

A special unit to avert entrepreneurs' relocation to a better world

Marc Binnié reports on the new psychological support unit for distressed business owners: 'Aide Psychologique des Entrepreneurs en Souffrance Psychologique Aigüe' (APESA)



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Suffering: a familiar yet hot issue

We all know how much energy, imagination, dedication, audacity – if not outright adventurism – it takes to start up a new business. We also understand what this entails for business owners in terms of risk-taking, dangers, and tension, often brought to a peak in bankruptcy procedures.

Olivier Torres, Economy Professor in the University of Montpellier, and head of the Entrepreneurs' Mental Health Observatory AMAROK (www.observatoire-amarok.net), points out that “*the business owner's health capital is the SME's chief intangible asset.*”¹

In firms – most of them small – facing such procedures, the ensuing difficulties have a direct impact on business owners' psychological health. During court hearings, judges, liquidators and court clerks are increasingly witness to scenes of mental breakdown, involving fits of crying, stress, despair, and even clearly articulated suicidal ideas.

For despondent entrepreneurs, such procedures first symbolise the brutal possible end of their career, guilt, failure, and dishonor, even if they subsequently realise that they often mark the first step of a personal reconstruction.

While legal concepts and procedures, together with business owners' efforts to “*put on a good face*” and behave as society expects them to, are often enough to smoothly address the most complex and tense cases, the weight of psychological and moral suffering is sometimes too heavy to handle for un-trained

court personnel.

Bankruptcy procedures have prompted so many desperate phone calls in the first contacts with court clerks; so many examples of a state of shock after the collapse of a “*life's dream*”; so many outbursts of tears by middle-aged men; so many mentions of the darkest thoughts during hearings; so many hopeless cases of solitude in spite of the rational, attentive, and kind-hearted arguments of professionals! How many years have we been helplessly witnessing the tragic sequence of events: bankruptcy, depression, and divorce?

The high number of proceedings (62,200 in 2013 alone) and the changes in the sociology of business owners were not matched by greater acceptance of bankruptcy procedures which, in addition to being the *locus* of well-known social tensions, also give way to often overlooked psychological and moral tragedies.

The psychological support unit's recognition of suffering entrepreneurs as a potentially suicidal and vulnerable group is in itself a protective factor. In contrast, ignoring this suffering can represent an aggravating factor. The day the same recognition is extended to independent workers will also mark a great step forward.

Recognizing suffering as a gesture of humility

Legal experts and bankruptcy procedure lawyers are not heartless, and some of them, tactfully alluding to the “*business owner's solitude*”² and their

