Forty Years of Corporate Insolvency Law

This commentator began an academic career specialising in Insolvency Law some 45 years ago[1]. That career has witnessed the production of the Cork Report on Insolvency Law and Practice in 1982[2] and it has been an observer to the impact of that Report since then. The 40th anniversary of the publication of the Cork Report therefore offers an opportunity to look back and reflect[3]. Some 40 years later it is indeed appropriate to review the evolution over four decades of Corporate Insolvency Law, both as a regulatory discipline in practice and as a subject for serious academic study. In this paper we intend to re-examine various facets of corporate insolvency law and analyse how things have changed over those intervening four decades. In so doing, we will draw heavily upon personal insights, but they will be illuminated by the published work of a wide range of expert legal commentators on the subject.

Corporate Insolvency Law: An Early History

Corporate Insolvency Law as a component of Company Law has a long history. Thus, we have the example of the 1844 winding up legislation as an early form of regulation[4]. The issue of corporate insolvency and consequential distributional justice became more acute with the advent of limited liability for shareholders in 1855. Unsecured creditors of a company thereby lost their safety net of pursuing shareholders for recovery of unpaid corporate debt and were compelled to look solely at the residual company assets for recovery of any sums due to them. The risk of business failure was thus transferred from the shareholders to the creditors. The subsequent giving of the green light by the courts to the device of the floating charge in 1870[5] further marginalised the position of the unsecured creditors in that it meant that most company assets could become subject to security. Unsecured creditors were therefore left with the unencumbered crumbs to share out on a pari passu (rateable) basis. Although the arrival on the scene of preferential claims[6] in the 1890s helped to promote a select few of those creditors who lacked security, the net effect was to further marginalise the vast bulk of unsecured creditors who did not enjoy that

[1] That career has been outlined in brief in the podcast *INSOL Talks No. 21* (July 2022).

[2] Cmnd 8558.

[3] Some instant reflections are to be found in a series of articles published in the Solicitors' Journal– see D. M. Hare and D. Milman "Corporate Insolvency: The Cork Committee Proposals" (1983) 127 Sols Jo 230 et seq seriatim. For other contemporary analysis see I. Fletcher's two part analysis in "The Reform of Insolvency Law" [1983] JBL 94 and 200. His later piece "The Genesis of Modern Insolvency Law: An Odyssey of Law Reform" [1989] JBL 365 is well worth studying.

[4] Joint Stock Companies (Winding up) Act 1844 (7 & 8 Vict, c. 111).

[5] Re *Panama, New Zealand and Australia Royal Mail Co* (1870) 5 Ch App 318.

[6] Notably via the Preferential Payments in Bankruptcy Act 1897.

preferential status. Judicial understanding of the precarious position of unsecured creditors in those early days was well recorded[7], but little could be done to improve matters in terms of promoting a more equitable form distributive justice as this was deemed a policy decision for Parliament. The 20th century saw some legislative tinkering around the margins[8], but the fundamental (unfair) priority system remained in place up to the 1970s. In terms of functional insolvency regime diversity, creditors' voluntary liquidation ("CVL") triggered outside the court was introduced in the Companies Act 1928, having been recommended by the Greene Committee[9]. We will consider later institutional developments in the story of corporate insolvency law shortly.

Corporate Insolvency Law as an Academic Discipline

In 1980 Corporate Insolvency Law was not fully developed as a legal discipline *in its own right*. Rather it was seen as an adjunct of Company Law worthy of a couple of discrete chapters at the end of a standard textbook on that broader subject. There was little in the way of dedicated periodical literature.

The publication of the final Cork Report on Insolvency Law and Practice (1982, Cmnd 8558) put Corporate Insolvency Law on the map by throwing up many policy issues for debate and evaluation. The hiatus[10] between the publication of this key reform document and the resulting implementation of many of its ideas in 1985-86 merely increased scholarly interest in the law and its underlying policy. Academic commentators and practitioners placed pressure on the government to ensure implementation of the Cork Committee proposals. That pressure bore fruit to a considerable extent with the 1985/86 legislative reforms. Since then there have been constant calls to revise the then current legislative framework. The process of keeping up with the pace of legislative change and judicial interpretation of new legislation has proved a challenge for all concerned[11].

Goode's classic text, Principles of Corporate Insolvency Law, first appeared in 1990. This was a major breakthrough for the discipline in that it revealed that the subject was not just

[7] Witness the comments of Buckley J in *Re London Pressed Hinge Co Ltd* [1905] 1 Ch 576 at 581 and 583.

[8] Attempts were made to control floating charges through the public registration system for company charges (introduced by Companies Act 1900) and the customised avoidance provision (first enacted in 1907) which is now found in s. 245 of the Insolvency Act 1986.

[9] Cmd 2657, 1926. See para [77].

[10] During this interval the Government produced its White Paper, A Revised Framework for Insolvency Law (1984, Cmnd 9175). See D. Milman and D.M. Hare "Cutting Cork Down to Size" (1984) 128 Sols. Jo. 340.

[11] The Annotated Guide to Insolvency Legislation by L.S. Sealy and D. Milman first appeared as a single volume in 1987 (initially published by CCH Editions and latterly by Sweet and Maxwell). It has now in 2022 progressed as a two-volume work in its 25th edition, an indicator of the volatility of the law over 35 years.

a composition of technical rules, but rather one that had a principled foundation[12]. This revered text (now in its 5th edition[13]) has been widely cited in the courts.

Corporate Insolvency Practice

In statistical terms there were some 8000 corporate insolvencies officially recorded in 1980. Over the course of the next 40 years this figure rose to a peak of 25,000 in 2009 (when the Global Financial Crisis was in full swing) and in recent years had settled at a level of approximately 15,000 collapses per annum. Prospects for the future however suggest that numbers of corporate casualties are going up again with a figure 20,000 plus likely to be recorded this year. That is no surprise with the difficult financial conditions which we as a country face and with the removal of many of the COVID 19 concessions for business support. What has been constant over time has been the dominance of the winding up regime (particularly the CVL method) in this statistical profile in spite of the proliferation of alternative regimes, which on one level might appear "sexier". In 1980 a company was deemed insolvent by simply applying a liquidity test; could the company pay its debts as they fell due? The additional balance sheet test, which compares the balance of liabilities to assets, and now found in s. 123(2) of the Insolvency Act 1986, was only added in the 1985-86 reforms. This addition may have contributed to the total number of corporate insolvencies, but the general impression is that it has proved to be statistically insignificant. In many cases distressed companies fail both financial criteria tests.

