

Uncharted: the road to recovery

Episode four: Light touch administrations

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Rebecca Burn-Callander: Today, we are talking about light touch administrations. These are proving increasingly popular in the wake of COVID-19, and we'll be discussing why that is and what they mean for business and the UK economy.

I'm joined by Joanne Rumley, who leads the restructuring and insolvency legal practice at Foot Anstey. Geoff Rowley, who founded FRP ten years ago, and now serves as Chief Executive, and Alistair Massey, a Partner in FRP's Restructuring Advisory team in London. I'm your host, the journalist Rebecca Burn-Callander.

I'd like to kick off by looking at why light touch administrations are in the press at the moment, because they've been around a long time. Is that right, Joanne? I mean, these aren't a new phenomenon...

Joanne Rumley: Yeah, that's right, Bex. They have been around a long time.

I think probably the starting point is actually that it is an administration. We're calling it light touch administration – it is a normal administration process, but with a difference. It's the way the administrator approaches the conduct of the administration to maximise the opportunity to try and rescue the business.

You're right, they have been around for a long time. In particular, there's been some high-profile cases. Railtrack was one of them, and Metronet. In the manufacturing space, one called Turner & Newall.

I guess the reason they've been around for a while is where people have needed to innovate with the tools we have already in our insolvency tool kit to make sure that the right outcome is achieved for the company and its creditors.

Rebecca Burn-Callander: In those previous cases that you mentioned, I mean, how successful have they been? Is there a great track record of light touch being the go-to form of administration in times of crisis? Why is that particularly?

Joanne Rumley: Yeah, you're right, Bex. The examples I've cited, Metronet, Railtrack, Turner & Newall, were high-profile, big cases of a time in a moment that needed this light touch.

We've probably not seen many light touch in administration since. And the reason for that is we've been sat in a relatively benign economy.

We obviously had the credit crunch, but that impacted the financial sectors rather than operational businesses. What we're seeing now is a one-off catastrophic event, COVID – a massive pandemic, and really good businesses affected by something that really is not of their making. It's not because of poor management.

Therefore the light touch has a place again in trying to sustain those businesses through this short-term crisis.

If you have a fundamentally good business with sudden and catastrophic impact, the underlying business is still good. If we can get it through the restructuring period it needs, give it some breathing space, light touch provides an opportunity to do that.

So, I wouldn't say it's a go-to process – it's right in the right types of circumstance and that's why we've probably not seen so many say in the last ten years.

Rebecca Burn-Callander: Great. Thank you for explaining that.

Geoff, if I can bring you in here, are there any particular types of businesses or sectors...because we've heard a lot about retailers, for example, being involved in LTAs. Why is that type of business so well suited to this approach?

Geoff Rowley: I think in the context of what is suitable, I think the primary thing that we're looking at is what's the underlying quality of the management? What's the underlying quality of systems and structures?

If you take retailers now, I mean, most of them will have pretty sophisticated systems in place in terms of how they are recording their sales, how they're dealing with all their SKUs, how they're dealing with their suppliers, and underpinning that – and obviously where those are also active in the online arena – they should have good systems, very good reporting.

I mean, most retailers of a decent size – or casual dining of a decent size of otherwise – their ability to understand what they're achieving on a daily basis is normally very high. So, most of them will deliver daily reports as to activity levels, as to margin levels, as to what they're going through.

In that sense what you're looking at is the ability to say, "How can the administrators come in alongside management?"

Now, as Joanne says, we are still the administrators and we can't delegate away our obligations and our responsibilities. But that doesn't mean that we have to assume responsibility for every operational aspect of a business.

It's therefore those that have got good systems and structures in place. There is no reason as to why administrators shouldn't be able to work alongside, recognising that there still will be a different world because the company is in administration, but to do that in collaboration and to give the company, and the business in question, breathing space, to look at its options...obviously, in the current climate we're in to sort of get through the immediacy of the crisis.

For many instances, it will then be about looking at what is the lie of the land? What are the options and what can be pursued in due course?

Rebecca Burn-Callander: Just to be clear, when we talk about a strong management team, what do we mean? Alastair, if I can bring you in here, what do you look for in terms of the characteristics and the strengths of a management team to know that they're capable of working within this structure?

Alastair Massey: If we take some of the examples you highlighted in Debenhams, for argument's sake, you've got career directors there who have been directors of PLCs, who are clearly very well respected and have a certain reputation to protect. Therefore, you can be relatively comfortable that the decisions they will make will be in the best interests of creditors and the best interest of the company.

