Spring 2025

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RECOVERY

Rethink and reform

Administrations: Time to replace 'all but dead' regime?

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> "The growth in the financial services market is a UK success story, but with growth comes failures"

From the editor

Rising inflation, stagnant growth, trade tariffs and wars. Welcome to 2025, which looks like being an interesting year for our profession.

With that in mind, in this edition, we look at what rethinks and reforms, if any, our profession needs, particularly with a new government in place. On a change at the top, we also have Tim Cooper's last column as R3 president before he hands over the reins to Tom Russell.

So what needs to change? Vernon Dennis of Howard Kennedy argues that the administration regime could do with a spring clean to move it away from being a terminal insolvency process and back to its original rescue purpose.

What about our place in the international restructuring market? Kathleen Garrett of Reed Smith looks at recent decisions and where they leave us post-Brexit. In addition, Alex Jay of Stewarts and Felipe Vieira of Loria e Kalansky Advogados explore how the UK and Brazil are well placed to develop cross-border restructuring reform.

Related to this theme, we look at changes the profession can instigate itself. Bradley Parrott of Opus promotes the opportunities that diversity, equity and inclusion can generate, and Asma Iqbal of Chadwick Lawrence reflects on her career in the industry.

The growth in the financial services market is a UK success story, but with growth comes failures. Mark Lawford and Natasha Ayres of Weil, Gotshal and Manges look at two recent decisions in respect of the WealthTek administration and the effect that they will have on distributions out of the investment bank special administration regime.

There have been further reports over the last few weeks on the continuing financial distress for the higher education sector. Eugenio Vaccari of Royal Holloway gives his perspective from within the industry.

"Build, baby build" is the Government's message as laid out by the prime minister on a recent visit to the National Nuclear Laboratory. Rory Dillon of Fletcher Bond explains how you achieve positive outcomes from property insolvencies and, following the Grenfell tragedy, Sylwia Jatczak and Carris Peacey of Charles Russell Speechlys look at the effect that the building safety legislation can have on IPs appointed over higher-risk buildings.

Fraud also remains high on the Government's agenda and goes hand in hand with insolvency. Stephen Hunt of Griffins and Matthew Brown of Gately Legal look at the Qualia Group administration and the difficulties that fractional ownership schemes present for office-holders. In addition, Neena Jakhu of Howes Percival looks at a successful fraudulent trading claim securing justice against a serial offending director.

There is much going on in the UK and further afield. Hopefully, this edition will give you some food for thought as to how we can all be better prepared for the challenges ahead.

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

Regulars

R3 matters

Dates for your diary

Legal updates

Real estate

Survey: Real estate services

Careers

Survey: Recruitment services

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Theme: Rethink and reform

Features

Managing editor Matt Jukes
T: 020 7841 5963
E: matt.jukes@klarents.com

Advertising Ben Nelmes / Jay Pawagadhi / Marcus Geatons
T: 020 7841 5962
E: ben.nelmes@klarents.com / jay.pawagadhi@klarents.com / marcus.geatons@klarents.com

Production Aimee O’Driscoll
T: 020 7841 5961
E: aimee.odriscoll@klarents.com

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

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Approaching the finish line

Progress on rules reform, dialogue with the new minister and advocacy for members: **Tim Cooper** reflects on the 'hard yards' of his term in office

Every R3 president builds upon the achievements of their predecessors. As my term approaches its conclusion and I reflect on R3's accomplishments this year, it reminds me of the invaluable groundwork laid by those before me. My aspiration is that the initiatives I have introduced, championed or influenced will similarly empower future leaders, not only in the upcoming year but for many years ahead.

"I have been pleased to see the new minister's willingness to engage with the profession, and we had a positive meeting with Justin Madders MP, Caroline Sumner and R3 Council member Allan Cadman in November, with agreement reached to continue a constructive dialogue"

R3's impact statement on its website offers a comprehensive overview of our key projects and achievements in 2024. I highly recommend reading it to gain a full appreciation of our efforts for members. In my final presidential column, I will revisit some of the highlights and look ahead to the continuing agenda for our profession.

Pressing for reform

Top of my list of priorities for my presidency was advocacy for our profession. We play a vital role in supporting the economy and engaging with the government, media, and industry stakeholders. The discussions between the R3 president and the CEO of the Insolvency Service are vital to this, as they allow us to convey our members' concerns and push for better reforms, such as those concerning the future of regulation and the proposed compensation scheme.

These are consistent themes I have heard from my discussions with members across the UK this past year, so I feel a sense of duty to the membership to address them.

The insolvency rules

The delay in implementing the outcomes from the review of the Insolvency (England and Wales) Rules 2016 has significantly impacted our daily practice. For example, in the cases of *Boughey & Anor v. Toogood International Transport and Agricultural Services Ltd, Re Pindar Scarborough Ltd (in administration)* and now *PSL2021 Realisations Limited (in Administration) (formerly known as Peacocks Stores Ltd) [2024] CSOH 105*. Highlighting the cost implications of the delay has been a focal point of our discussions with the Insolvency Service.

In our recent meeting with the Insolvency Service, I was pleased to hear that (barring unforeseen events) we should expect to see draft subordinate legislation by the summer that will address many of the issues with the rules that have been raised by R3's General Technical Committee. We were also assured that full consideration is being given to the more substantial legislative issues that we have given evidence on, which may require not only subordinate legislation but amendments to primary legislation too. That is naturally more challenging in the busy parliamentary programme of a new government, but I am pleased to say there are signs of progress.

I also took the chance to highlight to the Insolvency Service that it is not just the amendment of the England and Wales rules that is overdue – changes need to be addressed in Scotland and Northern Ireland too. R3 is in a unique position as a UK-wide association and, through our Scottish Technical Committee and Northern Ireland Committee (which includes members of the Insolvency Service in Northern Ireland), we can facilitate efforts to coordinate a review of the rules across the UK.

Further regulation

Despite the sun having set on the power of the secretary of state to create a single regulator, the topic has not gone away. Together with firm regulation and consultation on a possible compensation scheme, the issue will return to the surface in 2025 in the context of the Audit Reform and Corporate Governance Bill. We can expect further consultations on all three of these themes in my successor's term. Add to that the potential impact of the Employment Rights Bill in the context of insolvency, and our engagement with policymakers has never been more important.

These are issues that divide opinion, even among our membership, and it is difficult for us to promote a consensus (although I believe we are in broad agreement over the proposed compensation scheme – a very well-reasoned 'no'). There will be further dialogue with members as we firm up our stance on these key issues on your behalf.

"Some of the most engaging and well-attended events across the UK in 2024 have been new professional-led, covering a range of core, technical and soft skills, as well as issues relating to the future of the economy and society"

With the new government in place, it was very important for us to open a dialogue with Justin Madders MP, the minister responsible for insolvency. I have been pleased to see the new minister's willingness to engage with the profession, and we had a positive meeting with Justin, Caroline Sumner and R3 Council member Allan Cadman in November, with agreement reached to continue a constructive dialogue. Given the minister's background in employment law, there is a real opportunity to seek to address the long-running tension between employment rights and other creditor interests in insolvency.

As I was writing this column, we received confirmation from the minister of his acceptance of our invitation to attend the President's Lunch – our flagship public affairs event – at the end of March. I shall use this opportunity to highlight our concerns and future agenda on all of these issues to him (and the other government and

Manolete Head Office, 21 Gloucester Place, London, W1U 8HR

Steven Cooklin Chief Executive
steven@manolete-partners.com 07900 985 559

Mena Halton Managing Director
mena@manolete-partners.com 07912 466 695

Andrew Cawkwell Head of Business Development
andrew@manolete-partners.com 07702 319 421

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opposition MPs and Peers in attendance) and to understand more about his views on the future of regulation.

Opportunities to influence the future such as these are among the reasons why the role of R3 president is so attractive and worth the hard yards. What a great way to sign off on the end of my term.

Showcasing members' stories

Promoting our profession as an attractive career choice has been another key goal of mine. When speaking at regional events across the UK, I have expressed what a fantastic career I have enjoyed (and I am not done yet), and how much I have loved the work and enjoyed working with fellow professionals in our unique world. I have also emphasised that I am not the future of the profession but rather a custodian to promote the next generation of amazing talent that I see coming through – people who are generating a diversity of ideas, culture and thinking without which this profession could not survive and thrive.

The Class of 2024 initiative, conceived by Richard Obank and delivered at the R3 Conference in St Andrews in my first week as president, has been a highlight. This initiative celebrated our members' talents and illustrated the profession's diverse and rewarding nature and has continued throughout our forums and conferences over the year. We have heard from Jonathan Dunn about his work with the air ambulance services, Katie McLachlan's inspirational career story, Eleanor Temple's journey to becoming a KC, and Francesca Tackie's learnings from setting up and growing her practice. There are others I would like to mention, but I am working to a word count.

> **"We need to keep our new professional cohort engaged and enthused to convert them from early careers to leaders of our profession – this is something I know the R3 team has top of its list for this year"**

Through *Recovery* magazine and the R3 Member Spotlight, we've shared various members' journeys, further emphasising the profession's breadth and the opportunities it offers, and I have been delighted to see other regional forums and the SPG adopt and adapt this concept to make it their own, with the Northern Stars and SPG Stories being real highlights of my year.

R3 Vision: Tim Cooper met with past R3 presidents to debate how the association should invest in delivering a strong future for members

Shaping the future

Engaging new professionals has been another key priority for me, as is recognising their crucial role in R3 and the profession's future. We've integrated new professionals into our committees, ensured representation on the R3 Council, and run several dedicated events and forums to support their development. Some of the most engaging and well-attended events across the UK in 2024 have been new professional-led, covering a range of core, technical and soft skills, as well as issues relating to the future of the economy and society. These events show that there is real scope for growth.

> **"As my term concludes, I am thrilled to introduce Tom Russell as the next president"**

We need to keep our new professional cohort engaged and enthused to convert them from early careers to leaders of our profession – this is something I know the R3 team has at the top of its list for this year.

The changing state of the profession

R3's Future of the Profession survey at the start of 2024 aimed to identify how the profession has changed in the last 20 years – from how firms are structured, the type of work being undertaken by IPs, the impact of split licensing and the experiences of those at the commencement of their career. This helps R3 to understand the evolving shape of the profession and how we need to change to continue to deliver the support that you need. This has included consideration and discussion around whether the approach to training and development needs to evolve to fit the demands of the modern profession and modern IPs, and, if so, what that change might look like.

Over the past year, we have been talking to a range of firms, new professionals and the RPBs to identify where there may be issues and how they may be addressed. The JIEB exams and pass rates feature consistently in all of these discussions, along with many other subjects.

Developing on this research, I, R3's CEO and the R3 ExCo team have been developing our vision of how the association should further adapt and evolve to meet the changing needs of the profession, how it can work with members to drive innovation, and ensure that the profession and the regulatory framework behind it remain fit for the future. Our last strategic plan was published in 2019. R3 is in a completely different position from then, thanks to the work of a great many amazing professionals and the dedication of its staff. After consultation with R3's former presidents, the R3 Council will meet to debate how the association should invest in delivering a strong future to our members. This R3 Vision will be handed over to the next R3 president to launch and carry forward through 2025 and beyond.

Engagement on the frontline

A key reason for my interest in being president was the opportunity to meet members in each region working at the coalface of our profession. There simply is no space to cover all of this, but it has been a fantastic and fun journey meeting so many of you across the UK. I can assure you that I have brought back every bit of your feedback into R3.

Movement at the top

As my term concludes, I am thrilled to introduce Tom Russell as the next president. Tom brings a huge amount of experience to the presidency as a practising IP and director at James Cowper Kreston. He also has significant experience of R3, having been an active member of the STV Committee, R3 Council and ExCo.

I eagerly anticipate working alongside Tom and am confident in his ability to drive R3 forward.

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

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Jon Cookson MRICS FNARA, Managing Director
jcookson@hilcoglobaladvisors.co.uk +44 (0) 7917616490

Roland Cramp, MRICS, Managing Director
rcramp@hilcoglobaladvisors.co.uk, +44 (0) 7710152668

Legal Q&A

Matthew Martin and Katy Seago answer your insolvency queries

Q What are the key considerations for a secured lender when facing delays in the registration of security at HM Land Registry?

A With HM Land Registry processing times ranging between four months and almost two years for certain types of application, where a lender faces a lengthy wait for the registration of security, it has never been more important to understand the position in relation to the validity of security and the scope for enforcement of that security before registration is complete.

> “An equitable mortgage is only capable of protection by a notice at HM Land Registry and cannot be protected by a restriction that would prevent the borrower or third parties from dealing with the property without the lender’s consent”

Generally speaking, in order for a legal mortgage or charge in relation to land to be properly perfected it must be registered at Companies House (in relation to corporate borrowers) and at HM Land Registry, at which point it takes effect as a legal mortgage. A legal mortgage is considered to be the best form of security over property and gives the charge holder various enforcement rights including rights of possession, a power of sale of the property and the ability to appoint a fixed charge receiver. If a mortgage is not registered at HM Land Registry it cannot take effect as a legal mortgage.

Prior to registration at HM Land Registry, security takes effect as an equitable mortgage only. Historically, there were some limitations on the enforcement rights of the holder of an equitable mortgage, but legislation and case law have developed in such a way that now an equitable mortgage will generally carry the same enforcement rights as those of a legal mortgage, provided that the security document itself contains the usual range of contractual enforcement rights.

As such, where enforcement rights are specified in the charge then practically speaking a lender who has taken a charge by way of legal mortgage will have the same enforcement rights in relation to a property regardless of whether the security is registered at HM Land Registry or not, and a lender can take possession or appoint a fixed charge receiver of a property prior to registration.

An equitable mortgage is only capable of protection by a notice at HM Land Registry and cannot be protected by a restriction that would prevent the borrower or third parties from dealing with the property without the lender’s consent. A notice does, however, as you would expect, put third parties on notice of the security, and so practically speaking any purchaser of the land (or indeed another lender) is very unlikely to purchase the property or seek to take security in relation to it without the notice being removed or otherwise dealt with.

In addition, in the absence of registration, the priority of security may be prejudiced. As a general rule, where there are two legal mortgages in relation to the same property, those legal mortgages will rank in priority in the order shown in the charges register for the property at HM Land Registry and not in the order of the date they were created. The order of priority can of course be altered by the parties entering into a contractual agreement (such as a deed of priority or inter-creditor agreement). If an equitable mortgage is protected by a notice at HM Land Registry, then it will take priority over any subsequent legal or equitable mortgage, but an equitable mortgage which is not protected by notice will lose priority and rank behind to a subsequent legal mortgage which is registered.

In all cases it remains best practice to register security in relation to land. Although a lender can enforce security prior to its registration, a lack of registration or pending application is likely to require explanation to third parties such as receivers, agents and potential purchasers and so, wherever possible, applications to register security at HM Land Registry should be made on an expedited basis.

Security and enforcement rights: if a mortgage is not registered at HM Land Registry it cannot take effect as a legal mortgage

Q Leases – is a trustee in bankruptcy liable for breaches of covenant by a bankrupt tenant and how can they protect themselves?

A It is widely known that all property (as defined in s436 of the Insolvency Act 1986) belonging to or vested in a bankrupt at the date of the bankruptcy order will generally vest in the trustee in bankruptcy upon their appointment. Where a lease forms part of the bankruptcy estate, that lease will automatically vest in the trustee and the trustee will become personally responsible for the payment of rent and the performance of other covenants under the lease from that point onwards.

Where a breach of covenant occurred before the date of the bankruptcy order, the tenant remains ‘on the hook’ for such breaches even after their discharge from bankruptcy, unless the lease is disclaimed by the trustee. Debts arising in relation to such a breach, however, (such as liabilities for unpaid rent) will generally be provable debts which the bankrupt tenant will no longer be liable for upon their discharge from bankruptcy. A trustee can therefore be relatively relaxed in relation to personal liability in connection with pre-appointment liabilities arising from a breach of covenant.

“Rent and other obligations pursuant to the lease that accrue after the date of the bankruptcy order will not be provable debts in the bankruptcy but rather the trustee will be personally liable for rent and other covenanted obligations under the lease that continue to accrue”

Following the date of the bankruptcy order, the landlord’s rights under the lease are unaffected such that the tenant remains liable for the payment of rent and the performance of the tenant’s other obligations under the lease. Rent and other obligations pursuant to the lease that accrue after the date of the bankruptcy order will not be provable debts in the bankruptcy but rather the trustee will be personally liable for rent and other covenanted obligations under the lease that continue to accrue. On the basis that the lease vests in the trustee, the trustee will be liable for any such breaches post-bankruptcy, even potentially those caused by a bankrupt who is still in occupation of the property.

For protection, and in the interest of the bankruptcy estate, a trustee may consider disclaiming the lease as onerous property. The effect of the disclaimer is to discharge the estate and the trustee from any liability under the lease. A trustee cannot however disclaim a lease where the bankrupt has beneficial title to part of the lease or holds the entire leasehold interest on trust. Similarly, the legal estate in a lease which is jointly held cannot be disclaimed by the trustee of the joint tenant.

Finally, where there is realisable value within the lease after discharge of any security against it, and with the landlord or remaining charge holder’s consent, the trustee may assign the lease. Where possible in these circumstances, to protect their position against any personal liability, indemnity provisions should be negotiated to ensure the trustee is not caught out by personal liability as trustee of an original tenant for post-bankruptcy breaches.

Matthew Martin is an associate and **Katy Seago** is a partner at Aaron & Partners

Recent case summaries

The latest insolvency update from **Andrew Brown**

Contract Natural Gas Ltd (in liquidation) v. ZOG Energy Ltd (in liquidation) [2025] EWHC 86 (Ch)

In *CNG*, Andrew Twigger KC, sitting as a deputy High Court judge, had to consider the issue of whether time stops running for limitation when a company enters administration, or a CVL, as it does in a compulsory liquidation, and ultimately held that time continues to run in an administration but not in a voluntary liquidation.

The dispute concerned duelling applications by the liquidators of Contract Natural Gas Ltd (CNG) and Zog Energy Ltd (ZOG) challenging the rejection of each other's proofs. CNG, a wholesale gas supplier, had supplied gas to ZOG under a master services agreement (MSA), which in turn was supplied to consumers. The MSA contained various limitation clauses, such as limiting sums due by CNG to £250,000 and a contractual time-bar of 12-months. CNG and ZOG both entered administration in late-2021, with ZOG moving to CVL in 2022. CNG submitted a proof of debt for approximately £1.4 million based upon historical invoices, and ZOG submitted a proof for approximately £14 million in liquidated damages. In late-2023, CNG admitted ZOG's proof for £250,000 (capped by the limitation clause), while ZOG rejected CNG's proof in full relying on the contractual time-bar (with the debts time-barred in 2022).

> **If acting for a creditor where the debtor enters administration, consider the potential limitation position and issue a protective claim or seek a standstill agreement**

The parties disputed the interpretation of the quantum and time-bar clauses, and CNG contended that time ceased running upon ZOG's administration on the basis that the Enterprise Act 2002 had changed the nature of administrations to include a distribution process analogous to compulsory liquidation.

Ultimately, the judge held that CNG's interpretation of the £250,000 cap on ZOG's proof was correct, that ZOG's interpretation of the time-bar clause was to be preferred, that entry into administration does not create a statutory trust analogous to a compulsory liquidation and thus time continues to run for limitation against creditors in an administration unless they protect their position, but in a CVL a trust does arise that stops time running.

Important points for practitioners:

- If acting for a creditor where the debtor enters administration, consider the potential limitation position and issue a protective claim or seek a standstill agreement.
- If a company moves from administration to CVL, and no limitation protections had been undertaken, then consider whether some debts were still viable at the date of the CVL.
- Contractual time-bars are not extended by an acknowledgement of a debt in a statement of affairs, although see the judgment in *Maxima Creditor Realisations Ltd v. Fealy [2024] EWHC 2694 (Ch)* in which in *obiter* remarks the judge considered that a statement of affairs acknowledging a debt would extend time pursuant to s29 Limitation Act 1980.

Re Stacks Living Limited & Re Staffs Furnishing Limited (Both In Liquidation) [2025] EWHC 9 (Ch)

In *Stacks*, ICCJ Greenwood considered various elements of fraudulent and wrongful trading claims, misfeasance, and a defence under s1157 Companies Act 2006, and ordered relief including the costs and expenses of the liquidations.

Mr Shergill was the shareholder and *de facto* director of the companies, who solely controlled their operation despite his wife, Ms Smith, being the *de jure* director. Shergill had a history of operating furniture companies that took on large tax liabilities before entering insolvency and immediately commenced trading under new limited companies in a classic phoenix scheme. It was alleged that Staffs was a phoenix of Stacks, with Stacks owing approximately £42,000 in rates to the local council, and Staffs owing approximately £15,000. The liquidators claimed fraudulent trading under s213 (and wrongful trading under s214) of the Insolvency Act 1986, as well as misfeasance, on the ground that Mr Shergill ran the companies with an intent to defraud the council and HMRC.

> **Compensation for fraudulent trading can include an order requiring a respondent to pay the costs and expenses of the liquidation**

Ultimately, ICCJ Greenwood held that Mr Shergill was liable for fraudulent and wrongful trading and misfeasance, and Ms Smith for wrongful trading and misfeasance. He rejected the s1157 defence of Ms Smith on the grounds that complete ignorance or inactivity by a director was unreasonable. He further ordered relief to include that Mr Shergill pay the costs and expenses of the liquidation as his intentions under the phoenix scheme to never pay involuntary creditors would have always resulted in the company becoming insolvent.

