THE PROFESSIONAL RESTRUCTURING OF CORPORATE RESCUE: COMPANY VOLUNTARY ARRANGEMENTS AND THE LONDON APPROACH

JOHN FLOOD

ROBERT ABBEY

ELENI SKORDAKI

PAUL ABER

RESEARCH REPORT

45

The Chartered Association of Certified Accountants

The Professional Restructuring of Corporate Rescue: Company Voluntary Arrangements and the London Approach

by

John Flood
University of Westminster/Vizards Reader in Law
University of Westminster

Robert Abbey
Associate Head of School of Law
University of Westminster

Eleni Skordaki
Head of Research
ACCA Research Unit

Paul Aber
Senior Lecturer in Business Law
University of Westminster

Certified Accountants Educational Trust, London 1995

The Council of the Chartered Association of Certified Accountants and the members of the Research Sub-Committee consider this study to be a worthwhile contribution to discussion **but do not necessarily share the views expressed, which are those of the authors alone.** No responsibility for loss occasioned to any person acting or refraining from acting as a result of any material in this publication can be accepted by the authors or publisher. Published by Certified Accountants Educational Trust for the Chartered Association of Certified Accountants, 29, Lincoln's Inn Fields, London WC2A 3EE.

ACKNOWLEDGEMENTS

We are grateful to the ACCA Research Committee for their financial support during the project. We would also like to thank the professionals who talked to us about their practices. Their help was invaluable. We would like to mention Mark Goldstein of MGA, especially. A number of firms shared their data on corporate rescue with us and the Insolvency Service thoughtfully deluged us with paper. Janet Butwell of the ICAEW, formerly of the Insolvency Service, pointed us in interesting directions. Avis Whyte gave us valuable research assistance at the later stages of the research. An earlier version was presented at the Law & Society Association Meeting in Toronto, June 1995. Finally, we thank various colleagues who have commented on earlier versions: and Deirdre Boden who gave us unpublished papers.

© Chartered Association of Certified Accountants 1995
ISBN 1 898291 83 7

CONTENTS

Executive Summary ... i

1 Introduction ... 1

2 Theoretical Framework ... 3

3 The Dramatis Personae of Corporate Rescue ... 7

4 An Anatomy of the Corporate Voluntary Arrangement ... 9

Case 1: A small company CVA ... 10
Case 2: A CVA within a CVA ... 12
Case 3: Turning an administration into a CVA ... 14

5 How Do Company Voluntary Arrangements Work? ... 17

6 The London Approach ... 27

7 Conclusion ... 35

Appendix 1 Biography of a Research Project ... 39

Appendix 2 The Legal Background of Corporate Rescue ... 43

a) The nature of the CVA
b) CVAs and schemes of arrangement
c) CVAs and liquidations
d) CVAs and administration orders
e) Instigation and approval of insolvency procedures
f) Approval of CVA proposals
g) Operation of CVAs once approved
h) Moratorium
i) Role of insolvency practitioner as nominee and superviser

Notes ... 49

References ... 53

Printed on Paper Manufactured from Chlorine Free Pulp

EXECUTIVE SUMMARY

Company voluntary arrangements (CVAs) were introduced by the Insolvency Act 1986 and are a mechanism by which the directors of a company and its creditors can attempt to work together to rescue the struggling business. For smaller companies, which are more prone to failure during recession, CVAs' entry into the statute book represented a desperately needed strategy of rescue. Large corporations already possessed their own version of "super-CVA", known as the London Approach, though one without any statutory backing or formal rules.

The main aims of this study are threefold: first, to examine how the two processes, the CVA and the London Approach, operate in practice; second, to identify under each system the main benefits and problems facing troubled companies and the practitioners charged with the task of rescuing them; third, to analyse the implications of existing procedures for the survival of small companies.

Our study shows that the practitioners engaged in these two corporate rescue schemes are not a homogenous group. Professional practice in general has been described as divided into two separate hemispheres: that of personal plight work and of corporate practice. For accountants operating in the personal plight hemisphere the main client is the small business, in most cases, owner-managed. On the other hand, the corporate hemisphere accountants, most notably found in the Big Six firms, aim their services at the largest corporations.

The respective characteristics and interests of these hemispheres inevitably affect the approach of practitioners to different modes of corporate rescue. While the CVA is commoner in the personal plight hemisphere, the London Approach is reserved for the use of those practitioners operating within the corporate hemisphere.

The CVA in Practice

Compared to receiverships and liquidations the use of CVAs is pitifully low. Most CVAs are put together by a small number of insolvency practitioners (IPs) who specialise in this field. Their first step is to examine whether the conditions exist for a successful CVA. The essential elements are: a good management team, a company's capacity to retain profitability, and finally, adequate funding. The different stages involved in a CVA include the proposal stage, which is characterised by intense IP involvement, the stage of securing

creditors' approval, where the IP's communication skills come to the fore, and finally the supervision of the CVA which grants the IP great symbolic, but very little real, power. The only weapon available is the threat to resign, essentially a once-only option. In some cases, it becomes necessary to set up a CVA within a CVA because creditors impose impossible demands for predictions of future trading and the first proposals are not always correct. Part of the supervisor's role then is to spot potential venture capital.

Overall, specialists admit that the CVA is not an easy instrument to use. There are hazards and difficulties, chief among them is learning to communicate effectively with all classes of creditors. Communication is a recurrent theme of putting the proposal together and it is vital in establishing trust and limiting risk. Success in CVAs is variable, and because of the relatively small size of businesses involved, it is difficult to attract venture capital.

The London Approach in Practice

The London Approach, which can be traced back to the recession of the mid-1970s, has no formal status in law, nor does it constitute a set of rules. It is an informal arrangement originally brokered by the Bank of England, a set of principles aiming to provide a flexible framework whereby banks can continue to extend support to companies in financial difficulty, including the provision of additional short term liquidity. Since the late 1980s the Bank of England has been involved in about 150 such workouts.

The London Approach is appropriate only for large companies that have borrowed vast sums. One main reason is that it is expensive to implement. A successful workout can cost £6 million over its life and it is possible for a company to remain under bank control for up to ten years. But one main advantage is that there is absolutely no publicity around it.

While the weaknesses of this scheme have been recognised, eg, there must be unanimous support from the company's bankers before it can go ahead and during discussions the company remains exposed to creditor demands, on the whole, bankers strongly oppose the thought of defining the London Approach in statute. Its genius is seen to lie in the informality and flexibility with which it can be moulded and shaped to each individual case.

Implications for the Rescue of Small Companies

While very large corporations can benefit from the flexible, informal, and discreet London Approach, smaller companies must rely on statutory provisions such as the CVA to enable them to ride out their financial problems. Yet, as statistics show, the norm for smaller companies in trouble is demise rather than rescue. A theme constantly reiterated in the course of our study was the lack of knowledge about CVAs from all quarters. However beyond the pressing need to educate the corporate world about CVAs, it is vital to

understand the obstacles that stand in the way of wider use and acceptance. Our study identified economic, social and moral factors.

Economic

The idea of rescue entertains a higher degree of risk for IPs because the possibility of failure is ever present and the world of insolvency is extremely competitive. By comparison, other procedures entail minimal risks and build on the established pattern of relationships between IPs and the banks. Also, CVA fees are low in comparison to receiverships and administrations. Finally, evidence on the benefits of reorganization versus business disposal remains inconclusive.

Social

In the two hemispheres model of the professions it is rare that the two sides will interact. They produce their own cultures and ideologies. In the London Approach there is an established culture that knows how to tackle risk and create trust. Similarly, in the niche market of CVAs the smaller firms know their rules. But the two cultures are so far apart as to be unbridgeable, although some of their values may be held in common.

Moral

The entire notion of insolvency is stigmatized and is irrevocably tied into the concept of failure. Because directors' conduct is brought into question it becomes difficult to create the conditions for a successful workout. This is more of a problem when it comes to small companies with big creditors distrusting what they see as inept and inexperienced directors. It is in this arena that the IP who is promoting the CVA must create a situation of trust through his integrity.

The role the insolvency profession can play in promoting a rescue culture is of vital importance. However, a massive cultural change will have to take place — based on education and values — before the profession comes to perceive the notion of rescue as the norm, rather than the exception.

1. INTRODUCTION

Since 1980 business failures in England and Wales have risen dramatically from 10,000 to a "peak" of 51,957 in 1992 (Times 1994: 21). And even though there has been a fall in the last two years to 40,255, Dun & Bradstreet still commented, "When the recovery first began, its impact was felt mainly by the medium size to larger businesses. Small businesses continued to feel the brunt of the recession" (Times 1994: 21). Yet small businesses have suffered a double fault: on the one hand they are more prone to failure, on the other they have lacked a range of strategies to cope with their rescue. In the mid-1980s the Government introduced measures to alleviate some of the burdens of small businesses.

Corporate or company voluntary arrangements (CVAs) were introduced by the Insolvency Act 1986.[1] (See Appendix 2 for the statutory background to CVAs.) They were designed as a shortstop to insolvency.[2] Instead of plunging a company into receivership or liquidation, there would be an attempt by the directors of a company and its creditors to work together to rescue the company and ensure its ability to continue trading. CVAs would help small companies ride out the rough times of recession and business difficulties, so the theory had it. CVAs would also preserve the company from the extravagant expense of administration orders, even though these do occasionally give rise to CVAs, and court interference. Large companies already possessed their own version, a kind of "super-CVA", though one without any statutory backing. The London Approach, as it is known, is an informal arrangement originally brokered by the Bank of England and constitutes a club in which every player knows the etiquette and abides by it. For the small company, however, the rules have always been subject to change and reinterpretation, often at the expense of the wellbeing of the company. Small companies never had the clout, unlike large companies, to resist the predatory moves of creditors.

Perhaps the most conspicuous thing about CVAs is how few there are, in practice, compared to other insolvency devices under the 1986 Act. Unfortunately, no accurate data exist for reconstructions under the London Approach, so we are unable to present any. Table 1 on page two shows the growth in statutory insolvency devices since 1986.

Table 1. Insolvency Statistics for England & Wales 1987 - 1994

	1987	1988	1989	1990	1991	1992	1993	1994
Liquidations**	11,439	9,427	10,456	15,051	21,827	24,424	20,708	16,728
Administrations	131	198	135	211	206	179	112	159
Receiverships	1,971	1,384	1,507	3,972	5,734	5,104	3,226	2,107
CVAs	21	47	43	58	137	76	134	264

Key: ** includes compulsory and creditors' voluntary liquidations
Sources: DTI statistics and Insolvency Bulletin

Compared to receiverships and liquidations the use of CVAs is pitifully low. In our research we have identified a number of factors that explain this low number. They are economic, social and moral. No single factor is sufficient to explain the phenomenon here; it is essential to view them in combination. In order to interpret these factors fully we have constructed a theory of the collective management of uncertainty, which is laid out in full below. We argue that it will be difficult, given the present composition of the accounting and legal professions for a new, more responsive regime of corporate rescue for small businesses to develop, whereas large firms benefit from the extraordinary flexibility of the London Approach. Institutional forces in the professions and government departments have built up over time that have made attitudes to insolvency difficult to reinterpret. Whilst one finds a few isolated figures prepared to boost devices like CVAs, they remain in a professional minority. A massive cultural change will have to take place — based on education and values — before the insolvency profession will accept the notion of rescue as a norm (Miller and Power 1995: 74).

Our report is structured as follows: firstly, we establish our theoretical framework; secondly, we set out the main players in corporate rescue; thirdly, we analyze the structure of CVAs, explaining how they are set up; and fourthly, we discuss the players' attitudes to corporate rescue, looking in part to methods used in other jurisdictions, particularly the United States; fifthly, we examine the London Approach and contrast it with the CVA; and, finally, in Appendixes 1 and 2, we give the background to the project, explaining how it took its final shape, and set out the statutory background to the CVA.

2. THEORETICAL FRAMEWORK

In devising the original plan for this project we were initially concerned with the quantitative aspects of the study (see Appendix 1). The project was seen as exploratory and essentially descriptive. As it has mutated into its present form, the collecting and analyzing of our data have compelled us into taking a broader theoretical view, one which enables us to place the study in a sociological context. We therefore relied on Glaser and Strauss's idea of grounded theory (1967). In this idea data collection and analysis are carried out together enabling the analyst to construct a theoretical framework that emerges from the study rather than being imposed on it *a priori*. We believe that our theory provides a context for the analysis of many concerns relating to problems of corporate rescue.

There are three important legs to our theory: they are the notions of risk, trust, and uncertainty. And we are especially concerned with the theory of the collective management of uncertainty in situations of great risk. This aspect of the theory derives from earlier work undertaken by Flood (1991) who examined face-to-face interaction between American attorneys and their corporate clients. In that study Flood argued, based on work by Fox (1957, 1959) who researched the training trajectories of medical students, that "the central role business lawyers play is in *managing uncertainty* both for themselves and for their clients" (1991: 42-3). Fox had shown how young doctors went through stages whereby as they gained their initial knowledge their certainty about how the medical world functioned increased. By the student's third year of medical school, "He....adopts a *manner* of certitude, for he has come to realize that it may be important for to 'act like a savant' even when he does not actually feel sure" (Fox 1957: 227). Yet this feeling is temporary, for as soon as the tyro has sole care of patients she or he is pitched back into the maw of uncertainty.

Between doctors and lawyers and, by extension, accountants there is a fundamental difference that raises the stakes for the latter two groups. Training in medicine is a constant mingling of theory and practice whereas in law and accounting there is a sharp disjunction between educational theory and the world of practice. The medical school combines the world of practice with education. Law and accounting teach their acolytes a body of knowledge and then thrust them into the "real" world. There are few enduring links between the academy and the world of experience. As Flood puts it, "It is the move into practice which prompts the thought that 'experience makes you less certain of yourself'" (1991: 44). For practitioners this uncertainty remains throughout their careers and must

be managed. Uncertainty here operates at more than one level. Firstly, there is the uncertainty that attaches to situations which are fluid, open and constantly changing. Experience rather than "book learning" is crucial here. Secondly, there is the uncertainty caused by ignorance where the practitioner is faced with a novel situation and to some extent may have to fake knowledge, ie, undertake "snow jobs" (Flood 1991: 63-6).

