Questioning the narrative of stigma in corporate insolvency: Empirical reflections

Emilie Ghio reports on the first phase of a major project looking into the stigma surrounding corporate insolvency

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Over the last several decades, corporate insolvency reform across many jurisdictions has been driven by a powerful and largely uncontested narrative: that the stigma associated with business failure discourages directors from seeking help, delays engagement with insolvency frameworks, and ultimately, undermines the effectiveness of rescue-oriented regimes.

The emphasis on stigma is neither accidental nor novel. International organisations,[1] regional institutions,[2] national bodies,[3] and academic commentaries[4] have consistently identified negative perceptions of insolvency and failure as a central obstacle to the development of a "rescue culture." In policy discourse, stigma is frequently invoked to explain why directors delay seeking advice, avoid formal procedures, or persist with failing businesses until liquidation becomes inevitable. Yet, despite the centrality of stigma in these accounts, empirical evidence examining how stigma is experienced, understood, and acted upon by directors remains remarkably limited.

It is against this background that the International Project on the Stigma of Insolvency (IPSI) was launched. IPSI is a multi-phase, comparative research project (led by Emilie Ghio, University of Edinburgh and Donald Thomson, Thorntons LLP) examining the gap between the sustained policy commitment to corporate rescue and the persistently low uptake of non-terminal insolvency procedures in practice. The project starts from the premise that legal reform and economic incentives alone are insufficient to explain this disconnect, and that closer attention must be paid to the socio-legal factors shaping insolvency decision-making at director level.

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Phase 1 of IPSI was deliberately exploratory in nature. Rather than testing a fixed hypothesis, it sought to examine, through empirical engagement, whether stigma operates in the way in which it is commonly assumed to do and whether it meaningfully shapes directors' behaviour when businesses enter financial distress. In doing so, Phase 1 combined a national pilot study involving interviews with directors of micro, small, and medium-sized enterprises (MSMEs) with an initial international comparative exercise drawing on contributions from insolvency scholars across multiple jurisdictions.

While stigma provided the initial analytical lens, Phase 1 produced an unexpected but consistent finding: alongside, and often intertwined with, perceptions of stigma was a profound lack of knowledge and understanding of insolvency law and procedures among directors. This lack of knowledge was not an original focus of the research design but emerged inductively from the data, revealing itself as a significant barrier to timely engagement with rescue mechanisms. As such, Phase 1 did not simply interrogate the stigma narrative; it exposed its limits and redirected the project's analytical trajectory.

Research design and scope of Phase 1

Phase 1 adopted a **mixed qualitative approach**, combining semi-structured interviews with business owners and directors with a questionnaire circulated to insolvency scholars and experts across multiple jurisdictions. The objective was twofold: first, to explore how stigma is constructed and discussed in policy and academic discourse; and second, to test how those narratives align with the lived experiences and perceptions of those operating businesses in financial distress.

The interview component focused primarily on owners and directors of micro, small, and medium-sized enterprises (MSMEs). This group was selected deliberately, given that MSMEs make up the vast majority of corporate entities[5] yet appear to be systematically marginal to the design and effective use of formal rescue mechanisms. Interviews were complemented by a structured questionnaire sent to academic

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contributors, designed to capture comparative insights into insolvency frameworks, uptake of rescue procedures, and the prevalence of stigma narratives at national level.

The design of Phase 1 was ambitious, particularly given the absence of large-scale funding and the reliance on voluntary participation. As discussed below, these conditions shaped both the data collected and the lessons drawn from the research process itself.

The stigma narrative: assumed but only partially confirmed

One of the most striking findings of Phase 1 was the apparent disconnect between the prominence of stigma within policy and academic discourse and its more limited role in the empirical accounts provided by directors themselves.

At policy and scholarly level, stigma is pervasive. Insolvency is routinely framed as socially discrediting, and business failure as something to be concealed. This framing is particularly pronounced in discussions of rescue culture, where stigma is often presented as the principal explanation for the low uptake of non-terminal insolvency procedures.

Interviews with directors, however, revealed a more nuanced picture.[6] While some respondents acknowledged feelings of embarrassment, concern about reputational damage, or anxiety about how insolvency might be perceived by peers, customers, or lenders, these sentiments were rarely articulated as decisive. Where stigma was present, it tended to be moderate rather than overwhelming and was frequently secondary to other, more immediate concerns.

Crucially, directors did not consistently describe insolvency as morally shameful or socially discrediting in the manner suggested by policy rhetoric. Instead, insolvency was more often perceived as confusing, intimidating, and opaque. In other words, stigma was present, but it did not operate in isolation, nor did it emerge as the dominant driver of inaction.

This finding unsettles a long-standing assumption in insolvency scholarship: that stigma can explain delayed engagement and the failure of rescue mechanisms. Phase 1 suggests that stigma is better understood as contextual and contingent, rather than universal or determinative.

Knowledge deficits: the unexpected core finding

If stigma proved less influential than expected, lack of knowledge emerged as the most consistent and seemingly consequential barrier across interviews.

