



#insolvency #restructuring #5thsymposium

@walters_adrian; @HenkelProfessor; @LCoordes;
@YseultMarique @eugevaccari86

The 5th International and Comparative Insolvency Law Symposium

Royal Holloway, University of London

Thursday AM – 25 April 2024



WELCOME!

Prof. Ravinder BARN

Head of Department, Dpt of Law and Criminology

Royal Holloway, University of London



WELCOME!

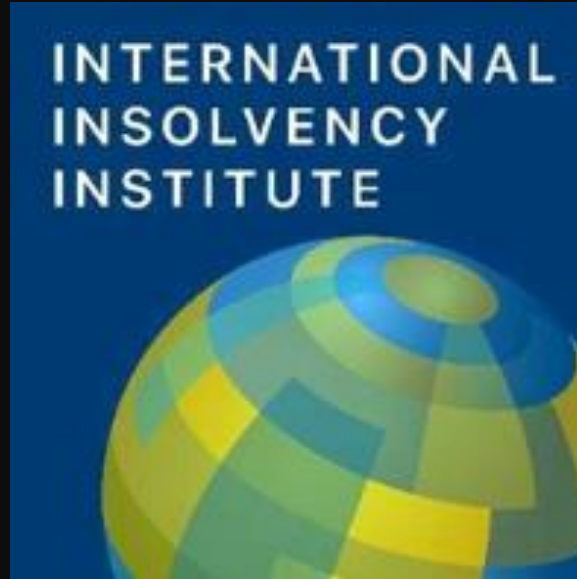
Dr. Eugenio VACCARI

Senior Lecturer, Dpt of Law and Criminology

Royal Holloway, University of London

THANK YOU!

- Ravinder; School, Department, Rights & Freedoms cluster;
- INSOL International; Whiteford, Taylor & Preston; International Insolvency Institute; Edward Elgar Publishing;
- Laura, Christoph and Adrian;
- Yseult, Kenneth and my students;
- Speakers, chairpersons, and delegates.





Housekeeping Rules (1)





Housekeeping Rules (2)





Housekeeping Rules (3)

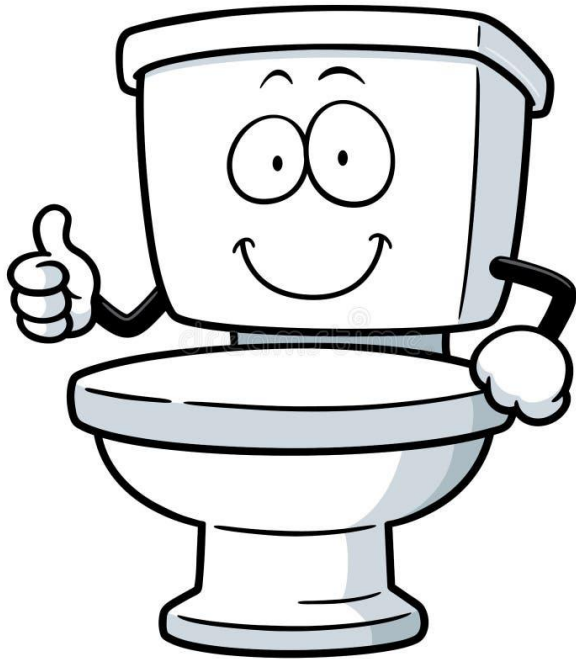


[website](#)





Housekeeping Rules (4)



#insolvency #restructuring #5thsymposium

@walters_adrian; @HenkelProfessor; @LCoordes;
@YseultMarique @eugevaccari86



Housekeeping Rules (5)



+44 1784 443 063
999



#insolvency #restructuring #5thsymposium

@walters_adrian; @HenkelProfessor; @LCoordes;
@YseultMarique @eugevaccari86

Finance and Banks

Prof. Christoph HENKEL
Drake University Law School



The return of client money in UK investment bank administrations: an empirical assessment

Dr Zhang Zinian

University of Glasgow, Scotland



Deposit-taking banks
Investment banks (firms)
Insurance firms



Outline of this presentation

Part 1: legal background and research questions

Part 2: major findings

Part 3: legislative reform recommendations



Part 1: the new UK investment bank special administration regime

The Lehman Brothers International (Europe) 2008 debacle

The Investment Bank Special Administration Regulations 2011

A speedy return; really? (this is the question)

19 investment bank insolvencies 2011-2021

Companies House and the London Gazette

£100 bn money v. £10 tr assets



Part 2: the major findings from the data (1)



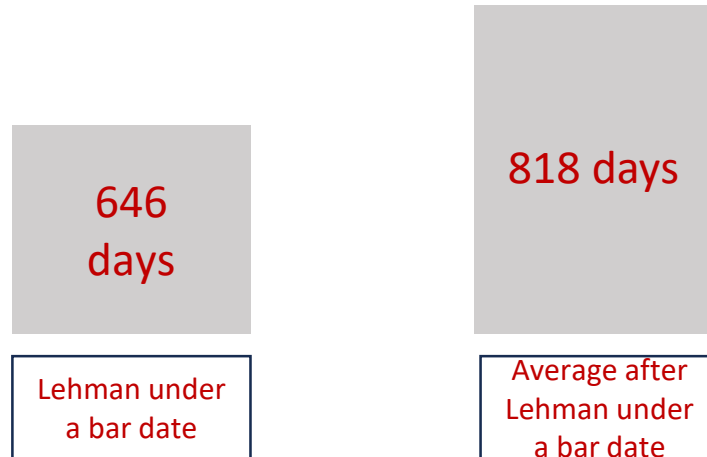


Part 2: the major findings from the data (2)

Lehman's 1,034 days of suspension
Due to the trust litigations reaching the Supreme Court



Part 2: the major findings from the data (3)





Part 2: the major findings from the data (4)

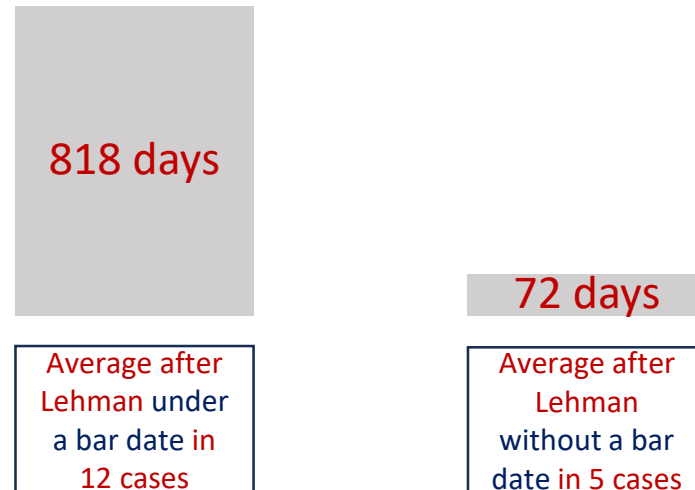
The Investment Bank Special Administration Regulation 2011 made things from bad to worse.

Who is the troublemaker?

It is probably the bar date.



Part 2: the major findings from the data (5)





Part 2: the major findings from the data (6)



Really?



Part 2: the major findings from the data (7)

- **76.47%** of cases saw no client money shortfall
- Even shortfall, this does not mean the inaccuracy of the records



Part 2: the major findings from the data (8)

Who should be responsible?

Insolvency practitioners (prolong working hours for more fees)

Ill-informed UK lawmakers (legislative assumption of money shortfalls)



Part 3: What should be improved?

Legislative assumption of automatic shortfalls: corrected

A bulk client money account transfer: prioritised

Proactive money incentives by the FSCS for efficiency and cost-reduction



Thank you and any question welcome



Resolution or Liquidation for Banks? A Tool-based Regime for Single and Hybrid Models

Shuai Guo | Assistant Professor | China University of Political Science and Law | s.guo@cupl.edu.cn

CHRISTIE'S

LEHMAN BROTHERS



Silicon Valley Bank

3003
SOUTH ENTRANCE

SVB CLIENT WEB

SVB FUNDING WORKSHOP

SVB

9:00 am - 2:00 pm



NOTICE OF NON-DISCRIMINATION POLICY

SVB





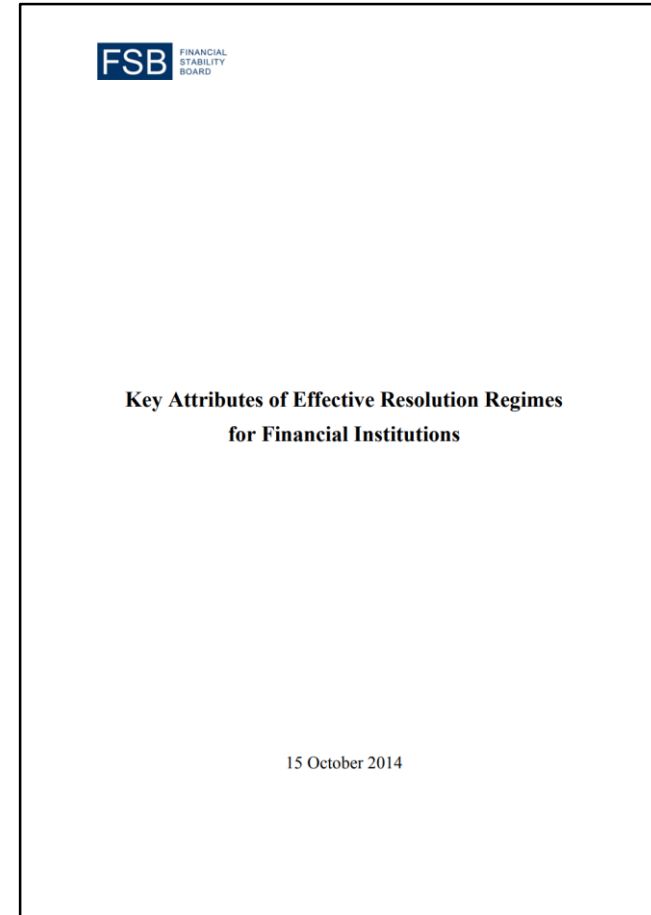
Why treat banks differently?