It's still, obviously, as Geoff indicated, incredibly important for us to – whilst not taking over the entire management structure and the reporting lines – that we have an appropriate intervention within, say, cash commitments or daily payments where a member of the administrative staff has oversight to know what the administrators have effectively undertaken to commit to and cash leaving the business.

So, it's about augmenting the management structure to ensure that we are mindful and compliant in our duties whilst not completely reinventing that reporting process.

Rebecca Burn-Callander: Alastair, is that a challenge? How do you keep those lines of communication open and ensure that the administrators have all the information they need? Is that complex, or is that something that you guys are very used to and you know what questions to ask? How do you manage that relationship?

Alastair Massey: I think we're obviously mindful, from our experiences, of the areas that are likely to be of higher risk than others.

It has been more difficult in the lockdown scenario because we can't simply walk the floor and understand what each member of the team, say the finance team, for example, would do.

So, it's about spending the first two, three weeks understanding how the processes will work and ensuring that if we do feel there's a weakness or some need to augment that process with an additional step to give us more control, that we're able to highlight that, identify it and put something in place to ensure that we do have sufficient control.

Rebecca Burn-Callander: I've heard that there's some legislation in play, the 'consent protocol', which is also helping to alleviate some of the pressure on the insolvency industry of going through these LTAs.

Geoff, you talk me through how that works and why it's proved useful in this process?

Geoff Rowley: Yes. So, as an immediate response to the pandemic – and I have to say, we have to give credit to Joanne and our legal colleagues here, because it was the parties such as the Insolvency Lawyers Association that sort of led the way on actually sort of taking a pause, looking at what we already had, recognising that the prospect of coming up with something entirely new was unlikely to be feasible within the very short period of time that people initially had to react and taking the legislation that we had and in many ways – because there was a draft protocol agreement, which effectively seeks to set out the relationship between the administrators and the senior management team – and to give clarity about who's doing what.

Now, by definition for a fairly large organisation, the ability to make that on day one a hundred percent accurate and prescriptive is impossible.

But I would have to say that if you get to the point where your protocol agreement has to be one hundred percent prescriptive, you probably have an environment where a light touch administration is not going to work, because it needs to be a framework rather than, "You can do X, you can do Y; you can't do this, you can't do that"...if you bring it too granular, I would offer the opinion that that probably means that the working relationship and our trust in management and their trust in us is never going to quite work.

But it was very helpful to have the profession come forward with a clearly drafted agreement that said, "Taking the existing powers that have always been there but have just been probably hidden somewhat and not quite exposed in the way as to the usefulness they are..." and then take that forward...As Alaister said when we did Debenhams literally on day one of our appointment that agreement was entered into, and thankfully we've actually had to refer to that agreement very, very little because the working relationship has been very collaborative its been very positive around trying to look at dealing with the trading, dealing with all sorts of matters. But it is a useful document that everyone knows sits there and can be referred to.

As I say, I look at it really as being a framework. I think that if it's put there in place for everyone's protection then it should serve purposes very well.

Rebecca Burn-Callander: Joanne, I mean, do you think that the consent protocol will mean that the LTA is going to be popular beyond lockdown, beyond COVID-19, because there's a little bit more of a framework in place as Geoff has said?

Joanne Rumley: So, I think the answer to that depends very much on whether an LTA is the right approach for the particular company that you're dealing with at the time and not every company will be right for an LTA.

So, the consent protocol, as Geoff says, is very much a framework. It's not designed to cover everything – it's designed to put some parameters around the relationship.

It's probably just worth us talking about why that protocol's necessary. In a normal administration process, the director's powers are switched off the minute the administrator's appointed – that's written into statute. But there's a big 'unless', and it's this unless that drives the protocol. The unless is...unless the administrator decides that it's appropriate and grants his or her consent to allowing the directors to exercise rights.

And so, the protocol is then borne out of "What is the extent of the powers that the administrator is prepared to grant permission to the directors to exercise?"

I can see cases in the future where this hidden power or this hidden section – paragraph 64 in Schedule B1 – could actually be used, even if you're not doing a full light touch administration.

There could be situations where Geoff and Alastair are appointed, and other insolvency practitioners, where actually it's right to grant a very limited power to certain directors to carry out certain aspects of an administration.