There are important points for practitioners when considering claims for fraudulent and wrongful trading:

- The test for dishonesty under s213 IA is objective, and intent to defraud involuntary creditors does not require deceitful conduct, such intent exists where there is no honest belief those liabilities will be paid. The judge rejected an argument that a respondent must know they are stepping outside what ordinary decent people would regard as honest.
- Compensation for fraudulent trading can include an order requiring a respondent to pay the costs and expenses of the liquidation.
- Paper directors can be liable for wrongful trading as their minimum duties include appraising themselves of a company's finances following appointment and taking necessary consequential actions.
- Relief under s1157 will not be available to a director who does nothing.

• *Neena Jakhu writes in more detail on the case on page 34*

Andrew Brown is a barrister at Radcliffe Chambers


DEEP
EXPERIENCE

Judgments confirm courts' right to override rights of clients

If IBSAR regime rules apply, administrators must consider whether litigation is appropriate and be mindful of who will pay, say **Natasha Ayres** and **Mark Lawford**

Two recent judgments arising out of the WealthTek special administration provide important guidance on distribution plans under the investment bank special administration regulations regime (IBSAR): *Re WealthTek LLP [2024] EWHC 2520* and *Re WealthTek LLP [2024] EWHC 3050.*

The English High Court approved the WealthTek distribution plan proposed by the administrators which, for the first time, did not strictly follow some of the creditors' rights in the underlying assets. However, the High Court did not approve a proposed litigation reserve.

Underpinning both judgments, and informing how administrators should approach a distribution plan, is the nature of the relationship between the investment bank and the client in this case and many others involving the IBSAR regime: one of trustee and beneficiary.

The IBSAR regime was introduced following the Lehman Brothers insolvency to deal with specific issues arising in investment bank insolvencies that are not easily dealt with under the ordinary administration process in schedule B1 of the Insolvency Act 1986. This includes reuniting the customers of a failed bank with the money and investments in their accounts as speedily as possible, and overcoming some of the technical obstacles to this happening by reason of the fact that their assets and money may be held on trust for them by the bank.

> **"The administrators found that WealthTek's books and records were unreliable, with significant discrepancies and mismatches"**

Under the IBSAR regime a special administrator has three objectives:

- Objective 1: to ensure the return of client assets as soon as is reasonably practicable.
- Objective 2: to ensure timely engagement with market infrastructure bodies and the Bank of England, HM Treasury, the FCA and the Prudential Regulatory Authority.
- Objective 3: to either rescue the investment bank as a going concern or wind it up in the best interests of its creditors.

The costs of objective 1 only are to be paid from client assets and client money. This was a key point when the court considered whether to approve the proposed litigation reserve.

The administrators' costs of objectives 2 and 3, and indeed all other administration costs, are to be borne from the investment bank's assets. WealthTek had no meaningful assets left and the distribution plan was only concerned with objective 1.

Objective 1 requires the administrators to prepare a distribution plan setting out what assets are to be returned, to whom and when, and what retention is to be made for costs. It is intended, in appropriate cases, to override proprietary rights to permit the administrators to fulfil objective 1, for example in situations where the investment bank's records do not identify who the assets belonged to, or where there are shortfalls in total assets and it is not clear how the assets should be distributed. If the court were to treat proprietary rights as sacrosanct, the IBSAR's fitness for purpose would be undermined.

The WealthTek distribution plan

There was a significant shortfall in client assets and money held by WealthTek when it went into special administration and the administrators found that its books and records were unreliable, with significant discrepancies and mismatches.

The client assets were held in a bare trust, and the plan returned stocks, shares and other assets to WealthTek's retail clients (with client money being returned in accordance with the rules of the FCA's client asset sourcebook). Most of WealthTek's clients

WealthTek timeline

WealthTek is a wealth management firm that was originally incorporated as a limited liability partnership in 2010 under the name Vertus Asset Management. The LLP later changed its name to WealthTek and traded under three names: WealthTek, Vertem Asset Management and Malloch Melville.

On 4 April 2023 the FCA ordered WealthTek to cease trading due to "serious regulatory and operational issues". Two days later the firm was placed into special administration with Shane Crooks, Mark Shaw and Emma Sayers from BDO appointed as joint special administrators.

The following month, the FCA froze the assets of WealthTek's principal partner, renowned racehorse owner John Dance, and launched a criminal investigation into a potential £84 million shortfall of client money.

In May 2024, the joint special administrators applied for the approval of a distribution plan in respect of approximately £148 million in stocks, shares and other client assets for which hearings were held in June and July 2024.

Judgment on the distribution plan was handed down in October 2024, with a consequentials hearing and judgment following in November.

In December 2024, Dance was charged with nine criminal offences, including fraud and money laundering. He was accused by the FCA of transferring more than £64 million from client accounts to his own personal and business accounts between 2014 and 2023. The regulator alleged that Dance had used some of the money personally to buy racehorses and residential property. Dance pleaded not guilty at North Tyneside Magistrates Court to the nine charges and is next due to appear before Newcastle Crown Court in February 2025.

Matt Jukes

"The court's approval of a distribution plan is a key safeguard of client interests under the IBSAR regime and it must satisfy itself that a proposed plan is fair and reasonable"

were eligible for compensation from the FSCS up to the £85,000 cap.

Due to the complexity of identifying the ownership of the client assets and the costs involved in asking the court to determine how to treat individual claims, the administrators undertook a reconciliation of the accounts, adopting a 'robust and commercial approach' to establish the rights of the clients in the assets. They received legal advice on this process, including a joint counsel's opinion, developed the plan in consultation with the FCA and the FSCS, and received creditors' committee approval. The administrators appreciated that where contrary positions were arguable, there would be winners and losers.

Notably:

- the distribution plan had no procedure to refer disputes between the administrators and the clients over the reconciliation exercise to the court as the administrators maintained this would render the plan unworkable;
- the administrators treated their legal advice, including the legal opinion, as privileged and refused requests by WealthTek's clients to see it. It was not produced to the court;
- the administrators invited the court to accept their proposals, agreed by the creditors' committee (including the FSCS), as being in the interests of the clients generally, without further consideration.

The plan included a cost reserve with each client bearing a share of the costs, which included an element for potential litigation costs. Significantly:

- the FSCS had an interest in the costs being minimised and the court took comfort in them monitoring the non-litigation costs;
- 40% of the proposed cost reserve was allocated for undetermined potential litigation against third parties and was to be held indefinitely.

In his first judgment, Mr Justice Rajah approved the distribution plan, finding it fair and reasonable in meeting objective 1, but refused to approve the proposed litigation reserve. In his second judgment following a "consequentials hearing" on matters relating to the proposed litigation reserve, he concluded that, on the facts of the case, the rights and the costs to pursue any such litigation belonged to the FSCS which was subrogated to the clients after it had paid compensation, and the FSCS was to bear such costs, which could not be funded by client assets.

Findings from the first judgment

The judge found on the administrators' approach to the application that:

- Not providing the joint legal opinion to clients, on the grounds it was privileged, was a questionable approach in circumstances where the advice was: to determine each beneficiary's interest in the trust assets; was being paid for by the trust funds; and was arguably a trust document.
- The court's approval of a distribution plan is a key safeguard of client interests under the IBSAR regime and it must satisfy itself that a proposed plan is fair and reasonable, although it will have appropriate regard to the views of the administrators and the creditors' committee.

"The administrators' approach on the proposed litigation reserve, however, was not fair and reasonable. Litigation to recover missing trust assets was a chose in action that was an asset belonging to the client"

- The application was adjourned, and independent counsel was instructed by the administrators to review the reconciliation exercise on the basis that the counsel's primary and overriding duty was to the court and to consider the distribution plan from the perspective of the beneficiaries. The judge's preference, however, would have been for the independent counsel to have been instructed by a representative client or the committee, with the costs of the exercise paid by the administrators as part of the application costs.

On the jurisdiction to approve a plan that does not conform with the strict rights of clients in and to the client assets:

• The court confirmed it has an unfettered discretion whether to approve a distribution plan or make some other order, and will take into account whether the distribution plan assists in achieving objective 1 and whether it is satisfied that the plan provides a fair and reasonable means of effecting the distribution. A plan which rides roughshod over clients' rights without good reason would not be fair or reasonable.

• The judge found that the distribution plan was as fair an approximation of each client's interest in the client assets as could be practically achieved if there were to be a speedy return of assets. The independent counsel had concluded that although there were winners and losers, the distribution plan interfered with the strict legal rights of beneficiaries in a rational and sensible way, taking the available path of least interference or least prejudice possible and avoiding incurring of significant levels of costs.

• The administrators' approach on the proposed litigation reserve, however, was not fair and reasonable. Litigation to recover missing trust assets was a chose in action that was an asset belonging to the client. There were no compelling legal or procedural reasons for the administrators to bring the litigation that justified overriding the clients' rights and retaining clients' funds for that purpose. The retention was not necessary to achieve objective 1.

Findings from the consequentials hearing

• It was found at the consequentials hearing that the FSCS had paid compensation to WealthTek's clients and the FSCS subrogated to the clients' rights against the defaulting firm and third parties in respect of the clients' loss.

"Administrators in such cases should be mindful to provide as much information as possible to the clients and the court regarding the distribution plan, particularly where there is not separate representation for clients' interests in court"

Compensation: The FSCS scheme should have been taken into account in the formulation of the distribution plan

The scheme for recoveries by the FSCS in accordance with the rules in the compensation sourcebook within the FCA handbook in COMP 7 therefore applied and, on that basis alone, there was no entitlement to a litigation reserve. This had not been brought to the court's attention at the previous hearing.

• The FSCS had a duty to bring appropriate proceedings to pursue recoveries for itself and the clients if it considered the recoveries were likely to be both reasonably possible and cost-effective to pursue (the "Comp 7.4 threshold"), to be brought at its own risk and expense. If the Comp 7.4 threshold was not met the FSCS must assign back the subrogated rights to the relevant client if requested.

• The FSCS compensation scheme should have been taken into account in the formulation of the distribution plan and should have been brought to the attention of the court when it was asked to approve the distribution plan as fair and reasonable.

The WealthTek judgments both confirm the jurisdiction of the court to authorise a distribution plan under the IBSAR regime that does not give effect to the strict rights of the clients and highlight the various issues that can arise under the IBSAR regime when administrators are dealing with client assets held on trust.

Administrators in such cases should be mindful to provide as much information as possible to the clients and the court regarding the distribution plan, particularly where there is not separate representation for clients' interests in court. The court will want to satisfy itself that the distribution plan is fair and reasonable and, as when sanctioning a scheme of arrangement or restructuring plan, the role of the court is not merely to act as a rubber stamp.

Administrators must consider whether it is appropriate to pursue litigation on behalf of clients in light of the IBSAR regime objectives and the involvement of the FSCS compensation scheme and relevant rules, and be mindful of who will bear the burden of any litigation and related costs.

Natasha Ayres is a senior knowledge and practice development counsel and **Mark Lawford** is a partner in the restructuring team at Weil, Gotshal & Manges, London

Is it time for a rethink to replace the 'all but dead existing regime'?

Reluctant lenders, negative public perception and risks for IPs have driven the administration process away from its original use for rescue, says **Vernon Dennis**

The UK's administration process is not fit for purpose and it is only the continued innovation of insolvency practitioners that has kept it alive in a diluted form, far removed from the purpose for which it was originally intended. It is time to reform the process, to allow it to be used as a gateway to rescue and reconstruction, not as a final insolvency destination. Unfortunately, governments tend to take notice of the insolvency regime only after it has buckled under the close scrutiny of a recession, with an accompanying clamour to legislate in a way that solves yesterday's problem. A more forward-looking approach to legislative reform would be of huge benefit, taking a step back from what we have, and towards what we want from our insolvency processes.

Statutory definition

When approaching any proposed reform of the administration regime, it is worth noting that it was first introduced in the Insolvency Act 1985, following the recommendation of the Cork Committee (1977-1982), to cover a gap in the corporate rescue regime, namely those companies that did not have the benefit of a floating charge holder who could appoint a receiver over the whole, or substantially the whole, of the business and assets of a borrower. The administrative receivership process, given statutory definition by the 1985 Act and subsequently consolidated in the Insolvency Act 1986, was a creature very much of its own

> **It would be a foolhardy practitioner that enters the administration process without a clear exit plan and, of course, this has meant that the pre-pack has developed as a solution that dominates thinking and distorts the public perception of the process**

time, where the vast majority of corporate borrowing was taken from the major clearing banks. It was in the lender's interest to sell the business and assets as a going concern, funding the administrative receiver to stabilise and trade the business while looking for new owners who could clear the bank's debt and, consequently, rescue the business.

This type of rescue had the advantage that the lender was often the key stakeholder as corporate borrowing tended not to be so diffuse, with less bespoke asset-based finance (and thus available assets) meaning the lender providing funding was clear going into the process that they could control the costs and expenses of the business and the accompanying process. This ensured that administrative receiverships that saw the business being traded were a common occurrence.

The lending landscape

The Enterprise Act 2002 introduced a series of overtly political reforms, intentionally giving the management/owners a 'second chance' by opening up the administration process through a cheaper out-of-court process, abolishing administrative receivership and making company rescue the primary objective of administration. The bank's loss of control was offset by the abolition of Crown preference, but the unintended consequence was to cut the link between the lender and the funding

> **Light touch administration is available in the current regime but giving such a process a statutory effect would protect the directors from what should be strengthened wrongful trading legalisation and provide an additional incentive to use the process more readily**

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Call: **0800 612 6587**   Email: **info@annectolegal.co.uk** of the rescue process, which ultimately caused the death of the trading administration. What was particularly short-sighted at this time was the rejection of calls to bring in a form of super-priority funding, on the entirely unfounded optimism that it would be for the existing lender (as it was in administrative receivership) to decide whether there was merit in funding a trading period.

> **It is quite probable that, in the minds of the public and stakeholders, administration is an insolvency destination process, and this perception has taken such a deep root that simply reforming the administration process will not be sufficient to change attitudes and behaviours**

The rise in debtor-led administration has been accompanied by an ever-increasing degree of securitisation of company assets, increasing the number of key stakeholders in any prospective administration with the consequence of additional complexity in finding a solution. The global financial crisis of 2008–2009 also led to the retrenchment of the clearing banks which at the same time became less inclined to lead the restructuring processes. In addition, a subsequent deluge in alternative capital provision has caused huge shifts in the dynamics of any business rescue process. The lending landscape of over 40 years ago, which produced administration as an alternative to administrative receivership, is now radically different.

Along with lenders having less inclination to fund and use administration to restructure the borrower's business, the judiciary's strict interpretation of the cost and expense rules in administration causes a significant issue for the board of the debtor company and any prospective administrator. As a result, the use of administration as a breathing space to work out how the business would best be rescued and restructured, with a consequent plan to be proposed to creditors and then implemented if approved, is all but dead. Currently, it would be a foolhardy practitioner that enters the administration process without a clear exit plan and, of course, this has meant that the pre-pack has developed as a solution that dominates thinking and distorts the public perception of the process. It is time for a rethink to return administration to its original purpose.

Towards reform

At its core, any legislative reform should introduce a process that allows for a breathing space (for example, a moratorium). Management/owners could retain principal responsibility to manage the affairs of the business in the interests of the creditors as a whole but rely on professional oversight and assistance to either trade the business to return it to a going concern basis or draw up a plan of rescue or reconstruction that will be put to creditors (secured and unsecured) for approval, with a potential for a court-approved cram down.

A reluctance of the management/owners to enter the current administration process is often due to the consequence of loss of control to the administrators. To such stakeholders the appointment of an administrator, timed in accordance with their wishes and direction, as seen in a pre-pack, makes sense. It is true to say that a 'light touch administration' is available in the current regime but giving such a process a statutory effect would protect the directors from what should be strengthened wrongful trading legalisation and thus provide an additional incentive to use the process more readily, and distinctly earlier, in the distress curve.

> **The current risks of trading with the accompanying cost and expense, alongside the desertion of investors/funders, suppliers and customers/clients, create a death spiral for a business in administration**

As a balance to debtor-in-possession control, the directors should not be excused from any finding of misfeasance during the process if they fail to act in accordance with the modified duty to promote the success of the company (and thus creditors). Even where the company is rescued, the office-holder should be required to look at the pre-process conduct of the directors and those within the current ownership structure, both to report to the Insolvency Service and as a key part of making recommendations to the creditors voting on any plan involving the exiting management/ownership.

Lessons should be learned from previous attempts to decrease office-holder control to an alternative monitoring role (for example, a small company CVA moratorium and new-style moratorium). The new process of oversight described above should not be overly complex and should avoid imposing an unnecessary burden on the office-holder, but it should be policed by an immediate ability to remove/replace directors and report any abuse of the process.

Another crucial issue that needs to be addressed is the strict cost and expense rule associated with any trading administration process. Some ability to disclaim contracts should be considered in addition to a change in the priorities of the expense rule because the current rules mean that office-holders are disincentivised from taking an appointment where there is a commercial risk of trading such that they will not be paid for their services. A process that allows super-priority funding (perhaps as part of the agreed plan) is a further issue that needs to be considered afresh.

Reputational difficulties

One final consideration is the name of any reformed process. While legislative change would take the shape of a reformed administration process, it is quite probable that, in the minds of the public and stakeholders, administration is an insolvency destination process, and this perception has taken such a deep root that simply reforming the administration process will not be sufficient to change attitudes and behaviours.

The current risks of trading with the accompanying cost and expense, alongside the desertion of investors/funders, suppliers and customers/clients, create a death spiral for a business in administration and the alternative, a pre-pack solution, suffers from public reputational difficulties despite the profession's promotion of the positives such as job retention and creditor returns.

As a result, there could well be a case to be made that, rather than simply giving statutory effect to a new style light-touch administration process, we would need to a find a new name for this forward-looking corporate rescue process. Calls for the originator of the idea to be given some credit, perhaps by giving their name to the new process, would not be resisted.

Vernon Dennis is head of business advisory at Howard Kennedy

Recognition conflict could sap UK status as a restructuring forum

Recent cases highlight a need for balance between protecting common law principles, sovereignty and choice of English law for proceedings, says **Kathleen Garrett**

Following the recent Supreme Court judgment *Kireeva v. Bedzhamov [2024] UKSC 39*, it would appear that the courts have moved further towards territorialism in the recognition of foreign insolvency judgments.

By way of background, Mr Bedzhamov, a Russian citizen and the respondent in this case, had resided in England since 2017 and purchased the property in question, a house in Belgravia (London), in 2015. Mr Bedzhamov was declared bankrupt in Russia in 2018 with £30 million in debts. The appellant, Ms Kireeva, was appointed by a Russian court to realise his assets. While *Kireeva* was a personal bankruptcy case, the judgment did not suggest that it would not apply to corporate insolvencies too.

> **"It could appear that the Supreme Court's judgment in Kireeva has quashed any common law trend of universalism, edging more towards territorial sovereignty in the recognition of foreign insolvency judgments"**

In *Kireeva*, the Supreme Court ruled that the immovables rule reigns supreme; foreign courts and foreign office-holders (IPs, trustees etc.) have no recourse to a debtor's immovable property (land and such arising rights) in England and Wales where statutory provisions, under which the English courts may give assistance to a foreign insolvency proceeding, do not apply. Moreover, the proceeds of any subsequent sale remain subject to the immovables rule because such status is determined at the date of the foreign bankruptcy order.

Prior to *Kireeva*, it was widely considered as common law that while immovable property owned by a foreign 'bankrupt' did not automatically vest in a foreign office-holder, the English court had the discretion to assist the foreign office-holder to enable them to deal with the property. Following *Kireeva*, it is now certain that no such common law assistance will be given, absent statutory intervention.

It could appear that the Supreme Court's judgment in *Kireeva* has quashed any common law trend of universalism, edging more towards territorial sovereignty in the recognition of foreign insolvency judgments. Yet, the immovables rule is clear that (subject to limited exceptions) immovable property is exclusively governed by the courts of the country where the immovable property is located (*lex situs*). The Supreme Court concluded that "in short, the immovables rule reflects territorial sovereignty", noting that land and such arising rights maintain a "rather special position in most legal systems". The Supreme Court noted that the principle of modified universalism "remains an important element of the common law as regards assistance in cross-border insolvencies, but it is necessarily subject to jurisdictional limits".

> **"The common law power to assist foreign insolvency proceedings is nuanced, specific to the facts of the case, and must be in line with established principles and policy; it is not a separate universal common law power in itself"**

Recognition pre-Kireeva

In *Re HTH Casualty & General Insurance Ltd [2008] UKHL 21*, Lord Hoffman referred to the principle of modified universalism as "a golden thread running through English cross-border insolvency law since the 18th century."

In *Cambridge Gas [2006] UKPC 26, 2006 WL 1546603*, a case which considered recognition

The principles of universalism and territorialism

The principle of universalism is that insolvency proceedings have universal application; there is one insolvency proceeding in the jurisdiction of the 'bankrupt', in which all creditors are entitled and required to prove, foreign office-holders are recognised and cross-jurisdictional courts provide assistance. Under modified universalism, this principle is highly modified on pragmatic grounds as a matter of principle and policy.

The principle of territorialism is that there is no recourse for foreign insolvency procedures and office-holders; the law of the country where the assets are located governs how they will be realised, usually for the satisfaction of domestic creditors rather than foreign creditors.

of a creditors' plan relating to a company in Chapter 11 proceedings, Lord Hoffman stated that: "English common law has traditionally taken the view that fairness between creditors requires that, ideally, bankruptcy proceedings should have universal application. There should be a single bankruptcy in which all creditors are entitled and required to prove..."

