

SUMMER EDITION

AUGUST 2022

Swift

The Online Turnaround Times



Improving your soft skills to win the big pitches



The IFT Academy goes from strength to strength



IFT Next welcomes Khalil Malik as new Co- Lead



Evelyn Partners joins as IFT Corporate Partner

Swift

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SUMMER '22

MESSAGE FROM THE CEO

Dear Members,

Welcome to our summer edition of *Swift*.

I'm pleased to say it's all-go for the IFT as we prepare for a busy schedule this autumn and beyond.

First, I'm delighted to say our annual National Conference will be taking place on September 9th at 11 Cavendish Square.

We're excited to welcome members, partners and associates *in-person* to the key conference in turnaround, restructuring and transformation.

This year, we will hear from leading sector experts addressing the challenging economic backdrop, geopolitical dynamics affecting business, women in turnaround as well as a range of panel discussions.



It's been an active phase for member recruitment, from independent members and corporate members alike. In July, we were delighted to welcome Evelyn Partners to the IFT - you can find out more on page 6.

It's also been an active phase for IFT Next, our initiative to support the next generation of turnaround talent. Our co-leads have been busy growing the network following successful launch events in the regions. Should you be interested in finding out more, look out for the IFT Next panel discussion at our conference which will focus on challenges for future turnaround leaders.

Into the autumn, we have a packed calendar of events, including webinars and in-person events in various regions. Building on a model pioneered by Simon Girling and our West and Wales Regional Committee, we will be holding a series of "Webinar+" events, which are detailed further on page 5.

Looking further ahead, we'll be celebrating the very best of turnaround at our Annual Awards in November - more information about submissions and deadlines can be found on page 2.

We have also started the fieldwork for our societal impact report, which conveys

the positive change created by IFT members.

Keeping to the theme of member insight, feedback we've received suggests the time is right to consolidate our messaging and ensure the brand represents the contribution of IFT members. With this in mind, we will be launching an extensive engagement process with the help of brand experts over the autumn and beyond. Our thanks go to those who have already contributed, and we look forward to working with the wider membership on this exciting area of work.

Kind Regards,
Milly Camley, IFT CEO

Swift IFT NEWS



Charlotte Hales joins IFT executive team



We're pleased to welcome Charlotte to the team as Administrative Executive. Charlotte joins us from Lower Richmond Properties Ltd and will provide support to our finance function and the wider executive team.

IFT National Conference

The key conference in turnaround, transformation and restructuring is back in person, at **No.11 Cavendish Square, London**. Speakers include:



Wolfango Piccoli
Co-Lead Teneo
Geo-Political
Risk Team



Victoria Kerton,
NatWest



**Mark Berrisford-
Smith**
HSBC



Donald Muir,
CEO, Travelex

Members – £295
Fellows - £225
Non-Members - £400
**Associate/
Bring a Friend - £350**
(EXL VAT)

The IFT Annual Awards submissions are now open!



Following requests for an extension to the submissions deadline, we have decided to extend the deadline to 17:00, Friday 19 August.

Award submissions can now be completed via an online form:

- For Individual and Firm Awards: Please click [HERE](#)
- For Company and Organisation Awards: Please click [HERE](#)

The judges are really looking forward to reviewing submissions.

The IFT welcomes Richard Obank and Rob Lewis as Fellows



Richard Obank is a senior restructuring lawyer with 35 years of experience and well-recognised within the UK restructuring market and wider business community. He has featured regularly in Legal 500 and Chambers Directory as a leading individual. Richard has extensive

experience acting for a variety of stakeholders, predominantly in the areas of distressed M&A, debt and capital restructuring, corporate reorganisation and workouts. He specialises in advising company board of directors who are experiencing financial distress and regularly acts for PE sponsors seeking to restructure portfolio companies.



Rob Lewis has worked in the restructuring arena for over 30 years, advising board of directors, lenders and other stakeholders. His experience includes working with listed and private companies as well as organisations in the public sector.

As a partner lead for engagement, Rob works extensively with independents, including many IFT members in placing experts into client projects, and providing continuing professional development, particularly on technical matters and allied business trends.



