Winter 2024

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> "I would not say that they are anywhere close to a go-to tool for the profession as a whole, but restructuring plans continue to keep the courts busy"

From the editor

The new Government is doing its tax and spend thing and Mr Trump will be back in the White House in 2025, which all suggests that it could be an interesting year for our profession. To conclude this year of elections, we look at Government-related issues.

Dan Hurd of EY interviews Natasha Rouse of Equitix about the practical challenges involved in restructuring public private sector contracts and Bryn Tucker at EY looks at restructuring opportunities in PFI projects.

Kartik Sharma looks at an attempt to launch a restructuring plan in respect of a PFI SPV, which was thwarted by an application for security for costs.

With restructuring plans continuing to be the preserve of large-value assignments, the mid market go-to remains the pre-pack administration. Following our coverage in the last edition on evaluators, Johnny Abraham makes the case for expanding the evaluator's role.

One of the more controversial elements in the budget was VAT on private school fees and whether this will increase failures in the sector. Punnit Vyas at Teneo gives us his views on the position of the schools and insolvency practitioners appointed over them.

I would not say that they are anywhere close to a go-to tool for the profession as a whole, but restructuring plans continue to keep the courts busy. Julie Grieg and Sophia Harrison of Burness Paull review the sanctioning of the Cineworld RP and the latest compromise of landlord claims.

Tal Goldsmith at Stephenson Harwood, Kirsty McMahon at BDO and Enda Lowry at Teneo look at UK/Irish cross-border restructurings.

David Rankin at Creditfix looks at the current state of play on IVAs, and Simon Howell at Tarmac gives a credit manager's perspective on construction supplier-customer relationships where there is business distress.

Alex Jay and Aaron Le Marquer at Stewarts urge IPs to review business interruption insurance policies in light of recent decisions.

This edition's survey looks at litigation funding and we hear from R3 colleagues on suggested administration extension reform, networking, their new bursary scheme and its leadership development program.

I am writing this column in mid-November, but you will read this in December, so I think it is just about appropriate to wish you and your families a Merry Christmas and a prosperous New Year.

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

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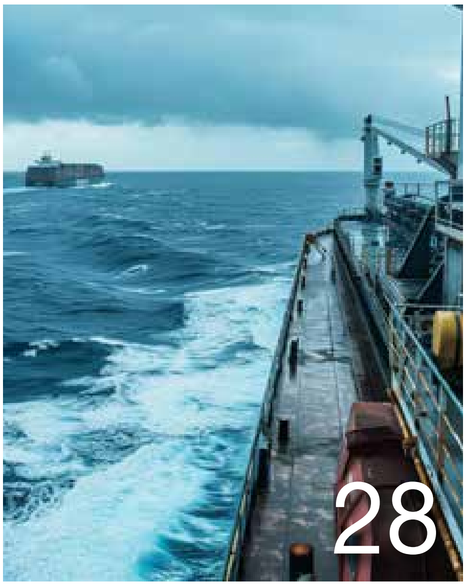

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View from the top

The second quarter of **Tim Cooper's** presidency involved stakeholder meetings, regional forums, reviewing R3's articles and bylaws, and two flagship events

In my last column, I noted that the first quarter of my term of office had been an intense (but thoroughly worthwhile) one. Q2 has not been any different, any less enjoyable, or any less worthwhile.

Among other areas of work, I have spent the last three months meeting and updating members on what R3's doing for them – and being updated on their issues and insights, meeting stakeholders to explore opportunities for closer working and raising members' concerns in a number of areas. And that is alongside the day-to-day presidential tasks.

> **"For me, that is what makes R3's events so valuable – the access to insight from those at the heart of the biggest issues relating to the profession and those it supports, as well as the chance to meet new contacts and re-establish links with old ones"**

One highlight of the last quarter was my meeting with Dean Beale, CEO of the Insolvency Service, and Angela Crossley, director of strategy, policy and analysis at the Insolvency Service. This meeting provided an opportunity to hear more about their plans for firm regulation, to raise members' concerns about this and outline how the delay in implementing the review of the insolvency rules is affecting practitioners and creditors.

As a member of the profession, it is rare to get this kind of opportunity to sit down with someone so senior from the Insolvency Service. It was a great opportunity to provide members' feedback on a number of areas of policy and to gain intelligence to feed back to members at events, conferences and meetings.

Laying the foundations

Another key project I have been involved with over the last few months has been R3's review of our articles, which culminated with the introduction of modernised articles and a new set of bylaws. This should make it easier for anyone wishing to join R3 as a member to do so.

These changes will make R3 more inclusive and ensure we are at the heart of the 21st-century turnaround, insolvency and restructuring profession, enabling us to connect the whole of the profession and speak with a broader voice when it comes to our lobbying and representation work.

This project lays the foundations for R3's next strategic review, which we will be working on for the rest of this year and the early part of 2025.

Content from the key players

Attending the Northern and the Eastern Forums gave me an opportunity to witness the high quality of the programme content at these events and meet members from regions that I would not normally have had the opportunity to visit.

It is hard to pick out one specific highlight from the programmes, but two sessions that really stood out for me were the Northern Forum's Bank of England update from Gareth Harrison (which took place on the day the Monetary Policy Committee announced its interest rates decision) and Joe Curl KC's Eastern Forum session on the BHS case, where delegates heard from an R3 member who drove one of most high-profile cases this year.

For me, that is what makes these events so valuable – the access to insight from those at the heart of the biggest issues relating to the profession and those it supports, as well as the chance to meet new contacts and re-establish links with old ones.

October's Business Lunch was another highlight for me – and, from what I have heard, for the members who attended it. More than 500 people from across the profession attended to network and swap intelligence and insight, as well as raising nearly £1500 for the Dorset and Somerset Air Ambulance.

I have heard this event being described as "like a 'who's who' of insolvency and restructuring", and that remark illustrates the value attendees place on it – and explains why this year's, like 2023's, sold out within a couple of days of launching.

> **"Hearing first-hand from Lee Castleton about his experiences in the Horizon case was incredibly powerful"**

Much like the Business Lunch, this year's SPG Forum also sold out and it was a great opportunity for me to meet and update members of a key constituency for R3 and take in another high-quality programme of content.

Picking a particular highlight is a challenge, but hearing first-hand from Lee Castleton about his experiences in the Horizon case was incredibly powerful, and Dean Beale's session on the Insolvency Service's plans for the next 12 months was another one I followed with interest.

Thank you to all those who attended this event, the Business Lunch and the Northern and Eastern Forums – and to the R3 team for all their work delivering events like these for our members.

Passing the policy torch

I would like to end this column by thanking our outgoing Policy Group chair, Mark Shaw, for his contribution. Mark chaired Policy Group during a period that saw four different prime ministers, as well as crucial milestones in the regulation and the personal insolvency framework reviews.

Thank you for all your time and support Mark – and good luck to Sophia Harrison, our new chair. Given we have just had a change of government and leader of the opposition, I do not think your tenure will be any quieter than Mark's…

Tim Cooper is president of R3 and a partner at Addleshaw Goddard

Plan companies can seek further compromise of creditor contracts

Cineworld shows that, even if agreements were made conditional on there being no further compromise, that may not be enough, say **Julie Greig** and **Sophia Harrison**

In the recent judgment of Justice Miles (*UK Commercial Property Finance v. Cine-UK and Cineworld [2024] EWHC 2475 (Ch)*), restructuring plans were approved in respect of four companies forming part of the Cineworld group. Here, we consider the key issues before the court.

In short and at a high level, orders were sought by the applicants to sanction four restructuring plans (RPs) in relation to four Cineworld companies. Pursuant to the RPs, among other compromises sought, some of the plan companies' rental liabilities to landlord creditors would be compromised.

> **The objectors contended that by promoting RPs that sought to compromise liabilities under or by reference to the relevant leases, the plan companies were in breach of the contractual undertakings given**

However, prior to the plan companies' application for sanction of the RPs, in 2023, they had negotiated agreements with various landlords, including UK Commercial Property Finance Holdings Limited (UKCP) and the Crown Estate Commissioners (these two landlords together are referred to below as 'the objectors') to substantially reduce the rent and other liabilities due under the relevant leases with those landlords. These agreements were documented in a deed (or minute) of variation and side letters.

As part of those agreements:

- In terms of a side letter to UKCP, some of the plan companies agreed, in the event of a proposed RP, not to make further amendments to UKCP's leases; and
- In a side letter to the Crown Estate, some of the plan companies undertook not to seek further compromise of the relevant leases by way of an RP for three years.

Notwithstanding the amendments to the leases agreed with UKCP and Crown Estate, the objectors' leases were included within the proposed RPs. The objectors contended that by promoting RPs that sought to compromise liabilities under or by reference to the relevant leases, the plan companies were in breach of the contractual undertakings given. The objectors therefore

> **The court took the view that the process was a statutory and collective one designed to prevent insolvency; and was not a conventional dispute between the objectors and the plan companies themselves**

sought injunctions to remove the leases from the RPs, relying on the agreements reached with the plan companies.

The plan companies argued that the contractual rights agreed were themselves capable of being compromised by the RPs and they invited the court to address them as part of the sanction exercise.

In reaching its decision, the court considered whether the previous agreements between the objectors and some of the plan companies were capable of being compromised as part of the RPs or whether they should be excluded. The court took into account the following factors.

Side letter undertakings: four Cineworld companies had negotiated agreements to reduce rent and liabilities with various landlords prior to their applications to sanction RPs

Pari passu and fairness

The *pari passu* principle means that all unsecured creditors in insolvency processes must share equally any available assets of the company in proportion to the debts due to each creditor.

The court was required to consider whether, in a situation where the alternative is a formal insolvency, upholding the agreements would infringe the public policy embodied in the *pari passu* principle, and whether the contracts represented a good reason or proper justification for excluding the objectors from the RP. The court considered that to be the same exercise as the consideration of fairness under the plan jurisdiction.

The court considered that the exclusion of creditors from the RP (here, the objectors), without good reason or proper justification could potentially render it unfair to the creditors who were included in the RP.

The court took the view that the matter could not simply be viewed as an *inter partes* dispute between some of the plan companies and the objectors, but instead ought to be viewed more widely, stating that the collective nature of the proceedings added an important and additional dimension here, which was the interests of creditors generally. The court considered the default position to be that creditors are to be treated in accordance with the *pari passu* principle.

Excluding the objectors' leases

Given the importance of the *pari passu* principle, there would need to be some *good reason or proper justification* to treat the objectors more favourably than other landlords and excluding them from the RPs. The objectors submitted that the side letters were themselves a good reason or proper justification. The court did not accept this.

“This decision highlights that in the context of an RP, the court, in the exercise of its discretion, will consider the prospects of a successful restructuring in the interests of the collective”

The feature of cases where there may be good reason or justification for the exclusion of some creditors (which would give them a preferential position to the position they would have had in the relevant alternative – a formal insolvency) would be one where it would facilitate or enhance the prospects of a successful restructuring in the interests of the collective. In the present case, this was the reason to justify the special treatment of the head office lease. There is no such feature in relation to the objectors. Excluding the objectors from the RPs would not facilitate or improve the prospects of success of the RPs.

The court was satisfied on the evidence that the RPs were developed in the course of 2024 in response to the worsening financial position of the UK Group. While the court acknowledged that the objectors may feel aggrieved that having reached agreements with the plan companies in respect of the leases relatively recently, they now sought further relief by way of the RPs; the court considered that the question was how the losses should fall on the creditors as a whole and that it was a matter of fairness as between them. The court took the view that the process was a statutory and collective one designed to prevent insolvency; and was not a conventional dispute between the objectors and the plan companies themselves.

Sanction against a dissenting class

Applying *Virgin Active and AGPS*, the court held (see paras 68 and 69 of the *Cineworld* judgment) that when deciding whether to sanction an RP against a dissenting class, it is relevant to consider whether the dissenting class is 'out of the money' in the relevant alternative. When a dissenting class is out of the money, the view of any creditor in that class about the fairness of the plan or complaints about the distribution of the benefits of the restructuring "should not weigh heavily or at all in the decision of the court as to whether to exercise the power to sanction the plan and cram them down"[1].

This decision highlights that in the context of an RP, the court, in the exercise of its discretion, will consider the prospects of a successful restructuring in the interests of the collective. So where agreements have been reached between parties prior to the RP (and of course depending on the particular facts), those agreements may not be sufficient to exclude the particular creditor from the restructuring plan, unless it can be shown that in doing so, it will improve the prospects of success of the plan.

This means that debtor companies who have negotiated contractual compromises with creditors – even if the compromise was made conditional upon the company not seeking a further compromise – can nonetheless seek further compromise of their obligations through the statutory regime; subject of course to otherwise satisfying the court that the requirements of the regime are met and that the court's discretion ought to be exercised in the sanction of the plan.

Rhona Masson contributed to this article.

1 *[Re Virgin Active at [249]]*

Julie Greig is a director and **Sophia Harrison** a partner at Burness Paull

Recent case summaries

The latest insolvency update from **Ali Tabari** and **Charles Towl**

Broom v. Molina Aguilar [2024] EWHC 1764 (Ch)

In *Broom*, the High Court has provided a salutary warning for IPs on the question of service.

The case concerned whether or not the trustee in bankruptcy had validly served proceedings on Mrs Molina Aguilar, the wife of the bankrupt, arising from alleged transactions at an undervalue. Specifically, although the trustee's predecessor obtained an order permitting service by alternative means under CPR r6.15, he did not apply for permission to serve out of the jurisdiction where the appellant had, prior to the application and unknown to the trustee, emigrated to Spain.

Judgment was obtained against Mrs Molina Aguilar, and only when she was tracked down for the purposes of enforcement proceedings did she engage. She argued that, because she was not served personally with the proceedings and was outside the jurisdiction when the application was made, the court had never exercised jurisdiction over her. Accordingly, she applied for the order for alternative service to be rescinded under s375 of the Insolvency Act 1986.

The trustee's case was that he could not be expected to have made an application for permission to serve out in circumstances where he did not know the appellant was outside the jurisdiction.

> **The lesson for practitioners is simple: where doubts exist, adopt a precautionary, 'belt and braces' approach to service procedure**

HHJ Paul Matthews rescinded the order, applying the "fundamental rule" that a defendant may only be served if they are within the jurisdiction at the time of service. If a defendant is in fact outside the jurisdiction, they will not be subject to the English's court's jurisdiction, unless they are brought within the relevant statutory extension to persons abroad (that is, via an application for permission to serve out). Fundamentally, r6.15 does not apply to those outside the jurisdiction, and cannot be used to create a long-arm jurisdiction that outflanks the special permissions required for service out.

Further, the judge rejected the respondent's argument, holding that "[t]he English court does not have jurisdiction […] just because the claimant honestly but mistakenly, and even reasonably, believes […] that the intended defendant is actually within it." Importantly, the judge held that, where there are doubts, the correct approach is to obtain permission to serve out.

One cannot help but be sympathetic towards the trustee's position in this case, given that the substantive judgment also had to be set aside. Nevertheless, the lesson for practitioners is simple: where doubts exist, adopt a precautionary, "belt and braces" approach to service procedure.

Manolete Partners plc v. Freed [2024] EWHC 2242 (Ch)

In a boost to applicants, and primarily office-holders, this decision of ICCJ Mullen appears, for the time being, to have resolved the question of how to deal with the increasingly common defence of 'circularity' raised by respondents to breach of duty claims.

The respondent was found liable for breach of duty but argued that, given that he was also a creditor in the administration, his liability should be restricted to the shortfall in the estate only; the logic of the argument being that, if he is forced to repay so much to the estate that he receives a distribution as creditor, it will create a pointless 'circular' flow of money.

The judge reviewed the limited authorities on the point and followed the decision of Zacaroli J in *Manolete Partners plc v. Hope [2022] EWHC 1801 (Ch)*, finding

> **Office-holders and their assignees can take, as a safe starting point, that the relief they seek in a breach of duty claim will likely be the full sum caused by the breach of duty, and will not be restricted by the size of the deficiency in the estate**

that there was no principled policy reason for restricting the liability of a party found to be in breach of duty, unless he comprised all of (or the overwhelming majority of) the unsecured creditors. It was important in cases involving misappropriation that the full sum of the money taken by the respondent is properly restored. Even if the respondent were the only or majority creditor, it would be a rare occasion where the court reduces the quantum of any order for repayment, and would leave the decision of how to deal with matters practically to the office-holder, after the order has been made.

In any event, making an order restricted to the deficiency of the estate would likely be complex and would, at least in part, be impossible to properly quantify because of all the unknowns involved in finalising an insolvency process (such as, for example, the level of costs and expenses incurred).

What this means in practical terms is that office-holders and their assignees can take, as a safe starting point, that the relief they seek in a breach of duty claim will likely be the full sum caused by the breach of duty, and will not be restricted by the size of the deficiency in the estate.

Ali Tabari is a barrister and **Charles Towl** a pupil barrister at St Philips Chambers

More restructurings ahead to reshape remaining PFI projects

The government has recently announced plans to harness private investment for UK public infrastructure projects and the creation of a new body to combine the National Infrastructure Commission and the Infrastructure and Projects Authority. This has led to speculation that PFIs could be making a comeback. As part of a special focus on PFIs in this edition, **Bryn Tucker** explains below the history of PFIs, how they work and why restructuring is likely to be needed more often in the coming years, on pages 14-18 **Dan Hurd** and **Natasha Rouse** explore the practical challenges of restructuring in this arena, and on pages 19-20 **Kartik Sharma** analyses the implications of a recent case where security for costs was sought over a PFI company proposing a restructuring plan

PFIs have been abolished for new infrastructure projects, but existing PFI projects remain ongoing, with over 650 still in operation across the UK involving a collective capital value of over £50 billion.

As most projects progress through their operational phases, the risks associated with PFIs are becoming increasingly evident. Issues often arise relating to historical latent defects in the construction work, which can result in ongoing performance issues that are frequently unreported or under-reported for a long period of time. These issues form the basis of potential disputes and contingent liabilities for various parties.

> “PFI project agreements have contractual mechanisms for dealing with disputes, but if they cannot be resolved consensually or via mediation, then typically they require adjudication, with an ‘adjudication loss’ often creating imminent insolvency issues for the projectco”

If not resolved consensually between the parties, disputes have the potential to create significant contingent claims that can immediately wipe out the projectco's (definition on the opposite page) operating cash and reserves and, therefore, threaten the liquidity and future delivery of the projects.

PFI project agreements have contractual mechanisms for dealing with disputes, but if they cannot be resolved consensually or via mediation, then typically they require adjudication, with an ‘adjudication loss’ often creating imminent insolvency issues for the projectco.

