

8. Active audience engagement. The effective use of Slido for polls and questions kept attendees actively involved and alert throughout the day.

How do you ensure that your forum will be a great success? Simple. As regional chair, pull together an organising team of energetic, well-connected, innovative and enthusiastic members in your area, and you will not go far wrong.

My thanks to the organising committee: Melia Hirst, Nick Oliver, Louise Griffin, Caleb Bompas, Mark Boughey, Mike Pavitt, Charlotte Boatman, Asa Buchanan and Richard Broekman – you were a fantastic team to work with.

Successful forum: Neil Stewart welcomes delegates to the event

Neil Stewart is R3's Southern & Thames Valley regional chairman and an associate director at Manolete Partners Plc

A running start for R3's new president

Post-inauguration, Tom Russell, licensed insolvency practitioner and director at James Cowper Kreston, discusses his career and plans for office with **Stuart McBride**

Three years at university juggling lectures and deadlines with sessions rowing on the river prepared Tom Russell for a career in restructuring, insolvency and turnaround – and for being president of R3:

"I was a rower at uni and in my 20s, and you do not play at rowing," he says. "Fitting everything in was a balancing act. I was training before work and revising for exams in the evening, but it was great preparation for a career in the profession and will probably stand me in good stead for what is in store over the next year."

Tom's 20-year career in the profession began at Buchanans, a boutique insolvency firm in Southampton that would later merge with his current employer, James Cowper Kreston. There he became a licensed IP and made his way up to become a director of the firm, working with clients across a variety of sectors including technology, retail and property.

> **It is very clear the Labour Government is keen to talk to us, keen to engage with us, and keen to hear our insights into policy and policy proposals**

It was early on in his career at Buchanans that Tom first became involved with R3: "Two of the partners were members of regional committees, and they signed me up as a 'young professional' [now new professional] member," he says. "It gave me a great opportunity to meet peers from other firms, which was particularly helpful as I was working at a smaller practice and it gave me a larger social and support network. I ended up on the Young Professional Committee, getting more involved and helping to organise events."

It was not long before he followed in his bosses' footsteps and became a member of the Southern and Thames Valley regional committee, where he was part of the group that organised the first R3 Southern Forum in 2017 under the leadership of R3 stalwart Mike Pavitt.

"It was the first time anything like that had been done in the region and it was a big success both in terms of content and attendance," he says. "It set the bar for future Forums in the region, and I'm pleased to say we managed to match it both in 2023 and this year." [For more about the 2025 Southern Forum, see page 46]

Towards the top

It was another R3 stalwart, Neil Stewart, who paved the way for Tom to join the R3 Council. Tom adds: "Neil had decided to stand as regional chair and that created a vacancy for a regional council member. I knew I wanted to become more involved with R3 and joining the council seemed like a good fit with my interest in the managerial side of things, so I put my name forward and was elected as the Southern and Thames Valley region's rep. As a council member, I also volunteered to sit on the executive committee."

A couple of years later, Tom would then find himself running for deputy vice president: "At this point, I had been involved with R3 for over 15 years and had really enjoyed contributing to the council and executive committee. I wanted to give something back, and the best way to do that was to stand for president," he says.

Starting, finishing, continuing

Now his term of office has started, R3's new president is realistic about his plans for the year ahead: "I only have 12 months, and there are some big projects in the pipeline for R3 this year as well as areas of work Tim has handed over, so I know I cannot do everything, but there are four definite areas I want to focus on," he says.

The first of his priorities is to ensure R3 leads the debate on regulation and continues the work done by his predecessors, some of whom have had a challenge engaging with parliamentarians. But since the political colours changed in Westminster, attitudes appear to have changed as well: "It is very clear the Labour Government is keen to talk to us, keen to engage with us, and keen to hear our insights into policy and policy proposals," Tom says.

> **If firm regulation is introduced, it has to be done in a way that does not hinder our ability to do the day job and any regulation changes should consider the impact on smaller practices**

"You only have to look at the fact that we met the insolvency minister very early into his term of office, that we have been invited to contribute to the Covid-19 inquiry, and the calibre of people attending the President's Lunch [R3's annual parliamentary reception] to see how the Government's attitude to engaging with the profession, and R3, has improved since the election."

This provides a potential opportunity for R3 to help shape the discussion around what the regulatory framework would look like and, hopefully, put some of the more concerning elements aside.

"I do not necessarily think a single regulator would be a bad thing as long as the right person is doing it," Tom says. "The Insolvency Service is not the right choice as there is real potential for a conflict of interest, but the right regulator could help standardise things in the profession, which could benefit everyone."

Nor is there an issue, at least theoretically, with the introduction of firm regulation, he says. "Many organisations manage regulation and compliance at a firm level in a number of areas, with anti-money laundering being one that springs to mind. If firm regulation is introduced, it has to be done in a way that does not hinder our ability to do the day job

Tom on stage at the Annual Conference 2024

and any regulation changes should consider the impact on smaller practices."