Robert Albert Walker

BSc (Hons) Financial Services
FCIB, MIFT

(29 August 1965 - 3 June 2022)

It is with great sadness that we announce the recent passing of Robert Albert Walker on 3rd June 2022.

A valued and supportive member of the IFT, Robert worked for Lloyds Banking Group for 37 years before retiring in 2020. His varied career entailed working in relationship management, credit sanctioning and turnaround management.

During his time with Lloyds, he became an acknowledged specialist in the field of further education, enjoying a long affiliation with the London Institute of Banking and Finance as a tutor, consultant, and latterly Chief Examiner of Corporate and Commercial Lending module. When Robert wasn't dedicating time to bringing along the next generation in banking, he could be found supporting charities and voluntary organisations. This included a year at Business in the Community and, most notably, the British Legion – a charity that held a special place in his heart.

His funeral, held at an at-capacity York Crematorium on the 27th of June was attended by friends and family who spoke of his devotion to them, his warm, generous, and gregarious spirit, his love of all things Yorkshire (including his infamous Yorkshire puddings) as well as his interests in sport, the theatre and good wine. Robert is survived by his wife Lesley and his two daughters Helena and Bethan.

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IFT NEXT

IFT Next is our professional network bringing together leading advisory, banking, legal and investment professionals active in the marketplace. IFT Next provides those who have identified turnaround as a career path the opportunity to build their profile and connect with senior leaders, and is also suitable for those taking their first steps into independent advisory.

It's been a busy time for IFT Next, with successful launch events in London, Leeds, Manchester, Birmingham and Bristol, a packed social calendar, as well as our recently introduced lunchtime learning sessions - a series of webinars featuring senior turnaround leaders, chaired by an IFT Next member.



We've already had expert sessions from a range of wonderful presenters including (but not limited to): Richard Farr of Cardano Advisory, Robert Griffiths of Latrig Consulting Ltd, Susan Blum of Susan M. Blum, John Playfair of Playfair Partnerships as well as Benji Dymant and Paul Keddie of Teneo and Macfarlanes LLP respectively. Topics include pitching to clients, making the most of teamwork, best approaches to family business assignments, as well as legal cases most pertinent to turnaround.

IFT Next welcomes Khalil Malik as Co-Lead



Khalil Malik is a Manager with Teneo Financial Advisory in Newcastle, having joined Teneo as part of its purchase of Deloitte's restructuring business. Khalil has experience in working on both insolvency and advisory engagements, focussing on turnaround and restructuring.

IFT Academy Module Programme - #2



The IFT Academy completed its second module in May, with participants exploring the history, craftsmanship, and production line of

of Morgan, followed by a tour of the Jaguar Land Rover factory. These tours were followed by discussions focussed on the challenges for the automotive sector, turnaround plans, cost structures and reward. The Academy also heard from Charles McLeod of McLeod partnerships and IFT Independent member, Lee Swinerd of Interpath Advisory and Huw Dolphin of DLA Piper.



September 2022

Member meetings and webinars are included in memberships and corporate partnerships and a separate IFT Next events bulletin is sent to members of the IFT Next programme.

To register for any of the events shown here, please email info@the-ift.com

Lunchtime Learning: Collections and Cash Management with Glen Morgan of Credent

- Date/Time: 6th September - 12:15 - 13:00
- This is a webinar over Zoom
- Open to IFT Next

IFT National Conference - Only a few tickets remaining

- Date/Time: 9th September - 08:45 - 16:00
- No.11 Cavendish Square, London
- Open to all IFT Members, Corporate Partners, IFT Next and stakeholders

Joint IFT & R3 Event

- Date/Time: 12th September - 17:45 - 20:00
- EY Birmingham
- Open to IFT Members and Corporate Partners and R3 Members

Automotive Outlook with Lee Swinerd of Interpath Advisory

- Date/Time: 15th September - 08:00 - 09:00
- This is a webinar over Zoom
- Open to all IFT Members, Corporate Partners and IFT Next

Me, You and Moving Mountains

- Understanding the power of a turnaround mindset with Martin Hibbert, Manchester Arena bomb survivor
- Date/Time: 7th September - 18.00 - 20.00
- Gateley Leeds
- Open to IFT Members, Corporate Partners & IFT Next

Our events programme, bringing together the best of turnaround via a mixture of in-person and hybrid events continues to go from strength to strength. We're working with our fantastic committees to plan more events in the regions, including our **Webinar+**. Webinar+ offers the opportunity to attend an in-person viewing of a webinar, followed by a discussion and networking.