It is imperative for practitioners to maintain the image of authority that attaches to professionals, however spurious (Goffman 1959; Schön 1983). Professional work is carried out in conjunction with clients, and this creates a set of tensions that call for resolution (Johnson 1972). Moreover, professional work is carried out in competition with other professionals who will claim jurisdiction over each other's territories (Abbott 1988). Professionals therefore incur a double contingency.

This has particular relevance to the world of corporate rescue. Much of the success of ventures like the corporate voluntary arrangement or the London Approach depend upon the management of professional authority rather than the strict application of rules because the rules would not necessarily bring the venture to a successful conclusion, from the practitioner's perspective. Factors such as moral suasion are paramount. Hence the notions of "moral labour" and "character work" are vital to understanding the process of corporate rescue (Goffman 1961; Harré 1977). Harré puts it this way:

While one is playing one's part in a drama of character, one has to be getting on with the official performance as well, even if in a ritualized form....'Character-work' is possible because when performing we act in accordance with a certain style, qualifying our actions by the manner in which we carry them out. Duties are performed alright, but always with a certain style. The description of the performance will, generally speaking, appear in verbs, and descriptions of style will generally be manifested in adverbs. Wage claims can be negotiated churlishly, elegantly, cheerfully, disconsolately, etc. The adverbs represent the style, the verbs the performance. It is in the style of the performance that the dramaturgical aspect of an institution is carried on (1977: 31-2).

Embedded within the theory of the management of uncertainty are the concepts of risk and trust. Placing one's professional authority on the line entails risk of failure and consequent risk of loss of face. Of course the obverse of risk of failure is the risk of success which generates impressive rewards and more opportunities to engage in risk. Corporate rescue brings others into the fold of risk (cf. Beck 1992). The creditors and banks must risk their assets on future chances of success; they balance their needs against the moral authority of the insolvency practitioner who is attempting to orchestrate the sequencing of events. This moral authority has to create a context for trust to emerge, which in itself is multi-faceted. It must function between IP and management, creditors and IP and then to management. Boden argues, however, for a new conception of trust in late modernity, which is relevant for our purposes, one of "faceless" trust (Boden nd).[3] For, as she writes, "Modern societies, wherever they may be, require genuine trust in distant and mostly unseen and unknown others upon whose actions they depend....It is, moreover, a trust that

has to be worked at, rather than any sort of passive state" (Boden nd: 1). It appears our society is moving, as Maine characteristically phrased it, from status to contract and that arms-length conduct in late modernity:

....entails a kind of Brave New Trust, one which is simultaneously rooted in remote expert systems and quick local understandings of rapidly changing conditions of action. It is thus a trust that is faceless yet anchored in face-to-face local realities, a thoroughly modern sort of trust that underpins the largest and smallest of everyday actions....(Boden nd: 1).

Exposure to risk and the creation of trust are necessary components of a system of uncertainty management. Both company voluntary arrangements and the London Approach rely on solutions crafted by professionals in the absence of a clear jurisprudence or other norms. In fact, inherent in these two modes of rescue is a culture of "anti-juridification", where accountants, bankers and others resist any moves towards a more finely-grained, rule-bound system oriented to lawyers and courts. CVAs require court sanction, but, unlike Chapter 11, they do not necessitate constant oversight: the London Approach is not even shadowed by the courts. What is needed by CVAs and the London Approach is something we can call "the practitioner's buzz"; for it is the successful management of risk — of the unpredictability of people, of transience of assets and money — and the creation and establishment of trust among disparate, discrete congeries of people that brings about the very process in which the practitioner is engaged. Reducing risk and raising trust thus empowering others gives the practitioner, banker or IP, a status as broker within a professional community, someone who can tread the high wire. "It is well known," Power tells us (1995: 5), "that accounting is a filter for variable forms of uncertainty in the environment of organisational decision making. Accounting as a technology for managing uncertainty translates spontaneous disturbances into the manageable for decision making purposes". The virtue of the collective management of uncertainty is to show how the diverse components of the process of corporate rescue interact to produce successful outcomes.

Perhaps one effect of these moves ought to be heeded. Beck (1992: 24) postulates a future in which inheres the following possibility: "Averting and managing [the political potential of catastrophes] can include a *reorganization of power and authority*. Risk society is a *catastrophic* society. In it the exceptional condition threatens to become the norm". Without a thorough understanding of the culture of rescue, and its implications, and a realization that rescue is becoming a "normal" part of life, no longer the exception, it is possible that entrepreneurship and business will suffer.

3. THE DRAMATIS PERSONAE OF CORPORATE RESCUE

In discussing CVAs and the London Approach we need to be aware of who is involved in constructing these devices. As we stated earlier, the role of character work is vital in bringing rescue to successful fruition. Rescue work is essentially collective. Without the positive efforts of the various parties involved the rescue enterprise is unable to work.

1. **The directors**: these are the individuals who run the company. They have invested their money, and perhaps that of outsiders, in a venture which they hope will generate profits. Their investment is naturally twofold. In addition to the economic investment there is the emotional investment in the business. It is the conflict between these two that can produce disabling effects if for whatever reason the business gets into difficulty. In the scope of the CVA the directors' role is crucial, as they will be the ones to trade the business out of trouble. It is worth noting here, as one IP we interviewed pointed out, that most businesses that enter stand-alone CVAs are relatively small (£2 million turnover or less). Thus the directors are usually intimately involved with the company with extensive personal investments. There will always be questions about the suitability of retaining the original directors. Virtually every other procedure under the Insolvency Act 1986 ejects them, whereas the CVA is designed to keep them in place.[4]

   With mega-firms, of course, the situation is quite different. Rarely are directors of these organizations at risk in the same way as directors of small firms. However, they are accountable to a greater range of shareholders. Their position enables them to talk to creditors in qualitatively different ways; not so much the supplicant rather an equal. They are usually part of the club of which the major bankers and other professionals are members. Small business directors are outsiders.

2. **The creditors**: these are the individuals and institutions who have valid claims on the business — for example, landlords, the Inland Revenue, secured creditors, Customs & Excise, suppliers, banks (usually the clearers). There are different types of creditors — secured, preferential, unsecured — and chargeholders, but it is worth borrowing a distinction from Aghion, Hart and Moore (1993) where they categorize creditors as senior and junior with the former taking precedence over the latter. Interestingly, whereas in the CVA the majority of creditors are involved in the construction of rescue, in the London Approach the aim of the banks doing the reconstruction is to prevent the involvement of trade creditors.

3. **The insolvency practitioners**: according to the Insolvency Act 1986, only authorized insolvency practitioners may be appointed as "officeholders". Indeed, a person that acts as a company's liquidator, administrative receiver, administrator or supervisor of a company voluntary arrangement when "not qualified to do so" is liable to imprisonment or a fine or both under section 389(1) of Insolvency Act 1986. Qualification implies authorization; it can only be granted to an individual and does not cover an entire firm.[5] It can be granted by a competent authority, ie, the secretary of state, or by virtue of membership of a recognized professional body.[6] In addition, the possession of technical knowledge and expertise in accountancy and law now needs to be demonstrated through professional examinations. The various recognized professional bodies have collaborated to ensure that one examination is sat by all applicants, whichever body or profession they joined. The examination is organized by the Joint Insolvency Examining Board. Finally, even though all IPs are entitled to do CVAs, relatively few do so. And most IPs doing them belong to small firms of accountants or are sole practitioners. Large accounting firm IPs really only become involved when a CVA emerges from an administration order. Within the scope of the CVA itself, IPs play two roles: first, as nominee during the process of putting the proposal together; second, as supervisor once the proposal has been accepted by the minimum 75 per cent of the creditors.

   As the London Approach is a non-statutory procedure, authorized professionals are not a necessary precondition for rescue. The clearing banks, however, already have strong, institutionalized links with City lawyers and Big Six accounting firms, which renders authorization redundant.

4. **The bankers**: predominantly these are the clearing banks, eg, Nat West, Barclays, Lloyds and Midland. The bulk of lending direct to business comes through them. They are therefore intimately implicated in all stages of corporate rescue. Their influence is felt by the choice of IPs and lawyers, and other professional advisers, for example, they may be called on to suggest an accountant for a small business.

   In the next section we examine the interaction of these parties in the context of the CVA using some case studies to illustrate how a typical CVA is put together and run.

4. AN ANATOMY OF THE COMPANY VOLUNTARY ARRANGEMENT

One distinguishing feature of CVAs is that there are so few of them. Moreover, the rules governing CVAs in the Insolvency Act 1986 are scant. The result is that the scope for devising CVAs is broad. It has to be. The folk culture that is established as professionals devise strategies to deal with particular areas of work, such as liquidations or receiverships, is missing here. The CVA is perhaps the most recent insolvency-based innovation and therefore lacks the substance and weight gained by the others (cf. Geertz 1983: 78). But one further fact must be considered, namely, the nature of the people involved in the process.

In the previous section we outlined the *dramatis personae*. This was done, deliberately, in broad strokes. As we shall see in this and later sections, the scale of the CVA compared to other forms of corporate rescue is small. Add to this that we are faced not with a homogeneous professional culture of corporate rescue but rather a divided one along social and economic lines. One way to understand this is to borrow an analysis of American lawyers.

The key study of the US legal profession is Heinz and Laumann's *Chicago Lawyers: The Social Structure of the Bar* (1982). Its central finding is that lawyers belonged to two hemispheres according to their practice.[7] In the corporate hemisphere were those who practised corporate law, eg, business litigation, antitrust, banking. In the personal plight hemisphere were the practitioners of, eg, plaintiffs personal injury work, divorce, criminal defence. Heinz and Laumann argue that although the lawyers in their study came through the same style of education, by the time they entered practice they rarely had contact with each other and had adopted different values, including ethical values. Research in the UK would suggest a similar configuration among accountants and lawyers (see Roslender 1992, Hanlon 1994, and Flood 1995; cf. Hopwood and Miller 1994). For accountants operating in the personal plight hemisphere the main client is the small business which, in most cases, is owner managed and is characterised by a great level of *personal* involvement and commitment by the owner. On the other hand, the corporate hemisphere accountants, most notably found in Big Six Firms, aim their services towards the largest corporations operating on a large, often global, scale and with complete separation between ownership and management.

Such a division between the hemispheres of the accounting profession would suggest that the respective interests of these hemispheres would affect their approach to the different

modes of rescue. CVAs, especially of the stand alone type, are mostly undertaken by practitioners from small firms and rarely involve large businesses. Thus it would be fair to say that the "local knowledge" of the CVA is commoner in the personal sphere than in the mainstream corporate sphere. Bearing this in mind we explore the means by which CVAs are put together (see Yin 1993). The cases we present are taken from actual case files of practitioners. The documents are in the form of a statement by the directors, though largely written by the IP, laying out the history of the company and the ways in which they propose to extricate themselves from the problems they have. The first two examples are of stand-alone CVAs and the third is of an administration/CVA.

We selected these cases as they represent a cross-section of CVAs. The first is a straightforward, typical CVA that could be found in the files of any IP who does stand-alone CVAs. The second case is a study of a more mature approach to CVAs now that they have been established for some years. It is a stand-alone CVA that recognizes that not all proposals and forecasts can be made accurately and that from time to time they will need to be revised. The last case is a relatively straightforward administration/CVA undertaken by a Big Six firm. It illustrates the ways that monies can be distributed without disturbing the original administration order which remains in effect.

Case 1: A Small Company CVA

The company is a small design business set up in 1985 by the two directors. They had worked with each other for six years before 1985 and had a substantial range of contacts in their business world that they were able to capitalize on. Financially, the company was established with a contribution of £5,000 from each of the directors, a bank loan of £10,000, and an overdraft facility of £5,000 supported by personal guarantees. The company traded out of a unit on an industrial estate subject to a 25 year lease. They soon outgrew the premises and moved into other units, but they were still locked into the original lease. However, during the first four years of trading the company was successful. A sister company was set up and a subsidiary was begun but collapsed because the supplier fell through. The company won a court case against the supplier. In 1989 the company developed a special printing machine for garments, but it was never fully exploited because the recession started to bite. Moreover, the company felt the effects of the recession as customers began to delay their purchases forcing the company to seek alternative sources of funding.

At this time the company's auditors suggested the company strengthen its management team, which lacked financial expertise. A financial controller was hired to control accounts and to liaise with the banks and auditors. For two years, 1989 to 1990, the arrangement worked reasonably well, but since the trading environment appeared to be worsening, the auditors suggested a refinancing by finding an outside investor. Through the auditors' networks one was located but after extensive negotiations neither side could agree terms

and the deal fell apart. Following this period the company solicitors recommended a consultant who devised a restructuring plan which consisted of selling surplus machinery raising £40,000, refinancing other plant raising £60,000, and injecting £20,000 from the directors' pension funds. Although overheads were lowered by these actions, the bank had to maintain a higher support level than it wanted at £345,000. And indeed, it advised the company to change auditors. The new auditors took the directors through a number of options including creating an offshore company, creating a holding company, merging with another company and preparing a new business plan. The directors started merger negotiations with one of their previous employers, but that company went into receivership during the talks. Two managers from the failed company joined the company promising to inject £15,000 each. Despite their promises, their contributions never materialized and they left.

While this was taking place the Inland Revenue stepped in and promptly lost patience with the company and levied distraint, which was discharged by the company within three months. These failures convinced the directors that they lacked the proper financial nous and their accountants introduced them to a businessman who was prepared to work with them on a part-time basis. He introduced factoring and improved their management structure. The directors also attempted to renegotiate their rent arrears with their landlords who eventually levied distraint on all their assets in 1993. Despite these moves by early 1994 cashflow had worsened, the factoring facility generated an average of 50 per cent prepayment instead of the anticipated 70 per cent, and cheques to Customs & Excise and trade creditors were dishonoured. Because of the price sensitivity of the market more and more orders were going overseas leading to an oversupply of the company's types of goods.

