

Roger Laville

Called: 2015
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PROFILE

Roger is an experienced commercial chancery advocate specialising in finance disputes, encompassing:

- debt finance, including banking and insolvency; and
- equity finance, including shareholder disputes and claims involving breach of directors' duties.

Fraud and dishonesty are a regular feature of Roger's cases, often necessitating freezing orders and other injunctive relief, and many involve cross-border inter-jurisdictional issues.

Before being called to the Bar in 2015, Roger was a partner in a firm of solicitors. His experience as a solicitor means that he knows the importance of giving clients clear pragmatic advice that enables them to take properly informed decisions, and of being easy to contact and ready to talk through problems informally. He especially relishes cases that throw up seemingly intractable problems, or that require imaginative analysis to identify a solution.

EXPERTISE

Banking and Finance

Roger has for many years dealt with a wide variety of personal, business and corporate banking disputes. During this time, he has acted in cases involving issues such as security and guarantees, undue influence and misrepresentation, customer and third-party fraud, money-laundering reporting obligations, consumer credit and financial services regulation, unfair relationships, mortgage and conveyancing fraud, professional negligence claims against valuers and solicitors, invoice discounting and factoring, asset finance, credit

reporting, investment mis-selling, breach of mandate, the priority of interests in land and other security and fixed charge receivers, including several injunctions to prevent sales by receivers.

Recent work includes:

- Representing a company bringing a claim against its former finance director in respect of losses arising from leveraged currency derivatives which it was claimed had been entered into for hedging purposes without authority and negligently. This dispute, which was compromised shortly before trial, gave rise to complex issues of limitation law and detailed expert evidence concerning the proper accounting treatment of forex derivatives and the nature of currency hedging operations.
- Acting for one of the parties in the *Arena* litigation, a dispute arising from the largest asset finance fraud conducted in the UK, with losses alleged to exceed £250 million.
- Acting for a mezzanine property fund in a claim against another secured lender relating to their respective rights and obligations under an intercreditor deed and the treatment of the realisations from property sales arising from a luxury apartment development.
- Acting in ongoing Gibraltar proceedings defending a claim brought by the administrators of a tech investment fund against an individual alleged to have been a *de facto* or shadow director, to have acted in breach of his fiduciary duties and to have dishonestly assisted in breaches of fiduciary duty.
- Acting in several cases for both creditors and debtors concerning the implementation and effect of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020, in particular in the context of ongoing proceedings and in relation to secured debts. He represented the successful creditor in *Bluestone Mortgages Ltd v Stoute* [2024] 3 WLUK 138, which is the leading case on the effect of the Regulations on mortgage debts.
- Acting for an individual in claim arising from a Consumer Credit Act 1974 regulated agreement for the purchase of a supercar. Acting in several other matters in which credit agreements which are regulated, or are alleged to be regulated, have resulted in disputes about the effect of the CCA, in particular which there is alleged to be an unfair relationship under s140A.
- Successfully representing a fixed charge receiver in opposing an application for an injunction to prevent him selling at auction the property over which he was appointed. Of particular interest was the court's agreement that the end of a stamp duty holiday was a good reason for the injunction to be refused on applying the balance of convenience test. Reported as *Taga v Waterfold Asset Management Ltd* [2021] EWHC 1823 (Admin).
- Acting for a provider of regulatory compliance services, which is itself authorised under the Financial Services and Markets Act 2000 and which appoints its customers as appointed representatives under s39 of the 2000 Act, in a dispute with a former customer concerning unpaid fees and allegedly negligent advice.
- *Hardy Exploration & Production (India) Inc v Government of India* [2018] EWHC 1916 (Comm). Advising the India Infrastructure Finance Company about attempts to enforce a £70 million Malaysian arbitration award by attaching it to payments due from the lender to the Government of India under a guarantee scheme.
- Acting in professional negligence claims against conveyancing solicitors who failed to advise properly on an easement crossing the purchased land and who failed to advise on the implications of a ransom strip in a historic building which had been converted into luxury apartments.
- Defending a clearing bank against claims relating to fraud reports to the National Hunter and CIFAS databases. In another matter, defending a challenger bank against claims arising from reports to the National Crime Agency concerning suspicions of money-laundering.
- Acting for an individual who had fallen victim to an unregulated debt adviser, granting the adviser security over the individual's family home for his unlawful and extortionate fees. Successfully obtaining a court order for the removal of the security from the land register on the ground, among others, that the adviser had breached the general prohibition under s19 Financial Services and Markets Act 2000.
- Acting for the representative of a class of traders in currency derivatives in proceedings to determine the existence and extent of the traders' proprietary interests in funds held in the segregated and non-segregated accounts of the trading platform provider.
- Acting for connected offshore companies which invested in ground rent portfolios and the individual