In addition, the management structure of PFI project companies often involve a limited number of shareholder representatives who may be stretched across multiple projects with limited additional resources available to assist with issues outside of business-as-usual activities, such as performance problems and disputes.

The risk of disputes and adjudication is often heightened by the inherent complexity of the contractual arrangements for PFI deals. The contracts can be lengthy and complicated, often resulting in differing views and interpretations of the contractual terms and performance standards required.

Complex assets

PFI financing has historically been used for some of the public sector's more complex assets such as hospitals and acute healthcare facilities. As would be expected, these assets have complicated built environments, often with 24/7 usage throughout the year, making them challenging maintenance environments with a propensity for technical issues.

These issues are often exacerbated where there has been some element of ‘value engineering’ (lowering the cost while retaining essential functions) in the approach and practices of private sector subcontractors in the construction phases, sometimes resulting in defects. This can make it challenging to meet service standards in the operational or maintenance phases, resulting in penalties and deductions issued by the relevant government authority.

While PFI deals are typically structured so that these deductions should be passed through to the underlying subcontractors with little impact at the projectco, this may not always be the case where there are contractual mismatches between the project and subcontractor agreements or in situations where there has been a change in service provider, for example, due to insolvencies such as Carillion. Such circumstances can cause rapid and significant liquidity issues at projectcos.

> “Clearly, there is a fine line to be struck on the public sector side between accurate and commercial management of these contracts to ensure value for money and delivery of critical public services, and overzealous management of these long-term contracts”

Contract management

As projects head deeper into their operational phases and the public sector starts to plan for expiries and hand backs, there appears to have been a trend towards more proactive contract management by the public sector.

This trend is seemingly driven by the desire to resolve issues ahead of hand back into public ownership. Given this position, there is a natural incentive for the public sector to identify and resolve any issues relating to latent defects and sub-standard assets or performance, which may have occurred under the watch of PFI lenders and sponsors, well ahead of expiry. The idea is that lenders and sponsors can contribute to a restructuring solution formed while they still have some ‘skin in the game’.

There has recently been a rise in the use of performance consultants, who bring a strong

What is a private finance initiative?

A private finance initiative (PFI) is a mechanism for funding major public-sector projects through private sector financing and was launched in the UK in the 1990s. PFIs have included a range of critical public sector infrastructure projects and services including hospitals, schools, roads and highways, waste management, prisons, street lighting and military facilities. Structured typically to include a construction phase and a long-term operational/maintenance phase, often lasting 25 to 30 years, they were designed to attract private sector investment and alleviate the upfront burden on government, and therefore taxpayers, of finding capital for major public sector projects.

In 2018 the Government announced the abolition of PFIs for new infrastructure projects, following a steady decline in their use after the global financial crisis. The reasons cited for their abolition included increasing costs (partly due to the tighter regulation of banks, which increased lending costs for long-term debt), a view that PFIs were overly complex and inflexible, austerity measures putting the spotlight on public sector budgets and a lack of ‘upside sharing’ for the public sector.

Several other countries outside of the UK have used similar financing mechanisms for major public sector projects. However, these arrangements are typically called public-private partnerships.

Structure

Under a PFI, a project company (‘projectco’) arranges the financing of the up-front project construction costs via third-party lenders and shareholders and, in return, the relevant government authority makes regular, usually monthly, payments to the projectco over the long term.

The construction phases for PFI contracts are now complete and the projects are well into their operational phases, with several contracts set to expire in the coming years and a bow wave of expiries due in the 2030s. Accordingly, there has been an increased focus on preparation for PFI expiry and ‘hand back’ to the public sector, which has led to increasing scrutiny of PFI projects and a corresponding identification of underperforming projects.

Another important aspect to note is that projectcos are typically thin special purpose vehicles (SPVs) which outsource most of their activities. This includes: i) the delivery of services that are outsourced to third-party subcontractors, usually one main subcontractor; ii) the management of the SPV, usually undertaken by a management services company and often with significant shareholder board representation; and iii) the financing of the project, which is usually provided via third-party lenders and shareholders.

The financial models for these PFI projects are typically set such that the projectco will retain limited operating cash flows after debt service, sub-debt payments and shareholder dividends, with lenders provided with additional comfort in the form of secured reserve accounts. These reserve accounts may include a debt service reserve account, maintenance reserve account and often a change of law reserve account, among others.

Bryn Tucker

commercial edge to the management of PFI contracts. This, anecdotally, can result in extremely strict interpretations of the contracts and significant penalties and deductions against the PFI unitary charge (monthly payments) often resulting in increased disputes.

Clearly, there is a fine line to be struck on the public sector side between, on the one hand, accurate and commercial management of these contracts to ensure value for money and delivery of critical public services, and on the other hand overzealous management of these long-term contracts. The importance of effective and collaborative relationships cannot be underestimated.

Re-engineering projects

When underlying defects or operational delivery issues are found, there can be rapid implications for projectco liquidity, with knock-on implications for government authorities, subcontractors, lenders, shareholders and projectco boards.

We have seen this with recent cases like the proposed restructuring plan (RP) related to the Tameside and Glossop PFI, which aimed to use cross-class cram down to compromise the NHS Trust (see page 19 for more). While this RP is now stayed, it illustrated how underlying performance issues can rapidly result in significant potential liabilities, leaving stakeholders and projectcos looking for novel ways to implement the significant financial re-engineering required to create sustainable restructured PFI models.

With SPV (definition above) management teams often thinly stretched and sometimes without significant restructuring experience, early guidance from restructuring advisers can play a crucial role in understanding the liquidity available. Areas of focus for the restructuring professional include helping boards to accurately assess their solvency and reasonable prospects (alongside legal advisers), as well as providing vital early support with stakeholder management and a rapid assessment of ‘the art of the possible’ in terms of the PFI’s underlying financial model and the ability to find consensual restructuring solutions that bridge the liquidity issues. The aim is to reset these projects such that the economics can still work for key stakeholders.

As PFIs tip-toe closer towards expiry, with the resulting heightened focus on resolving issues ahead of expiry and lenders exiting (which usually occurs two to three years before expiry), we expect to see increasing levels of restructuring activity where the profession can provide real value to stretched management teams to reshape the remaining PFI projects and ensure ongoing delivery of critical public services in the UK, through to PFI expiry and beyond.

Technical issues: ‘value engineering’ by the private sector can sometimes result in construction defects, leading to penalties and deductions from the relevant government authority

Bryn Tucker is a partner at EY Parthenon

Financial arguments 'not always most powerful' for public sector

Traditional restructuring options are limited, cash envelopes are finite and key points are often 'lost in translation'. **Dan Hurd** spoke to **Natasha Rouse** about the practical challenges for restructuring professionals involved in public-private sector contracts

DH: The new government is talking about adjusting some of its fiscal rules to allow for more investment or the raising of debt to invest in infrastructure assets again. The real question for me is whether they establish a new set of PFIs or change the rules. One of the big advantages of the PFI structure, and often a hurdle to a restructuring, is that they are off the government's balance sheet, so the risk has largely been transferred to the private sector. That's a great thing for the government, but it also leads to some interesting challenges when they go wrong.

NR: The UK has a backlog of between £50 billion and £300 billion of capital maintenance in the public sector and social infrastructure facilities. That's all of the infamous hospitals' sewers backing up, and reinforced aerated concrete roofs in schools and potholes on our roads. Why does this backlog happen? I believe this is because of the squeeze in public sector finances, and because our public sector bodies are having to balance their operational cash requirements with what they can afford to retain for capital maintenance in the future.

That brings PFI more to the centre of the debate across spectrums political, economic and fiscal. Learning lessons from where things work well and what solutions exist for the old

Dan Hurd is a partner in turnaround and restructuring at EY. He is currently the administrator of the holding company that owns the PFI for Birmingham Highways.

> **In the restructuring world, collapses and administrations are normal, but PFI failures are very loud because there's not supposed to be failures. This is the public sector**

model is important, both for preservation of investments and stakeholder interests, but also in terms of broader strategy for the Government and what they are going to do.

DH: There is a raft of challenges, both operationally and financially, but the problems are driven predominantly by operational issues linked to contracts. Those PFIs have either already gone through some form of restructuring or failure, or it will bubble up over the next few years where there is still a risk of debt being underwater or equity being lost. Potentially, they may have to fail or go back to the public sector sooner than was expected. There have been PFI failures and restructurings for a number of years, but with the additional pressure on government, local authority, and government spending, everybody's looking for levers to try and save cash and cost, and that's creating a dynamic that puts more pressure in the system.

NR: Fundamentally, the PFI industry suffers from a loss of institutional memory. In the first 10 years after the start of PFIs, when investment was ramping up, the industry developed a lot of expertise and knowledge, both on the public and private side. Long-term PFI contracts were meant to be relational, not transactional. They were set up by people with knowledge of the PFI structure who negotiated the investment pipelines in social infrastructure and transport. Now, 15 or 20 years down the line, the people who negotiated and structured those contracts are largely gone. Most of them

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are retired and the institutional memory is rapidly disappearing.

In a lot of cases, our public sector counterparts may not fully understand why the contract is what it is. And without using expensive, but sometimes self-serving, advisory services, the so-called 'performance improvement' industry that has developed around PFIs, the public sector has no chance of dealing with contracts. As a result, we finish up with quite a lot of well-meaning decisions with unintentional consequences that are being made almost at all levels within the government.

It's one of the factors causing a few spiky situations in the management of PFI contracts and a number of collapses within PFIs. In the restructuring world, collapses and administrations are normal, but PFI failures are very loud because there is not supposed to be failures. This is the public sector.

Loss of knowledge is not the only cause. PFI contracts are long-term and over the years changes and challenges happen. How

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Goldilocks zone: successful restructurings of PFIs find the right rebalancing of the contract specification, risk transfer and value for money to the public sector

> Where collaboration and constructive relationships break down, the contracts conflict and in some cases, complete project collapses can occur

these are dealt with defines if the contract is a success or a failure. An example of such changes is the drive for net zero, which of course did not exist and was not foreseen in contracts when they were set up.

DH: That applies to changes in regulation as well.

NR: And changes in geopolitical environments. At the core of PFI contracts was an assumption that the public and private sectors would work together to solve problems. Contracts where this approach still applies are the ones performing in a stable manner. Where collaboration and constructive relationships break down, the contracts conflict and in some cases, complete project collapses can occur.

Restructuring is the penultimate avenue for resolution in these contracts. The recent White-Fraser report commissioned by The IPA advocates for a reset of relationships in PFI and public-private partnerships. The report recognises that there's been a move, in some parts of the public sector, from working with the private sector to improve the service to penalising the private sector through deductions. Deductions are a blunt instrument, which in a lot of situations can backfire and doesn't achieve the performance improvement objective. Within a finely balanced financial framework of a PFI contract, this approach is the root cause of a lot of the problems that lead to a need for restructuring.

DH: If you're going down the route of dispute where everybody's poring over the contract and arguing for penalties and deductions, the relationship and the longer-term knowledge are no longer there. In our experience, that's a short-term gain that causes a long-term problem. It massively destabilises the project and potentially puts at risk both the contracting party and the SPV, because [the SPV] has borrowed money and has covenants that it needs to maintain and repay debt. Those deductions often flow through to the provider or subcontractor and may have a serious impact on their financial health or even bring down the project. It could also drive cost into the project, because other stakeholders want their own advice, and it has to come out of the envelope of money that's available within the project.

> The usual restructuring and turnaround tools are hard to apply within PFIs

NR: Within a PFI the income envelope is fixed. If it gets severely reduced through the strategic application of deductions, it leads to a contract collapse as the project companies rarely have sources of capital other than the payments received from the public sector. This then transfers all risk back to the public sector, as PFI assets are public service facilities. The usual restructuring and turnaround tools are hard to apply within PFIs. The ability of the project company to cut costs is very limited because, fundamentally, the whole structure is built around a contractual specification that needs to be delivered. There's nothing to sell within the PFI structure. You can't break it up. You can't consolidate it.

> There's only so far you can go with the renegotiation of the contract, because if you end up transferring more risk back to the public sector, it may no longer be a PFI and qualify for the funding

DH: You can replace a subcontractor if the subcontractor is underperforming if you think that is going to improve the service levels. But the challenge is the fixed envelope of cash and the service requirements. There's only so far you can go with the renegotiation of the

contract, because if you end up transferring more risk back to the public sector, it may no longer be a PFI and qualify for the funding.

One of the challenges of trying to use something like a restructuring plan as a tool is that arguably, legally, you could use the plan to amend the terms of the contract, but the problem is that if the contract then doesn't fit the requirements of a PFI, then the whole thing falls apart. Traditional restructuring options are limited. You either have a failure, where the project collapses and goes into administration or some form of insolvency and transfers back to the public sector along with the risk, or you have to reach some kind of consensually negotiated solution that could involve equity putting a bit more money in.

NR: The legal enforceability of a restructuring plan in a PFI would be an interesting case to follow. It's an attempt at a solution. Successful restructurings within PFIs find that 'Goldilocks zone', the right rebalancing of the contract specification, risk transfer and value for money to the public sector. It's not impossible, the structure allows for this to happen, but a successful PFI restructuring requires a move from an adversarial to a partnering cultural approach between public and private sector. Company administration is never a nice thing to go through, but a pragmatic and productive administration can bring an external perspective and an ability to understand the interests of all the stakeholders involved, and find ways of negotiating and balancing those interests.

> **"A successful approach to restructuring PFIs only arrives when whoever is attempting it has an understanding of the complex, multi-stakeholder environment we work in and the limitations of the levers available"**

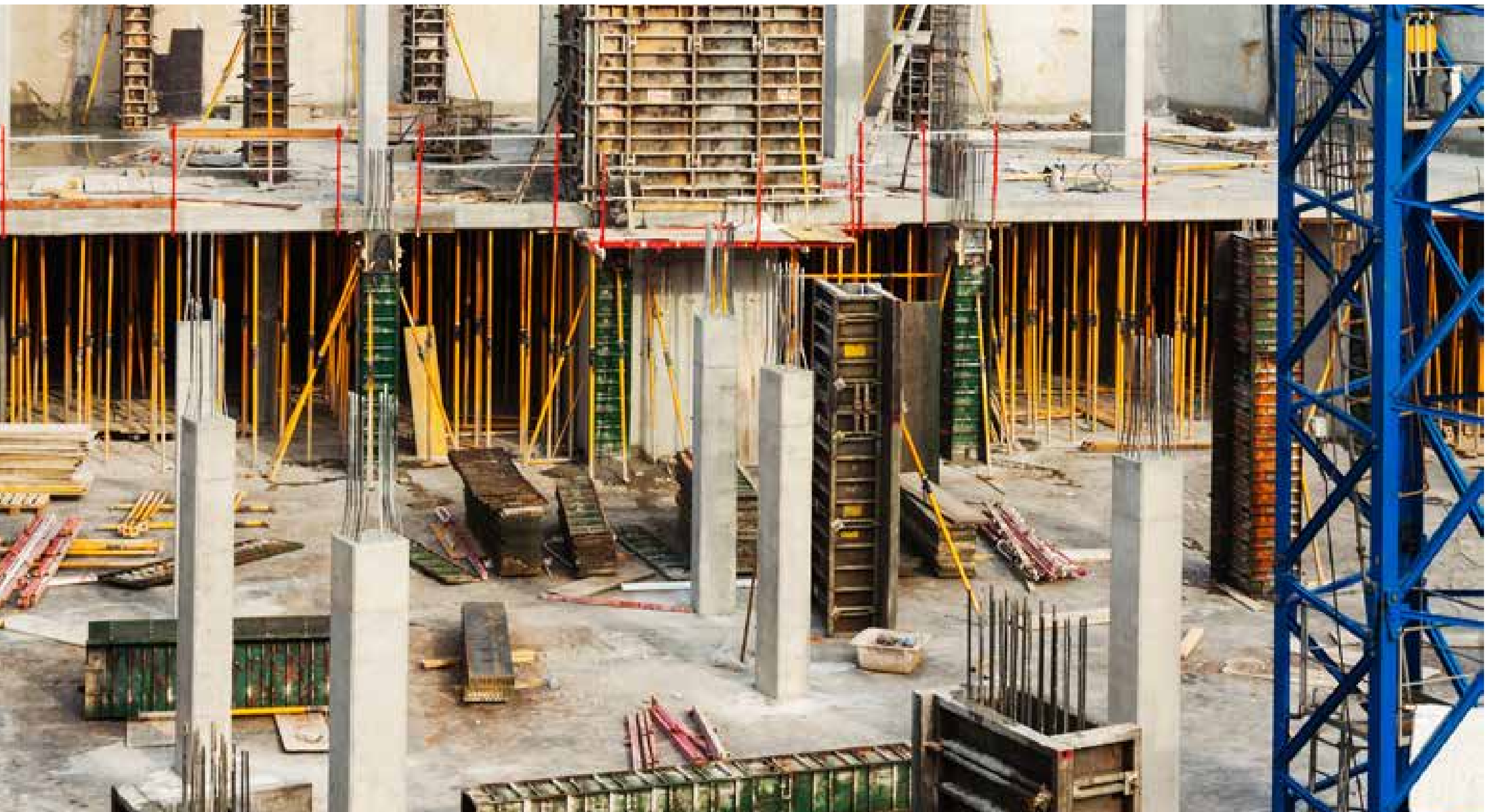
DH: What final advice would you give to restructuring professionals as the best way to approach these situations?

NR: For me, a successful approach to restructuring PFIs only arrives when whoever is attempting it has an understanding of the complex, multi-stakeholder environment we work in and the limitations of the levers available. The driving factor, I think, is the ability to manage interests through soft power rather than hard, convincing and persuading rather than forcing.

The financial levers are going to be quite obvious, and important, because financial restructuring is what we're trying to do. But financial arguments are not always the most powerful with public sector stakeholders. Their function, their job, is to provide a service to the public. We lose key points in translation because in meetings, public and private sector representatives often speak very different languages. From an equity perspective we might be presenting a very sound case that is cost effective for the public sector, but that may not do the job for our public sector counterparts because their key drivers may be completely different. Understanding that dichotomy in public-private sector contracts, is fundamental to success.

DH: I do agree with that. Understanding these structures and the finite envelope of cash is really important around the financial engineering. You need to know what will work within those constrained funds, but you also have to understand the stakeholders and what's driving them to know the dynamics of what's possible for them to agree to for a consensual outcome.

NR: And you need expertise. It's a specialist area. I would suggest any kind of restructuring and turnaround practitioner find expertise in the relevant sector for the PFI that is sound and pragmatic and going to aid the process rather than frustrate it.