At this stage the company decided to enter a voluntary arrangement with its creditors. An insolvency practitioner with CVA experience was brought in by the directors on referral from their accountants. As nominee, he went through the company's business plan and accounts then talked with the management about their ideas. He considered there was a business worth rescuing rather than being put into liquidation. But to reach the point of putting forward a realistic CVA to the creditors he had to discuss it with them, especially the bank, the landlord, the Inland Revenue and some of the bigger trade creditors. All this activity takes place over a period of six to eight weeks: it is intense as the nominee has to be convinced that the business plan is sound, that the directors have integrity and the nominee himself must convey this to the creditors who are often baying for the directors' blood. The role of the nominee is crucial because he must create a consensus and persuade the creditors that they will benefit more by letting the company trade rather than winding it up. In the case of this company it took from May 1994 to August 1994 to prepare the statement of affairs — which is considered a more thorough analysis of the business than the company's own balance sheet — to construct the proposal and bring it forward to a creditors' meeting.

The proposal put forward that the current management would stay in place, that the trade creditors who had supplied goods after the appointment of the nominee would be paid in full and that payments would be made to the supervisor for the benefit of creditors. The CVA would be in place for four years. The bank would continue to receive £10,000 per month until it is discharged. The factors would continue their agreement advancing up to a maximum of 70 per cent of the value of invoices. One of the critical elements was securing the agreement of the landlord to the arrangement. He agreed to the company continuing to lease a unit and that various arrears (up to about £180,000) would be added to his preferential claims. However, his distraint order would remain in place throughout the course of the CVA. On top of this the company would make contributions of £15,000 per quarter to the supervisor to ensure that the preferential creditors are paid within two years of the CVA. If further payments could be made by the company the supervisor would distribute them to the benefit of the creditors generally. But within the lifetime of the CVA creditors would receive a proposed dividend of 30p in the £ as settlement of their claims. The nominee would be paid a flat fee of £5,000 and expenses and the supervisor would be paid on a time basis. Of course they were to be the same person.

The supervisor showed that if the company were to be liquidated the total deficiency would be £730,000. If the CVA was accepted the deficiency would be reduced to £430,000. Despite the objections of the Inland Revenue — which usually tends to object — more than 75 per cent of the creditors agreed to the proposal bringing the CVA into existence.

Case 2: A CVA within a CVA

One problem with CVAs emphasized by one practitioner was that often unrealistic expectations were forced on the management by creditors who are worried they will be cheated out of their money. The repayment schedule becomes inflated to levels that cannot be maintained through the life of the CVA. It then becomes necessary to create another CVA to "rescue" the original CVA. The IP viewed it as a way of bringing home the reality of the situation to the creditors after the "euphoria" of the original CVA had worn off. It is a difficult enterprise to bring about because the supervisor and directors have to repersuade the creditors of the value of letting the company continue trading. This example illustrates how the CVA within a CVA is achieved.

The company produced fittings for use at exhibitions and in stores. Owing to a number of circumstances including exchange rate fluctuations the company found itself unable to fulfill its original CVA objectives entered into in July 1991. Under the original CVA terms the company agreed to repay its German sole supplier in full by the end of 1993, to repay in full the money borrowed from a credit corporation, to repay the preferential creditors in full within 24 months, to repay the junior creditors in full within 48 months and to defer all claims of the directors until the other objectives had been met. By mid-1994 the

company had managed to repay substantial sums — nearly £100,000 — to the overseas supplier and the credit corporation, and to pay voluntary contributions of over £60,000 to the supervisor. During this time sterling had devalued 20 per cent against the Deutschmark, increasing the cost of repayments. The company had also reduced its reliance on a sole supplier allowing it to take advantage of price fluctuations in the fittings market. Nevertheless, the severe recession of the early nineties knocked the company off course. It found its repayment schedules too burdensome, it lost customer confidence, and its warehousing and distribution systems went awry.

The directors made changes. A new junior director took over as managing director who reduced staff levels, brought the warehousing back under direct control, and eliminated company cars. Finally, in early 1994 the supervisor was contacted by a business "angel" who wanted to invest £100,000 in the company in return for which he would receive a shareholding of 51 per cent. It was on the basis of the "angel's" proposed investment that the directors sought a new CVA. The financial statement of affairs estimated the company's deficiency in a winding-up at £468,760 and in the new CVA at £260,000.

This put the supervisor in the position where he again became a nominee with the purpose of becoming the supervisor if the new CVA was accepted. The new proposal was conditioned on the preferential creditors accepting partial payment. If they agreed then the investor would inject his £100,000. Of that £50,000 would be given to the supervisor to distribute to the junior creditors who would receive 18p in the £. The remaining £50,000 would be used to discharge current trading liabilities, the residue being available for working capital. This would put the company back into a normal trading position without liability.

At the creditors' meeting, in October 1994, the nominee started with a formal statement about the CVA, but soon said he wanted to run the meeting informally as there were only nine people present, which made it a quiet meeting (cf. Wheeler 1994). In this example the creditor's IP represents the factoring company, the only creditor of substance to attend.

Nominee (N): The position is the CVA will result in a one-off payment of £50,000. There will be a shortfall in preferentials and non-preferentials and the non-preferentials will get eighteen pence in the pound. The "angel" will ultimately have fifty-one per cent of the shareholding with nominal payment. His injection now will give him a directorship and forty per cent. His money will be released if the creditors agree. But the directors won't themselves benefit from the "angel's" money later on. I've kept in with the directors and although the company fell into arrears I think it should continue to trade as the core business is sound despite the fact the company doesn't have the resources to pay off the creditors in full.

Creditor's IP (IP): You've answered most of my questions, but have the claims of all the creditors been agreed?

N: Under the old CVA some creditors didn't lodge claims. So it's possible we could get new claims after this length of time because creditors would have until the thirtieth of November to register claims. All the big creditors have put in claims, but the new claims, if any, would be very small. The dividend would be paid in December. We'd like to see dividend cheques released for Christmas. With small amounts the dividend might fluctuate between fifteen pence and eighteen pence.

IP: Have the prefs agreed?

N: The Vatman hasn't voted and the Inland Revenue have voted against.

IP: Well, I haven't any more questions.

N: The Inland Revenue haven't understood what's going on. They want to know why aren't the prefs being paid in full? I've told them they are, but they're angry about "funding" the new company. I reckon they'll get seventy-two per cent on the new CVA, but they're being paid off a hundred per cent in the old CVA.

IP: Of the hundred thousand, is that all going in or will it be less expenses?

N: No, all of it will go in.

IP: OK, I'll vote for it.

N: I now have the necessary votes for a new CVA.

The nominee and directors were well pleased with the way the meeting had run and followed it by having a celebratory lunch together.

This is a not untypical situation where an outsider steps in and, in effect, takes over or takes a substantial holding in the company releasing it from the scourge of its liabilities. Of course, for the directors they must live with reduced independence.

Case 3: Turning an Administration into a CVA

At the other end of the scale are the CVAs that emerge from administrations. By necessity these are larger companies, for it is argued that the minimum cost of obtaining an administration order is £20,000 — a deterrent for many companies. The advantage to the administrators — who are actually running the company instead of the directors — of

setting up a CVA within the administration is that they give themselves "exit" routes otherwise unavailable to them. Under the Insolvency Act an administrator is not empowered to make a distribution of less than 100 per cent to the creditors from the assets in his hands. To go into liquidation the administration order must be discharged, but CVAs and administration can coexist. Continuing the administration has tax advantages, avoids loss on liquidation and enables some future reorganization of the company to take place. The administration order/CVA is not, however, a true CVA like the stand-alone CVAs above. It is not necessarily concerned with continuing the trading of the company, but rather with distributing the proceeds from the company assets.

The company in this example was a financial services company, part of a large multinational group, with interests in film finance, Spanish property development, leasing and UK financial services. The parent company was put into administration during 1990 along with four of its major subsidiaries. After two years five companies in the group were in administration, ten were in creditors' voluntary liquidation and one was in compulsory liquidation. Three other subsidiaries with Spanish interests had been placed into the Spanish equivalent of administration. However, a number of subsidiaries continued to trade until sold by the administrators. Altogether there were approximately 25 companies in the group — a complex structure. This example concerns only one of the group members.

The administration order made by the Chancery Division of the High Court appointed two senior partners of a Big Six accounting firm as administrators. Their goal was to realize the assets of the company and in 1991 they sold the subsidiaries of this company for £5,680,000. However, the agreed claims of the creditors, by virtue of the statement of affairs, amounted to £64,118,804, but for purposes of the CVA the claims were calculated to be £29,388,611. The statement of affairs showed the company to have assets at book value of roughly £27,000,000 only (estimated to realize £10,500,000). In addition, the company had a series of cross-guarantees with three banks — Barclays de Zoete Wedd, National Westminster Bank, First National Bank of Boston — that complicated matters. To avoid extensive litigation the administrators were able to arrive at a compromise with the banks through the CVA. But the banks insisted on the CVA going through or they would revert to their former claims. There were no secured creditors and only one preferential creditor, namely, Customs & Excise with which the administrators had worked out a deal.

The CVA scheme was designed to pay out the money to the creditors at the rate of 17p in the £, and the supervisors would do no more. The first tranche of payments would be just under £5,000,000 and the CVA would continue while the supervisors were able to make further payments. The administrators would continue to monitor the state of the business. Thus the two IPs would receive fees as administrators, nominees and supervisors calculated on a time basis. The CVA was accepted at the creditors' meeting.

These three examples describe the process of putting together CVAs. They show typical problems and difficulties faced by business people as they try to run their businesses in a harsh economic climate. One distinction between the three cases is that in case 3 the reason for the collapse of the business was redundant for the purposes of setting up the CVA, whereas in cases 1 and 2 it was vital. For it is through the directors' potential to persuade the creditors that fundamentally the business is under control that they succeed in establishing the bona fides of the CVA process. All three cases share one thing in common. In each proposal the directors or nominee stress that if the CVA is not adopted, the consequences for the creditors will be dire. Either they will receive very little or, more likely, nothing at all. In the next section we look at how the professionals view their roles in corporate rescue.

5. HOW DO COMPANY VOLUNTARY ARRANGEMENTS WORK?

The insolvency practitioners we interviewed had definite views on corporate rescue and its problems. In this section we explore those views and show how they build up a depressing picture of the scope of corporate rescue in today's economic climate.

One IP put the point very starkly. He said, "IPs are the wrong people to do corporate rescue. They aren't trained to do it. They only know how to kill companies." The essential nature of an insolvency practitioner was counterproductive because even the name emphasized the ideals of insolvency and undertaking rather than rescue. He believed the IP's training concentrated on the strategies of liquidation and receivership, ways of disposing of companies. In a survey of bankers, accountants and solicitors carried out by Levy Gee (1994) they found:

In general the knowledge base is surprisingly low, particularly as Voluntary Arrangements have now been operational for the best part of 8 years. Only 30% agreed with the statement, " I have a good working knowledge of CVAs", and 45% disagreed. The group that showed the lowest level of understanding were Accountants (16%). *Bankers and Solicitors came out on top with 44% and 45% agreeing with the statement (Levy Gee 1994: 7).*

Another IP followed the line of thought:

Insolvency practitioners are used to dealing with liquidation and receiverships and do not necessarily have the flair or corporate finance skills to look at an insolvency matter in a constructive manner (Gilbert nd a).

Goldstein also thought similarly on the matter:

....the insolvency profession is more familiar with burial rites than with rescue procedures. Rescue always implies risk and courage. The insolvency profession's past experience is with established certainties and practitioner safety (Goldstein nd).

And there may be something in this view. If we consider Table 1, the statistics show us, at least, that receiverships and liquidations are "popular" in comparison to administrations and CVAs. But perhaps a senior accountant captured the essence of insolvency work when asked what the role of officeholders was: "We are debt collectors". Another said, "You've got to stop the assets walking out the door" (Flood and Skordaki 1995). Another IP thought the "going concern" departments of the Big Six firms were much better at corporate rescue, but "the two departments don't talk to each other because they're frightened of having business pinched by the other".

Given that the present rules ensure IPs are involved in CVAs and other procedures, we find that few IPs actually do them. There is some support for this assertion. The SPI survey (SPI 1994) states in its statistical background to the survey that its sample size for receiverships, creditors' voluntary and compulsory liquidations was sufficient; but for administrations and CVAs it was too small (SPI 1994: 25). If we distinguish for analytical purposes between stand-alone CVAs and administration/CVAs, the numbers would probably decline even more. As we saw from the cases above, administration/CVAs are quasi-CVAs; they carry none of the fervour or zeal of the stand-alone CVA. They are merely sophisticated distribution conduits. One small firm insolvency practitioner who did CVAs thought it was ignorance of the procedures on the part of the big firms that made them so scathing about CVAs. In our research we found that three individuals' names arose time and time again. They were the key CVA players. Each had done around 30 to 40 CVAs, constituting between 30 and 40 per cent of the total number. This made them experts in the field.[8] Other IPs generally had done up to a handful of CVAs. It is reasonable to say, therefore, CVAs and those that do them are rare commodities. Without doubt, those engaged in the work have a missionary zeal about it. One such practitioner, Mark Goldstein, has set up his own firm to do only company rescue: he will not undertake normal insolvency work. The other two key players belong to firms and are involved in other kinds of insolvency work in addition to CVAs.

With relatively few practitioners committed to CVAs their low numbers lack surprise. A theme constantly reiterated was the lack of knowledge about them from all quarters, not just the accounting profession. Gilbert (nd b: 2) touched an interesting note when he wrote:

There are few rules and regulations to a CVA which is both a strength and weakness. The Legislation is uncomplicated and only covers 7 sections of the 1986 Insolvency Act and 18 pages of the Insolvency rules. There are only 4 statutory forms and from a legal point of view it could not be simpler.

However, one IP commented, "Some creditors are suspicious because CVAs take up only a few sections of the Act compared to the others." Another IP said, "It's education. It's getting people used to the idea that rescue isn't about letting people get away with it. It's about keeping a going concern going". Another IP said:

Another problem is no one understands them because when I send the papers to the creditors they call up and say, "So XXX is in liquidation then", which shows they haven't read the papers.