- Balance sheet: short-term deposit v. long-term loan
- Payment system
- Monetary policy



Resolution: The New Regulatory Regime

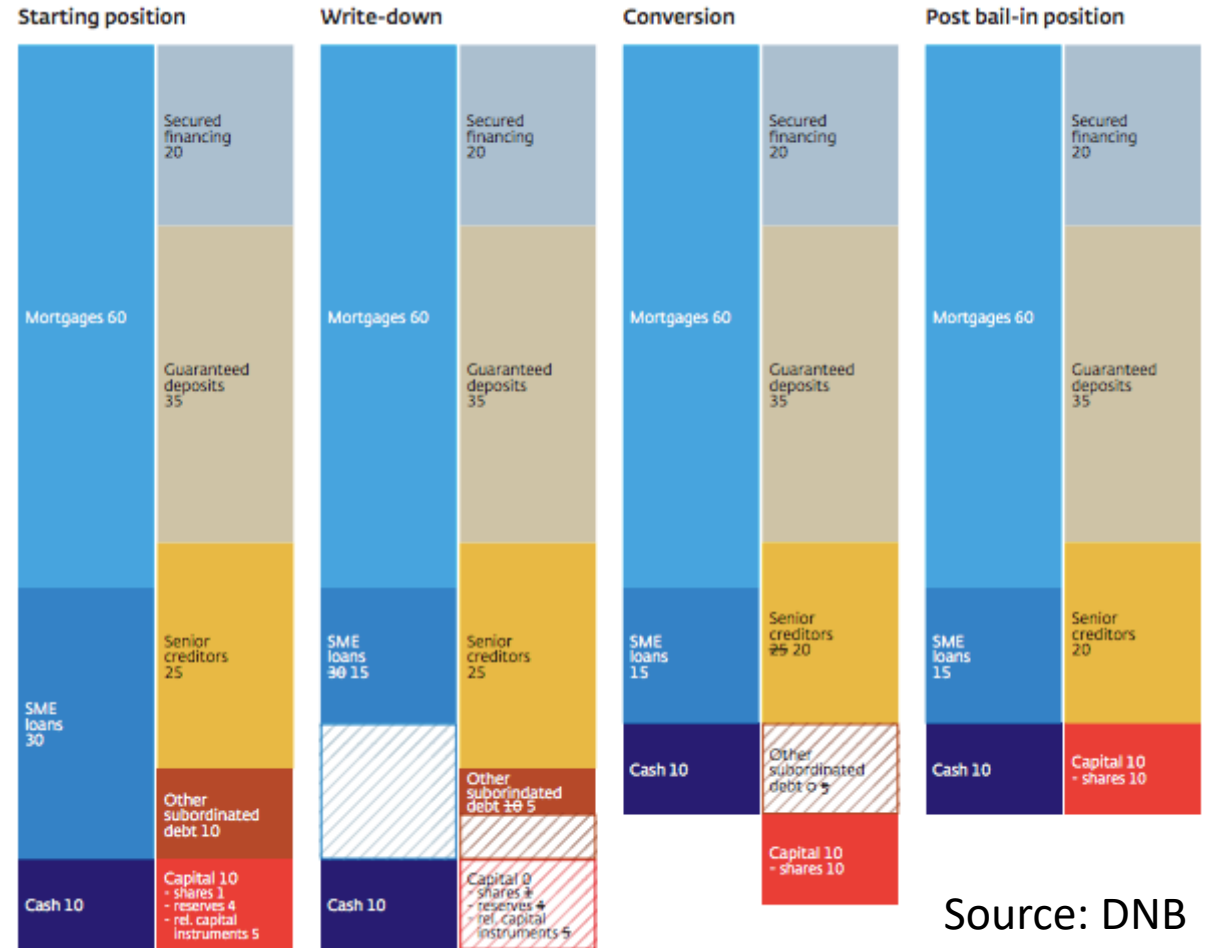
- Financial Stability Board (FSB)
- Key Attributes of Effective Resolution Regimes for Financial Institutions (2011/2014)





A Key Feature: Government Intervention

- Resolution tools
 - Bail-in
 - Write-down
 - conversion
 - Transfer tools
 - Temporary stay
- (Without the consent of shareholders and creditors)



Source: DNB

| FSB / ReSG Member Jurisdiction | Powers to transfer or sell assets and liabilities | Powers to establish a temporary bridge institution | Powers to write down and convert liabilities (bail-in) | Power to impose temporary stay on early termination rights | Resolution powers in relation to holding companies | Recovery planning for systemic firms | Resolution planning for systemic firms | Powers to require changes to firms' structure and operations to improve resolvability |
|--------------------------------|---|--|--|--|--|--------------------------------------|--|---|
| Argentina | | | | | | | | 1 |
| Australia | | | | | | | (B) | |
| Brazil | | (B) | (B) | (B) | | | | ¹ (B) |
| Canada | | | | | 2 | | | |
| China | | | | | | | 3 | 1 |
| France | | | | | | | | |
| Germany | | | | | | | | |
| Hong Kong | | | | | | | | |
| India | 4 | | | | | | | |
| Indonesia | | | | | | | 7 | 7 |



Bank Insolvency: UNIDROIT's new project

- A new instrument supplementing the FSB Key Attributes
- Bank liquidation

The screenshot shows the UNIDROIT website interface. At the top right, there are language options for 'ENGLISH' and 'FRANÇAIS'. The main header features the UNIDROIT logo (a globe) and the text 'UNIDROIT International Institute for the Unification of Private Law Institut international pour l'unification du droit privé'. Below the logo are links for 'About UNIDROIT' and 'Contact', and a search bar. A navigation menu below the header includes 'News and Events', 'Meetings', 'Work in progress', 'Instruments', 'Studies', 'Library', 'Publications', and 'Research'. The breadcrumb trail reads 'Home / Work in Progress / Bank Insolvency'. The main content area is titled 'BANK INSOLVENCY' and 'STUDY LXXXIV – BANK INSOLVENCY'. A text box contains the following information: 'After the 2008 global financial crisis, the international community has developed a legal framework to manage the failure of "too big to fail" financial institutions in a way that preserves financial stability. Despite this significant progress, critical gaps remain. In particular, there is no international guidance on how to deal effectively with the failure of small and medium-sized banks. The design of bank liquidation laws is left purely to domestic legislation and differs substantially across the globe. The UNIDROIT project on Bank Insolvency aims at addressing the current gap in the international legal architecture, by developing an international soft law instrument covering the key features of bank liquidation proceedings. The preparation of a guidance document on Bank Insolvency is expected to take place over five sessions of the UNIDROIT Working Group on Bank Insolvency in 2021-2023, with a view to be adopted by 2024. The work is conducted in cooperation with and with the support of the BIS Financial Stability Institute.' To the right of the main text is a 'WORK IN PROGRESS' sidebar with a list of links: 'Bank Insolvency', 'Digital Assets and Private Law', 'Enforcement: Best Practices', 'Factoring Model Law', 'Legal Structure of Agri-Enterprise', 'MAC PrepCom', 'Model Law on Warehouse Receipts', 'Private Art Collections', 'Rail PrepCom', 'Reinsurance Contracts', and 'Space PrepCom'.

