STEPHENSON HARWOOD

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Trust Matters

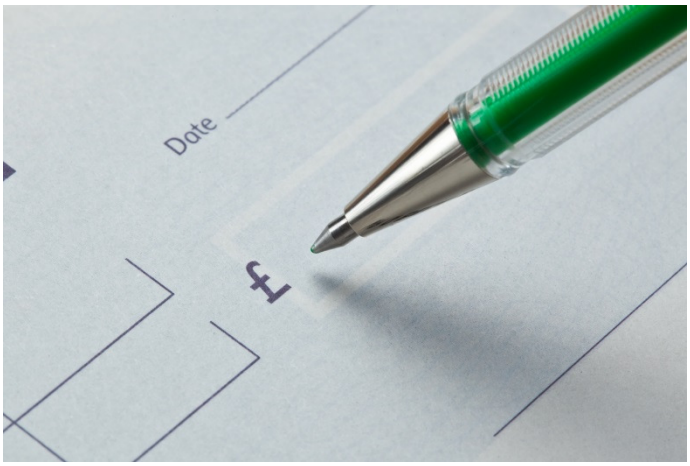
An update for Corporate Trustees

In this issue

A member of TACT THE ASSOCIATION OF CORPORATE TRUSTEES

Recovering costs and expenses: the scope of the trustee's contractual indemnity

The trustee's contractual indemnity has come under the spotlight in two recent cases. Both should give comfort to trustees that the courts recognise the crucial importance to trustees of being able to claim costs and expenses under the contractual indemnity. However, it is equally clear that the court will never just sign a "blank cheque" in the trustee's favour.



UBS v GLAS

At the heart of ***UBS AG London Branch v GLAS Trust Corporation & Anor*** was the question of whether costs and expenses of an ad hoc committee of noteholders constituted "*expenses properly incurred by the Note Trustee*" for the purpose of its contractual indemnity. An extraordinary resolution of the noteholders had authorised the trustee to meet the ad hoc committee's costs and expenses.

If the ad hoc committee's expenses were considered to be "*expenses properly incurred by the Note Trustee*" they would rank at the top of the pre-enforcement payment waterfall, and above the issuer swap counterparties, including UBS.

In his judgment, Blair J made observations about the breadth of the trustee's indemnity which should be music to trustees' ears:

"…In deciding whether particular expenses fall within the trustee's expenses clause, it should be kept in mind that such clauses are typically (and are in this case) widely drafted, and in the context of a financial transaction should be given a commercial and not artificially restricted meaning. This reflects the fact that the exercise of the trustee's powers may contain a substantial measure of judgment, may be controversial, and may have to be carried out speedily to enable resolution of the transaction. Of course, the position depends on the construction of the particular clause, but subject to that the trustee should be able to fulfil its duties with confidence that if it acts in a commercially reasonable manner, it will be entitled to indemnification. In the financial context, any other approach would risk frustrating the transaction…"

However, the judge made it clear that the adoption by the trustee "en bloc" of the ad hoc committee's costs and expenses was inappropriate and "in effect surrendered the trustee's duty to form an independent view as to whether the expenses were ones which it could properly incur". The court accepted that in principle a note trustee could adopt expenses incurred by third parties and that it could be "*duplicative for the Note Trustee and its advisers to reinvent the wheel*". However, considerably more scrutiny of those costs and expenses was required by the trustee.

In mid-September 2017 Stephenson Harwood LLP took over from Ropes & Gray LLP as legal adviser to GLAS Trust Corporation Limited on this transaction.

Law Debenture v Ukraine

The Law Debenture Trust Corporation p.l.c. v Ukraine related to (among other things) payment by Ukraine of the trustee's costs, following the High Court's decision to grant summary judgment in favour of Law Debenture (as note trustee) in respect of non-payment of Eurobonds issued by Ukraine in 2013.

The trustee sought summary judgment in respect of its costs of the proceedings under the indemnity in its favour in the trust deed. However, Ukraine argued that the court should make any costs order under Part 44 of the Civil Procedure Rules (i.e. by way of its power to award costs, such costs to be assessed by the costs judge).

