

INSOLVENCY LAW REVIEW

Minutes of the Thirtythird Meeting of the Review Committee on
19 September 1979

Present: Sir Kenneth Cork (Chairman)
J S Copp
AIF Goldman
J M Hunter
D McNab
P J Millett
T R Penny
E I Walker-Arnott
T H Traylor (Secretary)
E L Reeves (Assistant Secretary)

In attendance: J R Endersby
D Graham
R B Jack
G A Weiss

1 The Committee met at 10.00 am. It was noted that para 12 (page 4, line 15) in the minutes of the thirtysecond meeting held on 10 July 1979 should read ".....and said he could not pay,". The minutes as amended were agreed and signed. ✓

SECRETARY'S REPORT

2 The Secretary said that Mr Avis, Mr Drain, Mr Muir Hunter and Mr Taylor had sent apologies for absence.

3 The following papers had been circulated since the last meeting:--

- (a) drafts of Chapters 1 to 5 of the report [the Secretary thanked members for their prompt response and constructive suggestions; he added that it would be helpful to receive back as soon as possible the comments of those members who had not yet replied];
- (b) written submissions C166-177;
- (c) comments by members on ILRC 98;
- (d) receivership statistics provided by the Insolvency Practitioners Association;
- (e) bankruptcy statistics provided by the Inland Revenue, Customs & Excise and DHSS; and
- (f) an extract from Trade and Industry "Insolvencies in England and Wales: second quarter".

4 Copies of "Companies in 1978" and the "Bankruptcy General Annual Report from 1978" had been laid before members at the meeting.

5 The Secretary said that the Lord Chancellor's Department had carried out a pilot survey, at the Penny sub-committee's request, in a number of County Courts on Administration Orders. The results, with an analysis by the LCD, would shortly be circulated to members of the sub-committee.

INTERIM REPORT

6 The Chairman reported that Mr PAR Brown, Deputy Secretary, had told him that in connection with the exercise on savings in Government expenditure consideration was being given to dealing with bankruptcy differently, if the creditors wanted someone to deal with a case they had to provide a trustee, but if the creditors were not prepared to meet the cost of dealing with the matter this way, nothing would be done. He had told Mr Brown that there were certain cases in which an enquiry was essential, and that the Committee would be producing proposals which would reduce substantially the number of bankruptcy cases, leaving only those where an enquiry was desirable. He had also said that the Committee would not be changing its thinking on the subject.

7 The Chairman went on to say that he had subsequently received a letter from Mr Brown which read as follows:-

"You will know that the Government is examining many possible ways of reducing the size of the Civil Service; and with the objective of cutting manpower in mind, the Secretary of State is bound to consider the extent to which it is now necessary, and will be desirable in the future, to devote so much official time, both of Examiners and of other officers in the Insolvency Service, to the duties currently imposed by bankruptcy legislation. In coming to decisions on this matter, it would be very helpful, indeed very desirable, for the Secretary of State, to have the recommendations of your Committee on the future shape of the bankruptcy legislation; and I am therefore writing to ask whether it would be possible for you to complete your review of bankruptcy, and to present your conclusions in a separate report, reasonably soon. I fully realise, as does the Secretary of State, that the matter is a complicated one, calling for intricate study and deliberation by the Committee, and that an early report may not be easy; but I hope that in view of the importance of the decisions which the Government will be considering in the autumn, you will nonetheless be able to let the Secretary of State have your views in time for them to be given full weight."

He hoped that the Committee would be able to submit within a few weeks a short report setting out the general principles which the Committee had concluded should apply to the insolvency of individuals, and then follow this, before the final report was submitted with its full conclusions on bankruptcy.

8 Mr Millett was of the opinion that the report should be followed by a further report on consumer bankruptcy, but Mr Walker-Arnott thought that it would be unwise to put out subsequent reports in isolation as the matters were inter-connected and needed to be looked at together. This view was supported by Mr Goldman.

Roy (Jettor)

9 Mr Walker-Arnott, supported by Mr Goldman, thought it important not to allow the Committee's approach to the report to be determined by the Government's desire to effect savings. The Chairman said that the request for a report would not affect the Committee's proposals.

10 Mr McNab, referring to the scheme which Mr Brown had outlined to the Chairman, pointed out that rogues would have an easy time if there was to be no investigation.

11 It was agreed that the Chairman should reply to Mr PAR Brown, saying that he had consulted the Committee who had agreed to set out in a short report, by the end of October, an outline of the proposals which they would be making, but nothing would be said about further reports.