Turning to the situation in practice, the picture presenting itself was one of practitioners operating in an uncoordinated way and "under the radar" in a non-pejorative sense. Few firms (with a couple of notable exceptions) had dedicated insolvency practices. The Cork Committee recommended, albeit in cautious manner, some form of compulsory qualification for insolvency office holders (see Cmnd 8558, para 756). That important regulatory goal was achieved by the Insolvency Act 1986, which installed a system largely based upon a combination of licensing and self-regulation. Existing recognised accountancy bodies then licensed individual insolvency practitioners *ad personam* (but not the firms in which they worked). The Insolvency Practitioners' Association was a representative organisation having been in operation under a different form since the 1960s and incorporated by name in 1973. Also in terms of industry representation The Society of Practitioners of Insolvency was formed in 1990. It was then rebranded as the Association of Business Recovery Professionals (or R3 for short) in 2000, an association which produced its own journal *Recovery* from 2000 onwards. The Insolvency Lawyers' Association was

[12] The Cork Committee had trail-blazed this path of devising general explicit goals – see Cmnd 8558 at para [198] where 12 goals are identified. Ian Fletcher's The Law of Insolvency (Sweet and Maxwell) appeared in its first edition in the same year as Goode's magnum opus. This authoritative text by Fletcher covered both corporate and personal insolvency perspectives.

[13] (Sweet and Maxwell) (2018) edited by K. van Zwieten.

incorporated in 1989. For a number of years it had its own dedicated journal[14] but that merged with *Insolvency Intelligence* (an established journal which dated back to 1988) in 2004. The arrival on the scene of both of these organisations reflected the growth of what was seen as an emerging area of legal and accountancy practice. Both organisations admitted academics within their ranks and supported academic research. They have profoundly enhanced discourse between academics and practitioners to the benefit of all concerned.

Most observers agreed that there was a role to be performed by the public sector in Corporate Insolvency Law, particularly through the work of the official receiver in winding up hopelessly insolvent companies where a private practitioner could not be persuaded to assume that thankless role. But the 1980s was an era of Thatcherite public expenditure cuts and these posed an existential threat to the office of official receiver. Fortunately, these challenges were fought off[15] and the official receiver continued to perform valuable service in those cases where private practitioners could not be persuaded to take on the thankless role of office holder.

The legal foundation

At the start of the period under review the fundamental rules of Corporate Insolvency Law were located within the body of the Companies Act 1948 (as amended). The Insolvency Act 1976 had just begun to introduce limited reform, particularly with regard to the disqualification of directors. The Companies Act 1981 had also made provision for some insolvency-related matters[16]. The Companies Winding Up Rules 1949 (SI 1949 No. 330, L4) dealt with the nitty gritty of day to day functionality.

In terms of case law there were scores of reported cases of interest. But, surprisingly, few of these were truly of fundamental importance[17]. That was because legislation dominated the substantive law. Most cases simply involved the judicial construction of statutory

[14] The *Insolvency Lawyer* (1999 to 2004). The ILA has also funded empirical research and postgraduate scholarships.

[15] The Cork Committee played an important role here in defending the role of the public sector in insolvency cases – see Cmnd 8558, Ch 14. The public expenditure attack launched by the government had its focus on the use of official receivers in bankruptcy cases, but, had it been allowed to succeed in that context, it surely would have extended its attention to winding up.

[16] For instance it had tried to tackle the “Centrebind” problem of improperly constituted CVLs (named after *Re Centrebind Ltd* [1967] 1 WLR 377) but that attempt was quickly neutralised by an inconvenient judicial decision in *Saxton & Sons v Miles (Confectioners) Ltd* [1983] 1 WLR 952.

[17] Exceptions, which proved this rule, were *Ex parte James* (1873-74) LR 9 Ch App 609, *Salomon v Salomon & Co Ltd* [1897] AC 22, *Illingworth v Houldsworth* [1904] AC 355, *British Eagle v Air France* [1975] 1 WLR 758 and *Aluminium Vaassen v Romalpa Aluminium Ltd* [1976] 1 WLR 676.

provisions. Sometimes, however, that interpretation was unhelpful[18]. It is true to say that the judiciary were cautious about straying into areas that were best left to legislation[19]. But there always was a common law component to contend with, a fact confirmed by the Supreme Court in *BTI 2014 LLC v Sequana SA*[20].

The position today is much the same. Apart from the increased volume of legislation, this downplaying of the judicial contribution is reflected by the willingness of the legislature to overturn inconvenient decisions[21]. That said, what are we left with in terms of truly key cases appearing since 1980? The Court of Appeal ruling in *Bristol Airport v Powdrill* [22] ticks many of the boxes here. It speaks volumes to the primacy of corporate rescue, soon to become the dominant mantra in the field. The House of Lords judgment in *Official Receiver v Wadge Rapps and Hunt*[23] features the protestation of Lord Millett that there is more to the institution of liquidation that the pure realisation of assets. It is multi-dimensional and serves a public interest function. Other leading post 1980 authorities of note include the Supreme Court rulings in *BNY Corporate Trustee Services v Eurosail UK 2007 3 BL plc*[24] , *Belmont Park Investments v BNY Corporate Trustee Services*[25], and *Nortel (Bloom v Pensions Regulator)*[26]. We now have *BTI 2014 LLC v Sequana SA*[27] to add to that list of "celebrity" judicial decisions from the highest echelons.

[18] One thinks here of the Court of Appeal decision in *Re Yeovil Glove Co Ltd* [1965] Ch 148 which undermined the floating charge avoidance mechanism which is now located in s. 245 of the Insolvency Act 1986. The Cork Committee (at para 1562) called for its reversal, but leading academic writers rejected this recommendation – see R. Goode in his Principles of Corporate Insolvency Law (1990) at 183, and L. Sealy "Company Law. Bankers' Loans and the Rule in Clayton's Case" [1964] CLJ 215 and no change was made.

[19] An approach evidenced by the comments of ICC Judge Burton in *Re Allied Wallet Ltd* [2022] EWHC 1877 (Ch) at para [35].

[20] [2022] UKSC 25. Here the Supreme Court confirmed the common duty to protect creditors in defined circumstances.

[21] Such as *Re Leyland DAF* [2004] UKHL 9, a case on liquidation expenses, which was neutralised by Companies Act 2006 s. 1282. Note also the Court of Appeal ruling on adoption of employment contracts by administrators in *Re Paramount Airways (No. 3)* [1994] BCC 172 which triggered the retrospective Insolvency Act 1994, a pro rescue statute. The case progressed to the House of Lords sub nomine *Powdrill v Watson* [1995] 2 AC 394 and some of the rough edges in the Court of Appeal ruling were reduced, and the Insolvency Act 1994 remains embedded in the main legislative structure.