Ukraine's counsel argued that the trustee could not recover costs that had not been reasonably incurred or which were unreasonable in amount. The court stated that in its view, in the context of a financial transaction of the kind in this case, this meant "commercial reasonableness" and that full effect must be given to the parties' agreement that costs properly incurred are to be paid on a full indemnity basis. The court noted:

"A trustee could not safely take on this kind of responsibility if when acting properly it risked ending up out of pocket."

However, the court admitted to finding the position with regards to the amount of the costs more difficult than the scope of the costs, because the parties had not provided the court "to any great extent" details of the costs incurred. The court accepted that it was open to the court to grant summary judgment of the trustee's costs without an assessment by the costs judge, as had been done in ***The Law Debenture Trust Corporation p.l.c. v Elektrim Finance B.V***. However, in ***Elektrim*** the judge relied on the detailed narrative with which the defendant had been supplied and the fact that no "plausible reason" or "clear case" had been advanced as to the unreasonableness of any particular item. Blair J concluded that as this was certainly not the case here an assessment by the costs judge would be "the most practical means" of quantification. He said, "On balance, and even allowing for the full contractual indemnity, it seems inappropriate in this case … to summarily order the payment of millions of pounds of costs, the quantum of which is in dispute, without any assessment at all".

An appeal against the grant of summary judgment is being heard by the Court of Appeal.

Secure Capital – who is "the holder" of notes?

In the recent judgment of ***Secure Capital SA v Credit Suisse AG*** the Court of Appeal looked at whether an investor with an interest in notes issued in bearer form and held through the Clearstream system had a direct claim for breach of contract against the issuer of the notes in respect of an alleged breach of the misleading statements term.

The Court of Appeal concluded that, unless the transaction documents purported to give ultimate investors direct rights against the issuer, it was only the "holder" of the notes (here the common depositary) who had a contractual claim against the issuer. In this case, it was only if there was default in the payment of principal of the notes, or if Clearstream were closed permanently or for a continuous period of 14 days, that Clearstream account holders acquired directly enforceable rights against the issuer.

While the legal logic is hard to question (and the decision of the three appeal judges was unanimous), this approach clearly leads to some undesirable consequences which probably neither the issuer nor the investors with the ultimate economic interest in the notes had expected. First, a common depositary is highly unlikely to take action. Its role as the holder of the permanent global note is generally accepted to be necessary to make the transaction work, but it is not economically interested in the transaction. Second (as raised by the aggrieved investor in this case – Secure Capital) the common depositary will be unlikely to have suffered any loss from the breach to enable it to bring the action anyway. So, the analysis effectively makes the issuer immune from a contractual (although potentially not a tortious) claim. Secure Capital said that this created a lacuna in the legal position. The Court of Appeal disagreed, with some "caveat emptor" reasoning:

"A lacuna cannot in any relevant sense be said to exist if it is precisely the consequence of the express terms of the Notes and ancillary documents … If it had been intended that Account Holders or Account Owners or others with even more remote interests should be entitled to sue Credit Suisse in contract for breach of the misleading statements term, the documents could and would surely have so provided. It was a matter for Secure Capital whether it traded in interests in securities having these features."