representatives of those companies in a dispute with their finance brokers concerning whether the threshold conditions for fees had been satisfied and the extent of restitutionary liability of the owners.

- Acting for the successful claimant in two multi-million dollar claims to enforce corporate and personal guarantees given in respect of Indian coal fired power station projects.
- Representing a Scandinavian lender in a portfolio of claims involving the application of foreign law, especially the law of limitation and its effects under sections 1 and 2 Foreign Limitation Periods Act 1984 where the foreign limitation period is alleged to contravene English public policy by causing undue hardship.
- Acting for an Indian commercial lender in a claim under a guarantee, which supported the acquisition of a Spanish company, said to have been vitiated by Indian exchange control legislation.
- Representing invoice finance providers in claims against invoice debtors, raising issues of set-off, and against directors or shareholders under personal guarantees.
- Representing a mortgage advisory firm which was being sued for alleged mis-selling on the part of an appointed representative under s39 Financial Services and Markets Act 2000. An application for summary judgment on limitation grounds forced the withdrawal of the claim.
- Acting for an individual in a professional negligence claim against solicitors who missed a limitation deadline in a mis-selling claim against the individual's financial advisers.
- Acting for a corporate finance adviser in a claim for performance fees due to him after his advice was instrumental in enabling his client to obtain finance. The claim was brought both in contract and also as a *quantum meruit* claim in restitution.
- Advising the vendor of plant and heavy machinery under asset finance arrangements in a dispute with the asset finance lender. Misrepresentation claims by the lender were settled on favour terms.
- *John Morris v Royal Bank of Scotland plc* (3 July 2015, Norris J). The assignment of an alleged £11 million claim against the Bank from the Bank's customer to the customer's director was void because of a clause prohibiting assignment in the Bank's fixed and floating charge debenture (as a solicitor).
- *Obadare v Barton Bridging Capital Ltd* [2013] EWCA Civ 1096. The Court of Appeal held that an action was not "pending" in the short period between being struck out and an appeal being issued, and therefore could not be protected on the land register as a pending land action (as a solicitor).
- *Gatt v Barclays Bank Plc* [2013] EWHC 2, the first reported decision about a bank's obligations in contract, negligence and defamation when providing customer information to credit reference agencies (as a solicitor).

Restructuring and Insolvency

Since qualifying as a solicitor in 2002 Roger has acted for banks, insolvency practitioners and company directors in corporate and personal insolvency disputes, from small procedural applications to hard-fought trials. Issues which have arisen include misfeasance by directors, preferences, undervalue transactions, transactions defrauding creditors, wrongful trading, avoidable floating charges, private examinations, phoenix trading, commercial and private trusts in insolvency, equitable interests in bankrupts' homes, officeholder remuneration and expenses, insolvent partnerships and disputed proofs of debt.

Recent work includes:

- Acting in ongoing Gibraltar proceedings defending a claim brought by the administrators of a tech investment fund against an individual alleged to have been a *de facto* or shadow director, to have acted in breach of his fiduciary duties and to have dishonestly assisted in breaches of fiduciary duty.
- Acting for the administrator of a potentially insolvent estate seeking a *Beddow* order and relief under s284 Insolvency Act 1986 to ensure the availability of funding to defend proceedings brought by alleged creditors.
- Advising creditors of a company whose assets had been sold by officeholders in breach of The

Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021, successfully reaching an agreement for the unwinding of the transaction.