Where R3's new president does have concerns, though, is with the proposals to introduce a compensation scheme. "If that comes in, it has the potential to be horrendous," he says. "It would make dealing with cases with high volumes of creditors, particularly consumer creditors, very risky."

"At the moment the creditor gateway gives creditors an avenue to raise complaints so that regulators can take action accordingly. The process is effective, so I do not see that there is any need to supplement it with something that will ultimately drive up costs for us and the estate, and which could lead to slower and smaller returns for creditors as a whole."

Evolving members' experiences

The second priority for Tom's presidency is refining the member experience at R3.

"I would like to build on what we have already. There are so many great things going on at R3 and we need to make sure that it is as easy as possible for members to experience them," he says.

"For instance, you can now get the R3 Podcast through Spotify and other platforms, which is great as you can just subscribe and get an alert when a new episode goes live. There will be other things we can do on the technological side of things to help enhance the member experience by making things quicker and easier, and that help the R3 team further support the work that is going on in the regions and done by the committees.

"Now that the membership categories have been simplified to just three [new professionals, members and fellows], I would also like us to look at what we can do for the different categories of members, whether that is looking at specialist events for fellows or any gaps we can fill in training and support for the new professionals."

> **"When you think about how interesting and broad the work is, we have got a lot to attract people who are thinking about a career in accountancy or law, but do not know that our profession is an option for them"**

And, of course, Tom is keen to grow R3's membership during his term as well: "Every president wants to increase membership numbers, but I think I have a real opportunity during my year to build on the strong foundation of the new articles, and the revised corporate membership offering and simplified membership categories brought in last year.

"I shall be taking every opportunity I can to remind people of the value of R3 membership and encouraging them to get more of their staff involved so that they can make the most of what we offer."

Looking to the future

New professional engagement is also on Tom's list for his year in office: "R3 has worked really hard in this area over the last couple of years – creating the new professionals forums, growing the representation on our standing committees and boosting new professional committees across the UK," he says.

"Like Tim, I am keen that we continue to grow our offering for new professionals, whether that is looking at training and development gaps we can fill or putting on more, or new kinds of events."

One area Tom is keen to explore providing more support around is the route to qualification and taking a practising licence. Recent years have seen the number of students sitting the exams fall, and he believes that more advice on the scale of the task and the commitment required would help prospective candidates prepare better for this process.

"The JIEB is incredibly worthwhile, but you need to put the work in to pass it," he says. "If R3 can help prospective candidates by running webinars or half-day seminars where senior people share their experience of it and what is required, that is something we should look at."

"I am not saying we should help people pass the exam, but we can help them understand the scale of what they are taking on so they can invest the time they need into preparing for it."

Promoting the profession

Like his predecessors, R3's new president is keen to promote the value of the profession, but he wants to look at that from a recruitment perspective too:

"Restructuring, insolvency and turnaround is such a fantastic profession. We do so much, and the work is so varied that we should not be shy about telling people about it and the opportunities that such a career can provide.

> It has taken a lot of work from a lot of people to make R3 the success it is today, and I want to make sure that continues on and after my watch

"R3 has done some great work with university, school and college outreach through its equity, diversity and inclusion project with the Insolvency Service and we should be building on that and encouraging people to think about a career in the profession early so that when they are going into their final years at school or uni, we are at the front of their minds," he says.

"We have got so many people with great stories to tell and, when you think about how interesting and broad the work is, we have got a lot to attract people who are thinking about a career in accountancy or law, but do not know that our profession is an option for them."

Immediate priorities

Like all presidents, Tom's term began with the Annual Conference, whose organising committee Tom chaired as one of his last tasks before taking the presidency.

"Conferences are a lot of work to organise for everyone involved but the results are always worth it," he says. "This year was no different and one of the highlights for me was the fantastic sessions from the Class of 2025 [R3's TED-talk style sessions delivered by emerging and established talent from the profession]. They showed the range of routes into restructuring, insolvency and turnaround, and the breadth of the work the profession does, but this also gave them a springboard and opportunity to build their profile, which is equally as important as they are the future of the profession."

The Conference also saw the launch of R3's strategic review – another big project for R3's Executive Committee and Council, and one that will set R3's strategy for the next five years.

"The world has changed a lot since the last strategic review took place in 2019, and so has R3," Tom says. "We want to use this as an opportunity to make sure we continue to evolve over the next five years, and so that we develop a really clear plan for what R3 stands for and its focus for the lead-up to 2030.

"It has taken a lot of work from a lot of people to make R3 the success it is today, and I want to make sure that continues on and after my watch."

Stuart McBride is senior communications manager at R3

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