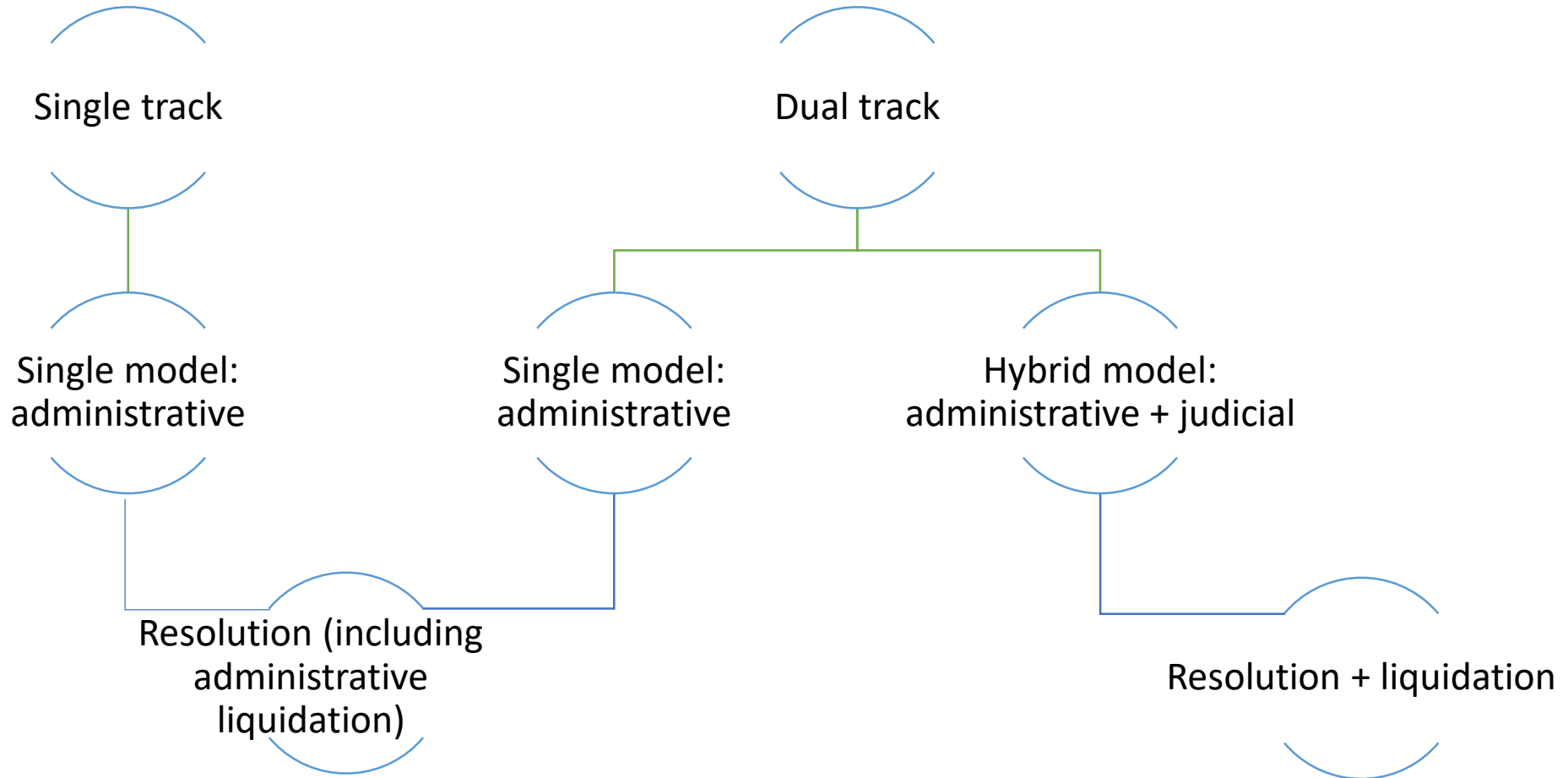


Single versus Dual Track

| | Single track | Dual track |
|-------------------|--|--|
| Systemic risk | Administrative resolution | Administration resolution |
| Non systemic risk | Administrative liquidation | Administrative/judicial liquidation |
| Example | United States FDIC | European Union Resolution authority (eg SRB) Liquidation authority |
| Tools | Purchase & Assumption (P&A) liquidation | Resolution Transfer liquidation |



Single and Hybrid Models





Thank you!
s.guo@cupl.edu.cn



The Treatment of Depositors In Bank Resolution/Insolvency Following The Financial Market Turmoil of March 2023: Comparative Study of Proposed Solutions

Dr. Ilias Kapsis, Senior Lecturer in Law, City Law School

Dr. Neeti Shikha, Lecturer in Law, University of the West of England



Introduction

Depositors:

- ✓ Unsecured bank creditors
- ✓ Keep the financial system stable

but

- ✓ Instigate bank runs

Depositor losses in bank resolution/insolvency have significant social impact

but

Protecting all depositors from bank failures has been contentious due to rising risk of moral hazard and high cost for the taxpayer



Current practice for dealing with depositors when banks fail

- A special flexible resolution regime, instead of insolvency, for systemic banks which are the most consequential (*FSB Key Attributes of Effective Resolution Regimes*)

- Overarching strategy to avoid market disruption, protect financial stability and minimise the use of public funds by:
 - a. transferring all deposits of the failed bank (along with the rest of bank assets or separately) to a private sector purchaser (immediately or through a bridge bank or asset management vehicle)
 - b. utilising bail-in to write down bank equity and eligible debt instruments (it may include depositor losses)
 - c. sending the bank to insolvency and liquidation with depositors facing losses if the deposits are not transferred to another bank
 - d. nationalising the bank (could protect deposits)



Current practice for dealing with depositors when banks fail

- Regulators typically enjoy a wide discretion and seek the least-cost-option taking into account the other public policy objectives
- Deposit insurance systems complement the strategy by offering partial insurance of deposits
- Creditors should not be left worse off than in insolvency

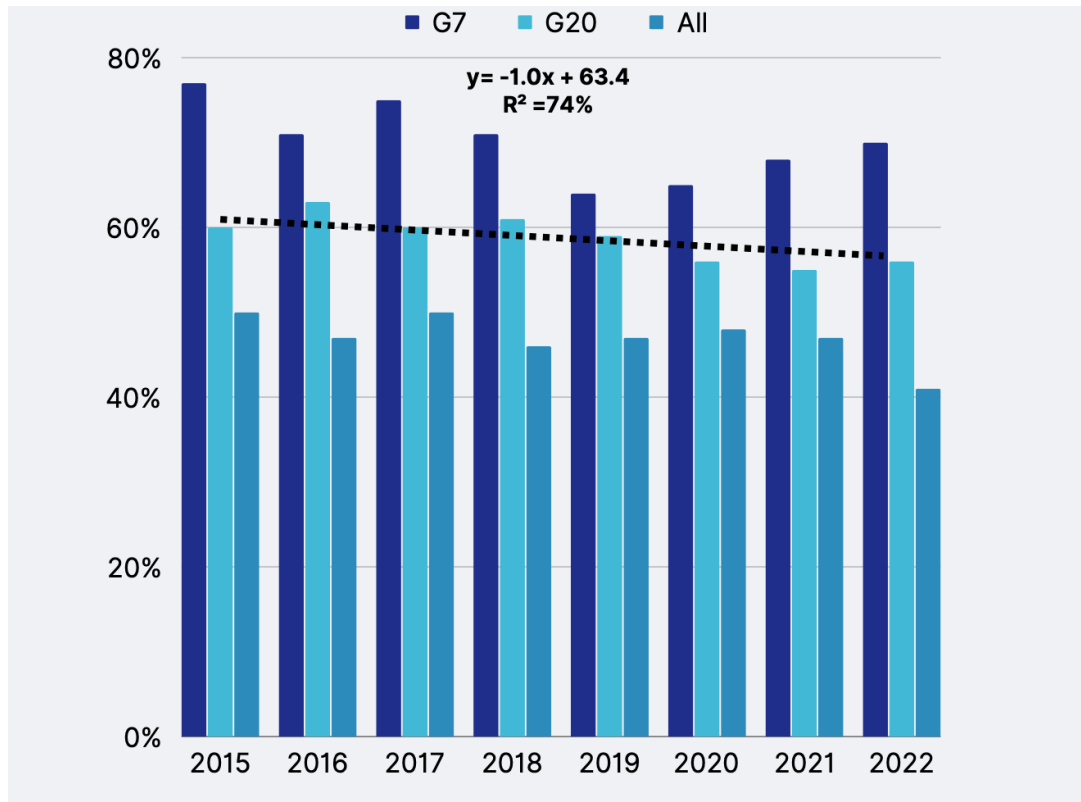


The role of deposit insurance

- Limited depositor protection is the prevailing practice (*Core Principles for Effective Deposit Insurance Systems 2009/2014*)
 - i. Uses deposit insurance systems funded by the industry and/or public funds to compensate most depositors in the case of ultimate bank failure (during insolvency)
 - ii. Typically offers complete protection to retail depositors and leaves large accounts uninsured
 - iii. Uncovered depositors (UDs) could take losses if the failed bank goes into liquidation without deposit transfers
 - iv. The extend of UD losses depends on their place in the order of creditors in insolvency
 - v. Depositor losses are rare



The extent of uncovered deposits



1. Global median depositor coverage ratio is 98% (IADI)
2. Global median coverage ratio per value of deposits is 41% (IADI)
3. Small number of depositors (corporations, institutional investors among others) hold large accounts, which are partially covered
3. Losses could be imposed on these accounts



Country practice

1. Some countries use liquidation to provide (often unlimited) aid or to arrange deposit transfers
2. Other countries use resolution to protect UD, but funds may be limited
3. The boundaries between insolvency/resolution are increasingly blurred due to inconsistent state practice
4. Some countries use deposit insurance or other schemes to protect all deposits or to fund bank resolution
5. The place of deposits insurance claims in the hierarchy of creditors in insolvency varies:
Some countries provide general preference to all depositors in insolvency, others place CDs above UD



The market turmoil of March 2023

- ✓ Started with the failure of Silicon Valley Bank, followed by Signature Bank and First Republic
- ✓ Medium size US Banks
- ✓ All had high level of uncovered deposits (more than 80% for SVB and Signature, 64% for First Republic)
- ✓ The mobilisation of UDs to withdraw their deposits was critical for the bank failures
- ✓ The failures spread to other US banks with similar characteristics
- ✓ The crisis ended with US regulators using the systemic risk exception to least-cost-resolution
- ✓ The Federal Deposit Insurance Company (FDIC) guaranteed all deposits of SVB and Signature saving UDs
- ✓ The deposits were finally transferred to other banks
- ✓ SVB UK was sold to HSBC using resolution even if no other UK bank was affected.