Loss of institutional memory: PFIs were set up by people with knowledge of the structure who negotiated the investment pipelines in social infrastructure and transport. Years down the line, those people are largely gone

Funding 'tipping point' vital to assess risk of stifling restructuring

Creditors of a PFI vehicle applied for security for costs, but whether this becomes a new tool of rebellion against part 26A plans remains to be seen, says **Kartik Sharma**

The decision in *Consort Healthcare (Tameside) Plc v. Tameside and Glossop Integrated Care NHS Foundation Trust* [2024] EWHC 1702 (Ch) considers the applicability of security for costs principles in the context of restructuring plans under part 26A of the Companies Act 2006 and whether, if at all, the usual civil procedure rules (CPR) continue to apply to such proceedings given the ostensible distinction between ordinary adversarial civil litigation and restructuring proceedings. In addition, and importantly, the decision also throws light on how a court would consider exercising judicial discretion when deciding such an application in the context of a restructuring plan. From a commercial standpoint, this decision reminds insolvency and legal practitioners that a court is likely to look at the entire background and context of a proposed plan and its commercial and legal ramifications when reaching a decision on a security for costs application from a creditor rather than simply looking at the plan proposal in isolation.

> **The trust applied for security for costs to be given by the company as it considered that 'there is reason to believe that the plan company will be unable to pay the trust's costs if ordered to do so'**

Consort Healthcare (Tameside) Plc, applied for an order under section 901C of the Companies Act to convene a creditor meeting in relation to a proposed restructuring plan. At the meeting, one creditor, Tameside and Glossop Integrated Care NHS Foundation Trust, opposed the plan. The company and the trust, had a project agreement formed pursuant to a private finance initiative (PFI), the trust received services from the company and in return paid the company for those services in the form of unitary charges and service payments. A dispute arose between the two concerning the service levels. This resulted in an adjudication award whereby the plan company owed £9 million to the trust with the trust potentially having further claims of about £20 million. Consequently, a restructuring plan was considered.

Mr Justice Richards made an order convening the plan meetings and dealt with other case management matters. However, after the convening order but prior to the sanction hearing, the trust applied for security for costs to be given by the company as it considered that "there is reason to believe that the plan company will be unable to pay the trust's costs if ordered to do so."

The company made three main arguments in its refusal:

1. The nature of proceedings under part 26A was fundamentally different from ordinary adversarial litigation.
2. If the application were allowed, there would be a risk that the proceedings under part 26A would be "stifled" and that this was "unpalatable" when the underlying objective of a restructuring plan is to rescue; and
3. The "set-off argument", namely, that because the trust could set off costs it was owed against monies it owed the company for services under the service agreement, the trust is not subject to any real risk of being unable to recover costs against the company.

The court addressed each of them in turn and at the end, expanded on exercise of judicial discretion in relation to CPR 25.13(2)(c).

Adversarial litigation

The company argued that since there are obvious differences at various levels (policy, contextual, consequential) between proceedings under part 26A and 'ordinary' adversarial proceedings, it naturally follows that:

a. There should be a difference in the costs consequences between the two;

b. A court should be reluctant in making an order for security for costs.

Richards J agreed with the company's restatement of the comments of Snowden LJ in *Smile (Sanction) [2023] 1 All ER (Comm) 519* that there is a difference in the cost consequences between ordinary adversarial litigation and restructuring proceedings. The company further argued that since part 26A proceedings are "underpinned by a policy of facilitating company rescues", it follows from that logic that compelling a company to pay such costs go against that policy. Although Richards J agreed with the policy statement, he did not agree on the conclusion. He remarked that simply because there is a plan that is proposed to "facilitate a company rescue", it does not follow that a court should be reluctant to make an order for security for costs because that would place a "hurdle" in the way of the company's part 26A plan. Since the court retained judicial discretion in all such plans, the fact that a plan was afoot did not automatically mean that it will "facilitate a company rescue" nor that the existence of a plan would automatically result in creating a bar on any future applications from creditors of this nature.

The company also argued that some additional factors would be necessary before the court should make an award of security for costs, such as a dissipation of the company's assets or a suggestion that the plan was hopeless or improper. Rejecting this argument as well, Richards J endorsed CPR 25.12 and remarked that pursuant to that rule, the court must consider "all the circumstances" of the case when exercising its discretion. Further, although there are obvious differences between ordinary adversarial litigation and restructuring proceedings, these differences cannot compel the court to refuse an order for security for costs. Therefore, he ruled that despite there being apparent differences in the nature of proceedings, those differences do not translate into creating an automatic or blanket ban on any security for costs applications from creditors.

The judge then went on to consider the context of the plan and the history of litigation between the parties. This seemed to be a consideration of "all the circumstances" of the matter at hand. On that basis, and with the adjudication award and future commitments in the background, he considered the plan proceedings to be a continuation of the commercial dispute between the company and the trust.

The company also advanced a "floodgates argument" that if an application for security for costs were to be allowed, dissenting creditors will routinely seek security for costs as a means of frustrating the kind of restructurings that part 26A is intended to facilitate. This argument was also rejected. Although the judgment did not expand much on this, it was remarked that each application under CPR 25.12 is to be considered by reference to the circumstances of the case. In this instance, the circumstances of the case suggested that proceedings were similar to (or at least not that dissimilar to) ordinary adversarial litigation. However, in the same sentence, it was also remarked that the circumstances of future plan proceedings may be less adversarial and it is for the judge in each case to consider how to exercise judicial discretion and whether an application is meritorious or not.

The takeaways are these:

a. Applications for security for costs are considered against all the circumstances of the case;

b. Where circumstances in part 26A plans are more indicative of ordinary adversarial litigation, an application for security for costs is more likely to be considered than where such circumstances do not exist; and

c. Judicial discretion is paramount when considering such applications. Richards J, in rejecting the floodgates argument, held that all such applications are considered on their own circumstances.

The Company made two other arguments to oppose the security for costs order: the risk of 'stifling' the plan and that set off ought to render this application futile.

Effect on the plan

Firstly, the company argued that if the order were to be made, there was a risk that the plan would be stifled, and the court should consider that risk when exercising its discretion and, on that basis, refuse to make a security for costs order. Richards J, in line with settled principles, approached the risk of stifling with an examination of the immediate and near-term funding that was available to the company and whether, if at all, there was a 'tipping point' when the company would abandon the plan if a security for costs order were to be made. On analysis he concluded that, although the company had received extensive funding to pursue these proceedings, and the funders had communicated that they would be unwilling to contribute further resources, it was not clear: a) whether there was a 'tipping point' and if so what it was; and b) why, after having provided £4.9 million of funding in the proceedings thus far, they had suddenly reached their limit. The takeaway from this reasoning is this: when exercising their discretion, judges will be conscious of the funding arrangements of the company during plan proceedings and the risk of exceeding a tipping point, if one could be identified.

Adjudication: Tameside and Glossop Integrated Care NHS Foundation Trust was owed £9 million by Consort Healthcare

> **"The differences between the plan and 'ordinary adversarial litigation' were not sufficient to dissuade the judge"**

Set-off argument

Secondly, in relation to the set-off argument, after considering the quantum and time period if and when the trust would have to pay monies to the company, in both the situation that the plan was sanctioned and that it was not sanctioned, the judge concluded that there was a real risk that the trust would have to wait up to four years to exercise its set-off right. The set-off argument was rejected with the judge concluding that there was a real risk that, if the plan was sanctioned, the trust would not be able to set off the full amount of any costs made to it against the termination payment.

Exercise of discretion

Based on the above, the judge considered that it was appropriate to exercise discretion to require the company to provide some security for costs. The differences between the plan and "ordinary adversarial litigation" were not sufficient to dissuade the judge. The purpose of the security for costs was to compensate an applicant against the "relevant risk" which in this case was that the company would be unable to pay costs if ordered to do so. For quantum, although the judge indicated that normally the starting point is that the applicant should obtain security for the entirety of its costs, in this scenario it was not ideal and he ordered for the trust to receive half the amount the trust requested, and that it be paid immediately as the risk existed in the present.

The decision is important for all IPs and restructuring lawyers. It is difficult at this stage to be sure to what extent security for costs in part 26A restructuring plans may become a new tool of rebellion in a dissatisfied creditor's toolkit. What is clear though is that, despite the apparent difference between ordinary adversarial litigation and plan proceedings, a creditor, like any party to civil litigation, can make an application for security for costs if it considers that there is a real risk that the company will be unable to pay its costs if ordered to do so. The court's discretion goes a long way when examining all the circumstances of the case and whether such applications would 'stifle' plan proceedings. In respect of the latter, it is important for a plan company, or a funder backing plan proceedings, to make it known early on as to where the 'tipping point' for the funding arrangements lie, if any. Although it is a matter for the court's discretion, it is vital nevertheless.

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Should evaluator role be expanded beyond its current scope?

While some regulations need to be strengthened, stronger evaluators have helped to improve the credibility of connected party transactions, says **Johnny Abraham**

The last edition of *Recovery* magazine saw a spotlight shone on connected party pre-packs and the evaluator role introduced by the Administration (Restriction on Disposal etc. to Connected Persons) Regulations 2021.

Below, I set out some further considerations on two of the key concerns that were raised.

Firstly, as per the headline of the article, '*The lack of definition of the qualifications to be an evaluator is controversial*' (*Recovery* Autumn 2024, p18). This, I would say, is the most significant area where the wording of the 2021 regulations needs to be strengthened.

The regulations, as currently drafted, state in regulation 10 that "an evaluator is an individual who is satisfied that their relevant knowledge and experience is sufficient for the purposes of making a qualifying report." To say that this is vague and open to abuse would be something of a compliment.

The current wording has allowed a number of parties to 'window dress' their way into justifying their ability and suitability to meet the "relevant knowledge and experience" criteria. This has also led to a number of parties providing evaluator services that simply do not, in my opinion, meet the implied spirit of the requirements of the regulation.

There are several examples where statements as to qualifications and suitability to act could be questionable at best and misleading at worst. For example, a more generic qualification and role does not provide an individual with knowledge and experience relevant to the very specialist sector that is business recovery and insolvency.

Non-compliant

This is further evidenced by a number of very poor quality reports where, for example, connected parties and purchasing entities are not properly identified, or the transaction value or terms are not properly documented and/or do not equate to the transaction that has been completed, which in some cases I would expect could be deemed non-compliant by regulatory bodies when file reviews are completed.

There are also numerous reports that make the misleading statement that the proposed administrator has raised no objection to the suitability of an evaluator, when in reality the proposed administrator would have had no idea who the evaluator was until they received the report, and therefore no ability to object.

> **A number of insolvency firms also have their own internal risk teams that carry out a peer review of each pre-pack transaction alongside the qualifying report**

These points, if left unchallenged, could leave the evaluator in question and the IP and connected person at risk. Until such time there are clearly defined criteria to meet the "relevant knowledge and experience" requirement, connected persons and IPs need to ensure that any evaluator is suitably knowledgeable and experienced, not only to meet the spirit of the regulations as currently worded but also to evaluate the transaction that is being presented, which can vary from simple and low value through to highly complex and high value.

In my opinion, to meet the spirit of regulation 10, an evaluator should hold a professional qualification of significant relevance to business rescue and restructuring and have to maintain an active membership with a relevant regulatory professional body.

In addition to this, an evaluator should also have a CV that can demonstrate a minimum amount (for example, 10 years) of hands-on experience within the business rescue and restructuring sector. Without this qualification and experience, how can someone be tasked with reviewing and giving an opinion on a transaction that is to be completed by highly regulated professionals?

Formal complaints procedure

Implementing these suggestions would not only provide professional credibility to an evaluator as an individual but would also ensure that they are a regulated individual with continuing professional development requirements and professional standards that they must abide by, with a formal complaints procedure in place should it be required. Collectively, these suggestions would provide significantly increased accountability for evaluators and diminish the risk of the next point, over-familiarity.

In his article '*Same Evaluators 'guns for hire' may be leading to over-familiarity*' (*Recovery* Autumn 2024, p20), Professor Peter Walton writes: "The ability of those engaged in a connected party pre-pack to choose their own evaluator may be leading to over-familiarity with the same guns for hire being approached."

This makes for an attention-grabbing headline. However, the reality is that some evaluators are regulated professionals with reputations on the line, and IPs are also highly regulated professionals. A number of insolvency firms also have their own internal risk teams that carry out a peer review of each pre-pack transaction alongside the qualifying report.

> **"Being allocated what could transpire to be an unsuitable evaluator could cause unnecessary delays or transactions to fall through, resulting in jobs being lost and creditors being placed in a worse position"**

I would say that it is highly unlikely that an evaluator that meets the qualification and experience criteria set out above would engage in behaviour that would bring their professional integrity into question.

Professor Peter Walton writes: "One of the benefits of the Pre-Pack Pool was that those approaching it had no control over the identity of the individual that carried out the evaluation. That independence appears to be lacking under the new system. If tales of the Wild West prove to be based on fact, the 2021 system may need an epilogue where those hiring do not get to choose their evaluator."

The problem with this statement is, as contained within it, it is based on a tale. Could it be happening? Possibly. Is it likely to be happening on a regular basis? I would not think so. If it is, I would expect that this would be picked up by the regulatory bodies. Is the answer to have a randomly allocated evaluator, as Professor Walton is implying? Absolutely not.

External scrutiny

The proposed purchaser and proposed administrator need to know that the individual providing the report is suitably knowledgeable and experienced (taking into account the size and complexity of each situation) to provide a report for the transaction in question and that the qualifying report will stand up to external scrutiny. Being allocated what could transpire to be an unsuitable evaluator could cause unnecessary delays or transactions to fall through, resulting in jobs being lost and creditors being placed in a worse position.

Regulation 12 states, "An individual meets the requirement as to independence unless they have, at any time during the period of 12 months ending with the date on which a report is made by that individual for the purpose of satisfying the condition in regulation 3(1)(b) provided advice to, and in respect of, the company or a connected person in relation to the company, (i) in connection with, or in anticipation of, the commencement of an insolvency procedure under parts A1 to 5 of the Act, or (ii) in relation to corporate rescue or restructuring."

This regulation would appear to prohibit an evaluator from acting for a connected person again within 12 months, and that is how I would interpret it. However, in my opinion, what is not clear is whether this is a blanket restriction relating to the connected person (and any entity they are involved in) or if it relates to a specific company. My suggestion would be that this wording needs to be strengthened to ensure it is not misinterpreted.

Small number of key partners

Another point that needs to be acknowledged is that, in total, there are only approximately 1250 appointment-taking IPs in the UK. Of those, there will be a significant number that only engage in personal insolvency matters or work in small firms that predominantly (if not exclusively) work with small businesses when appointed as liquidators. They will rarely be appointed

> **"I have seen circumstances where businesses have been sold to third parties where the marketing process and value achieved are questionable or where alternative action could have been taken to enable existing parties to retain their businesses and see creditors repaid"**

as administrators and would therefore rarely, if ever, have cases that fall subject to the regulations. Large insolvency firms often only have a small number of key partners that take appointments nationally.

When you start to think deeper about the numbers, we operate in a very niche area of highly specialised individuals, which also applies to the number of suitable evaluators available. The bigger risk, I would say, is that there may be companies that should have been placed into administration and subject to the connected party regulations that are instead being placed into creditors' voluntary liquidation to avoid the scrutiny that an administration and the regulations would bring.

Outside of my work as an evaluator, I have seen circumstances where businesses have been sold to third parties where the marketing process and value achieved are questionable or where alternative action could have been taken to enable existing parties to retain their businesses and see creditors repaid.

While some of the regulations need to be strengthened, there is no doubt that stronger evaluators have helped to improve the credibility of connected party transactions, and that the process has, in some cases, resulted in increased consideration and strengthened terms for creditors, which can only be seen as a positive development.

The question, therefore, becomes: 'Should the evaluator role be expanded beyond its current scope?'

Johnny Abraham is managing director of J9 Advisory, which provides evaluator services

Upsides to VAT change could prove invaluable for creditors

Among many other issues, if office-holders are appointed, VAT recovery in relation to administrators' fees will need to be considered carefully, says **Punnit Vyas**

The exempt status for private schools is coming to an end. With VAT due to be levied on fees from 1 January 2025, private schools will face a challenging environment to operate in. But might there be an upside, and will it be enough to compensate for the impact of VAT on their businesses?

This article explores how schools, as VAT-registered businesses, may embrace this significant shift in VAT policy, look for opportunities to maximise cash flows and stay solvent, avoiding, as some are predicting, the need for potential widespread school closures.

From 1 January 2025, private schools will need to charge VAT and be registered for VAT (we can safely assume that they all have turnover more than the current £90,000 VAT registration threshold).

Private schools have enjoyed a special VAT status as an 'eligible body' until now. While many private schools are also charities, going forward, they should generally be regarded as being 'in business' so far as their activities of education services and vocational training are concerned. As businesses, they will need to manage and aim to improve their cash flow as well as ensure that they meet their VAT obligations. If private schools fail to remain solvent, the VAT considerations will also be a key concern for any insolvency practitioner.

Liabilities and payment

HMRC are proactively getting private schools ready for the change (schools have been allowed to register early, from 30 October 2024).

Interestingly, if not somewhat predictably, some early misguided VAT planning attempts at averting the impact of the change by bringing forward and paying fees in advance before the introduction of VAT have been thwarted by the introduction of anti-forestalling legislation. This means any private school fees paid after 29 July 2024 for tuition and boarding fees covering a period on or after 1 January 2025 will be subject to 20% VAT. However, this does mean that some private schools may already be carrying a VAT liability at present for fees received in advance, which won't necessarily be reported to HMRC until the school is registered for VAT and until the first VAT return is submitted. The schools will need to take care to ensure that they pay the right tax to HMRC at the right time.

Whether each individual school chooses to pass VAT onto their customers or the extent the school absorbs the VAT without passing it on will vary from school to school based on their commercial considerations. At first glance, VAT may be problematic for many schools where the charge is ultimately borne by their customers, and those customers' sensitivity to school fees means there could be a disproportionate loss of revenue. However, if customers do decide to stay and bear the school fees plus the VAT at a further 20%, there should be upsides for the business.

Deductions

The first and foremost benefit of registering for and charging VAT (output tax) is the ability to recover input VAT. The law allows someone who is registered for VAT to reduce the amount of output VAT they pay to HMRC by the amount of VAT they have themselves been charged by their suppliers in the course of making their taxable supplies. The tax they are charged is referred to as input tax, and it is recovered from HMRC or deducted from output tax, as appropriate, provided it meets the normal input tax rules. As such, there will be scope for schools to recover VAT on their inputs going forward after they become VAT-registered. There are also additional rules which allow for some VAT recovery in relation to pre-registration VAT, which could also boost the initial VAT recovery for schools.