- Acting for a supplier of a company in multi-party proceedings to determine whether the proceeds of sale of the supplies are held under a Quistclose trust for the benefit of suppliers.
- Acting for one of the parties in the *Arena* litigation, a dispute arising from the largest asset finance fraud conducted in the UK, with losses alleged to exceed £250 million.
- Advising on the implications of a large-scale and longstanding employee benefit trust arrangement embedded in the corporate structure of a national retail group which has entered administration and on potential claims by HMRC, former employees and directors and other group companies.
- *Taga v Waterfold Asset Management Ltd* [2021] EWHC 1823 (Admin). Successfully representing a fixed charge receiver in opposing an application for an injunction to prevent him selling at auction the property over which he was appointed. Of particular interest was the court's agreement that the end of a stamp duty holiday was a good reason for the injunction to be refused on applying the balance of convenience test.
- Acting for a representative of a class of currency derivatives traders in proceedings to determine the existence and extent of the traders' proprietary interests in funds held in the segregated and non-segregated accounts of the trading platform provider, which is in compulsory liquidation.
- Representing a liquidator in obtaining an order under s.236 Insolvency Act 1986 for the private examination of a company director, conducting the examination and subsequently acting in a successful application for relief in respect of undervalue transactions and preferences. This required obtaining a freezing order to prevent the director from disposing of his assets during the course of the proceedings, utilising the unambiguous impropriety exemption in order to rely on otherwise without prejudice communications evidencing dissipation. Leading Tiernan Fitzgibbon
- Advising a leading national arts organisation about the insolvency of an important contracting counterparty.
- Acting for the successful claimant in two multi-million dollar claims to enforce corporate and personal guarantees given in respect of Indian coal fired power station projects and involving the impact in England of Indian liquidation proceedings.
- Obtaining a validation order facilitating the withdrawal of a winding up petition and the rescue of a major automotive parts manufacturing company.
- Acting for the directors and shareholders of a commodity trading company in defending claims brought by the liquidator of the company in respect of historic dividends, allegedly paid in breach of Companies Act 2006 restrictions and as a transaction defrauding creditors.
- Obtaining an order under s.236 Insolvency Act 1986 for the disclosure of documents by financial institutions which had received misappropriated funds, including a "gagging order" preventing them from notifying the wrongdoers against whom fraud and breach of fiduciary duty claims were contemplated.
- Acting for a creditor in a dispute under the Insolvent Partnerships Order 1994, successfully opposing the setting aside of an order for the winding up of an insolvent partnership.
- Representing in English bankruptcy proceedings the overseas creditors of an individual debtor who is subject to insolvency proceedings in another jurisdiction and advising on the cross-border insolvency issues which arose.
- *SerVaas Incorporated v Rafidain Bank* [2010] All ER (D) 201. Acting as a solicitor for a US corporation against the Republic of Iraq in a claim to enforce a judgment debt of around US\$40 million which arose before the first gulf war against an expected dividend from the liquidation of a state-owned bank.
- Advising a liquidator about potential claims to recover rental payments which were made while the winding up petition was pending and thus void under s127 Insolvency Act 1986.
- Advice and representation leading to a former company director being granted permission to re-use a company name which would otherwise have been a prohibited name under s216 Insolvency Act 1986.
- An application to fix the remuneration of a liquidator under r18.23 Insolvency Rules 2016, where the

creditors had refused to do so.

- Acting for an individual in defending a claim brought by a trustee in bankruptcy alleging that the client was the recipient of undervalue transactions or transactions defrauding creditors. The claim settled on advantageous terms.
- Acting for a former company director who was alleged to have misappropriated the company's business, to have benefitted from transactions at undervalue and preferences and to have been guilty of wrongful trading to the total value of over £1,000,000.

Companies and Partnerships

Roger represents and advises companies, directors and shareholders in claims involving breach of fiduciary duty and misconduct, unfair prejudice petitions and derivative claims, share capital, unlawful dividends and shareholders' agreements. He also advises partners in traditional partnerships and members of limited liability partnerships.

