

Institution: Nottingham Trent University
Unit of Assessment: C20 Law
Title of case study: Informing Dispute Resolution (Best) Practice in the Civil Justice and Insolvency Practitioner Fields
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Researchers, led by Seneviratne, have long influenced debate and had impacts in practice within various dispute resolution frameworks. Seneviratne's work on the civil litigation system (with Peysner), has had broad and significant influence in reviews of civil justice systems internationally, as has Peysner's other research undertaken at this UoA. Seneviratne's work on insolvency complaints and disciplinary procedures (with Walters) has had real influence in informing both domestic Parliamentary and international debate regarding insolvency practitioner regulation.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p><i>a) Access to justice</i></p> <p>The report, <i>The Management of Civil Cases: the Courts and the post-Woolf Landscape</i> (2005) by Peysner and Seneviratne was commissioned and funded by the (then) Department of Constitutional Affairs. It evaluated the 1999 Woolf Reforms to the civil justice system, which encouraged early settlement of disputes and alternatives to litigation. The research included a qualitative study of the management of fast-track and multi-track cases in 2003 and 2004. Peysner and Seneviratne noted a drop in litigated cases and increased quality and pace of dispute resolution but increased costs. In view of the far reaching nature of the Woolf Reforms this was an important study and it has since been referred to domestically and internationally in evaluations of civil justice frameworks and proposed reforms conducted in other jurisdictions, examples of which are detailed in Section 4a) below. Peysner also published a 2004 journal article (referenced in Section 3 below) based on this jointly researched project.</p> <p><i>b) Complaints handling in the insolvency profession</i></p> <p>Seneviratne and Walters conducted two externally funded projects in 2007-8 which culminated in two separate reports to the funding body, the (now defunct) Insolvency Practices Council, "IPC" (references in Section 3 below).</p> <ul style="list-style-type: none"> The first project (2008) investigated complaints handling and disciplinary procedures in the insolvency practitioner profession. The research drew upon information about these procedures that was already in the public domain which was then supplemented and enriched by eighteen semi-structured interviews carried out with representatives of the Insolvency Service, the seven recognised professional bodies that license insolvency practitioners in Great Britain and ten insolvency practitioner firms based at various locations in England and Wales. This initial report provided accounts of: in-house complaints handling procedures within accountancy and insolvency practitioner firms; the requirements or recommendations of the insolvency regulators as regards in-house complaints handling within such firms; the steps taken by the insolvency regulators to monitor "in-house" complaints handling; the complaints handling and disciplinary procedures of the insolvency regulators; and remedies available to the insolvency regulators when dealing with complaints and disciplinary matters. The second project (2009) built upon the insights of the first project by comparing the insolvency regulators' complaints handling and disciplinary procedures with comparable systems in other professions and industries. It then set out the findings, framing the comparison by reference to broad themes of: jurisdiction; purpose; context; accessibility; process; remedies; sanctions; accountability; and independence.

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3. References to the research (indicative maximum of six references)

John Peysner and Mary Seneviratne, *The Management of Civil Cases: the Courts and the post-Woolf Landscape*, commissioned by the Department for Constitutional Affairs (DCA Research Series 9/05, 2005).

John Peysner, "Predictability and Budgeting", (2004) 23 Civil Justice Quarterly 15.

Mary Seneviratne and Adrian Walters, *Complaints Handling by the Regulators of Insolvency Practitioners: A Comparative Study* (2009) – report for the UK Insolvency Practices Council.

Mary Seneviratne and Adrian Walters, *Complaints Handling in the Insolvency Practitioner Profession* (2008) Report for the Insolvency Practices Council.

Evidence of the quality of the research:

The 2005 report by Peysner and Seneviratne was funded by the Department of Constitutional Affairs. The Peysner article was published in a well-regarded, peer reviewed, journal.

The Insolvency Practices Council awarded contracts of £17,100 and £11,150 for the two *Complaints Handling* research projects of Seneviratne and Walters.

4. Details of the impact (indicative maximum 750 words)a) Access to justice

Peysner and Seneviratne's work has been influential nationally and internationally.

Peysner was consulted as one of a small group of distinguished academic lawyers as part of the *Review of Civil Litigation Costs* (Ministry of Justice, 2009) by The Right Hon Lord Justice Jackson (5.4 below). Peysner's article "Predictability and Budgeting", (2004) 23 Civil Justice Quarterly 15 was cited in evidence. Prior to this review he also worked with The Law Society's Civil Justice Committee in formulating ideas for the project management of litigation.

The Peysner/Seneviratne report was cited (5.1 below) in the *Report of the Scottish Civil Courts Review* (2009), at p 105, as evidence that case management conferences were one of the main successes of the civil justice reforms in England and Wales but also that the system of allocating cases to judges could be improved. The findings of the report were also cited in relation to telephone conferences, pre action protocols, settlement offers, the disclosure regime and wasted costs (references in 5.1 below).

The Peysner/Seneviratne report has been widely influential in reviews of civil justice systems in Australia. For example, the report's findings were a key influence underpinning the view in Attorney General of New South Wales, *ADR Blueprint Discussion Paper* (2009, 5.2 below) that similar reforms, if introduced, should not be prescriptive about the action that a lawyer must take, since this could lead to higher consumer costs in some cases. It was also noted in this report, based on Peysner and Seneviratne, that it was unclear that court annexed mediation produced significant costs savings. Peysner and Seneviratne's findings that the overriding objective gave too much discretion to the courts, resulting in a lack of guidance and inconsistent interpretation of the rules, and that the certainty of the previous system resulted in costs savings, were noted by the Australian Law Reform Commission in its 2010 consultation paper on *Discovery in Federal Courts* (ALRC CP 2) (5.3 below).

b) Complaints handling in the insolvency profession

In the present economic climate public confidence in the operation of the insolvency system is high on the agenda as evidenced by the 2008-9 report on Insolvency Practitioners by the House of Commons Business and Enterprise Committee, which cited the work of Seneviratne and Walters. The timeliness of the research therefore magnified its reception and impact.