> **“In terms of supplier creditors, there is an important concession for businesses that enter insolvency that removes the requirement for the company in insolvency to repay input tax to HMRC in respect of unpaid creditors, which should be utilised where possible”**

However, input VAT recovery may not be particularly straightforward to calculate for private schools as there is the additional complexity of partial exemption to consider (see an example in the box above). The reason partial exemption may arise is because other goods and services 'closely related' to education (such as school meals, transport, books and stationery, which are considered to be integral to children accessing education – other than boarding provision) will remain exempt from VAT. Any nursery class provision by private schools is also anticipated to remain exempt.

Therefore, partial exemption will require an analysis of all the input tax to *directly attribute* it as far as possible according to the various activities. For example, the provision of education (taxable), closely related to education (exempt), nursery provision (exempt), before or after school childcare (exempt) etc. Where the costs cannot be directly attributed fully to a taxable or exempt activity (for example,

Example: input vat and partial exemption

Input VAT directly relating to:	
Education (taxable)	£60,000
Nursery (exempt)	£40,000
Overheads	£30,000
Total input VAT	£130,000
Partial exemption recovery rate, for example	*80%**
Input VAT recoverable:	
Education	£60,000
Recoverable overheads	£24,000**
Total input VAT recoverable	£84,000

**This would be calculated in line with an approved partial exemption method, for example, standard method, which uses income as its basis (recoverable in line with taxable income as a proportion of total income)*

***£30,000 x 80% = £24,000*

accountancy fees), they will form part of the overheads.

It can be expected that HMRC will provide further guidance for schools that specifically includes a discussion of partial exemption, which should be useful in navigating this complexity. If office-holders are appointed, VAT recovery in relation to administrators' fees will need to be considered carefully, in line with the existing partial exemption method at the time of the appointment and depending on whether the business continues to trade post-appointment.

Note that one very large cost relating to the taxable activity of education is staff salaries, which would generally not be VAT-bearing. So, it remains very likely that most private schools will be in a large net VAT payable position regardless of the ability to recover input tax on ongoing expenditure.

However, another area where the benefits of charging VAT could be significant for private schools is in relation to capital expenditure. VAT may be recoverable on large-scale items of expenditure, for example, school buildings, refurbishment works, etc., which would be subject to the normal input VAT rules and partial exemption. Schools may already be deferring significant capital expenditure to benefit from the possible input VAT recovery. However, here, there is the additional complexity of the 'capital goods scheme' (CGS), which means that VAT recovery is subject to review over a 10-year period.

"Whether large-scale school closures, insolvencies or other forms of distress in the sector materialise remains to be seen, and, in part, it may come down to how schools manage the impact of the VAT policy change"

Private schools will likely not have recovered any VAT in relation to capital expenditure in the past, as they were likely unregistered and fully exempt. However, there may be remaining input VAT adjustments (input VAT claims) that could be favourable for the business. They should review their position, identify the capital projects undertaken in the last 10 years and consider obtaining appropriate advice as necessary.

Winding down

If, despite all the best efforts to keep cash flowing, assets liquid and students enrolling, private schools do find the headwinds too strong, it may mean the beginning of the end. There are numerous routes a wind-down could take (trading or non-trading administrations, liquidations, etc.), but in any form of appointment, office-holders should consider what opportunities are available to maximise value for creditors. For example:

- Are there further options to tax that could be made in relation to land and property assets that may provide input VAT recovery potential (perhaps via a positive CGS adjustment as mentioned above)?
- Could there be a claim for bad debt relief to consider? In terms of debtors, if schools found that their troubles started as parents stopped making payment of school fees in full, the business could look to reclaim the VAT that has been paid to HMRC but never collected from the customer.
- In terms of supplier creditors, there is an important concession for businesses that enter insolvency that removes the requirement for the company in insolvency to repay input tax to HMRC in respect of unpaid creditors, which should be utilised where possible.

There may be many more ways of maximising input VAT recovery where there were none previously, which could prove invaluable to IPs for realising value. They should definitely be seeking tax advice to manage compliance and maximise realisations.

Overall, VAT needs to be considered in the round, along with other taxes and wider commercial considerations. For instance, a change to business rates has also been announced with the VAT changes, which will mean that private schools that are charities will no longer be eligible to claim charitable rates relief and will be required to pay their full business rates liability from April 2025.

This is certainly a changing landscape for private schools. There could be some further changes between now and January, but the policy and necessary legislation all largely appear to be set. It is therefore essential that private schools remain alive to the situation and try to make the best of the position in which they find themselves.

The wider impact that this government policy could have on schools and the economy is difficult to predict. How private schools adapt to this will be fundamental to their survival. There will be many financial institutions and other stakeholders that will no doubt be keen to ensure that private schools stay afloat. Whether large-scale school closures, insolvencies or other forms of distress in the sector materialise remains to be seen, and, in part, it may come down to how schools manage the impact of the VAT policy change.

Additional complexity: partial exemption may arise because goods and services 'closely related' to education remain exempt from VAT

Punnit Vyas is an associate director at Teneo

Silverpail appears to pave way for stronger UK-Irish relations

Tal Goldsmith, **Enda Lowry** and **Kirsty McMahon** give differing perspectives on what they see as an increasingly important cross-border insolvency relationship

Ireland and the UK's trade and business relationship is a long-standing one that continues to be significant and valuable for each jurisdiction. This is especially prevalent following the UK's exit from the EU when it was deemed practical and essential in certain cases for some corporates to continue to maintain a presence in the EU.

It comes as no surprise then that in matters of insolvency, practitioners are increasingly finding that they are collaborating with their colleagues across the sea (not least because Ireland is the only country that is both a member state and a relevant country for the purposes of section 426 of the Insolvency Act 1986). Last year's decision in *Silverpail*[1] was an important example of the UK and Ireland cooperating on a cross-border insolvency. The decision is significant because it appears to pave the way for the relationship between the two jurisdictions to only become stronger.

In this article, we each give our thoughts and perspectives on this increasingly important cross-border relationship, especially in the light of the seminal decision in *Silverpail.*

Tal Goldsmith, Enda Lowry and Kirsty McMahon

'The decision in Silverpail illustrates the extent of possible UK-Irish cooperation in the insolvency sphere in the aftermath of Brexit'

Silverpail is one of Ireland's largest ice-cream makers and got into financial difficulty in late 2022. KPMG in Dublin was appointed shortly after as Silverpail's examiner by the High Court in Ireland to put forward a scheme of arrangement under Irish law. As Silverpail had a number of creditors in England that it wished to be bound by the scheme, the Irish court was asked to send a letter of request to the English court to seek recognition by the High Court in England of both the examiner's appointment and the scheme, and an order that Silverpail's English creditors would be bound by the scheme under Irish law. The English court granted assistance under English law by making an order giving effect to the Irish scheme under Irish law.

The decision in *Silverpail* therefore illustrates the extent of possible UK-Irish cooperation in the insolvency sphere in the aftermath of Brexit. Indeed, it was the first reported case to consider the recognition of, and granting of assistance in relation to Irish insolvency proceedings in England post-Brexit.

From 2002, the EC Insolvency Regulation (1346/2000) applied, making recognition simple. However, in a post-Brexit world, the examiner needed to rely on the mechanism in s426 of the Insolvency Act 1986, which allows the English court to assist foreign courts exercising insolvency jurisdiction.

Silverpail has received criticism in some quarters of the legal press on the basis that it allegedly fails to pay proper heed to the rule in *Gibbs v. Societe Industrielle des Metaux*[2] (the proper law of a debt governs when it is extinguished). The critique of *Silverpail* has relied on both the judgment in re *OJSC International Bank of Azerbaijan*[3] in which the Court of Appeal confirmed that the Uncitral Model Law, as incorporated in the Cross Border Insolvency Rules 2006, does not operate so as to circumvent the rights of English law creditors under Gibbs (albeit there is a significant distinction between procedural recognition under the model law and the substantive recognition and assistance given by s426), and also the obiter commentary of Lord Collins in *Rubin v. Eurofinance SA* and *New Cap Reinsurance Corporation (in liquidation), and another v. AE Grant and others (New Cap)*[4] regarding the distinction between enforcement of insolvency judgments within the courts of the UK and assistance given to other relevant countries that falls short of such enforcement.

I look forward to further developments in this area of the law post-Brexit.

Tal Goldsmith is an English insolvency lawyer and partner at Stephenson Harwood

‘Could the use of the Irish scheme of arrangement be the one-stop shop needed to compromise English law-governed claims and make restructuring plans capable of automatic recognition in the UK?’

The trading relationship between the UK and Ireland has always been symbiotic. In 2022, the UK was Ireland’s third-largest export market for goods and services, and the UK was Ireland’s largest source of imported goods in the same period, making up 21% of goods imported[5].

There are a number of factors that ensure this relationship will remain of great significance: a historic relationship, common language, proximity and culture.

This is why we often see the need to consider the alternative jurisdiction in our local insolvency processes. For example, in 2022 we saw The Body Shop go into administration in the UK on 13 February 2024, with the six Irish stores all closing on 29 February and the Irish entity entering liquidation. There are a large number of retail brands that have been commonplace in both the UK and Ireland that have been equally affected by the move to online over the past decade.

The crossover between the two nations in insolvency processes can be limited to a brand. However we often see a shared back-office function where HR and finance may operate from either jurisdiction, causing a reliance between the two processes, which often requires IPs in both jurisdictions to work together to ensure the best outcome for creditors in their respective jurisdictions. This relationship is here to stay.

Interestingly, with the precedent set in *Silverpail*, the relationship with Ireland may become of increasing importance. The restructuring plan has risen in popularity since its introduction as part of the Corporate Insolvency and Governance Act 2020. However, one of the uncertainties that can arise is whether a UK restructuring plan can be recognised and effective in other jurisdictions since the UK no longer has the benefit of the automatic recognition afforded to an EU member state. We have seen parallel proceedings in other jurisdictions to ensure that a restructuring plan is enforceable and effective, but could the use of the Irish scheme of arrangement (proposed within an Irish examinership) be the one-stop shop needed to compromise English law-governed claims and be capable of recognition in the UK?

Kirsty McMahon is an English insolvency practitioner and a partner at BDO

‘While more and more transactions are governed by Irish law, I see the UK and Ireland relationship remaining central to a lot of our work’

The relationship between Ireland and the UK is key for restructuring. We have many large international corporates with a significant presence in Ireland and therefore huge crossover between this jurisdiction and the UK. Cross-border elements are always present in large restructuring processes and as a result integrated cross-border restructuring and legal advice is crucial.

We are dealing with several cases with our UK colleagues – often in the retail sector – where there are entities with outlets in the UK and Ireland that need some form of financial restructuring and/or formal insolvency procedure. A huge number of international retailers with outlets in Ireland are owned by UK high street retailers. Many of these disappeared from our city streets and shopping centres as a result of the Covid pandemic and we are now seeing a further wave of work in this area.

One of the keys to running these processes well is cross-border collaboration between advisers and clients. From a practical perspective for an IP in Ireland, many of the central functions – finance, legal, HR – are dealt with in the UK head office and in many cases the intellectual property is owned by one of the UK-based group entities.

As set out elsewhere in this article, there has been some interesting case law in the Irish Courts recently that shows the connectedness of the jurisdictions.

For instance, Mac Interiors Limited, a company with its registered office in Newry, Co. Down in Northern Ireland petitioned the Irish Courts for the appointment of an examiner in 2023[6]. The company argued that its COMI was in Ireland and that, as a result, the court should make an order appointing an examiner. The court identified several factors in support of the argument including where the banking and administrative functions were carried out, the company’s tax residency, and where its trade customers and creditors were based. Ultimately the court made an order appointing an examiner in accordance with article 3.1 of the EU’s Recast European Insolvency Regulation.

My colleagues are also currently working through the GTLK liquidation process – an Irish-based global lessor with assets valued at approximately €4 billion. Many of the aircraft leases, the bonds which were issued to finance the companies’ activities, and the maritime bareboat charters are governed by English law. So it is critical for the liquidators to engage UK expert advisers to assist.

The relationship between the UK and Ireland in respect of insolvency is extremely important at present and while more and more transactions are governed by Irish law, I see the UK and Ireland relationship remaining central to a lot of our work.

Connected jurisdictions: GTLK is an Irish-based global lessor in liquidation, but the maritime bareboat charters, aircraft leases and bonds are all governed by English law

1 *Re Silver Pail Dairy (Ireland) Unlimited Company [2023] EWHC 895 (CH)*
2 (1890) 25 QBD 399
3 2018] EWCA Civ 2802
4 [2012] UKSC 46
5 ‘Statistics on UK trade with Ireland’ by Matthew Ward – 23 June 2022
6 *In the Matter of MAC Interiors Ltd [2023] IEHC 395*

Enda Lowry is an Irish insolvency practitioner and a managing director at Teneo

IP workloads and fees need to be aligned to keep IVAs accessible

The Insolvency Service should be bold in its thinking and look at procedures introduced in other countries for consumer debtors, says **David Rankin**

It is probably fair to say that in the last two decades, with significant numbers of consumers utilising an IVA, there has rarely been a period of sustained tranquillity for this debt solution.

Many one-time major providers have exited the market for reasons primarily related to their funding models, changes in the regulatory cost of doing business and the level of fees that can be achieved. There are few major providers who have maintained significant volumes for 10 years or more before exiting. This volatility and churn is not helpful in establishing a reliable and stable provision of advice and debt relief for consumers.

The sector is currently facing its biggest challenge yet, as fees have failed to keep pace with rising costs, general inflationary pressures and an increased regulatory burden.

The use of the IVA by consumers began in the early 2000s. Some early providers were floated on the alternative investment market or attracted investment from private equity or venture capital outfits, providing them with funds to increase their marketing efforts. As a result, Insolvency Service statistics show that between 2004 and 2006 the number of new IVAs effectively doubled each year, from 10,714 in 2004 to 20,156 in 2005 and 43,964 in 2006.

What is an IVA?

The IVA was introduced in the Insolvency Act 1986 as an alternative to bankruptcy. It was aimed at self-employed traders and intended to facilitate the survival of a business with all the attendant benefits to all stakeholders, including higher returns to creditors. It involved the individual making an offer to their creditors to make partial or full payment over a set period of time. At the time there really was no such thing as a consumer debtor.

The introduction of the IVA coincided with the deregulation of financial markets in October 1986, which led to a huge expansion in the provision and availability of consumer credit. This in turn led to the phenomenon of the insolvent consumer debtor.

During the 1990s the debt management plan emerged as a tool for overindebted consumers but this was a mere rescheduling of the repayment of the consumer's debt over a longer period, with payment in full still required.

Around the beginning of the new millennium a small number of IPs began to use the IVA for these consumers to provide a quicker way out of their difficulties with an element of debt forgiveness.

Monetised service

The emergence of the volume consumer IVA market also gave rise to an associated ecosystem. It led to the emergence of a commercial model of voting agents. Some large accountancy firms provided a free service to represent clients in insolvency procedures, but some organisations saw an opportunity to monetise that service, effectively providing an outsourced service to lenders.

It also led to a new market in the sale and purchase of debt in IVAs. While a market already existed for the sale and purchase of delinquent debt, the proliferation of consumer IVAs effectively created a new market with greater predictability of returns, and there are now specialists in this area.

Disposable income levels in these early years probably averaged in the region of £250 to £300 per month. The average fee for a five-year IVA would have been in the region of £6000 to £7000, with some disbursements such as the registration fee and bonding charged in addition.

In May 2007, Capital One announced that they would not sanction fees in excess of £4500 (excluding disbursements). Other creditors were quick to follow.

The sharp decline in fees saw some early providers exit the sector and volumes saw small reductions in 2007 and 2008. Pressure on fees continued as the financial crash of 2008 affected disposable income and average contribution levels fell. Between 2005 and 2009 the average nominee fee fell from a level of around £2500 to £1000, with supervisors' fees being restricted to 15% of contributions once the nominee fee had been paid. Some creditors still seek to modify fees to these levels today.

Criticism

This led to further exits from the provider market as investors turned away from the sector and some business owners decided to sell their portfolios. Other entrants emerged, adopting a business model geared to the fees that could now be expected. Providers began to outsource certain aspects of the administration of IVAs and charge the provision of services as a disbursement.

In addition, fees realised on the proceeds of payment protection insurance mis-selling claims helped to mask the underlying issues at many businesses until those fees ran out following the FCA deadline for making claims.

The use of disbursements eventually attracted criticism from creditors and regulators. Some IPs argued that a higher percentage fee would help to negate the use of disbursements and give them greater certainty, allowing them to provide a better service.

> "Creditor decision making is heavily influenced by a very small number of individuals in just two organisations"

I had worked in the sector since 2005, and by about 2014 I had begun to question the validity of a percentage fee model as average disposable income levels, and, as a result, fee levels began to decline. The work involved in advising a consumer, gathering the necessary information, preparing a proposal and administering an IVA once approved does not vary according to the contribution level. There are factors that mean some IVAs require more work than others, but the contribution level itself is not one of them. The consumer IVA had never lent itself to traditional time-cost charging, and the percentage fee model had been adopted almost by default, but I thought this was inconsistent with SIP9. If fees were expected to be a fair reflection of the work done, then why should fees vary depending on the contribution level? That seemed demonstrably unfair.

Creditfix began to work on a fixed-fee model for consumer IVAs in 2016. We eventually agreed a model with one creditor representative to be used with effect from May 2017. It was never our intention that this should become the model for all providers. It was agreed with one representative for future Creditfix proposals only. The fee agreed was a total of £3650; a nominee's fee of £1900 and a supervisor's fee of £1750.

We also agreed to make distributions to creditors from month three of the arrangement at a level of 30% of receipts, rising as accrued fees were paid down. This was aimed at sharing risk with creditors and demonstrating a commitment to the successful completion of the IVA. Previously, creditors might not receive a dividend until the third year of an arrangement or miss out altogether where the IVA failed in the first two or three years. Recoveries for creditors improved almost overnight.

In the ensuing years, this model was accepted by other creditor agents (agencies that manage the voting and dividend collection in IVAs for major creditors) and they began to impose it on other IVA providers via modifications. It has become the model used in the vast majority of IVAs approved these days.

Alongside changes in the economic model of the sector, there have also been changes in the regulatory framework.