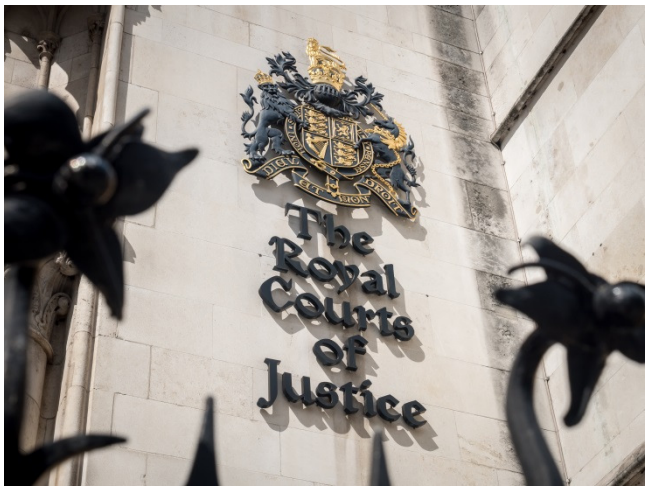
Importantly, the note issue in ***Secure Capital*** used a fiscal agency structure, rather than involving a note trustee. In a note issue involving a note trustee, the position was likely to have been different. The note trustee is the legal creditor and will hold the covenant to pay (and the other obligations of the issuer) on trust for the noteholders. It is therefore the trustee which has the ability to accelerate the notes, and to enforce the obligations of the issuer. However, while the trustee retains an inherent discretion to take action, it will invariably act on the instructions of the "noteholders" - ordinarily delivered via an extraordinary resolution in a noteholders' meeting. The mechanics for convening, attending and voting at a noteholders' meeting will be set out in the trust deed. It is ordinarily only if the trustee has been instructed to take action and has failed to do so that noteholders acquire direct rights against the issuer.

Processes and procedures have developed over the years which are generally accepted to enable those with the ultimate beneficial interest in notes held through the clearing systems to cast their votes at noteholders' meetings. The meeting provisions in most modern trust deeds generally now reflect these procedures and consequently it will be the ultimate beneficiaries of the notes who will ultimately dictate how the votes attaching to their notes will be cast.

However, even where a trustee is involved in a note issue, much can still turn on the defined terms used to identify the ultimate beneficiaries and/or those with the economic interest in the notes. The case of ***Citicorp Trustee Company Ltd v Barclays Bank Plc & Ors*** looked at whether it was possible to stretch the meaning of the phrase "*beneficial owner*" of notes to encompass someone who has no actual interest in a proprietary sense, but who has an interest in an economic sense (by virtue of derivative arrangements and the ability to direct how the noteholders voted). Probably unsurprisingly the judge in this case said,

"It might be possible in certain unusual circumstances to stretch the traditional and well understood meaning of the words beneficial ownership beyond a proprietary nature (although I cannot conceive of any circumstances where it would) but I do not think that there is any basis for so stretching the words in this case".

He thought the expression "*economic interest*" was just too vague and that departing from the traditional meaning of the words beneficial owner would create "a potentially huge minefield of uncertainty".



Clear drafting to avoid a contractual interpretation dispute: Class X notes and rating agency confirmations

Securitisation transactions have been a fertile ground for contractual interpretation disputes in recent years. Such disputes show, time and again, the importance of clear and unambiguous drafting in transaction documents. The outcome of contractual interpretation litigation can be notoriously difficult to predict – even when the courts apply the well-established rules.

Class X notes

2016 saw a flurry of litigation by the holders of "Class X" notes.

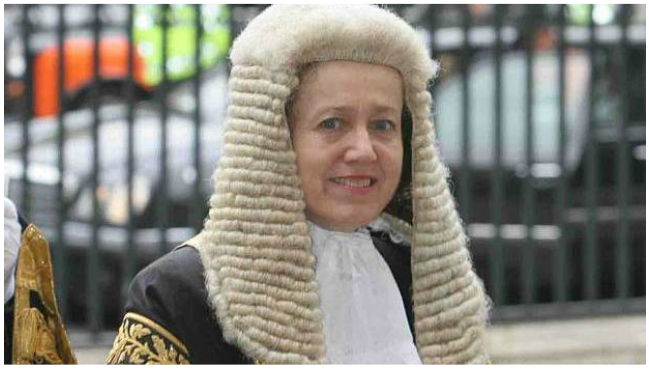
Class X notes are a feature of many CMBS transactions. Typically Class X notes are purchased for nominal value by the originators of the underlying loans, although they can be sold on to third parties. They are designed to enable any "excess spread" (i.e. the excess interest which arises in the hands of the issuer from the underlying commercial mortgage loans) to be paid to the Class X noteholder(s).