The ignorance surrounding CVAs can reach striking proportions, as one IP discovered when he described his encounter with a bank:

In 1991, I had a situation where five companies were put into a group CVA. It was fairly tricky. I went to the bank with the director expecting two people at the bank — someone from that branch and another from region. When we got there, there were eight people, not two. They asked all sorts

of questions and then gave us the go-ahead. As we left, I asked why there were so many people present. Seven of them were from region: they didn't know anything about CVAs and had spent the whole morning reading up on them because they wanted to know what they were. And that was only two years ago.

Banks can be a recurring problem and some IPs complained vociferously about them:

You have to explain to banks what a CVA is each time because their people move through the bank's departments on a three-yearly cycle. I dread it when I get someone new who says, "Now, what is this thing, this CVA?" You have to educate them all the way....It also depends on the region whether they know much or not.

In part, this lack of knowledge about CVAs reflects a philosophical divide about the role of the IP in rescue work. Many IPs see themselves as guardians of the company with a duty to sell it for the best return for the creditors. If we dissect the CVA specialist's approach to what constitutes the ideal circumstances for a CVA, we see a different picture. A senior IP specified his conditions for a successful CVA thus:

You need a good management team. If the management team isn't any good then there's no CVA. The company has to be capable of retaining profitability. Usually, in most rescues the company has had a piece of bad fortune or the company hasn't reached its potential. Finally, there must be adequate funding. The directors have to be prepared to put their houses on the line. If you've got all this then it's worth rescuing them.

Another mix was presented this way:

The first question I ask "is there a viable core business to save?" Number two "is management right? If not, are they prepared to go?" Number three "do the projections show they can survive the first six months?" That's the most difficult part. The books have to be up to date or we can't do it.

Or as an IP succinctly put it, "I've done a number of CVAs and I've looked at a hundred I turned down principally because it was too late in the day or I didn't trust the personalities involved". This comes close to Giddens' idea (1991: 131) of fatalism where "in specific risk contexts [it] tends to devolve into the more encompassing attitudes of what I have elsewhere called 'pragmatic acceptance' or 'cynical pessimism'."

Once these questions have been answered (positively) the IP becomes the nominee and the work day expands, as an IP explains:

The work is very intense at the start. Fifteen hour days over a week. I do it all myself — I even write all the letters! You have to know everything that's going on, otherwise you will look stupid if you miss something. I work with a corporate finance guy who does the financial modelling. I know only the basics of corporate finance. When I investigate the company I'll get the technical people in to tell me about the products. But when it comes down to it, you can't delegate rescue.

The nominee prepares the report including the statement of affairs and future projections. This phase is crucial because it provides the basis of future action. An IP noted, "Most accountants and IPs don't know how to do proposals. They don't forecast how the company will go in the future. So obviously people aren't attracted to the rescue". Gilbert (nd b: 2) implicitly reinforces this view: "The only rules are that the business plan must contain proposals [on] how to deal with the preferential and the secured creditors. The rest is made up out of commercial negotiations and common-sense".

With this knowledge in hand the IP can approach the creditors who must be persuaded that rescue is preferable to ditching the company. Although one IP claimed not to do this: "I don't persuade people. I simply tell them this is the situation. And in all my CVAs the decision has been unanimous among the creditors". A story told by an IP indicated some of the obstacles to suasion:

I had one CVA once where I had a group of creditors and four IPs at a meeting. The IPs thought I was crazy and should go for an administration order not a CVA, which would have displaced the management, etcetera. I was losing my temper by this time, so I said, "Look, I'm leaving the room. You sort it out among yourselves". After twenty minutes I came back in and there were four people with red faces. It all went through and the company is trading profitably now.

The IP/nominee has to be seen as trustworthy by the creditors including the banks. One IP remarked on the difficulties of establishing trust:

To some creditors the money isn't important. I've seen them turn down 90p in the pound because they didn't like the directors. Personalities are important. If the creditors feel the directors are really trying hard, then they might go with a proposal. I've also seen them turn down good proposals because they didn't like the IP. They'll say, "I can't trust him."

The IP has a difficult line to walk. "[C]ultivated risk-taking", according to Giddens (1991: 133), "represents an 'experiment with trust' (in the sense of basic trust) which consequently has implications for an individual's self-identity". For example, in a case involving an engineering company which had sustained losses of £1.73 million the creditors demanded the liquidation of the company and its management investigated (Welch 1995:13). They argued that the IP had bargained with some creditors, notably the Inland Revenue, to gain a vote in favour of the CVA after two votes had already gone against the CVA.

An experienced IP said, "I talk to everyone: factors, suppliers, landlords, the Revenue. I have informal meetings, then the formal ones are a rubber stamp". The technique of one IP to create trust was to form a creditors' committee. He said:

Creditors like being involved. In a receivership — I do them — you work for the bank, so you don't care about the creditors. But in a CVA they're vital. Under the statute there's a requirement for a creditors' committee in every single insolvency procedure except for the one where

you need it most — CVAs. So I make one up — you do it as you go along — and I give them some powers to make decisions and I discuss my decisions with them.

But creditors' relationship with the CVA process varies over time as one IP described:

There's a lot of emotion at the beginning. Creditors worry that the directors won't be reported under a CVA.[9] *They won't get punished. But later at the meetings there is great apathy. Most creditors don't bother then. They're put off by the paperwork, which is thick because it has to include the statutory stuff. The real important part of the proposal, of course, is only in two pages.*

All IPs pointed at two obdurate creditors: the Inland Revenue and Customs & Excise (see Setchim and Jewitt 1991). One said, "Customs & Excise start more winding-ups than anyone". The Inland Revenue has outlined the way it will treat voluntary arrangements:

The Inland Revenue deal with every Administration Order and Voluntary Arrangement proposal on its own individual merits, taking into account all known features of the case. When deciding how to vote, the Revenue give consideration to, amongst other things, the way in which the taxpayer has attended to his tax obligations, the level of uncertainty over assets and liabilities and whether a voluntary arrangement is the appropriate course for the Revenue to approve as a creditor. The Revenue are also very much aware of the interests of other parties and of the purpose of the voluntary arrangement procedure (quoted in Davis 1992).

This view was articulated after both the Inland Revenue and the Customs & Excise found themselves on opposite sides in a proposed CVA where the Customs & Excise voted in favour and the Inland Revenue against, thus leading to the bankruptcy of a restaurant owner (McQueen 1989: 104). McQueen further suggests:

It seems incredible that one Government department should deliberately set out to sabotage the intentions of another. In the writer's opinion the Enforcement Office of the Inland Revenue at Worthing has been 'hooked' for too long on the bankruptcy axe and would benefit from some radical reeducation on the subject (McQueen 1989: 104).

Few IPs felt the Inland Revenue dealt with matters fairly. One with experience of CVAs characterized the relationship this way:

The problem with preferential creditors is they want to be paid pound-for-pound and I don't see why that should be. The worst is the Revenue. They're horrible to deal with. I lose my temper easily and I can keep it with them for the first few phone calls, then I lose it. To them it's moral. They want to punish the directors. They would rather get nothing than rescue the company. Even when you're successful and you pay them, they never say thank you.

Another talked of the imperviousness of the Inland Revenue:

Dealing with Worthing [the Inland Revenue] is difficult because you don't know the seniority of the person you're dealing with.[10] *You write to one person and a letter comes back signed by another. One problem is the sheer size and scale of the Revenue, so its procedures get rigid and they turn things down.*

A more general but related point was made by one IP, "If prefs need, say, one million pounds, because of the full payment condition you might not be able to get that money and so there's no CVA". The voting rights of preferential creditors concerned one IP, "I don't think prefs should be able to vote at meetings. They should be on the same footing as secured creditors: if you vote you give up your security."

The Insolvency Service consultative document questioned this right of Crown Preference but recognizes it is a thorny issue. Levy Gee (1994) found that:

Respondents were generally of the opinion that Crown Preference should be removed. This is probably due to the natural resentments of the Crown having the 'first bite' on assets (Levy Gee 1994: 18).

In part, this phase of the CVA process, making it a realistic possibility, is summed up by Mark Goldstein who highlighted one particular aspect:

The CVA is not an easy instrument to use. There are hazards and difficulties, chief among them is learning to communicate openly with all classes of creditors — not something that comes easy to us insolvency practitioners (Woodcock 1993: 12).

Communication is a recurrent theme of putting the proposal together and, of course, is vital in establishing trust and attenuating risk. An accountant, whose own company entered a CVA, remarked:

There's a great deal of openness in a CVA. Before the creditors' meeting one must talk to everyone, the bank and other major creditors must be sounded out about their attitude towards letting the company trade on, even though on paper death may seem imminent. We had to demonstrate, in personal discussions, and again at the creditors' meeting, that prospects for creditors were significantly improved over any other course of action. We did not look forward to broaching the subject. But with one or two exceptions, creditors were much more supportive than we expected. After some initial surprise, they were really willing us to succeed (Pennells 1993).

Once the proposal is accepted, the nominee becomes the supervisor. Whereas the nominee's role is finite and short term, the supervisor has a long term commitment to the CVA. One IP thought it took three years to rescue a company properly. None of the IPs we interviewed expressed the desire to be the quarterback of the rescue team. That was the task of the management; their role was to ensure the CVA could be carried out. And here their power was symbolic rather than real:

As a supervisor you've got no real power. You've got to work with the management you've got. You can't get rid of them. All you can do is threaten to resign then if the creditors hear that [XXXX] is quitting, they'll want to know why.

This is not power to be used on a casual basis. It is essentially a once-only option, but the thought of it helps keep management in line. Another IP said he did not want to be

involved in the day-to-day running of the business. He wanted to make certain that the management had the right conditions to go about their business. Nevertheless, IPs doing CVAs said they maintained contact with the management. One IP said in law he was working for the creditors and for the company in "part-practice".

If we return to case 2 above we see that that particular IP knew that his role as supervisor would ineluctably revert to nominee during the CVA:

Every CVA should have another CVA within it because creditors impose impossible demands for predictions of future trading. Therefore the first proposals aren't always correct. I like to insert a review clause in the original proposal that in four months the CVA will be reviewed and if necessary will be redrafted.

Although the purpose of this stage of the CVA is for the company to trade out of its debts, it is sometimes beyond the capabilities of the most determined managements. Cashflow problems can be endemic. Part of the supervisor's role then is to spot potential "white knights" or "angels" who might step in and invest funds into the company or buy it outright. David Gilbert of Levy Gee describes how one such situation arose:

With the Company no longer under pressure from its creditors, the business began to recover. In the first six months of the scheme....creditors were paid £136,275 and the Bank's security improved by £103,026. However, due to the initial shock to customers (who did not understand the term 'Voluntary Arrangement' and who thought the Company had been wound up!) the Company did not achieve sales forecasts and....it had become apparent that there would be insufficient cash to either honour obligations to existing creditors or develop the business any further and consequently the Directors concluded that it would be in the best interest of all parties to either offer equity participation to a Venture Capitalist or sell their shares to a Corporate Investor. Although numerous interested parties attended the Company's premises and offers were received, the Directors' initial contact made the best offer and....purchase[d]....a majority shareholding....A crucial term of the deal was an undertaking to repay the Bank and creditors in full within seven days of the day or purchase, which subsequently took place (Gilbert 1990: 4).

Success in CVAs is variable. We have no reliable data — and we have discussed the obstacles to obtaining them in Appendix I— but the IPs who were involved in CVAs reported that with experience they knew how to structure them so they would succeed. In the beginning, they said, they had "to fly by the seat of their pants" because no one knew how it was to be done. They had to construct their knowledge in action. It led to a 50 per cent failure rate in the first two or three years of the Insolvency Act. Failure is always possible. Because of the relatively small nature of businesses in CVAs, they are often unattractive to venture capitalists who would like to invest £5 million to £10 million, so the search for external funding is difficult and relies on the networks established by the IPs among banks, accountants and lawyers. It is worth reflecting that professional relationships across jurisdictional boundaries are crucial to the satisfactory resolution of something like the CVA.

We pointed out that the accounting profession is divided into hemispheres like those of lawyers. The result of this division is a curious one. Although the concept of profession is encompassing its effects are divisive. All individuals within the term "accountant" acknowledge themselves to derive from the same professional origins, but once they have emerged from their academic and practical training they travel off to the different hemispheres where they are imbued with the values of their ideological *confrères*. The divisions become representative of social, moral and economic worlds. We know élites will attempt to dominate entire classes and shape their value systems, but in the professional worlds of accounting and law the élites are doubly advantaged by having access to the governing bodies of their professions — with powers to prescribe codes of ethics, etc — and to the élites of the political and economic worlds. Thus not only can they prescribe through their own professional channels of communication but also via the political channels.

The Insolvency Service's consultative exercise on CVAs is a case in point. The working party contained accountants from large and small practices as well as other professionals. The document itself eventually recommended a series of reforms which the large accounting firms have great difficulty in accepting. Following its publication members of the working party belonging to this group have distanced themselves from the consultative document. At a conference on "Insolvency - has the rescue culture failed?" organized by *Accountancy Age*, one member of the working party said of the document's recommendations, "we might throw the baby out with the bath water, and the baby is the ability of insolvency practitioners to achieve a business rescue by sale of the business" (Accountancy Age 1994).[11] This view — emphasizing sale rather than rescue — was given support by bank representatives and other accountants from large firms. At other conferences, eg, the Financial Markets Group of the London School of Economics, Big Six partners have expressed their displeasure with the document's original proposals.

The difference between accountants and bankers is also marked (see Holland 1988). Cheyne (1994), a banker, says, apropos of the Olympia and York administration, that the administrators found it "difficult to cope with [the] bank style which was very involved. In fact, the whole administration was bank driven". We know from other research (Flood and Skordaki 1995) that lawyers on the whole take a back seat in insolvency work, acting usually as the advisers to the officeholders. With CVAs lawyers play less of a role, or, occasionally, none. As one IP said:

I don't use lawyers. I can draft all the documents myself. If I have something complex, I'll do it and show it to a solicitor-friend of mine for half an hour.

If lawyers were to be employed, they had to be sympathetic: "We use firms of solicitors who are good and are prepared to think in a business-like way as well. That's very important."