12 The Committee then discussed what should go in the report and inclusion of the following points was generally agreed:-

- (a) in a changing world, where people had credit thrust upon them, there had been an enormous increase in non-trading debtors,
- (b) the increase in bankruptcy proceedings against small businesses was largely caused by VAT and the Revenue,
- (c) bankruptcy was now one of the most efficient methods of debt collecting,
- (d) the effects of the foregoing were that the full rigours of bankruptcy were being applied to far more cases than the system had been designed for and many of these could be dealt with by other less rigorous procedures, which would not have the stigma of bankruptcy but which would result in a more economical and efficient recovery for creditors,
- (e) the various channels proposed for those not deserving full bankruptcy would be spelt out,
- (f) there would be facilities for switching to full bankruptcy where this was appropriate,
- (g) the defects in present systems (eg. Administration Orders and Deeds of Arrangement) should be mentioned, as should how they would be met,
- (h) full bankruptcy would be reserved for the bad cases, and for those who had defaulted in some less rigorous form of administration, and include more severe penalties and full investigation; this was particularly necessary as it was proposed to deal in this way with delinquent directors,
- (i) there would remain an essential role for the OR service in policing such cases, and
- (j) the Committee's views had been coloured by the need for harmonisation.

13 It was suggested that public examination should only be on application for cause shown by the OR, the trustee or a creditor. While this found favour with some members, others were doubtful about including this in the report and there was no general agreement that it should be mentioned.

14 Mr Millett said that the Committee had to be careful not to suggest that the report was being made in an effort to save Government expenditure; what was needed was a further letter asking for a progress report. The Secretary said that he thought that there would in fact be a further letter asking for an outline scheme for individual debtors. *issued Oct.*

15 It was agreed that the Secretary should draft the report, two copies of which would be sent to members within 14 days. Members were asked to return one copy annotated with their comments within 7 days of receipt. It was hoped that a paper marshalling the various comments could then be circulated in time for discussion at the next meeting. The Chairman asked for brevity and said that only comments which had come back in writing would be considered at the meeting; no other proposed amendment would be considered.

STATEMENT OF INDEPENDENCE - ACCOUNTANTS

16 Referring back to the minutes of the 30th meeting (para 10) and the 31st meeting (para 4) the Chairman said that he had discussed the matter with Mr PAR Brown who had said that if the Committee wished to write to the Department, he would recommend that the Department should have a discussion with the Institute.

17 The Secretary recalled that in reply to the Committee's letter, the Secretary of the Institute's Department, of Professional Conduct said the Ethics Committee would be considering the matter further, and if they agreed that a modification was necessary it would be published before the Statement as published became effective on 1 January 1980. He suggested therefore that the Committee should first find out from the Institute what the present position was. Mr John Hunter supported this proposal. The Chairman however said that the ban on a receiver becoming even a joint liquidator had already started to operate and in his view this was contrary to public policy.

18 On the basis that the ban was already in operation, the Committee agreed that the Chairman should write to Mr PAR Brown.

ANY OTHER BUSINESS

19 In response to an enquiry from members, Mr Jack said that there had been criticism of the Scottish system for dealing with insolvent debtors. Investigation of debtors was paid for by the creditors, but a number of cases disappear into limbo; the petition is presented, the trustee looks for assets and finds none, and no-one has any interest in bringing the case to a conclusion. The Scottish Law Commission were looking at a system whereby every estate would get a trustee who would be paid for out of public funds. Another difficulty in Scotland was the lack of a sophisticated fraud investigation department.

20 Mr John Hunter drew the Committee's attention to the three points made in Mr Chamberlain's speech in 1883:-

- (i) there should in every case be a public enquiry into the circumstances which placed a man in the position in which he came to the law and asked to be relieved from obligations which he had voluntarily entered into,
- (ii) there must be a public official to conduct this enquiry, and
- (iii) if you want to make this man fully responsible he must be placed under the direction of one of the departments of state responsible to the House.

The Committee accepted this, but with the proviso that an enquiry would only be required in a minority of cases.

21 Mr Penny drew attention again to the problem of dealing with the self-employed. The Registrars were recommending the restoration of the judgment summons where there was a default on a DAO.

FUTURE MEETINGS

Penny Spce to Registrars

22 It was agreed that the Committee would meet at 10.00 am on Thursday, 18 October. Further meetings had already been fixed for Wednesday 21 November, Friday 14 December 1979 and Friday 18 January 1980. Subsequent meetings would be held on Thursday 21 February, Tuesday 18 March and Wednesday 16 April 1980.