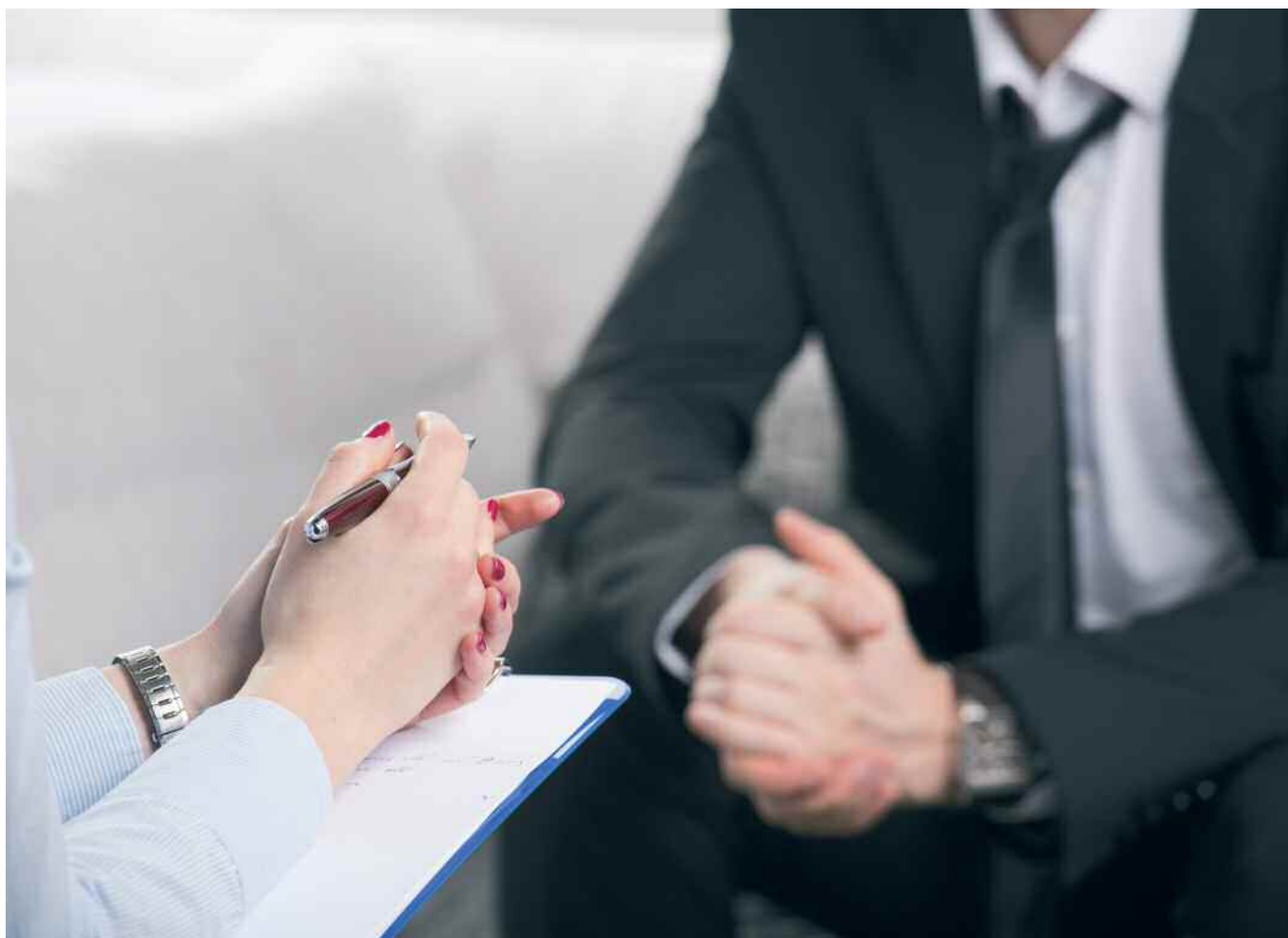
“*psychologically affected*”³ state, do demonstrate their awareness that using the generic term ‘debtor’ poorly accounts for a complex situation that only someone with a lack of psychological training would still feel entitled to describe as straightforward.

The publication by the National Clerks' Association of a widely distributed brochure⁴ entitled “*Entrepreneurs, do not deal with your problems alone!*” (which can be downloaded on its website www.cngtc.fr) attests to the growing awareness within the profession of the need to inform economic actors about the procedures in order to roll back “*fatalism and discouragement.*”

Lawmakers, too, send out protective signals every now and then. The so-called Business Rescue Act and the upcoming Investigation Procedure for Personal Recovery⁵ have both a legal and psychological impact.

However, given the lack of prior psychological assistance, the onus is on the legal process – since “*the judge only rules on real cases involving flesh-and-blood men*”⁶ and because “*the courts are confronted with raw human nature*”⁷ – to give this suffering a voice, before channeling it toward organized structures.

When within the framework of bankruptcy procedures we talk about judicial time, we are not only referring to the time of the hearing, but more broadly to the time of judicial receptiveness, which covers the entire process, from the talks with the judge for the prevention of corporate difficulties and with clerks, to meetings with liquidators and receivers.



What is a hearing primarily about, if not listening? What helpful listening “*truly aims for is not so much to understand the other person as to give them the opportunity to better hear and understand what they are saying and experiencing.*”⁸

Bankruptcy proceedings are conflict-prone⁹ and sometimes have psychological effects, but they also represent a breeding ground where various branches of the law can meet. Provided that they are not viewed as a cure-all solution, the daily practice of bankruptcy procedure is intended to open up to other fields of knowledge, and to become a bridge so that its practitioners become more alert when faced with distressed subjects.