[22] [1990] Ch 744.

[23] [2003] UKHL 49.

[24] [2013] UKSC 28. This deals with the meaning of insolvency. For background to this ruling see the influential piece by see P. Walton "Inability to Pay Debts – Beyond the Point of No Return? " [2013] JBL 212.

[25] [2011] UKSC 38 – championing commercial practicality over rigid application of insolvency rules.

[26] [2013] UKSC 52. An important ruling on the priority of administration expenses.

[27] [2022] UKSC 25.

Corporate Insolvency Regimes

Essentially, in the days before the Cork Committee worked its magic, there were only two discrete and significant regimes operating in the UK to deal with the problems of insolvent companies. Liquidation[28] (or winding up) was the main and inevitable outcome for an insolvent company. Winding up of an insolvent company might be compulsory (using the court) or conducted outside the court (CVL). It was a terminal procedure leading to dissolution. The rules here were largely based upon statute, as supplemented by some significant case law additions[29].

The alternative institution of receivership in Company Law had developed since the late 19th century. Originally, it was a court-based remedy designed for debenture holders to enforce their security by application to court. But it soon transformed itself into an out of court procedure which had even greater attractions for holders of floating charges because it reduced initiation costs. Statutory regulation of this procedure was minimal, probably because it was seen as a contractual remedy and could be tailored by the contracting parties accordingly. That idea, of course, ignored the realities of unequal bargaining power. It also ignored the impact of receivership on unsecured creditors. Judicial decisions had illuminated the process of receivership.

To complete the picture on the ground we also had the scheme of arrangement restructuring tool, a feature of Company Law since the enactment of the Joint Stock Companies Arrangements Act 1870. This procedure could be used by both solvent and insolvent companies. But in 1980 it was a low profile institution with only limited reported usage. It required recourse to the court to seek sanction of any proposed scheme.

The position today is vastly different. Liquidation still remains the key player in Corporate Insolvency Law, but there are "political" reasons why its pivotal role is downplayed[30]. It represents an inconvenient truth as far as those who push the "rescue philosophy" are concerned. In spite of support from the Cork Committee in Chapter 8 of the Report,

[28] To complete the picture we should note that within the liquidation family there was the hybrid winding up procedure under the supervision of the court. This was scrapped by the Insolvency Act 1985 s. 88. The Cork Committee (Cmnd 8558, paras [182]-[183]) recommended this change.

[29] Such as the cases of *Pulsford v Devenish* [1903] 2 Ch 605 on the positive duty to identify known creditors. The rule in *Ex parte James* (1873-74) LR 9 Ch App 609, which requires liquidators as officers of the court to act honourably, has stood the test of time.

[30] It does not suit the needs of politicians (nor many insolvency practitioners) to emphasise this economic reality. Rescue is very much "Motherhood and Apple Pie" and has a dearth of visible sceptics. But the truth is that rescue makes demands on many stakeholders to sacrifice legitimate interests and that must always be justified. Utilitarianism is often cited as justification, but that is a doctrine that must be carefully watched. But, that point made, see the R3 Report of 2019 on the number of jobs apparently saved through pursuit of rescue. The figure quoted was 297,000.

receivership has largely disappeared from the scene as far as insolvent companies are concerned as a result of the virtual abolition of the ill-named “administrative receivership” by the Enterprise Act 2002. We barely find one reported case each year in official statistics. Notwithstanding its undoubted functionality, administrative receivership was seen as too politically incorrect an institution in an era where stakeholder theory and collectivism came to the fore in policy discourse. The idea that a secured creditor could “scoop the jackpot” with little regard to other stakeholders in a distressed company could no longer be tolerated.

The landscape of corporate insolvency however has been enriched by the advent of administration, particularly since its statutory makeover in 2003[31]. Although often associated with corporate rescue, this procedure can be utilised by floating charge holders as a more socially acceptable form of receivership[32]. Administration can also provide an efficient form of liquidation in some situations because of the flexible powers given to administrators. Another rescue-oriented regime that owes its origins to the Cork Committee is the company voluntary arrangement (hereafter “CVA”)[33]. The original CVA model has stood the test of time, though it has not been extensively used, save in particular sectors of the economy (such as retail). It does have the attraction of a debtor in possession feature. An attempt via the Insolvency Act 2000 to supplement the original CVA model with a more heavily regulated sibling turned out to be a complete failure[34] and this newcomer was quietly disposed of by the Corporate Insolvency and Governance Act 2020 section 2(1) and Schedule 3. Few mourned its passing.

That most recent piece of legislation also spawned a scheme of arrangement[35] variant for distressed companies (in the form of Part 26A of the Companies Act 2006[36] and which is

[31] In Schedule B1 of the Insolvency Act 1986. As a result of the Enterprise Act 2002 administration can now be accessed without a court order and most administrations occur in that more informal way. That flexibility has cause problems where practitioners misuse it thereby generating a considerable body of satellite litigation.

[32] See K. Akintola and D. Milman “The Rise, Fall, and Potential for a Rebirth of Receivership in UK Corporate Law“[2020] 20 JCLS 99.

[33] For the genesis of the ideas underpinning the CVA see Cmnd 8558 paras [429]-[430]. The amount of discussion by the Cork Committee was minimal but of course influential.

[34] As was predicted – see D. Milman, “Corporate Insolvency in an Era of Increased Legal Complexity” (2003) 25 Co Law 2.

[35] Schemes of arrangements have flourished during the period under review in this survey – they have been seen as particularly attractive by foreign companies (due to the inadequacies of local law) and the English courts have helped to boost their usage by some generous interpretation of jurisdictional criteria and practical flexibility. The role of the City of London in financing businesses has been critical here by providing the necessary jurisdictional nexus.

[36] This variant in Part 26A embodies technical features which makes it more difficult for dissenters to block a scheme by exploiting features of the original scheme of arrangement model. Cross class cramdown of dissenting creditor groups is now allowed. But Part 26A

specifically geared to the needs of distressed companies) and the so-called breathing space scheme (now framed as Part A1 of the Insolvency Act 1986[37]). It is too early to undertake any objective assessment[38] of the usage of these two new regimes, though the former has already notched up some impressive achievements both with regard to large enterprises and small businesses[39]. That said, the latest official statistics published by the Insolvency Service reveal only 12 cases where such a scheme has be sanctioned by the court, but the majority of these cases involve large firms. The breathing space scheme, however, has been under-utilised as far as expectations are concerned with only 39 examples of it being used since its introduction up to July 2022.