Monitoring volume providers

While not regulation as such, the first iteration of the Consumer IVA Protocol was introduced by the Insolvency Service in 2008. It sets out some general principles for consumers, providers and creditors and a set of standard terms for consumer IVAs that differ in some ways from the standard terms for IVAs issued by R3. The protocol and associated standard terms have been revised several times since 2008, with a further revision due this year.

In 2017, we began talking to both the Insolvency Service and the IPA about a more appropriate and collaborative method of monitoring volume IVA providers. The IPA brought other large providers into these discussions, which eventually led to the volume provider scheme, which has been operated by the IPA since 2019, and increases the frequency of inspections above the minimum required by the Insolvency Service.

In 2023, SIP3.1 was updated to provide greater and stricter guidance on what is expected of an IP in advising a consumer and assisting in the preparation of an IVA proposal. The protocol deliberately steers clear of any mention of fees, although up to the 2021 release it did specify that IPs were entitled to a reasonable fee for any work done in relation to a meeting convened to vary the terms of an arrangement.

> **I believe it is possible to also design separate IVA procedures for trading and non-trading debtors and to protect access to the solution for all who need it**

Some of these developments have been a reaction to FCA initiatives since it took over regulatory responsibility for debt advice in 2014. They are welcomed, but it must be acknowledged that there is now a much greater level of regulation and oversight than ever before.

The consumer IVA is recognised as a valuable debt solution for many people that can offer real advantages over some other solutions. It is, however, a critical time for the consumer IVA.

There has been no increase in the fixed fee of £3650 since its inception in 2017 and, indeed, some creditors seek to restrict it further. That figure itself was significantly less than what was paid in the earliest years of the consumer IVA and was nearly 20% lower than the restricted fee imposed by Capital One a full decade earlier, which also allowed for the charging of disbursements. Had the £3650 fee increased in line with CPI since 2017 then it would now be £4741, according to the Bank of England inflation calculator.

There has also been consolidation in the creditor representative market. For some time now the approval, modification or rejection of the vast majority of IVA proposals has been decided by three main creditor representatives who represent most major lenders. Two of those representatives are now merged, meaning that creditor decision making is heavily influenced by a very small number of individuals in just two organisations.

Legislative change 'some way off'

The Insolvency Service is currently conducting a review of the personal insolvency framework, which presents an opportunity to update the legislation to reflect the economy and society we live in now. I would encourage the Insolvency Service to be bold in its thinking and to look at procedures that have been introduced by other countries since 1986 specifically aimed at consumer debtors. Several provisions of the protocol could also be incorporated into legislation to streamline the process. The Insolvency Service has already shown a willingness to do this with the introduction of the Debt Relief Order in 2009, which provides an alternative to bankruptcy for debtors who meet the criteria. I believe it is possible to also design separate IVA procedures for trading and non-trading debtors and to protect access to the solution for all who need it.

Any change in legislation is however still some way off and if consumers are to continue to have access to the IVA, then the level of work required by an IP and fees paid need to be in alignment.

Much is made of the number of IVAs that do not conclude successfully, for myriad genuine reasons, yet very little is said about the hundreds of thousands of consumers who have successfully completed their IVAs over the last two decades and achieved relief from the stress of unaffordable and unmanageable debt in a controlled manner and been financially rehabilitated. That is a success story that should be celebrated. All stakeholders have a responsibility to reach a consensus and ensure that the sector has a secure future for the benefit of consumers.

Big challenges: IVA fees have failed to keep pace with rising costs, general inflationary pressures and an increased regulatory burden

David Rankin is insolvency director at Creditfix

A more cooperative approach would generate better outcomes

Simon Howell brings a credit manager's perspective on how construction supplier-customer relationships can improve the management of business distress

This article came out of a conversation around construction insolvencies and why so many seem to produce little return. I will state the conclusion at the start: a better outcome in insolvency will always be based on *early intervention*. The IP being involved *before* things become critical. The real questions are: why does this rarely happen? And how can we improve this?

Insolvency has been part of my time in the construction credit world almost since day one. I had worked for a few years as a credit/working capital consultant in the late 1980s/early 1990s and then took a job with one of our clients, Hanson.

Within three weeks of starting, a major customer went insolvent while building Center Parcs at Longleat. A classic case of overtrading, stretching their balance sheet and, more importantly, their cash flow to breaking point. I then had a brutally quick lesson in what happens in the corporate world when something like this goes wrong.

There was an immediate inquest into who had done and not done what. Why did we not spot this beforehand? What had we made on trading prior to the failure? What was the process to be followed? How much are we likely to get back from the receivership (that dates this story)?

Supported to overtrade

I learned a lot in a very short time. It was very different being part of the team involved rather than being on the outside as a consultant.

One element learned very quickly was that our behaviour as a supplier or creditor contributed to the failure. We gave that business a credit limit that was excessive against their balance sheet worth and business strength. We effectively supported their decision to overtrade.

That experience and many others, almost always around major insolvencies, formed the way that I operate around credit risk and account control.

What I hope to do in this article is provide you with some insight into what happens before you, as IPs, are asked to be involved and what the trends around this are. Hopefully I will also highlight possible routes to a better outcome. None of this is rocket science, I would say.

Where to start? Understanding how suppliers or creditors view and deal with customers is a major factor. I will start with Tarmac and then look at the reality for many smaller creditors. The requirement to obtain contracts can mean that suppliers are convinced to deal where they know they probably shouldn't, which can have a major impact on how creditors deal with a struggling business.

From that first insolvency mentioned above, I learned a basic tenet of credit: 'A high-risk customer is not just more likely to fail, they are less likely to pay you on time.' The two things have a single source.

The major lesson I have learned over the years is that you must concentrate on management of risk in all its forms – failure or bad debt; cash flow; or resource impact (time spent that is not used on active tasks or management). Essentially, as a supplier, you must choose the right business to supply or contract with. If you do that right, all elements of credit performance stand a chance of falling into place, such as bad debt loss, cash flow and disputes or queries. This should then dictate how you deal with those customers. There is a better chance of managing those who do get into trouble more positively and in a timely manner if you understand the customer. How do you achieve that?

Firstly, you need a clear, robust, and connected relationship with the commercial teams, with senior management of the supplier business forming the initial foundation. Secondly, everyone needs to understand their role and responsibility in the process and be accountable for it. Thirdly, there must be a clear policy and direction for the distressed business that is understood by and bought into by everyone in the process.

The policy and direction must reflect the appetite for risk in all its forms – as set out by the directors/board/executive committee – and be balanced between fundamental requirements of the business, both trading and financial.

At Tarmac, we have developed a clear direction that leads to a robust set of actions and controls in management of debtors. This includes:

- Clear parameters of trade – credit limit and terms of payment are managed closely, consistently, and most importantly, constantly.
- Clear and robust management of the collection/account management process. Every customer is subject to the rules of business without fail.
- Any exceptions are controlled and transparent. What I have found is that most customers welcome 'knowing what is going to happen'. Those that don't are almost invariably the ones where cash or the organisation are pressured and where failures occur.

> **If the supplier realises that its exposure is too high, or payments are becoming more difficult, then it can simply shut down supply with little warning, or severely reduce a credit limit or terms**

Rich ground for failure

What about smaller and less developed businesses? Or where the balance between finance and credit on the one hand, and commercial on the other, is skewed in one direction – often commercial?

Many of these suppliers/contractors do not have such a well-developed structure as the one I have described above, meaning that levels of control on accounts are less robust. They do not have that clear line of sight or are driven primarily by a single area, often commercial. Without that connection between commercial and credit, a business has the possibility of taking higher risks than it intends.

This has two consequences. Firstly, the supplier/contractor ends up with higher exposure than they would have expected or wanted, but so does the customer as well. In other words, the customer can be encouraged to effectively overtrade.


Lack of understanding: Many construction businesses are good at operating and delivering, but do not comprehend the importance of cash flow

Secondly, the response by the supplier business can become difficult to predict. If the supplier realises that its exposure is too high, or payments are becoming more difficult, then it can simply shut down supply with little warning, or severely reduce a credit limit or terms. In all cases, this provides a rich ground for failure of the customer business.

> There is a continuing suspicion of the insolvency world, with a reluctance to ask for help even when it's clear it's needed

The lack of stability in approach, along with uncertainty, can and does impact the ability of customers to cope with cash flow impacts and obtain contributions to working capital.

There are other issues that can also impact a supplier's behaviour and ability to manage the supply. For instance, resourcing can be an issue. Many supplying businesses have stretched resources, and the lack of resources means signs are missed and close management is simply not possible. It absorbs a lot of time.

Improper use of support elements can also be a problem, which can take many forms, such as credit insurance and credit data. Insurance is seen by many as the 'panacea for all ills'. It is not. It is always limited and can be withdrawn with little notice in many cases and comes with significant responsibility by the insured business to comply with policy. This is where many smaller businesses fall down. Regarding data, the models for calculating scores, limits and other guides are fixed. Businesses can fall foul of this because they are relying on them without understanding them.

What are the issues for distressed customers, those being supplied? Firstly, there is a fundamental lack of understanding by many distressed customers of the signs of an impending problem. This can be a lack of experience, a belief in their own 'hype' or simply a lack of expertise in running a business. Many construction – and probably other – businesses are good at operating and delivering but do not understand the critical importance of cash flow or the dangers of overcommitment.

More developed credit management teams become adept at spotting these businesses and engage with them to help them in that understanding. However, you have got to spot them and have a willing listener to what can be a difficult message.

Secondly, there is a continuing suspicion of the insolvency world, with a reluctance to ask for help even when it's clear it's needed. That is another fundamental problem.

Every man for himself

So, businesses do not recognise the signs and are then slow or reluctant to act on them. Not a great start. How do we get a better outcome? In the 'old world' there used to be 'informal creditors' meetings' with key suppliers. Situations were laid out with an IP involved (usually through introduction by suppliers) and an agreement of support gained. There tended to be a much better outcome. It was predicated on acceptance of the distress situation, good communication and good relationships. There are several elements that inhibit this in the current environment.

For larger businesses, competition rules mean an avoidance of contact with competitors around areas such as this, which can make creditors' meetings difficult. Creditors simply cannot liaise with the competition and certainly cannot make any agreements. Perhaps for smaller businesses there can be a lack of trust in each other as creditors. It's 'every man for himself' in both cases. The same applies for many of the finance suppliers, such as banks and factors who have secured positions. How could we change this situation?

Firstly, by educating businesses to be aware of the signs and how they need to act on them. You can set up a business with £2 share capital, which allows directors with serial failures behind them to simply move on and try again. How do you get such a situation understood and then acted on?

Secondly, by adopting a more cooperative approach, such as with 'informal creditors' meetings'. This must include all parties involved that have a critical influence, including credit insurers (who often have significant amounts of money at stake).

Thirdly, and I talk here about suppliers, relationships need to be developed with customers so that difficult conversations can be held. In the past, these were often created by face-to-face meetings. These happen less and less, possibly due to the point about resourcing I made above.

Hopefully I have provided some food for thought and insight into the supply world where IPs may not have significant understanding. If this does contribute to any discussion, then maybe we will be able to change and improve outcomes.


Simon Howell is a senior manager in credit management at Tarmac

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Covid-era policies could still yield big returns for creditors

IPs should check companies' documents as a recent landmark decision opened the door to payments of wrongfully denied claims, say **Alex Jay** and **Aaron Le Marquer**

Four years on from the UK's first national lockdown, following a prolonged series of test case litigation in the English courts, thousands of British businesses are able to pursue an indemnity from their insurers for pandemic-related losses. For those businesses that have already entered into an insolvency process, any viable claim will be a potentially valuable asset in the insolvent estate and it can still be pursued and realised by IPs for the benefit of the company's creditors.

Any business that was adversely affected by the Government's lockdowns may have held coverage for the resultant loss of profits and may be entitled to make a claim. Hospitality, retail, entertainment and leisure businesses in particular were often insured under standard wordings that have been confirmed as triggering post-pandemic payouts. Health, fitness and beauty salons also frequently have coverage.

Test case litigation

Typically, the insurance provides coverage for lost gross profit caused while the business was forced to close or operate under restrictions. In cases where the business was not entirely closed, it may additionally be able to claim for increased costs incurred in continuing to trade under restrictions. Deductions are made for savings in overhead costs so that the business is put back in the position it would have been in had the pandemic never happened. In most cases, coverage is only provided for a limited period of time, typically between three to 12 months.

> "Further test case litigation scheduled for January may yet determine whether insurers were incorrect to deduct 'furlough' monies from payouts, as many have done"

Many claims were incorrectly rejected by insurers before the correct legal position on coverage had been established by test case litigation. IPs may now be able to rely on more recent legal precedents to pursue a claim, even where the insurer considered and rejected a claim made by the business at an earlier time.

In September 2024, the Court of Appeal upheld a landmark decision that confirmed companies with 'at the premises' policy wordings were eligible to claim on business interruption insurance, a case which has given many more businesses the opportunity to seek redress. Further test case litigation scheduled for January may yet determine whether insurers were incorrect to deduct 'furlough' monies from payouts, as many have done. Policyholders argue that the intent of this relief was to keep businesses afloat, rather than grow insurers' profits.

Cover held by 370,000 firms

The value of a claim depends on the size of the business and level of cover purchased. Claims for SMEs are frequently valued in the range of £100,000–£1 million, while larger businesses may be due an indemnity valued in the tens of millions.

Many policyholders may have been unaware they held insurance coverage for pandemic losses or advised by brokers or insurers that their policies did not respond. The insurance industry's own latest claims data, as reported to the FCA, shows that of an estimated 370,000 businesses holding relevant coverage, only around 43,000 claims have been paid.

In most cases, businesses have six years from the date of loss to pursue a claim against their insurer, meaning claims will not become time-barred until at least March 2026. Although many insurance policies

include strict notification provisions, the FCA has instructed insurers not to raise late notification as a defence to Covid business interruption claims. The fact that the business has been placed into administration or any other insolvency process does not affect the IP's right to pursue a claim on behalf of the business.

In some cases, a further indemnity may be payable as a result of recent legal developments. Businesses may find that they have additional claims for multiple premises or for multiple lockdown periods, and should review their positions even where claims have already been settled.

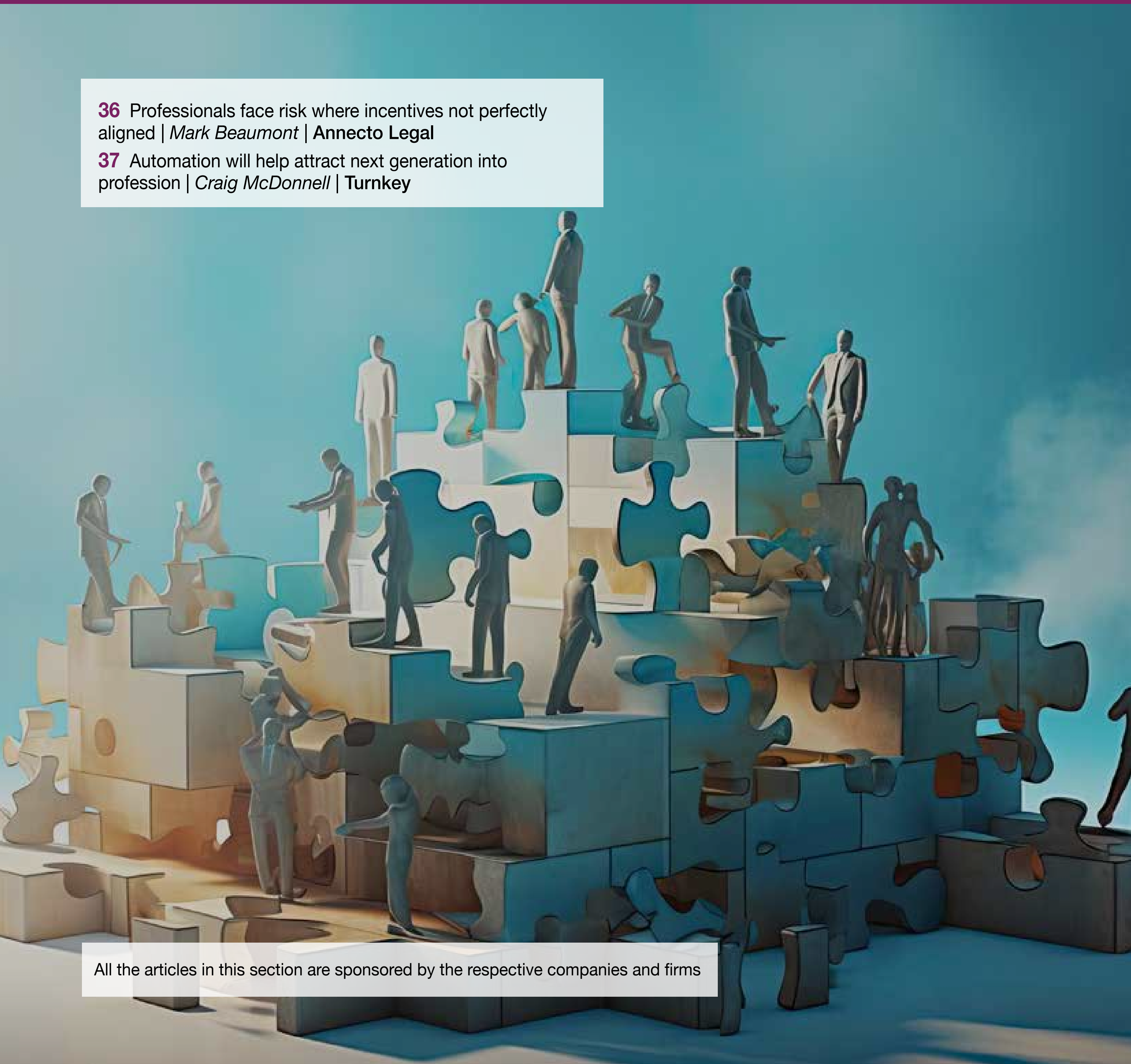
In the first instance, the IP simply needs to identify the policy documents in place for the 2020/21 period. If these are not readily available from the company records, the business's insurance broker should be able to provide copies. Where an IP believes an insurance claim might be viable, they should seek expert legal advice.

Alex Jay is partner and head of insolvency and asset recovery, and **Aaron Le Marquer** is partner and head of policyholder disputes at Stewarts

RECOVERY Insights

New perspectives on insolvency, restructuring and turnaround

Sponsored Editorial



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Professionals face risk where incentives not perfectly aligned

The dominance of the assignment model in insolvency is surprising after a decade of development for different funding options, says **Mark Beaumont**

Ten years on from the Jackson reforms and the market for third-party litigation funding has expanded massively, with new entrants regularly joining the fray. Law firm RPC's analysis of just 15 of the largest UK litigation funders showed assets growing from £0.4 billion to over £2.2 billion in the decade leading up to 2022. The largest area of growth has been the assignment of claims to funders. This is done for an upfront fee, a share of recoveries made or, more commonly, a combination of both.