The court in *Cambridge Gas* concluded that, in the context of cross-border matters, insolvency has special jurisdiction outside of the long-established ordinary common law principles of in-person claims (*in personam*) and claims in respect of property (*in rem*), further stating rather that "bankruptcy, whether personal or corporate, is a collective proceeding to enforce rights and not to establish them".

> **"Developing and enhancing cooperation in cross-border insolvency proceedings is a key driver behind the UK government's proposal to implement the MLR IRJ 'as soon as possible'"**

However, in cases following *Cambridge Gas* and *HTH*, it was held that, while the English courts have the common law power to assist foreign insolvency proceedings in so far as it is fit to do so, the applicable circumstances (and thus the principles of modified universalism) were restrained.[1] Most notably, the Supreme Court in *Rubin and another v. Eurofinance SA and Ors [2012] UKSC 46* heard two appeals in respect of the enforcement of default foreign judgments (where *Rubin* had not submitted to the foreign court's jurisdiction). The majority in the Supreme Court considered that *Cambridge Gas* and *HTH* judgments were a "radical departure from substantially settled law… of the recognition and enforcement of judgments", which is a matter only for legislation – concluding that the interests of universalism do not elevate insolvency proceedings to a special jurisdiction separate from long-established ordinary principles.

The common law power to assist foreign insolvency proceedings is nuanced, specific to the facts of the case, and must be in line with established principles and policy; it is not a separate universal common law power in itself.

Legislative reform

Recognition of foreign insolvency procedures is not automatic under English law.[2] Under s426 of the Insolvency Act 1986, another court (but not an office-holder) in another part of the United Kingdom or a limited number of countries (which includes mainly commonwealth countries, British Overseas Territories and Ireland) can write to request assistance from the English courts under insolvency laws (either English or foreign laws compatible with the Insolvency Act 1986). Such assistance is discretionary. The courts' assistance has notably included binding unsecured English creditors to an Irish scheme of arrangement in R*e Silverpail Dairy (Ireland) (Unlimited Co) [2023] EWHC 895 (Ch)* and directing English liquidators to remit English assets to Australian liquidators in *McGrath v. Riddell [2008] UKHL 21*.

Pursuant to the CBIR 2006, a foreign court or state, creditors, or a debtor or its representative (including interim representatives, for example, IPs) can apply for recognition of foreign insolvency proceedings. If the insolvency procedures are recognised as foreign main proceedings (taking place in the jurisdiction in which the debtor has its centre of main interests (COMI) then an automatic stay will apply to prevent creditor or debtor action (except enforcement, repossession and winding-up). If the proceedings are not recognised as taking place in its COMI, discretionary relief can be sought. Furthermore, the court also has the discretionary power to grant "any appropriate relief" including entrusting the realisation of a debtor's assets located in England and Wales to a foreign representative. However, Rubin is the authority that the CBIR 2006 does not extend to the recognition or enforcement of foreign judgments against third parties and cannot be used to enforce a foreign judgment *in personam*.

Developing and enhancing cooperation in cross-border insolvency proceedings is a key driver behind the UK government's proposal to implement the MLR IRJ "as soon as possible". Yet, *Rubin* and *Kireeva* further highlight the conflict between the principle of universalism and the common law recognition and enforcement of foreign courts' insolvency-related judgments. The crux of the wider significance of this conflict, which the government must address in its review of article X of the MLR IRJ, is how can the enforcement of foreign insolvency proceedings be granted under English law while a fundamental objective of the foreign proceedings cannot be satisfied, given that a contract governed by English law cannot be compromised or discharged by insolvency proceedings in a foreign jurisdiction (absent of certain exceptions) pursuant to the rule in *Gibbs*. However, doing so could potentially undermine the English courts' status in respect of contract law and consequently England as a renowned forum for a significant number of cross-border restructurings.

With a common law tightening of the principles of modified universalism, it will be interesting to see how legislation develops. The legislature will likely need to strike a balance between protecting established common law principles and sovereignty together with the position of English law as the governing law of choice in international transactions and restructurings while continuing the advancement of cross-border collaboration in insolvency proceedings.

1 E.g. see *Singularis Holdings Ltd v. PricewaterhouseCoopers [2014] UKPC 36* and *Vizcaya Partners v. Picard JCPC/2014/0048* which as Privy Council cases are persuasive rather than binding authority at common law.

2 Including, post-Brexit, for any proceedings commenced on or after 1 January 2021 in the European Union.

Kathleen Garrett is a partner at Reed Smith

UK and Brazil should seize the chance to lead on early adoption

Both countries have the opportunity to remain key places for resolving business distress by being in the vanguard of cross-border reform, say **Alex Jay** and **Felipe Vieira**

Following Labour's victory in the UK general election last year, strengthening the UK's laws for dealing with global insolvencies may not be at the top of Kier Starmer's to-do list, but it is a topic worth putting on the agenda. But, his is not the only government that has an opportunity to make changes. Brazil has also been considering insolvency reforms and offers an interesting counter-example when evaluating how the international frameworks for handling international insolvency matters might be improved.

This article evaluates potential changes both jurisdictions could introduce and how they might make both the UK and Brazil more attractive places to do business.

Cross-border reforms in the UK

The UK government promised in its Autumn 2024 budget to "restore stability, increase investment and reform [the UK's] economy". An important part of this should be to ensure the UK's legal system remains the first-choice destination for managing international insolvencies and restructurings, and resolving related disputes.

Following the King's Speech in the summer of 2024, an important omission from the governmental agenda will not have passed unnoticed by the international insolvency and restructuring community. There was no mention of the government's plans for introducing the Uncitral model laws into UK law, namely:

- The Uncitral Model Law on Recognition and Enforcement of Insolvency-Related Judgments 2018 (also known as the judgments model law); and
- The Uncitral Model Law on Enterprise Group Insolvency 2019 (also known as the group model law).

> "Reforms could equip insolvency office-holders and courts with additional powers and provide global guidelines for efficiently managing corporate group insolvencies"

In July 2023, the Conservative government said it wanted to bring the entire Uncitral group model law into UK law (with minor amendments) and develop further its proposals for the Uncitral judgments model law. It proposed and held a consultation on adopting article X of the Uncitral judgments model law to create a new and simplified process for the UK courts to recognise and enforce international insolvency-related judgments. However, the UK courts would retain the final say on whether an international judgment would be recognised and enforceable in the UK. This was a controversial point in the consultation that the government had said it would further consider.

There have been no updates since then, and the current government has not indicated whether it will revive these proposals or suggest its own reforms concerning these model laws.

What could the reforms do?

The Uncitral model laws would benefit IPs, overseas courts and other parties dealing with global insolvencies and restructurings. They would be especially useful for insolvencies and restructurings involving businesses, assets and/or parties spread across different countries but with some connection to the UK, or those that need assistance from the UK courts (for example, worldwide asset preservation orders) or UK-licenced IPs.

If the reforms were introduced (in the form summarised above), they would:

1. Introduce a tailored, simplified and quick route for enforcing international insolvency-related judgments in the UK.
2. Give the UK courts flexibility to recognise and enforce specific parts of an insolvency-related judgment if some parts of it are outside the scope of the Uncitral judgments model law.
3. Equip insolvency office-holders and courts with additional powers and provide global guidelines for managing corporate group insolvencies spanning multiple countries in a more efficient and coordinated manner.

Do the reforms go far enough?

One matter that would need to be addressed if the above proposals for the Uncitral judgments model law are to be introduced is whether the rule in *Gibbs* should still apply or whether it should be abolished. The rule in *Gibbs* prevents the law of a foreign insolvency proceeding from altering an English law contract or debt unless the contracting parties consent to the change. It essentially protects those parties' rights to choose which law applies to their transactions.

Editor editor@r3.org.uk

In some situations, the rule can be problematic. It could mean, for example, that if the courts decided an international insolvency judgment should not be recognised and enforced in the UK because of the rule in *Gibbs*, an insolvency office-holder's ability to recover, sell and take other actions against businesses and assets located in the UK may be limited or no longer a viable option. This, in turn, could potentially cost millions – especially in large insolvencies, where non-recognition reduces the value that can be returned to creditors.

The flexibility of the former government's proposals to allow the English courts a final say, combined with the rule in *Gibbs*, could mean that the UK courts recognise an international insolvency judgment even where the Uncitral judgments model law would refuse to do so.

> **Brazil's alignment with other countries that have adopted the Uncitral cross-border model law, such as the UK, helps foreign creditors better anticipate the risks they face, ensuring equal treatment between national and foreign creditors**

Depending on the situation, this flexibility could be advantageous. The problem is that the former government's proposed approach does not give international parties certainty or any guarantees on whether an insolvency-related judgment will or will not be recognised because the UK courts would have broad scope to decide this on a case-by-case basis.

More public debate is needed to resolve the *Gibbs* issue. One possible solution might be for the recognition and enforcement of international judgments in the UK to be mandatory so long as it does not fall within the criteria for refusing recognition under the Uncitral judgments model law or conflict with public policy. The courts could also have limited power to overrule recognition and enforcement in exceptional circumstances. The government should consult on and then decide whether the rule in *Gibbs* should be included as a qualifying exception.

Cross-border reforms in Brazil

In 2020, Brazil incorporated the provisions of the 1997 United Nations Commission on International Trade Law's Model Law on Cross-Border Insolvency (also known as the cross-border model law). At the beginning of 2024, the Brazilian parliament initiated discussions on a new draft law on judicial recovery and bankruptcy. However, this draft law sparked a broader debate among insolvency specialists, leading to a halt in the legislative process.

This halt does not imply stagnation in Brazil's progress on cross-border insolvency. Brazil's adoption of the Uncitral cross-border model law offers significant advantages for insolvency professionals involved in international insolvency matters. After the country incorporated the law with minimal modifications, Brazil's courts have been able to rely on international jurisprudence and doctrine and Uncitral guidelines when interpreting its provisions.

As a result, Brazilian insolvency law now includes:

1. Specific provisions outlining the process by which foreign administrators or presiding judges may request assistance.
2. A defined framework for the application of cross-border insolvency rules.
3. Criteria for recognising foreign proceedings, including the distinction between main and secondary proceedings.
4. Clear rules on the treatment of foreign creditors and the remedies available to them in Brazilian courts.

One key aspect of Brazil's insolvency system following its incorporation of the Uncitral cross-border model law is that it shares a foundational objective with Brazilian judicial recovery and bankruptcy legislation: maximising the value of a distressed company's assets while organising its creditors in a coherent manner. This alignment with other countries that have adopted the Uncitral cross-border model law, such as the UK, helps foreign creditors better anticipate the risks they face, ensuring equal treatment between national and foreign creditors in cross-border situations and reducing transaction costs.

They may also enable the courts and IPs located outside of Brazil overseeing the process to support debt restructuring efforts in certain situations, and so enhance the value of an insolvent company's assets.

In addition, in recent years several key rulings in Brazil's courts have addressed the recognition of foreign proceedings under the cross-border insolvency provisions of the country's Bankruptcy and Restructuring Law (often known by the abbreviation LRF). Most of these decisions have reinforced the framework for cross-border insolvency and helped insolvency professionals access measures from the court in support of insolvency proceedings.

One such decision was made by the Court of Justice of the State of Rio de Janeiro. The court granted moratorium protection to a foreign company headquartered in Norway and recognised that the ongoing proceedings before the High Court of Singapore constituted the main proceeding. In this case, relief was sought in the Brazilian court to prevent enforcement actions and individual measures by creditors against the company's assets in Brazil, particularly vessels located off the coast of Rio de Janeiro.[1]

Brazil and the rule in *Gibbs*

In Brazil, the main principle applicable to judicial recovery and bankruptcy is the '*par condicio creditorum*' principle. This establishes a rule that there is equality among creditors who have claims with the same legal characteristics (for example, whether or not the company's debt is backed by a collateral agreement).

Brazilian law provides that, as a general rule, the law governing a particular contract (and therefore the claim arising from it) is that of the place where the obligations are created or the law expressly chosen by the parties.

The Brazilian courts may limit the application of certain rules related to specific obligations as determined by the court overseeing the case (whether it is the main or non-main proceeding). Due to potential violations of Brazilian public policy, these sorts of rulings are usually made in limited circumstances – for example, if they are related to ensuring compliance with Brazilian insolvency law.

There is a huge opportunity for the UK and Brazil to be among the first countries to adopt the Uncitral insolvency judgments and Uncitral group insolvencies model laws, which we think they should seize. No other countries appear to have adopted the model laws yet, but the more that do, the greater the likely positive impact.

We will be monitoring whether Brazil and the UK put forward new plans to further the reform of their cross-border insolvency regimes. We believe their respective governments should consider this if they are to remain key destinations for resolving insolvencies, asset recoveries and related disputes.

Lucas Thedim S. Ribeiro de Barros contributed to this article

1 TJRJ, Proc. 0129945-03.2021.8.19.0001, 3ª Vara Empresarial da Capital, j. em 07.07.2021.

Alex Jay is a partner and head of insolvency and asset recovery at Stewarts and **Felipe Vieira** a partner at Loria e Kalansky Advogados

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'This may become one of the few Ponzi schemes where victims get most of their money back'

Failed fractional ownership schemes present considerable challenges for IPs. **Stephen Hunt** and **Matthew Brown** share their experiences of the Qualia Group

MB: In 2020, the Qualia Group owned 13 care homes, with contracts in place to acquire two more, when the Care Quality Commission launched an investigation into the group's funding model. The investigation resulted in the CQC refusing to agree the registration of new homes and prohibiting the acquisition of new homes. A cash flow crisis followed, and administrators were urgently appointed. More than £53 million had been taken from investors worldwide for the 793 rooms in the care homes. Investors were promised annual returns of 8–10% and a repayment of 100–115% per cent of their initial investment after five years.

> There were few controls in place, with undisclosed HMRC debts exceeding £1 million. Most of the available cash had been used to pay Mr Forster's personal defence costs in the FCA claim

A month after their appointment, the administrators agreed a sale of the care homes' freeholds to a newco group controlled by Robin Forster, who ran Qualia Care Developments and Qualia Care Properties before both companies entered administration. The plan was for the newco group to continue making payments to investors and gradually recover the losses incurred by the insolvent companies over time.

However, the sale to Mr Forster raised concerns among investors, prompting them to appoint Stephen as joint administrator to investigate the transaction.

SH: I accepted the appointment as joint administrator with a limited remit. As it turned out, it was not long before the administration ended, and I became the sole liquidator. The assignment progressed from an investigation into a disputed sale to working with creditors to reverse it.

MB: The FCA issued proceedings against Mr Forster[1] and found that he was operating an unregulated collective investment scheme (UCIS). The instalments promised to investors under the sale agreement had ceased and action needed to be taken.

In August 2022, Stephen took control of the newco group and its operator, though the battle for control of the operator through a creditor administration application was fiercely contested. The operator submitted evidence from another IP arguing that administration was not appropriate, along with accounting evidence claiming that the operator was viable and solvent. Just days before the hearing, all directors offered to resign and assign their shares, ensuring the operator would come under Stephen's control. The offer was accepted.

> It was clear that the business had been a Ponzi scheme, but I established that a trading administration could be viable

SH: It became apparent within two weeks of my instructing Healthcare Management

Fractional ownership schemes

The SRA and others have long flagged the potential problems inherent in fractional ownership schemes. See, for example, the 2020 Warning Report[2], which links to a thematic review.

Under a fractional ownership scheme, a promotor raises money by selling long leases of rooms within a care home, hotel, student accommodation or any property that can be split into fractional interests. The investments might be used to finance the purchase or redevelopment of the site. Rent will be a peppercorn or similar.

At the same time, a sublease is granted by the investor back to the promotor. Rent is usually 8–12% of the capital sum paid per annum. This is the investor's 'guaranteed' annual return.

The promotor and investor often enter into options so that after a few years the investor can require the promotor to buy back the leases, and the promotor can do likewise. The premium is often 110% or 115% of the capital paid.

Finally, the promotor (as a tenant under the sublease) enters into an operating agreement for the room with an operator. Income then flows back up the structure to the investor.

Examples of failed fractional ownership schemes include the Qualia scheme (£53m invested)[3], Park First airport parking scheme (£230m invested)[4], Carlauren (£75 million invested)[5] and Northern Powerhouse Developments (£80 million invested)[6].

Collective investment schemes

Depending on their structure, a fractional ownership scheme can be a collective investment scheme (CIS). Typically, this happens where profits are pooled to pay investors. A CIS is defined by s235 of the Financial Services and Markets Act 2000 (FSMA) and is a regulated activity in the UK. Section 19 of the FSMA prohibits the promotion, establishment or operation of a CIS by any person who is unauthorised or exempt from authorisation. Section 382 of the Act allows the court, on the application of the FCA, to make restitution orders against those concerned.

Stephen Hunt and Matthew Brown

Solutions (HCMS), an experienced CQC-approved operator, to take over the head office functions and that the business was insolvent. There were few controls in place, with undisclosed HMRC debts exceeding £1 million. Most of the available cash had been used to pay Mr Forster's personal defence costs in the FCA claim. It was clear that the business had been a Ponzi scheme, but I established that a trading administration could be viable. I moved the operator into administration so that trade could continue.

Initial forecasts indicated losses for a few months before the business would turn a profit and achieve positive cash flow. My trading plan streamlined operations by eliminating head office functions, closing one care home and negotiating higher residential fees. The key obstacles to success were no indemnity for losses, a lack of suitable assets to secure borrowing for working capital, rising heating bills because of the Ukraine war and very limited cash reserves. I approached another IP to act as a potential conflict joint administrator, and he turned me down.

We engaged with local authorities, recognising that the care homes housed over 600 residents and employed a similar number of staff. The loss of any care home would be disastrous for both residents and their families while putting additional pressure on local services. Adopting a proactive approach to negotiations, we determined that preserving services at break-even levels would justify keeping some care homes open. The local authorities responded positively, offering contracts on better terms. By eliminating losses, the more profitable care homes could support the overall business, which provided the platform for a potential rescue.

MB: While Stephen concentrated on managing the business, I developed an exit strategy centred around the support of investors. The majority of the Qualia Group's investors held 125-year leases in the company's care home rooms, and many had been badly burned by other fractional investment scams. They were supportive of Stephen's actions but understandably protective of their own property interests.

SH: By Christmas 2022, we had completed three months of trading but the losses were greater than anticipated, with the short-term forecast indicating we would run out of money by the end of February 2023. With no access to capital, we had few options. I sought advice from an experienced IP at another firm about deferring the monthly PAYE payments for the spring, which would allow us to build up capital. He advised me on how to approach the conversation and I subsequently wrote to HMRC to explain my decision. The strategy worked, and we eventually became cash-positive.

> **"The portfolio, once valued at £7 million under the best-case scenario, is now likely to sell for over £25 million for the benefit of investors, HMRC and trade creditors"**

MB: Our objective was to sell the freeholds for maximum value and distribute the proceeds to investors, less agreed costs. The problem was that the freeholds were essentially worthless with the leases in place. Without any leases, the freeholds would have significant value, which could be returned


Test solution: the loss-making St Mary's home was used as a trial for the proposals, with an original valuation of £1.3 million

Barrier to realisations: the freeholds were essentially worthless with the investors' leases in place

> **"Following the hearing, 45 investors voluntarily surrendered their leases and the court executed three more"**

to investors as a consequence of their giving up their leases. The question was, if we explained the situation, would the support of the majority persuade the minority?

We explored the provisions of the Financial Services and Markets Act 2000 (FSMA), which might allow the unwinding of the UCIS upon repayment of the amount invested. Given the business's insolvency, this was not feasible, but we became confident that a workaround was possible. We engaged Ruth Bala, an experienced FSMA specialist counsel, to advise on the technical solution and also instructed Eleanor Temple KC.

We consulted creditors about our proposed solution, which received a cautious response. Undeterred, we pressed ahead with a plan to test the solution on a single loss-making home, called St Mary's. We obtained a valuation of £1.3 million for the property, assuming it was sold as a going concern and free of the leases, and we sent a proposal to the St Mary's investors. We then held a 'town hall' meeting to answer their questions.

SH: The investors at the 'town hall' were not hostile but they also were not enthusiastic. However, there was enough support to proceed with the application. I instructed Peter Fenwick and Colliers to begin marketing St Mary's ahead of the application. At the same time, my team worked hard to locate and speak with all the investors, which was especially challenging for investors in different jurisdictions, to explain our proposal. By the final hearing, all 58 investors were involved, with all but two supporting the proposals. None were against.

MB: The court process was complex, but we ultimately obtained the orders sought. Following the hearing, 45 investors voluntarily surrendered their leases and the court executed three more. This enabled St Mary's to be sold for £2.275 million – nearly £1 million more than expected. The net proceeds were quickly distributed to investors.

SH: At the time of writing, we have made proposals to investors for all remaining trading care homes. The responses have been overwhelmingly in favour, with no votes against. The portfolio, once valued at £7 million under the best-case scenario, is now likely to sell for over £25 million for the benefit of investors, HMRC and trade creditors. Thanks to HCMS and care home staff, all care homes are now rated 'good' by the CQC, which has significantly increased the value of the freeholds. The operator is now generating over £1 million in profit. HMRC will receive about £10 million in tax from the administration trading period in addition to the full repayment of their £1.3 million preferential claim. Valuable local services have been rescued and jobs have been saved.

MB: We are hopeful that with the overwhelming support of investors and further court applications, we will realise the full value in the remaining homes. If achieved, this may become one of the few Ponzi schemes where victims get the majority of their money back, and it is largely because of the support and dedication of a huge number of stakeholders, not all of whom have been mentioned in this article, and by building trust with investors over time.