Recent examples of work include:

- Acting in ongoing Gibraltar proceedings defending a claim brought by the administrators of a tech investment fund against an individual alleged to have been a *de facto* or shadow director, to have acted in breach of his fiduciary duties and to have dishonestly assisted in breaches of fiduciary duty.
- *Re Truth Data Insights, Henrickson v Constant* [2023] EWHC 1373 (Ch). A case considering the position where a company had been restored to the register following the submission of false information to the Registrar of Companies and where its shares, which had devolved *bona vacantia* to the Crown, had been acquired from the Crown following the provision of false information, all with the intention of continuing unmeritorious litigation in the United States.
- Acting for the successful creditors in *Moss v Martin* [2022] EWHC 2788 (Comm), obtaining summary judgment for US\$12 million to enforce Texan civil judgments for fraud and for breach of a partnership agreement. The defendants' arguments that the Texan judgment had been obtained in breach of natural justice, and that they had not submitted to the Texan jurisdiction by virtue of s33(1)(c) Civil Judgments and Jurisdiction Act 1982 were dismissed.
- *Homes of England Ltd v (1) Nick Sellman (Holdings) Ltd (2) Bromham Road Development LLP* [2020] EWHC 936 (Ch). Acting for the successful appellant in this interesting case which determined for the first time the appropriate test for deciding whether to grant permission for a member of a limited liability partnership to continue a derivative claim on behalf of the partnership.
- *Homes of England Ltd v Horsham Holdings Ltd* [2020] EWHC 1175 (Ch). Also acting for shareholders in connected unfair prejudice petitions relating to a property management company and a series of property development joint ventures for the construction of blocks of student accommodation.
- Representing a US company and its director in an action to undo the unlawful restoration and takeover of its English subsidiary and to seek a hostile rectification of the register in relation to the subsidiary under s1076 Companies Act 2006. This involved obtaining urgent injunctive relief to prevent shares in the subsidiary from being transferred away and intellectual property infringement.
- Representing a communications company in a claim against a former director for making a secret profit in breach of his fiduciary duties and a shareholders' agreement. Central issues included whether the claim was a reflective loss, whether the shareholders' agreement could be discharged for fundamental breach and whether the non-compete covenants were an unlawful restraint of trade.
- Advising the director/shareholder of a substantial financial services company whose shares were acquired under the compulsory acquisition terms in a shareholders' agreement. The failure of the valuation expert to following a previous course of conduct in valuing the shares resulted in an unfairly low sale price and potential liability of the valuer in negligence.
- Acting for a media company in a dispute with a shareholder/consultant about the terms of his remuneration package, involving the contractual interpretation of the shareholders' agreement.
- Acting for the directors and shareholders of a commodity trading company in defending claims brought

by the liquidator of the company in respect of historic dividends, allegedly paid in breach of Companies Act 2006 restrictions and as transactions defrauding creditors. Successfully brokering a settlement of the claim.

- Representing a departing shareholder in seeking to enforce the financial terms of a share sale agreement.
- Advising a company director and shareholder seeking the removal of documents from Companies House records.
- Advising the members of a traditional partnership of the implications of taking preparatory steps to establish a new, allegedly competing, partnership in the face of assertions by the remaining partners of breaches of fiduciary duty.
- Advising on the legal issues applicable to a company share valuation following divorce.
- Obtaining a High Court injunction to freeze a sum of several hundred thousand pounds in a company's bank account to prevent a director of the company from misappropriating the money.

Civil Fraud and Injunctions

Roger has acted in many disputes which involve allegations of fraud, conspiracy and breach of trust. He has acted in freezing injunction applications, both for applicants and respondents, and has experience of search orders, including as a supervising solicitor. He also advises and represents both banks and insolvency practitioners in relation to disputes arising from customer accounts and insolvent estates containing the proceeds of crime or subject to restraint or confiscation orders.

Recent work includes:

- Acting in ongoing Gibraltar proceedings defending a claim brought by the administrators of a tech investment fund against an individual alleged to have been a *de facto* or shadow director, to have acted in breach of his fiduciary duties and to have dishonestly assisted in breaches of fiduciary duty.
- Acting for judgment creditors in *Moss v Martin* [2022] EWHC 3258 (Comm), in which the English court refused to stay enforcement of an English judgment debt pending the appeal in Texas of the judgment underlying it, an outcome subsequently upheld by the Court of Appeal.
- Acting for the successful creditors in *Moss v Martin* [2022] EWHC 2788 (Comm), obtaining summary judgment for US\$12 million to enforce Texan civil judgments for fraud and for breach of a partnership agreement. The defendants' arguments that the Texan judgment had been obtained in breach of natural justice, and that they had not submitted to the Texan jurisdiction by virtue of s33(1)(c) Civil Judgments and Jurisdiction Act 1982 were dismissed.
- *Moss v Martin* [2022] EWHC 2385 (Comm), a decision concerning the basis and exercise of the court's jurisdiction to order the temporary confiscation of the defendants' passports in support of freezing orders.
- Acting for one of the parties in the *Arena* litigation, a dispute arising from the largest asset finance fraud conducted in the UK, with losses alleged to exceed £250 million.
- *Taga v Waterfold Asset Management Ltd* [2021] EWHC 1823 (Admin). Successfully representing a fixed charge receiver in opposing an application for an injunction to prevent him selling at auction the property over which he was appointed. Of particular interest was the court's agreement that the end of a stamp duty holiday was a good reason for the injunction to be refused on applying the balance of convenience test.
- Acting for the directors of a company said to have been involved in the Spanish law equivalent of an unlawful means conspiracy to breach intellectual property law. Successfully obtaining the withdrawal of the claim on the basis that the English courts were not the appropriate forum under the Recast Brussels Regulation.
- Representing the chair of a major UK political party in opposing an urgent application for an interim injunction and disclosure of information brought by a member challenging their deselection as a

candidate for the party in the European parliament elections.

- Representing a US company and its director in an action to undo the unlawful restoration and takeover of its English subsidiary and to seek a hostile rectification of the register in relation to the subsidiary under s1076 Companies Act 2006. This involved obtaining urgent injunctive relief to prevent shares in the subsidiary from being transferred away and intellectual property infringement.
- Representing a liquidator in obtaining an order under s236 Insolvency Act 1986 for the private examination of a company director, conducting the examination and subsequently acting in a successful application for relief in respect of undervalue transactions and preferences. This required obtaining a freezing order to prevent the director from disposing of his assets during the course of the proceedings, utilising the unambiguous impropriety exemption in order to rely on otherwise without prejudice communications evidencing dissipation.
- Advising a group of investors in an insolvent financial services group about potential claims against directors for fraudulent misstatement inducing lending of many millions of pounds.
- Acting for an e-learning company in an application to obtain an urgent injunction to preserve access to its computerised training platform and the information stored on it.
- Representing an individual who claims to have been defrauded in the course of purchasing several rare and collectable sports cars costing many millions of pounds.
- Representing an individual who was misadvised to invest his salary in an opaque offshore structure, claiming against the advisors who were party to the misappropriation of funds.
- Advising an international group about the prospect of obtaining injunctive relief and an expedited trial to prevent the breach of non-compete obligations in a franchising agreement.
- Obtaining a High Court injunction to freeze a sum of several hundred thousand pounds in a company's bank account to prevent one of its directors from misappropriating the money.

Commercial Litigation

Roger has acted in many commercial disputes involving breach of contract claims and other litigation arising from business relationships, often giving rise to jurisdiction issues:

- Acting for judgment creditors in *Moss v Martin* [2022] EWHC 3258 (Comm), in which the English court refused to stay enforcement of an English judgment debt pending the appeal in Texas of the judgment underlying it, an outcome subsequently upheld by the Court of Appeal
- Acting for the successful creditors in *Moss v Martin* [2022] EWHC 2788 (Comm), obtaining summary judgment for US\$12 million to enforce Texan civil judgments for fraud and for breach of a partnership agreement. The defendants' arguments that the Texan judgment had been obtained in breach of natural justice, and that they had not submitted to the Texan jurisdiction by virtue of s33(1)(c) Civil Judgments and Jurisdiction Act 1982 were dismissed.
- *Moss v Martin* [2022] EWHC 2385 (Comm), a decision concerning the basis and exercise of the court's jurisdiction to order the temporary confiscation of the defendants' passports in support of freezing orders.
- Acting for one of the parties in the *Arena* litigation, a dispute arising from the largest asset finance fraud conducted in the UK, with losses alleged to exceed £250 million.
- Representing the successful respondent in *Mahajna v London School of Business and Finance* [2020] EWHC 3717 (QB), a High Court appeal in which the appellant's allegations that the original judgment was tainted by serious procedural impropriety was dismissed. Leading Matthew Tonnard.
- *Hardy Exploration & Production (India) Inc v Government of India* [2018] EWHC 1916 (Comm). Advising the India Infrastructure Finance Company about attempts to enforce a £70 million Malaysian arbitration award by attaching it to payments due from the lender to the Government of India under a guarantee scheme.
- Acting for the directors of a company said to have been involved in the Spanish law equivalent of an

unlawful means conspiracy to breach intellectual property law. Successfully obtaining the withdrawal of the claim on the basis that the English courts were not the appropriate forum under the Recast Brussels Regulation.