This fascinating overture will naturally involve broadening the scope of the training of both

clerks¹⁰ and lawyers¹¹. This is the least of the humanistic values of CSR (Corporate Social Responsibility) we are asking business leaders to adopt.

An experimental psychological support unit

It has appeared when dealing with corporate difficulties that one cannot provide the business owners only with legal answers when despair and suicidal ideas are near at hand in the worst cases. It explains why the Commercial Court of the city of Saintes set up a psychological and suicide prevention support unit especially dedicated to business owners.

Without acting as medical practitioners, the head of the Prosecution Department of Courts of First Instance, the

judges, liquidators, clerks and clerks’ assistants are now able to guide and advise desperate business owners to willingly consult trained psychologists. Basically, the idea is to restore dignity and self-respect to those men and women.

The suicide prevention society “*The Time Passengers*”, whose chairman is Jean-Claude Douillard,¹² collaborates to the unit by providing proper and regular treatment and attention to suffering debtors.

All bankruptcy practitioners have got appropriate training to detect suicidal ideas and identify the germs of suicidal risk.

They are now able, if necessary, to discuss the personal psychological business owner’s situation. It is now possible for each member of the ‘team’ noticing psychological distress at a hearing or during a conversation,



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to immediately fill in an alerting file and send it to the unit's coordinator.

The latter will at once contact the suffering entrepreneurs and propose them after about half an hour talk, free psychological care in five sessions performed by the nearest trained practitioner.

The framework of the programme is fairly simple:

- Signs of an acute psychological suffering are displayed by either the business owner when having a conversation with the clerk, its assistant or the liquidator, or when interviewed by a judge during a hearing.
- Assessment of aggravating or protecting factors.
- Proposition of psychological care.
- An alerting file is filled in at once if the interested party has consented to it, and sent to the unit coordinator.
- The psychological evaluation interview will be immediately performed by the coordinator.
- The coordinator chooses the nearest and most appropriate psychologist.
- The latter will then contact the candidate.
- Information about the psychological care is given to the 'alert trigger'.

It only requires:

- Appropriate training to conduct a psychological suffering assessment interview provided to all practitioners dealing with bankruptcy procedure.
- Constitution of a trained psychologists network ready to take action in emergency

Perfect and total confidentiality prevail, no information of any kind is given to the different actors of the bankruptcy proceedings (district attorney, judge, liquidator, clerk or assistants of the latter).

They will only receive information about the setting up of the psychological care. The device is also meant to protect those who are at the front of sufferings.

A transversal conception of justice

Considering individuals in their entirety and their complexity on legal and economical proceedings is to all accounts a fairly new idea that enhances the social efficiency of justice. Nevertheless, this conception is close to the guidelines of the recently tabled report of *"The Institute of Superior Studies on Justice"* according to which:

*"Trial can pretend to some social efficiency only through concatenation of (...) different realities. Trial gets its strength from Law but also from the intersection of all kinds of realities in 'a total social fact'. Social efficiency of justice comes from its centralising and structuring capacity to combine all kinds of dimensions, social, legal, rhetorical, political and subjective ones."*¹³

The party concerned, thanks to the lightness of the device, becomes aware that his/her sufferings of neither legal nor economical kind are taken into account. It is not a question of acting no longer as a district attorney, as a judge, as a liquidator or as a clerk, it only means a new action, a new way of enhancing our mission.

As a practitioner once said in a few words: *"being able to understand how suicidal behaviour operates, being able to identify anxiety disorders, which afflict victims with excessive and unrealistic feelings that interfere with their lives, learning to ask valuable and proportionate questions without fearing of hurting the other person are the main points I will remind from the different interventions. Analysing risk and trying to be protective is also a means for us to assess and manage our feelings and hand over the reins to the professionals of the unit when necessary."*¹⁴

Hearing time or conversation time remain specific, genuine, but the possibility of a psychological care, without having to thoroughly change our practice, allows when needed, to follow the person who, consciously or not,

bears the burden and suffers from the contradictory tensions of business difficulties.