The problem with failed fractional ownership schemes has been evident for years. Could the rescue of Qualia Group offer a solution to failed schemes where property interests have been granted? We think so, but only if those involved recognise that the economic interest in the properties is with the investors and not with the freehold-owning companies that insolvency practitioners are appointed over. Of course, most importantly, the solution must be heavily supported by the investors themselves.

1 *The FCA v. Robin Scott Forster and others [2023] EWHC 1973 (Ch)*
2 www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing
3 www.fca.org.uk/news/press-releases/financial-watchdog-wins-civil-case-against ponzi-like-care-home-investment-scheme #:~:text=The%20High%20Court%20has%20 ruled,to%20pay%20back%20to%20investors
4 www.fca.org.uk/news/news-stories/park-first-limited-information-investors
5 www.gov.uk/sfo-cases/carlauren-group
6 www.gov.uk/sfo-cases/northern-powerhouse-development group-and-mbi-group

Stephen Hunt is a partner at Griffins and **Matthew Brown** is a partner at Gateley Legal

A long-term strategy is needed to avoid expensive bailouts

A proactive approach, including a carefully designed restructuring regime, is essential to support one of the UK's key economic drivers, says **Eugenio Vaccari**

The financial landscape for UK higher education institutions (HEIs) is becoming increasingly precarious. A recent report by the Office for Students (OfS) paints a stark picture of the sector's financial health. Without significant mitigation, by the 2025/2026 academic year the sector's deficit will grow to more than £1.6 billion, leaving 72% of providers in deficit and 40% with low liquidity. In response, the OfS has called for "bold and transformative actions".

Amid these mounting concerns, the Government announced an inflation-linked 3.1% increase in tuition fees for domestic undergraduate students in England – the first adjustment since 2017. While this measure is intended to help universities manage rising operational costs, it has been met with scepticism. University representatives argue that the fee hike will barely offset new financial burdens (such as the rise in national insurance contributions) as well as existing ones (inflation, cost of credit), making it, at best, a zero-sum game.

Legal framework for HEIs

Higher education institutions in England and Wales are typically incorporated as Royal Charter corporations (RCCs), higher education corporations (HECs), or companies limited by guarantee. However, there is no dedicated regulatory framework for HEIs in financial distress, except for companies limited by guarantee, which can access general corporate insolvency remedies. For example, GSM London (formerly Greenwich School of Management), a company limited by guarantee, entered administration in 2019, leaving students and staff in limbo and underscoring the need for a more structured approach.

RCCs and HECs can only be wound up as unregistered companies[1]. This process typically halts trading, an outcome that could have dire consequences for universities. If an institution ceased operations mid-academic year, it might need to refund tuition fees, disrupt students' studies, and damage sector-wide confidence, potentially triggering a domino effect.

A potential solution could involve appointing special managers alongside liquidators, as seen in the insolvencies of Carillion, Thomas Cook and British Steel. While this would require government intervention and raise concerns about 'bailing out' a 'wealthy' (yet not healthy) sector, the Official Receiver with government-backed indemnities could allow institutions to operate until the end of the academic year, minimising disruption. This approach mirrors the liquidation of *Baglan Operations*[2].

Goldsmiths, University of London, offers an example of turnaround addressing financial challenges while planning for the long-term

> While traditional insolvency remedies focus on maximising the returns to creditors, the FEI regime balances the protection of students with the interests of creditors

Enforcement of securities in this context poses unique challenges. Secured creditors could appoint receivers, but legal and political uncertainty often discourages action. Many HEIs borrow on an unsecured basis with strict solvency covenants, or their secured charges are improperly registered, adding complexity to insolvency scenarios[3].

Governors and vice-chancellors, who function as trustees and oversee the day-to-day financial management of institutions respectively, also face potential liabilities under the Insolvency Act 1986, including misfeasance (s212), fraudulent trading (s213), and wrongful trading (s214). However, the threshold for liability remains high, particularly in light of recent judicial guidance, such as that issued in the recent *BHS* case[4]. Many institutions have not yet reached this threshold, though growing financial instability could test these boundaries.

The OfS plays a pivotal regulatory role under the Higher Education and Research Act 2017, with a statutory duty to ensure HEIs' financial sustainability (s68). Following the 2023 independent review led by Sir David Behan, the government has refocused the OfS's priorities on financial stability to deliver better outcomes for students and secure the sector's long-term resilience.

Legal framework for FEIs

Calls have been made to extend the special administration regime (SAR) currently applied to further education institutions (FEIs) under the Technical and Further Education Act 2017 and Further Education Bodies (Insolvency) Regulations 2018 to HEIs facing financial distress. This is because, while traditional insolvency remedies focus on maximising the returns to creditors, the FEI regime balances the protection of students with the interests of creditors[5].

The SAR process can be triggered when a FEI is unable, or likely to become unable, to pay its debts. The Secretary of State for education may apply to the court for an education administration order, which appoints an education administrator to oversee the institution's affairs. The administrator has wide-ranging powers. The regime also permits government financial support through loans and guarantees to stabilise institutions and achieve these objectives, reflecting its tailored approach to the education sector.

The regime has been implemented in practice, albeit not without challenges. In January 2019, Hadlow College in Kent became the first FEI to enter special administration, shortly after the framework came into effect. A similar case followed in 2019 involving West Kent and Ashford College, where administrators used their powers to propose a CVA enabling the continuation of the college's operations. Both of the FEIs were subsequently acquired out of administration by North Kent College.

Despite these successes, the use of SARs has been controversial. A 2020 report by the National Audit Office revealed that the two cases cost nearly £27 million, raising questions about the long-term financial sustainability of the approach. The report also highlighted that the government was engaged in ongoing financial interventions in nearly half of all further education colleges. These concerns have prompted inquiries into the regime's costs and overall effectiveness.

The case for an HEI regime

Adapting a SAR for higher education institutions presents both opportunities and challenges.

One key advantage is the establishment of clear guidelines and structured processes for managing financial distress, which could prevent chaotic closures and prioritise the continuity of students' education. Such a regime could provide a moratorium on creditor actions and additional funding to support recovery efforts.

> **Implementing a SAR for higher education institutions risks triggering a domino effect, given the precarious financial state of many universities**

However, introducing non-terminal restructuring options might lead to a wave of rescue-oriented procedures, potentially resulting in staff reductions, loss of institutional memory and cuts to academic programmes. These measures could diminish the quality of education and research, harming the sector's long-term health and its contribution to the country's economic growth. Moreover, balancing the interests of diverse stakeholders – students, staff, alumni and local communities – while seeking to achieve favourable outcomes for creditors would likely be more complex in higher than in further education.

Accountability for financial mismanagement is another pressing issue. It is crucial to hold senior management accountable for decisions that lead to financial distress. Public trust in HEIs has already been shaken by cases of egregious financial mismanagement, making accountability essential not only for justice but also for sector-wide credibility.

Universities, however, are not merely businesses. The broader public interest must be central to any SAR applied to universities, recognising their critical role in communities, the national economy, and the broader knowledge ecosystem. A SAR for higher education should focus on protecting students and ensuring continuity of education while also taking a holistic view of the institution's impact.

Alternative strategies

Short and long-term alternatives to a SAR for HEIs must address immediate financial distress while promoting sustainable sector resilience.

Mergers and strategic alliances offer a proven path to stabilisation, as seen in cases like Thames Valley University with Reading College, and Bedford College with Royal Holloway. Two merger models exist: model A, which creates a new organisation but is costly and time-consuming, and model B, where one institution absorbs another's undertakings – a simpler and more economical approach. Recent successes, such as mergers between St. George's and City, University of London, and Anglia Ruskin with Writtle, underscore the potential benefits of strategic consolidation, though distressed purchases remain risky and should be avoided.

University governors and vice-chancellors must strengthen their understanding of their fiduciary responsibilities and engage proactively with restructuring specialists in order to enact turnaround without a merger[6]. Institutions such as Goldsmiths, University of London, and the University of East Anglia offer examples of turnaround plans addressing financial challenges while planning for long-term sustainability.

Student protection plans (SPPs) are another key tool, designed to safeguard students' academic interests during significant disruptions like institutional closure. These plans outline contingency measures and refund policies and are approved by the OfS. However, SPPs have proven costly and burdensome for HEIs to implement without budgetary support, leading to questions about their practical utility.

Regulatory bodies, particularly the OfS, will need to take on a more interventionist role, providing restructuring expertise and enhanced oversight. An OfS consultation proposes measures such as increased monitoring and expanded powers to improve sector resilience. While promising, these steps require collaboration with the government to ensure that universities can navigate financial pressures without compromising their mission to deliver high-quality education and research.

Reforms in the higher education sector must prioritise safeguarding students and maintaining the world-renowned quality of UK institutions while introducing robust mechanisms for financial recovery and accountability. As argued elsewhere[7], implementing a SAR for higher education institutions risks triggering a domino effect[8], given the precarious financial state of many universities. Such an outcome would tarnish the reputation of the entire sector and exacerbate its challenges. Instead, the government should consider facilitating aggregations among smaller universities, as is being done for financially struggling local authorities, and take steps to attract more international students by easing visa processes, given their significant contribution to tuition revenue. Additional measures, such as multi-year funding agreements, as seen in Australia, and the redistribution of funding and opportunities from London to other regions and devolved nations, could further stabilise the sector.

Despite challenges, mergers and acquisitions – domestic and international – should be encouraged as a path towards creating more resilient institutions. However, they must be conducted within a regulated framework that prioritises educational quality and long-term sustainability over short-term profit maximisation.

The government and regulators must act swiftly to develop a comprehensive, long-term strategy to avoid reactive, expensive, and disruptive bailouts, as exemplified by the University College Cardiff intervention in 1987. Delays in addressing financial instability leave the sector vulnerable to crisis-driven decisions that ultimately harm students, staff, and the broader economy. A proactive approach, including a carefully designed restructuring regime, is essential – not in response to immediate emergencies but as part of a strategic effort to support one of the UK's key economic drivers. Higher education's role in fostering growth, productivity, and innovation demands nothing less.

1 Tamlin v Hannaford [1950] 1 KB 18.
2 *Re Baglan Operations Ltd* [2022] EWHC 647 (Ch).
3 Restructuring in HE sector requires flexible approach, *Recovery* magazine, Autumn 2022, p24.
4 *Wright & Ors v. Chappell & Ors (Re BHS Group Ltd & Ors (in liquidation)) [2024] EWHC 1417* (Ch)
5 *Further Education administrations: the school of hard knocks?* (2018) *Recovery* magazine Winter 2018, p38; *Lesson and Learning from the further education insolvency regime*, *Recovery* magazine Summer 2020, p26.
6 *Restructuring specialists can educate HEIs on financial distress, Recovery* magazine, Spring 2024, p15.
7 E Vaccari and Y Marique, 'Navigating Financial Turbulence: Should Labour Introduce a Special Administration Regime for Universities?' (Sept. 2024, *Middle Templar*).
8 *Higher Education needs access to a proper restructuring regime, Recovery* magazine, Spring 2024, p12.

Eugenio Vaccari is a senior lecturer in law at Royal Holloway, University of London

Fraudulent trader ordered to pay costs and expenses of liquidation

On page 12 **Andrew Brown** summarises the important points for practitioners arising from *Re Stacks* and *Re Staffs* when considering claims for fraudulent and wrongful trading. Here, **Neena Jakhu** – who acted for the joint liquidators in both cases – describes how a director with a repeat history of phoenixing and failing to pay business rates was finally brought to justice

In 2018, Stacks Living Limited (Stacks) and Staffs Furnishing Limited (Staffs) were compulsorily wound up by the High Court following winding-up petitions presented by Stafford Borough Council for non-payment of non-domestic rates for retail premises in the Guildhall Shopping Centre, Stafford.

Following the appointment of the joint liquidators, Mustafa Hassanali Abdulali and Neil James Dingley, IA 1986 applications were issued against Balvinder Shergill, the *de jure* and *de facto* director of Stacks and Staffs, for, *inter alia*, fraudulent trading.

> **A phoenix company run by the same director, selling the same furniture from the same premises, would simply rise from the ashes**

The trials of both cases were heard concurrently in October 2024 and a single judgment for the two was handed down on 3 January 2025.

Why fraudulent trading?

Shergill started out as a market trader who moved into the retail furniture business in around 2011. He had a long history of incorporating companies and then applying to dissolve them, or allowing them to be compulsorily struck off, leaving business rates unpaid for almost two decades dating back to 2015. Shergill was well known to Stafford Borough Council.

From 1993 onwards Shergill had been a director of several companies that were placed into CVL with substantial liabilities to HMRC. His *modus operandi* changed from 2014 onwards, when he simply allowed the companies to be struck off the register when it became convenient to do so.

Shergill then went on to incorporate Houghton Furnishing Limited in 2011, Houghton Furnishing Stafford Limited in 2013 and Houghton Furnishing Net Limited in 2015 (the Houghton companies), which were all later struck off the register for failing to file accounts, with outstanding liabilities to the council.

This pattern of behaviour did not end with the companies, and two further companies (albeit with other family members as the director/shareholder) were incorporated: Montgomery Stafford Ltd (also wound up by the council for failing to pay business rates) and MTS Furnishing Ltd, which was voluntarily struck off the register. Put simply, this was someone who was determined to continue trading to the detriment of the council.

Shergill was the controlling mind of the companies in every aspect, notwithstanding that, for a period of 95 days, his long-term partner, Miranda Smith, was appointed as *de jure* director of Staffs. Smith knew of and agreed to her appointment but Shergill accepted that, during the period of Smith's appointment, he was the *de facto* director. Given his history, the liquidators were advised to pursue a fraudulent trading claim against Shergill.

Proving fraudulent trading

Section 213, IA 1986 provides:

"(1) If in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper."

> **The liquidators were able to prove that at no time had Shergill lodged an appeal with the valuation office and that neither the council nor anyone else had given credible advice that the companies were eligible for any discounts/reliefs**

Consequently the liquidators had to prove that: (1) Shergill had carried on the business of the companies, or *any* business of the companies, with intent to defraud their creditors – fundamentally, involuntary creditors Stafford Borough Council and HMRC; and (2) Shergill was knowingly a party to the business being carried on in that way and should therefore be held liable to contribute a sum sufficient to compensate the companies/their creditors for the totality of loss including the liquidators' costs and expenses.

The focus on this case was on 'intent to defraud' and whether Shergill acted dishonestly. It is well documented that proving dishonesty involves a two-stage test set out by the Supreme Court in *Ivey v. Genting Casinos (UK) Ltd t/a Crockfords Club) [2017] UKSC 67*. Firstly, it was necessary for the liquidators to show the subjective or actual state of Shergill's knowledge or belief as to the facts and, secondly, it was for the judge to determine whether his conduct was dishonest by reference to the objective standards of ordinary decent people.

The liquidators' case was that Shergill was well versed for at least two decades in incorporating companies and allowing them to be dissolved with outstanding liabilities to the council. He knew, each time, that he would incur the liability for business rates with no honest belief or intention of discharging those liabilities. A phoenix company run by the same director, selling the same furniture from the same premises, would simply rise from the ashes.

In response, Shergill claimed that:

(1) He was more used to dealing in cash transactions as a market trader and didn't have sufficient experience of being a director of a limited company.

(2) He had been advised that the companies were entitled to a discount/relief and had lodged an appeal of the rateable value of the premises. He therefore held an honest belief that the business rates would be reduced to a level affordable to the companies.

(3) He did not think that he had to register for VAT as the companies were not meeting the threshold for registration; and

(4) He did not think he needed to register as an employee with HMRC, and pay NIC and PAYE, as his salary was below the personal tax threshold.

> **Shergill's course of conduct was dishonest by the standards of ordinary decent people, and it was highly likely that he knew this**

By using publicly accessible information in respect of not only the companies but every company that Shergill had been involved in, and the council's records, the liquidators were able to prove that Shergill's version of events was simply untrue. In reality, by the time Stacks was incorporated, he had been a director of at least eight companies, including the Houghton companies. He had managed to avoid any personal liability throughout and, effectively, trade with impunity.

Further, the liquidators were able to prove that at no time had Shergill lodged an appeal with the valuation office and that neither the council nor anyone else had given credible advice that the companies were eligible for any discounts/reliefs.

In respect of HMRC, the liquidators undertook investigations that evidenced that Shergill had not taken advice from the tax accountants he claimed to have instructed, and that he had received correspondence from HMRC, which would have alerted him to the fact that the companies needed to register for VAT.

Unpaid business notes: Shergill moved into the retail furniture business in 2011, but had a long history of incorporating companies and then applying to dissolve them or allowing them to be compulsorily struck off

What did the judge find?

ICCJ Greenwood found that Shergill operated the businesses of the companies with intent to defraud the council and HMRC, acting in each case with actual dishonesty and real moral blame. His evidence was contradictory, and he often claimed that he could not recall significant events if he thought it assisted him, while recounting irrelevant stories from the same period of time. His version of events was vague, inconsistent and unsupported by any documentary evidence. In proving dishonesty, the judge was instead guided to Shergill's conduct when he attempted to voluntarily strike Stacks from the register following the council's demand for outstanding business rates, and the fact that six days later Shergill had incorporated Staffs.

In a rather damning finding, the judge found that Shergill knew that neither of the companies could pay business rates but nevertheless continued to trade to the detriment of the council. Further, he had no real or honest belief that the business rates would (or could) be paid and no real expectation of a reduction or discount based on an appeal or otherwise; his intention was to repeat history by allowing the companies to be struck off and simply incorporating a phoenix company to carry on the same business, ensuring that voluntary trade creditors were paid to continue in business but that the council was not. Consequently, Shergill's course of conduct was dishonest by the standards of ordinary decent people, and it was highly likely that he knew this.

Costs of the liquidation

In determining quantum, the judge ordered that Shergill pay the costs and expenses of the liquidation by reference to the cases of *Re Overnight Ltd (n Re Overnight Ltd (in liquidation) (No 2) [2010] BCC 796, [11])* and *E-Tel (UK) Limited (In Liquidation) [2023] EWHC 1214 (Ch)*. The position advanced on behalf of the liquidators was that, if compensation was not ordered, creditors would lose out because the compensation awarded would be expended first on the costs and expenses of the respective liquidations thereby leaving a smaller pot from which to pay a dividend to creditors.

> **Liquidators can be reluctant to issue claims for fraudulent trading due to the cost involved and the subjective test in proving dishonesty. Hopefully this case will encourage more liquidators to pursue such claims**

The judge found that Shergill was solely responsible for the fraudulent conduct of the companies and would therefore be ordered to contribute sufficient sums to meet the totality of the loss incurred including the costs and expenses of the liquidations.

Liquidators can be reluctant to issue claims for fraudulent trading due to the cost involved and the subjective test in proving dishonesty. Hopefully this case will encourage more liquidators to pursue such claims not least if doing so could lead to an order including payment of the costs and expenses of the liquidation.

The author and her colleague Deborah Nigh acted for the joint liquidators in both cases.

Neena Jakhu is a legal director at Howes Percival

More pressure from the judiciary means mediation is here to stay

ADR can be beneficial for complex insolvency cases, but whether it becomes mandatory, with sanctions for non-compliance, remains to be seen, says **Neil Stewart**

The success of mediation in resolving insolvency and other forms of dispute is difficult to deny. According to The Centre for Dispute Resolution (CEDR), 60–70% of their cases settle on the day, with a further 20% settling in the following weeks.

CEDR's experience is aligned with our own; mediation is the method by which most of our claims are resolved and monetised. Unsurprisingly, therefore, we always propose mediation from the outset and are strong supporters of the process.

However, there remains tension between the traditional view of mediation as a voluntary, consensual process and compulsory mediation. This might account for the slow progress and uncertainty towards making the process, and other forms of alternative dispute resolution (ADR), mandatory with sanctions for non-compliance.

Off the 'trial track'

Significant steps have been taken towards mandatory mediation since the days of *Halsey v. Milton Keynes General NHS Trust [2004] EWCA Civ 576*, when Lord Dyson said: "It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court."

In 2013 Sir Alan Ward[1], one of the Court of Appeal judges in *Halsey*, suggested a review of the position, while acknowledging: "It is not possible to shift intransigent parties off the trial track onto the parallel track of mediation."

Compulsory ADR has already been adopted in other jurisdictions and, to a limited extent, the UK courts. Judges routinely conduct evaluation appraisals in the form of early neutral evaluation and financial dispute resolution hearings, principally in the family courts. Mediation is mandatory in most small claims in the county court[2].

In its June 2021 paper entitled 'Compulsory ADR' the Civil Justice Council concluded that parties can be lawfully compelled to participate in ADR, provided that access to the court remains available, so as not to breach the parties' rights to a fair trial under article 6 of the European Convention on Human Rights.

Questions on the point at which to compel parties to attend ADR, the precise form to be imposed, whether parties must demonstrate more than perfunctory compliance, sanctions for non-compliance, quality control of ADR practitioners and a range of other issues have no easy answers, but the Civil Procedure Rule Committee has been grappling with such matters following an April 2024 consultation.

The courts have already shown a willingness to impose penalties such as reduced costs recovery for a winning party or indemnity costs against a losing party. Should the range of available sanctions be expanded? Future sanctions could include making the commencement of proceedings conditional on entering ADR or empowering the court to strike out a claim or defence if a party fails to comply with a compulsory ADR order at a later stage. The concern is that such measures could breach article 6 and undermine the value of the adjudicative system, even though any strike-out could be set aside if there was a valid reason for non-compliance.