- Advising a construction subcontractor in a contract dispute with the main contractor on a significant public sector contract, enabling the client to vindicate its rights in full.
- Acting for a Lithuanian sub-contractor in a dispute with a German main contractor concerning the insulation works in the construction of a landfill-to-energy plant in the Scottish lowlands.
- Representing an individual who claims to have been defrauded in the course of purchasing several rare and collectable sports cars costing many millions of pounds.
- Acting for an air charter company in order to recover unpaid charter fees.
- Advising a civil aviation engineering company in relation to a dispute with the administrators of an airline concerning allegations that part failure led to engine damage and consequential losses.
- Representing a company specialising in the disposal of industrial plant and machinery in a dispute arising from a joint venture to disassemble and auction the contents of a chilled deserts factory.
- Acting for an e-learning company in an application to obtain an urgent injunction to preserve access to its computerised training platform and the information stored on it.
- Advising an international group about the prospect of obtaining injunctive relief and an expedited trial to prevent the breach of non-compete obligations in a franchising agreement.
- Acting for connected offshore companies which invested in ground rent portfolios and the individual representatives of those companies in a dispute with their finance brokers concerning whether the threshold conditions for fees had been satisfied and the extent of restitutionary liability of the owners.
- In several cases, acting for auctioneers in order to recover unpaid auction fees.
- Acting for a corporate finance adviser in a claim for performance fees due to him after his advice was instrumental in enabling his client to obtain finance. The claim was brought both in contract and also as a *quantum meruit* claim in restitution.

FURTHER INFO

Publications

- “*Enforcing judgments against pension assets: a developing jurisdiction*”, Butterworths Journal of International Banking and Financial Law, March 2023
- “*Marex Financial Ltd v Sevilleja: a new look at reflective loss*”, Butterworths Journal of International Banking and Financial Law, September 2020.
- A review of “*The Law of Tracing in Commercial Transactions*” by Magda Raczynska, published in Butterworths Journal of International Banking and Financial Law, June 2019.
- “*Enforcing Judgments Against Pension Assets: Reappraising Blight v Brewster*”, Butterworths Journal of International Banking and Financial Law, January 2018.
- “*Mistaken Release of Security: a New Avenue to Altering the Land Register*”, Butterworths Journal of International Banking and Financial Law, November 2017.
- Articles for Lexis PSL on “*Inquiry into a bankrupt’s dealings and property (including by way of private examination) under section 366 of the Insolvency Act 1986*” and “*Inquiry into a company’s dealings (including by way of private examination) under section 236 of the Insolvency Act 1986*”, published first

in 2016.

- “*Bankers Take Note: How the Tracing Remedy has Become More Complex*”, Butterworths Journal of International Banking and Financial Law, December 2015.
- “*Freezing Orders and the Corporate Veil*”, Butterworths Journal of International Banking and Financial Law, October 2013.
- “*Treading on Eggshells: Mental Incapacity Issues in Bankruptcy*”, Recovery Magazine, December 2012.
- “*Open Justice at the FOS*”, Butterworths Journal of International Banking and Financial Law October 2012.
- “*Unlawful Loans to Company Directors and Constructive Trusts*”, Butterworths Journal of International Banking and Financial Law March 2012.
- “*The Bonfire of the Charities – Winding up Unregistered Entities*”, Insolvency Intelligence March 2011. Written with Derek Francis of Terra Firma Chambers.
- “*Insolvency and International Criminal Asset Recovery*”, Butterworths Journal of International Banking and Financial Law February 2011.
- “*Lindsay v O’Loughnane: Outflanking the Insolvency Process*”, Butterworths Journal of International Banking and Financial Law January 2011.
- “*Cross-Border Transaction Avoidance: Rubin v Eurofinance SA*”, Insolvency Intelligence November 2010. Written with Sharif Shivji of 4 Stone Buildings.

Professional Memberships

Roger is a member of the Chancery Bar Association, Commercial Bar Association and R3, the Association of Business Recovery Professionals.