

Lending insights: Receivership, restructuring, insolvency - TAB U Podcast - S2 E10 - #TABUniversity

Podcasts

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TAB University is back and today Katrina is joined by [Mathura Paramjorthy](#), COO and general counsel of TAB and Georgina Eason, partner, licensed insolvency practitioner and qualified fixed charged receiver at [MHA Macintyre Hudson](#).

This episode is on receivership, restructuring and insolvency within the lending industry. The top five questions we asked Georgina are:

1. What is a fixed charge receiver?
2. What is the role of a receiver in property finance?
3. What is the difference between insolvency and receivership?
4. What happens when a receiver is appointed over a property?
5. How did you get into becoming a receiver?

You can watch the full episode above on our YouTube channel, or you can listen to every episode, including this one on all the normal audio channels, links are in the show notes at the bottom.

1. What is a fixed charge receiver?

Quite simply, where a lender has a charge such as a mortgage, a property or other assets, they have the power to appoint a receiver if that charge allows them to do so. And then once appointed as receiver, I'll take control of the asset, whether it's property, a boat, or something far more fancy and interesting and try and effectively sell it to realise the asset and funds obviously to go towards paying the charge holder.

What does the role involve? Can I act as a receiver?

You could do, actually, surprisingly. You might not want to! So in terms of who can be a receiver, it's an individual - you'll usually find it will be an estate agent, surveyor or insolvency practitioner. I'm a qualified fixed charge receiver. You don't have to be qualified. I did an exam because stupidly I just love exams. If you're going to take on the role, you should know everything that it encompasses. So yes, broadly, it can be you. But I'm also a member of NARA, the National Association of Receivers in the UK, so I'm subject to sort of best practice guidelines, compliance, and reviews. Quite often the lenders that I work for appreciate that because it shows that I have some kind of governance because receivers as a whole aren't regulated.

How does it compare to a bailiff?

If I say I'm an insolvency practitioner (IP) to someone I've not met before, the first thing they say is 'consultancy practitioner?'. And then when I go on to explain what an IP is and then say I'm a fixed charge receiver they say 'oh one of those bailiffs that just goes in...'

So no, I'm not a bailiff, but we do use bailiffs. If I'm appointed as a receiver, let's say over a residential property, a buy to let property, for example, and there's tenants within the property, I need to get possession order to evict the tenants and we will then instruct the high court enforcement officer to go in and effectively evict the tenant in accordance with the order that's made by the court. So they will be the ones that turn up at the property, assist us with the eviction, and then at the same time we will have locksmiths and various estate agents. They assist in that process.

How long are possession orders taking at the moment, because I know there was a backlog?

So with the pandemic in terms of possession, they were all suspended for a period. So even those that were part way through, we weren't allowed to enforce and actually go for possession. Some orders have actually taken sort of two years to come through where we've had to reactivate. Now we're back down to sort of a few months in terms of getting hearings listed. Obviously, courts are

closed over the summer and we don't usually like to do it around the Christmas period. So now we are looking at a lot of hearings that won't be listed until next year but it's usually around 12 weeks to do list. And then obviously if they're disputed and hearings are adjourned, it can be quite protracted. Taking possession is a worst case scenario for us. But it's a means to an end.

2. What is the role of a receiver in property finance?

If I'm appointed specifically over a property as opposed to any other asset, the first step really is for the lender to serve the demand. The borrower would be aware that they have either defaulted or haven't met the terms that the lender would like. I usually step in if the borrower is out of options or it's been dragging on for quite some time, or indeed the relationship between a borrower and a lender has broken down.

The demand will be served, they'll be well aware then of the amount that's required to repay to stop any enforcement action being taken. If it's not repaid, then I'll sign a deed of appointment.

In terms of duties and obligations, the first step is to insure the property or review any insurance that we're aware of that's in place, make sure it's sufficient. Then we'll get valuations of the property, and depending on the property type, will depend on what agent we use. Some receivers are agents as well, so they tend to use themselves. I think the benefit of not being an estate agent receiver is the fact that I'll use and look to a variety of different agents. Sometimes the lender will have a panel of agents, sometimes it's down to me.

So the lender could in that scenario say, we use John from down the road. And then would you be obliged to use that agent or would you kind of say, actually, we recommend using these guys because they're particularly good at valuing?

Yeah, we would have a conversation with the recommended agent and if they've got the appropriate expertise and the location is appropriate - if they were suggesting a London agent and my property is in Liverpool I might suggest that we also chat to one that's got local presence. It will always be done in conjunction with the lender. The receivers are appointed to do that job, and it's not for the lender to tell the receiver what to do. That's quite key for a lender, because if they step over that boundary and

if something goes wrong, they can be held accountable, and the whole point of appointing me so that that doesn't happen. I get all the risk and liability and everything else.