Lessons

- Failures of smaller banks (even one bank) could generate market contagion
- Current legal frameworks may be unsuitable for small banks
- Resolution (usually reserved for systemically important banks) had to be used to avert contagion
- All deposits had to be protected but payouts were avoided



Issues

- Imposing losses on UDIs is increasingly challenging even in non-systemic cases
- Protecting all depositors (explicitly or implicitly) could become more frequent
- Other bank creditors will assume a greater burden
- Funding of more deposit coverage is a major challenge
- Median DI coverage is currently 2.5 times of per capita GDP (G20) funded by the banking industry and/or public funds (IADI)
- Cost of for insurance systems could be substantial (e.g. Bradford & Bingley £15.65 billion)
- Passing the additional cost of deposit coverage to the banking industry could pass



#insolvency #restructuring #5thsymposium

@walters_adrian; @HenkelProfessor; @LCoordes;
@YseultMarique @eugevaccari86

Perspectives from Africa and the Middle East

Dr. Kayode AKINTOLA
University of Sheffield



Responsive Insolvency Law Reform:

Considerations and Challenges of Reforming the Nigerian Regulatory Framework for Insolvency Ethics

Dr Bolanle Adebola

Associate Professor
School of Law, University of Reading

Dr Hamisi Junior Nsubuga

Senior Lecturer
City Law School, City University of London



Overview of Presentation

⇒ NiCOE Project: Overview.

⇒ Comparative Review: Background and Research Questions.

⇒ Comparative Review: Framing, Comparators, and Key elements.

⇒ Conclusion: Emerging Insights.



NiCOE Project: Overview

Insolvency Law in Practice: the intersection of the regulation of the insolvency practice and the attainment of insolvency reform objectives.

What are the challenges faced in practice regarding practitioner conduct?

How does the regulatory system oversee and regulate practitioner conduct?

How effective is that regulatory framework in ensuring ethical and professional behavior?



Comparative Review I: Background and Questions

Stakeholder Engagement Workshop

- ⇒ Discussions with key stakeholders.
- ⇒ Resulted in research questions.



Research Questions

- ⇒ Design of the framework for ethics.
- ⇒ Enforcement of the framework for ethics.
- ⇒ **International practices and contextual fit.**



Comparative Review II: Framing

Features of a profession

Licensing

Exclusive Jurisdiction

Service Ideal

- **Conduct of practitioners.**
- **Disciplinary systems.**



Comparative Review III: Comparators

England
and
Wales

India

New
Zealand

Singapore

South
Africa



Comparative Review IV: Key Elements

Conduct

The review examines how conduct is regulated.

Whether there is a code of ethics specifically tailored to the insolvency profession.

Whether the framework for conduct is coordinated or uncoordinated in the relevant jurisdiction.

Enforcement

The review examines whether there are clear disciplinary mechanisms in place.

Whether these processes are coordinated or uncoordinated across the regulatory framework.



Conclusion: Emerging Insights

The comparative review highlights the emerging prevalence of a holistic approach to fulfilling the service ideal, encompassing:

- ⇒ Coordinated rules on conduct, including insolvency codes of ethics.
- ⇒ Coordinated disciplinary processes.
- ⇒ National differences in design and focus.



Thanks for Listening!

Questions and comments are most welcome.



b.adebola@reading.ac.uk; hamiisi.nsubuga@city.ac.uk



@Blanle_A; @Hamswa; @CLR_N





#insolvency #restructuring #5thsymposium

@walters_adrian; @HenkelProfessor; @LCoordes;
@YseultMarique @eugevaccari86

Investigating the Causes and Preventing Financial Distress

Prof. Adrian WALTERS
Chicago-Kent Law School



A GPT-based legal advice tool for small businesses in distress

Marton Ribary (Royal Holloway, University of London)

Paul Krause (University of Surrey)

Miklós Orbán (OPL gunnercooke / University of Surrey)

Eugenio Vaccari (Royal Holloway, University of London)

Thomas Wood (Fast Data Science / Ulster University)



The team



[Marton Ribary](#)

(Royal Holloway,
University of London)

legal reasoning,
private law,
computational
methods

[Paul Krause](#)

(University of Surrey)

complex systems,
theoretical and
practical aspects of AI

[Miklós Orbán](#)

(OPL gunnercooke /
University of Surrey)

legal tech, industry
perspective, data-
driven legal analysis

[Eugenio Vaccari](#)

(Royal Holloway,
University of London)

qualified Italian
lawyer, corporate
insolvency and
bankruptcy law

[Thomas Wood](#)

(Fast Data Science /
Ulster University)

data science, machine
learning models,
information
extraction



The English insolvency context

Micro-, Small- and Medium-Sized Enterprises (MSMEs):

- the backbone of modern economies
- increased insolvency risk (Covid, rising costs of dept etc.)

“company insolvencies in Q2 2023 was the highest since Q2 2009, 9% higher than in Q1 2023, and 13% higher than in Q2 2022”

England and Wales:

- no simplified MSME-specific rules (unlike many common law jurisdictions)
- but sufficiently flexible and modular approach to corporate restructuring

⇒ potential to assist: MSMEs in distress, solo legal practitioners and smaller law firms lacking sufficient legal expertise to assess situations related to insolvency

5th International & Comparative Insolvency Law Symposium | 25th-27th April 2024



legislation.gov.uk

Statute

custom database of relevant statutes (5), one row for each section

source: [legislation.gov.uk](https://www.legislation.gov.uk)

structure: chapter, subchapter, preamble, paragraph, title, text

2898 rows in total



HM Revenue
& Customs

HMRC forms

custom database of relevant HMRC forms

source: [forms for insolvency rules](#) and [forms for limited companies](#)

structure: form name, form instruction, cited legislation

190 rows in total

The knowledge base

Find case law

THE

NATIONAL

ARCHIVES

Case law

custom database of related cases

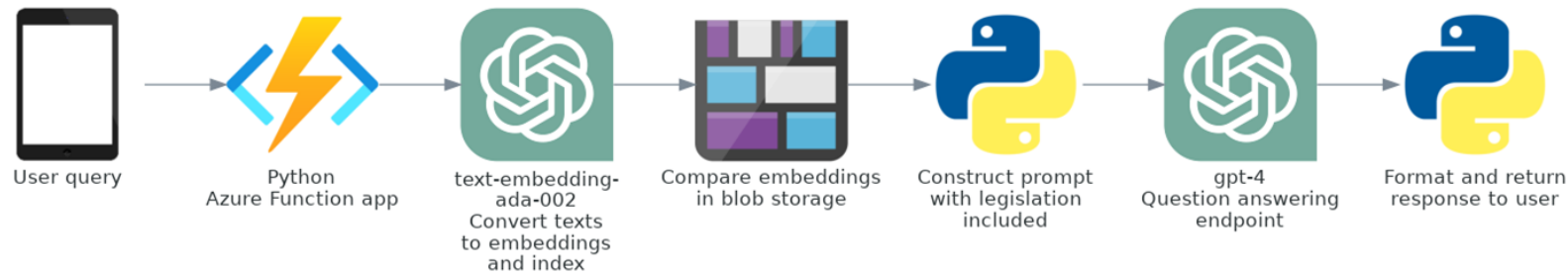
source: [Find Case Law](#) (The National Archives), [Westlaw UK](#), and the [Insolvency Lawyers' Association](#)

structure: summary (some custom written), manually assigned keywords (plain English), cited legislation

198 cases in total



Design of the Insolvency Bot



Triaging the user query and identifying relevant law:

- rule-based keyword matching algorithm
- zero-shot classification - sentence embeddings (text-embedding-ada-002)
- matching with (vectorised) items from the domain specific knowledge base (cosine distance)

Prompt engineering:

- structured query enhanced with relevant law passed to LLM via API
- response returned to user



Demo of the Insolvency Bot

<https://fastdatascience.com/insolvency/>



SCAN ME



Methodology

Test and fine tuning:

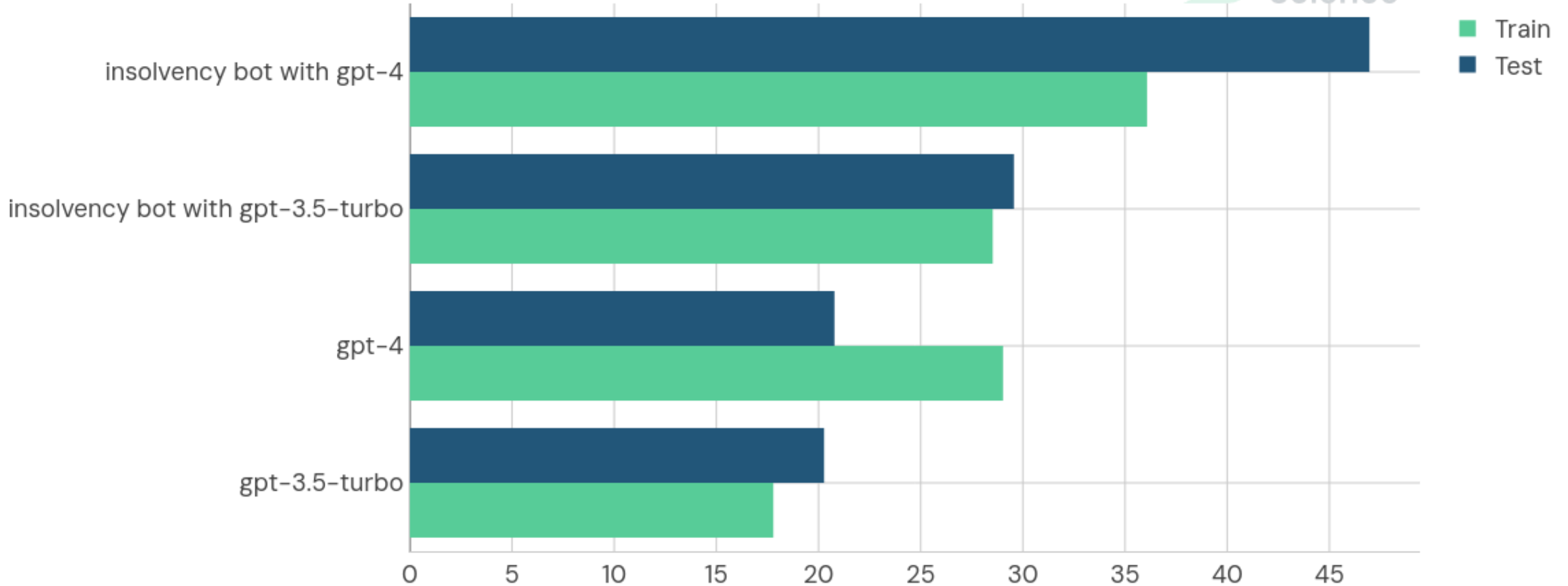
- 12 queries related to insolvency (from a batch of 60) from the "Legal, Employment and Insolvency" section of the [UK Business Forum](#) platform

Final testing:

- additional 12 queries created by a domain expert
- matching mark schemes created by a domain expert (7-10 weighted question, total of 25 points) commensurate to a Level 6-7 (=1st-2nd year undergraduate) law student
- automated evaluation by parsing answers to simple yes-no questions



Results (train/test by bots)





Preliminary results

Our hypothesis confirmed: query responses from an LLM will be improved if the model is enhanced with a trusted domain specific knowledge base - modest results confirm that we are on the right track.

Results: on the “unseen test set”:

- the Insolvency Bot based on gpt-3.5-turbo outperformed gpt-3.5-turbo (p = 1.8%)
- the Insolvency Bot based on gpt-4 outperformed gpt-4 (p = 0.05%)

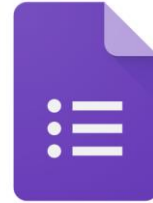


Unmoderated user test on Prolific



Survey group

110 participants
recruited on [Prolific](#)
UK-based entrepreneurs
representing small businesses



Google Forms

Survey design

interacting with the Insolvency Bot
based on fictional scenarios
participants wrote a prompt,
assessed the response
answered structured questions in
Google Forms



Survey analysis

generating quick insights by script
promising results testing the bot
with real users
excellent input for future
improvements
indicates the need for a two-tiered
system



The most common pieces of legislation cited are two sections of the Insolvency Act 1986:

s. 123 “Definition of inability to pay debts”

s.124 “Application for winding up”





The most common forms cited are:

Companies House form MT03
 “Notice of early end of moratorium”

Companies House form RT01
 “Application for administrative restoration to the register”

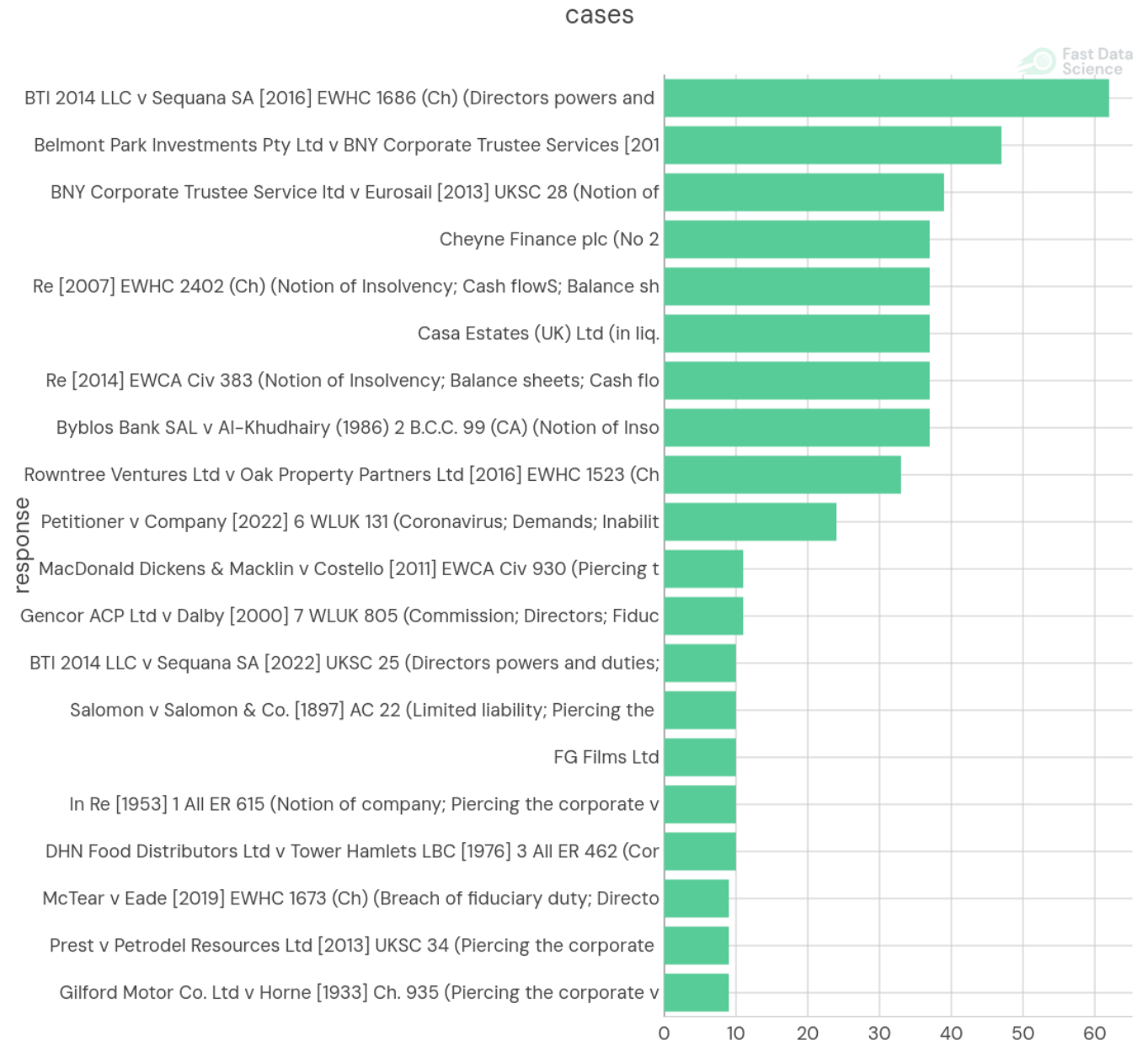




The most common cases cited are:

BTI 2014 LLC v Sequana SA [2016] EWHC 1686 (Ch) (Directors powers and duties of directors towards creditors as a company approaches insolvency)