In December 2016 the Court of Appeal heard ***Credit Suisse Asset Management LLC v Titan 2006-1 P.L.C. and others***. The Class X holders in the Titan structure ranked towards the top of the payment waterfall, and the interest on the Class X notes was based on the amount payable on the underlying loans, rather than the amount paid. Therefore even when the

underlying loans had defaulted the Class X interest continued to accrue.

The Court of Appeal had to determine whether the Class X holders' entitlement to interest included only the "ordinary" interest rate payable under the terms of the underlying loans or whether it included the higher "default" interest rate. The answer to this question made a significant difference to the recoveries (or lack of them) of those noteholders ranking below the Class X holders in the payment waterfall.

Lady Justice Arden (pictured) gave the leading judgment. She did not consider that the documentation supported an interpretation that default interest formed part of the interest rate on the Class X notes. However, she also looked at the "commercial logic" of the transaction.



She said "It is difficult to think of any commercial transaction when parties would intend to reward a person (or his successors in title) by reference to the default of a third person. Yet, what happens on the default interest interpretation is that the entitlement of the Class X Notes to a share of Titan's revenue increases at exactly the time that revenue decreases because of the default".

Lord Justice Underhill agreed with the conclusions reached by Lady Justice Arden, but based his conclusion primarily on an interpretation of the documents themselves " … rather than on a determination of which of the two possible interpretations is more commercially logical, since that is a rather artificial exercise in circumstances which it is clear that the parties did not contemplate at the time that the notes were issued".

Lord Justice Briggs dissented, considering that the "contextual" and "natural" meaning of the critical phrase "the related per annum interest rate due on such Loan" included default interest. He said "Although that outcome produces a result in the context of a serious default which bears harshly on noteholders lower in the waterfall than the Class X noteholders, that factor is insufficient to require the critical phrase to be given some restricted meaning contrary to its contextual meaning."

The very fact that not all the judges agreed (and that even those who did agree, focused on different principles of interpretation) shows precisely why contractual interpretation disputes are fraught with uncertainty.

Rating agency confirmations

Securitisation transaction documents will commonly require more than one rating agency (and sometimes all the rating agencies) to confirm that the replacement of a special servicer will not impact on the transaction's rating. It is therefore not surprising that when in 2012 Fitch followed Moody's and announced a policy of not issuing rating agency confirmations in relation to the replacement of special servicers, problems ensued.

In the High Court decision of ***US Bank Trustees Limited v Titan Europe 2007-1 (NHP) Ltd*** the court thought that the relevant clause should be construed as though the rating confirmation was not required where the rating agency had indicated that it would not, as a matter of policy, provide such a confirmation. One of the provisions in the Servicing Agreement stated:

"…if any provision of this Agreement requires the Servicer or Special Servicer to obtain written confirmation from the Rating Agencies in respect of a particular matter but a Rating Agency declines to issue such a confirmation, then the relevant provision shall be read and construed as though written confirmation from the Rating Agency declining to issue the confirmation was not required…".

The judge did not consider the provision to be directly applicable to the clause at issue in the case (which he did not think required written confirmation). However, he did consider it to give "a very clear indication in an analogous situation as to what the parties would intend to happen as a matter of common sense if a Rating Agency were simply to stop issuing rating confirmations altogether".

However, the Court of Appeal came to a different decision on the same issue (the failure by a rating agency to provide a rating confirmation) in ***Deutsche Trustee Company Ltd v Cheyne Capital (Management) UK (LLP) & Anor***. The court looked to the "natural and ordinary" meaning of the words in the relevant clause. It agreed with the trustee that the

fact that Fitch had a policy of not issuing rating agency confirmations in this situation did not mean that a clause requiring such confirmations from the rating agencies should be interpreted as referring only to those rating agencies "as are willing in principle" to give such confirmations. The court gave weight to the fact that the relevant clause specifically included the alternative option of seeking noteholder consent to the successor special servicer: it made available another (albeit inconvenient) mechanism for introducing a replacement special servicer which did not depend on the delivery of rating agency confirmations. The Chancellor (sitting as one of the appeal judges) was also at pains to point out that the earlier High Court decision in ***US Bank Trustees Ltd v. Titan Europe 2007-1 (NHP) Ltd & Ors*** did not assist, due to the material differences between the relevant documents in the two cases.