If you are interested in attending any of the events listed below, please contact events@the-ift.com

Looking Ahead

Lunchtime Learning: Leadership in Turnaround with Caroline Gourlay

- Date/Time: 21st September - 12:15 - 13:00
- This is a webinar over Zoom
- Open to IFT Next

Social Mobility & Inclusion: Panel Discussion - in association with the IFT Women's Network

- Date/Time: 3rd October - 18:00 - 20:30
- FTI, London
- Open to all IFT Members, Corporate Partners and IFT Next

Storytelling to Create Followership Webinar with Kate Forrest of t-three

- Date/Time: 18th October - 08:00 - 09:00
- This is a webinar over Zoom
- Open to all IFT Members, Corporate Partners and IFT Next

International Debt Recovery with CCICM & DLA Piper

- Date/Time: 31st October 18:00 - 20:00
- DLA Piper London
- Open to all IFT Members and Corporate Partners

Inclusive Leadership Webinar with Kate Forrest of t-three, in association with the IFT Women's Network

- Date/Time: 10th November - 08:00 - 09:00
- This is a webinar over Zoom
- Open to IFT Members, Corporate Partners and IFT Next

Real Estate Update with Jim Tucker of Interpath and IFT Independent Member Mark Bayley

- Date/Time: 7th December
- Interpath London
- Open to all IFT Members and Corporate Partners

CORPORATE PARTNER NEWS

evelyn
PARTNERS

A warm welcome to new IFT
Corporate Partner

Evelyn Partners

Evelyn Partners are the UK's leading integrated wealth management and professional services group with a network of offices in the UK, as well as the Republic of Ireland and the Channel Islands. Their purpose is to 'place the power of good advice into more hands'.

Claire Burden, who leads Advisory Consulting for the UK, said "We are incredibly excited to be joining the IFT as a Corporate Partner. Given the current economic climate, turnaround is more important than ever as we work to support businesses early to ensure they are rescued.

The IFT is a badge of honour for us turnaround professionals - signifying experience and professionalism combined with urgency and action".



IFT WOMEN'S NETWORK

Our inaugural Women in Turnaround (WiT) dinner back in March, with Heather Melville, OBE CCMI of Ridgeway and WiT lead Kelly Jones, Transformation Director at Kingsgate was a great success, and we're excited to announce further events in the calendar as **we continue to celebrate the the brilliant women from across the turnaround, transformation and restructuring community:**

- **Our next dinner, kindly sponsored by PwC**, will take place at the Hotel du Vin Birmingham on Wednesday 28th September. Further details will be announced in due course.
- We will be holding an **open event** that will be open to all in the turnaround community, comprising a panel discussion and networking event at FTI Consulting in London on 3rd October, exploring the 'S' in ESG, particularly in terms of social mobility and diverse perspectives in business. The panel will be chaired by our Women in Turnaround lead, Kelly Jones, as well as:
 - Parmesh Rajani, Kingfisher Plc - Parmesh, Chair of Kingfisher Race & Culture network, will provide a lived experience on tackling this challenge.
 - Lorraine Langham, Chief Executive of Future First - We'll also hear from Future First, a charitable organisation working in this space.

We were delighted with the energy, discussions and connections made as a result of our first dinner, and we look forward to what's next for the network.



FEVER PITCH

Struggling with your success rate in selling conversations? Read on to find out about 'Fever Pitch' - a simple sales conversation process developed by IFT Fellow Richard Farr, Managing Director at Cardano Advisory, focussing on the soft skills required to improve conversion rates to circa 75%...

If you type in 'improving pitch conversion rate' into Google, you'll be met with a seemingly endless stream of advice, techniques, and counselling. Although designed with the best of intentions in mind, there is a risk wading through it could have a counterproductive, confusing effect, and the material is often left on the bookshelf or folder and never referred to again.