I think the protocol's helpful, but I think I would caution that it's not necessarily appropriate for every single case. And so, do I think we will see more of them? I'm back to, I guess, the statement I made right at the beginning when we were talking, which is that every case has got to be assessed on its facts.

For me, the objective of the administration is probably what drives whether the LTA's important or not.

The primary objective in administration is the rescue of the company as a going concern. Over time, we've probably moved because of the economy to a situation where objective one of administration's probably not being what we've needed to pursue.

We've been looking at better realisation for creditors, perhaps a secured creditor. So, how do we maximise value from the assets? There will be cases going forward where rescue of the company is absolutely the right objective, and in those circumstances, an LTA might be helpful.

Rebecca Burn-Callander: That's great thank you, we have to judge everything on a case by case basis. Alastair, can I bring you in here, for anyone listening that's just curious how in a practical sense how an LTA is delivered, what is the step by step process that is followed? Can you just take us through an overview of how it works?

Alastair Massey: Well if you take the Debenhams case, as I indicated earlier, cash was our primary concern in the first instance, but then it was around understanding how the distribution centres worked, and whether we were comfortable with how those processes worked. There was no point in myself and my team taking over those processes, because clearly we're not experts in health and safety or indeed in getting the infrastructure of the stores up and running. It was about augmenting management where they needed assistance in negotiation with suppliers, and assisting management in negotiating with vendors to ensure we had sufficient stock to enable us to do that.

Rebecca Burn-Callander: And how tricky is it to manage all the stakeholders through an LTA? I mean, who are the stakeholders and also, what do people tell their staff? How tricky is it to manage those relationships?

Geoff, I might bring you in here because you've seen a few of these now.

Geoff Rowley: The issue of communication is essential to all administrations or all restructurings.

If you can't communicate, the chances of you succeeding are always going to be reduced, I would suggest. Obviously, the pandemic has thrown up another challenge, which, as Alastair said, historically we would have been able to be either very visible or somewhat more visible in a physical sense, and that's gone.

Now, what we found – thankfully, actually – is that for the cases we dealt with thus far, the companies had already embedded very good communication systems for getting messages out to staff.

Immediately upon our appointment, whether it was on Carluccio's or indeed Debenhams, messages, actually in the first instance from the CEOs, were delivered to the staff, both in recorded messages as in videos, so that they could see their CEO explaining what was going on and why things were happening, but then on top of that, obviously updates in written form as well.

I think we have to say absolute credit to staff who have gone through not only the fundamental uncertainty and the challenges that we've all had around the impact of COVID, but also their employer has gone into administration and quite naturally an initial concern will be about job losses, et cetera.

Whilst we can't say that an LTA will never cause job losses to occur, the issue of communicating and talking through...again, on the wider stakeholder piece, there's been very significant amounts of communication that COVID hasn't stopped – whether that's by video calls, via conference calls or whatever that has been.

But talking to people still is the way that you get results. Because if you're trying to deal with a disgruntled supplier...and we've had suppliers from all around the world who are facing their own challenges, all sorts of stuff working through there...

The light touch bit hasn't meant that you don't talk to people. The fundamentals remain. You've still got to communicate and communicate and communicate.

As long as that is core to what people are doing, you can't hide away from the fact the company's in administration. It is there, but we haven't found that to be an impediment. Clearly you've got to engage with as many people as possible to explain what you're trying to achieve.

Rebecca Burn-Callander: How much harder is it to go through this process when the brands ... I mean, the brands we're talking about today, they're household names, there's a lot of media attention...

I mean, does that put on extra pressure to the parties on both sides? Joanne, I might bring you in here. That must be difficult when all these things are being executed in the public eye.

Joanne Rumley: Yeah, I think media's obviously something that anybody in any administration context, light touch or otherwise, is aware of, but there's a job to do, there's duties to fulfil. And when we're in a light touch administration, those duties fall both on the administrator, but also on the directors who by the consent protocol are given discretion to exercise those duties.

Their focus has to absolutely be on "What is the rescue plan and how does what I'm doing enhance the position for the creditors?"

We all know the media will present things in the way the media chooses to present things. It doesn't necessarily mean it's right.

For me, from a legal perspective and looking into a legal mind, there's one eye on the risk and reputational piece in terms of how the media are presenting things, and there's a lot we can do to help and assist the media...support the right messaging around it.

But the priority always has got to be about doing the job properly, and that focus I think is paramount.