Both judgments were therefore very much based on the construction of the particular clauses, and go to show that what may seem to be a commercially sensible outcome in one case, cannot be relied on in another where different drafting has been used.

Historic payment miscalculations – are they events of default or not?

The case of ***Hayfin Opal LuxCo SARL & Anor v Windermere VII CMBS Plc & Ors*** was one of the many "Class X" cases which came before the courts in 2016. In the case, the court was asked to consider an issue which is likely to exercise every trust officer at some point in their career. If there have been historic underpayments has a non-payment event of default occurred under the notes?

Before considering this point Mr Justice Snowden had determined that there had been no underpayments of interest on the Class X notes, effectively rendering the question about whether an event of default had occurred irrelevant. However, he expressed an obiter view, nonetheless.

Condition 10(a)(i) of the Notes provided that there was an event of default upon:

"the failure, for a period of three days, to make a payment of principal, or the failure, for a period of five days, to make a payment of interest on, the most Senior Class of Notes then outstanding; in each case when the same becomes due and payable in accordance with these Conditions."

Mr Justice Snowden's view was that there would not have been an event of default as a result of historic underpayments of interest. This was because the Conditions of the notes provided that the only Class X interest amounts that became due and payable on each payment date were those determined to be due and payable by the Cash Manager. So, " … even if it might now be appreciated that there had been a miscalculation and underpayment of a Class X Interest Amount…that would not have been an Event of Default in respect of the Notes".

The judge stated:

"Standing back, it seems to me that this is an entirely sensible commercial view of the Conditions … Given the hugely significant consequences for all parties of the occurrence of a Note Event of Default, I simply cannot see why, at the commencement of the CMBS structure, the parties should be taken to have intended to create what could amount to a concealed 'hair trigger', under which an Event of Default could accidentally occur because of a simple miscalculation of the amount of interest payable, without that fact being appreciated by anyone, and then be incapable of cure at a later date when it was discovered, no matter how solvent the structure might be."

Clearly the judge's obiter statements in this case depended heavily on the fact the Conditions required the cash manager to make a determination for an amount to be due and payable. It will obviously always be necessary to scrutinise specific events of default (and the terms and conditions which feed into them) according to the facts of a particular case. However, as many highly structured finance transactions now require the services of a professional third party to calculate sums payable to certain noteholders, it is worth remembering this obiter statement.

Conflicts between statements in the offering circular and provisions in the trust deed

As corporate trustees know only too well, it is not uncommon to encounter conflicts between statements in an offering circular ("**OC**") and the equivalent provisions in the operative transaction documents. All too often in a default or distress situation it is necessary to determine which takes priority.

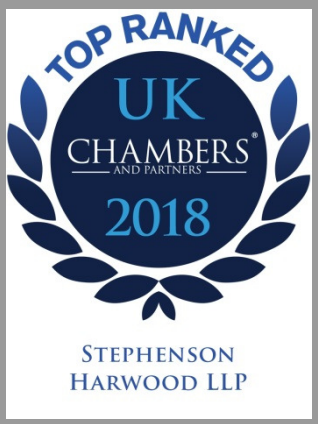
Most OCs will make it clear that the operative transaction documents (which are available for inspection) take priority over statements made in the OC. However, where there is ambiguity over the scope of a provision in a transaction document, the OC can be an aid to construction.

In the 2014 case of ***US Bank Trustees Limited v Titan Europe 2007-1 (NHP) Ltd*** the court had to determine whether the definition of "Controlling Party" should be the definition set out in a transaction document or the definition set out in the OC (as the two were different). The judge stated that he was "acutely conscious" of the importance of a prospectus to investors but concluded "… my task is to construe the contractual documents in accordance with the recognised principles of interpretation … If the result is that the offering circular did not accord with the contractual documents, then this may simply have the result that Noteholders might have claims in respect of the Offering Circular … ".