> "There are potential gains for IPs undertaking mediation training, whether to become mediators or to improve their understanding of mediation dynamics"

There is validity in the question of the applicability of mediation to insolvency. There is a risk of increased costs in the event of an unsuccessful mediation, for example, but that is often dwarfed by the potential cost-saving and reduced burden on insolvent estates by avoiding lengthy litigation.

Figures for the overall cost vary widely depending on the type and size of claim, the stage at which the matter is referred to ADR, the time spent mediating and other factors, but it is typically a fraction of that for litigating to trial. It is not unusual for cases with estimated trial costs of hundreds of thousands of pounds to settle at mediation with costs at four or five figures.

Accelerated realisation of claims

Other benefits of the process include confidentiality, a flexibility that allows for creative solutions tailored to the specific features of the case, time saved and potential acceleration of realisation of claims where mediation succeeds.

Concerns are sometimes expressed as to the complexity of some insolvency claims and whether mediators have sufficient expertise in insolvency law. Sector-specific training for mediators handling insolvency matters would undoubtedly enhance the process and prospects of success. Mediators are by no means exclusively lawyers and there are potential gains for IPs undertaking mediation training, whether to become mediators or to improve their understanding of mediation dynamics.

However, concerns are best addressed by considering the key features of the mediation process itself. It is primarily forward-looking. The mediator does not give legal advice or adjudicate but assists parties in finding a mutually acceptable resolution. Anecdotally, formerly reluctant parties often express surprise at how effective the process can be.

Mediation is here to stay, with increased pressure, if not compulsion, from the judiciary for parties at least to attempt mediation or ADR. Even without that impetus, increased awareness of its potential benefits and the option of partnering with litigation funders to de-risk the process seem likely to continue the upward trend.

1 *Colin Wright v. Michael Wright Supplies Limited [2013] EWCA Civ 234* at [3]

2 Practice Direction 51ZE – small claims track automatic referral pilot mediation scheme

Neil Stewart is an associate director at Manolete Partners, neil@manolete-partners.com, 07771 963 975

Changes put building remediation before creditors' returns

New building safety laws mean increased notification requirements for IPs and the removal of an option to recover costs, say **Sylwia Jatczak** and **Carris Peacey**

The Building Safety Act 2022 (BSA) gained Royal Assent on 28 April 2022 as the official legislative response to the disastrous Grenfell Tower fire. It was introduced in order to, among other things, improve the design, construction and management of higher-risk buildings.

Since its implementation, the BSA has been subject to various changes and amendments and has been implemented in stages. One of the most recent changes was introduced by the Leasehold and Freehold Reform Act 2024 (LFRA). Section 119 of LFRA repeals s125 of the BSA and introduces a new section 125A. The new section applies if an IP is appointed over a 'responsible person' for either a 'higher-risk building' or a 'relevant building'.

New obligations: IPs must provide information to the local authority and the fire and rescue authority for the area in which the buildings are situated and, in the case of a higher-risk building, the building safety regulator

> **If an IP is appointed in respect of the owner of a relevant building, they need to consider if there is a relevant defect or if relevant steps need to be taken**

Caution will need to be exercised as to what is meant by the term 'responsible person' as this is language used elsewhere in building and fire safety legislation (principally under the Regulatory Reform (Fire Safety) Order 2005) but is defined differently to those other uses.

As of 24 July 2024, an IP appointed over a responsible person for a higher-risk building or relevant building is under a statutory obligation to provide, within 14 days of their appointment (that period beginning on the day of appointment), 'relevant information' to:

(i) the local authority for the area in which the building is situated;

(ii) the fire and rescue authority for that area; and

(iii) the Building Safety Regulator (in the case of a higher-risk building).

In addition to this, if an IP is appointed over the owner of a relevant building, they need to consider if there is a relevant defect or if relevant steps need to be taken pursuant to s120 BSA (see box for explanation of 'relevant defect' and 'relevant steps').

To whom does section 125A apply?

Section 125A of BSA applies to office-holders appointed over a responsible person. This will include administrators, administrative receivers, a receiver appointed by the courts or by a mortgagee, a liquidator, a trustee in bankruptcy or a surveyor.

What does this mean for IPs?

Within 14 days of a relevant appointment (beginning with the date on which the appointment is made), an IP must provide the following information to the local authority and the fire and rescue authority for the area in which the buildings are situated and, in the case of a higher-risk building, the building safety regulator:

> **It is interesting to note that, while the reporting obligations set out in s125A are expressed as mandatory obligations, the legislation is silent on the consequences of non-compliance**

1. The name and addresses of the person or persons/entity or entities in relation to whom the IP is appointed;

2. Address of each higher-risk and relevant building for which that person or persons/entity or entities are a responsible person;

3. Provide official copies of the register of title and title plans relating to each registered estate or interest that the person over whom the IP is appointed holds in the said buildings (if any);

4. The nature of the IP's appointment;

5. The IP's name, address, telephone number and email address; and

6. Details, so far as they are known to the practitioner, of the information as is set out in the table in rule 1.6 of the Insolvency (England and Wales) Rules 2016.

It is interesting to note that, while the reporting obligations set out in s125A are expressed as mandatory obligations, the legislation is silent on the consequences of non-compliance. It will be interesting to observe how case law develops in this regard.

When did the requirements take effect?

Section 125A of the BSA came into force on 24 July 2024. However, the 14-day period in which an IP must notify the relevant authority begins on the day of appointment. As the BSA is unclear as to whether or not these provisions are to impact appointments made before 24 July 2024, we consider it prudent to assume that the provisions of s125A apply to office-holders appointed over a responsible person where such appointment remained current as of, or started on or after, 24 July 2024.

Repeal of section 125

In addition to the new notification requirements, s118 of the LFRA repeals section 125 of the BSA. That means it is no longer open to IPs appointed over a landlord company to seek an order from the court under the BSA for a corporate body or partnership associated with the insolvent landlord company to pay or contribute towards remediation costs, or make such other contributions to the landlord company's assets.

> "IPs will have to seek advice, on a case-by-case basis, as to whether the existing remedies of remediation might be available to them"

Section 125 of BSA was intended to allow for the recovery of remediation costs relating to residential (or mixed use) buildings that are 11 metres high or above (or at least five storeys) in an insolvency, and for these funds to be used to remediate the building. According to a government guidance note published on the day the abolition of s125 came into effect, there was concern that section 125 conflicted with wider insolvency law. Amounts recovered on behalf of insolvent landlords would have been distributed to creditors in the first instance, in accordance with insolvency legislation, instead of being used for remediation. By repealing s125, the Government has sought to prevent the BSA from being used to secure funds for creditors rather than being used for remediation.

For the time being at least, where the conditions exist that s125 of the BSA would have applied, IPs will have to seek advice, on a case-by-case basis, as to whether the existing remedies of remediation – contribution orders (s124, BSA) and/or building liability orders (s130, BSA) – might be available to them.

Please note that this article is not exhaustive and does not address every issue relevant to IPs within the context of the BSA. The subject matter is extensive, and there are several other broader issues under the BSA that IPs may encounter, which are beyond the scope of this piece.

Key terms under the Building Safety Act 2022

Higher-risk building (pursuant to s65, BSA) means a building in England that is at least 18 metres in height or has at least seven storeys; and contains at least two residential units (subject to limited exceptions).

Relevant building (pursuant to s117, BSA) means a self-contained building or self-contained part of a building in England that is at least 11 metres high or has at least five storeys; and contains at least two dwellings.

Responsible person (pursuant to s125A, BSA) means, (i) in relation to a higher-risk building, an accountable person for the building, and, (ii) in relation to a relevant building, the person who would be an accountable person for the building if it was a higher-risk building.

Accountable person (pursuant to s72, BSA) is, subject to certain limited exceptions, a person who holds a legal estate in possession in any part of the common parts of the building or who does not hold such an estate but is under a relevant repairing obligation in relation to any of the common parts. In practice, this could be any person or organisation who owns or has responsibility for the higher-risk building or a relevant building, such as: a freeholder, a leaseholder, a management company etc. (but excludes court-appointed managers).

Relevant defect (pursuant to s120(2), BSA) in relation to a building, means a defect as regards the building that:

1) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works; and
2) causes a building safety risk.

Relevant step (pursuant to s120(4A), BSA) in relation to relevant defects means steps that have as their purpose:

1) preventing or reducing the likelihood of fire or collapse of the building (or any part of it) occurring as a result of the relevant defect;
2) reducing the severity of any such incident; or
3) preventing or reducing harm to people in or about the building that could result from such an incident. Whenever it is envisaged that an IP will be appointed over an entity or individual who has some responsibility for maintenance of the common parts of a higher-risk building or a relevant building (or a legal or equitable interest in such a building), we recommend that the IP take advice regarding what obligations they might owe under the BSA and associated legislation.

Sylwia Jatczak is an associate in the real estates disputes team and **Carris Peacey** is an associate in the corporate restructuring and insolvency team at Charles Russell Speechlys

One of the worst expressions in our sector: 'It is what it is'

Positive outcomes from property insolvencies are possible with a mindset that challenges the inevitable and focuses on the property, people and plan, says **Rory Dillon**

Property restructuring can be fraught with challenges. Loans in default are never welcome news, but early engagement can lead to better-than-anticipated outcomes.

Descartes proposed that: "We do not describe the world we see; we see the world we can describe." This is never truer than when working in insolvency; IPs, lawyers and lenders often work with incomplete information. And when you are faced with, for example, a loan in default, a tenant who is not paying or a stalled development scheme, it is a natural human tendency to see an unresolvable problem.

However, property restructuring professionals should reframe that view and think instead about the art of the possible. We should be in business to execute meaningful restructures and leave situations in a better position than we found them.

In this article, I will share my approach to the three 'Ps' – property, people and plan.

Property – the importance of getting on site

If readers only take one lesson from this article, it is that property is a 'hard asset.' To truly understand it, you need to see, feel and touch it, and, in some rare instances, just check it exists.

> **The extended timescales associated with keeping the wrong people are the enemy; they erode returns and need to be dealt with clinically**

An experienced professional will note less-tangible aspects of the asset that simply cannot be assessed without physically being there. How does it sit within its local context? Is it well managed and maintained? Is the tenant mix appropriate?

As with most things in life, the quality of the answer you receive will depend on how good the question was in the first place. Client needs must be anticipated before they are articulated and you must be alert to the location fundamentals, including progress on site, quality of construction, health and safety adherence, whether what is being built is in line with the drawings, who the professional team are, how regularly they attend the site and whether they are appropriate for the size and scale of the development.

Problems left unnoticed could prove expensive or even fatal. As an example, a wall cladding product may be correctly specified, but do you know who is installing it and will it have a manufacturer's warranty if not installed by an approved installer?

Time and again, we see professional reports that have fallen into the trap of viewing 'bricks and mortar' as static – that the latest valuation can just be slotted into a business review or estimated outcome statement.

Independent site inspections bring a dose of reality and a layer of transparency to what is happening. The job of the surveyor is to report that in an unbiased way so there is a clear baseline understanding of the facts. IPs can then design a suitable quote to deal with the case or liaise with their client in a far more informed way.

Once a surveyor has assessed the physical site conditions, the next stage is to assess the scheme's economic viability. Is the scheme appropriate for its locale? Is there sufficient demand for the product? Is it under/over-specified?

For housebuilders, return on capital employed (ROCE) is the key metric. Are housebuilders matching their rates of delivery to sales rates and conserving their capital or are they overtrading? When budgets are tight towards the end of a project, we often see developers cutting back on the items that sell properties, such as kitchens and sanitaryware in residential.

Understand the property: independent site inspections bring a dose of reality and a layer of transparency to what is happening

'Three Ps' case study: Dockside Aparthotel

An example of how we applied the three Ps comes from a recent appointment on a scheme of 50 city centre apartments in Liverpool, called Dockside Aparthotel. They were in a partially completed but fire-damaged block, complete with UN1s (indicating a claim to the property) from off-plan sales and associated group company debts in the tens of millions.

The IPs had no security over the external envelope of the building so could not repair it and ostensibly our interest was worthless. There needed to be a full provision.

It would have been easy to say 'It is what it is' or decline the appointment. However, with that challenge set, we insisted on a site visit to really understand the property, which made our confidence grow. The site was well located with waterfront views, excellent reletting prospects next to the M&S Bank arena and suitable for use as an aparthotel (apartment-style rooms with hotel facilities). We undertook viability studies and appraisals, listened and understood stakeholder requirements, and engaged with the local authority and councillors, which provided an opportunity. We then developed a plan and persuaded the senior lender to introduce some new capital into a separate SPV, to secure control of the freehold envelope, which provided a complete security package and achieved an outcome that saw an approximate 75% recovery in the original indebtedness position from a base position of negligible value. This was a true restructure, where all stakeholders ended up better off by working smartly and collaboratively and the scheme is now trading successfully as an aparthotel.

Rory Dillon

A strong network of contacts up and down the supply chain can help build a more detailed picture of the development or developer. The contacts might uncover whether the method of construction is likely to have mortgage issues or whether emerging legislation (particularly around fire safety and the Building Safety Act) is likely to impact converting the project to cash. Where pre-agreed and/or overseas sales have been undertaken, you can check if the Land Registry has been notified, where the deposits are and if there is a requirement to cleanse the title through a paragraph 71, IA86, application process.

While these investigations can unearth difficult messages to deliver to seasoned directors, working at speed is key. Seeing the physical asset is invaluable to undertaking a successful property restructure.

People – listen, don't tell

There are often many stakeholders involved in a property development project starting with lender or equity sponsors, the developer, the contractors and supply chain underneath, the professional team and a whole network of professional design team staff, lawyers and sales agents to bring in the cash. When insolvency occurs, a cacophony of voices emerges with demands, threats and offers of assistance, as well as those looking to leverage the situation for personal gain. At this point, calm heads prevail.

Good IPs know that most of the time, within the problem also sits the solution. It just requires a mindset shift and the right professional team. Generally, success lies in strong cross-disciplinary teams who communicate well, and who are also willing to roll their sleeves up and own the problem. Diverse teams who bring different approaches have been shown to be more effective than groups of people who think similarly.

It is worth acknowledging early that some people within this tight ecosystem will be underperforming in their roles. However, a steamroller approach is not always advisable, and it can be better to take time instead to understand what is failing and why, as it is not always black and white.

Once understood though, it is time for radical transparency. Failing elements of the team should be replaced on the most amicable terms possible. Ripping the plaster off always causes pain in the short term but usually leads to quicker and enhanced recoveries. In property restructuring, the extended timescales associated with keeping the wrong people are the enemy; they erode returns and need to be dealt with clinically. This is carried out more easily when there is a commitment among stakeholders to obtaining the best result on a restructuring.

Plan – Is it really what it is?

Time spent planning is time well spent, as the adage goes. But how do you resist the pressure to act when time delays and procrastination reduce the prospects of a successful restructuring? In my experience, it pays to go slow before you go fast but, and it is a big but, it is vital to keep moving at all times.

When you are faced with multiple decisions, it is wise to take three steps back and ask whether what you are planning to do is going to be meaningful and leave the situation in a better position than you found it.

One of the worst (and sometimes laziest) expressions used in our industry is: "It is what it is." When I hear those words, I see it as a challenge. What if it is not? What would have to happen to make this a success again? Only after running through all of the options sequentially can it be decided that it is a hopeless case. More often than not, with the application of some considered thought, solutions can be found. After all, opportunity often comes disguised in the form of misfortune or temporary defeat.

Once a plan has been developed, its success lies in getting the stakeholders to agree to it. A great communicator is so much more than an articulate presenter. I like the quote from Greek philosophy: 'We have two ears and one mouth so we can listen twice as much as we speak.' Just because you might be an expert on a subject it does not mean you have the green light to bombard others with that knowledge. The trick is to listen, with the intent to understand and not to respond, particularly in high-pressure situations.

To achieve outsized results, there will inevitably be elements of risk. But, by focusing on the three Ps – property, people and plan – and bringing a mindset that will not accept what might seem inevitable, you can turn an insolvency event into a positive outcome.

Dockside Aparthotel: the property saw an approximate 75% recovery in the original indebtedness position from a base position of negligible value. Image courtesy of Fletcher Bond

Rory Dillon MBA MRICS FNARA, is founder and managing director of Fletcher Bond

SURVEY:
Real estate services

Introduction

Welcome to our second survey of specialist providers of real estate services for insolvency professionals.

To complete our survey tables, we approached more than 90 firms in the market and asked them for a detailed breakdown of the services they provide, with a particular focus on those that dispose of properties for insolvency practitioners.

For those firms that facilitate the sale of properties, questions covered the range of commission claimed on sales, how frequently retainers and fixed fees are charged to IPs, whether the firm will act on a multi-agency basis and whether minimum guaranteed sale prices are offered. In addition, each firm was asked to provide the total approximate value of real estate sold for IPs in the last year.

The firms who took part in our survey were in addition asked for information to contribute to a handy buyer's guide on the non-sales services related to real estate that they provide, such as insurance, on-site security services, records management, loan security and loan book reviews, and landlord negotiation and lease advisory services.

Finally, from page 56, you can find a list of the participants listed by the type of real estate they specialise in.

In total, 28 companies responded with information in answer to our questions, and 15 more companies were added into the survey using publicly available information. You can find all of the companies profiled in the tables overleaf.

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

Real estate firms – Who's who

Trading name of UK business	Contact tel for IPs	Contact name for IPs	Contact email for IPs	Website	Main address in UK	Top/parent company in group	Registered country of top/parent company	Registered company no of top/parent company
Allsop	020 7543 6857	Victoria Liddell	victoria.liddell@allsop.co.uk	www.allsop.co.uk	33 Wigmore Street, London W1U 1BZ	Allsop LLP	UK	OC315531
Belleveue Mortlakes	*020 7323 1100*	*n/s*	*hvarsani@bmortlakes.com*	*www.bmortlakes.com*	*17 Hanover Square, London W1S 1BN*	*n/s*	*n/s*	*n/s*
CAPA	020 7224 7222	Mike Sheath	mike@capa.uk.com	www.capa.uk.com	7 Stratford Place, London W1C 1AY	Consultiam Property Limited	UK	4906350
CBRE Limited	020 7182 2921	Tim Perkin	tim.perkin@cbre.com	www.cbre.com	Henrietta House, Henrietta Place, London W1G 0NB	CBRE Limited	UK	03536032
Christie & Co	020 7227 0763	Stephen Jacobs	stephen.jacobs@christie.com	www.christie.com	Whitefriars House, 6 Carmelite Street, London EC4Y 0BS	Christie Group Plc	UK	01471939
Clearway	*n/s*	*n/s*	enquiries@clearway.co.uk	www.clearway.co.uk	Pennine Place, 2a Charing Cross Road, London WC2H 0HF	The Clearway Group Limited	UK	10417114
Clive Emson Land & Property Auctioneers	0345 850 0333	Martin Hardy	auctions@cliveemson.co.uk	www.cliveemson.co.uk	Rostrum House, Rocky Hill, London Road, Maidstone, Kent ME16 8PY	Regional Property Services Ltd	UK	02399687
Colliers	07717 652 778	Nick Hammond	nick.hammond@colliers.com	www.colliers.com/en-gb/services/advisory-restructuring	95 Wigmore Street, London W1U 1FF	Colliers International Property Consultants Limited	UK	7996509
Copping Joyce Surveyors Ltd	07770 755 850	David Foskett	dfoskett@cjllp.co.uk	www.coppingjoyce.co.uk	28-30 Worship Street, London EC2A 2AH	Copping Joyce Surveyors Ltd	UK	*n/s*
Cushman & Wakefield	*029 2026 2238*	*Andrew Hughes*	*n/s*	*www.cushmanwakefield.com*	*2 Marchmount House, Dumfries Place, Cardiff CF10 3RJ*	*n/s*	*n/s*	*n/s*
Fenn Wright LLP	*01206 216 543*	*n/s*	*n/s*	*www.fennwright.co.uk*	*1 Tollgate East, Stanway, Colchester CO3 8RQ*	*n/s*	*n/s*	*n/s*
First Response Group	0330 124 6019	Jennie Duff	vacants@firstresponsegroup.com	www.firstresponsegroup.com/insolvency	Unit 2, Gemini Business Park, Sheepscar Way, Leeds LS7 3JB	First Response Group Ltd	UK	06263326
Fletcher Bond	020 4570 5577	Rory Dillon	rory.dillon@fletcherbond.co.uk	www.fletcherbond.co.uk	16 Upper Woburn Place, London WC1H 0BS	Fletcher Bond Property Consulting Limited	UK	10827693
Generator Real Estate Solutions Ltd	020 7426 5555	Paul Isaacs	paul.isaacs@generatorgroup.co.uk	www.generatorgroup.co.uk	Townfield House, 27-29 Townfield Street, Chelmsford CM1 1QL	Generator Real Estate Solutions Ltd	UK	11069378
GMS Property Services Ltd	01384 319 187	Sarah Smith	s.smith@gms-group.co.uk	www.gms-group.co.uk	218 Oakham Road, Tividale, West Midlands B69 1PY	GMS Group of Companies Ltd	UK	08240846