- The immediate beneficiary of the research was its sponsor, the Insolvency Practices Council ("IPC"), a public interest body established by the government in 2000 to advise the insolvency profession and its regulators on professional and ethical standards and on matters relating to the regulation of, and complaints about, insolvency practitioners. The research provided

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the IPC with an evidence base for its recommendations for reform of complaints handling in its Annual Reports, including in 2008 (5.6 below). The IPC closed in December 2011 but the issue of complaints handling by insolvency practitioners remains under review (5.9 below).

- The IPC's Annual Reports and recommendations were considered by the Joint Insolvency Committee, the body that co-ordinates regulation across the eight organisations that are authorised to license and regulate insolvency practitioners in the UK. The research therefore fed directly into the formal structures that are in place for the co-ordination of regulatory practice.
- The references to the research in the IPC Annual Reports are indicators of its influence in informing policy/policy review in respect of complaints handling, potentially influencing insolvency practitioner regulators and affecting the entire community of c.1700 licensed insolvency practitioners.
- The Seneviratne/Walters research was also cited in a report of the House of Commons Business and Enterprise Committee in 2009 (5.5 below) and directly informed the Committee's recommendation that the Department of Business, Innovation and Skills should undertake a cost/benefit analysis of the case for establishing an insolvency ombudsman.
- The research informed the IPC's call for the Financial Ombudsman Service's jurisdiction to be extended to cover complaints by personal debtors about bad advice received from any insolvency practitioner regardless of whether the practitioner is operating under a standard or group consumer credit licence. The recent application by the Insolvency Practitioners Association for a group consumer credit licence suggests that this recommendation, which derives directly from the research, has gained traction, in spite of its rejection by the Office of Fair Trading (5.8 below).
- The research has also informed a review of complaints handling and disciplinary practices in the Australian insolvency profession (5.10 below).
- The research was relied upon by the Irish Law Commission upon as an authoritative account of UK insolvency practice and complaints handling (5.7 below).

5. Sources to corroborate the impact (indicative maximum of 10 references)

For citation of the Peysner and Seneviratne report (2005) see:

5.1 *The Report of the Scottish Civil Courts Review* (2009), http://www.scotcourts.gov.uk/docs/aboutscs/vol1chap1_9.pdf, which contains citations of findings of Peysner and Seneviratne in relation to the impact of civil justice reforms at p 105 (general conclusion), 146 (telephone conferences), 178 (pre action protocols), 191 (settlement offers), 205 (disclosure regime) and 350 (wasted costs).

5.2 Attorney General of New South Wales, *ADR Blueprint Discussion Paper* (2009) http://www.courts.lawlink.nsw.gov.au/agdbasev7wr/assets/cats/m402652I3/adr_blueprint.pdf at pp 15 (noting various findings of Peysner and Seneviratne that led to the conclusion that the Woolf reforms delivered quality, at a better pace, but at a higher cost) and 26 (citing findings in relation to the use of alternative dispute resolution).

5.3 Australian Law Reform Commission, *Discovery in Federal Courts* (2010) (ALRC CP 2) <http://www.alrc.gov.au/publications/discovery-federal-courts-alrc-cp-2>, 5.28 (citing the 2005 report as evidence of the positive impact of the Woolf reforms on the culture of litigation) and 5.42 (citing the report's findings in relation to a lack of certainty following the reforms, as perceived by practitioners).

5.4 *Review of Civil Litigation Costs* (Ministry of Justice, 2009) by The Right Hon Lord Justice Jackson, <http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/jackson-final-report-140110.pdf>, at p 11, p 217, and p 233 (contributions of Peysner regarding the costs of litigation).

For direct citation of Seneviratne and Walters (2009) see:

5.5 House of Commons Business and Enterprise Committee, *The Insolvency Service* (Sixth Report of Session 2008-09) available at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/198/198.pdf>, paras 52-53 (recognition of the importance of the work by Seneviratne and Walters in informing a decision to undertake a cost benefit analysis of the desirability of establishing an insolvency ombudsman).

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For reception of the research into the work and recommendations of the Insolvency Practices Council see:

5.6 Insolvency Practices Council (2009), Annual Report 2008 available at http://www.insolvencypractices.org.uk/reports/2008/annual_report.htm (endorsing recommendations made by Seneviratne and Walters).

5.7 Seneviratne and Walters (2008) is extensively cited in the report of the Irish Law Reform Commission in its report on "Personal Debt Management and Debt Enforcement" as a source to describe the contours of the UK regulatory system: <http://www.lawreform.ie/fileupload/Reports/r100Debt.pdf>;

5.8 Seneviratne and Walters (2008) is cited in the Office of Fair Trading market study on "The Market for Corporate Insolvency Practitioners" (June 2010) http://www.offt.gov.uk/shared_offt/reports/Insolvency/oft1245 (citing the report's findings in relation to the close link between complaints and disciplinary procedures in the insolvency Recognised Professional Bodies).

5.9 Corroborating Source from the Insolvency Service – confirmation of the influence of work by Walters and Seneviratne on the approach of the Insolvency Service to the handling of complaints in relation to insolvency practitioners and the ongoing influence of the work in providing a starting point for discussions with practitioners.

5.10 Corroborating Source from the Insolvency Practitioners Association Australia – confirmation that work by Walters and Seneviratne informed a review of complaints handling and disciplinary procedures in Australia.