Transparency and Discourse

One reason why corporate insolvency was not recognised as an academic discipline in its own right forty years ago is that it lacked the coherent informational and literary infrastructure that was needed to facilitate broader access and understanding. How has that particular landscape changed?

It was possible four decades ago to find scholarly pieces[40] on Corporate Insolvency Law in general law journals, but these were few and far between. The one legal periodical that did provide regular insights into insolvency was the *Journal of Business Law*, which at the time was edited by the eminent Clive Schmitthoff. In terms of contributions in that journal one thinks here of John Farrar's piece on fraudulent trading[41].

The Company Lawyer first appeared on the scene in 1980. A number of its early contributions reflected contemporary issues of concern in Corporate Insolvency Law. Foremost amongst these was the piece[42] by Roy Goode delivering a general critique of the current position and the article on the floating charge by John Farrar[43].

cannot impinge upon third party rights without their consent – for discussion see *Oceanfill Ltd v Nuffield Health Wellbeing Ltd* [2022] EWHC 2178 (Ch).

[37] At the time of writing this has rarely been used, but it is premature to make a definitive assessment of its utility as innovations take time to bed down in practice. There has only been one reported case on this breathing space – see *Minor Hotel Group MEA DMCC v Dymant* (*Re Corbyn & King Ltd*) [2022] EWHC 340 (Ch) where Sir Alastair Norris looks at the continuation of the moratorium during the period of breathing space.

[38] But see the promising indications revealed by the interim Walton/Jacobs Report which was produced for and published by The Insolvency Service in March 2022.

[39] On Part 26A and usage by SMEs see *Re Houst Ltd* [2022] EWHC 1941 (Ch).

[40] Such as R.R. Pennington, "The Genesis of the Floating Charge" in (1960) 23 MLR 630.

[41] "Fraudulent Trading" [1980] JBL 336.

[42] "The Death of Insolvency Law" (1980) 1 Co Law 123. In view of how the regulatory system of Insolvency Law developed in the years post 1980 this may appear an ironic title. Goode was in an ideal position to make such comments as he was a member of the Cork Committee which was set up in 1977 and which reported in 1982.

[43] "World Economic Stagnation Puts the Floating Charge on Trial" (1980) 1 Co Law 83.

The arrival in the UK of the specialist law reports designated as *British Company Cases* in 1983 and *Butterworths Company Law Cases* (also in 1983) also did help to raise awareness[44]. Although not exclusively concentrating on matters of insolvency, this aspect of Company Law provided a regular source of content for these law reports. Indeed, in the 1980s some of the most frequently reported case law involved judicial decisions on company administration and disqualification of directors.

The publication of *Insolvency Law and Practice* (from 1984-2008)[45] and *Insolvency Intelligence* (in the years from 1988 until 2021) did help greatly and they both gave an opportunity for academic and practitioners to interact[46]. The *Journal of Corporate Law Studies* opened up fresh insights from 2001[47].

An indicator of growing scholarly interest in the field can be seen in the series of lectures on the subject delivered at University College London in 1990 – this lead to the publication of a special issue of *Current Legal Problems*[48]. This renewed basis for academic interchange within the broad arena of Insolvency Law was further enhanced by the July 1991 WG Hart Workshop which was held at the Institute of Advanced Legal Studies[49]. The significance of this event in terms of the development of the discipline is sometimes overlooked.

The decade following the 1990s saw major scholarly contributions from Vanessa Finch[50], Rizwaan Mokal[51] and Andrew Keay[52]. Corporate Insolvency Law as an academic subject of scholarship was now in a strong position when competing with other disciplines in scholarly contexts. In the battle for resources within law schools that was important.

The major change in the past two decades with regard to information provision generally has been the launching of the British and Irish Legal Information Institute ("Bailii") with its reporting of neutral citation cases. Very few cases of any significance now escape the attention of this invaluable informational tool. Its facility has transformed scholarly

[44] In the years between 1985 and 1989 there was also the short-lived *Palmer's Company Cases*. From 1996 onwards we also had the *Bankruptcy and Personal Insolvency Law Reports*, which, in spite of the restrictive title, did cover cases featuring corporate insolvency. Indeed, the important ruling of Hart J in *Re G Tech Construction Ltd* [2007] BPIR 1275 on defective appointment of administrators can only be located in that source.
[45] Subsequently rebranded as *Corporate Rescue and Insolvency* in 2008.
[46] There was also *Receivers, Administrators and Liquidators Quarterly* which was prominent in the middle part of the period under review from 1994 onwards.
[47] This journal was previously designated the *Corporate Financial and Insolvency Law Review* (1997 to 2001).
[48] See A. Clarke (ed), Current Issues in Insolvency Law (Stevens)(1991).
[49] For a selection of the papers presented see H. Rajak (ed) Insolvency Law: Theory and Practice (Sweet and Maxwell) (1993).
[50] Vanessa Finch's Corporate Insolvency Law: Perspectives and Principles was first published by CUP in 2002. It is now in its third edition (2017) (co-authored by D. Milman).
[51] See Corporate Insolvency Law: Theory and Application (2005, OUP).
[52] A leading Australian commentator who came to our shores in the 1990s bringing with him a wealth of experience and fresh insights.

research. Such is the quantity of output from bailii that even specialised sets of law reports struggle to keep up with the pace of judicial decision making. Key judicial decisions often enter the public domain within hours of being handed down. The practice now from 2022 onwards is also to put bailii judgments into the National Archives. That is a tribute to its success.

Corporate insolvency and the wider world

In 1980 it would be fair to say that most academics and many practitioners working in the field viewed corporate insolvency through the parochial lens of the jurisdiction of English Law. There were notable exceptions to this limited perspective[53]. The problem of cross border insolvency was not seen as acute in day to day practice and so did not merit legislative investment. The march of globalisation changed everything. It was recognised that a corporate collapse in one jurisdiction often caused ripples overseas.

Membership of the EEC (as it then was) from 1972 onwards did not immediately change this limited perspective on Corporate Insolvency. Some feeble attempts at regulation by the EEC got nowhere[54]. One problem here was that insolvency impinged upon property law and this was seen as a sensitive area when it came to European harmonisation/intrusion.