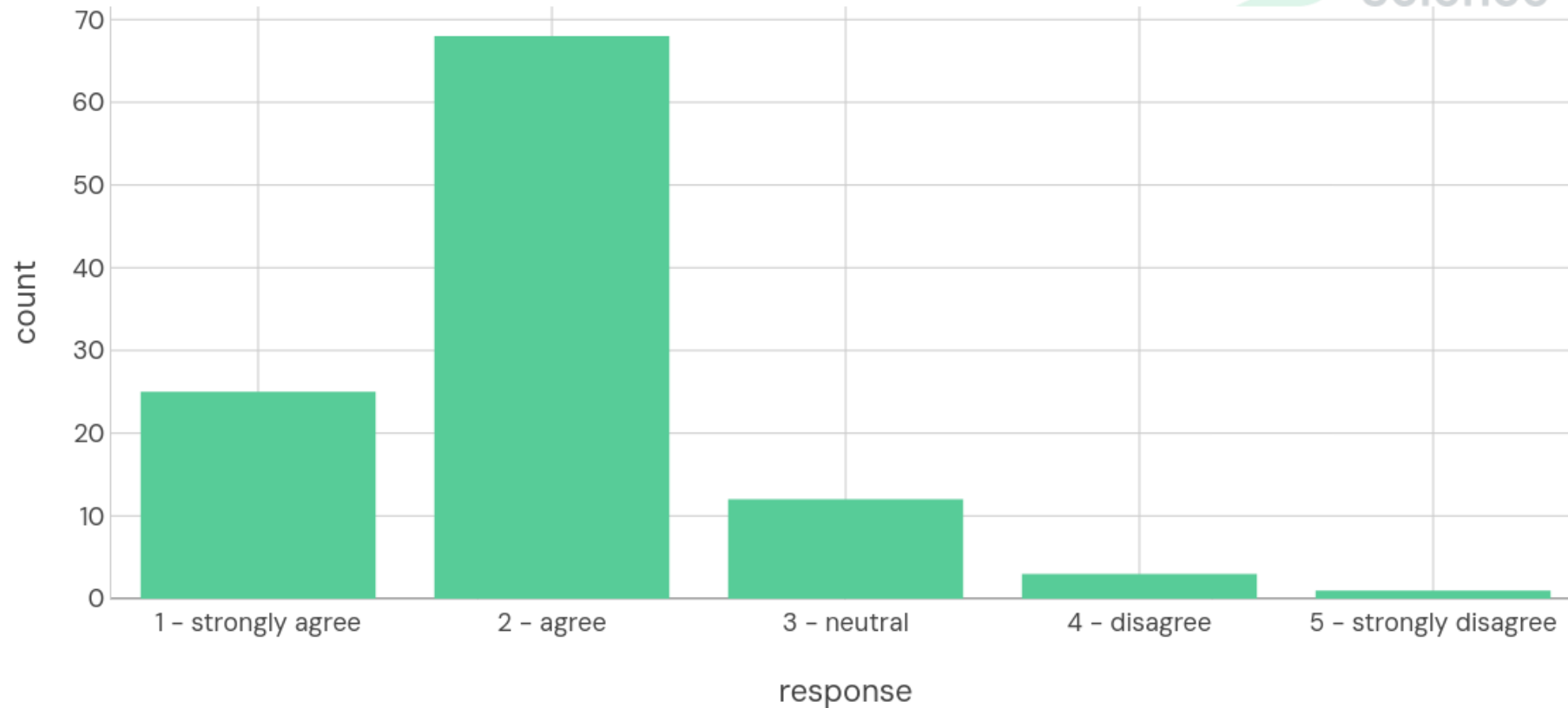
Belmont Park v BNY [2011] UKSC 38 - concerning the general principle that parties cannot contract out of the insolvency legislation





Trustworthiness of the Insolvency Bot

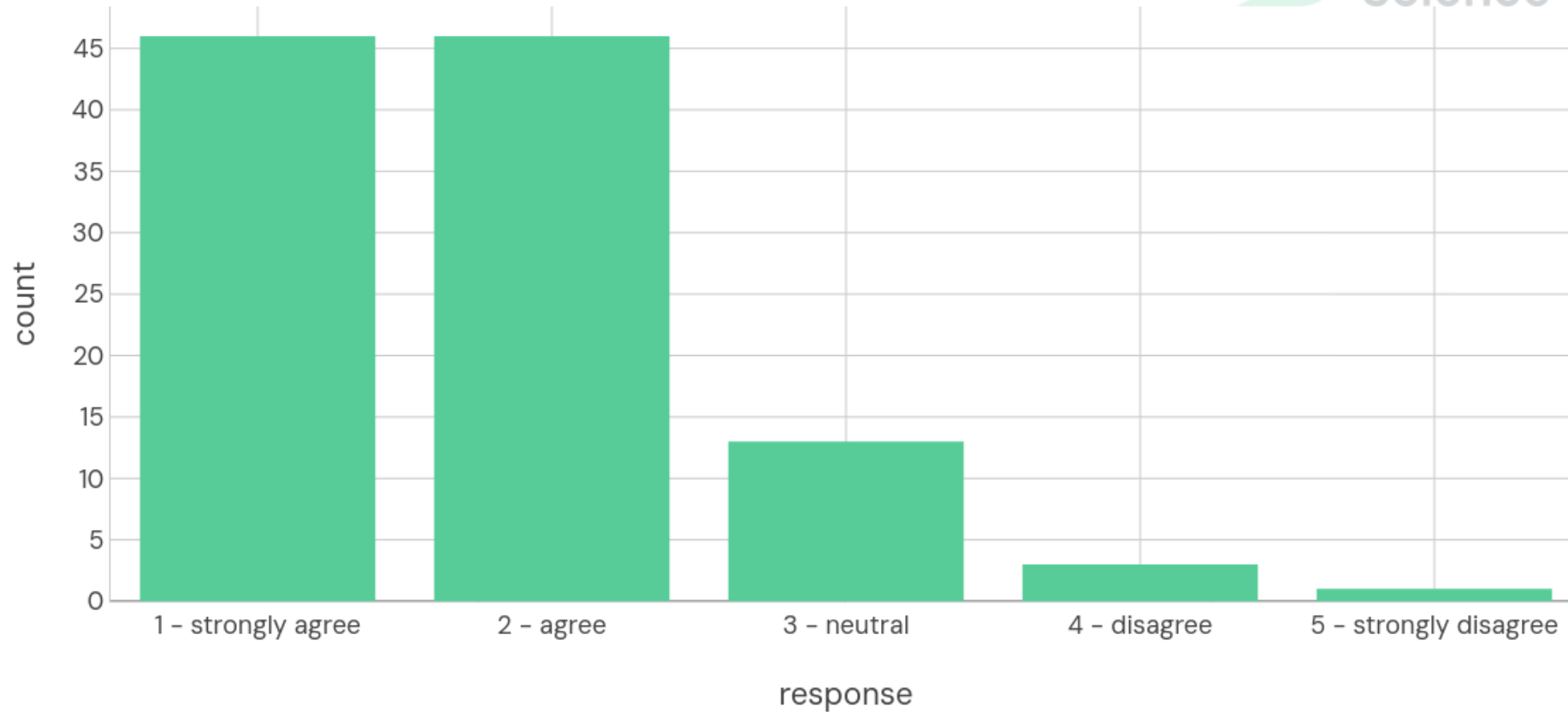
On a scale of 1 to 5, do you feel you can trust the advice received?





Understandability of the Insolvency Bot

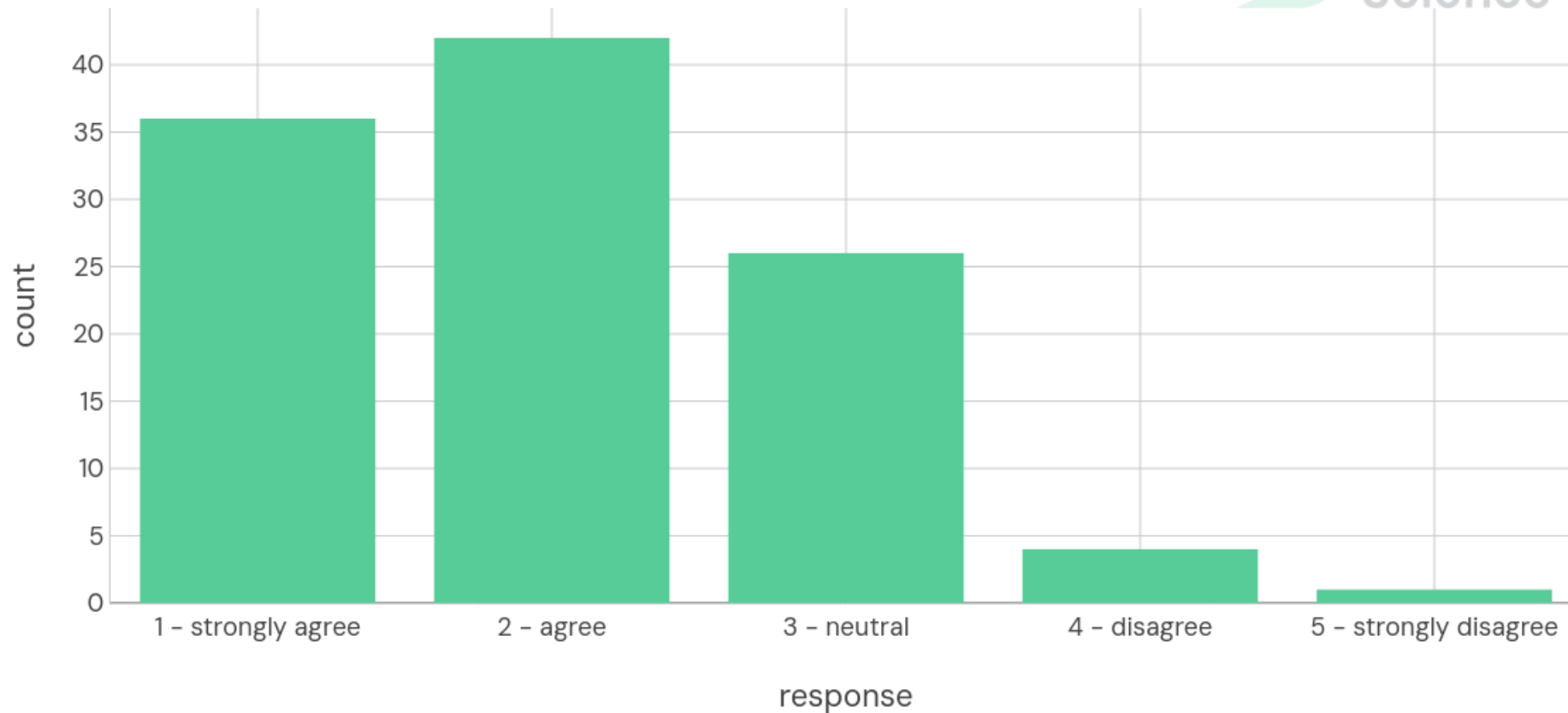
On a scale of 1 to 5, did you understand the advice generated by the Insolvency Bot?