This makes sense in some contexts, and we work with several parties that are keen to acquire claims outright. It is also worth considering situations that might be better served by a combination of conditional-fee agreement (either in full or in part) alongside after-the-event legal expenses insurance and either disbursement funding or an element of non-recourse funding. This could finance legal fees and/or the insolvency professional's work in progress.

> **By having access to multiple markets, you maximise the chances of creating value from claims, which might be one of the few routes to providing any cash generation at all**

These models can work either in a scenario where the funding needed is very low (to pay just an issue fee, perhaps) or where a claim is significant and the legal costs could run into the hundreds of thousands of pounds or more.

There are good reasons to consider a range of options around insolvency disputes, given the desire to maximise returns, but also because of cases such as *Brewer & Anor v. Iqbal [2019] EWHC 182 (Ch)*, which centred on allegations of misfeasance and a breach of duty of care against Zafar Iqbal, an insolvency practitioner. The main issue in the case was the handling and sale of the company's assets, which were sold below market value without proper market exposure or valuation efforts. When combined with the case law of *LF2 Ltd v. Supperstone*, the judgment in *Brewer* makes the demands on IPs very clear.

Settle on lower terms

In *LF2 Ltd v. Supperstone & Anor (Administrators of Pennyfeathers Ltd) [2018] EWHC 1776 (Ch)* the judge noted that: "A viable claim by the company against a third party is an asset of the company. A claim which is arguably viable, is a potential asset of the company. In principle, an administrator ought to be ready to investigate whether such an asset should be preserved and pursued."

Brewer makes clear that assets must be marketed properly, while *Supperstone* clarifies that viable claims are considered assets. Assignment can be a sensible route for certain claims (and claim sizes) but it is clearly important to consider all options. Also, retaining decision-making authority in a dispute can be beneficial: securing external funding but retaining control is a good way to pursue larger claims where there is a risk that an assignee might settle for less than you might consider prudent.

Given the way that assignment works, it might be commercial for an assignee to settle on much lower terms than might be considered wise under more traditional funding arrangements such as CFAs or ATE insurance. If the assignee has paid a low upfront fee to acquire a claim, then a quick return could prove to be 'better' than a higher return over a longer period. This will not always be the case, but it is clear that incentives are not always perfectly aligned, and there is certainly a risk there for professionals.

A better solution

IPs should be aware of their professional obligations, of course, as well as the opportunities presented by having access to a wide range of retainer, funding and insurance options for any claim. By having access to multiple markets, you maximise the chances of creating value from claims, which might be one of the few routes to providing any cash generation at all.

> **Given the way that assignment works, it might be commercial for an assignee to settle on much lower terms than might be considered wise under more traditional funding arrangements such as CFAs or ATE insurance**

While there will be claims that several funders would like to acquire, allowing you to maximise value, there may be others that only one funder will see value in pursuing. It is worth exploring your options before writing something off or accepting an offer without properly marketing the opportunity. In other scenarios, it may be that a different model generates a better return for all concerned, and the assignment option is just a back-up.

The last 10 years have seen major developments in the use of retainers, insurance models and different funding options, which makes the dominance of the assignment model in insolvency somewhat surprising. There is certainly a place for it, and we handle a lot of assignment projects ourselves, but I do think there should be consideration given to when it is the right option, or whether there may be a better solution.

Mark Beaumont is co-founder at Annecto Legal, mark.beaumont@annectolegal.co.uk, 07730 217 643

Automation will help attract next generation into profession

Tools such as OCR can reduce time spent on laborious tasks that put off younger workers who value creativity in their professional lives, says **Craig McDonnell**

The insolvency industry has always been a complex and labour-intensive field. But, in recent years, this field has faced a growing challenge: resourcing.

Shifting workforce trends and the increasing volume of insolvency cases have made it difficult for firms to attract and retain talent. Meanwhile the amount of manual, repetitive tasks, such as processing proof of debts (PODs) and managing creditor communications, continues to grow, placing more strain on already overworked teams.

Automation offers a solution to these challenges, providing the industry with a way to not only streamline time-consuming tasks but also to attract new talent and retain experienced employees while also making the industry more appealing to potential employees.

Technology influences job choice

Take the POD submission process, for example. PODs require careful examination, verification, and cross-referencing with creditor databases – a task that traditionally involves combing through stacks of documents and manually inputting data.

> **High turnover rates and burnout are common in industries where repetitive tasks dominate the workflow**

It's not just the volume of paperwork that represents a challenge. The attitude of the workforce to such tasks is also changing. As many industries embrace digitisation, younger professionals are drawn to tech-driven careers that offer more dynamic and intellectually stimulating roles. For those just entering the workforce, the idea of spending long hours manually processing claims is hardly an attractive proposition. In fact, according to a report by Dell Technologies, 91% of Gen Z says that the technology offered by a company influences their job choice.

Burnout is common

The manual, often repetitive, tasks that define much of the insolvency process are unappealing to this new generation of workers who value automation, flexibility, and creativity in their professional lives.

High turnover rates and burnout are common in industries where repetitive tasks dominate the workflow. By offloading much of this work to an automated system, even seasoned insolvency professionals can experience reduced stress and better work-life balance, leading to higher job satisfaction and lower attrition rates.

Automation is not just about reducing time spent on mind-numbing tasks. It is also about improving accuracy, ensuring consistency, and allowing human resources to be redirected toward more critical aspects of the insolvency process where human judgment is invaluable, and where the skills of experienced professionals can make a real difference.

In an industry where resourcing has become a critical challenge, automation offers a way forward. One such innovation is the use of optical character recognition (OCR) technology, which converts images of text such as scanned documents or photos into readable data. The data can then be combined with a customer relationship management (CRM) system. OCR can automatically extract key data from PDFs and other documents, eliminating the need for manual data entry.

Efficiency

Turnkey's Proven, an emerging tool in this space, offers precisely that capability. By extracting data from submitted PODs and mapping it directly into a firm's CRM system, the software simplifies what was once a laborious process.

Proven is just one example of how technology can help streamline the POD and proxy submission process, but it also signals something more significant: a shift in how we view insolvency work. By embracing automation such as this, firms not only improve their operational efficiency but also position themselves as attractive employers for a new generation of talent.

Reducing manual labour: software can extract data from PODs and map it directly into a CRM system

Younger professionals want more than just a job – they want careers that challenge them and offer opportunities for growth. By reducing the amount of time spent on monotonous, manual work with automation tools, the insolvency profession can become more appealing to the next generation of finance, legal and technology professionals.

Craig McDonnell is director of personal insolvency at Turnkey, craig.mcdonnell@turnkey-ips.com

SURVEY: Litigation funding

Introduction

Welcome to our second survey of litigation funders, brokers, and other related service providers.

We approached more than 50 firms in the market and asked them for information on a range of detailed issues. For the funders, questions covered how often they pay for the legal costs of the funded party in their entirety, how often they provide security for costs and cross undertakings for damages, the approximate percentage of their insolvency-related cases are undertaken on an assignment basis, and how they typically get paid.

The funders who took part in our survey have also provided information on the timescales they typically work to, minimum and average claim sizes, whether they use the IP's choice of solicitor, average percentage returns from damages awarded, and how they are different to other funders.

In total, 24 companies responded with information in answer to our questions, comprising 14 funders, seven brokers and three other service providers, and these companies are profiled in the tables below.

We hope you find the results useful in helping you to compare and contrast what is on offer from different providers, and to use that to leverage better returns for creditors.

Matt Jukes, managing editor


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HOWDEN

Litigation funding: Survey results

About this survey

Please note that all information in this section has been supplied by the companies concerned, unless indicated otherwise. Please see key below.

Who's who

Trading name	Trading address	Website	Contact persons for IPs	Top/parent company in group | Reg country | Reg No	No of years providing/ advising on third party funding for insolvency -related litigation	Regulated by
Annecto Legal Ltd ■	106 Kennedy Building, Murray Street, Manchester M4 6HS	www.annectolegal.co.uk	Mark Beaumont, Director, mark.beaumont@ annectolegal.co.uk, 07730 217 643	Annecto Legal Ltd | UK | 08370254	11	Financial Conduct Authority as an appointed representative of 2direct Limited.
Apex Litigation Finance Limited ■	20-22 Wenlock Road, London N1 7GU	www.apexlitigation.com	Mark Sands, Head of Insolvency, marksands@ apexlitigationfinance.com, 07972 004 303	Apex Litigation Finance Limited | UK | 11664128	5	None
Asertis Ltd ■	100 Barbirolli Square, Manchester M2 3AB	www.asertis.co.uk	Roger Dugan, Investment Manager and Solicitor, roger.dugan@asertis.co.uk	Asertis Ltd | UK | 11269006	4	None
AxiaFunder ■	184 Shepherds Bush Road, London W6 7NL	www.axiafunder.com	*n/s*	Champerty Limited | UK | 10532108	TBC	Financial Conduct Authority
Balance Legal Capital LLP ■	25 Southampton Buildings, London WC2A 1AL	www. balancelegalcapital.com	Robert Rothkopf, Managing Partner, robert.rothkopf@ balancelegalcapital.com, 020 3950 0432	Balance Legal Capital LLP | UK | OC401304	9	Financial Conduct Authority
Bench Walk Advisors ■	1 Bow Lane	www.benchwalk.com	Adrian Chopin, Managing Director, adrian.chopin@benchwalk. com, 07753 709 013	Bench Walk Advisors LLC | US | 6083215	7	Securities and Exchange Commission
Burford Capital ■	Paternoster House, 4th Floor, 65 St Paul's Churchyard, London EC4M 8AB	www.burfordcapital.com	*n/s*	N/A | UK | N/A	15	Burford Capital Limited's shares are dual listed on New York Stock Exchange (NYSE) and Alternative Investment Market of the London Stock Exchange (LSE AIM). Also member of International Legal Finance Association.
Cavendish IP Solutions Ltd ■	29-31 Euston Road, London NW1 2SD	www.cips.uk.com	Richard Hasseck, CEO, richard@cips.uk.com, 07970 700 122	N/A | UK | 09439024	8	CEO Richard Hasseck is an FCA

Key:
■ = Broker
■ = Funder
■ = Another litigation funding service

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Text in regular font = text supplied by the profiled company
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Trading name	Trading address	Website	Contact persons for IPs	Top/parent company in group | Reg country | Reg No	No of years providing/ advising on third party funding for insolvency -related litigation	Regulated by
Clarendon Associates ■	1 Suffolk Road, SW13 9PH	N/A	Clive Petty, Principal, clive.petty@clarendonassociates.com, 07802 333 522	Clarendon Associates | UK | N/A	10	None
Client Care Options Ltd ■	48 Pilley Lane, Cheltenham GL53 9ER	www.ccoptions.co.uk	*n/s*	Straight Solutions Ltd | UK | 05203285	16	Financial Conduct Authority
Escalate ■	Exchange Station, Tithebarn Street, Liverpool L2 2QP	www.escalatedisputes.co.uk	Chris Clay, Managing Partner, chris.clay@escalatedisputes.co.uk, 07875 403 543	Escalate Law Limited | UK | 10381993	7	Solicitors Regulation Authority
Exton Advisors Ltd ■	46 Gresham Street, London EC2V 7AY	www.extonadvisors.com	John Astill, Managing Director, john.astill@extonadvisors.com, 07555 464 207	Exton Advisors Ltd | UK | 10976291	6.5	Financial Conduct Authority
Factor Risk Management Ltd ■	Dawson House, 5 Jewry St, London EC3N 2EX	www.factor-risk.com	Tom Davey, Director, tom@factor-risk.com, 07873 890 244	Factor Risk Management Ltd | UK | 12650248	4	Financial Conduct Authority
Gateley Legal ■	1 Paternoster Square, London EC4M 7DX	www.gateleyplc.com/gateley-legal	Alex Thompson, Partner, alex.thompson@gateleylegal.com, 020 7653 1666	Gateley Plc | UK | 09310187	15	Solicitors Regulation Authority
Global Corporate Solutions ■	The Tall Trees Estate, Tan Y Bryn Road, Amlwch LL68 9TH	www.globalcorporate.uk	Mike Hartley, Director, mikeh@globalcorporate.uk, 0845 094 2572 / 07513 778 389	MT Portfolio One Limited | UK | 09545417	9	None
Henderson & Jones ■	91 Wimpole St, London W1G 0EF	www.hendersonandjones.com	*n/s*	*n/s*	8	Solicitors Regulation Authority and Institute of Chartered Accountants England and Wales
Howden Insurance Brokers Limited ■	One Creechurch Place, London EC3A 5AF	www.howdengroup.com	Julia Mahoney, Divisional Director, julia.mahoney@howdengroup.com, 07761 516 508	Howden Group Holding Limited | UK | 2937398	5	Financial Conduct Authority
LCM Funding UK Ltd ■	Beaumont Blackfriars, 181 Queen Victoria Street, London EC4V 4EG	www.lcmfinance.com	Hugo Richard Leask Marshall, Investment Manager, hmarshall@lcmfinance.com, 07549 546 997	LITIGATION CAPITAL MANAGEMENT LIMITED | Australia | 608 667 509	26	London Stock Exchange, Australian Securities and Investments Commission
LFA ■	Suite 123, 12/F Somptueux Central, 52-54 Wellington Street, Central, Hong Kong	www.lfamea.com	Rupert Purser, Director (of UK associate), r.purser@pursercooper.com, 07840 939 508	Terramillem Advisory Limited | Hong Kong SAR China | 1744890	12	HKICPA and AOE
LionFish Litigation Finance Ltd ■	165 Fleet Street, London EC4A 2AE	www.lflf.co.uk	Tetsuya Ishikawa, Managing Director, tets.ishikawa@lflf.co.uk, 020 8148 9575	LionFish Litigation Finance Ltd | UK | 12165991	4	None

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Call: **0800 612 6587** Email: **info@annectolegal.co.uk**

Who's who (continued)						
Trading name	**Trading address**	**Website**	**Contact persons for IPs**	**Top/parent company in group | Reg country | Reg No**	**No of years providing/ advising on third party funding for insolvency -related litigation**	**Regulated by**
Maxima Litigation Finance Limited ■	Kingsnorth House, Blenheim Way, Birmingham B44 8LS	www.maximagroup.org	Vanessa Andrews, Director, vanessaandrews@ maximagroup.org, 0333 772 0454	Maxima Litigation Finance Limited | UK | 10987867	17	Maxima Litigation Finance Limited is not regulated (third party funding services). Maxima Litigation Solutions Limited is regulated by Financial Conduct Authority (after the event insurance and general insurance regulated activities). Members of BIBA.
Optimise ■	7th Floor, Walker House, Exchange Flags, Liverpool L2 3YL / The Le Gallais Building, 54 Bath Street, St Helier, Jersey JE1 1FW	www.optimiseinsolvency claims.com	Mark Goodwin, Managing Director, mark.goodwin@ optimiseinsolvencyclaims. co.uk, 0151 305 4141	Provenio Law Limited | UK | 11438729	1	None
Pythagoras Capital Limited ■	Suite 202, Golden Cross House, 8 Duncannon Street, London WC2N 4JF	www.pythagorascapital. com	Rachel Jones, Business Development Manager, rachel.jones@ pythagorascapital.com, 020 3633 0053	Pythagoras Capital Limited | UK | 08124706	8	N/A
Redress Solutions PLC ■	Coopers' Hall, 13 Devonshire Square, London EC2M 4TH	www.redresssolutions. co.uk	Marius Nasta, mnasta@redresssolutions. co.uk, 07801 916 279	Redress Solutions PLC | UK | 9079980	17	The business is self regulated but is a member of the Association of Litigation Funders of England and Wales.