Rebecca Burn-Callander: Absolutely. It strikes me when we're talking about management having a little bit more sway during a light touch administration, that a lot of the success of these arrangements relies on trust. So how do you build trust, I suppose, between the two sides? Then, how do you mitigate risk at the same time?

Alastair, I might bring you in here. What have you found?

Alastair Massey: Certainly from an operational point of view, which was my primary focus on Debenhams, you're right, that building that trust with management from the outset...and that goes both ways that they, I guess, accept that you're not going to be interfering in the minutiae of their day job, but also from my point of view, it's about managing risk and ensuring they're not behaving in cavalier management.

As Geoff indicated earlier, it's just about communication and understanding more about their situation and their concerns about the process. And often that's, say from a reputational point of view, that the individuals who are dealing with major beauty vendors on there on a daily basis, they want to make sure that their own reputations are protected and how we can assist them in ensuring that's the case – that everything's dealt with in a commercial and a professional manner. I think that's how you go through that process.

Rebecca Burn-Callander: Are there any key learnings that the wider insolvency industry will take on board as a result of COVID-19, as a result of having to process these LTAs? Are there any longstanding learnings that you think will change the industry long-term, Geoff?

Geoff Rowley: Yeah, so I think as Joanne said, the rights for this have always existed, but I think it's safe to say that the insolvency profession as a whole, and that's both the accountants – we tend to be the administrators – and the lawyers who are advising I think it's fair to say that in the main there's a natural degree of caution about life, and it's easier to default to the cautious approach than it necessarily is to say, "Let's think a bit broader."

That cautious approach over the last 25 years of administrations plus, has been to take the cautious approach, which has meant the administrators come in, they take complete control, they seek to control the minutiae because that's the easier route in some ways.

But I think in the context of both COVID, I think we should expect to see in the consideration of the options that a light touch administration is given greater air time. And that if practitioners in the administrator sense can get slightly more used to the fact that they don't have to do everything – and that doesn't mean giving away or exposing yourself to undue risk – then actually it should become a more useful tool.

We expect that the moratorium process and the restructuring plan process will not be the right thing for many companies for the reasons as to what you have to do in there, but a light touch administration may be, or should be, another tool that's under consideration where you're looking to use the restructuring tool that is administration as effectively as possible.

So, I would like to think that, over time, administrators – and therefore the sort of wider restructuring and insolvency profession – feels a little more comfortable, if not, somewhat more comfortable in feeling that they can adopt the LTA without exposing themselves to sort of an undue level of risk.

Clearly, as Joanne said earlier, not all cases will be relevant or appropriate for an LTA, but we should see some progression in how the profession looks at the options that are available.

Rebecca Burn-Callander: Geoff, do you feel like the need to get the best possible outcome from every administration is more pressing than ever, given that we're in a pandemic, that there's all these pressures on the economy, does that feel like it puts even more weight on every single one of these deals to get them exactly right?

Geoff Rowley: Yes. I mean, I think the profession as a whole knows it's always being judged by the outcomes.

Now, obviously, there are, for many matters, many stakeholders, and therefore different people have a different perception as to what a successful outcome is. But, if we take one facet of what an administrator might achieve, which is the preservation of jobs, I think it's safe to say that the preservation of jobs in the coming months, if not couple of years, is going to be something at the top of every politician's agenda and probably every businessperson's agenda in the context that the impact of COVID-19 is already demonstrating significant unemployment levels, which sadly are only being predicted to rise.

So, the prospect of using an LTA or indeed any other restructuring tool with regards to trying to preserve whether a company itself or its underlying business will come ever more into focus.

The one thing I would say is when I talk about the insolvency profession needing to learn and adapt itself, I would love to see a wider business change, however, where people are prepared to take advice earlier.

Because it's absolutely true that the more time that we – whether as restructuring advisors or Joanne as a restructuring advisor from the legal sense – are given to assess a position, the greater the prospect of us achieving success.

I think it is a reasonable comment to make that we don't have a business culture where people seek early advice.

I've been doing this for 30 years and sadly, people feel as though taking advice is often seen as almost some sort of weakness. So, hopefully if we can get a wider environment where people want to engage earlier, then the success that you refer to as being highly important for what we all seek to achieve, we marginally, if not significantly improve the prospects of delivering that success.

Rebecca Burn-Callander: That's a really interesting point, Geoff, maybe we could dig into that a little bit more...