Reference to cases

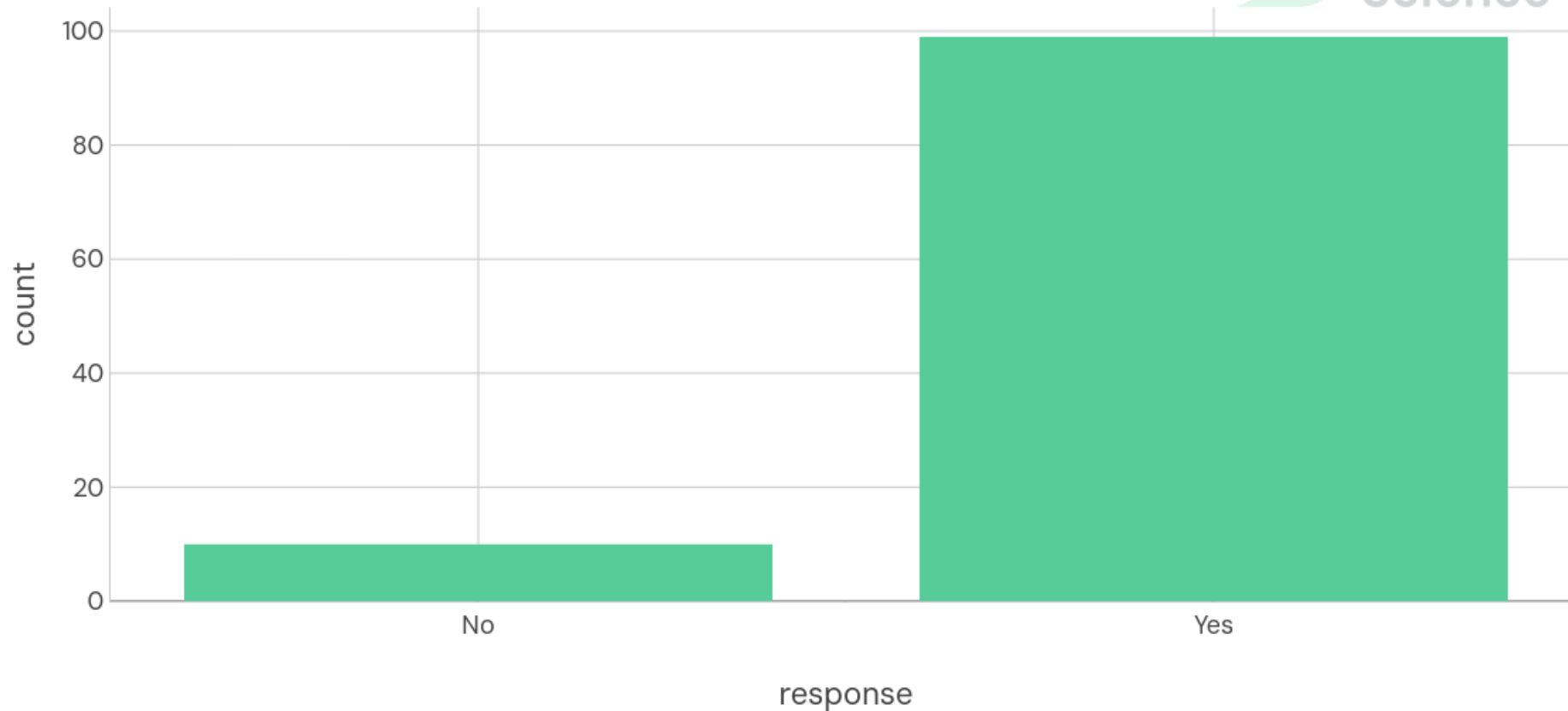
On a scale of 1 to 5, did you find it useful to have references to cases in the advice?

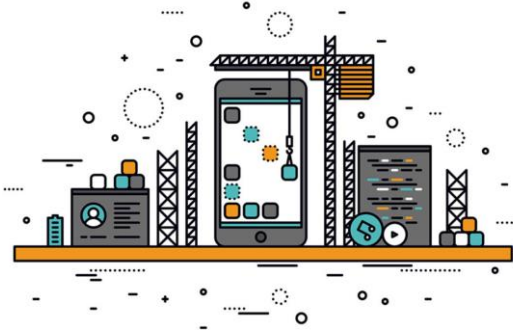




Expecting returning users

Having used the Insolvency Bot, would you consider using it in the future?





System development

more sophisticated techniques for matching queries with relevant law
testing other LLMs, e.g. IBM foundation models, Mistral 7B
training a custom language model
experimenting with multilingual LLMs



User experience

organising an in-person workshop with representatives of MSMEs, insolvency professionals and public service providers

...next steps



Expanding the insolvency scope

engage with insolvency experts, e.g. 5th Insolvency Symposium (London, Apr 2024), INSOL Europe (2025)
expanding the system to cover other jurisdictions as well as cross-jurisdictional queries



Fast Data
Science



UNIVERSITY OF
SURREY



SCAN ME

Thank you!

<https://fastdatascience.com/insolvency/>



Results (by test queries)

Table 1. Scores of unmodified GPT bots and those enhanced by the Insolvency Bot (IB) according to our marking scheme

| Question no. | Points available | gpt-3.5-turbo | gpt-4 | IB (gpt-3.5-turbo) | IB (gpt-4) |
|----------------|------------------|---------------|-------------|--------------------|------------|
| Q1 | 25 | 6 | 12 | 12.5 | 15.5 |
| Q2 | 24 | 3 | 3 | 3 | 4.5 |
| Q3 | 25 | 3 | 3 | 3 | 10 |
| Q4 | 25 | 3 | 3 | 9 | 5 |
| Q5 | 22 | 3 | 3 | 3 | 12 |
| Q6 | 25 | 6 | 6 | 9 | 14 |
| Q7 | 25 | 3 | 6.5 | 1.5 | 9.5 |
| Q8 | 25 | 11 | 3 | 16.5 | 19.5 |
| Q9 | 25 | 3 | 3 | 6 | 15 |
| Q10 | 25 | 11 | 11 | 16 | 19.5 |
| Q11 | 25 | 3 | 3 | 3 | 4.5 |
| Q12 | 25 | 5 | 5 | 5 | 10 |
| Total | 296 | 60 | 61.5 | 87.5 | 139 |
| Percent | - | 20% | 21% | 30% | 47% |



Sail or Sink: Navigating Venture Distress in South Africa through the Critical Incident Technique for Causal Attribution

Melody Kuziwa Jombe (m.k.jombe@exeter.ac.uk)



Purpose of Study

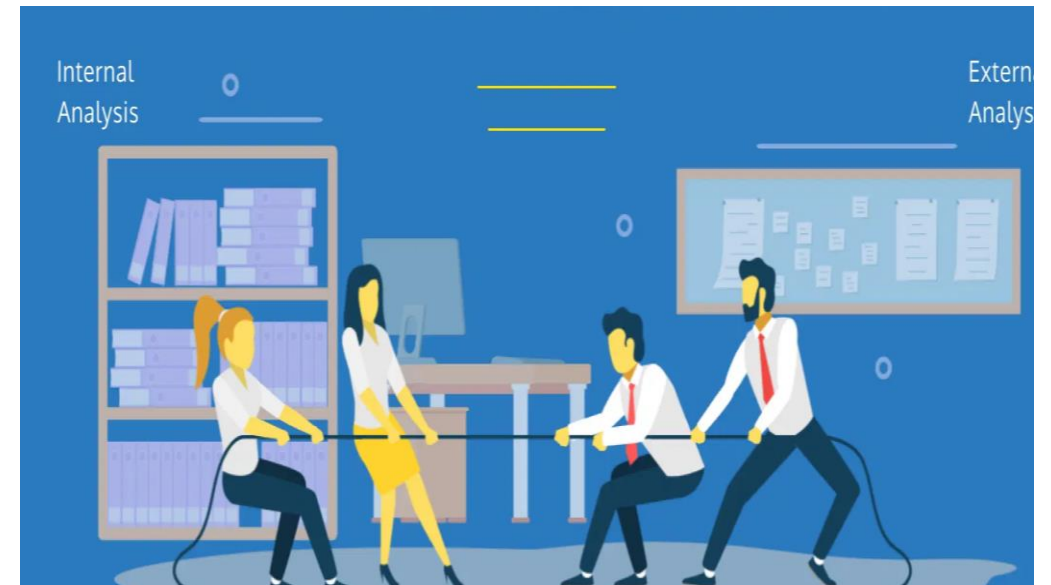
Explore causal attribution of venture distress in South Africa using the CIT method as a diagnostic tool.