And then once you've got valuations, what's the next step?

I get appointed on a broad range of stuff. So it might be a part built property development with work going on or work ceased, so still some cost to complete and things like that, which can be quite an involved process obviously if we're looking at that independently. If it's an empty property which is low value we might look to auction it. There might be a change of use which might enhance value. We'll basically do an estimated outcome and look at various options and suggest it to the lender, and then it's down to them to agree with us.

What's the most interesting type of security that you've been instructed on?

The most difficult is shares - they're quite complex. I much prefer property because you can go and see it. Any kind of property based asset is fine. In terms of 'interesting' property related stuff. I had a grade two listed building, and if you've got something listed, the whole world's interested in it, and it was being inhabited by some squatters. They were quite friendly and used to invite me to all sorts of events. It was quite difficult as they were using electricity supplies from local premises down the road, obviously illegally, with children and animals in there. It wasn't particularly safe because it wasn't meant to be inhabited. So it did end up in court proceedings.

We don't get involved in who pays for the electricity and other issues. We're acting as an agent for the borrower. Any unsecured kind of debt that had been built up by illegal occupiers inhabiting a borrower's premises is not really down to me.

Just for clarification for our listeners, what does it mean to go into default on a loan?

When a loan has come to the end of the term and they haven't redeemed, that is a default. We try to speak to the borrowers, figure out what's going on, give them some time if there's time. If negotiations do break down, then that's a default and lawyers and the receivers get instructed to take over.

How is the money paid back to the lender? And then does anything left over go to the borrower?

In terms of the receivership, if it's a straightforward sale, the sale proceeds will come in, then we will have to look at the title. It can be a first charge holder or a second charge holder if they have the ability to appoint, and the consent of the first charge holder. We will check the office copy entries in conjunction with our lawyers and we will work out who needs what. So we'll get redemption statements from any other charge holders, we'll ensure that all the costs of the receivership have been paid - the insurers, the agents, the lawyers, whoever else may have been involved. If there is a surplus it will go back to the borrower. Where there's a surplus, we do have a higher level of duty of care in a way, because if we're making decisions to sell, then it's going to affect what goes back to them. So if a lender is owed £100,000 we don't just sell it for £100,000 if it's worth £400,000, because the borrower will then be £300,000, less cost, out of pocket. So we always have to achieve the best price. To ensure that there is no risk of challenge, we will get the borrower to consent.

Is there often a surplus?

It completely depends. I think with my appointment from bridging loan companies, typically there will be a surplus and they will always get out. I think that's because of the difference in the LTV and also because they take action earlier. The typical high street lenders, or some of the alternative lenders, tend to negotiate, negotiate, negotiate, interest racks up, things get delayed and before you know it, property values have gone down and there's a shortfall scenario. The key is to engage early and that's where I will see the surplus.

What happens when there is a shortfall?

It depends on the setup with the lender. A lot of lenders will take alternative security, for example, over another asset. If the only other security they've got is a personal guarantee, then the lender may be advised by the lawyer to pursue the personal guarantee. If that's not repayable, then with my IP hat on I can assist because we can look to make that individual bankrupt. And if they're bankrupt, then that gives not only the lender but all of the other borrower's creditors access to whatever assets they have. So if they're made bankrupt and they own properties in Spain and Ferraris then we get to realise all of it for the estate and the secure and unsecured creditors will get paid.

3. What is the difference between insolvency and receivership?

As an insolvency practitioner, I get involved with both personal and corporate appointments. On the personal side, it's mainly bankruptcies. A lender can petition to bankrupt an individual. Once they've done that, they can then nominate me to act as an insolvency practitioner. There has to be a 50% majority of all of the unsecured competitors to get my appointment. But once I'm in the duty then is to all of the bankruptcy creditors. That's the main difference and the fact that I get all of the assets. So it's dealing with all of the assets and all of the liabilities, not just the one liability to the secured lender and the one property they've got security over.

It's the same really on the corporate side. I would actually be appointed by the board as opposed to the lender. I'll have to do more investigation as well. We don't just recover physical assets - it's lots of different angles for us to kind of swell the pot in terms of recoveries for creditors.

Do you go and look at the physical assets yourself?

Sometimes I'll see a photo from an agent, but tomorrow, for example, I should be appointed to large developments in Liverpool. So I will go and see those myself because it's far easier to visualise something that you've seen. For a lower value asset that we'll probably put to auction, I'll just speak to a valuer and look at the photographs and go on their recommendations. We semi rely on what they put in questionnaires and their interviews with the official receiver instead of going to the property of someone who is bankrupt.

Would you take a team with you?

