

INSOLVENCY LAW REVIEW COMMITTEE

1(4.5)

THIRTYFIFTH MEETING

Meeting to be held in the Conference Room, 2-14 Bunhill Row,
on Wednesday 21 November 1979 at 10.00 am.

A G E N D A

- 1 Minutes of the meeting on 18 October.
- 2 Matters arising.
- 3 Secretary's report.
- 4 Initiation of insolvency proceedings (ILRC 98). *Law Couns. need a paper.*
- 5 Bankruptcy offences (ILRC 94, paras 61-63 and Annex). *refer to Panel.*
- 6 Immediate winding up order (ILRC 97).
- 7 * Voluntary settlements (ILRC 87, para 28).
- 8 * Fraudulent preferences (ILRC 88, and brief).
- 9 Any other business.
- 10 Agenda for the next meeting (14 December). *ILRC 100.*
* Time permitting *Fraud. Prefers.*

Note If members would kindly let me have any points or proposals which they wish to make on the main items, I will try to get them circulated to all members (para 14 of the minutes of the last meeting refers).

Comments by 1 Dec

Traylor Traylor
T H TRAYLOR
Secretary

INSOLVENCY LAW REVIEW COMMITTEE

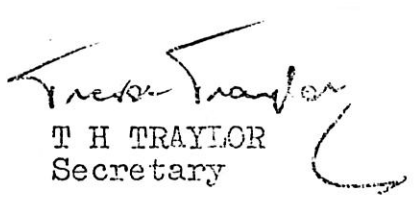
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T H TRAYLOR
Secretary

INSOLVENCY LAW REVIEW

Minutes of the Thirtyfourth Meeting of the Review Committee on
18 October 1979

Present: Sir Kenneth Cork (Chairman)
PGH Avis
J S Copp
J M Hunter
MVS Hunter
D McNab
P J Millett
T R Penny
C A Taylor
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. The minutes of the thirty-third meeting held on 19 September 1979 were agreed and signed.

MATTERS ARISING

2 Mr Penny, referring to para 7 of the minutes of the thirty-third meeting, asked whether it was now contemplated that a further report on bankruptcy would be submitted. It was noted that it had been agreed (para 11 of the minutes) that the question of further reports would not be mentioned in the letter to the Department. The Committee took the view that no further interim reports should be entertained pending the preparation of the final report.

3 Referring to paras 16 to 18 of the minutes, the Secretary said that the Secretary of the CCAB Ethics Committee had now replied to the letter of 18 May 1979 and a copy had been placed before members. The Committee took note of the letter. Mr Muir Hunter (in the chair) said that his views were that (i) the fourth para contained a threat (it did not say that "it does not follow" but said "it does not necessarily follow" so that in fact they were legislating for the profession) and (ii) if the Committee felt it was in the interests of creditors generally that the same person should be receiver and then liquidator, then that should be the law. He suggested that it should be referred to at the next meeting for the views of the Chairman himself. The Secretary added that he understood that the Chairman had received from the Department a reply to the letter which had been written to the Department on the Committee's behalf.

*could
or might*

SECRETARY'S REPORT

4 The Secretary said that Mr Drain and Mr Goldman had sent apologies for absence.

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

- (i) the interim report and four briefs regarding proposed changes, and
- (ii) ILRC 9 (Part B) by Mr Taylor on the Duties and Functions of the Official Receiver in Bankruptcy.

The Secretary added that the Committee might wish to discuss the OR service at an early date.

6 More written evidence had been received and would be circulated as soon as practicable.

7 The Secretary said that the Chairman had received a letter from the Department indicating that the paper on preferential rights, which would conclude the Department's submission to the Committee, would not be ready until later in the year. In reply to a question, the Secretary said that if a particular subject was raised (such as the Insolvency Service), the Department's views could be sought.

8 As to meetings, the Penny sub-committee had met on 5 October and the Weiss sub-committee on 10 October. The two Working Groups would be meeting on 25 October and 2 November. Meetings of the Accountants' Panel, Legal Panel and the Drafting sub-committee had had to be deferred.

INTERIM REPORT ON BANKRUPTCY AND ANALOGOUS PROCEEDINGS

9 The Secretary asked that the assistance provided by Mr Graham should be placed on record. He had also had a number of constructive amendments suggested by other members which had been inserted in the draft without circulation to the remainder of the Committee.

10 Mr Walker-Arnott questioned the nature or character of the report. There was a difference between making a report which sets out proposals and one giving the line of thinking. He was not clear what the intention was. It seemed to be getting close to a consultative document, saying that the Committee were reserving the right to change its mind, and this would give the right to people to express their dissent to the Committee, giving their reasons. If the Committee was to have any purpose, and argument, debate and points of view were to have any currency and weight it would be wrong to accept a sub-committee's proposals when these had been discussed in Committee. Mr Millett thought that it would be absurd to produce no more than the trend of the Committee's thinking. The Committee had made up its mind on certain points and it was its duty to tell the Secretary of State what

He felt that the DAO provisions could get implemented quite soon. The Chairman suggested that the Committee should give its general ideas on what it had in mind.

11 The Committee then discussed the draft, para by para, and individual paras were amended. Additional sub-paras were inserted in para 6; paras 20 to 22 were deleted; para 27 was deleted (in consequence of amendment to para 26); a new para regarding the impact of the provisions of the draft Bankruptcy Convention was inserted; and an additional final para (suggested in Brief No.4, but amended further) was added.

12 It was agreed that the draft as amended could go forward, and a formal vote of thanks to those principally concerned in producing the draft was adopted.

13 Mr John Hunter suggested a note which might be considered for the final report. In 1883 Mr Chamberlain had said that the Government were proposing abolishing all preferences except wages, and the Treasury had then agreed.

ANY OTHER BUSINESS

14 Mr Copp suggested that there should be a change in the method of working. It would concentrate members' minds if they had draft proposals put to them and the individual members' comments on these views were circulated and then discussed at a meeting.

FUTURE MEETINGS

15 It was agreed that the Committee would meet at 10.00 am on Wednesday, 21 November. The dates of subsequent meetings to and including April 1980 were recorded in para 22 of the minutes of the thirtythird meeting. The Committee then went on to fix dates for meetings beyond that date, as follows:-

| | |
|------------------------|------|
| Wednesday, 21 May | 1980 |
| Tuesday, 24 June | |
| Wednesday, 16 July | |
| Wednesday, 20 August | |
| Thursday, 25 September | |
| Wednesday, 15 October | |
| Thursday, 20 November | |
| Wednesday, 17 December | |

16 It was agreed that in view of the workload the Committee should in future meet from 10.00 am to 4.00 pm and the formal matters (consideration of the minutes, etc) should be dealt with in the first thirty minutes.

17 The main items on the agenda for the next meeting would be ILRC 98, followed by bankruptcy offences (ILRC 94) and the possibility of an immediate winding up order (ILRC 97). It was agreed that the report on Debts Arrangement Orders should be dealt with as soon as it is ready.

Received