Distress origin

Force of managerial action

Responding strategies

NB: You cannot cure that which you do not know!





Basis!

Source: Adopted from CIPC (2021)

| Status of Proceedings | 2011- + 2012 | 2012- + 2013 | 2013- + 2014 | 2014- + 2015 | 2015- + 2016 | 2016- + 2017 | 2017- + 2018 | 2018- + 2019 | 2019- + 2020 | 2020- + 2021 | 2021- + 2022 | Grand Total |
|-----------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------|
| Active | 52 | 115 | 118 | 122 | 146 | 120 | 138 | 154 | 204 | 270 | 219 | 1658 |
| Liquidation | 58 | 65 | 70 | 73 | 73 | 49 | 36 | 33 | 26 | 19 | 9 | 511 |
| Nullity | 111 | 28 | 21 | 26 | 24 | 17 | 22 | 32 | 15 | 6 | 8 | 310 |
| Set aside | 2 | 5 | 6 | 4 | | 3 | 2 | 5 | 3 | 2 | | 32 |
| Substantial | 83 | 108 | 105 | 97 | 88 | 75 | 60 | 50 | 64 | 34 | 2 | 766 |
| Termination | 77 | 119 | 89 | 91 | 150 | 111 | 104 | 75 | 61 | 42 | 19 | 938 |
| Grand Total | 383 | 440 | 409 | 413 | 481 | 375 | 362 | 349 | 373 | 373 | 257 | 4215 |



Critical Incident Technique: **WHAT?**

- **CRITICAL INCIDENT:**

- A subsequent meaningful incident, situation or event that results in or has implications for certain important outcomes. = **-Ve**

- **CRITICAL INCIDENT TECHNIQUE**

- A **qualitative** research method that focuses on **an analysis** of certain incidents, situations, events or actions, to have **deeper contextual insights** into the **causes** and **consequences** of these incidents or events.



Critical Incident Technique: **WHY?**

- Deeper, contextual analysis of critical incidents
- Understanding incidents empirically
- Identifying causes, consequences and loopholes
- Informed decision making



SIGNALLING THEORY

| Signaller | Signal | Receiver | Feedback |
|--------------------|--|--|-------------------------|
| Distressed venture | Is sent to receiver (causal attribution signals) | Observes and interprets signals, e.g. BRPs | Is sent to stakeholders |



Critical Incident Technique: **HOW?**

- Identification of the problem/ Issue
- Identification of critical incidents
- **Sample**: **Four** distressed ventures, **Ten** highly experienced senior level decision makers, **eleven** BRPs and **four** secured creditors (25).
- Data collection (semi-structured critical incident interviews & card sort)
- NVivo >>>Thematic analysis >>>Codes>>>sub themes >>> main themes
- Response rates and a boundary was used to determine the criticality of incidents. For this study, the boundary was marked **at six responses** for an incident to be termed critical.



CIT DATA ANALYSIS

| Subtheme | Code | Response rate % (response numbers in parenthesis) | Event |
|-----------------------|------------------------|--|----------|
| Managerial misconduct | Lack of skills | (25) 26.3% | Critical |
| | Failed growth attempts | (15) 15.8% | |
| | Big egos | (9) 9.5% | |
| Boardroom fights | Key staff T/O | (12) 12.6% | Critical |
| | Fights | (11) 11.6% | |
| | Trust | (7) 7.4% | |
| Financial misconduct | Fraud | (10) 10.5% | Critical |
| | Lifestyle | (6) 6.3% | |

| Subtheme | Category | Response rate % (response numbers in parenthesis) | Event |
|---------------------------------------|------------------------|--|----------|
| Force majeure | Covid lockdowns | (24) 18% | Critical |
| | Regulations | (12) 9% | |
| | Natural disasters | (9) 6.8% | |
| Withdrawal of key stakeholder support | Loss of contracts | (19) 14.3% | Critical |
| | Lack of funding | (15) 11.3% | |
| Economic turmoil | Market decline | (6) 4.5% | Critical |
| | Mass migration from SA | (6) 4.5% | |
| | Inflation | (6) 4.5% | |
| Contagion | Ripple effect | (13) 9.8% | Critical |
| | Non-payments(debtors) | (6) 4.5% | |
| Criminal activities | High crime | (9) 6.8% | Critical |
| | Construction mafia | (8) 6% | |



Signal popular card placement matrix of distress assessment

| Card # | Causal attribution signal components | Categories | | |
|--------|---|-------------------|-----------------------|------------------|
| | | HIGH SIGNIFICANCE | MODERATE SIGNIFICANCE | LOW SIGNIFICANCE |
| 2 | Commercial insolvency of the firm (liquidation) | 100% | | |
| 18 | Cash flow shortages | 96% | 4% | |
| 10 | Payment of salaries (Ability to) | 96% | 4% | |
| 19 | Availability to create cashflow/ Failure to | 92% | 8% | |
| 26 | Supplier Support/ lack of it Interview 12 BRP | 92% | 8% | |
| 27 | Shareholder support/ or not Interview 12 BRP | 92% | 8% | |
| 20 | Management absenteeism from work | 88% | 4% | 8% |
| 21 | Declining sales | 88% | 12% | |
| 14 | Directors' loans paying themselves out. | 84% | 12% | 4% |
| 15 | Financial manager/ accountants' change knowle | 84% | 8% | 8% |
| 29 | Lifestyle of Directors Interview 19 BRP | 83% | | 17% |
| 1 | Technical Insolvency of the firm (BR) | 80% | 16% | 4% |
| 3 | Demand of the business (Order book) | 80% | 12% | 8% |
| 22 | Late submission of financials | 80% | 12% | 8% |
| 24 | Growth attempts (forced, ambitious, unclear stra | 80% | 20% | |
| 23 | Tax issues (avoidance, sensitivity) | 76% | 12% | 12% |
| 5 | Management reports | 72% | 8% | 20% |
| 12 | Availability of assets for redistribution/ shortage | 68% | 28% | 4% |
| 7 | Procedure of requesting cash: Systems in place | 64% | 12% | 24% |
| 9 | Salary packages | 64% | 28% | 8% |
| 16 | Financial statements without notes | 60% | 12% | 28% |
| 4 | Report of customer complaints | 44% | 32% | 24% |
| 25 | Eskom avoidance/ Garnish (from C1) Interview | 35% | | 65% |
| 28 | Ongoing Litigations Interview 19 BRP | 34% | 66% | |
| 11 | High staff turnover | 32% | 60% | 8% |
| 13 | Types of accounting systems | 20% | 20% | 60% |
| 8 | Structure of top management | 20% | 68% | 12% |
| 6 | Number of family members in the business | 8% | 12% | 80% |
| 17 | Type/ name of banking institution | | 8% | 92% |



CIT & CARD SORTING TECHNIQUE

| Subtheme | Category | Response rate % (response numbers in parenthesis) | Event |
|-------------------------------|-------------------------------|---|----------|
| Financial distress | State of financial statements | (11) 13.6% | Critical |
| | Depleting cashflow | (9) 11.1% | |
| | Non payments | (7) 8.6% | |
| Inventory levels | Stock levels | (14) 17.3% | Critical |
| | Withdrawal of creditors | (6) 7.4% | |
| Workplace culture | Mood of employees | (9) 11.1% | Critical |
| | Internal conflicts | (7) 8.6% | |
| Directors' lifestyle | Lifestyle | (9) 11.1% | Critical |
| Failure to maintain equipment | Dirt on machines | (9) 11.1% | Critical |

| Subtheme | Card number | Card description | Significance |
|-------------------------------|-------------|----------------------------------|-------------------|
| Financial distress | 5 | Management reports | High significance |
| | 10 | Payment of salaries | |
| | 18 | Cashflow shortages | |
| | 19 | Failure to create cashflow | |
| | 22 | Late submission of financials | |
| | 23 | Tax issues (Avoidance) | |
| Inventory levels | 3 | Demand of the business | High significance |
| | 21 | Declining sales | |
| | 26 | Lack of supplier support | |
| Workplace culture | 20 | Management absenteeism from work | High significance |
| Directors' lifestyle | 29 | Lifestyle of directors | High significance |
| | 14 | Directors' loans (Payouts) | |
| Failure to maintain equipment | - | - | - |



Findings

| Operational CIs | Strategic CIs | Force of Action | Responding Strategies | Critical Signals |
|---|---|--|---|--|
| <ul style="list-style-type: none"> • Managerial Misconduct • Boardroom Fights • Financial Misconduct | <ul style="list-style-type: none"> • Force Majeure • Withdrawal of Key Stakeholders • Contagion • Criminal Activities | <ul style="list-style-type: none"> • Creditors Protection • Directors Self Interests | <ul style="list-style-type: none"> • Cost reduction strategies • Stakeholder Engagement • Diversification • Leadership Change | <ul style="list-style-type: none"> • Financial Distress • Inventory Levels • Culture • Directors' lifestyle • Failure to maintain equipment |



CONCLUSION

- 3 samples used were not proportional << Triangulation based on BR case.
- The CIT can be further researched to address faulty attribution theory and assist managers to accurately determine distress causality.