Funders (table 1)							
Trading name	**Approximately how much capital do you currently have access to that you can use and/or are already deploying to fund insolvency -related cases? (£)**	**Who provides this funding, how is it provided, and how long does it take to draw down?**	**Approximately how many live insolvency-related cases are you currently funding globally?**	**What is the approx value of those claims should all of them be successful?**	**Approximately what % of the total value of the cases that you are currently funding are for/ from UK-based insolvency practitioners**	**Is the funding that you provide for insolvency-related cases non-recourse?**	**How often in insolvency-related cases do you pay for the legal costs of the funded party in their entirety?**
Apex Litigation Finance Limited ■	20,000,000	Funding is provided through a Guernsey domiciled company. Once a funding agreement is executed, drawdown is immediately available.	5	70,000,000	20	Always	Always
Asertis Ltd ■	350,000,000	We would prefer not to say	We would prefer not to say	We would prefer not to say	We would prefer not to say	Always	Always
AxiaFunder ■	500,000	HNWs	N/A	0	*n/s*	Sometimes	Sometimes
Balance Legal Capital LLP ■	300,000,000	Our capital is raised from institutional investors in Europe, the US and Australia. We raise the capital via (and fund cases from) UK funds, for which we are the investment manager. Capital is drawn from investors on a periodic basis to meet upcoming cash requirements on the fund's cases.	5	250,000,000	15	Always	Mostly

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Funders (table 1) (continued)							
Trading name	**Approximately how much capital do you currently have access to that you can use and/or are already deploying to fund insolvency -related cases? (£)**	**Who provides this funding, how is it provided, and how long does it take to draw down?**	**Approximately how many live insolvency-related cases are you currently funding globally?**	**What is the approx value of those claims should all of them be successful? (£)**	**Approximately what % of the total value of the cases that you are currently funding are for/ from UK-based insolvency practitioners**	**Is the funding that you provide for insolvency-related cases non-recourse?**	**How often in insolvency-related cases do you pay for the legal costs of the funded party in their entirety?**
Bench Walk Advisors ■	100,000,000	Private equity structure. Institutional investors. Typically 30 day capital call.	4	120,000,000	25	Mostly	Always
Burford Capital ■	5,710,000,000	Funding is provided through a mixture of balance sheet and fund capital. Burford has the distinct advantage of conducting all our case review in-house. As a result, we can act more quickly – and we see and learn from thousands of matters each year.	10	80,700,000	*n/s*	Always	Mostly
Cavendish IP Solutions Ltd ■	Rather not disclose	Draw down on demand (less than seven days)	21	7,000,000	100	Always	Sometimes
Henderson & Jones ■	*n/s*	We have the ability to draw on multiple large cash resources as needed.	145	1,360,000,000	95%	Always	Sometimes
LCM Funding UK Ltd ■	400,000,000	Balance sheet capital and third-party investors. Typically, draw down takes less than four weeks.	20	This is not a metric we report on nor assessed	19	Always	Always
LFA ■	10,000,000	We have a panel of capital sources, mainly family offices. Diligence to funding will usually take four to 12 weeks.	1	15,000,000	0	Always	Mostly
LionFish Litigation Finance Ltd ■	Subject to confidentiality	We are owned by funds managed by Foresight Group LLP. As shareholders, they also make available investment capital to LionFish. LionFish advances drawdowns under each funding agreement on the last business day of each month, pursuant to a pre-agreed drawdown process.	Subject to confidentiality	Subject to confidentiality	Subject to confidentiality	Always	Sometimes
Optimise ■	1,200,000	Optimise has a funding agreement with a global litigation funder which provides financial support for our operations. Under this agreement, it may take up to 28 days to draw down funds once a drawdown request is made.	8 in the first six months of trading	10,000,000	100	Always	Always
Pythagoras Capital Limited ■	N/A	Self funding, immediate drawdown	176	78,000,000	100	Always	Always
Redress Solutions PLC ■	10	Institutional investors	None	0	0	Always	Always

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Funders (table 2)					
Trading name	**In respect of insolvency-related cases, do you fund the other party's costs in an insolvency-related dispute if the funded party is ordered to do so?**	**Do you provide funding for security for costs and cross undertakings for damages?**	**Approximately what percentage of your insolvency cases are undertaken on an assignment basis?**	**Do you ask for an exclusivity period while you do your due diligence before making a firm offer to fund an insolvency-related case?**	**How do you typically get paid for an insolvency-related case?**
Apex Litigation Finance Limited ■	Never	Sometimes	0	Sometimes	In all cases, the return to the funder is a multiple of the amount deployed into the case.
Asertis Ltd ■	Always	Always	We would prefer not to say	Always	We would prefer not to say
AxiaFunder ■	Sometimes	Mostly	*n/s*	Never	N/A
Balance Legal Capital LLP ■	Always	Mostly	0	Sometimes	On success in a case, we are typically reimbursed our drawn capital and paid a return structured as a multiple of capital. The multiple is usually staged, such that it starts low and increases with time, for example from 1x to 2.5x. Our funding is non-recourse (no return if the case loses).
Bench Walk Advisors ■	Sometimes	Mostly	10	Always	Multiple of invested capital
Burford Capital ■	Sometimes	Sometimes	*n/s*	Never	We typically receive return of funded capital, plus one or more of: multiple of funded capital that may increase over time; time-based return, like an interest rate; entitlement to a percentage of the net realisation that may change over time or may depend on size of total resolution amount.
Cavendish IP Solutions Ltd ■	Sometimes	Sometimes	85	Sometimes	Usually, up-front fee and a percentage of net recoveries.
Henderson & Jones ■	Always	Sometimes	90%	Never	We only get paid on successful conclusion of our claim. We pay insolvency practitioners up front and/or with a share of net proceeds, which we share.
LCM Funding UK Ltd ■	Never	Sometimes	0	Sometimes	When funded, the structure is usually (i) capital back plus (ii) a multiple of capital deployed, rising as a function of time from the date of the agreement to the date of recovery.
LFA ■	Mostly	Mostly	0	Mostly	Subject to rules and regulations that dictate an agreement's strcture, we seek a minority interest in the net realisations.
LionFish Litigation Finance Ltd ■	Sometimes	Mostly	0	Never	The pricing structure is typically a multiple that steps up every calendar year. The multiple varies from deal to deal and is dependent on the risk profile of the underlying case. The pricing structure may also vary depending on the requirements of the funded matter.
Optimise ■	Always	Always	Currently 100% of our cases are undertaken on an assignment basis. However, Optimise is open to providing a more traditional litigation funding option without the need to sell or assign the claim outright.	Never	We provide insolvency practitioners with an agreed upfront payment on the purchase of a claim – proportionate to the claim's value and a backend share of the net recovery.
Pythagoras Capital Limited ■	Always	Sometimes	1	Never	We act as the IP's agent, aligning our interests to maximise recoveries in an efficient manner. We run the claims fully contingently, taking on all of the cost and risk. IPs retain control over settlement and proceedings. Upon success, we deduct our costs then split the proceeds with the IP.
Redress Solutions PLC ■	Never	Always	0	Sometimes	2x capital committed plus return of capital deployed. The multiple goes up by 0.5% on a yearly basis until x3.

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Funders (table 3)								
Trading name	**Max no of working days you take to make a firm offer to fund an insolvency-related case after you have been given all the information you require to make a decision?**	**Average no of working days you take to make a firm offer to fund an insolvency-related case after you have been given all the information you require to make a decision?**	**Minimum claim size (£)**	**Average (median) claim size (£)**	**Do you reserve any rights to approve the way an insolvency-related case is settled?**	**Do you use the insolvency practitioner's choice of solicitors?**	**How are you different to most other funders of insolvency-related litigation?**	**What other services do you provide insolvency practitioners?**
Apex Litigation Finance Limited ■	10	5	20,000	250,000	Sometimes	Always	We are a pure non-recourse litigation funder, therefore we do not seek to take assignment or ownership of the claim. This leaves the IP to control the litigation and to achieve the maximum return for creditors.	As several of our team are experienced insolvency professionals, we are able to contribute to discussions regarding litigation and enforcement strategy.
Asertis Ltd ■	4	2	We would prefer not to say	We would prefer not to say	Always	Always	Our philosophy is personal, yet commercial. Taking each case carefully on its merits, we create a unique relationship with our clients based on trust, professionalism and mutual understanding.	*n/s*
AxiaFunder ■	N/A	N/A	N/A	N/A	*n/s*	*n/s*	*n/s*	*n/s*
Balance Legal Capital LLP ■	15	7	20,000,000	30,000,000	Never	Always	We have strong internal due diligence capabilities and our investment committee meets weekly which means we make decisions quickly. We have full authority to make investment decisions on behalf of our funds. We focus on UK and Australian investments.	*n/s*
Bench Walk Advisors ■	40	30	10,000,000	25,000,000	Never	Mostly	We are renowned for our ability and commitment to making fast decisions. Each of our clients deals directly with a highly experienced, deal-oriented decision maker throughout the review process.	Recourse, firm wide lending facilities
Burford Capital ■	*n/s*	*n/s*	£3,900,000 ($5,000,000)	*n/s*	Never	Always	We differentiate ourselves due to our broad team expertise, substantial capital, and ability to conduct all due diligence in-house. This allows us to provide comprehensive, efficient support across all stages of the legal process.	*n/s*
Cavendish IP Solutions Ltd ■	28	7	50,000	300,000	Never	Sometimes	Being small and nimble we can operate at speed. We run many cases using our in-house legal team, which has the advantage of greater cost control and responsiveness often responding to incoming correspondence on the same day it is received.	*n/s*

Key:
■ = Broker
■ = Funder
■ = Another litigation funding service

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company
Text in italic font = text supplied by the *Recovery* publishing team based on publicly available information

Funders (table 3) (continued)								
Trading name	**Max no of working days you take to make a firm offer to fund an insolvency-related case after you have been given all the information you require to make a decision?**	**Average no of working days you take to make a firm offer to fund an insolvency-related case after you have been given all the information you require to make a decision?**	**Minimum claim size (£)**	**Average (median) claim size (£)**	**Do you reserve any rights to approve the way an insolvency-related case is settled?**	**Do you use the insolvency practitioner's choice of solicitors?**	**How are you different to most other funders of insolvency-related litigation?**	**What other services do you provide insolvency practitioners?**
Henderson & Jones ■	15	7	25,000	700,000	Sometimes	Sometimes	The founders are experienced insolvency and litigation professionals. Don't need application packs. Assignment model allows us to take on greater risks and generate excellent outcomes.	*n/s*
LCM Funding UK Ltd ■	30	10	10,000,000	50,000,000	Never	Always	LCM has a demonstrable track record of successfully funding significant, complex insolvency practitioner-led claims, via transparent and reliable capital sources. LCM is flexible on terms because of direct and immediate access to unfettered capital.	*n/s*
LFA ■	20	10	1,000,000	3,500,000	Never	Mostly	We focus on off shore matters	Expert and business turnaround advisory services
LionFish Litigation Finance Ltd ■	5 to 10 days	5 to 10 days	3,000,000	Subject to confidentiality	Mostly	Always	Rather than taking an assignment, we will provide third party funding on an agreed strategy and budget, subject to due diligencing not only the case but the legal team. Once funded, we allow the team to get on with the matter.	*n/s*
Optimise ■	30	14	50,000	245,000	Always	Mostly	Optimise can assist with often neglected lower-value claims as our Provenio partnership allows flexible legal cost management. We also offer more commercial terms beyond rigid 50:50 splits and work with external solicitors on mid/high-value claims.	As part of the assessment process, we offer insolvency professionals and their advisers the benefit of Paul Flint's 35 years of hands-on insolvency experience as well as access to our portfolio of counsel to give early advice on the merits of claims.
Pythagoras Capital Limited ■	5	2	20,000	N/A	Sometimes	Never	Our in-house law firm efficiently handles smaller claims, while we have partnerships to run larger claims. We don't need extensive work by an IP or counsel's opinion. Our principals' extensive insolvency experience at global law firms set us apart.	We pioneered the use of adjudication for insolvent construction companies in the UK (see our Bresco Supreme Court decision). We fund adjudications and enforcement proceedings, on the same no cost/no risk model as for our insolvency litigation work.
Redress Solutions PLC ■	30	14	4,000,000	5,000,000	Never	Always	From receipt of papers we usually provide an indicative reply regarding funding within 48 working hours.	*n/s*

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Brokers								
Trading name	**Briefly describe the services you provide to insolvency professionals**	**Approx what % of the turnover of your business/ group is related to third party litigation funding for insolvency claims?**	**How many third party litigation funders do you have access to for insolvency-related claims?**	**Minimum claim size (£)**	**Average (median) claim size (£)**	**How do you typically get paid in respect of arranging third party insolvency -related funding?**	**How many FTE employees do you have?**	**How are you different to most other litigation funding brokers operating in the UK market?**
Annecto Legal Ltd	Annecto Legal gives access to a broad market for Assignment of Claims, Third Party Funding and Insurance, including ATE and WIP insurance. Happy to discuss claims (and potential claims) and give guidance on funding options and their likely costs. Cover the whole range of claims sizes and complexity.	60	35	20,000	250,000	Upon recovery: 5% of funder's net return.	5	Owner-managed, taking a long term view rather than short-term profits. Background in legal costs: Able to give a broad view on retainers, funding & insurance options to package the correct solution. Established 12 years ago, and FCA regulated so able to recommend both insurance and funding.
Clarendon Associates	Assistance in securing suitable litigation funding and associated ATE insurance, security for costs cover, enforcement, etc.	50	10	1,000,000	3,000,000	Fees earned from the funder upon successful conclusion	1	I tend to work harder on fewer cases
Client Care Options Ltd	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Exton Advisors Ltd	We provide advisory and brokerage services in relation to financing and insuring insolvency claims.	N/A	N/A	10,000,000	N/A	We charge advisory fees	N/A	We are a global disputes finance advisory firm with a unique skill set that incorporates, insurance, legal, corporate finance, distressed debt and structured credit enabling us to draw from a wide pool of experience to deliver market leading solutions to claimants, law firms and investors.
Factor Risk Management Ltd	We are specialist independent advisers and brokers of litigation finance and dispute related insurances, including: after the event; contingency fee; cross undertaking in damages; judgement preservation; warranty and indemnity; claim assignments; and monetisation of awards.	30%	25+	200,000	1,500,000	Introducer fee paid by the funder at the successful conclusion of the claim	7	We are a full service broker that advises and arranges on a wide range of dispute related insurances alongside litigation funding. This dual offering is market leading and we have comprehensive in-house expertise and experience encompassing underwriting, accountancy, legal, and funding.
Howden Insurance Brokers Limited	Our specialist team works exclusively on developing solutions to the problems presented to clients when undertaking litigation or arbitration through the application of insurance and funding.	35	20	100,000	500,000	Typically we get paid at the successful conclusion of the case with the funder paying us a percentage of their returns.	5	We draw on experience from legal, insurance and funding backgrounds which enable us to take an advisory approach in implementing bespoke arrangements to mitigate the risks and costs associated with pursuing credible actions.
Maxima Litigation Finance Limited	We procure third party funding and legal expenses insurance for IP's claims, whether they lend better to be purchased or litigated upon, providing the best terms for the creditors across the market. We all provide indemnity bonds or anti-avoidance endorsements to meet security for costs.	70	14	500,000	3,000,000	Fees are usually paid by the third party funder. Other options are available	3	We work with insolvency practitioners and their lawyers to meet the needs of the case. This may require helping them with early case funding or cases that have run out of funds midway but have good merits. We do not just submit random applications, we look at the best solutions and the best partners.

Other litigation funding service providers	
Trading name	**Litigation funding services provided to insolvency professionals**
Escalate	Escalate is a multi-award winning packaged solution for insolvency practitioners with contested claims ranging from £25,000 to £2 million. It is a solution that combines legal expertise, case funding, and full cost protection under 'one roof' – all for a capped fee that is only payable upon successful recovery and which guarantees the creditors will be the main beneficiary of the claimed amount. Whether a claim is at the start of its journey or has already progressed and stalled due to funding constraints the Escalate solution can help. Assignments can also be taken if preferred.
Gateley Legal	Gateley is able to offer litigation funding to clients in appropriate cases through access to a permanent £50 million litigation funding facility with Bench Walk, a leading funder in the market. Gateley has years of experience advising both claimants and funders on funding dispute resolution claims. Our advice covers the full spectrum of the funding application process, including initial evaluation of case merits, the prospects of recovery, cost budgeting and assessing the likely duration of the assignment from inception through to cash recovery.
Global Corporate Solutions	Book debt/ledger collection. Book debt/ledger assignment/purchase. Assignment of claims on an outright purchase or split of recoveries basis. Funding of claims/applications. Funding or outsourcing of investigations/financial analysis.

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On behalf of the profession

Regional forums, training initiatives and events, and ongoing representation work have kept the R3 team busy since the last issue of *Recovery*, writes **Amelia Franklin**

Over the past few months, R3's Policy and Public Affairs team has been actively engaging with key stakeholders. Shortly after Parliament returned from its summer recess, R3 CEO Caroline Sumner met with Heather Buchanan, director of policy and strategy at the All-Party Parliamentary Group for Fair Business Banking. The discussion focused on a range of topics, including the audit reform and corporate governance bill, which could introduce reforms to insolvency regulation, as well as Companies House reforms aimed at increasing transparency and tackling fraud.

These policy issues were also discussed at R3's Policy Group meeting in September, where the group examined the potential impacts of the audit bill on the profession. The group also debated the water (special measures) bill, which will introduce stricter regulation for water companies.

> Nearly 200 delegates attended the Northern and Eastern Forums in September, where they had the opportunity to connect with fellow members, share insights and hear from industry leaders

Recognising the need for updated legislation on investigative powers, R3 has formed a working group. This group, composed of members from the General Technical Committee, Scottish Technical Committee, and the Fraud and Asset Recovery Group, will analyse current legislation and propose necessary changes to the Insolvency Service. An initial meeting took place at the end of October 2024.

Requests for clarity

At the end of July, R3 and the RPBs wrote a joint letter to the Insolvency Service seeking urgent clarification of its view that "a creditor is set at the point of entry to the procedure and that this remains, even if payment in full is subsequently made". This was after two recent court rulings that determined the administration period could be extended without requiring consent from secured creditors who had already received full payment. We will keep members updated on any response received from the Insolvency Service as this situation evolves. The Insolvency Service is considering the matter further and hopes to come back to us soon, but that may take time as it is seeking legal advice.

As this column went to press, R3's General Technical Committee and the Fraud and Asset Recovery Group were reviewing a draft of Companies House's request form for IPs seeking disclosure of non-public data in line with section 1110F of the Companies Act 2006, which is not yet in force. The groups will provide feedback to ensure the final version meets the needs of practitioners.

Strengthening regional connections

Nearly 200 delegates attended the Northern and Eastern Forums in September, where they had the opportunity to connect with fellow members, share insights and hear from industry leaders.

It was fantastic to see both seasoned professionals and rising stars take to the stage to deliver a programme of high-quality and engaging sessions including a talk from the Bank of England, Eastern region member Joe Curl KC's summary of the BHS case from his perspective as counsel for the liquidators, and updates from our 'Northern Stars' – upcoming and established professionals from the region, who spoke about their career journeys and key areas of expertise.

Both events also featured updates from R3 president Tim Cooper and CEO Caroline Sumner, who highlighted the importance of regional engagement. Caroline also used her session to announce R3's new Bursary Scheme, which offers subsidised places for R3 events and training. You can read more about this in Robert Beer's article on page 58.

Spotlighting and supporting the progression of the next generation of leaders in our profession is a key priority for R3. With this in mind, the Training Academy team has launched a new leadership development programme tailored specifically for new- to mid-level insolvency and restructuring professionals. You can read about the

> R3's comments on corporate and personal insolvency statistics also featured in a wide range of national, trade and regional publications

programme in more detail in course leader Antoinette Dale Henderson's piece on page 59.

The Training Academy held their Personal Insolvency Forum and Restructuring Forum, as well as two bootcamps, one focused on insolvency and one on restructuring, to cap a busy summer and autumn for the team. Thank you to all our speakers, sponsors and attendees.

R3 in the media

Media interest in the profession and R3's work has remained high in recent months. R3 president Tim Cooper was interviewed by the BBC's *Reporting Scotland* about football administrations and past president Nicky Fisher was quoted in *The Times* discussing the rise in voluntary insolvency levels.

R3's comments on corporate and personal insolvency statistics also featured in a wide range of national, trade and regional publications, including *The Daily Telegraph*, *The Guardian*, *The i*, and the *Daily Express*.

Our insights into business trends in the nations and regions, delivered through our partnership with Creditsafe remain popular, with a report on start-up growth in Northern Ireland appearing in *The Irish News* and *Business Eye*, and a story highlighting a decline in insolvency-related activity in Yorkshire featuring in *The Yorkshire Post* and *Business Live*. In Scotland, our analysis of the Accountant in Bankruptcy statistics appeared stories in *The Times*, *Credit Connect*, *Scottish Business News*, and *Scottish Financial News*.