The picture changed over the next two decades. INSOL was formed in 1982[55]. The Insolvency Act 1986 contained a specific provision in the form of s. 426 which offered up the possibility of assistance from the English courts to certain courts from common law jurisdictions (the so-called "cricket countries"). Comity between courts was seen as important. This mechanism was then overtaken in practical importance by the adoption of the EU Regulation on Insolvency Proceedings 1346/2000[56] and the advent of the Cross Border Insolvency Regulations 2006 (SI 2006/1030). This latter measure represented the adoption in English Law of the 1997 UNCITRAL Model Law on cross border insolvency. Even

[53] Professor Ian Fletcher was the critical pioneer here. Philip Wood also produced some excellent insights through his global mapping work, which categorised jurisdictions into "debtor- friendly" and "creditor-friendly" types. Gabriel Moss QC lead the practitioner contingent. In more recent times the works of Paul Omar and Gerard McCormack have been influential in illuminating this cross border insolvency field of scholarship.

[54] See R. Goode's comment in "Reservation of Title: The EEC's Faulty Approach" (1980) 1 Co Law 185 on a proposed EU measure on security over personal property which may have impacted upon the law of title retention.

[55] The work of INSOL Early Research Academics has been constructive in fostering links and preserving insights from the older generation through the INSOL TALKS series of podcasts.

[56] Later Recast into EU Insolvency Regulation 2015/848. On Brexit the UK produced its own "retained" version of this Regulation – for text see Sealy and Milman, Annotated Guide to Insolvency Legislation 2022 (Sweet and Maxwell) Vol 2 at 168-173. The practical purpose of this localised and heavily edited measure escapes many commentators.

the common law of insolvency comity began to stir[57], but the potential for advancement here was quickly limited by some reactionary rulings in the Supreme Court[58] and Privy Council[59]. By way of contrast the English courts did much to open up the scheme of arrangement procedure to foreign companies by taking a wide view of jurisdictional matters[60]. This new interest in the field of cross border insolvency was reflected in the available literature[61].

With the "completion" of Brexit, the non-EU cooperative measures noted above will enjoy an increased stature. Indeed, further UNCITRAL initiatives in the field of insolvency may well be adopted by the UK in the near future[62].

Priority rights

The floating charge had ruled the roost for generations, but its pre-eminence in the field of UK corporate finance was being challenged at the start of the period under review in this article. Receivership was the critical enforcement tool to protect the value of this security. There was some judicial support for the floating charge[63], but the weakness of the floating charge was becoming increasingly obvious to its main users, the banks. Title retention had burst onto the scene in 1976 with the celebrated ruling of the Court of Appeal in *Romalpa*[64]. This was a great victory for the unsecured creditor camp and one that marginalised banks providing finance for the manufacturing sector using the floating charge security device. The *Siebe Gorman* case[65] had just materialised and it was seized on with relish by the banking

[57] *Cambridge Gas Transport Corp v Official Committee of Unsecured Creditors of Navigator Holdings* [2006] UKPC 26.

[58] *Rubin v Eurofinance SA* [2012] UKSC 46.

[59] *Singularis Holdings Ltd v PwC (Bermuda)* [2014] UKPC 36.

[60] Key cases here would include *Re Drax Holdings* [2004] 1 WLR 1049 and *Re Rodenstock GmbH* [2011] EWHC 1104 (Ch). The judiciary saw no objection to "good forum shopping" in this context – *Re Codere Finance (UK) Ltd* [2015] EWHC 3778 (Ch).

[61] The *International Insolvency Review* made its entrance onto the scene in 1990. It was a publication closely linked to INSOL. *International Corporate Rescue* then made its debut in 2004. A number of the standard texts on Corporate Insolvency Law began to include a discrete chapter on cross border insolvency. Dedicated texts were also produced – for example Look Chan Ho, Cross Border Insolvency: Principles and Practice (2016)(Sweet and Maxwell).

[62] In July 2022 the Insolvency Service launched a consultation on whether the UK should adopt the UNCITRAL conventions on enforcement of insolvency judgments and on insolvent group enterprises. For comment on the latter initiative see K. Stones, "UNCITRAL Model Law on Enterprise Group Insolvency, 'MLEG'"[2022] 15 CRI 167.

[63] See for example *Re Brightlife Ltd* [1987] Ch 200 (automatic crystallisation accepted) and *Re Croftbell Ltd* [1990] BCC 781 (green light for lightweight floating charges).

[64] *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 1 WLR 676.

[65] [1979] 2 Lloyds Rep 142. This was a ruling of the widely respected judge Slade J. It is curious that it never was reported beyond this specialist series of reports.

community in that it opened up the possibility of creating a fixed charge over future book debts whilst allowing considerable freedom to the borrowing company to deal with said debts. That said, the idea of a valid fixed charge over future book debts was viewed with suspicion in many quarters[66] and that disquiet was vindicated by the House of Lords decisive ruling in *Re Spectrum Plus Ltd*[67]. The nature of a charge was to be determined by how it operated in substance and not by how it was superficially designated. That precedent reminded us that decisions of UK courts can have retrospective effect, a fact that concerned insolvency practitioners who had distributed assets on the wrong assumptions. The Crown had to step in and offer relief by way of extra statutory concession[68].

One constant in Corporate Insolvency Law that has not changed greatly over the decades has been the plight of unsecured creditors[69]. That is not to say that the policymakers have not tried to effect change in the latter part of the period under review. As we moved into the millennium we witnessed the arrival of the unhelpfully labelled “prescribed part”, which was designed to afford some prospect of return to unsecured creditors by top slicing floating charge realisations to a limited degree. The maximum level of the prescribed part was capped at £600K, but this was increased to £800K in 2020. The Cork Report had inspired this innovation with its suggestion of introducing a Ten Per Cent Fund[70], an idea that was adopted in slightly different mathematical form by the Enterprise Act 2002, thus ushering in the so-called prescribed part mechanism now located in s. 176A of the Insolvency Act 1986. There are doubts as to its effectiveness, but it is generally seen as a move in the right direction[71]. It is fair to say that unsecured creditors have gained from the enactment of s. 172(3) of the Companies Act 2006[72] and by the willingness of some courts

[66] Indeed the Cork Committee (Cmnd 8558) called for its reversal – see para [1586] of the Report.

[67] [2005] UKHL 41.

[68] See Sealy and Milman, Annotated Guide to Insolvency Legislation 2022 (Sweet and Maxwell) Vol 1 at 109.