Key: £ = GBP equivalent 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

■ = Sells real estate ■ = Provides other services
■ = Both of the above

Real estate firms – Who's who continued

Trading name of UK business	Contact tel for IPs	Contact name for IPs	Contact email for IPs	Website	Main address in UK	Top/parent company in group	Registered country of top/parent company	Registered company no of top/parent company
Graham + Sibbald ■	07840 022 259	Martin Davis	martin.davis@g-s.co.uk	www.g-s.co.uk	Dundee, Scotland	Graham + Sibbald LLP	Scotland, UK	SO307130
Hilco Appraisal Ltd ■	020 7374 5300	Jon Cookson	jcookson@hilcoglobaladvisors.co.uk	www.hilcovs.co.uk	99 Gresham Street London EC2V 7NG	Hilco Global	USA	N/A
Howden Insurance Brokers Ltd ■	*07923 254 786*	*Ed Brittain*	*ed.brittain@howdengroup.com*	*www.howdengroup.com/uk-en/cover/restructuring-and-resolution*	*1 Creechurch Place*	*n/s*	*n/s*	*n/s*
Lambert Smith Hampton ■	020 7198 2000 / 07979 541 236	Nick Blackwell	nblackwell@lsh.co.uk	www.lsh.co.uk	55 Wells Street, London W1T 3PT	Skipton Building Society	UK	*n/s*
Lamberts Chartered Surveyors ■	020 7520 4005	Henry Johnson	henry.johnson@lambertsurv.co.uk	www.lambertsurv.co.uk	Aztec Row, 3 Berners Road, London N1 0PW	Lamberts Surveyors Limited	UK	*n/s*
Landwood Group ■	07974 394 345	Mark Bailey	mark.bailey@landwoodgroup.com	www.landwoodgroup.com	Lancaster Buildings	Landwood Commercial (Manchester) Limited	UK	06655681
MAPS Solutions Europe Ltd ■	01299 825 014	Mark McCarron	mark@mapssolutions.co.uk	www.mapssolutions.co.uk	Office 46, Anglo House	Maps Solutions Europe Ltd	UK	07916432
Marpol Security Limited ■	*08085 627 765*	*n/s*	*info@marpol.co.uk*	*https://marpol.co.uk*	*Harvey Court, Harvey Lane, Golborne, Greater Manchester WA3 3RX*	*n/s*	*n/s*	*n/s*
Marsh Limited ■	07392 123 109	Adam Humphreys	adam.humphreys@marsh.com	www.marsh.com/en/services/financial-professional-liability/expertise/solutions-for-insolvency-practitioners.html	Tower Place, London EC3R 5BU	Marsh Limited	UK	*n/s*
Men-Sec Group ■	*03301 331 751*	*n/s*	*enquiries@mensec.co.uk*	*https://mensec.co.uk*	*85 Great Portland Street, London W1W 7LT*	*n/s*	*n/s*	*n/s*
Orbis Protect Ltd ■	*0800 083 0850*	*n/s*	*n/s*	*www.orbisprotect.com*	*Beaufort House, Cricket Field Road, Uxbridge UB8 1QG*	*n/s*	*n/s*	*n/s*
Pact Property & Assets Ltd ■	*07979 541 215 / 01242 339 500*	*Chris Price*	*chris.price@pactproperty.co.uk*	*www.pactproperty.co.uk*	*Phoenix Mill, Phoenix Works, London Road, Stroud GL5 2BU*	*n/s*	*n/s*	*n/s*
Pantera Property ■	01423 421 825	Tom Snook	tom@panteraproperty.com	www.panteraproperty.com	10 North Park Road, Harrogate HG1 5PG	Pantera Property Limited	UK	09796266

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■ = Sells real estate ■ = Provides other services
■ = Both of the above

Real estate firms – Who's who continued								
Trading name of UK business	**Contact tel for IPs**	**Contact name for IPs**	**Contact email for IPs**	**Website**	**Main address in UK**	**Top/parent company in group**	**Registered country of top/parent company**	**Registered company no of top/ parent company**
Peter Fenwick & Co	07831 588 299	Peter Fenwick	peter@ peterfenwickandco.com	www.peterfenwick andco.com	4 St James's Square, London SW1Y 4JU	N/A (Sole Trader)	N/A	N/A
Price Taylor LLP	*020 7354 7354*	*Paolo Mellors Puccinelli*	*p.puccinelli@ pricetaylor.com*	*www.pricetaylor. com*	*1st Floor, 108-109 Upper Street, London N1 1QN*	*n/s*	*n/s*	*n/s*
Proudley Associates	*01425 200 366*	*Olivia Proudley*	*admin@ proudleyassociates.com*	*www.proudley associates.com*	*Unit 4C Austin Park, Yeoman Road, Forest Gate Business Park, Ringwood BH24 3FG*	*n/s*	*n/s*	*n/s*
RamRe	*029 2274 2470*	*Richard Murphy*	*contactus@ram-re.com*	*www.ram-re.com*	*3rd Floor, Capital Tower, Cardiff CF10 3AG*	*n/s*	*n/s*	*n/s*
Restore Information Management	0333 222 6390	*n/s*	*n/s*	www.restore.co.uk/ information management	London	Restore Plc	UK	05169780
Roche Chartered Surveyors	01603 619 876	Graham Jones	grahamj@rochecs. co.uk	www. rochesurveyors. co.uk	56 Thorpe Road, Norwich NR1 1RY	Roche Chartered Surveyors	UK	N/A
RPRS	020 3148 7500	Richard Reed MRICS FNAVA	richard@rprs.co.uk	www.rprs.co.uk	124 City Road, London EC1V 2NX	RPRS Group Ltd	UK	13424660
Sanderson Weatherall	*0113 221 6000*	*n/s*	*enquiries@sw.co.uk*	*www.sw.co.uk*	*6th Floor Central Square, 29 Wellington Street, Leeds, West Yorkshire LS1 4DL*	*n/s*	*n/s*	*n/s*
Savills	*020 7499 8644*	*n/s*	*n/s*	*www.savills.co.uk*	*33 Margaret Street, London W1G 0JD*	*n/s*	*n/s*	*n/s*
Secure Empty Property	*0330 088 1973*	*n/s*	*sales@secure emptyproperty.com*	*www.secureempty property.com*	*Integrity House, Charles Lane, Lancashire BB4 5EH*	*n/s*	*n/s*	*n/s*
SIA Group Asset Ingenuity Ltd	020 7498 4900	John Wills	john.wills@ sia-group.co.uk	www.sia-group. co.uk	107 Cheapside, London EC2V 6DN	SIA Group Asset Ingenuity Ltd	UK	*n/s*
Specialist Risk Insurance Solutions	0115 908 4935	Angela Poyzer	apoyzer@ specialistrisk.com	www.srinsurance solutions.co.uk/ service/insolvency	Cumberland House, 35 Park Row, Nottingham NG1 6EE	Specialist Risk Group Limited	UK	12083334
Vail Williams LLP	*023 8082 0900 / 07760 171 443*	*Russell Miller*	*rmiller@vailwilliams. com*	*www.vailwilliams. com*	*Savannah House, 3 Ocean Way, Ocean Village, Southampton SO14 3TJ*	*n/s*	*n/s*	*n/s*
Watling Real Estate	07956 097 199	Alan Ryall	alan.ryall@watling.com	www.watling.com	60 Cannon Street, London EC4N 6NP	N/A	N/A	N/A
Wilsons Auctions	01294 833 444	Rebecca Wilson	rebeccawilson@ wilsonsauctions.com	www.wilsons auctions.com	6 Kilwinning Road, Dalry KA24 4LG	Wilsons Auctions Limited	Northern Ireland, UK	NI011967

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Company profiles

Trading name of UK business	Who regulated by and parts of business, groups, or individuals that are regulated, if appropriate	Years providing services for IPs	Approx % of turnover that relates to services for UK IPs	Services	How different to other providers
Allsop	*n/s*	100	100	Residential and commercial auction, residential and commercial investment, residential and commercial valuation, land and property development and consultancy, recoveries and receivership, residential letting and management (ALM).	At Allsop we adopt a people-focused approach. We are an an independent company and pride ourselves on being partner-led. This approach ensures that we can provide our regular clients with fast but fully considered, accurate advice.
Belleveue Mortlakes	*RICS, NARA*	*n/s*	*n/s*	*Specialists in property insolvency, experienced in both residential and commercial fixed charge receiverships and appointments under the Law of Property Act 1925.*	*n/s*
CAPA	RICS and IRRV	20	50	We value and transact on commercial property whilst businesses are sold or turned around. We interrogate historic property and AP data forensically to recover overspend across varied use sectors and portfolio sizes, saving otherwise 'invisible' sums.	Occupier representation only – no conflicts of interest. Lease restructuring/rent mitigation specialist. UK's largest independent property cost auditor. Substantial back catalogue of cases, intel and precedence. Contingency fee basis – no win no fee.
CBRE Limited	RICS	30	<1	CBRE's 4000 professionals across 15 UK-based offices provide a full range of real estate advisory services across every sector of the real estate market in the UK and overseas.	CBRE is the largest commercial property advisor in the UK. CBRE's loan recovery team has an in-depth understanding of IPs' requirements and challenges. It regularly acts as a conduit for IPs looking to access the specialist services at CBRE.
Christie & Co	Our valuation business is regulated by RICS. We have a national team of RICS registered valuers.	45	*n/s*	We value, sell and advise on operational real estate – care, leisure, hospitality, medical, childcare and education, retail sector. Marketing appraisals, asset disposal – closed/going concern. RICS valuations, Capex condition, lease advisory, market intel.	We are market leading, award winning sector specialists. Largest and most active team of experts enabling best in class advice and outcomes. Dedicated team for R&I assignments. Rapid response to review businesses nationwide – single asset/large portfolios.
Clearway	*n/s*	30	N/A	For over 30 years, Clearway has developed an unparalleled range of security and safety risk mitigation solutions, protecting your people, property and assets, across a wide range of industry sectors internationally.	Clearway operates as the pan-European supplier of choice for property and asset security solutions via customer service excellence, product innovation and employee engagement. Security and safety supplier today, your technology partner for tomorrow.
Clive Emson Land & Property Auctioneers	We are regulated by The Property Ombudsman scheme with our auctioneers and appraisal staff belonging to a mixture of the following trade associations: RICS, NAVA and NAEA.	35	N/A	Selling land and property by auction.	We are an independent firm, run by auctioneers, and can offer unbiased property auction appraisals.
Colliers	RICS	20	*n/s*	Valuation, asset management, project and building consultancy, and disposal services, in respect of all property sectors nationally.	Colliers has a unique combination of scale and agility, being a global real estate services business with a hands-on entrepreneurial spirit, always providing service excellence and doing what is right.
Copping Joyce Surveyors Ltd	RICS and NARA	30	50	Valuations. Option reports for method and timing of disposal/s including planning, and estate management advice.	Specialists in certain geographical areas. Within the M25 and particularly in the City Fringes and North/North West London, having been involved in two of the largest developments in these areas. Huge amount of expertise in investments and developments.
Cushman & Wakefield	*RICS, FCA*	*n/s*	*n/s*	*Our Receivership & Recovery Solutions team brings more than 20 years' experience in providing strategic advice to lenders, insolvency practitioners, corporate, and equity fund clients, for distressed property assets.*	*Our solutions include taking on receiverships in the UK and offshore, as well as over special purpose vehicles where appropriate, in order to maximise recovery.*
Fenn Wright LLP	*n/s*	*n/s*	*n/s*	*We act for a wide range of accountants and insolvency practitioners and have a proven record for providing discrete, pragmatic property insolvency advice.*	*With 11 offices situated along the A12 corridor we can provide the most appropriate property strategy for the recovery or winding up of an insolvent business.*

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Company profiles continued

Trading name of UK business	Who regulated by and parts of business, groups, or individuals that are regulated, if appropriate	Years providing services for IPs	Approx % of turnover that relates to services for UK IPs	Services	How different to other providers
First Response Group ■	Security Industry Authority (SIA) – SIA Approved Contractor Scheme (ACS) status for the provision of security guarding, key holding and public space CCTV. National Security Inspectorate (NSI) – manned guarding and keyholding services, CCTV, access control and intruder detection services.	15	*n/s*	First Response Group (FRG) provide rapid insurance-approved advisory and delivery of security, fire and facilities management solutions to protect and maintain vacant properties on behalf of restructuring and LPA, corporate recovery, and fixed charge receiver clients nationwide.	Our dedicated risk experts ensure your distressed asset insurance and regulatory obligations are met in the most efficient and cost-effective way possible. We have extensive experience and knowledge working with UK insurance providers and recommend risk reduction measures in line with insurance industry compliance requirements.
Fletcher Bond ■	RICS and IPA	10	60	We provide full service property advice including strategic valuation and agency/disposal advice of real estate assets on behalf of receivers and insolvency practitioners.	We are specialists in development of part complete commercial and residential schemes as well as general asset management and value add commercial business real estate asset disposals.
Generator Real Estate Solutions Ltd ■	N/A	13	N/A	N/A	N/A
GMS Property Services Ltd ■	GMS Group of Companies is accredited with ISO 9001, ISO 14001 and ISO 45001. GMS Security Services Ltd (part of the GMS Group of Companies) also holds ACS accreditation, SSAIB and Avetta. GMS Property Services Ltd is part of Safe Contractor and CHAS.	26	*n/s*	GMS Property Services Ltd provide vacant property services to comply with insurers' unoccupied building conditions.	*n/s*
Graham + Sibbald ■	RICS	66	5	Graham + Sibbald is one of the UK's leading property consultancy services. With an established team of commercial specialists and surveyors we can value, advise, and sell commercial property assets and businesses across the UK.	Graham + Sibbald's success is built upon how we deliver our service; it is a unique combination of being both professional and personable. From London to Inverness, with almost 300 people in 21 offices across the UK, we are nationwide but local wise.
Hilco Appraisal Ltd ■	RICS and IPA	20	15	Our corporate restructuring advisory teams across real estate, P&M, inventory, IP and AR meet strict timeframes that the restructuring environment demand, delivering valuations and disposition services, with asset sale capability to release liquidity.	Our real estate team has a combined 150 years' of experience in providing dedicated tailored real estate solutions to the restructuring market place and community, across all real estate asset classes, and across the UK and Europe.
Howden Insurance Brokers Ltd ■	*Howden Insurance Brokers Limited - Financial Conduct Authority*	*n/s*	*n/s*	*Insurance brokers.*	*n/s*
Lambert Smith Hampton n	RICS, NARA and IPA	150	5	Our property restructuring team provide strategic, valuation and agency advice on distressed and non-performing property assets to insolvency practitioners and act as fixed charge receivers on distressed property loans.	Lambert Smith Hampton is one of the UK and Ireland's leading and most progressive property consultancies with 32 offices and over 1000 staff. Over 250 years, we have built a vast regional network, giving us an unrivalled understanding of the market.
Lamberts Chartered Surveyors ■	RICS and IPA	35	10	We accept appointments as fixed charge and Law of Property Act receivers from UK banks and lending institutions.	We are independent from lenders and agents. We specialise in high value property appointments and also have extensive experience of dealing with farms, country estates and rural property.
Landwood Group ■	RICS	17	60	Valuation of property and business assets. Advice and strategic options to enhance asset value. Rent collection/tenant liaison/management of properties. Sale and clearance of plant and machinery assets to optimise value. Private treaty sales and auctions.	We are specialists in restructuring and recovery. All property types and machinery and business assets dealt with. Partner/director led work on every instruction and solutions and advice tailored to each case.

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Company profiles continued					
Trading name of UK business	**Who regulated by and parts of business, groups, or individuals that are regulated, if appropriate**	**Years providing services for IPs**	**Approx % of turnover that relates to services for UK IPs**	**Services**	**How different to other providers**
MAPS Solutions Europe Ltd ■	SIA	21	*n/s*	MAPS® is a security and investigations organisation providing risk management solutions and services to the professional sector. MAPS® provide a wide range of services for IPs, LPA receivers, lawyers, agents, banks and financial institutions.	*n/s*
Marpol Security Limited ■	*Marpol Security Limited holds SIA approved contractor status for the provision of security guarding and key holding service.*	*n/s*	*n/s*	*We work closely with receivers and insolvency practitioners to deliver quality security solutions. Our bespoke security packages are hand-tailored to meet our clients' needs as they comply with their insurers' risk improvement notices.*	*n/s*
Marsh Limited ■	Marsh Ltd is authorised and regulated by the Financial Conduct Authority (FCA). Our Financial Services Register number is 307511.	30	*n/s*	Marsh's Restructuring and Recovery Practice provides immediate open cover for Law of Property Act Receivership Appointments. Cover can be provided for both occupied and vacant properties with the ability to defer payment until realisation.	We provide fire risk assessments on any vacant property in order to comply with fire safety legislation. Marsh also provides a site access report, which contains information that may be critical to the safety of you and other visitors on site.
Men-Sec Group ■	*n/s*	*n/s*	*n/s*	*MEN-SEC was established by insolvency security experts, in the aim of simplifying the management of unoccupied property.*	*n/s*
Orbis Protect Ltd ■	*n/s*	*n/s*	*n/s*	*We provide a diverse range of vacant property services and on-site cleaning, clearing, pest and infection control solutions. Our range of security options can also monitor and protect your properties.*	*n/s*
Pact Property & Assets Ltd ■	*RICS, NARA*	*n/s*	*n/s*	*We provide property and asset consultancy services to IPs, restructuring professionals and property lenders. With our 'more than' approach, safeguarding your interests and preserving value sits at the heart of what we do.*	*n/s*
Pantera Property ■	RICS	9	60	Agency – commercial and residential. Fixed charge receiverships. Asset advisory and recovery. Lease advisory. Valuation. Property management. Vacant property services.	National coverage. Full range of services. Act on realisation basis on various scenarios.
Peter Fenwick & Co ■	Peter Fenwick is jointly regulated by the IPA and the RICS. Peter Fenwick now does not take receivership appointments.	30	100	One stop shopping for all property services (valuation, planning, management, security, H&S, agency: all property sectors, nationwide.	Always assembling the very best hand-picked local advisors (valuer, planner, agent, etc.) for every assignment – this generates the highest sale price. Creating the best add-value strategy/marketing strategy for diverse property assets, nationwide.
Price Taylor LLP ■	*RICS*	*n/s*	*n/s*	*Our experienced chartered surveyors have a long track record in offering advice and services to insolvency practitioners. We offer calm advice and take control, and provide accurate property valuations which are crucial for timely resolutions.*	*n/s*
Proudley Associates ■	*NAVA Propertymark, NAEA Propertymark, The Property Ombudsman, RICS.*	*n/s*	*n/s*	*Valuation and disposal of all types of assets both tangible and intangible, including businesses and shares.*	*n/s*
RamRe ■	*RICS, NARA*	*n/s*	*n/s*	*RAM RE Property Advisors provide high level strategic advice to insolvency professionals and delivers pro-active/ cost-effective realisation strategies across all property classes and throughout the UK. We ensure the right team and deliver results.*	*RAM RE Property Advisors is truly independent. We fully understand the context of insolvency, having over 30 years, experience of working closely with insolvency practitioners. We are always prepared to link our remuneration to our performance.*

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Company profiles continued

Trading name of UK business	Who regulated by and parts of business, groups, or individuals that are regulated, if appropriate	Years providing services for IPs	Approx % of turnover that relates to services for UK IPs	Services	How different to other providers
Restore Information Management	*n/s*	30	*n/s*	Restore Information Management is the leading UK-owned provider of information management services, specialising in secure physical document storage, digital transformation, and data management.	Our approach helps businesses protect, transform, and access their information seamlessly and efficiently. Helping businesses streamline and transform their information management processes to stay competitive in today's fast-paced market.
Roche Chartered Surveyors	RICS	37	1	Agency, valuation and consultancy services – all related to commercial real estate.	We are commercial property specialists. Our agency department is recognised year after year as being the leading force in Norfolk carrying out more property transactions than any other firm which gives us unrivalled local knowledge.
RPRS	RICS – regulated by RICS; Propertymark – Propertymark Protected; The Property Ombudsman.	17	100	RICS consultancy; valuations/sales – private treaty and auctions; property management/vacant property services and evictions; asset management; business rates; property renovation.	We are specialists in this sector and only work on insolvency related cases. We service administrations, liquidations, bankruptcies and receiverships nationwide. We pride ourselves on our personal relationship with our clients.
Sanderson Weatherall	*n/s*	*n/s*	*n/s*	*Sanderson Weatherall LLP is one of the UK's largest independent property consultancies with a renowned industry reputation in the real estate insolvency market. Often working alongside our machinery and business Assets division, we are able offer an all-encompassing national service.*	*n/s*
Savills	*RICS*	*n/s*	*n/s*	*n/s*	*n/s*
Secure Empty Property	*British Security Industry Authority (BSIA), The Security Systems and Alarms Inspection Board (SSAIB), ConstructionLine and ISOQAR quality management.*	*n/s*	*n/s*	*Secure Empty Property deliver specialist vacant property security and asset management services nationwide.*	*Our remotely monitored alarm technology delivers 95% of the security of a static guard at 10% of the cost.*
SIA Group Asset Ingenuity Ltd	RICS	12	*n/s*	*n/s*	*n/s*
Specialist Risk Insurance Solutions	FCA	60	25	We are insurance brokers who arrange insurance for assets and liabilities on behalf of insolvency practitioners, receivers and lenders. We also arrange IPs' licence bonds, health and safety services, fire risk assessments and after-the-event insurance.	We are the pioneers of open cover insurance. At the core of our 'Difficult. Done Well.' mantra is the provision of superior levels of service in all aspects of our business.
Vail Williams LLP	*RICS, IPA*	*n/s*	*n/s*	*n/s*	*n/s*
Watling Real Estate	RICS and IPA	25+	35	Agency/transaction management. Advisory. Valuation. Due diligence support. Licence to occupy management. Leasehold portfolio reviews. All services in our bespoke Insolvency Real Estate Framework Model (IREF).	Our experience is unparalleled, having worked on some of the most significant real estate restructuring and recovery projects over the last 30 years. We manage risk and maximise returns providing full national coverage through our office network.
Wilsons Auctions	National Association of Motor Auctions; National Association of Valuers and Auctioneers; National Association of Estate Agents; Royal Institute of Chartered Surveyors; Property Services Regulatory Authority's (PSRA) PSRA Licence No: 001527; Society of Chartered Surveyors Ireland.	40	10	Providing the complete corporate recovery service to insolvency practitioners. Our wide span of expertise encompasses every field enabling us to provide a comprehensive review of all recovery options without delay.	Holding over 3100 auctions per year, we can auction every category of asset from cars and vans, plant and machinery to property and general goods. We manage the whole asset realisation process for its clients, including collection, valuation, storage, re-marketing and auctioning of assets.