One reason for the reluctance shown by the corporate hemisphere to specialise in CVAs is the matter of fees. Receiverships attract higher fees than CVAs. One IP supposed "for a CVA lasting about three years, it will cost £60,000." An IP who specialized in CVAs commented on the difference this way, "I get £25,000 over two years for a CVA, whereas in receiverships you can get £75,000 over six months." This is backed up by a survey carried out by *Insolvency Bulletin* in October 1993. Only three of the Big Six accounting firms had completed CVAs for the first eight months of 1993: Ernst & Young with ten, Cork Gully with seven, and Price Waterhouse with one. The three IPs who have done the greatest number of CVAs had completed 23 CVAs for the same period (Insolvency Bulletin 1993: 9).[12] Cheyne (1994) put this into stark relief when he talked of the cost of professional advisers in the Olympia and York administration:

Great expense — £10m. 40-60 lawyers were involved and four firms of accountants. The management and coordination of such a big group of professionals was very problematic and the bank hoped that lessons had been learnt for the future.

One other concern of the corporate hemisphere accountants is the importation of US Chapter 11 techniques by the back door. It is worth noting that this concern is highest among those professionals with direct experience of transnational cases which involved Chapter 11 and UK administration.

The fear of Chapter 11 spills over into attitudes towards a moratorium in CVAs. Hughes' response to the Chancellor of Exchequer's 1994 budget proposals for a 28-day moratorium in CVAs revealed alarmist tendencies:

There was no need for the Chancellor to mention insolvency in the Budget. By doing so, when there are no detailed proposals available to debate, banks have been encouraged to expect the worst. If that makes them rather more cautious lenders for the next few months, nobody should be surprised (Hughes 1994: 28).

The representatives of the larger accounting firms have distanced themselves from the Insolvency Service consultative document which proposed the 28-day moratorium. This response is typical of their primary concern for senior creditors. However, the Law Society has come out in favour of a moratorium (Legal Practice 1993). The pro-CVA IPs like to emphasize the ideal of rescue and therefore actively promote the establishment the moratorium. One IP, however, argued that the stay should only be for seven days believing that after that period one knew the condition of the company and what steps to take.[13]

Despite the fear of Chapter 11 some of its features appear in UK restructuring work. If we compare the CVA with its counterpart for mega-firms, ie, the London Approach, we see these features revealed.

6. THE LONDON APPROACH

The London Approach, as a rescue procedure, is well-steeped in tradition compared to the CVA; it dates back to the mid-1970s (Floyd 1995). Kent (1994a: 7) calls it "a means of reducing mistrust". Smith (1992: 2) graphically describes the inception of the London Approach:

The origins of the London Approach can be traced back to the recession of the mid-1970s. This was the first serious interruption to world economic growth since 1945. We at the Bank of England (at least those of us with as many grey hairs as me) remember it most for the secondary banks' crisis and for the launching by the Bank of the so-called lifeboat. This was the first bank *support operation that the Bank of England had had to organize, but, in the context of the London Approach, it was an influential forerunner of the Bank's later involvement in workouts for non-financial companies.*

It was the switch from financial to non-financial that set the Bank of England on a new path towards corporate rescue. But the path meandered among only the big, major corporates; it circumvented small and medium-sized companies. Smith (1992: 2-3) explains how the Bank of England became involved:

The mid-1970s saw an increasing number of non-financial companies encountering severe financial problems. Burmah Oil (now Burmah Castrol) was a notable example, highlighted by the suddenness with which the crisis blew up and the need for some very prompt action — on that occasion by the Bank of England itself. There was very little experience of organizing workouts in those day; we were not used to major companies coming to their bankers and saying that, unless they were given more liquidity immediately, they would have to stop trading. In particular, we had hardly any experience of arranging support operations for companies which had obtained finance from a wide range of banks and other sources, a trend which had just taken hold in the early 1970s. These were the beginnings of what became to be called multi-bank support operations. My predecessors at the Bank in the late 1970s identified a need to co-ordinate discussions among the banks with loans outstanding to a company in difficulty. This usually meant the Bank taking the initiative in convening meetings of banks and, on occasions, other interested parties to help secure collective agreement to a refinancing package.

The Bank of England thus had as its motive "not want[ing] companies to be placed in receivership or liquidation unnecessarily for wider economic reasons; we wanted viable jobs and productive capacity to be preserved" (Smith 1992: 3). Since the beginning of the recession in the late 1980s the Bank of England has been involved in about 150 workouts (Kent 1994b).[14]

Its current incarnation stems from a circular the Bank of England helped to draft which was distributed by the British Bankers Association in 1990. The London Approach has no

formal status in law, nor does it constitute a set of rules. At best it is a set of principles which contains as its objective:

to provide a flexible framework whereby Banks can continue to extend support to companies in financial difficulty, pending agreement as to the way forward [which] may include the provision of additional short term liquidity (Pointon 1994: 5).

The difference with CVAs is that the London Approach only applies to major corporates. Or, as Pointon (1994: 7-8) characterizes it:

The final major flaw that I see is that the London Approach is only really appropriate for large situations, therefore the number of cases handled using this process is relatively small. Indeed, it has been said that only those who have borrowed vast sums receive the benefits of such treatment.

The London Approach has four phases. First, there is a standstill covering all debt owed. All bank lenders must give unanimous support. Second, the banks send in investigating accountants who would not be the company's auditors. Third, the lead bank negotiates with the other banks — which can be as few as six or as many as 106 — to provide a new facility for the company. This is a difficult and tense period. Pointon (1994: 7) describes this phase:

To give an idea of the complexity of arrangements, many major groups have multinational subsidiaries in as many as 20 countries. Funding of these groups is frequently through syndicates with 30 or more banks who all need to agree with the proposed restructure. These banks are often in differing financial positions; some may be secured, for example, and may come from countries with different business cultures and differing perceptions of the ways in which situations should be dealt with. As a result of these complexities there has been one case where the legal documents needed to be redrafted 17 times. Problems such as this can make achievement of final agreement very expensive in legal terms.[15]

In the final phase, according to Pointon (1994: 7), "the corporate has a new operating and financial structure which should allow it to prosper. Naturally, the Banks and their appointed accountants will, however, monitor on-going progress closely."

A key role in a London Approach workout is assigned to the lead bank. It will coordinate the rescue and have the task of bringing it to fruition. Smith (1992: 7-8) remarks that a lead bank has:

to perform a difficult balancing act; it must, for example, provide firm but not overbearing leadership. It must also be a good communicator; one of the most frequent complaints we receive at the Bank of England is that a lead bank has failed to provide banks with information which they regard as essential for the decisions that they are being asked to make. A lead bank is tempting disaster if it takes, albeit probably inadvertently, the views of banks for granted. It must, in other words, be sensitive to the circumstances of individual banks. Above all, a lead bank needs to be flexible; it must be able to respond to the unexpected and know when to give ground in difficult discussions.

How is the lead bank chosen? A banker who has led workouts answered thus:

It's usually the bank with the biggest exposure. But that doesn't always work out. Suppose the biggest lender is [XXXX], well, they don't have the experience to be the lead bank, they're not competent, they don't know how. So, their chap might come to me, say, because I'm the largest lender who's a clearer and ask me if we'd be lead bank. It's a lot of responsibility being the lead bank. You have to put the team together—you're responsible for appointing the investigating accountants, and you have to make sure everyone reports their total exposures. We freeze lendings at the date of the standstill.

The London Approach is expensive to implement. A successful workout could cost £6 million over its life. It must therefore satisfy certain conditions, which are lacking in CVAs. A banker put it this way:

Let's, for example, take a small company, a typical mid-corporate, with three bankers, poor management, lousy at forecasting, with annual sales of £10 million, borrowings of £4.5 million, owns its own factory and some machinery, has a mortgage debenture to one and a charge to another. This wouldn't be any good for a London Approach. There's no meat on the bone, there's no value, nothing to play with, all the assets are secured.

To achieve London Approach status, therefore, a company must have assets largely unsecured or undersecured. Sometimes there are no assets, but this is not necessarily a bar to rescue as another banker said:

[XXXX], the advertising company, had no assets; it had the goodwill, its business, the clients. There we traded debt for equity thereby downsizing the debt. The company traded over a few years and fortunately kept its Stock Exchange quote. At the end the banks sold out their equity and recovered their money. [XXXX] is still going: that was a successful London Approach.[16]

If the company has the right configuration, a successful London Approach is feasible. It is possible for a company in the London Approach scheme to remain under bank control for up to ten years.

There are two other factors that help make the London Approach unique. The whole process takes place outside the glare of publicity.[17] One banker said the last thing he wanted to see was the unsecured creditors jumping out at the news. The cloak of secrecy also helps the banks work together rather than in competition with each other. This is especially so in the meetings where the workouts are structured. These meetings are delicately negotiated, contingent affairs rife with bluff and double bluff. A banker told of his first London Approach rescue:

A colleague of mine dropped me in it. He had another commitment and asked me to take his meeting. Everything was taken care of, he said, they've all agreed to sign. All you've got to do is collect the signatures. I went in to the meeting where there were sixty banks from all over — Europe, US, Japan. I asked if they were all ready to sign and all except two Belgian bankers said they were. I wasn't expecting this. They said their creditors' committee hadn't been able to meet last night and they would expect a phone call soon to let them go ahead. I asked the rest if they

would sign anyway and they said no, only if everyone signed. After that great start I put the two Belgians in a room with a phone and we waited. The meeting started about ten o'clock and at twelve there was no sign of an answer from their banks. At this point a Dutch banker came up to me and said, "I have a plane to catch to Amsterdam in an hour and I don't want to wait around any longer". I said all right why don't you sign and I'll hold your paper until everyone else has signed on. I won't use it unless everyone signs. He was happy with that and left to catch his plane. Next the Americans agreed to the same deal. I asked the Japanese if they would do the same. They refused saying they could only sign if everyone did. Their creditors' committees had given them strict instructions. We had a large screen TV in the room which was used for videos, but I had it hooked up to an external feed and there was Wimbledon on. The Japanese watched away. There was still no call from Belgium. Eventually I spoke to the representative of the Bank of Tokyo saying why don't you call your bank in Japan. He said he couldn't because it was a bank holiday in Japan. I said why don't you call them anyway. He caught my drift and I took him to another room. He came back a while later saying his bank said he could sign, they trusted us not to use the document unless everyone signed. Eventually I had everyone's signatures except for the Belgians. I went in to see them and said you should phone your banks now and tell them every bank except yours has signed up to this deal. If it falls through now because your banks won't authorize you to sign, everyone is going to know it's your fault. That won't look good for you in the future, will it? In no time at all they signed.

In this scenario the lead banker played off the major players against the minor ones. If the Belgians had held out and destroyed the deal, their reputations would have been severely tarnished in the City, where reputation is crucial. This banker remarked that everyone knew everyone else in the business and that the "favour bank" was frequently used: "You scratch my back, I'll scratch yours. Banks will help each other out in workouts."

The risk of rescue is also negotiated between the banks. A workout specialist said:

Everyone must share the pain equally. Sometimes it's not the same and we have various matrices we use to make it equitable. You sit around the table with the other banks and you say if we liquidate the business you will get fifty cents in the dollar. Is there anyone who wants to take that? Everyone says no, but one or two say we can't take this or that. They've said they don't want the fifty cents, so it's a matter of moving them to one of the other scenarios. You have to run different scenarios for restructuring plans — worst case scenario, second worst case, best case, etcetera. You don't know if it'll work since it's all guess work. We run the scenarios over one year, three years, twelve years to see what it will look like.

In difficult moments the Bank of England is able to step in to "ease" the process. Kent (1994a: 5) declares:

The Bank of England's role in workouts is part missionary, part peacemaker. As missionary, we advocate the London Approach as a basis for constructive cooperation regarding a customer's cashflow crisis. As peacemaker, we try to help banks resolve those differences which threaten to undermine an attempted workout.

He has further followed that view: "I have always made clear that our interest is *not* as a supervisor or "regulator" of the market" (Kent 1994b: 5). Another banker believed the Bank of England was useful:

It is good for dealing with bank regulators in other countries. If you have seventy banks in a team and one, say, a Spanish bank, hasn't signed on then the Bank of England can talk to the Spanish bank regulator, and say we've got a major restructuring going on here and sixty nine banks have signed on but yours hasn't. Why not? And very often it's because the bank doesn't know about it. They might send a relatively junior official who has to pass recommendations up to his seniors and depending on how quickly they get passed, it can screw up or work well. The Bank of England can make it move up the hierarchy quickly. The Bank could also make rumbling noises about bank licence renewals, but they don't control foreign banks.

One official at the Bank of England commented that this was not how he viewed the role of the Bank:

Our role is one of peacemaker, that is, not passive but quite active. We come in when, for example, there are fifteen banks and one or two don't agree. There are always two sides to a story, so we'll talk to the ones who say no and then I'll talk to the others or bring them together. Usually the differences can be ironed out. But if there's a nine to six split, then we would not be involved.

He concluded by saying, "there was always the threat of the Governor's eyebrows." Those involved in the London Approach know each other well. It is a club with customs and habits understood by the members, which explains the lack of need for formal rules or legislation. The official noted that:

We know the core group of bankers well and the main players are always in contact with each other. We are invited in. A bank calls me and says there may be a workout coming up, and that might be enough — that call — to bring everyone into line. We have no sanctions, although we have all sorts of relationships with banks and companies. Some companies are so big, they borrow in their own names. Indeed, they have better credit ratings than their banks. So we do have considerable authority. In a workout it may be worth going along with the majority because they will be in a similar situation again soon. If a bank is prepared to cooperate in a workout now, it will be to its advantage next time.

On the whole, bankers are strongly opposed to the thought of a statutory basis for the London Approach. It would run counter to its philosophy. Many thought that parliamentary draftsmen would be incapable of understanding the minutiae of the London Approach and so it was best left in the hands of those who knew how to do it. However, Smith (1993: 11) believes otherwise because of two weaknesses in the London Approach. These are:

(i) workouts require unanimous support from a company's bankers before they can go ahead;
(ii) a company is exposed to creditor demands while the terms of a workout are being hammered out.