[69] See D. Milman “A New Deal for Companies and Unsecured Creditors“ (2000) 21 Co Law 59 for an explanation of the reluctance of policymakers to introduce change. Unsecured creditors shared rateably in realised assets under the pari passu tool of distributive justice.

[70] See Cmnd 8558 paras [1538]-[1549].

[71] For analysis see K. Akintola “The Prescribed Part for Unsecured Creditors – A Pithy Review” [2017] 30 Insolv Intell 55.

[72] This has reinforced a common law development as manifested in the Court of Appeal in *West Mercia Safetywear Ltd v Dodd* [1988] BCLC 250. Liquidators can use this provision to pursue errant directors who expose creditors to risk. Increasingly, using this provision is favoured over recourse to the wrongful trading sanction found in s. 214 of the Insolvency Act 1986. The existence of the common law principle was recognised in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25 and it was accepted that it could operate alongside the statutory concept of wrongful trading.

to step in and control dividend distributions to shareholders where such dividends might prejudice creditors[73].

The current priority system on corporate insolvency in English Law encourages artificiality. That can bring with it a lack of transparency for any party considering providing finance for a company. Title retention clauses and trust devices[74] are generally non registrable because they are not seen as creating charges. Attempts by the Law Commission to move towards a more functional analysis of security (along the lines of Art 9 of the US Commercial Code) with attendant transparency have made little progress[75]. The last makeover of the charge registration system in 2013, although improving matters somewhat, avoided this fundamental issues[76].

The floating charge user constituency was pleased with the fact that Crown preferential debt was scrapped[77] in 2003 (as part of a package of reforms designed to rebalance the priority system) but were disappointed when it was only to reappear in a more diminished form in the Finance Act 2020 (ss. 98 and 99)[78]. This volte face represents a rare defeat for the rescue lobby, which was fiercely opposed to this change on the grounds that it undermined the economics of rescue. Whether that adverse consequence has materialised is as of yet unclear.

Improving managerial behaviour in the twilight zone

The need to improve the standards by which directors operated their stewardship of limited liability companies was recognised by the Cork Committee. In particular, it was generally accepted that the fraudulent trading mechanism (introduced in 1928) was not effective and matters were exacerbated by virtue of the fact that the newly introduced[79] director disqualification regime for unfit directors had several weaknesses both in terms of

[73] But see here *BTI 2014 LLC v Sequana SA* [2022] UKSC 25 where the prospect of challenging an otherwise lawful dividend was marginalised by the Supreme Court.

[74] Such as those based upon the precedent of *Barclays Bank v Quistclose Investments* [1970] AC 567.

[75] See Company Security Interests (Law Commission Report No. 296, 2005) (Cm 6654). This is a particularly difficult area to effect reform in. We note the Companies Act 1989 Part IV and its failure to get off the ground. The revision of Part 25 of CA 2006 by Companies Act 2006 (Amendment of Part 25) Regulations 2012 (SI 2013/600) did represent some modest reform.

[76] See SI 2013/600 (noted above). Important changes included requiring all charges to be registered unless expressly excluded and an attempt to harmonise the English and Scottish systems.

[77] The Cork Committee had called for this – see para [1489] of the Report.

[78] For implementation see the Insolvency Act 1986 (HMRC Debts: Priority on Insolvency) Regulations 2020 (SI 2020/983).

[79] This regime was established by the Insolvency Act 1976. But much was left to the discretion of the court and there was no effective whistleblowing requirement by which names came to the attention of the authorities.

substantive law and operational matters. The "ostrich syndrome" under which directors chose to ignore the realities facing a distressed company was still prevalent and not penalised. As was trading on Crown debts, where sums collected by companies and due to be handed to the Revenue were used as working capital. The solution favoured by the Cork Committee involved the introduction of the wrongful trading concept and the upgrading of the disqualification system[80]. After some early successes[81], the wrongful trading reform embodied in s. 214 of the Insolvency Act 1986 lost much of its impetus due to inconvenient judicial rulings on both substantive matters[82] and with regard to pragmatic considerations affecting litigation finance[83]. Indeed, in practice, the same form of abuse which might be viewed as wrongful trading is now more usually dealt with by insolvency office holders through the pursuit of misfeasance proceedings (using the facility of s. 212 of the Insolvency Act 1986) based upon breaches of directors' duties using Companies Act 2006 s. 172(3)[84].

By way of contrast, the disqualification reforms[85] inspired by the Cork Committee reforms resulted in a flood of cases hitting the courts in the late 1980s and 1990s. We are talking here of publicly funded litigation. It was soon realised that this created a drain on the public exchequer and the National Audit Office argued that reform was required[86]. This occurred and took the form of disqualification undertakings introduced via the Insolvency Act 2000. This out of court procedure is much more cost effective and it is no surprise that the vast

[80] Disqualification of directors in limited circumstance was first introduced in 1928 but it was not extended to unfit directors of insolvent companies until 1976. Cork called for that regime to be improved – see Chapter 45 of the Report. The reforms made in the Insolvency Act 1986 involved a compulsory whistleblowing procedure being imposed on insolvency practitioners and a removal of discretion enjoyed by the courts to let unfit directors off the hook.

[81] *Re Produce Marketing Consortium Ltd (No. 2)* [1989] BCLC 520.

[82] See here cases such as *Brooks v Armstrong* [2016] EWHC 2893 (Ch) and *Re Ralls Builders Ltd* [2016] BCC 293. For critique of the less than constructive approach of some courts see G. Moss "No Compensation for Wrongful Trading – Where Did it All Go Wrong?" [2017] 30 Insolv Intell 49 and 88. See also K. van Zwieten, "Disciplining the Directors of Insolvent Companies" [2020] 33 Insolv Intell 2.

[83] Note *Re Oasis Merchandising Services Ltd* [1998] Ch 170 (barring assignment of wrongful trading claims) which was overturned by s. 118 of the Small Business, Enterprise and Employment Act 2015 (now s. 246ZD of the Insolvency Act 1986). That 2015 legislation extended to administrators the right to pursue wrongful trading claims – see now Insolvency Act 1986 s. 246ZB. For recent judicial discussion of the area of assignment of recovery claims see Freedman J in *Re Transworld Payment Solutions UK Ltd* [2022] EWHC 2742 (Ch) at paras [164]-[173].

[84] For the latest judicial thoughts on this provision see *BTI v Sequana* [2022] UKSC 25.

[85] Such as the whistle blowing system formerly found in s. 7(3) of the Company Directors Disqualification Act 1986. This was remodelled into a more streamlined procedure now found in s. 7A of the same Act.