What's worse, you'll lose sight of what's important. Selling isn't all about selling.

It's about a state of mind. It's about being yourself in twenty minutes.

Timing is Everything

Why twenty minutes?

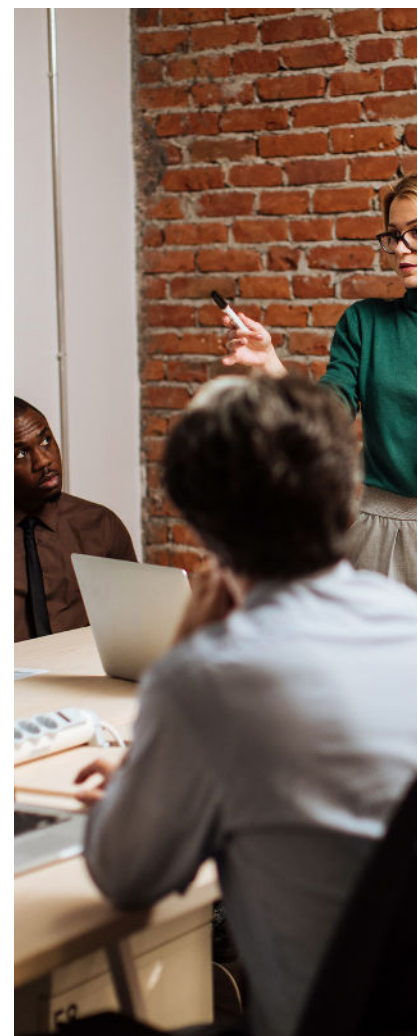
In a selling conversation scenario, you'll be given the benefit of the doubt for the first few minutes but ultimately, you only have a certain window of (often polite) interest or opportunity to connect.

The audience that you will need to impress will be on a spectrum – ranging from the detail-orientated guru in their field who looks at their shoes more than yours, all the way through to those who use gut feel to make choices and to hell with the detail.

But, of course, where are you on the Spectrum also? You must use a combination of effective timing and emotional intelligence to establish a personal connection with a view to ascertaining where your client sits on this Spectrum. The sooner you've found it, and connected, the sooner you can show who you really are.

The DNA Helix

Proceeding with an effective DNA helix is critical to keep your client engaged as you seek to connect and then build to the crescendo of your "pitch". So, what is the DNA Helix?



Title: What does the title slide say? This slide will often get left on a desk or waiting on the screen, as you engage in pleasantries or typical Teams /Zoom chat (“what is that on your wall?”). As such, it is the slide that gets the most airtime – so invest time in its conception. It is an opportunity to reflect the key part of your passion to keep the client intrigued. Never use “Introduction to...”!

CV: This isn't just to tell the client who you are. You can use your CV as a hook to get your client to tell you who they are, and to get them talking about themselves. This is a good opportunity to get onto the Indifference Curve.

Agenda: Pressure, politics and timing issues all impact the sales conversation and as such, impact the agenda. It's vital to re-affirm the agenda and ensure it's still correct as their situation evolves (not least in a competitive pitch process).

Key Messages: Tell your client why you're there (“I'm going to tell that/why/who...”). Watch for any reaction – blank/surprise/indifference/alertness.

Background & Issues: Offering your experience is a great way to ensure you and your client are still on the same page in identifying the issues – get them to at least nod their heads in empathy.

Offer Free Advice: You're not the only person in town pitching to the client. If your client hasn't heard your advice before, you can zero in on this. If they have, at least you've confirmed the opposition is as good as you. (“Everyone will/should have told you this, and we are no exception...”)

At every point in the conversation think about how you can use each component of the DNA helix to get your client talking. Once you get them talking, you've connected personally and you're on your way to a successful conversion.



The Killer Slide

Having effectively delivered each component of the helix, you're now ready to build to the crescendo of your conversation, and the most crucial and excitable slide. If you can't finally get a reaction here, then you've failed. After all, if you can't get excited about your killer points, why should they?

This slide can even be one killer point that differentiates you – why would the client employ you compared to your competition? Ideally 3 or 4 killer points to allow flexibility in reaction.