In February 2017 Lady Justice Arden reinforced this view in the Court of Appeal decision of ***Credit Suisse Asset Management LLC v Titan Europe 2006-1 Plc & Ors*** stating:

"… the Offering Circular states that any purchaser of the Notes acknowledges that the transaction will be governed by the documents described in the Offering Circular and that the statements and information given in the Offering Circular are qualified by those documents. So in general a Noteholder cannot rely on any conflict between a statement in the Offering Circular and a statement made or information given in a document available for inspection ... The Offering Circular is nonetheless an aid to construction provided the effect of the acknowledgement is borne in mind."

Recent awards



Corporate trusts

Our cross-discipline team acts for corporate trustees across all aspects of the international debt capital and syndicated lending markets: new issues, trusts administration, debt restructuring, disputes resolution, enforcement and insolvency.

Our team has acted for corporate trustees in their capacity as bond trustee, security trustee and escrow agent on a wide range of capital markets, structured finance, project finance and banking transactions and solvent and insolvent restructurings and disputes – including with distressed debt investors - since the mid-1980s.

Our extensive experience of complex restructurings (and related disputes) extends as far back as the corporate debt restructurings of Heron, National Home Loans, Barings, Railtrack, Marconi, British Energy and TXU in the 1990s/early 2000s and, more recently, the Tahiti (Holiday Inns) securitisation, the liability management exercises by the Bank of Ireland and The Co-operative Bank plc, the compromise of ALMC's debt and the on-going issues related to the Fairhold securitisation.

Areas of practice

- Distressed situations, including restructurings (both through consensual arrangements and court driven processes, such as schemes of arrangement and CVAs), enforcement and insolvency.
- The resolution of disputes and potential disputes, including hostile bondholder actions, inter-creditor claims, construction issues, Beddoes applications, misrepresentation claims and third party actions.
- All aspects of trusts administration, including the exercise of trustee powers and discretions, manifest error issues, waivers, modifications and consent solicitations.
- New issues, including note and security trustee roles, loan agency roles and escrow arrangements.

"They are experienced, dependable, knowledgeable and friendly. They stand out from the crowd. It's more than the general capability of providing good solid trustee advice. It's that extra ability to stand a corner with us and help us navigate our way."

Client comment

A member of TACT THE ASSOCIATION OF CORPORATE TRUSTEES

Jayesh Patel

Partner, Corporate trusts and restructuring

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Jayesh has acted for corporate trustees in their capacity as bond trustee, security trustee and escrow agent on a wide range of capital markets, structured finance, project finance and banking transactions and restructurings since the mid-1980s, including in connection with the restructurings or reorganisations of Barings, Railtrack, Marconi, British Energy, TH Global, TXU and the Tahiti (Holiday Inns) securitisation, the US$2 billion merger of Whistlejacket and White Pine (two SIVs), the liability management exercises by the Bank of Ireland and The Co-operative Bank plc, the compromise of bondholder claims against ALMC (a failed Icelandic bank) and issues related to the Fairhold securitisation.

Jonathan Proctor

Partner, Corporate trusts and restructuring

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Jonathan acts for corporate trustees across all aspects of debt capital markets; from new issues and consents to enforcement and debt restructuring. Jonathan has recently worked on a number of high profile restructurings and has advised trustees on the implementation of liability management exercises affecting major listed debt issuers. He also has wide-ranging experience of advising trustees in the context of note defaults, standstill arrangements and consent solicitation processes.

Charlotte Drake

Senior associate, Corporate trusts and restructuring

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Charlotte has over 15 years's experience of advising corporate trustees. She particularly enjoys advising trustees in connection with issuer defaults and has acted for the bond trustee on a number of high profile restructurings and reorganisations, such as Railtrack, Marconi, British Energy, TH Global, the merger of Whistlejacket and White Pine (two SIVs) and the Battersea Power Station restructuring.