He then asks the question:

Would statutory backing make the London Approach more effective? While we do not want to lose the advantage of flexibility or to increase the cost of workouts, appropriate statutory backing would

remove the need for unanimity. Legislation could also be designed to provide a company with protection from creditor demands while the terms of a reconstruction were being hammered out. However....we still lack a generally applicable effective statutory mechanism for dealing with corporate financial difficulties in the UK. Neither Administration nor Corporate Voluntary Arrangements....have been widely used (Smith 1993: 11-12).

To the bankers involved in the London Approach its genius lies in the informality and the infinite flexibility with which it can be moulded and shaped. And, of course, it is not beholden to a formally, rational authority, even though the Bank of England is an authoritative body whose strictures cannot be easily ignored. Nevertheless, the system is not hermetically sealed, as the growth of the distressed market has shown.

The system works because of the shared understandings and values of the participants: they have been through the process of rescue and restructuring together and are essentially bound by a common cause (cf. Hughes 1971). They attempt to reduce the uncertainty inherent in such risky ventures on the basis of imperfect information and future projections. However, some of the smaller lenders might be tempted by short term gains through selling their debt in the secondary distressed debt market. They may have doubts about the trustworthiness of the main lenders, that they have formed a cabal against the minority debt holders. As long as unanimity obtains as the guiding principle, the risk of defection into the distressed debt market remains. This kind of behaviour brings the flavour of the auction into what, on the whole, appears a settled process (Smith 1989). Unanimity has been emphasized before and a Bank of England official argued its justification thus:

One of the reasons for the London Approach is that in some countries where this type of situation arises, because of the different levels of exposure of the banks, they have different attitudes to a workout. The smaller banks are in a strong position, so there's a tendency to take them out. But that's a spiral because next time others will try it and eventually you're left with one bank holding the debt. We don't want that to happen.

Kent also worried that:

if debt trading became commonplace, lenders would direct their energies to extricating themselves from a situation rather than working to help resolve it — in other words, it could undermine the spirit of the London Approach....some buyers of debt would be driven by short-term speculative motives and would not want 'insider' status; they might have no intention of subscribing new monies as part of a restructuring. Indeed, they may want to exploit their veto on the terms of a refinancing (1994a: 7).

Attempts to prevent the distressed debt market from undermining the London Approach have ranged from appealing to "the positive and constructive spirit" (Kent 1994b: 6), to creating a code of conduct, to a ban on debt trading at "sensitive" times. The latter suggestion has been firmly rejected by both British and foreign banks: they want the freedom to engage in this expanding market. A code of conduct has been interpreted as

too legalistic an approach, rather than respecting the spirit of the London Approach. Thus the Bank of England and the other major players are left with the force of exhortation and the capacity of their insider status to deter potential spoilers. Since success in the City depends on engaging with many of the same institutions time and time again, renegades will over time face increasing difficulties in achieving their objectives. As Kent tellingly recounts:

All parties involved must recognise that by cooperating they are collectively preserving and enhancing value for themselves. My experience suggests that the speed with which the terms of a workout are agreed is often hindered by a lack of trust, preventing openness and leading to suspicions that certain players have hidden agendas (1994a: 7).

7. CONCLUSION

Bourdieu reminds us that, "To denounce hierarchy does not get us anywhere. What must be changed are the conditions that make this hierarchy exist, both in reality and in minds" (Bourdieu and Wacquant 1992: 84). Let us, then, examine the conditions that enable the domination of corporate *rescue* by corporate ***undertakers***.[18]

We consider there are three crucial elements to understanding the nature of insolvency work. They are the economic, the social and the moral.

Economic

CVAs are small pieces of work which makes them unattractive to many IPs. The exception is the administration/CVA. The fees are low in comparison to receiverships and administrations.[19] The idea of rescue entertains a higher degree of risk for the IP because failure is ever present and the world of insolvency is extremely competitive. One IP remarked that "you're only as good as your last job." One result of competition is to force practitioners to specialize; specialization is a technique that prevents competitors from moving easily into others' turf. CVAs are a niche market. Another aspect of the economic is the relationship that obtains between IPs and banks. In the smaller insolvencies the bank is often the senior creditor. Unless the bank actually requests a workout, the professionals are habituated to adopting their most frequently used procedures. They guarantee stable results for the professionals and the banks: they entail minimal risk. And this cements working relationships between the professionals and the banks (cf. Holland 1988).

One final aspect of the economic element is the economics of reorganization themselves. In a study by Eisenberg and Tagashira (1994) they explored the issues of whether reorganizations delivered net gains over liquidations. Using data from a large-scale study of Japanese reorganization law, they concluded that reorganization was a more successful vehicle for corporate rescue, because:

Proposals to use auctions or variants thereof in lieu of Chapter 11 seem premissed on the assumption of a healthy market for troubled large firms (or their assets). As firms shrink from the mega-firms usually considered in auction proposals, the healthy market assumption becomes more questionable. In samples consisting of small and mid-sized firms, auctions may be of little use (Eisenberg and Tagashira 1994: 258).

However, it is worth noting that, according to Aghion, Hart and Moore (1992: 529-30), reorganization via a Chapter 11 scheme is theoretically imperfect for five reasons. They are:

(i) Chapter 11 can take a great deal of time.

(ii) During this time, there can be serious loss in value — because of managerial distraction, incompetence, or negligence; foregone investment opportunities; or a drop in demand (either because competitors behave more aggressively or because customers lose confidence). Also, suppliers may be unwilling to extend credit.

(iii) The procedure involves significant legal and administrative costs.

(iv) The procedure appears to be soft on management.

(v) Chapter 11 judges sometimes abuse their discretionary powers.

Ultimately, these and other studies tell us that reorganization versus disposal (auctions) is an unresolved problem (cf. Baird 1986; Bebchuk 1988; Bradley and Rozenweig 1992; LoPucki and Whitford 1993). While there has been research on the American systems, eg, Chapter 7 and Chapter 11, British and other European systems remain under-researched.[20]

Social

The social element is very important. In the two hemispheres model of the professions it is rare that the two sides will interact much. They produce their own cultures and ideologies. We see in the London Approach there is an established culture that knows how to coexist with and to tackle risk; it knows how to create trust. In the realm of mega-insolvencies all members of the club — bankers, lawyers, accountants — know the unwritten rules. This culture also obtains in the world of administrations. Here, though, the directors are taken out but they are replaced by IPs from, usually, a Big Six firm.[21] Similarly, in the niche market of CVAs the professionals engaged in them know their rules. But the two cultures are so far apart as to be unbridgeable, although some of their values may be held in common. The IPs who do CVAs admitted they felt they were looked down upon by the bigger firms of professionals and that their work was marginal to the professional mainstream.[22]

Moral

In the mainstream of insolvency work the professionals hold themselves out as the final arbiters of the outcome of the business. This brings us to the moral element which plays a central role in insolvency work. The entire notion of insolvency is stigmatized (Goffman 1970). It is irrevocably tied into the concept of failure. One IP who undertook CVAs said, "Traditional IPs look down on CVAs because they aren't retributive. They're concerned

with keeping the company going." That failure should deserve moral opprobrium seemed to be a normal part of insolvency and the just deserts should be the ousting of the directors who put the company into insolvency. Wheeler's (1994) work on creditors' meetings provides some support for this view. She describes how provisional liquidators must transform their relationships with directors:

To combat the attacks of the professional creditor, the provisional liquidator has to manipulate his relationship with his director client in such a way that he moves from being a supportive translator and conduit of information into just as hostile a questioner as the professional creditor. In this way the provisional liquidator can present himself to the trade creditors as just as appalled by the director's conduct as the professional creditor and just as prepared to investigate it fully (Wheeler 1994: 363).

Because directors' conduct is brought into question it becomes difficult to create the conditions for a successful workout. Obviously generating new funds will be impossible at times. The responses to proposals for a 28 day moratorium have raised questions of moral worth. Hughes (1994) wrote about the moratorium, "what safeguards will ensure that no mischief occurs during the stay?" One banker drew attention to the spectre of Asil Nadir and his flight to Cyprus. Even the Inland Revenue appears to take a moralistic line as Davis suggests:

The Revenue's perspective may be wider than that of the insolvency practitioner proposing the arrangement, since it will be concerned with preserving the integrity of the collection system and not merely whether the balance is favourable in a particular case between the arrangement and other possible outcomes of the insolvency (such as liquidation or personal bankruptcy proceedings) (Davis 1992: 12-13).

It is in this arena that the IP who is doing the CVA must create a situation of trust. His integrity vouches for the bona fides of the directors and simultaneously calms the creditors. This is why any threat to resign as supervisor by an IP is the ultimate threat. It kills the trust. In contrast to the CVA, where often the directors are naive and new to business and so imagined as incompetent at signs of trouble, the London Approach is able to transcend these hurdles. Given the size of the companies that use the London Approach, it is highly unlikely that the directors would be inexperienced. They would understand finance. But one feature that distinguishes the London Approach from the CVA is the absence of the trade creditors in putting together the London Approach. On both sides of the divide it was felt that trade creditors could easily scupper an arrangement through devotion to their short term interests. As we discussed earlier, the government departments most often involved in insolvency — Inland Revenue, Customs & Excise — tend to foreclose early rather than promote rescue.

If we put these elements together we can portray the work of rescue as the collective management of uncertainty comprising trust and risk. The enterprise of rescue will always be contingent. Indeed, we go as far as to say that it would be impossible to specify

conditions that could overcome the uncertainty inherent in corporate rescue. Its successful resolution is a combination of character work by practitioners who are able to raise the consciousness of those embroiled, willingly or unwillingly, in the world of corporate rescue. In his discussion of the "co-production" of science between producers and target groups, for example, Beck alludes to the "pluralization of knowledge sources" which enables users to shop around for the particular type of expertise that they want to purchase. Furthermore, "not only are practitioners and politicians able to choose between expert groups, but those groups can also be *played off against each other* within and between disciplines, and in this way the autonomy of the customer is increased" (Beck 1992: 172-3). This is the kind of game being played in corporate rescue; differently in the CVA compared to the London Approach. Over the entire range of corporate rescue, and that includes international insolvencies where different regimes can be appealed to, the pluralization has taken place. Knowledge is fragmented and the concept of rescue is made more ambiguous. This is also compounded by the impact of this pluralization on the professionals themselves. Implicit in the title of this report is the idea that in restructuring rescue, the professional cadres are themselves restructured. The divisions within practitioners become finer, communication between deteriorates and knowledge disaggregates. The two hemispheres we started out with decompose into smaller units.

However, we leave the last word to an insolvency practitioner who succinctly described the process of rescue as: "it's religion, race, sex, gender, money — all of them come into play."

APPENDIX 1: BIOGRAPHY OF A RESEARCH PROJECT

When drafting a research proposal ideas flourish and are eventually tamed by theoretical and methodological concerns. When the draft is completed the researcher feels confident that the project, as devised, is feasible and will therefore follow a path from initiation to fruition. Of course, one expects minor alterations and fluctuations in expectations. But these never precipitate any radical change in the plan. Many texts on social research apprise students to be aware of hidden contingencies, but they rarely counsel them on how to handle ruptures or collapses in proposed research projects (see Danet, Hoffman and Kermish 1980).

While drafting this proposal for the ACCA on CVAs, we were confident that the research would follow the plan and follow it smoothly. Our proposal sought to map the terrain of CVAs through a statistical analysis of the data held by Companies House on businesses that had undergone the experience of a CVA. Given that in comparison to other instruments of insolvency practice — administrations, liquidations, administrative receiverships — the numbers of CVAs are low (circa 780 since 1987) the feasibility of examining the population of CVAs should not have presented any great difficulties. Nevertheless, there were difficulties, some of which proved insuperable.

We present this biography with two purposes in mind. The first is as a warning to those who intend to use government statistics: they are not always what they seem. The second is as story in risk management when researchers are forced by circumstances beyond their control to develop alternatives to their original proposals.

Companies House maintains records on over a million businesses. It keeps these records on microfiche and on an online database. The agency, while entrusted with maintaining such records for government, is now a body independent of government which must sustain itself economically. Its operation therefore is geared more to the corporate user than merely as an archive for government. It makes choices about what types of information it will keep. Unfortunately, these do not always accord with the desires of social scientists.

When we examined the Department of Trade and Industry's (DTI) statistics on insolvencies, we noted they included the numbers of CVAs, amongst others, on an annual basis. We also knew that all CVAs had to be registered with Companies House as part of the process of setting up the CVA. We had ascertained, at the planning stage, from Companies House headquarters in Cardiff, that we could obtain the microfiche records of the businesses we wanted to examine at a cost of £3.50 per record. As the research project

started, one of the researchers visited Companies House in London requesting information on all the companies currently in a CVA. A blank response was our answer. We were told that we would need to supply the names of the businesses we wanted before we could obtain the records. In addition, we were offered an alternative, which was to examine *every single record* in Companies House, at our expense.

Needless to say, we were perplexed at the outcome of our enquiries. We knew the information was there but it was seemingly inaccessible. Rather than deal with an outpost of Companies House we telephoned the statistics department of Companies House. There we spoke with a statistician who explained that there was a disjunction in the process of recording CVAs. As best we could understand, hard-copy information about a company would enter Companies House and it would then be entered by hand into the individual records. Following that a raw count would be taken of the numbers of CVAs. The original hard-copy was then thrown away by Companies House. What did not take place, unfortunately, was the linking of the record of the name of the company and the CVA. Unlike say, administrative receiverships, no one could request a complete list of companies in a CVA. The two pieces of information, which once were interrelated, were uncoupled from each other never to reconnect. It was hinted to us by someone outside Companies House that there was an official who unofficially kept a list of names of businesses that could be linked with CVAs, but we never located him nor were we certain he even existed. He may have been merely a myth. This was particularly tiresome in respect of the online database Companies House had set up. Through it one could access the records by computer and explore the database by a variety of methods. Again these methods failed to include CVAs. Officials told us that CVAs might be included as a separate search string in a few years time. Somehow the entire process seemed to reflect the general low regard in which CVAs were kept.