Once you've delivered the killer slide you must re-affirm the key messages. Throughout the DNA helix, you've been building to re-delivery of these key messages – so now be passionate about why you're there.

Then you must look for the reaction. You have now shot your bolt so even if it's a negative reaction, you can ask the client why what you've said won't help them arrive at their solution and have a last-ditch rescue conversation in those last few minutes (even as you walk to the door).

Think: you may have missed the (evolving) brief and you have one last chance to sell (again!).

So, what are the 10 Commandments of Fever Pitch?

1. They are only killer points if you understand the client issues (How well do you know them?)
2. If you do nothing else, plan (and confirm the agenda). Try and expand the agenda to match your killer points
3. You were given two ears and a mouth for a reason – get them talking as soon as possible.
4. Pick the winning team (who will play the leader, sector expert, and (even) project manager) and make sure each has a speaking part
5. If you can't find their pain, no gain – keep looking and re-affirming.
6. Know thy enemies – once, twice, thrice be warned. There are 3 ways to lose a sell – to a competitor, the client doing nothing or a client doing it themselves. Does your pitch cover all scenarios?
7. Everybody likes a good experience story – you must litter the sales conversation with real life examples of you doing your job.
8. Rehearse, rehearse – the more for the bigger opportunities.
9. Take forward next steps like you mean it – Asking the client what needs to happen before the relationship begins is key. Watch out for acceptance or reluctance – if you sense reluctance, push for why this is the case – what else have you got to lose?
10. Independent feedback is the only way to learn and improve. Make sure you ask the right questions!

Next Steps?

So, go out and fail! But get feedback as to why and go again, and again...

Channel your inner Malcolm Gladwell, after all there are 10,000 reasons...

The Cardano logo consists of the word "cardano" in a white, lowercase, sans-serif font, set against a dark blue rectangular background.

Richard Farr, is a Fellow of the IFT and Managing Director at Cardano - specialists in covenant and related advisory services for defined benefit pension schemes.

DON'T GET LOST LIVING IN THE CLOUDS

Matt Ward of Softcat Plc talks to the IFT about the value of cost control across your entire IT estate

The age of the local server and on prem solutions is over. The rise of cloud technology is enabling organisations of all types to make technology choices on their own terms. Enhanced security, increased collaboration amongst your team and even a significant carbon footprint reduction awaits those who make the choice to live amongst the clouds.

It's no surprise then that Gartner are forecasting worldwide public cloud spending to reach nearly \$350 billion in 2022, but managing the transition from on prem license models to cloud based licenses and usage models is riddled with complexity and it's the vendors who have the upperhand.



According to our data, some 30%+ of cloud spend is wasted, 81% of organisations indicated security in the cloud is a challenge, 55% of organisations struggle with the cost implications of cloud software licenses and 75% of businesses lack the resource and/or expertise to manage and remain compliant in the cloud. This is because licensing cloud technology is increasingly more complex due to various cloud subscription models; managing it now extends beyond just users and devices. It requires knowledgeable people, aligned to the right processes using a fit for purpose toolset.

With a landscape that is moving so fast it is virtually impossible for any SME (and most large corporations) to manage the breadth of knowledge required without external support. The solution though is relatively simple – engage external expertise based upon % of savings made against current cost base.

Establishing governance processes that lead to controlled operational expenditure is therefore critical. In many cases, we see a “disruption gap” between IT, procurement, and the business, leading to annual software spending spiralling out of control – the long tail of software applications, licenses, users and devolved responsibility across multiple departments in reality means most businesses have no real idea as to what their actual software spend is.

It can be hard to keep track of and manage a large IT estate, which often comprises thousands of devices in larger organisations. Added to this, in a rush to realise the obvious promise of cloud technology, many organisations have rushed to compete with others, sometimes prioritising end-user experiences over operational expenditure.

In many cases, our expertise has helped deliver huge savings and kept a lid on runaway costs. It's therefore vital you have insight into how to best manage your cloud environment, so it enhances instead of costs your organisation.

At home, we wouldn't leave the lights and heating on 24/7 – so why are we doing it with cloud spend?