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Partner, financial Litigation

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Recognised as a leading individual in banking litigation by Chambers 2016 and described by Legal 500 as "excellent, bright and tough and fearless in her representation of her clients", Sue co-heads the firm's banking and finance litigation group. She has broad experience in advising corporate trustees, service providers and noteholders on a wide range of disputes arising out of corporate bond issues. She was featured in The Lawyer Hot100 2017 and was awarded Woman Lawyer of the Year 2017 at the Law Society Excellence Awards.

Jenny McKeown
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Jenny is an established name in the contentious trusts arena, widely recognised for her experience in complex, high value, trust disputes in the banking and financial services sectors as well as in private wealth and pensions (both onshore and offshore). She acts for corporates, trustees, financial services firms, financial institutions, insurers and private individuals. In particular, Jenny has considerable experience advising financial institutions in all capacities in complex security trustee disputes within the banking and financial services sector. Jenny is ranked as a leading individual in Contentious Trust and Probate and as a Notable Practitioner in both in Chambers & Partners UK.

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Helena acts for corporates, trustees, financial services firms, financial institutions, insurers and private individuals. With over 20 years' experience in complex high value contentious trust and pensions disputes, Helena is recognised as a leading industry figure and was shortlisted for "Client Partner of the Year" at the Lawyer Awards 2015. Helena is particularly adept at advising in complex trust disputes within the banking and finance sector and defending trustee advisers in professional negligence claims.

Susan Moore
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Sue is known for her extensive expertise in cross-border and domestic restructurings, corporate insolvencies and insolvency litigation. She has acted for corporate trustees in their capacity as bond trustee and security trustee in a number of restructuring and insolvency assignments, for example in the Amazing Global Technologies enforcement proceedings in a number of jurisdictions, as well as the Co-op Bank restructuring. Described by the Legal 500 2016 as "intelligent, articulate and shrewd", Sue is widely recognised as a leading lawyer in her field. Sue is also head of the finance practice, and was featured in The Lawyer's Hot 100 in 2016.

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Libby is a restructuring and insolvency expert focussing on all aspects of corporate financial distress with particular cross-border experience together. She also has experience of large scale litigation. She has acted for corporate trustees on a number of restructuring mandates including The Co-operative Bank Plc, ALMC and MWB. According to the Legal 500 she "combines quality legal skills with winning charm and diplomacy". Sue and Libby and the wider restructuring team have been recognised as a top 30 firm by the Global Restructuring Review 2017.

Our experience

Fairhold Securitisation Limited

Advising the note trustee on issues arising in relation to Fairhold Securitisation Limited's £443,500,000 sheltered housing securitisation, taking over from the note trustee's incumbent advisers in September 2017.

Taberna Europe CDO I plc

Advising the note trustee on issues arising in relation to Taberna Europe CDO I plc's €362 million Class A1 Notes, including in connection with court proceedings to determine whether events of defaults alleged by the senior noteholder, but disputed by the issuer, had occurred.

The Co-operative Group

Advising the bond trustee on issues arising in relation to a liability management exercise involving an exchange offer and a scheme of arrangement affecting nine subordinated bond issues by The Co-operative Bank plc aggregating in excess of £1.2 billion.

Bank of Ireland

Advising the bond trustee on a liability management exercise implemented in relation to an aggregate of €2.6 billion of subordinated bonds issued by Bank of Ireland, including extensive dealings with an action group representing retail bondholders.

ALMC fc

Advising the bond trustee and security trustee on enforcement options and the compromise of bondholder claims relating to €2.24 billion Amortising Zero-Coupon Bonds issued by ALMC International Investment Bank.

Battersea Power Station

Advising the CULS trustee in connection with the financial restructuring of the Real Estate Opportunities group, whose key asset was Battersea Power Station.

DECO

Advising on a delegation of security trustee and note trustee functions from Deutsche Trustee Company Limited as part of DECO Sub SPV plc's €28 million repackaged notes issued pursuant to its loan repackaging programme and related noteholder issues and litigation.

Synthesis Trade Finance

Advising the note and security trustees on a US$550 million MTN Programme by Synthesis Trade Finance.