Having arrived at what appeared to be the end of a path in a labyrinth, we were baffled as to our next step, if any. We again called our contact at the Cardiff headquarters who could offer no solution within the confines of Companies House. However, he mentioned, almost in passing, that the Big Six accounting firms acquired raw data on insolvency matters from Companies House on a regular basis. If we wanted data these firms could at least supply us with names of companies thereby narrowing the search. The official gave us the name of a marketing manager at one of the Big Six accounting firms. This manager was helpful on hearing our problems with Companies House and provided us with a computer printout of the firm's administration and CVA cases. Although we now possessed one firm's list of matters, the actual list omitted to distinguish between administrations and CVAs. Moreover, the firm had never bothered to separate them. We tracked some of them through the Companies House records, but again that was turning into a long-drawn out task. We had met another barrier in our maze.

It is worth mentioning here the quality of the records kept in Companies House. We were looking for a variety of information that might tell us what constituted a successful CVA.

Their records were not uniform in standard. Some were complete; others were quite scant. It was obvious that Companies House undertook little checking on the completeness of records. The institution was clearly reactive in attitude to record-keeping: what it received it included. If an insolvency practitioner failed to deliver full records, no one sought them.

Our next endeavour was to contact the other Big Six accounting firms. This cull produced varying results. One gave us copies of their files on CVAs. Another firm had no central register of CVAs; each of the twenty or so local offices kept its own data. But perhaps the biggest drawback of using this method was that it gave us access only to the combined administration/CVAs, not to any stand-alone CVAs. For these we had to approach the smaller accounting firms — a much harder task than dealing with the Big Six. The smaller and medium-sized firms are an amorphous group, mostly arranged locally. They are not easily convenient to categorize.

At first we were assisted by the Insolvency Service. It included a note about our research in its consultative document on CVAs and administration orders (Insolvency Service 1993). The Insolvency Service too had no idea how to obtain statistics on CVAs. This led to our being approached by an IP from Leeds. And eventually others tracked us down by the same method. Fortunately, the consultative document was controversial and so people wanted to comment and discuss it. Then in 1994 the journal, *Accountancy Age*, ran a seminar on the document and corporate rescue. The seminar proved extremely useful as it introduced us to a wide selection of people involved in administrations and CVAs, namely IPs, lawyers and business people. During the seminar we became aware of the informal workout-rescue called the London Approach. Not much had been written about it, but the seminar aroused considerable interest over this technique which paralleled the CVA but in a different dimension. Flood then undertook interviews with bankers in the field.

Nevertheless, it was around this time we experienced a *crise de coeur*. Trying to tap the population of CVAs was proving horrendously difficult. Companies House could not assist us, nor was the quality of its records uniform. The Big Six could only provide partial information. And the vast bulk of CVAs were spread around the country among a welter of IPs. We had, however, found the main three IPs that did CVA work, but each of those had undertaken at most 30 to 40 CVAs, amounting to a total of perhaps 120, out of the population of over 400. It was time for us to revise our efforts.

Our original intention had been to analyze statistically the population of CVAs. This was clearly impossible: the statistics were unobtainable or, if obtainable, of poor quality. From talking to practitioners, however, we were beginning to build up a picture of how the world of CVAs functioned. We decided then to capitalize on this qualitative data and seek to explain the variables of a successful CVA through those involved in them. Indeed, during our interviews it became more apparent to us that a straightforward quantitative approach would have been deficient. What information existed in the Companies House records was

of little use in helping to explain how a CVA might be successful. The figures were presented in a stylized way that was thin on content. For example, we could not detect the turnover of the company.

Although the study has changed, we believe it to be a richer one and one that does achieve many of the original aims. It is theoretically stronger and provides a much needed sociological analysis for this field. It is based on interviews with the key players in the insolvency and corporate rescue system. We have examined actual examples of CVAs and administration/CVAs. Finally, we have undertaken some observation of meetings between CVA insolvency practitioners and creditors.

APPENDIX 2: THE LEGAL BACKGROUND OF CORPORATE RESCUE

a) The Nature of the CVA

A corporate voluntary arrangement is a creature of statute and was intended to be the mechanism by which many struggling companies could be saved (see Rajani 1994). This new form of rescue procedure was introduced by the Insolvency Act 1986. Created by section one of the Act it was perhaps intended to be the procedure to which companies could first turn as reflected in its pre-eminent position chosen by the draftspersons of the statute.

Section one of the Act says that "the directors of a company....may make a proposal....to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangements of its affairs." It should therefore be apparent that this procedure was set up to be readily available to the company through its directors rather than its creditors. However, a proposal for a CVA will only come into force if a substantial majority of its creditors agree, ie, 75 per cent by value, as in section 4 of the Insolvency Act 1986. Any resolution to approve a CVA, however, will be invalid if certain creditors, including secured creditors, object and amount to more than 50 per cent by value.

The Act contemplates that a CVA will be an agreement between a company, its shareholders and creditors. It is, by comparison with other insolvency procedures, informal, requiring little publicity and little involvement with the courts. Within the wording of section one of the Act and subject to certain protections for secured and preferential creditors, parties are free to agree almost any terms that try to improve the hopes of rescue for all parties. In many cases this agreement will involve one or more of the following possibilities:

- delay of payment to creditors
- payment by installments
- payment of less than 100p in the pound
- appropriate management and financial controls and personnel

It is therefore apparent that the intention behind the new vehicle for corporate rescue was

to balance the needs of creditors and the interests of the company itself. The aim was to provide sufficient protection to the former without interfering too much with the normal operations of the latter, and as cheaply and simply as possible. To a large extent all the parties were allowed to agree a workable compromise. It was hoped that this would minimize loss through attempts to maximize the potential worth of a company which, given a breathing space, is likely to be profitable. Although the CVA is commonly proposed by the officers of the company, it must be approved by a majority of the creditors who can agree changes to it if they feel extra protection is needed. Indeed, a different or altered proposal may result in a greater chance of acceptance and success. Accordingly, "It is now possible....for limited companies to enter into a formal voluntary arrangement which is a straightforward legal contract for the satisfaction of debts....and such arrangements are binding on all secured creditors if the scheme is accepted by a majority....Voluntary arrangements offer very real and substantial advantages to both debtors and creditors alike" (McQueen 1989: 103).

b) CVAs and Schemes of Arrangement

A scheme of arrangement is another animal of statute designed to assist ailing companies. However it existed prior to 1986 and was not specifically intended or designed for insolvent companies. A scheme of arrangement is a court authorized procedure under sections 425-427 of the Companies Act 1985 under which the company has the power to compromise with creditors or members of the company (eg. Wilkinson and Turing 1993). The main comparative advantages of the CVA are the limited court involvement and the reduced number of meetings required to approve the scheme.

c) CVAs and Liquidations

The purpose of a liquidation is to terminate the company and to liquidate its assets to enable the distribution of monies to the creditors. There is no intention to rescue the company although it is common for liquidators to hive off the business of the company to another company to make it "clean" and therefore likely to fetch a higher price than if just sold off in segments. So liquidation may result in the business staying intact and returning to profitability but this may be without the consent or concurrence of the original shareholders or officers of the company. Unless it is the shareholders of the insolvent company who acquire the business from the liquidator they will cease to be the owners. During liquidation the decisions rest with the liquidator albeit subject to creditor approval through the committee of creditors. While the business may continue within another "new" company the old company will be liquidated. It is open to a liquidator to propose a CVA if he or she thinks this will ensure a greater distribution to creditors.

It is therefore plain that a liquidation is a cumbersome and inappropriate vehicle for corporate rescue and indeed it was never designed to operate in that way. This was no doubt part of the reason for the development of the CVA.

d) CVAs and Administration Orders

An administration order was another novel insolvency procedure introduced by the Insolvency Act 1986. Table 1 indicates that from 1987 to 1994 there have been 780 CVAs compared with 1331 administration orders. Administration is a procedure whereby an insolvent company or a company likely to become insolvent can be protected against creditors. Upon application to the Court for an order a moratorium against enforcement of security, legal proceedings and execution of judgments commences automatically.[23] This continues until the making of an order for administration or dismissal of the application generally. There is no moratorium with a CVA. As an alternative to formal winding-up the administration order provides a space for a company to continue to trade and therefore perhaps to survive. The purposes of an administration order are expressed in the Insolvency Act to be:

1. the survival of the company and the whole or any part of its undertaking as a going concern

2. the approval of a voluntary arrangement under Part 1 of the Act

3. the sanctioning under s.425 Companies Act 1985 of a compromise or arrangement between the company and any such persons that are mentioned in that section

4. a more advantageous realization of the company's assets than would be effected on a winding-up.[24]

In terms of cost the CVA is likely to have a lower minimum cost because of low court involvement. For some smaller companies in difficulties the administration order is not a possibility as they will be unable to afford the high cost of implementation. However, for those companies which can afford the administration order the combination of the application for the order followed by a CVA can provide the best of both worlds — protection in the short term, economy in the long term — during the rehabilitation of the company.

One common reason for the apparent unpopularity of administration orders is the control lost by secured creditors, usually the company's bankers, which they can retain if they appoint an administrative receiver under their debenture. Consequently the bank will often wish to appoint an administrative receiver to block the making of an administration order and thereby retain control.

e) Instigation and Approval of Insolvency Procedures

It is of crucial consequence to understand and examine the differences that exist between the various insolvency mechanisms set out above. This is because it will be seen that in

many respects CVAs are perhaps the easiest of them all to instigate although perhaps not for approval because of the position of secured and preferential creditors. In practice it will be necessary to canvass support for the proposed procedure before the creditors or creditors and members meetings are held. If you compare a CVA with any of the other procedures that require an application to the courts you will immediately appreciate why a CVA will be considered the simpler pathway in the context of instigation and approval.

f) Approval of CVA Proposals

The voting rules for the approval of a CVA are a little complex and imprecise. There are voting restrictions upon the rights of certain secured creditors and "connected" parties to vote.[25] The CVA must be approved by both the shareholders and the creditors and they may accept the proposal with or without modifications. For the creditors' approval there has to be a 75 per cent majority in favour of it of those attending and voting in person or by proxy. The majority is calculated by reference to the value of the creditor's claims but certain claims will not count, eg, claims to the extent that the claim is secured. Even if 75 per cent is achieved the resolution will still not be validly passed if those voting against it include more than 50 per cent in value of the creditors, excluding those disqualified from voting and those persons "connected with the company." For the shareholders only a simple majority — ie, 50 per cent — is required.

g) Operation of CVAs Once Approved

Once approval is given for the CVA the management of the business can remain in the hands of the existing directors with supervision, rather than with the interference and direct control of the IP as in the other insolvency procedures. CVAs allow additional management expertise to be used as and when required; this allows for flexibility and economy. For example, a company with a proven record of marketing and sales but with a lack of financial management expertise may, during a CVA, bring in a financial expert or director to fill the gap.

h) Moratorium

A moratorium in the context of corporate rescue is a period during which the ailing company is protected from creditors taking steps to have that company wound up or to recover debts or company assets.

Unlike the administration procedure or, in the personal insolvency context, the individual voluntary arrangement, there is no pre-approval moratorium for the CVA. This is clearly a flaw in the legislation and may well be one of the factors responsible for the apparent unpopularity of this procedure. Indeed government have clearly identified this as one of the elements that has held back development in this important area of corporate rescue.

This flaw has come to the forefront of the attention of the government as the Chancellor of the Exchequer, in his 1994 Autumn Budget statement made reference to new legislation to bring in a protective moratorium of up to 28 days. This may meet with opposition from creditors and in particular those with security interests such as banks (Hughes 1994). However, it is likely to be the only way in which the CVA can move forward and develop as a viable alternative and to meet some of the apparent needs of corporate rescue.

i) The Role of the Insolvency Practitioner as Nominee and as Supervisor

A proposal can be made by the directors of the company, its liquidator or administrator. The proposal will contain details of why the CVA is desirable together with details of the company's assets and liabilities and how the different categories of creditor will be dealt with.

The directors will use a qualified insolvency practitioner to act as nominee. They must give him a statement of affairs for the company. He must report to the court within 28 days of receipt of the directors' proposal and if he considers that a CVA stands a chance of approval he will recommend that creditors' and shareholders' meetings be held. The nominee must notify the result of the meetings to all shareholders and creditors.
The supervisor is responsible for the implementation of the CVA. He will usually be the original nominee, and will take possession of all of the assets subject to the CVA and he may apply to the court for directions. His duties include the preparation of accounts at least once every 12 months during the life of the CVA. If and when the CVA is completed the supervisor must formally inform all shareholders and creditors and the court.

NOTES

[1]CVAs are variously referred to as company or corporate voluntary arrangements. In this context the terms "company" and "corporate" are interchangeable.

[2]The nearest equivalent to this procedure is the US Chapter 11 bankruptcy procedures (see Bradley and Rozenweig 1992; Miller and Power 1995).

[3]Cf. Giddens' (1991: 38) answer:
What creates a sense of ontological security that will carry the individual through transitions, crises and circumstances of high risk? Trust in the existential anchorings of reality in an emotional, and to some degree in cognitive, sense rests on confidence in the reliability of persons, acquired in the early experiences of the infant.

[4]However, compare the situation with regard to directors' powers under section 103 of the Insolvency Act 1986 and note the case of Newhart Developments Ltd v Co-operative Commercial Bank [1978] 2 All ER 896 (CA).

[5]Cheyne (1994) notes, in connection with this principle, "the legal fiction is that you appoint the individual administrator rather than the firm, but in reality you need a team not an individual".

[6]The authorisation of RPBs to take over statutory powers is not only a feature of the Insolvency Act 1986 but also in financial services. The list of recognised professional bodies (RPBs) in relation to insolvency is: the Chartered Association of Certified Accountants (ACCA), the three Institutes of Chartered Accountants (ICAEW/England and Wales; ICAS/Scotland; ICAI/Ireland), the Law Society (England and Wales, Scotland), and the Insolvency Practitioners Association (IPA). The IPA is a specialist qualifying body for the insolvency profession whose members include solicitors, accountants as well as those with no other professional qualifications. The RPBs sponsor the Society of Practitioners in Insolvency (SPI), the profession's representative body. Its main function is to prepare and provide technical guidance and to make recommendations on behalf of its members, but cannot authorize practitioners itself.

[7]Heinz and Laumann have recently "revisited" their study of Chicago lawyers. A preliminary analysis of their new data suggests that the hemispheres model may no longer hold. Instead, they propose a set of clusters which takes account of the increased specialization in practice and describes a dimunition of the personal plight sector in favour of the corporate sector (Heinz 1995).