Amelia Franklin is campaigns and communications executive at R3

The importance of connections

Networking can be an uncomfortable part of professional life but positives can outweigh negatives with the right mindset, say **Moira Fitzpatrick** and **Ben Luxford**

Can we shock you? We don't particularly like networking. It is not that we do not like meeting humans or making new connections, we absolutely do. We are actually quite a hoot when we are out and about. It is our own anxiety and inner thoughts prior to a networking event that make us feel that we do not like networking: 'What will I say? What if I don't know anyone in the room? What if others think I am boring? What if my zipper is down?'. However, as soon as we start talking to another human being at a networking event, all those anxious thoughts fall away and we are fine. The human mind is such a powerful thing, is it not?

Ben's thoughts on networking

According to an article published by the University of California, Berkeley, it is part of human nature to build relationships. From a young age, children naturally form bonds with their parents and caregivers. This pattern continues throughout our lives. We constantly seek companionship and support as we go through life's stages together.

> **"Research has shown that the psychological and physical health benefits of social contact are so great that they can even outweigh the harmful effects of other risk factors and boost life expectancy"**

I only have to look at my four-year-old and how effortlessly she makes new friends. She will simply walk up to another child and say "Hello…do you want to play?". It really is that simple. If the child replies with "no, thank you", my daughter simply moves on without giving the response another thought.

Making healthy connections goes beyond simply avoiding feelings of loneliness and isolation. Our relationships impact all dimensions of our wellbeing, including physical and mental health and our ability to flourish at work and in every other facet of life.

Because social connection is so hardwired into human behaviour, it makes sense that our relationships (or lack thereof) significantly influence our wellbeing. Connections can be just as important to physical and mental health as exercise and healthy eating. Research has shown that the psychological and physical health benefits of social contact are so great that they can even outweigh the harmful effects of other risk factors and

> **"Social media certainly has benefits for making connections and showcasing work and opinions. However, human connections far outweigh any benefits of social media"**

R3 Training Academy

The R3 Training Academy is designed to suit a range of learning styles and preferences, which enable professionals to grow and develop throughout their career in the insolvency and restructuring profession.

Upcoming Training Academy eLearning

Directors' Duties Series

This eLearning series will provide a comprehensive understanding of directors' duties for those looking to expand their existing knowledge of the subject. Delivered in the format of 5 technical sessions, short form tests at the end of each chapter and a relevant overarching case study to illustrate the topics being covered.

The series will equip attendees with an in-depth knowledge of directors' duties from pre-insolvency procedures to the roles and responsibilities of charitable trustees. The course is delivered in a format which is accessible to all, and at the attendee's own pace.

CPD Hours: 5

Creditors' Voluntary Liquidations (CVL) Refresher Series

This eLearning training is aimed at insolvency professionals who have basic experience of insolvency, but have not administered CVLs previously and as a refresher for staff and IPs who are returning to deal with CVLs.

Creditors' Voluntary Liquidations (CVL) represent the vast majority of corporate insolvencies, though the nature of these voluntary liquidations is often misunderstood. Join Julia McKay on this eLearning series as we explore CVLs from initial consultation to completion.

CPD Hours: 3

Introduction to Insolvency Certification

Consisting of 21 sessions, short tests and case studies, this course equips attendees with practical knowledge and an understanding of all insolvency procedures.

On completion of this certification, you will be R3 recognised as having a principles level of understanding in the Insolvency profession. If you have New Professionals in your staff cohort, book now, or speak to our team regarding a group booking of 5 or more staff to get a discounted rate.

CPD Hours: 16

To find out more go to www.r3training.org.uk

boost life expectancy. I am certainly one in favour of living as long as possible.

Some may say that networking can often have a negative connotation. For example, ‘I can’t do it’, ‘it’s not for me’, ‘it’s a boys club thing’ or ‘my work will speak for myself’. This is simply not true. We all network, daily. Saying ‘thank you’ to a barista in the morning. Holding the door open for a colleague. Providing directions to another on the street. These are all human connections, which is what networking is.

Handy tips

(1) Be genuine: Focus on building authentic relationships, not just collecting names.

(2) Set clear goals: What do you hope to achieve from networking at the conference? Are you looking for new clients, collaborators, or simply to learn from others in your field?

(3) Prepare your ‘elevator pitch’ in advance: A concise summary of who you are, and what you do.

(4) Listen actively: Pay attention to what others are saying and ask follow-up questions.

(5) Take a moment: If you have anxious thoughts, take a moment to breathe before entering the venue. Centre the mind.

Finally, follow up with your new contacts via email or on LinkedIn post-event. Suggest meeting for an English tea or coffee.

And, for an encore, have fun.

> **“I still do not relish networking occasions but neither am I angst-ridden, and I would even admit to now leaving many networking opportunities feeling positive and more fulfilled”**

Networking helps create more connections, build more relationships and opens up the mind so you can be a richer person. In our profession it is important to have a network of connections as you may need to leverage a relationship in a time of need.

The more an individual networks, the less nervous they become prior to an event and the confidence will slowly grow to a point where anxious thoughts are no longer at the front of mind.

We understand that the younger (and older) generation are building connections on social media, which is great, and important in the modern digital world. Social media certainly has benefits for making connections and showcasing work and opinions. However, human connections far outweigh any benefits of social media. This also applies to virtual calls.

Moira’s thoughts on networking

For many people, and that includes me, networking has been an uncomfortable aspect of professional life. Naturally an introvert, the thought of networking has, at times, brought me out in a cold sweat.

When I first started working, I found the idea of networking a little unsavoury and inauthentic. It just didn’t sit easy with me and I would avoid situations where I would have to walk into a room full of strangers or of my peers. On occasion, I would even make excuses to leave events during the networking sessions. Unwittingly, I had set myself up to fail. I had the wrong mindset. Instead of networking becoming easier, it became more difficult.

The saying goes that practice makes perfect. Well, I am not sure that I can promise that, but it does get easier. I still do not relish networking occasions but neither am I angst-ridden, and I would even admit to now leaving many networking opportunities feeling positive and more fulfilled.

> **“I have talked to other professionals about the angst of networking and am always surprised to hear how many say that they dislike networking and leave events exhausted and dissatisfied with themselves”**

So what changed? Well, for starters, I am (slightly) older and no longer forging a career. In recent years, I’ve attended events where there has been more of a focus on soft skills, such as ‘how to network’ sessions. These have helped me understand what an important part of your professional life networking is, that it is possible to build authentic and mutually beneficial relationships where you can exchange ideas and experiences with your peers or more experienced professionals. Of course, meeting people is only the first step in building connections. For the relationship to grow, we need to follow up with our connections but that can be for another article.

I have talked to other professionals about the angst of networking and am always surprised to hear how many say that they dislike networking and leave events exhausted and dissatisfied with themselves. Perhaps R3 could encourage those among us who feel this way to identify ourselves by carrying a copy of this *Recovery* magazine to sessions and see what relationships might flow from chatting to others we know face the same networking challenges.

The home of networking

Since its inception in the glorious, vibrant 80s, R3 has been about bringing the profession together and enabling members to build connections and relationships with one another. While there are many other outfits putting on networking events, including our very own members, no one does it better than R3. We know we are biased because R3 employs us and we would like to keep our jobs, but if you ask yourself the same question, I think you would agree.

Now, go check out the events R3 are hosting and book yourself on one or even two. Let R3 help you build your confidence, make connections, improve your physical and mental health and the ability to flourish at work and in every other facet of life.

Moira Fitzpatrick is technical manager and **Ben Luxford** is head of technical and stakeholder relations at R3

R3 launches new Bursary Scheme

R3's new Bursary Scheme is open to anyone with self-defined constraints and will improve accessibility, diversity and inclusivity, says **Robert Beer**

In the restructuring, insolvency and turnaround profession, developing talent is essential. At R3, we recognise that the future of our profession relies not only on experienced professionals but also on the fresh perspectives and innovative ideas of new professionals. We appreciate that career development can be competitive and not everyone will have the same opportunities. Thus, we are responding to this need to ensure that everyone interested in pursuing a career in the profession has a fair chance to progress and succeed.

We aspire to provide a welcoming environment for everyone, regardless of demographic or socio-economic background. The bursary scheme is open to all R3 members who self-define as having constraints to attend our courses or events, and who would otherwise miss out on professional development opportunities in insolvency and restructuring. The bursary scheme aims to ensure inclusion and diversity across R3 events and courses.

> "We aim to make the path to developing your career more accessible to a diverse range of candidates"

More than financial

The R3 bursary scheme is designed to reduce barriers for anyone looking to attend an R3 course or event. Financial constraints, organisational budgets and competing demands are some examples of things that might prevent our members from attending courses or events. By providing financial support through the R3 bursary scheme, we aim to make the path to developing your career more accessible to a diverse range of candidates. We want our R3 membership to continue to expand and for the profession to be representative.

Our approach is focused on more than just financial assistance. The bursary scheme is tailored to support recipients in various

> "A strong sense of belonging and a welcoming workforce is crucial for building confidence and resilience, which are essential traits for working in the profession"

aspects of their professional development. This includes opportunities to network, meet aspirational experts and leaders, share perspectives with like-minded individuals, receive mentorship, and access training resources that enable them to develop the skills and knowledge that are needed to thrive in the profession.

By fostering a community around the bursary scheme, we aim to create a supportive environment where participants can share their experiences, challenges and successes. A strong sense of belonging and a welcoming workforce is crucial for building confidence and resilience, which are essential traits for working in the profession.

We are proud to support the current and next generation of restructuring, insolvency and turnaround professional through the scheme.

Eligibility

The bursary scheme is open to all fully paid-up members of R3. Membership fees must have been paid in full at the date of the application.

The R3 bursary scheme is a valuable investment in the future of the insolvency and restructuring profession. It will help to create a more diverse and inclusive profession and will provide talented individuals with the opportunity to develop their skills and knowledge. Thus, eligibility is self-defined. The scheme is for anyone who will benefit from joining one of our events or courses who may otherwise miss out on the opportunity.

We encourage all eligible members to apply. It is an excellent opportunity to develop your skills and knowledge and to connect with other professionals in the field. Applications will be considered confidentially by an R3 board for inclusion and diversity.

How to apply

The events and courses open for bursary applications are listed on the R3 event or course webpage. Applications are made by completing the online application form on the R3 Bursary Scheme webpage at www.r3.org.uk/events-training/events/r3-bursary-scheme.

We will be publishing a list of events and training courses covered by the Bursary Scheme very soon.

Robert Beer is head of training at R3

Accelerate your career growth

R3's leadership development programme will be a transformative experience that sets you on the path to career success, says **Antoinette Dale Henderson**

In today's competitive business world, it can be difficult for professionals to prioritise their own career development. Yet the more time you invest in self-improvement, the more opportunities arise. For those working in insolvency and restructuring, navigating the path to leadership can feel particularly challenging.

Tailored for professionals early in their careers, the R3 leadership development programme is designed to equip participants with leadership skills, enhance their professional networks and accelerate their career growth in this dynamic profession.

Unlocking career growth

R3's leadership development programme offers a structured way to enhance both attendees' skills and professional relationships. By focusing on career progression, peer networking and increased visibility, this programme is ideal for those looking to grow into leadership roles.

> **"The programme is crafted to meet the needs of professionals at the mid-point of their careers"**

Unlike many traditional training programmes, the R3 leadership development programme aims to simplify self-development and relationship building. Through a series of tailored masterclasses, participants will gain valuable leadership insights, build lasting professional connections and explore potential partnerships. It is designed to help participants foster deeper connections and identify new business opportunities, making it a truly holistic experience.

Tailored for aspiring leaders

The programme is crafted to meet the needs of professionals at the mid-point of their careers in insolvency and restructuring. It offers a combination of in-person and virtual sessions over six months.

The structure includes:

- Three in-person sessions, held in central London, each lasting three hours, including a networking breakfast.
- Three virtual sessions, delivered over lunch, designed to offer valuable learning in just one hour.

By offering both face-to-face and online sessions, the programme balances the benefits of in-person networking with the convenience of virtual learning. Participants are encouraged to sign up for the full series.

Core learning pillars

The programme is built around three key leadership pillars: Leading Self, Leading Others and Leading the Business. Each pillar focuses on the essential skills needed for leadership roles in insolvency and restructuring, with a strong emphasis on practical application.

Leading Self includes:

- Managing your mindset, building resilience and cultivating emotional intelligence (EQ). These skills are crucial for professionals in high-pressure environments like insolvency, where difficult decisions and complex challenges are common.
- Defining your leadership brand. This session focuses on building gravitas, assertiveness, and confidence – key traits that help professionals stand out and lead effectively.

Leading Others includes:

- Leading high-performing teams and driving employee engagement. Learn the strategies needed to create motivated, high-performing teams.
- Leading courageous conversations and handling conflict. This session will help participants master difficult conversations and manage conflict with confidence, a necessary skill for those in leadership roles.

Leading the Business includes:

- Strategic networking. Discover the secrets to building a powerful professional network that supports career advancement.
- Becoming a trusted adviser. Learn how to position yourself as a reliable, go-to expert within the industry, earning the trust of colleagues, clients, and stakeholders.

The programme will also integrate a commitment to diversity, equity, and inclusion (DEI), ensuring that participants are prepared to lead in a modern, inclusive business environment.

Is the programme right for you?

The R3 leadership programme offers an invaluable opportunity to help you to:

- Build essential leadership skills, from emotional intelligence to strategic networking.
- Connect with peers and experienced professionals, fostering relationships that can help you throughout your career.
- Gain the confidence to take on greater responsibility and lead with authority.
- Position yourself as a trusted adviser and valuable asset within the insolvency and restructuring industry.

Carefully curated content and a flexible format ensure that participants can engage fully while balancing the demands of their current roles.

The programme is an exceptional opportunity for emerging leaders to invest in their future. By participating in this six-month programme, you will build the skills, relationships, and confidence needed to accelerate your career in insolvency and restructuring.

Do not miss the chance to be part of a transformative experience that will set you on the path to leadership success. Enrol today and start unlocking your leadership potential.

Antoinette Dale Henderson is course leader for R3's leadership and development programme

- *Antoinette Dale Henderson is an expert in leadership communication and personal development. With 25-plus years of experience in senior leadership roles at top public relations firms, Antoinette understands what it takes to succeed in high-stakes industries. Antoinette's Gravitas Programme, which has been running for over a decade, has helped countless leaders develop the confidence and credibility needed to excel in leadership roles. She combines practical insights with strategic guidance, empowering professionals to enhance their leadership potential and navigate their careers with greater authority.*

New technical initiatives in era of reform and economic change

This unique period for the profession is providing both the greatest challenges and the greatest opportunities for IPs in 30 years, says **Dr Sonali Abeyratne**

The restructuring and insolvency landscape continues to evolve at a significant pace and economic circumstances remain challenging. Higher interest rates that have substantially increased the cost of borrowing for companies, along with slowing demand, low consumer confidence and volatile supply chains, are all placing businesses in diverse industries in distress. Consequently, insolvency filings are now exceeding pre-pandemic levels in most jurisdictions. According to the statistics published by the Insolvency Service, the UK saw a 17% increase in company insolvencies in first six months of 2024 compared to the same period in 2023.

In that context, we are seeing new restructuring mechanisms introduced in the UK, the Netherlands, Singapore, India and other jurisdictions. In recent years these mechanisms have been tested before the courts, creating a raft of important new case law. The controversy has also continued over non-consensual third-party releases, with the United States Supreme Court ruling that they cannot be included in a Chapter 11 restructuring plan in its decision in Purdue Pharma in June.

Increase in cross-border matters

Technological advances, including enhanced AI capability, are transforming the insolvency profession and offering greater efficiency for practitioners, but also driving greater restructuring activity among companies that can now rely on generative AI to transform the way they do business.

The expansion of global business has also seen a marked increase in cross-border insolvency matters, with model law recognition and cooperation processes becoming ever-important to coordinate creditor claims in multiple jurisdictions. Alternative dispute resolution processes – especially mediation and arbitration – are also offering flexible and creative means to resolve complex creditor claims and cross-border issues.

The pace of legislative reform also continues, with emerging regions eager to replicate the success of restructuring tools introduced in advanced economies. We truly are in a unique period for the restructuring and insolvency profession, which is providing perhaps the greatest challenges, but also the greatest opportunities, for IPs we have seen in the last 30 years.

In this environment, the technical team at Insol International has contributed some landmark new publications. In the last year, we published two new books: *ESG in restructuring* and *Environmental claims and liabilities in insolvency and restructuring*.

Dealing with failing banks

We have also released new technical papers and special reports on cross-border insolvency issues, investigations, asset tracing, enforcement challenges and pre-packs. Insolvency-related legislative developments in the People's Republic of China, South America and Africa will also be explored.

In the wake of the collapse of Silicon Valley Bank and the pressure on global banking stability in 2023, Insol also made its highly regarded 2019 book, *Bank resolution: key issues and local perspectives*, available for public viewing. This book outlines a number of bank resolution tools, the different approaches to dealing with failing international banks, and includes lessons from the global financial crisis on the design of financial regulation and supervision. It has helped regulators, financiers and practitioners navigate the current period of economic adversity.

Over the next year, the Insol technical team has a number of exciting and groundbreaking new publications planned, including a comparative report on insolvency regimes in the Gulf Cooperation Council countries and new books on valuation issues in insolvency, distressed debt investing and litigation finance. We will also publish new technical reports on asset tracing, the interplay between arbitration and insolvency, and jurisdictional developments in countries ranging from Germany and the US to India, Chile and Spain.

The technical team has also revitalised its highly regarded and valued monthly newsletter, now branded as the Insol Restructuring Alert. The alert has expanded its coverage and focuses on key developments in emerging markets as well as developed nations. We also continue to publish our quarterly TouchPoint newsletter for our Small Practice Group, as well as our Insol I-Read student newsletter, which is designed to engage and educate future insolvency professionals at an early stage. A newsletter highlighting insolvency issues in Africa will be launched in January 2025.

Access to the library

Insol is also working with a group of IPs and financiers to review the potential complexities and weaknesses in common financing documentation.

The technical team has also pioneered the Future Leaders Programme for younger members. It is offered in 22 different countries across the Asia, Africa, and Latin America regions for our younger members to receive coaching and training from world-leading practitioners on leadership and building their practices, and to also benefit from exclusive networking opportunities that assists them to advance their careers.

If any of the R3 members would like to be involved in INSOL International's technical initiatives, please do not hesitate to get in touch with our team, and we would be delighted to work with you.

Insol International membership for R3 members

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Dr Sonali Abeyratne is technical director at Insol International

R3 Events

Gaining insights, making connections

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