[86] The National Audit Office is very much the guardian of public expenditure.

majority of disqualifications (as much as 80%) are imposed through this methodology these days[87].

The desire of policymakers to combat directorial abuse of the facility of limited liability is very much alive today. So in the Rating (Coronavirus) and Director Disqualification (Dissolved Companies) Act 2021 we find an attempt to further attack a form of phoenixism where directors seek to avoid scrutiny for their misbehaviour by quietly dissolving a failing company without going through formal insolvency processes. That loophole, which often involved abuse of the "bounce back loan" facility[88], has now been closed and a number of disqualifications have occurred.

Transactional avoidance

Enhancing the possibility of setting aside dubious pre insolvency transactions was something that the Cork Committee was keen upon[89]. This policy promoted distributional justice by undermining unfair priority gaining and also served as a constraint upon misbehaviour by directors of distressed companies. On closer analysis, in spite of the rhetoric, the 1985-86 reforms did not make major strides forward. There was certainly an enhanced prospect of a transaction being found to be a preference in that the mental element was watered down and presumptions were introduced, but the statutory provision on preferences was not purely result-based[90]. The more significant change was the introduction of what is s. 238 of the Insolvency Act 1986. This is a purely objective provision that seeks to unwind the improper depletion of an insolvent company's assets via the undertaking of transactions at an undervalue. The 1986 reforms did not fully address the financial and procedural barriers to the promotion of an effective avoidance strategy; the Small Business, Enterprise and Employment Act 2015 did however advance matters in that regard by allowing greater latitude to administrators and ensuring that unsecured creditors would benefit from successful claims (see now Insolvency Act 1986 s. 176(ZB). Litigation funding for insolvency litigation is now much more prevalent than it was in 1980.

Rescue and restructuring

The possibilities offered by corporate and business rescue were at the forefront of the thinking of the Cork Committee[91]. Insolvency was not always to be viewed as a terminal

[87] In 2021-22 there were 802 disqualifications recorded. At its highest point the number of disqualifications in previous decades was twice that figure.

[88] Introduced to support business during the COVID emergency. It is now clear that it was a soft target for fraudsters.

[89] See Cmnd 8558 para [198(j)].

[90] See *Re MC Bacon Ltd* [1990] BCLC 324. This put English Law out of step with many other jurisdictions which applied a result-based test.

[91] This is hardly surprising as Kenneth Cork the practitioner was a pioneer of corporate rescue – see Cork on Cork by Sir Kenneth Cork and H. Barty-King (1988)(Macmillan) at p. 28.

condition, but could be remedied in some cases. Accordingly, the Cork Committee recommended new corporate insolvency procedures which resulted in the enactment of the administration order model and the company voluntary arrangement regime[92]. The former reform was mapped out in some detail by Chapter 9 of the Report. The process was to be initiated by application to court.

Administration has undergone change with a move away from initiation exclusively by court order to a model under which most appointments (whether made by floating charge holders or by the Company) are made out of court by filing documents with the court[93]. Administration is inextricably linked to the pre pack phenomenon[94]. This is a prearranged transaction under which the viable portion of a distressed company's business is provisionally sold off (often to a party connected to the directors) and the transaction is only completed once the company enters administration. The unsecured creditors of the company now in administration often feel cheated by this process[95]. It is a controversial technique that first surfaced in the 1990s.[96] There are issues as to potential conflict of interest and whether the property disposed of has been sold at proper value. It has received judicial approval in principle[97] and legislative support[98]. But it has been abused in some cases where connected parties have been involved with the result that increasingly strong self- regulation has come to the fore, particularly after the publication of the Graham Report in 2014. So, we have a revised Statement of Insolvency Practice 16 and the arrival on the scene of the Prepack Pool, which offers independent scrutiny. But referring a proposed prepack to that Pool was not mandatory and take up has been disappointing. Residual concerns have finally lead Parliament to step in[99].

[92] Cork said little about the CVA process apart from liking the basic idea of a simple out of court rescue option – see para [428] of the Report.

[93] Court appointments are still possible. This is useful for difficult cases. Unsecured creditors can seek a court appointment, but this is rare.

[94] See Bo Xie, Comparative Insolvency Law: The Pre Pack Approach in Corporate Rescue (2016) (Edward Elgar).

[95] In objective terms they are no worse off, but they feel worse off and it is that which triggers resentment.

[96] Therefore prepacks could not have been considered by the Cork Committee a decade earlier. But the similar ploy of "hiving down" on receivership was familiar to Sir Kenneth Cork and survived the Cork Committee without major criticism.

[97] See for example *DKLL Solicitors v HMRC* [2007] EWHC 2067 (Ch) and *Re Kayley Vending Ltd* [2009] BCC 578.

[98] See now Insolvency Rule 2016 r. 3.36. Under the 1986 Insolvency Rules this was r. 2.67A.

[99] The Administration (Restrictions on Disposals etc to Connected Persons) Regulations 2021 (SI 2021/427).

It is now the case that this desire to promote rescue is the driving force behind reform in Corporate Insolvency Law. Property entitlements[100] and contractual rights[101] have had to be sacrificed on the altar of rescue. A utilitarian would approve of this change, but there are nagging concerns as to whether rescue is anything but a short term fix. After 35 years of promoting this rescue strategy the law of diminishing returns might well be in operation. It also must be borne in mind that rescue (even where it works) is not cost free; it can be an expensive procedure and does involve interference with established property/contractual rights. More research is needed on the long term fate of rescued businesses.

Procedures: new forms of communication

In 1980 the designated procedures operating in the case of insolvent companies were still face to face and paper based, in much the same way they had been for previous decades. The Cork Committee did not focus on resolving this pragmatic issue because of the lack of available alternative technology at the time. The Electronic Communications Act 2000 made general changes in this respect.

We have now moved to a position where electronic communication is the norm for insolvency practice and insolvency proceedings. Official Forms have been scrapped (in name, but not in substance). Creditor meetings may be virtual and in some cases excused[102]. Reports on allegedly unfit directors are made via an online system. This development of the law exploiting technology has been accelerated by the COVID-19 crisis. Judicial hearings are often conducted virtually via skype and similar platforms. It remains to be seen if this will be continued in the future. However, technological advances are not a panacea – they can throw up new problems. This is well reflected by the CE Filing[103] saga in terms of the timing of the appointment of administrators where the appointment is made outside court hours. This particular technical innovation has caused difficulties for the courts and ultimately required a revision to the Practice Direction[104] to clarify the position.