[8]All three of them lecture on CVAs and pay great attention to marketing their practices. To be fair, this is not all self-aggrandizement, they all expressed a strong commitment to rescuing businesses, believing that many good companies were hard done by. They were featured—Mark Goldstein, David Gilbert, Gerald Krasner—in an article in the *Mail on Sunday* (Day 1993).

[9]Under the Insolvency Act 1986 during the winding up of a company a liquidator can apply to the court to have the directors contribute to the general pool of the company's assets. And under the Company Directors Disqualification Act 1986 directors can be disqualified from acting as directors. These capabilities are absent in the CVA regime, which is why some creditors can feel nervous about encouraging CVAs (see Williams and McGee 1992).

[10]The Inland Revenue deals with all voluntary arrangements from one office, located in Worthing. When IPs talk about the Inland Revenue they often just say "Worthing".

[11]A similar view was proffered to the House of Commons Social Security Committee (Social Security Committee 1993: xxiv) in evidence regarding Price Waterhouse's role in recovering Maxwell Communication Corporation assets: "Maxwell Communication Corporation might [still] be under the control of the Maxwells today had such a [voluntary arrangement] regime been available."

[12]Two IPs we interviewed thought they detected a trend towards bigger accounting firms wanting to do CVAs because the number of insolvencies was declining as the recession ends. This needs to be explored further.

[13]Note that the Canadian Bankruptcy and Insolvency Act 1992 provides for a 30-day stay against all creditors. And a secured creditor must give the debtor ten-day advance notice before realizing the security.

[14]Pointon (1994: 8) gives us an indicator of the amount of London Approach done by his bank: "Over the past three years [1991-94], of the 27 cases using the London Approach, in which NatWest was involved, all but 1 have survived thus far. The total amount of debt involved in those 27 cases was £19.8 billion."

[15]Financing can either be further lending or a variant on the debt-for-equity swap, although the latter is rarely the preferred route (see Hughes 1994).

[16]Another banker referred to Broadgate the office/shop development next to Liverpool Street station dismissively, "There's nothing there. There are the buildings but the debt matches the value. There's nothing to play with and the equity isn't worth anything."

[17]The *Accountancy Age* seminar provided the example of Berisford International, a commodities and property group, which owed its banks £1.4 billion in 1990 as a result of disastrous American property investments. It used the London Approach to restructure itself. Since taking on a new chief executive it has become an industrial holding company. In early 1995 it reported profits of £6.4 million (Flanagan 1995: 26).

[18]One insolvency practitioner, Peter Hughes-Holland, for example, has claimed, and so reinforcing this view, that "if each active UK insolvency practioner had launched just one Company Voluntary Arrangement per quarter, in the previous two years, there may have 200,000 fewer unemployed UK citizens" (News 1995).

[19]This is obviously an area that requires further research. We do not possess the data that enable us to analyze this with any accuracy. Note one City insolvency practice has begun to offer "price-capped" services for small business insolvencies (The Lawyer 1993).

[20]Aghion, Hart and Moore (1993, 1995) have been commissioned by the British government to see if their ideas can be transplanted into British insolvency practice. They propose using the "best" parts of receivership and administration to fashion a new procedure. Their proposal has not been given a raptorous welcome by the accounting profession. Bird says (1995: 141):

[T]he most radical of proposals [is] one fraught with problems that appear not to have been thought through. It has been put up by three professors, and the Treasury is apparently taking it seriously. If it becomes a reality, we shall have a real fight on our hands, to preserve what is good about our rescue process and to avoid being driven down one highly theoretical and unproven way of achieving that holy grail — the rescue culture that works.

[21]The Maxwell case provides an example of where creditor-led administration comes into conflict with debtor-led Chapter 11 bankruptcy. Generally, the banks feel more confident with the administrators than they do with the management (Flood and Skordaki forthcoming).

[22]This is not dissimilar to views held about insolvency work in general some years ago. It was not considered "gentlemanly" work (Skordaki and Flood 1995).

[23]S. 10(1) Insolvency Act 1986.

[24]S. 8(3) Insolvency Act 1986.

[25]There was a case in mid-1994 where a tenant and creditor brought an action against the insolvent management company that managed the apartment block where she lived "on the grounds that she had not agreed the amount of her claim and was therefore not bound by the arrangement" (Perrin 1994: 1). The company had entered a CVA, but the judge ruled

that "individual creditors with 'unliquidated claims' can refuse to be bound by voluntary arrangements agreed by the main body of creditors of an insolvent business" (Perrin 1994; see also Miller 1994). The profession reacted angrily, as the comments by a Coopers & Lybrand partner show, "It goes against the whole collective nature of insolvency proceedings and leaves an individual creditor to create mayhem" (Perrin 1994).

REFERENCES

Abbott, A. (1988) *The System of Professions: An Essay on the Expert Division of Labor* (University of Chicago Press: Chicago).

Accountancy Age (1994) "Rescue culture plans fail to win agreement" *Accountancy Age* February.

Aghion, P., O. Hart & J. Moore (1992) "The economics of bankruptcy reform" 8 *Journal of Law, Economics & Organization* 523.

Aghion, P., O. Hart & J. Moore (1993) "A proposal for bankruptcy reform in the UK" 9 *Insolvency Law & Practice* 103.

Aghion, P., O. Hart & J. Moore (1995) "Insolvency reform in the UK: a revised proposal" 11 *Insolvency Law & Practice* 67.

Baird, D. (1986) "The uneasy case for corporate reorganizations" 15 *Journal of Legal Studies* 127.

Bebchuk, L. (1988) "A new approach to corporate reorganizations" 101 *Harvard Law Review* 775.

Beck, U. (1992) *Risk Society: Towards a New Modernity* (Sage: London).

Bird, C. (1995) "Drain the bath but grab the baby" *Accountancy* March: 140.

Boden, D. (nd) "A delicate balance: trust, modernity and the interaction order" unpublished paper, Lancaster University.

Bourdieu, P. & L. Wacquant (1992) *An Invitation to Reflexive Sociology* (University of Chicago Press: Chicago).

Bradley, M. & M. Rosenzweig (1992) "The untenable case for Chapter 11", 101 *Yale Law Journal 1043*.

Cheyne, I. (1994) "Administration: the Olympia and York case" paper presented at "UK Insolvency: A Case for Reform?", London School of Economics.

Danet, B., K. Hoffman & N. Kermish (1980) "Obstacles to the study of lawyer-client interaction: the biography of a failure" 14 *Law & Society Review* 905.

Davis, A. (1992) "Tax aspects of company voluntary arrangements" *The Tax Journal* 29 August: 12.

Day, T. (1993) "Money/small business: why a bid to rescue debtors is failing" *Mail on Sunday* 7 November.

Eisenberg, T. & S. Tagashira (1994) "Should we abolish Chapter 11? the evidence from Japan", in *Current Developments in International and Comparative Corporate Insolvency Law* (ed) J. Ziegel (Oxford University Press: Oxford).

Flanagan, M. (1995) "Bowkett makes £6.4m profit as shares return" *Independent* 17 January: 26.

Flood, J. (1991) "Doing business: the management of uncertainty in lawyers' work" 25 *Law & Society Review* 41.

Flood, J. (forthcoming) "Conquering the world: multinational practice and the production of law" in *Social Change and the Solicitors' Profession* (ed) E. Skordaki (Oxford University Press: Oxford).

Flood, J. & E. Skordaki (1995) *Insolvency Practitioners and Big Corporate Insolvencies* (ACCA Certified Research Report: London).

Flood, J. & E. Skordaki (forthcoming) "Normative bricolage: informal rule-making by accountants and lawyers in mega-insolvencies", in *Global Law Without the State* (ed) G. Teubner (Dartmouth: Aldershot).

Floyd, R. (1995) "Corporate recovery: 'The London Approach'" 11 *Insolvency Law & Practice* 82.

Fox, R. (1957) "Training for uncertainty" in *The Student-Physician: Introductory Studies in the Sociology of Medical Education* (eds) R. Merton et al (Harvard University Press: Cambridge, MA).

Fox, R. (1959) *Experiment Perilous: Physicians and Patients Facing the Unknown* (Free Press: Glencoe, IL).

Geertz, C. (1983) "Common sense as a cultural system" in *Local Knowledge: Further Essays in Interpretative Anthropology* 73-93 (Fontana Press: London).

Giddens, A. (1991) *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Polity Press: Cambridge).

Gilbert, D. (1990) "Second opinion: corporate voluntary arrangements: a case study" (Levy Gee: London).

Gilbert, D. (nd a) "The successful CVA" (unpublished paper).

Gilbert, D. (nd b) "Draft speech to lending services section—Barclays Bank.

Glaser, B. & A. Strauss (1967) *The Discovery of Grounded Theory* (Aldine: Chicago).

Goffman, E. (1959) *The Presentation of Self in Everyday Life* (Penguin: Harmondsworth).

Goffman, E. (1961) *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books: Garden City, NY).

Goffman, E. (1970) *Stigma: Notes on the Management of Spoiled Identity* (Penguin: Harmondsworth).

Goldstein, M. (nd) "The company voluntary arrangement: twenty questions" (unpublished paper).

Hanlon, G. (1994) *The Commercialisation of Accountancy: Flexible Accumulation and the Transformation of the Service Class* (Macmillan: London).

Harré, R. (1977) "Rules in the explanation of social behaviour" in *Social Rules and Social Behaviour* (ed) P. Collett (Basil Blackwell: Oxford).

Heinz, J. (1995) "Changing patterns of inequality in the Chicago bar: 1974-1994" paper presented at Law & Society Association Meeting, Toronto.

Heinz, J. & E. Laumann (1982) *Chicago Lawyers: The Social Structure of the Bar* (Russell Sage Foundation: New York & American Bar Foundation: Chicago).

Holland, J. (1988) *Bank/Corporate Relationships* (ACCA Certified Research Report: London).

Hopwood, A. & P. Miller (eds) (1994) *Accounting as Social and Institutional Practice* (Cambridge University Press: Cambridge).

Hughes, C. (1994) "Chancellor worries banks" *Independent* 14 December.

Hughes, E. (1971) "The sociological study of work: an editorial foreword" in *The Sociological Eye: Selected Papers on Work, Self, & the Study of Society* (ed) E. Hughes (Aldine. Atherton: Chicago).

Insolvency Bulletin (1993) "CVAs on increase" *Insolvency Bulletin* October: 9.

Insolvency Service (1993) *The Insolvency Act 1986: Company Voluntary Arrangements and Administration Orders: A Consultative Document* (Insolvency Service: London).

Johnson, T. (1972) *Professions and Power* (Macmillan: London).

Kent, P. (1994a) "The London Approach: lessons from recent years" *Insolvency Bulletin* February: 5.

Kent, P. (1994b) "Trading and investing in distressed debt" paper presented to Euroform Conference, London.

Legal Practice (1993) "Insolvency law reform" *Law Society Gazette* 8 September: 33.

Levy Gee (1994) *How Effective Are Voluntary Arrangements?* (Levy Gee: London).

McQueen, J. (1989) "Eleventh hour reprieve" *Taxation* 27 April: 103.

Miller, P. & Power, M. (1995) "Calculating corporate failure" in *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets* (eds) Y. Dezalay & D. Sugarman (Routledge: London).

Miller, R. (1994) "Judgment threatens company rescues" *Times* 14 May.

News (1995) "CVAs could have saved a quarter of a million jobs, warns Morley & Scott" *Insolvency Bulletin* March: 4.

Pennells, J. (1993) "Rescued from oblivion" 137 *Solicitors Journal*.

Perrin, S. (1994) "New ruling 'will kill rescue culture'" *Accountancy Age* 19 May: 1.

Pointon, F. (1994) "London Approach: a look at its applications and its alternatives" *Insolvency Bulletin* March: 5.

Power, M. (1995) "From risk society to audit society" paper presented to Liability, Regulation and Risk Management: Reorienting the Legal Debate, W G Hart Legal Workshop, Institute of Advanced Legal Studies.

Rajani, S. (1994) *Tolley's Corporate Insolvency* (Tolley: Croydon).

Roslender, R. (1992) *Sociological Perspectives on Modern Accountancy* (Routledge: London).

Schön, D. (1983) *The Reflective Practitioner: How Professionals Think in Action* (Basic Books: New York).

Setchim, R. & K. Jewitt (1991) "Tax aspects of voluntary arrangements" 4 *Insolvency Intelligence* 27.

Skordaki, E. & J. Flood (1995) "The rise of the corporate adviser: accountants versus solicitors" paper presented to Regulating the Professions, ESRC Regulatory Policy Seminar Group, University of Strathclyde.

Smith, C. (1989) *Auctions: The Social Construction of Value* (University of California Press: Berkeley).

Smith, M. (1992) "The London Approach" paper presented to Wilde Sapte Seminar, London.

Smith, M. (1993) "Saving businesses — the London bankers' approach" paper presented to INSOL Conference, Melbourne.

Social Security Committee (1993) *Fourth Report: The Work of the Maxwell Insolvency Practitioners* (HMSO: London).

SPI (1994) *Company Insolvency in the United Kingdom: The Third SPI Survey* (Society of Practitioners of Insolvency: London)

The Lawyer (1993) "City firm to launch insolvency discounts" *The Lawyer* 20 July: 24.

Times (1994) "Biggest fall in business failure rate since 1980" *Times* 21.

Welch, I. (1995) "Beverley case highlights the problems of CVAs" *Accountancy Age* 26 January: 13.

Wheeler, S. (1994) "Empty rhetoric and empty promises: the creditors' meeting" 21 *Journal of Law and Society* 350.

Wilkinson, A. & D. Turing (1993) "Schemes of arrangement—the BCCI decision" 8 *Insolvency Law & Practice* 138.

Williams, C. & A. McGee (1992) *A Company Director's Liability for Wrongful Trading* (ACCA Certified Research Report: London).

Woodcock, C. (1993) "Kiss of life for ailing companies" *Guardian* 21 June: 12.

Yin, R. (1993) *Applications of Case Study Research* (Sage: London).