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Real estate sales services

Trading name of UK business	Minimum sales commission (%)	Maximum sales commission (%)	Average (median) sales commission (%)	Willing to structure sales commission on ratcheted basis?	Charge IPs retainer, fixed fee, or similar, as well as commission?	Willing to act on multi-agency basis	Do you/can you guarantee a minimum sale price and/or pay money upfront?	Details	Approx value of real estate sold on behalf of IPs in 2024
Allsop	0.5	1.5	1	Sometimes	Sometimes	Sometimes	Never	*N/A*	*n/s*
CAPA	1	2	1	Always	Never	Always	Never	*N/A*	N/A
Christie & Co	*n/s*	*n/s*	*n/s*	Sometimes	Sometimes	Sometimes	Never	*N/A*	£128,000,000
Clive Emson Land & Property Auctioneers	*n/s*	*n/s*	*n/s*	Sometimes	Never	Sometimes	Never	*N/A*	*n/s*
Colliers	*n/s*	*n/s*	*n/s*	Sometimes	Sometimes	Sometimes	Never	*N/A*	£100,000,000
Copping Joyce Surveyors Ltd	1	2	1.5	Sometimes	Sometimes	Sometimes	Never	*N/A*	£43,500,000
Cushman & Wakefield	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Fenn Wright LLP	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*N/A*	*n/s*
Fletcher Bond	0.5	15	2.5	Sometimes	Never	Sometimes	Never	*N/A*	£10,000,000
Generator Real Estate Solutions Ltd	*n/s*	*n/s*	*n/s*	Sometimes	Sometimes	Sometimes	Never	*N/A*	*n/s*
Graham + Sibbald	1	5	3	Sometimes	Sometimes	Sometimes	Never	*N/A*	£20,000,000
Hilco Appraisal Ltd	1.25	2	1.5	Sometimes	Never	Sometimes	Never	*N/A*	£40,000,000
Lambert Smith Hampton	0.75	2	1	Always	Never	Always	Never		£25,000,000
Landwood Group	1.5	2.5	1.75	Sometimes	Sometimes	Sometimes	Never	*N/A*	*n/s*
Pact Property & Assets Ltd	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Pantera Property	1	2.5	1.75	Always	Sometimes	Sometimes	Never	*N/A*	£50,000,000
Peter Fenwick & Co	1	2	1.5	Always	Never	Always	Always	Property assets will never be sold below the RICS Red Book value provided by an independent chartered surveyor registered valuer. Valuation/site security costs can be paid at completion of the sale.	£10,000,000
Price Taylor LLP	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Proudley Associates	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
RamRe	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Roche Chartered Surveyors	1.5	2	1.75	Sometimes	Sometimes	Sometimes	Never	*N/A*	£1,000,000
RPRS	Case specific	Case specific	Case specific	Sometimes	Never	Sometimes	Never	*N/A*	£17,500,000
Sanderson Weatherall	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Savills	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
SIA Group Asset Ingenuity Ltd	0.5	2	1	Sometimes	Sometimes	Always	Sometimes	*n/s*	*n/s*
Vail Williams LLP	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Watling Real Estate	*n/s*	*n/s*	*n/s*	Sometimes	Sometimes	Always	*n/s*	*N/A*	*n/s*
Wilsons Auctions	2	10	5	Sometimes	Sometimes	Sometimes	Never	*N/A*	*n/s*

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Buyers' guide

Sales channels

Advertise on third party platforms

Allsop
Colliers
Fletcher Bond
SIA Group Asset Ingenuity Ltd

Online auctions (own platform)

Allsop
Clive Emson Land & Property Auctioneers
Lambert Smith Hampton
Landwood Group
RPRS

Private treaty sales

CAPA
Christie & Co
Colliers
Copping Joyce Surveyors Ltd
Generator Real Estate Solutions Ltd
Graham + Sibbald
Hilco Appraisal Ltd
Lambert Smith Hampton
Landwood Group
Pantera Property
Peter Fenwick & Co
Roche Chartered Surveyors
RPRS
SIA Group Asset Ingenuity Ltd

Tender sales

Christie & Co
Copping Joyce Surveyors Ltd
Generator Real Estate Solutions Ltd
Hilco Appraisal Ltd
Pantera Property
Peter Fenwick & Co
Roche Chartered Surveyors

Other real estate services

Fixed charge receivership

Belleveue Mortlakes
Colliers
Cushman & Wakefield
Fletcher Bond
Generator Real Estate Solutions Ltd
Hilco Appraisal Ltd
Lambert Smith Hampton
Lamberts Chartered Surveyors
Marsh Limited
RamRe
Savills
Wilsons Auctions

Insurance

Howden Insurance Brokers Ltd
Marsh Limited
Specialist Risk Insurance Solutions

Inventory analysis

Hilco Appraisal Ltd
Restore Information Management

Landlord negotiations/lease advisory

CAPA
Christie & Co
Hilco Appraisal Ltd
Pantera Property
Roche Chartered Surveyors

Loan security valuations and loan book reviews

Allsop
Christie & Co
Copping Joyce Surveyors Ltd
Hilco Appraisal Ltd
Roche Chartered Surveyors
SIA Group Asset Ingenuity Ltd

Multi-asset disposal services

Allsop
CBRE Limited
Christie & Co
Copping Joyce Surveyors Ltd
Graham + Sibbald
Hilco Appraisal Ltd
Landwood Group
Peter Fenwick & Co
SIA Group Asset Ingenuity Ltd
Wilsons Auctions

On-site security services

Clearway
MAPS Solutions Europe Ltd
Marpol Security Limited
Men-Sec Group
Orbis Protect Ltd
Peter Fenwick & Co

Property audits

CAPA

Real estate development

Fletcher Bond
Generator Real Estate Solutions Ltd

Real estate management

Fenn Wright LLP
Orbis Protect Ltd
Pantera Property

Key: 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

Proudley Associates
RPRS

Records management

Restore Information Management

SIP16 compliance reports

Hilco Appraisal Ltd

Site clearances

Clearway
MAPS Solutions Europe Ltd
Restore Information Management

Site inspections

Hilco Appraisal Ltd

Valuation and option reports on real estate for restructuring purposes

CBRE Limited
Christie & Co
Colliers
Graham + Sibbald
Hilco Appraisal Ltd
Lambert Smith Hampton
Lamberts Chartered Surveyors
Landwood Group
Pact Property & Assets Ltd
RPRS

Sector specialisms

Agricultural

Howden Insurance Brokers Ltd
Pantera Property
Wilsons Auctions

Brownfield sites

Copping Joyce Surveyors Ltd
Generator Real Estate Solutions Ltd
Hilco Appraisal Ltd

Construction/property development

CBRE Limited
Clearway
Fletcher Bond
Generator Real Estate Solutions Ltd
Hilco Appraisal Ltd
Landwood Group
MAPS Solutions Europe Ltd
Pantera Property
Wilsons Auctions

Education

Christie & Co
Hilco Appraisal Ltd

Energy

Hilco Appraisal Ltd
Howden Insurance Brokers Ltd

Healthcare (including care homes)

Christie & Co
Copping Joyce Surveyors Ltd
Landwood Group

Heavy industrial sites

Hilco Appraisal Ltd
Roche Chartered Surveyors
RPRS

Leisure and entertainment operations

Christie & Co
Graham + Sibbald
Hilco Appraisal Ltd
Marpol Security Limited

Manufacturing sites

Hilco Appraisal Ltd
Lambert Smith Hampton
MAPS Solutions Europe Ltd
SIA Group Asset Ingenuity Ltd

Offices

CBRE Limited
Fenn Wright LLP
Hilco Appraisal Ltd
Lamberts Chartered Surveyors
Peter Fenwick & Co
Roche Chartered Surveyors
RPRS
Sanderson Weatherall

Residential

Belleveue Mortlakes
Fletcher Bond
Hilco Appraisal Ltd
Lambert Smith Hampton
Lamberts Chartered Surveyors
Peter Fenwick & Co

Restaurants, bars, cafes

CAPA
Christie & Co
Graham + Sibbald
Hilco Appraisal Ltd
SIA Group Asset Ingenuity Ltd

Retail

CAPA
Christie & Co
Fenn Wright LLP
Hilco Appraisal Ltd
Marpol Security Limited
Sanderson Weatherall

Transport infrastructure

Clearway

Other assets sold/disposed of

Business brands

Hilco Appraisal Ltd

Intellectual property

Hilco Appraisal Ltd
SIA Group Asset Ingenuity Ltd

Plant, equipment and machinery – agricultural

Hilco Appraisal Ltd
Wilsons Auctions

Plant, equipment and machinery – manufacturing/industrial

Fletcher Bond
Hilco Appraisal Ltd
Landwood Group
SIA Group Asset Ingenuity Ltd
Wilsons Auctions

Road vehicles

Hilco Appraisal Ltd
Landwood Group

Stock and inventory

Hilco Appraisal Ltd

Regional services (by R3 region)

Eastern (including Cambridge, Ely, Norwich, Peterborough)

Allsop
Copping Joyce Surveyors Ltd
Fenn Wright LLP
Generator Real Estate Solutions Ltd
Hilco Appraisal Ltd
Men-Sec Group
Restore Information Management
Roche Chartered Surveyors

London and South East (including Brighton and Hove, Canterbury, Chichester)

Allsop
Belleveue Mortlakes
CAPA
CBRE Limited
Copping Joyce Surveyors Ltd
Cushman & Wakefield
Fletcher Bond
Generator Real Estate Solutions Ltd
Hilco Appraisal Ltd
Lambert Smith Hampton
Lamberts Chartered Surveyors
MAPS Solutions Europe Ltd
Orbis Protect Ltd
Pantera Property
Peter Fenwick & Co
Price Taylor LLP
Restore Information Management
RPRS
Savills
SIA Group Asset Ingenuity Ltd
Specialist Risk Insurance Solutions

Midlands (including Birmingham, Coventry, Derby, Leicester, Lichfield, Lincoln, Nottingham, St Albans, Stoke-on-Trent, Wolverhampton, Worcester)

Allsop
CBRE Limited
Clearway
Hilco Appraisal Ltd
MAPS Solutions Europe Ltd
Peter Fenwick & Co

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Restore Information Management
RPRS
Specialist Risk Insurance Solutions

North East (including Durham, Newcastle upon Tyne, Preston, Sunderland)

Allsop
Hilco Appraisal Ltd
Howden Insurance Brokers Ltd
Restore Information Management

North West (including Carlisle, Chester, Lancaster, Liverpool, Manchester, Salford)

Allsop
Fletcher Bond
Graham + Sibbald
Hilco Appraisal Ltd
Landwood Group
Marpol Security Limited
Restore Information Management
Sanderson Weatherall
SIA Group Asset Ingenuity Ltd

Northern Ireland

Allsop
Hilco Appraisal Ltd
Howden Insurance Brokers Ltd
Restore Information Management
Savills
Wilsons Auctions

Scotland

Allsop
CAPA
Clearway
Graham + Sibbald
Hilco Appraisal Ltd
Restore Information Management
Wilsons Auctions

South West and Wales (including Bath, Bristol, Exeter, Gloucester, Hereford, Plymouth, Truro, Wells)

Allsop
Cushman & Wakefield
Hilco Appraisal Ltd
Lamberts Chartered Surveyors
Pact Property & Assets Ltd
RamRe
Restore Information Management

Southern and Thames Valley (including Oxford, Portsmouth, Salisbury, Southampton, Winchester)

Allsop
Hilco Appraisal Ltd
Proudley Associates
Restore Information Management

Yorkshire (including Bradford, Kingston upon Hull, Leeds, Ripon, Sheffield, Wakefield, York)

Allsop
Hilco Appraisal Ltd
Lambert Smith Hampton
Landwood Group
Pantera Property
Restore Information Management
Sanderson Weatherall

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Paying it forward in leadership

Ahead of International Women's Day on 8th March, **Asma Iqbal** reflects on her journey through the profession and the crucial role mentorship played

After completing my training contract and qualifying as a solicitor at a firm in Bradford, I knew that personal injury law was not the path for me. I wanted a niche, a challenge, so when the opportunity arose to work in Leeds at Brooke North Solicitors with the insolvency legend and guru, Steven Frieze, a senior partner in insolvency and district judge, I grabbed it with both hands.

I will forever remain grateful to Steven for the opportunity. He believed in me and went against the grain of the normal recruits of that time. In an era of networking with drinks and golf, he took a risk with me, a young Muslim woman of colour who did not drink and who was at the age where I would be taking time off to start a family. In Steven, I found a mentor, a father figure and an ally. It was an honour to learn from him, to watch him navigate complex scenarios and to inspire confidence with his approach. I often wondered: "Would I ever be as good as he was?"

Learning to network

Despite my knowledge of insolvency, it became clear that relationships were key to success. The IPs, accountants and bankers were the source of work, and herein I faced a challenge. These relationships belonged to Steven. I was his assistant and given that I did not drink or play golf, I was not building my own network of professional contacts. Self-doubt crept in. Was I ever going to carve out my own identity in this arena?

Another major influence in my career was partner at Brooke North, Stuart Frith, who later became president of R3. His presidency opened opportunities for me to get more involved in R3 and develop my own network. For the first time, I came across other women working in insolvency and restructuring who were breaking the glass ceiling. Although I was still the only Muslim woman of colour, meeting these women was empowering and a breath of fresh air.

> **"When women lift each other up, they create more opportunities for all"**

As my network and confidence grew, I began to be recognised in the insolvency profession. In 2009, I had the opportunity to chair the R3 Yorkshire Women's Group, a role that became a catalyst for change in my career. I still remember a call from the outgoing chair, Helen Kavanagh, who encouraged me to take on the role at a time when my confidence was at an all-time low after returning from maternity leave. Her belief in me, along with the support of the Women's Committee, helped me embrace the challenge and make lifelong friends.

> **"Being invited to join the board as an equity partner at the age of 30 was a true 'pinch me' moment"**

This network helped me overcome self-doubt and imposter syndrome and I was reminded that when women lift each other up, they create more opportunities for all, particularly in areas where there is male domination.

From a standing start

Another significant milestone was becoming head of insolvency at Chadwick Lawrence, where I took on the challenge of building a department from scratch outside of Leeds. Despite being advised that this move was risky, I decided to take the plunge, and this was the best decision of my career. The department thrived, growing to seven team members within six months and becoming the most profitable in the firm. Being invited to join the board as an equity partner at the age of 30 was a true 'pinch me' moment. How does a Muslim woman of colour from a state school and working-class background, and the first generation to attend university, achieve such a milestone in a traditionally white, male-dominated field?

The answer lies in the people who supported me, those who looked beyond my colour and gender and helped me progress. It is this support that has driven my own purpose, to accelerate action by becoming a role model for others. I want to ensure that the next generation of professionals not only succeeds but thrives in workplaces that celebrate their potential.

> **"Small actions can create a more inclusive environment, where people of all genders, faiths, and backgrounds have the chance to thrive"**

Addressing a culture of inequality

Throughout my career I have come to understand that inclusion is not just about dealing with problems as they arise, it is about embedding positive behaviours into workplace culture from the outset. Having faced the barriers that women, especially women from underrepresented backgrounds, often encounter, I understand how crucial mentorship and proactive steps are in driving diversity and inclusion. I am focused on creating workplaces that are inclusive for everyone, whether the challenges are rooted in unconscious bias or systemic barriers. This means addressing behaviours such as overlooking employees for promotion, failing to support them or excluding them from key opportunities, all of which contribute to a culture of inequality.

As we celebrate International Women's Day, I reflect on the role models who have inspired me, and the importance of paying it forward. It's a reminder of how small actions can create a more inclusive environment, where people of all genders, faiths, and backgrounds have the chance to thrive.

Asma Iqbal is a partner at Chadwick Lawrence Solicitors

DEI is an opportunity for the profession to broaden its reach

Larger firms lead the way on DEI, but if small firms take the right steps, they could also see business and staff benefits, says **Bradley Parrott**

Embracing the values of diversity, equity and inclusion (DEI) helps to promote a workplace as being one of great and fair opportunities. There is no question that every insolvency firm has an intention to demonstrate that it is a place of equal opportunity, but from the perspective of a small to medium business looking at some of the fantastic initiatives that large corporates run, it is easy to think:

1. How do we keep up with larger firms and position ourselves in the market?
2. How do we effectively do all of this with the resources and budget we have?

> Firms that demonstrate their values, rather than just talk about them, naturally become more attractive to diverse talent

Embracing DEI in business is important. As well as attracting talent of all skill and experience levels, it is important to retain great staff and help the insolvency profession raise awareness that this is a great and inclusive sector in which to build a career.

Although balancing resources and making an impact is a challenge, you do not have to be a big firm to promote visible change and foster an inclusive culture. The key is to make sure that the changes are manageable, fully embraced and maintained.

How does DEI strengthen a firm?

Diversity: Having people from all walks of life provides us with varied viewpoints, supports greater creativity and inspires ideas.

Equity: By being aware of people's differences, empowering employees and encouraging equitable leadership, firms can demonstrate fair treatment and equal access to opportunities for all employees. People work well in a place where identity is not a foretelling of opportunities or outcomes.

Inclusion: By creating a culture where everyone's perspective is valued, you create an environment where people feel respected and part of a team. This naturally generates more energy, creativity and commitment from everyone and an environment that people want to be a part of, which is far more productive too.

Currently, the profession is seeing a surge in work at the same time as facing a shortage of professionals. Our profession is not as widely known or understood when you consider other markets in the professional services arena. We need to show that it is an interesting and dynamic sector that is accessible to everyone.

Embracing DEI is not just the right thing to do, it also makes business sense. Studies and research have consistently found that diverse businesses outperform those that are not. A more inclusive sector does not only open doors for individuals from all backgrounds – it is how we attract the talent we need to meet the demands ahead.

The roadmap

Practically, embracing DEI can be broken down into three steps: embrace, communicate, and demonstrate.

Embrace: Make inclusivity part of your company's mindset. Hire for skills and potential, and create an environment where everyone, regardless of background, can succeed. Simple actions to promote this include having clear DEI policies, asking senior management to help build a culture that values differences, providing training for all staff and making sure that everyone in the firm knows about these initiatives.

Communicate: Whether it is what you include on a job advert, how you talk about your business to external parties or sharing internal communications – it should reflect your commitment to inclusivity. Use your website and social media to promote this commitment, and make sure your internal culture aligns with external messaging. Small gestures, such as celebrating religious holidays from different cultures or spotlighting employees' achievements, can make a big difference.

Demonstrate: Firms that demonstrate their values, rather than just talk about them, naturally become more attractive to diverse talent. Whether it is sharing internally that someone's idea has been adopted by the business, highlighting some exceptional work by an employee, offering flexible working arrangements, running mentorship schemes, or simply creating an open-door policy – small actions can have a big impact. This is particularly relevant when promoting your firm as a great place to work. Your employees will naturally shout about you to others in the industry, as well as friends and family when they see positive change. Any firm that values people and individuality is seen, naturally, as a great place to work.

