

Change is a constant

Simeon Gilchrist reflects on the continual developments in the profession and how the modern practitioner adapts to them.

David Bowie was a musical genius and one of my personal heroes. Constantly evolving, the living musical embodiment of the maxim that the only constant is change. Superlative in each professional iteration: as Ziggy; as the Man Who Fell to Earth; as the Thin White Duke; as a Young American. All, however, ruthlessly discarded on his way to elder statesman of the music world. Bowie evolved not so much as a response to his market, but primarily as a catalyst that drove and created his market. I was struck while watching a rerun of a most excellent biopic that Bowie's professional development was the perfect, albeit perhaps laboured, model for the approach that we must all adopt in our evolving professional environment; and is the approach that SPG members must take in meeting the landscape challenges that are now before us. Either that, or the thought was a sad reflection of my inability to leave the market behind at the office!

I gazed a gazeless stare

Pausing to consider why I might be trying subconsciously to ruin a great hour and a half in front of BBC4, safely insulated from the real world with the help of a glorious glass of red, I found myself disappearing down the professional rabbit hole and preparing a list of the present-day drivers for change. With profound apologies to the Man Who Fell To Earth, this is what I came up with.

Although The Insolvency Service's quarterly statistics had not at the time of musing gone to press, it seemed pretty clear that the recent trends would continue – there is a shrinking market in 'traditional' personal and corporate insolvency work. We have been living in an unprecedented era of record low interest rates and quarter on quarter the statistics seem to suggest that practitioners have to work harder to source and secure appointments. It is certainly the case that the distribution of appointments in personal insolvency cases remains a challenging environment for SPG members, and one in which there are calls for increasing transparency.

To be an office holder at all requires bonding and, from members' feedback, the days of low-cost bonding could be most firmly behind us. It would also seem that the renewal process is becoming more complex and more time-consuming with, in some instances, a greater requirement for disclosure of a member's monitoring



history than ever before. Whether complexity and cost are a function of the rise of the successor office holder per se, or a consequence of a rise in claims made by successor office holders, is a question for a long and more studious examination, but the challenges facing the bonding market certainly seem to coincide with the emergence of successor claims, whether or not those claims result in better returns to the creditor body.

As with the bonding market, also with the regulatory landscape, which would also seem to be in line for development; the Small Business, Enterprise and Employment Act 2015 not only brought into play substantive amendments to the 1986 Act, but also brings forward the prospect of a single regulator with, in the interim, a renewed set of regulatory objectives for RPBs. Whether the market is better served, and whether members would secure from a single regulator greater, more consistent outcomes of inspection, control and sanction would also seem to be a series of questions calling for greater and very much more serious examination.

Then, of course, we have the framework supporting the 1986 Act; the 1986 insolvency rules have undergone – or suffered – many changes over the years, as anyone with a subscription to the 'blue book' will know. Many and varied were the occasions for debate over the meaning of terms and expressions used in different parts of the rules, with different processes apparently in place in different parts of the rules for ostensibly the same end. The insolvency rules committee is seemingly still wrestling with the challenges of reforming thirty years' worth of plumbing, just as you and I are most probably wrestling with the draft format of the 2016 rules (my iPad copy runs to 387 pages) if indeed that is what they will be when released to us.

Stepping through the door

What seems certain is that we will have a view on 'Brexit' before we have the 2016 rules, at which point there will be a particular prism through which to view the calls for insolvency law harmonisation emanating from certain of our European colleagues. We had, I suppose, been practising within the framework of the EC regulation, assuming that if we all understood that there are rules for the attribution of work between the member state jurisdictions, competent and mature bodies of law and ways of doing things could coexist. There seem, however, to be voices to the contrary, which, should we stay, will need to be met. Does remaining 'in' necessarily mean harmonising? We will see.

Introducing an element of granularity into my train of thought, I had reason to reflect on the everyday nuances: SIP 9; SIP 16 and the pre-pack pool; FCA authorisation; and, of course, the evolving jurisprudence, with any number of cases worth mentioning this year alone, whether to do with the unassuming form that has unintended consequences (the HR1) or to the interaction between bankruptcy and pensions, there is no standstill option; the practitioner must be informed and up to date.

We could be heroes?

By the time I had finished having these thoughts on the drivers for change, the end credits were rolling, and my single glass of red might have been replaced with its friend. What, I wondered, to make of all this? I supposed, thinking of the modern practitioner's offering – the training, flexibility of approach, and his or her profound understanding of the subject – and straining the analogy for all it was worth, that Bowie had it right when he wrote, in 1971: 'I said that time may change me, but I can't trace time'. Here is to change, I thought, and with that, drained my glass. □

If you have any comments relating to this article or would like the R3 SPG Committee to address any matters on your behalf, please contact Emma Hobson at R3 (Emma.Hobson@r3.org.uk)



SIMEON GILCHRIST
is the R3 SPG chairman
and a partner at
Edwin Coe LLP.