[100] Landlords would confirm this – most recently in the CVA context. See, for instance, *Lazari Properties 2 Ltd v New Look Retailers Ltd* [2021] EWHC 1209 (Ch). But compare *Carraway Guildford Nominee A Ltd v Regis* UK Ltd [2021] EWHC 1294 (Ch). An Insolvency Service Report of 28 June 2022 denied that landlords were being unfairly treated by CVA usage but concerns remain.

[101] Witness the demise of the "ipso facto clause" in commercial supply contracts, where automatic contractual termination was linked to the commencement of an insolvency event; this outcome was neutralised as reflected in s. 14 of the Corporate Insolvency and Governance Act 2020.

[102] See Insolvency Act 1986 s. 246ZE.

[103] CE Filing is an electronic tool used to manage cases. Its use in insolvency proceedings is now widespread across the court system.

[104] For the convoluted litigation and complex background to this Practice Direction see Sealy and Milman, Annotated Guide to the Insolvency Legislation 2022, (25 ed) Vol 2 at Appendix IV and pp. 1449-1450.

Overview

The publication of the Cork Report in 1982 can truly be said to have been a watershed moment in the history of corporate insolvency law in the UK. Many of Cork's ideas were adopted, though some took time to attain appropriate legal form. Other recommendations have not been implemented. For example, the idea of an insolvency ombudsman (see paras 1772-1773 of the Cork Report) has never been accepted.

The position that presents itself today in the world of corporate insolvency law is one of considerable sophistication and complexity. Corporate insolvency law has broken the formal link with bankruptcy[105] to become a fully self-standing discipline and regulatory model in its own right. It is no longer seen as an "add on" adjunct to Company Law.

The legislature has addressed many of the problematic scenarios affecting insolvent companies. But legislation cannot cultivate a "magic money tree". Notable gaps remain therefore on the vexed question of rescue finance and what priority should be afforded to it as compared to pre rescue finance. This is a complex issue. Distributive justice in an insolvency context is in much a better shape than it was in 1980, but still more could be done to assist unsecured creditors. The Law Commission has touched upon this with regard to prepaying consumer creditors[106]. Some greater emphasis on how insolvent companies might be wound up more cheaply would be welcome[107]. It is good to see the lateral thinking employed in the Rating (Coronavirus) and Director Disqualification Act 2021 with its focus on ensuring that dissolution of a company is not used to evade the controls on errant directors built up via liquidation law. One cannot but feel that the constant focus on "all things rescue" will attract the law of diminishing returns in terms of practical achievement; but that positive trend has lead to the emergence of a sub-genre of restructuring law which has attracted some outstanding academic contributions[108].

In terms of its global rating, UK Corporate Insolvency Law stands up well to serious scrutiny[109]. This is reflected both by league tables and the fact that it attracts "tourists"

[105] A link that was evidenced by Companies Act 1985 s. 612.

[106] See Law Commission Report "Consumer Prepayments on Retail Insolvency" (2016, No. 368) – discussed by K. Akintola in "The Proposed Preferential Priority of Prepaying Consumers: A Fair Pack of Insolvency Reforms?" [2018] JBL 1. The Government response to this Report was fairly positive but little has been done to change the law.

[107] The "Red Tape Challenge" has led to efficiencies enacted through the Deregulation Act 2015 and the Small Business Enterprise and Employment Act 2015. The most high profile of these was the discarding of the infamous mandatory s. 98 physical meeting in a CVL. A physical meeting will now only be held if 10% of creditors demand it – see Insolvency Act 1986 s. 246ZE for the precise details.

[108] Exemplified by the work of Sarah Paterson – see for example "Debt Restructuring and Notions of Fairness"(2017) 80 MLR 600.

[109] The World Bank maintains league tables on "Resolving Insolvency" and the UK always scores highly as compared to many other jurisdictions.

from a range of jurisdictions. That may however diminish in the wake of Brexit, particularly as some EU jurisdictions seek to step into the void and offer rescue services via law reform. Ireland and The Netherlands spring to mind here. Regulatory competition is a good thing. UK Corporate Insolvency Law has faced up well to the twin challenges of the Global Financial Crisis and COVID-19. A combination of temporary measures and long term reforms were needed to assist struggling businesses and these were located primarily within the Corporate Insolvency and Governance Act 2020. The existence of effective rescue procedures will have contributed to this success in warding off economic disaster. The "cost of living crisis" is the next challenge for policymakers to tackle.

The twin communities of practitioners (including the judiciary) and academics working within the field of corporate insolvency are healthy; we are well beyond the critical mass tipping point and the future of the discipline in UK universities looks assured. The subject of Corporate Insolvency Law is attracting a new generation of proficient academics, most of whom have built their understanding upon doctoral research, some of which has been funded by the insolvency profession. The recent initiative[110] by the Insolvency Service to encourage greater interaction between academic and practitioners is a welcome step in this process of encouraging constructive dialogue. Access to information about how Corporate Insolvency Law operates in practice has changed beyond recognition.

The system of regulating insolvency practitioners has improved beyond recognition in the years since 1980, though the days of self-regulation for the future remain in doubt[111]. But it is important for the law not to rest on its laurels. There are still too few insolvency practitioners to service the needs of a distressed society; this professional constituency has barely increased in recent decades. Attempts to broaden the categories of those who may be entrusted to handle insolvency work have never been followed through[112].

In view of the developments outlined above, one can say with some degree of confidence that Sir Kenneth Cork and his colleagues on the Cork Committee could feel proud of the transformation in Corporate Insolvency Law which they inspired. But the process of change is ongoing as new crises stress-test the system.

[110] See "Dear IP" No. 130 (June 2021). The first such event was held at Aston University in November 2021. The papers presented have been posted on The Insolvency Service website. A second session is scheduled to be held at Nottingham Law School for November 2022.

[111] The Small Business, Enterprise and Employment Act 2015 made major reforms here by establishing a more heavily regulated regime for practitioners now found in the much revised Part 13 of the Insolvency Act 1986. For context see J. M. Wood "Assessing the Effectiveness of the UK's Regulatory Framework at Deterring Insolvency Practitioners' Opportunistic Behaviour" [2019] 19 JCLS 333 and "One Ring to Rule them All: Has the Call for a Single Regulator Been Answered?" [2020] 33 Insolv Intell 55. Further change seems to be on the horizon in 2022/23.

[112] Witness s. 17 of the Deregulation Act 2015, which opened up options for turnaround specialists by allowing for partial authorisation of insolvency practitioners. Partial authorisation, however, has not been embraced by the insolvency profession.

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