Because when we say, "Ask for advice earlier", at what point, what are the red flags or how early, how does a businessperson know, "Right, this is this time when things could go dramatically downhill"? What are the warning signs? I might bring you in here, Alastair. In your experience where's that fork in the road when businesses really need to think, "I need help here"?

Alastair Massey: It's as early as the company's lost a contract or it just starts to come slightly off-budget, and things can progress very quickly from a company simply being stressed to becoming distressed. As time passes the options available to the company decrease.

As Geoff indicated, the earlier we can have that intervention and start to provide some advice as to how to stop that decline continuing, the greater the likelihood of a successful turnaround and avoiding an insolvency event.

Rebecca Burn-Callander: It's tricky though, isn't it? Because I know that most entrepreneurs that I meet, they're incredibly positive people, and if something goes wrong, their first instinct isn't to think, "Oh, I should get advice". It's, "I'm going to fix this, this isn't that big of a problem". So, I suppose it's also about a kind of educational aspect to, as Geoff mentioned, it's not always a sign of weakness; it's not always a sign that things are going to get really bad if you get advice.

How do you instil that in entrepreneurs – people who are, by their nature, likely to kind of reject the idea that things are going wrong?

Alastair Massey: It's incredibly challenging and often owner-managers in that sense will seek advice from their retained legal advisor in the first instance. As you indicated, it's incredibly difficult to get an entrepreneur who, by the

fact that they're in that position, they have traditionally been hugely successful and they feel as though they can resolve it themselves.

Rebecca Burn-Callander: Joanne, there's a feeling that the insolvency industry and the government are kind of pulling in the same direction. Is that quite an interesting environment to be working in?

Joanne Rumley: Yeah, it's been a very busy environment to be working in because obviously, COVID hit. And so, we've got lots of businesses actually reaching out with questions, which to your earlier point about getting directors to engage earlier, we've seen much more of that in the COVID period. Just questions, a bit of checking about where they're unsure and really reaching out to professionals to just try and help guide them.

And alongside that, we obviously had all these changes proposed by government.

It's probably worth saying that the changes that have come into force at the end of June actually were talked about a few years ago. So, they're not new proposals. They have been discussed. They were consulted on at length and then parked I guess because government had all the business with Brexit and everything...

But given the pandemic they've been brought to the fore and expedited.

There's a lot of good in those proposals. There's also a lot of question marks still, but what I do know is we've got a very creative and sophisticated insolvency profession and I mean that in its broader sense – be it insolvency practitioners, be it the legal community, be it our judges.

Having the additional tools in the kit box will enable us to deliver better outcomes all round. I think there will be bumps along the way where we're not clear precisely what a particular provision means or how we should interpret it. But I do know the industry and the wealth and depth of experiences in it will work creatively to find solutions, and solutions are what help businesses.

Rebecca Burn-Callander: Oh, absolutely. Joanne, you mentioned those question marks...

How long do you think it will be before we know the long-term implications of some of these changes? Will we know relatively quickly or could it be years down the line?

Joanne Rumley: I think we will see some fallout relatively quickly. There were a lot of businesses going into COVID who were already financially distressed. We've actually seen some of them fall over along the current journey.

I actually think the longer-term impact is going to be quite sustained. I think Geoff mentioned earlier in the conversation about unemployment rates, but we've also got to think about all those businesses who've had to avail themselves of some of the government schemes, things like the CBILS loans.

When suddenly we've got to start servicing those interest payments, and we're looking at our balance sheets and maybe the revenues are not back to where they should have, or where we predict or hope, they will be, those businesses are going to have quite a tricky time.

To Alastair's point on directors taking advice early – this is exactly the time now to be perhaps engaging with people like Geoff and Alastair to have a conversation about, "Okay, this is where we're at. This is what we did to respond to COVID, but could you help us forward look? Could you help us roll forward perhaps our cash flows, our trading plans?" Because what directors need to do is make sure they're robust and resilient and the challenges I think could come at them all of a sudden, but in six, eight, 12 months' time, and planning now is not a waste of time.

Rebecca Burn-Callander: I think that's a brilliant place to end. Planning now is not a waste of time. I think that's got to be the message from this week's podcast.

Thank you all so much for sharing all of your insights and advice and examples from the real world, which always brings these topics to life.

It's been really interesting to dig into what light touch administrations really are and what they mean for businesses. Much appreciated. Thanks, everyone.