Within this framework, The Commercial Court does not depart from its primary mission of dealing with the *"difficulties of commercial and craft businesses"* and providing the most appropriate legal and economical answers, and has the opportunity of answering with pragmatism and imagination according to its tradition, to the crucial question: **"What is a good judgment in times of crisis?"**

An alerting protocol based upon inter-professional collaboration

The process began in December 2012 with an experimental phase. A number of health professionals – psychologists, psychiatric nurses, doctors and psychiatrists – started by attending hearings dedicated to cases of bankruptcy at the Commercial Court of the city of Saintes.

The persons summoned to court had previously consented to their presence. They were to be contacted again in January 2013, and most of them agreed to be more extensively interviewed.

Once over the initial feelings of surprise, because of not being used to be treated in a sensitive manner throughout the justice process, they willingly accepted to talk about their psychological condition; their cooperation confirmed the accuracy of our strategy.

This is how the alerting response protocol and the psychological care for distressed business owners were set up in the Commercial Court of the city of Saintes. We have also created several interdisciplinary collaboration tracks.

- Training time on legal proceedings in Commercial Courts for members of the steering committee – health professionals, highly trained nurses, psychologists, sophrologists, family therapists, educators, etc.;
- Awareness time dedicated to

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identify suicidal risk signs for insolvency practitioners;

The Commercial Court registry letters all mention the existence of the psychological support unit. Information screens shortly display messages to invite business owners to question themselves about their psychological state.

Since it was set up in September 2013, the service has benefitted 96 business owners: 38 women, 40 men and 9 pairs.. It proves that SME entrepreneurs are not reluctant to benefit from psychological support when feeling the need of it and confirms the wisdom of our approach. Initially focused on the business owner him/herself, it has been extended to the near family members, most of the time the spouse, who sometimes may encounter deeper sufferings. Psychological care was even granted to someone mourning a suicide victim.

Language being often the best way to reduce tensions, we are at present considering with a child psychiatrist the possibility of elaborating language items to be used by the business owner with his children.

It can happen to be rather difficult to build a theory of common sense, but according to E. Durkheim *“once evil is known, once we know what evil is made of and what it depends upon, once we know the main characteristics of the appropriate remedy to cure evil, it is not essential to set up in advance specific measures; but it is essential to attack the task decisively.”* ■

If you would like further information about the support described in this article, please contact the author at:
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Footnotes:

- 1 http://www.oec-paris.fr/documents/francilien/354_33.pdf
- 2 F. Pérochon, *Entreprises en difficultés*: LGDJ 9e éd., p. 47.
- 3 C. Delattre Bull. Joly, ED 2013, p. 399.
- 4 <http://www.cngtc.fr/page/flip/entrepreneurs-ne-restez-pas-seuls-face-a-vos-difficultes>
- 5 La procédure d'enquête pour le rétablissement personnel, François-Xavier Lucas et Marc Sénéchal : D. 2013, p. 1852.
- 6 A. Garapon, *Bien juger, essai sur le rituel judiciaire* : Editions Odile Jacob, collection Opus, p. 18.
- 7 *Ibid.*, p. 19.
- 8 J. Salomé, *Relation d'aide et formation à l'entretien* : Septentrion, Presses universitaires, p. 14.
- 9 Ph. Roussel Galle, sous la direction de, *Entreprises en difficultés, Terres de conflits, terre de rencontres*, Lexis Nexis.
- 10 CNG, *Rapport d'activité 2012 sur l'obligation de formation continue des greffiers des tribunaux de commerce*, p. 19.
- 11 J. Moret-Bailly et D. Truchet, *Déontologie des juristes* : collection licence droit, Puf 2010, p. 126.
- 12 Clinical Psychologist, Coordinator of regional health program, Promoting mental health and suicide prevention, to the south of Charente Maritime, j.douillard@ch-saintonge.fr
- 13 IHEJ, *La Prudence et l'Autorité, l'Office du Juge au XXIe siècle*, mai 2013, p. 67.
- 14 Marie-Adeline Rousselot-Gégoué, liquidator.
- 15 Emile Durkheim, *Le Suicide*, Petite bibliothèque Payot, 2012, p. 470



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