Many directors demonstrated only a rudimentary understanding of insolvency concepts, procedures, and consequences. Rescue mechanisms were frequently conflated with liquidation; insolvency practitioners were associated almost exclusively with the closure of businesses; and the language of insolvency law itself appeared alienating rather than enabling. For some respondents, the distinction between financial distress, insolvency, and business failure was unclear, contributing to paralysis rather than proactive engagement.[7]

These knowledge deficits had tangible practical consequences. First, they delayed help-seeking behaviour, not primarily because directors feared stigma, but because they lacked clarity about where to turn, whom to trust, and what engagement with the insolvency system would entail. Second, uncertainty amplified existing anxieties: limited understanding of the law intensified fears concerning loss of control, cost, and personal exposure. Third, it undermined the functional accessibility of rescue procedures, which – however sophisticated on paper – remain largely ineffective if directors cannot understand or navigate them.

Perhaps most strikingly, several interview responses revealed firmly held views about insolvency law that were misaligned with its actual operation. This exposed a limitation of the original research design: questions intended to probe stigma frequently elicited responses that instead revealed misunderstanding. Far from undermining the data, this became one of Phase 1's most important insights, highlighting the depth and pervasiveness of the knowledge problem.

Methodological surprises and practical constraints

Phase 1 also generated important lessons regarding the realities of empirical research in law.

Engaging business owners proved significantly more demanding than anticipated. Interviews were time-intensive, often requiring face-to-face engagement and repeated follow-up. In some cases, recruitment involved direct, informal outreach, with many potential participants declining due to time constraints or scepticism. Ethical approval requirements, while essential, added further delay and procedural complexity, extending timelines beyond initial projections.

The questionnaire circulated to academic contributors presented a different, but equally instructive, challenge. While responses were generous and thoughtful, coordinating input from a broad and geographically diverse group within specific time constraints proved challenging, particularly in the absence of dedicated funding or formal project allowances. Contributions were therefore provided on a voluntary, goodwill basis.

These experiences reinforce a broader point. Empirical research in law is not simply doctrinal analysis supplemented by data. It requires specific methodological expertise, realistic timeframes, and, ideally, collaboration with researchers trained in qualitative and socio-legal methods. Phase 1 underscored the importance of methodological reflexivity when moving beyond traditional legal scholarship.

Conclusion: Implications and reflections

The findings of Phase 1 suggest that efforts to promote a rescue culture have focused too narrowly on stigma, while overlooking the more foundational problem of legal understanding. Reducing stigma, while valuable, is unlikely to improve uptake of rescue procedures if directors do not know what those procedures are, how they operate, or when they should be used.

This has important implications for policy design. Legal reform alone cannot succeed if it is not accompanied by accessible information, meaningful guidance, and access to trusted intermediaries. The rescue culture is not solely a matter of social attitudes; it is also a question of cognitive and institutional accessibility.[8]

Phase 1 also demonstrates the value of empirical inquiry in challenging entrenched assumptions. By confronting the gap between narrative and practice, the project invites a reassessment of where reform efforts should be directed and how success should be evaluated.

At the same time, Phase 1 serves as a reminder that empirical research in law is demanding, time-consuming, and methodologically challenging. When undertaken carefully, however, it has the capacity to unsettle orthodoxies and enrich our understanding of how law operates in practice.[9] ■

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Footnotes:

1 See e.g. UNCITRAL Legislative Guide on Insolvency (2004), 2; Article 1(g), UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises (2022); OECD, *Going for Growth* (2018), Chapter 3 (Policies for productivity: the design of insolvency regimes across countries), 101.

2 COM(2007) 584 final, 3; Recital 20, European Commission Recommendation on a new approach to business failure (2014).

3 In the UK, for example, see *In re Equitable Life Assurance Soc'y* [2019] EWHC (Ch) 3336 (discussing the scheme of arrangement's inherent (and statutory) non-association with the stigma of insolvency); Institute of Chartered Accountants of England and Wales, 'It's time to admit British business has a problem' (Press Release, 7 September 2017), 1.

4 See e.g. Robert Sutton and Anita Callahan, 'The stigma of bankruptcy: spoiled organizational image and its management' (1987) 39 *Academy of Management Journal* 405, 405; Lisa McIntyre, 'A sociological perspective on bankruptcy' (1989) 65 *Indiana Law Journal* 123, 130; Tibor Tajti, 'Bankruptcy stigma and the second chance policy: the impact of bankruptcy stigma on business restructurings in China, Europe and the United States' (2018) 6 *China-EU Law Journal* 1, 29.

5 Micro-, small-, and medium-sized enterprises (MSMEs) make up over 99% of all businesses in the European Union (EU). See: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20241025-1

6 See generally Emilie Ghio and Donald Thomson, 'Is insolvency stigmatised?' (2023) 32(3) *International Insolvency Review* 397.

7 See Emilie Ghio, 'Ignorance is not bliss: directors, insolvency literacy, and the rescue gap' (2026) 35(1) *International Insolvency Review* (online version, 13 January 2026).

8 See Emilie Ghio, 'Small Firms, Big Gap: Rethinking MSME Rescue in EU Insolvency Law' (2025) 14 Laws 99.

9 N.B. Other than the literature already mentioned above in footnotes 6-8, the IPSI project has also yielded the following outputs to date: Emilie Ghio and Donald Thomson, 'Insolvency: More than just numbers' (2025) 36 *International Company and Commercial Law Review* 23; Emilie Ghio and Donald Thomson, 'Corporate Insolvency: Why are directors afraid of help? Preliminary study on the stigma associated with corporate insolvency' (2024) 98 Chicago-Kent Law Review 391.