Matt Ward is a Software Asset Management (SAM) professional with over 25 years' experience in the channel, and started the Software Asset Management at Softcat plc in 2005.

FINANCIAL PRESSURES IN THE CARE HOME SECTOR

Philip Dakin, Managing Director at Kroll Advisory explains the financial challenges facing the care home sector

Avoiding permanent care home placement could be viewed as a means of delaying dependency as well as the ability of local health and social care services working together to reduce avoidable admissions. But when measuring quality, care home admission levels are a blunt tool, as this is also an indicator of a lack of decent affordable provision.

Overall, the number of council-supported admissions has decreased over time but given the lack of reliable data on home care, this could indicate a fall in social care provision. But we have an ageing population, so do we have an increasing level of unmet need, and what impact is this having on care home providers and their finance?

Reduced admissions

We need to start any discussion on the sector by looking at the stark reality of what happened to admissions before and during the pandemic for the reason this lies at the heart of the challenge the sector faces. According to The Nuffield Trust, the rate of admissions gradually declined from 659 per 100,000 people in 2014/15 to 584 per 100,000 in 2019/20. This was then followed by a fall to 498 per 100,000 in 2020/21. This represents a 24% drop between 2014 and 2021[1].



Prior to the outbreak, many providers were operating with incredibly tight margins. Any reduction in patient numbers was going to have a dramatic effect at a time when care homes were seeing additional cost pressures associated with personal protection equipment (PPE), staff sickness and costly agency staff.

The UK Government launched an “infection control fund” to offset the additional costs incurred by service providers, and this was subsequently topped up with an additional £546 million and extended through to March 2021[2].

The government also launched a £1.75 billion fund to pay isolating staff[3]. Both have now ended, and while it was considered welcome news for the sector at the time, it did not address the lower occupancy levels that underpin financial viability.

Staffing pressures

The financial pressures facing care home providers are also having a serious impact on care homes’ ability to recruit and retain staff.

Pay and conditions are undoubtedly playing a role, with many established care home workers leaving the sector in search of better pay and less stress. Overall, the social care sector had a staff turnover rate of 28.5% in 2021, which is well above the national average of around 15%, according to Ceridian.

Along with difficulties recruiting new staff, which have been exacerbated by Brexit, there is a shortage of around 170,000 care home staff nationwide[4], according to the National Care Association. In addition, with the rise in the national minimum wage and the rise in national insurance combined with the continued necessity to use agency staff, the pressure on margins has continued apace as care home providers scramble to meet regulatory standards.

Inflation begins to bite

With the sector already facing longstanding financial pressures, a precarious and narrow provider market, an undervalued workforce and increasing workforce shortages, inflation is now magnifying these issues. From energy to food, from wages to IT and infrastructure costs, prices are increasing, adding to even greater financial pressures on providers.

There is no doubt that the operating environment for care homeowners is challenging, but it is possible to protect the business if you act quickly to assess available funding options to mitigate any funding requirements as well as more formal restructuring options should that be necessary.



Philip Dakin is a managing director in Kroll's Restructuring practice.



[1] <https://www.nuffieldtrust.org.uk/public/resource/admissions-to-care-homes#background>

[2] <https://www.gov.uk/government/publications/adult-social-care-infection-control-fund-round-2>

[3] <https://www.gov.uk/government/publications/adult-social-care-infection-control-and-testing-fund-round-3/adult-social-care-infection-control-and-testing-fund-round-3-guidance>

[4] <https://www.theguardian.com/society/2021/sep/04/care-workers-in-england-leaving-for-amazon-and-other-better-paid-jobs>

PENSIONS SCHEME ACT 2021 - WHY IS IT IMPORTANT?

Nick Agius of Cardano Advisory details what you need to know about the Pension Scheme Act 2021

Since its introduction late last year, the Pension Schemes Act 2021 (“PSA21”) has brought about a renewed focus on insolvency analysis. It is now being used to test corporate events, across a broad landscape of corporate activity, not just in distressed situations.