ICICI

Finance for Residential Social Housing plc - advising the note trustee on issues and consents arising under and in connection with a £560 million securitised transaction.

Sportingbet plc

Advising the trustee on manifest error issues and the implementation of a recommended offer for Sportingbet plc in the context of an £80 million convertible bond issue.

Tahiti Finance

Advising the note trustee on rating downgrade issues, formal standstill arrangements and the restructuring of a £535 million securitisation by Tahiti Finance plc.

Victoria Funding

Advising the note trustee on rating downgrade issues and on the final redemption of £323 million Notes issued by Victoria Funding (EMC-V) plc.

Epic (Industrious) Plc

Advising the ad hoc committee of noteholders in connection with the financially distressed Dunedin Property group, advising on the many issues arising in connection with the mortgage backed CDS in favour of the senior lenders which was underwritten by noteholders.

MWB

Advising the trustee in relation to amendments and extensions to the maturity date of £30 million unsecured loan stock issued by Marylebone Warwick Balfour Group plc and on issues arising out of the administration of the issuer.

Kingston Estates

Advising the trustee on the substitution of real estate assets secured in support of £30 million Debenture Stock issued by Kingston (City) Estates Trading Limited.

Healthcare sector

Advising the bond trustee and security trustee in relation to a restructuring of £1 billion debt securities programme issued by a major UK listed company active in the healthcare sector.

Bluebonnet Finance plc

Advising the trustee on rating downgrade and manifest error issues, consent solicitation processes and liquidity facility issues reacting to €1,340 million secured floating rate notes issued by Bluebonnet Finance plc.

BoS Notes

Advising the trustee on issues affecting US$250 million Undated Floating Rate Primary Capital Notes issued by The Governor and Company of the Bank of Scotland (now Bank of Scotland plc).

Plantation Place

Advising the trustee in relation to consents, waivers and enforcement issues on a £460 million single asset real estate securitisation.

Foundation Park

advising in the trustee in relation to a tender offer affecting £266 million secured floating rate notes issued by Real Estate Capital (Foundation) Limited and on transfer of property management and investment functions and related investor approvals.

Real Estate sector

Advising the trustee on the substitution of real estate assets secured in support of £100 million Mortgage Debenture Stock issued by a major commercial property investment and asset management company.

SEGRO plc

Advising the bond trustee in relation to a substitution of issuer on a £360 million bond issue.

Coriolanus

Advising on a delegation of rights and functions from Deutsche Trustee Company Limited, and issues arising, in relation to Coriolanus Limited's €10 billion secured note programme.

British Energy

Advising the existing bond trustee on the restructuring of the British Energy Group and the related Scheme of Arrangement and advising the new trustee in relation to a new issue of £700 million bonds issued by British Energy Holdings plc as part of the restructuring.

Marconi

Advising the trustee in relation to the restructuring of Marconi Corporation plc and its subsidiaries and the related Schemes of Arrangement.

TXU

Advising the note trustee on CVAs implemented in respect of TXU Europe Limited, the guarantor of £275 million notes and £301 million resettable securities issued by TXU Eastern Funding Company.

Railtrack

Advising the bond trustee in relation to Railtrack's 7 bond issues on the transfer of Railtrack's business to Network Rail.

Barings

Advising the bond trustee on the insolvency of Barings, including in relation to disputes between bondholder groups, dealings with hostile hedge funds and a scheme of arrangement.

Graso Shipping Limited

Advising a multi-national bank as new security trustee in relation to a circa US$56 million secured loan facility made available to a large shipping company.

Videocon

Advising a major bank in its capacity as escrow agent in relation to a high profile Indian M&A transaction.

Global financial institution

Advising a cash manager in relation to claims arising out of the expiry of a liquidity facility.

White Pine / Whistlejacket

Advising the security trustee on the merger of White Pine and Whistlejacket, two SIVs.

TH Global

Acting for the bond trustee on the restructuring of the TH Global group.

STEPHENSON HARWOOD