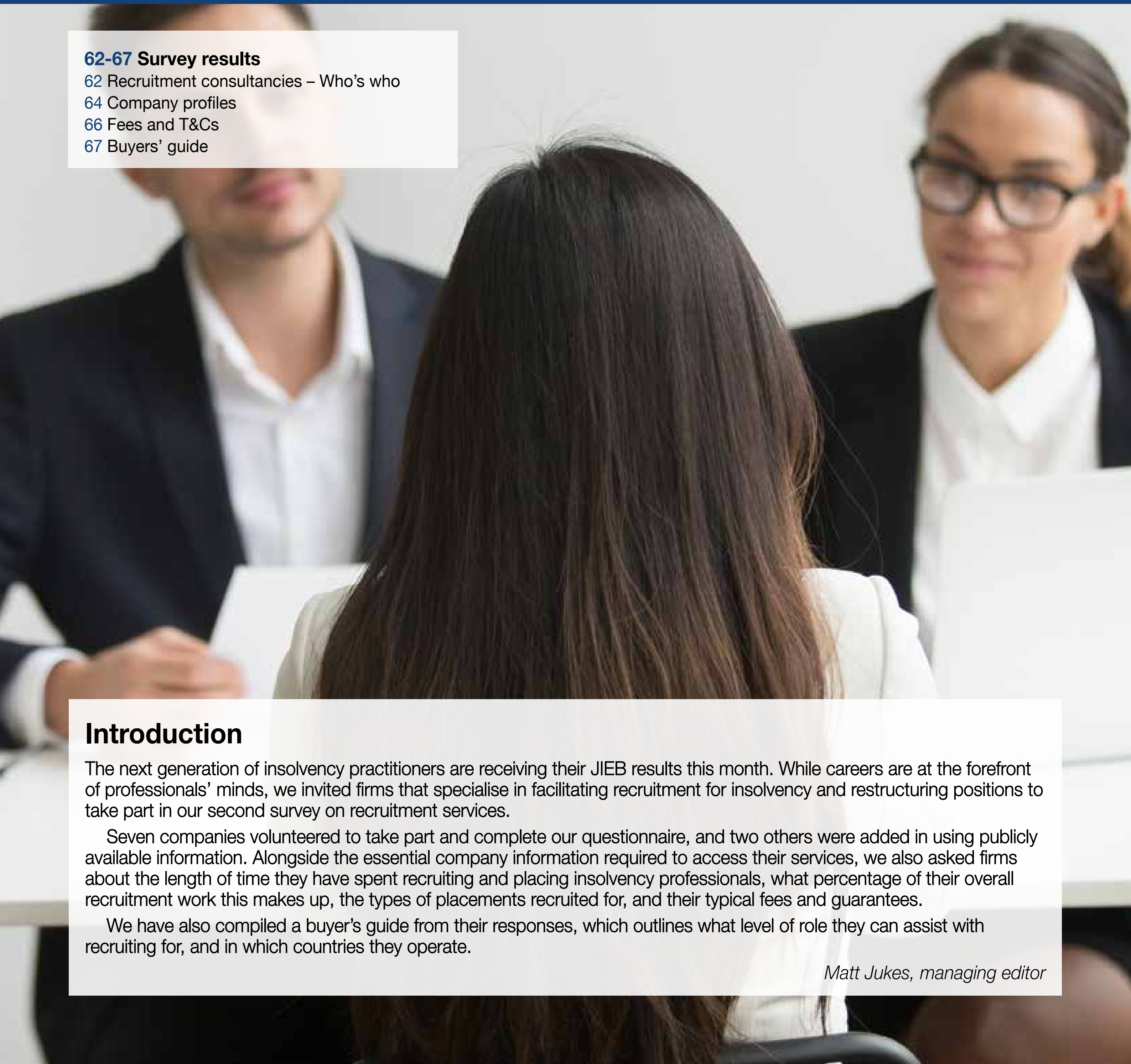
> A more diverse workforce means better problem-solving, increased innovation and an improved reputation for the industry as a whole

We do not need to wait for large firms to lead the way and risk missing out on talented individuals. Smaller firms can make a significant impact by taking practical, manageable steps. But, once you start something, it needs to be maintained. The benefits are clear. A more diverse workforce means better problem-solving, increased innovation and an improved reputation for the industry as a whole.

Having spent my career in the insolvency profession, and as someone who is part of a minority community, it is great to see the focus on and awareness of DEI growing. There is always more that can be done and this is an opportunity for the profession to broaden its reach. The landscape is changing and the future success of any industry is adaptability. Do not get left behind, find a way to demonstrate manageable change.

Bradley Parrott is a director at Opus

SURVEY:
Recruitment services



Introduction

The next generation of insolvency practitioners are receiving their JIEB results this month. While careers are at the forefront of professionals' minds, we invited firms that specialise in facilitating recruitment for insolvency and restructuring positions to take part in our second survey on recruitment services.

Seven companies volunteered to take part and complete our questionnaire, and two others were added in using publicly available information. Alongside the essential company information required to access their services, we also asked firms about the length of time they have spent recruiting and placing insolvency professionals, what percentage of their overall recruitment work this makes up, the types of placements recruited for, and their typical fees and guarantees.

We have also compiled a buyer's guide from their responses, which outlines what level of role they can assist with recruiting for, and in which countries they operate.

Matt Jukes, managing editor

Recruitment consultancies – Who's who

Trading name of UK business	Contact tel for IPs	Contact name for IPs	Contact email for IPs	Website	Main address	Top/parent company in group	Registered address of top/parent company	Registered company no of top/ parent company
Ambition	020 7404 4004	Rhoda Rivera	rhoda.rivera@ambition.co.uk	www.ambition.co.uk	25 Southampton Buildings, London WC2A 1AL	Ambition Group Limited	Level 31, 200 George Street, Sydney, NSW 2000, Australia	ACN 089 183 362
CML Offshore Recruitment	+1 345 949 1345	Tiara Armitage	tiara.armitage@cml.ky	www.cml.ky	7 Genesis Close, Monaco Tower 3 (Formerly Commerce House), 3rd Floor, PO Box 30237, Grand Cayman KY1-1201, Cayman Islands	CML Offshore Recruitment Limited	Governors Square, 2nd Floor, PO Box 1569, Grand Cayman KY1-1110, Cayman Islands	137563
First 2 Recruit Ltd	*01722 440 168*	*n/s*	*office@first2recruit.co.uk*	*www.first2recruit.co.uk*	*Unit 4 Hilltop Farm , Devizes Road, Salisbury, Wiltshire SP3 4UF*	*n/s*	*n/s*	*n/s*
Gambit Search	020 633 2500	n/s	*n/s*	www.gambitsearch.co.uk	4 Crown Place, London EC2A 4BT	*n/s*	*n/s*	*n/s*
GGT Insolvency Recruitment	0333 577 5705	Sheona Gee	sheona@insol-jobs.co.uk	www.insol-jobs.co.uk	38a Buttlegate, Torpoint PL11 3NQ	Ultim8 Limited	38a Buttlegate, Torpoint PL11 3NQ, UK	05939311
Harvey Sutton	*020 7250 0000*	*n/s*	*n/s*	*https://harveysutton.co.uk*	*The Cobalt Building, 1600 Eureka Park, Lower Pemberton, Ashford, Kent, TN25 4BF*	*n/s*	*n/s*	*n/s*
Levitate Recruitment Limited	020 7183 0967 / 0161 850 1990	Scott Lowes	slowes@levitaterecruitment.com	www.levitaterecruitment.com	Manchester	Levitate Recruitment Limited	Alex House, 260/8 Chapel Street, Manchester M3 5JZ, UK	8243975
Stonebridge Executive Search	020 3330 0104	Sam Doshi	sam@stonebridgerecruitment.com	www.stonebridgerecruitment.com	Stonebridge Partners Ltd c/o Orega, Willis Tower, 51 Lime St, London EC3M 7DQ	Stonebridge Partners Ltd	Nightingale House, 46-48 East Street, Epsom, Surrey KT17 1HQ, UK	11788554
Warner Scott Recruitment	020 7038 3614	Shaila Verma	sv@warnerscott.com	www.warnerscott.com	26 Mortimer St, London W1W 7RB	Warner Scott Recruitment LTD	6 Green Lane Business Park, 238 Green Lane, London SE9 3TL, UK	5997823

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Text in italic font = text supplied by the *Recovery* publishing team based on publicly available information

Company profiles

Trading name of UK business	Regulated by	Services	How different to other providers	No of years placing candidates in insolvency and restructuring roles for UK-based accountancy and/or law firms	No of candidates successfully placed in an insolvency and/or restructuring position for a UK-based accountancy/law firm during 2024 who started work	Approx what % of all the roles successfully filled by your group of companies in 2022 were for roles in insolvency and restructuring with UK-based accountancy and/or law firms?	Regularly provide staff on contract or temp basis? (Yes/No)
Ambition	Association of Professional Staffing Companies (APSCo).	Ambition recruits for all levels within insolvency and restructuring. We place high-calibre professionals into Big 4 firms, Top 20 practices, specialist restructuring boutiques, and advisory consultancies.	N/A	24	63	23	No
CML Offshore Recruitment	Trade and Business (Cayman Islands Department of Commerce and Investment). Payroll Services (Cayman Islands Institute of Professional Accountants). Recruitment Services & Immigration Services (Workforce Opportunities & Residency Cayman).	CML has been placing insolvency professionals in offshore jurisdictions for over 20 years. Our team have a proven track record assisting newly qualified and experienced insolvency practitioners begin or accelerate their offshore career.	As our team are based offshore, we socialise and network with all the major accountancy and law firms and can give you the inside scoop on office culture, salaries and what the different firms look for to ensure you land in your ideal firm.	20	17	25	Yes
First 2 Recruit Ltd	*First 2 Recruit Ltd are corporate and individual members of REC (The Recruitment & Employment Confederation).*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Gambit Search	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
GGT Insolvency Recruitment	*n/s*	GGT is a specialist in recruiting insolvency professionals across England and Wales at all levels for insolvency and turnaround practices. We do not recruit for any other sector, so we are totally focused on insolvency, our candidates and our clients.	GGT was set up by a retired insolvency practitioner who continues to oversee the business, so we truly understand insolvency and the profession. We retain our independence, low overheads and fees calculated at a flat rate irrespective of salary level.	17	*n/s*	100	No
Harvey Sutton	*n/s*	*Harvey Sutton is internationally recognised as specialist recruiters with in-depth knowledge of restructuring and insolvency jobs. We are proud to be working with some of the largest professional services firms in the world.*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Levitate Recruitment Limited	*n/s*	As the recognised recruitment specialist within insolvency and restructuring, we have built relationships with all the UK's large accountancy firms, as well as boutique restructuring and insolvency practices both across the UK and overseas.	All candidates work with a director. Levitate Recruitment has been instrumental in securing some of the best opportunities available for our candidates, helping individuals to progress their careers and achieve their aspirations.	12	24	90	No

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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.

eLearning available to start today

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

This eLearning series, consisting of 21 sessions, short tests and case studies, 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

"The 'go-to' provider of training in the Insolvency and Restructuring world"

- Introduction to Insolvency Delegate

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

Company profiles continued

Trading name of UK business	Regulated by	Services	How different to other providers	No of years placing candidates in insolvency and restructuring roles for UK-based accountancy and/or law firms	No of candidates successfully placed in an insolvency and/or restructuring position for a UK-based accountancy/law firm during 2024 who started work	Approx what % of all the roles successfully filled by your group of companies in 2024 were for roles in insolvency and restructuring with UK-based accountancy and/or law firms?	Regularly provide staff on contract or temp basis? (Yes/No)
Stonebridge Executive Search	N/A	For over 30 years, Stonebridge Executive Search has honed a specialist approach to recruitment, earning its position as the number one supplier to most of the UK's top 50. From graduates to partners, we deliver exceptional talent to our clients.	N/A	6+	89	90	Yes
Warner Scott Recruitment	*n/s*	Recruitment both contingent and retained headhunt campaigns. We focus on restructuring, insolvency. Asset tracing and advisory roles. My clients are mainly professional services firms, insolvency and restructuring boutiques and distressed investors.	With over 18 years' of experience in insolvency and restructuring recruitment, I bring a specialised focus that sets me apart from generalist accountancy or audit recruiters. I have an exceptional network of candidates and contacts in this market.	N/A	N/A	N/A	Yes

Fees and T&Cs

Trading name of UK business	Approx average (median) fee charged, as % of basic starting salary	Maximum fee charged, as % of basic starting salary	How typically get paid for placing candidates in permanent roles[1]	Guarantee period: At what point after candidate starts work will there be no refund/rebate/waiver of client fees if candidate quits their job[2]
Ambition	*n/s*	*n/s*	Mostly roles are paid on a 100% contingency basis, but we also receive some upfront fee/retainer in respect of some roles.	Candidate leaves >84 days after start date
CML Offshore Recruitment	20	20	Mostly roles are paid on a 100% contingency basis, but we also receive some upfront fee/retainer in respect of some roles.	Candidate leaves >84 days after start date
First 2 Recruit Ltd	*n/s*	*n/s*	*n/s*	*n/s*
Gambit Search	*n/s*	*n/s*	*n/s*	*n/s*
GGT Insolvency Recruitment	15	17.5	100% of our fees on all placements are on a contingency basis (i.e. we only get paid after our candidate starts work with an employer).	Candidate leaves >84 days after start date
Harvey Sutton	*n/s*	*n/s*	*n/s*	*n/s*
Levitate Recruitment Limited	20	35	100% of our fees on all placements are on a contingency basis (i.e. we only get paid after our candidate starts work with an employer).	Candidate leaves >56 days after start date
Stonebridge Executive Search	20	30	Approximately half of our assignments are paid on a 100% contingency basis, and approximately half are with some upfront fee/retainer paid.	Candidate leaves >84 days after start date
Warner Scott Recruitment	N/A	N/A	Mostly roles are paid on a 100% contingency basis, but we also receive some upfront fee/retainer in respect of some roles.	Candidate leaves >84 days after start date

1 In answer to the question 'How do you typically get paid?', recruitment companies were asked to choose one of the following five options:

- 100% of our fees on all placements are on a contingency basis (ie we only get paid after our candidate starts work with an employer)
- Mostly roles are paid on a 100% contingency basis, but we also receive some upfront fee retainer in respect of some roles
- Approximately half of our assignments are paid on a 100% contingency basis, and approximately half are with some upfront fee/retainer paid
- Most of our assignments are paid for at least in part on a retained or upfront fee basis
- 100% of our assignments include some fees paid by the client on a retained or upfront fee basis

2 In answer to the question on the guarantee period ('at what point after a candidate starts work will there be no refund/rebate/waiver of client fees if candidate quits their job?'), recruitment firms were asked to choose one of the following options:

- Candidate leaves 0-28 days after start date
- Candidate leaves >28 days after start date
- Candidate leaves >56 days after start date
- Candidate leaves >84 days after start date
- Candidate leaves >168 days after start date
- Candidate leaves >365 days after start date
- Candidate leaves >730 days after start date

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Buyers' guide

Job type specialisms

Accountancy jobs

Ambition Europe Limited
CML Offshore Recruitment
First 2 Recruit Ltd
Gambit Search
Harvey Sutton
Levitate Recruitment Limited
Stonebridge Executive Search

Administration jobs

First 2 Recruit Ltd
Harvey Sutton

Legal jobs

CML Offshore Recruitment

Turnaround and restructuring jobs

Ambition Europe Limited
Gambit Search
GGT Insolvency Recruitment
Levitate Recruitment Limited
Stonebridge Executive Search
Warner Scott Recruitment Ltd

Job seniority specialisms

Senior (i.e. partner, licensed insolvency practitioner, barrister, MD, CEO, or equivalent)

Ambition Europe Limited
CML Offshore Recruitment
Gambit Search
Harvey Sutton
Levitate Recruitment Limited
Stonebridge Executive Search
Warner Scott Recruitment Ltd

Mid level

Ambition Europe Limited
CML Offshore Recruitment
First 2 Recruit Ltd
Gambit Search
Harvey Sutton
Levitate Recruitment Limited
Stonebridge Executive Search

Junior / new qualified

First 2 Recruit Ltd
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Key: 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

R3 contacts

Executive

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

Technical

Ben Luxford Head of technical and stakeholder relations
T 020 7566 4218
E ben.luxford@r3.org.uk

Training Academy

Robert Beer Head of training
T 020 7566 4215
E robert.beer@r3.org.uk

Liana Lucine, Training manager
T 020 7566 4210
E liana.lucine@r3.org.uk

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

Miya Hukins Training coordinator
T 020 7566 4229
E miya.hukins@r3.org.uk

Communications

Stuart McBride Senior communications manager
T 020 7566 4214
E stuart.mcbride@r3.org.uk

Amelia Franklin Campaigns and communications executive
T 020 7566 4203
E amelia.franklin@r3.org.uk

Policy and Public Affairs

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

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

Membership

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

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

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

Events

Nicola Pogson Senior events manager
T 020 3987 9918
E nicola.pogson@r3.org.uk

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

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

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

Marketing

Neill Howard Marketing manager
T 020 7566 4219
E neill.howard@r3.org.uk

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

Office

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

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

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

R3 Association of Business Recovery Professionals

3rd Floor (East), Clerkenwell House,
67 Clerkenwell Road, London EC1R 5BL
T 020 7566 4200
E association@r3.org.uk
www.r3.org.uk

Advertisers' index

R3 Events

Gaining insights, making connections

Online	3 March	R3 International Women's Day
Leeds	6 March	Yorkshire Technical Breakfast Meeting
Manchester	6 March	North West International Women's Day
Cambridge	7 March	Eastern International Women's Day
Newcastle	12 March	North East Regional Meeting
Birmingham	12 March	Insolvency Service update and the categorisation of security
Glasgow	13 March	WOSIF Quiz
Bournemouth	20 March	Southern Forum
Nottingham	28 March	East Midlands Spring Lunch
Birmingham	3 April	Midlands Spring Ball
Leeds	24 April	Yorkshire Technical Breakfast Meeting
Exeter	24 April	South West & Wales Technical Update
Norfolk	1 May	Eastern Golf Day
Malta	7-9 May	R3 Annual Conference
Belfast	29 May	Northern Ireland Annual Dinner
Manchester	6 June	North West Ladies Lunch
Birmingham	17 June	Midlands Golf Day
Newmarket	19 June	Eastern Annual Dinner
Leeds	19 June	Yorkshire Business Lunch
Croydon	20 June	London & South East Golf Day
London	27 June	London & South East Summer Ladies Lunch
Route TBC	11 September	Eastern Bike Ride
Leeds	18 September	Northern Forum
Norwich	25 September	Eastern Forum
London	3 October	R3 Business Lunch
Stratford Upon Avon	19-21 November	SPG Forum
Newcastle	27 November	North East Annual Quiz
Norfolk	4 December	Eastern Christmas Lunch

...plus more to be announced.

To view the full range of R3 networking events and conferences please visit **www.r3.org.uk/events-training** or for more information including sponsorship opportunities contact **events@r3.org.uk**.

A fantastic line-up for 2025

Parliamentarians, economic experts and professionals are gathering for R3 events, roundtables and forums in the coming year, says **Amelia Franklin**

R3's Policy and Public Affairs team's flagship event, the President's Lunch, returns on Monday 31 March, offering a unique opportunity for high-level engagement between R3 Council members and parliamentarians from across the political spectrum.

We are excited to announce that Justin Madders, parliamentary under-secretary of state for business and trade, and Andrew Griffith, shadow business and trade secretary, have accepted invitations to this year's event. They will be joined by senior R3 members and a number of MPs and peers, and the event will provide an opportunity to discuss key areas of concern for members and the profession.

FT columnist Katie Martin will deliver this year's keynote speech, sharing her insights on the UK's economic and business outlook. With the OBR's economic and fiscal forecast due just days before the event, her speech is expected to spark informed discussions on its implications for the profession and the wider economy.

We look forward to welcoming members and parliamentarians as we strengthen the profession's connections with policymakers and highlight its role in the UK's economic framework.

A balanced approach

In December, we submitted our response to the Department for Business and Trade's consultation on collective redundancy and fire and rehire. Drawing on insights from the co-chairs of our Employee Working Group and members of the Policy Group, we highlighted the conflict between employment and insolvency law, noting that IPs often cannot meet consultation requirements due to time or financial constraints.

We raised concerns about increasing or removing caps on protective awards, which could hinder rescue efforts and reduce creditor returns. To address these issues, we proposed that employment tribunals consider the financial impact of protective awards and adjust them where necessary. We also called for clearer redundancy rules for insolvency cases, and clarification on key aspects of the proposal, such as the definition of 'insolvent firms'.

The government is now reviewing all submissions and will publish its response in due course. Depending on the outcome, the feedback received may inform future changes to the Employment Rights Bill.

Booked and busy

We've hit the ground running in 2025 with a fantastic line-up of forums, including the Personal Insolvency Forum, and the Northern Ireland Forum, which returned for the second time since 2019.

On the horizon is the Southern Forum, featuring keynote speaker Tobias Ellwood, former British army officer and senior UK parliamentarian. With his experience as a Foreign Office minister for the Middle East and chair of the House of Commons Defence Committee, Tobias will bring unique insights to what is sure to be an unmissable session on geopolitics.

> **"The Past Presidents' Roundtable reflected on the profession and R3's future challenges and the discussions will help to shape our next strategic review"**

Excitement is also building for our Annual Conference in Malta, this year themed 'Embracing change – shaping the profession to be fit for the future.' The programme will explore how we can harness change to ensure the profession evolves to meet future challenges, with keynote speaker Dr Paul Redmond offering insights into generational dynamics and helping attendees gain a deeper understanding of the evolving workplace.

The Class of 2025 will bring fresh and varied perspectives as they share their personal journeys into the profession and how these have shaped their approach to their work. These quick-fire sessions will ensure a dynamic conference that promises to be a highlight of the year.

Discussion and action

Building on the success of several roundtables in 2024, we're continuing these efforts in 2025, having already hosted one and with more planned.

In January, we held our second Past Presidents' Roundtable, chaired by current R3 President, Tim Cooper. The Past Presidents' Roundtable reflected on the profession and R3's future challenges and the discussions will help to shape our next strategic review so that we continue to meet the needs of our members.

We are also continuing the momentum from our 2024 diversity and inclusion champions roundtables, held in June and November, which have explored several topics including recruitment, retention, workplace policies and inclusive events. These discussions have led to several workstream and content ideas, and we look forward to building on them at our next roundtable in March.

R3 in the media

Media interest in the profession remains strong, with our comments on November's insolvency statistics featuring in outlets including the *Daily Mirror*, *City A.M.*, and the *Guardian Business Blog*.

We ended 2024 on a high with R3 past president Nicky Fisher's comments on 2025 insolvency trends featuring in 150 trade and regional publications and 11 national outlets, including the *Daily Express*, the *Evening Standard*, and *Daily Mirror.*

This brought our media efforts to a successful close, with R3 appearing in over 1200 stories, including 88 national pieces by the end of the year. These results highlight R3's continued recognition as the voice of the insolvency and restructuring profession as we bring the profession's expertise to the forefront of public and political discussions.

Amelia Franklin
campaigns and communications executive at R3

 Editor editor@r3.org.uk