As contradictory as it may sound, in practice insolvency analysis can support solvent transactions and remove obstacles to getting the deal done. It creates a focal point for negotiation with stakeholders, whether for the corporate, shareholders, lenders, Defined Benefit (“DB”) scheme trustees, the Pensions Regulator (“TPR”), or the Pension Protection Fund (“PPF”).

Why is this the case? The new Contribution Notice (“CN”) tests introduced by PSA21 formalise in legislation how we should think about corporate transactions involving DB pension schemes. In particular, the Employer Insolvency Test addresses an act or failure to act that “would have materially reduced the amount of the section 75 debt, likely to be recovered by the scheme”. This will involve quantifying the impact that corporate activity, such as debt refinancing, M&A activity, or a tax restructuring, may have on the recovery made by a DB pension scheme in a downside scenario.

As a result, estimating the potential recovery to a DB pension scheme if its sponsor faces distress is now an essential tool in understanding the DB pension scheme’s position and resulting risks. Any reduction in the DB pension scheme’s estimated recovery (compared with its section 75 debt) should then be used to inform mitigation negotiations and influence strategic decision making. Failure to appropriately take into account such considerations can expose stakeholders to regulatory action.

However, this can often be a complex and challenging process, requiring numerous key assumptions and experience of how such a scenario could play out in practice. Early experience has identified:

- Ways in which the DB pension scheme creditor can differ from other creditors e.g. complex last man standing / asset backed funding structures;
- Anomalies that an insolvency analysis of a solvent entity can throw up e.g. in the treatment of cash and cash equivalents - where there may be emerging standard practice, and;
- A necessity for entity priority modelling capabilities (and how appropriately to short circuit them in the interest of time and cost).



Approaches and assumptions may therefore be interpreted in many ways and be open to future challenge, with the benefit of hindsight. On a positive note, a robust analysis can reduce regulatory risk and facilitate transactions.

This can become particularly challenging where corporates are in the ‘zone of distress’ and there is implicit tension between the PSA21 and the Insolvency Act 1986 (“IA86”).

Due to recent Government policy and market conditions this is an emerging issue, but it will make the role of directors and professional advisors all the more challenging as we inevitably enter the next wave of restructuring activity.

PSA21 sets out that an act or failure to act that is deemed materially detrimental to the DB pension scheme (under the insolvency and or resources tests) can result in civil and criminal prosecution, whilst IA86 provides that in the event the company's directors have continued to trade when: "...they knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation..." ("Wrongful trading"), then they could also face civil prosecution.

On one hand, filing for insolvency too early and not considering the alternatives, could be deemed to be materially detrimental to the DB pension scheme under PSA21. On the other, continuing to trade while finding alternative solutions may expose the directors to risk of Wrongful trading under IA86.



The heightened tension arising from this could result in both an increase in the rate of formal insolvency proceedings, rather than more risky consensual solutions that might be said to prejudice DB pension schemes, and in stakeholders supporting the DB pension scheme survival, particularly where DB pension schemes are relatively well funded, as in the recent case of McColls.

Often s75 deficits can be too material in the context of a transaction to transfer across to a buyer. Cases like Silentnight have shown that there is a realistic risk of this, which could have grave consequences post PSA21.

TPR's case in Silentnight, was that the debt holder exerted its influence to create a 'burning platform' and cause an unnecessary insolvency. The same financial stakeholder allegedly also used its influence to manipulate the sales process. This raised considerations such as influence, control, viability of alternatives and conflicts of interest.

To avoid inadvertently breaching the new CN tests, (and where applicable, Wrongful trading), it is therefore necessary to assess options; understand the DB pension scheme dynamics as early as possible; prepare for corporate events and treat the DB pension scheme as one of the key stakeholders; ensure that there is adequate engagement with the trustees, TPR and, where relevant, the PPF; document key decisions and considerations; and, when necessary, obtain clearance from TPR.

Whilst this approach is necessary to ensure robust analysis and decision making by directors and professional advisors, it is also welcomed by trustees, as it brings more clarity and engagement with other stakeholders. It will also help other key stakeholders, obtain greater transparency and certainty around pension risks, which can then be adequately structured and priced into transactions.



Nick Agius Director at Cardano Advisory - specialists in covenant and related advisory services for defined benefit pension schemes.

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