Our teams are split - we have an individual team and a corporate team. And within the corporate team we have a real estate team. It usually helps to put the ones that like real estate in the real estate team because they tend to be more interested. They know what they're doing, they enjoy the work and if they're going out without me then they'll always be accompanied by a management agent or whoever is appropriate.

4. What happens when a receiver is appointed over a property?

So in terms of steps: letter of demand to the borrower, no repayment. Then a deed of appointment, drafted by the lawyers, is signed by the lender. As soon as I sign it, that's effectively when the appointment starts. So that minute we get on the phone to the insurers, get open cover in place to ensure that the property is insured, and then we'll look to secure it, get the agents there as soon as possible, get the recommendations going, then sell it, realise and payout.

How does it work with the lawyers - does everyone have their own lawyer? Would a borrower have a lawyer?

Yeah, they can do. TAB has a panel of lawyers and they would do the instruction to the receivers and retain that instruction until we've been repaid.

And do the receivers have lawyers?

Yes. Depending on the lender as well and also the lawyer - sometimes the lender's solicitors will act for me, but that's down to them it's a question of conflict or not. If they're not conflicted, then they will do both. They won't be able to review their own security, for example if the security is drafted by a TAB lawyer, the appointment document will be looked at by a different lawyer.

There is a lot of legal involvement, not only at the outset looking and ensuring the appointment is valid. A lot of lenders that I work with have their own in-house legal as well. So sometimes you can have in-house legal, the lender's lawyers and our lawyers. And obviously they'll always be engaged in terms of conveyancing as well if there is a sale at the end and there hasn't been a refinance. That would usually be the same firm that would look at our appointment and do the conveyancing.

I actually thought the receiver was also a lawyer.

I did actually do a law degree and I did my legal practice course, but I decided the lawyers worked too hard, so I opted to become an IP. I'm now not sure whether or not in fact that's true. I think you do longer hours than me sometimes. But I think the stress, liability and responsibility that an IP and receiver has can cause probably just as many sleepless nights.

5. How did you get into becoming a receiver?

I did a law degree, probably because I just enjoyed crime dramas and so I thought, 'Oh, I'll do a law degree.' It always interested me. Then I did my legal practice course. I think at that point I decided I didn't want to become a lawyer, but my parents wanted to pay for it. So, as long as I got a job that involved an element of the law, otherwise I'd have to get a loan and repay it. That was a stipulation.

I did my legal practice course and on that, real estate was one of my chosen options, but I also did an insolvency section and I'd never really come across it before. And it was the time that Ian Beale was being made bankrupt on EastEnders, and there was so much confusion even then on the barrister's part - she was lecturing as to who's a bailiff, what's bankrupt. I found it really interesting, thinking their job is to go round and sell people's assets and it stimulated some interest. And then I saw the job advertised. I mean, back then you couldn't really Google - I had no idea who was involved in the firm or anything like that. But that became my trainee insolvency role.

That was 21 years ago. My boss then was a receiver. He acted for one of the main property finance banks at that point. And I just got involved and started assisting him then subsequently had a lot of friends who were property developers and in property finance I was just kind of quite a natural thing to get into and it certainly is where my passion lies in terms of the job, anything real estate orientated, and I think because I probably do bang on about that quite a lot, it means that I do end up doing more of that type of work.

Did you find having studied law helped you in this role?

Definitely. It helps in both senses of being a receiver and an insolvency practitioner because as an IP I'm continually reviewing witness statements and signing them off. The key to me is to ensure that you understand the witness statement, particularly as it's been drafted by someone other than you. So that's really helpful. And on the receivership side, just reviewing all of the documents. Again, I'm forever signing TR1s and transfer documents, restriction documents. So understanding what I'm getting myself into and, you know, challenging lawyers is useful.

What other cases beyond property finance would you look at? Is there anything you wouldn't look at?

I'm going to say no! We do look at everything and everything. We've had some really weird and wonderful assignments, particularly within the insolvency side, the world of retail. We've had our bridal shops, for example, that have gone into a process. It's an absolute nightmare because you've got brides who have paid deposits, are expecting dresses to be delivered, finished, fittings. Bridezillas

are not the easiest to deal with. So that was particularly challenging for the people in my team. There's not much that we won't look at really. And sometimes when you take on an engagement you just don't know what's going to be there. If we end up with sort of onerous assets we've got the ability to disclaim those and get rid of them straight away.

What's the best piece of advice you'd give for a defaulting borrower?

Communication. Don't ignore. Pick up the phone to the lender. Frustration just builds more frustration. I think that's what I see day in, day out.

Where can someone find you should someone need a receiver?

Website: <https://www.macintyreHUDSON.co.uk/>

LinkedIn: <https://www.linkedin.com/company/macintyre-hudson/>,
<https://www.linkedin.com/in/georgina-eason-02a3a223/>

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