


INSOLVENCY LAW REVIEW COMMITTEE

FORTYFIRST MEETING

Meeting to be held in the Conference Room, 2-14 Bunhill Row,
on Wednesday, 21 May 1980 at 10.00 am.

A G E N D A

- ✓ 1 Minutes of the meeting on 16 April.
- ✓ 2 Matters arising.
- 3 Secretary's report.
- 4 Powers of the Court on setting aside voidable transactions
(Mr J Hunter's note of 27/11/79 para 9).
- 5 Committees of Creditors (ILRC's 113 and 115).
- 6 Criminal Bankruptcy (ILRC 114).
- 7 Compulsory Bonding (ILRC 117).
- 8 The Authority and Personal Liability of a Receiver under
Contracts and Leases (ILRC 118).
- 9 Minimum paid-up capital (ILRC 116).
- 10 Any other business.
- 11 Agenda for next meeting (25 June).


T H TRAYLOR
22.4.80.

INSOLVENCY LAW REVIEW

Minutes of the Forty-first Meeting of the Review Committee on 21 May 1980.

Present: MVS Hunter (in the Chair)
PGH Avis
J S Copp
AIF Goldman
J M 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. With regard to the minutes of the fortieth meeting held on 16 April, the use of the word ceiling in para 10 was queried; it was noted that this referred to specifying the maximum sum for which the security is valid (ILRC 105, paras 11 and 13). The minutes were then agreed and signed.

MATTERS ARISING

2 The Secretary said that Mr Avis had raised a point on the last sentence of para 26 of the minutes. It was agreed that the matter should be re-opened at the next meeting.

3 The Secretary said further that Mr Avis, in connection with para 32, had raised the problem of safeguarding any diminution in values which could arise with a deferment of realisation. It was noted that deferment for 12 months in the case of a fixed charge would not be automatic.

4 Mr Muir Hunter thought that under the American system where the Court could inhibit the enforcement of fixed charges, the Court took into account damage to the creditor and could compensate him. It was agreed that this should be discussed together with Mr Avis' point (para 2 above).

SECRETARY'S REPORT

5 The Secretary said that apologies for absence had been received from the Chairman and Mr Drain.

6 Papers circulated since the last meeting had been ILRC 113 to 118, consultees' submissions C198 to 201 and comments by members on items on the agenda. Papers placed before the meeting were an extract

from Hansard, and extracts from the Accountant and Accountancy Age regarding the disqualification of an individual.

DEPARTMENT'S PROPOSED CONSULTATIVE DOCUMENT

7 The Committee resolved that the record of its discussions on this matter should be treated as confidential to members and to co-opted members. **

NEXT MEETING

8 It was agreed that the Committee would meet next at 10.00 am on Friday, 13 June.

** Issued to members and co-opted members as Appendices A and B.

**Midland
Bank
Limited**

Poultry London EC2P 2BX

P G H Avis
Assistant General Manager



Cmdr. T.H. Traylor, MBE, C.de G.RN.,
Department of Trade & Industry,
Insolvency Service,
2-14 Bunhill Row,
London EC1Y 8LL.

15 May 1980

Dear Trevor,

Insolvency Law Review Committee - 41st Meeting

Thank you for the Minutes of our last meeting and I wonder if I could raise two subejcts, please, under "Matters Arising" :-

Item 26.

The last sentence reads "It was noted, however, that Mr Millett had made a proposal in ILRC 79, Section B 1(ii) and the Committee accepted this insofar as it secured a current account". As you know, I was not at the meeting and in talking to John about this particular decision he feels that it was not the intention to accept Peter Millett's recommendations as set out in the section referred to completely, but that something should be done about "washing" a current account. You will recall that I commented upon Peter's proposals in ILRC 75, para:4 and I would be very concerned if I felt that despite the observations I made, Committee had accepted Peter's proposals. If this is the case, then I would wish, please, if at all possible, to re-open the discussion as I feel very strongly that the practical outcome of the proposals would cause considerable problems. I tried to illustrate my view with the extract from Spillers Annual Report and, of course, this is only one of many such instances which one sees almost every day in the practical conduct of bank accounts.

Item 32.

Without being present, I am naturally not aware of the full discussion that ensued on this item but I believe I am right in assuming that any restriction on the enforcement of a fixed charge would only come about if the liquidator/receiver required it to be so in the course of his duties. The problems associated with the current and future value attaching to, say, a fixed charge over premises is one which we discussed previously and I am sure I am right in presuming that some arrangements will be made to safeguard any diminution in values which could arise with a deferment of realisation.

Continued / ...

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As regards to your letter of 8th May enclosing the provisional draft of the proposed Consultative Document, the only comment I would wish to make is that I would support Para: 5 (b) and it would seem that the problem of "slotting in" the consultative paper proposals into our overall plan are not too formidable. No doubt this will be well ventilated during the meeting of 20th May when our experts on this particular subject will have had an opportunity of considering them in more detail and we in the main Committee will perhaps be faced with only the main decisions of policy.

Agenda Item 4.

No comment other than perhaps it is intended to include the final paragraph of Section 57 (3) of the New Zealand Insolvency Act 1967 !!

Agenda Item 5.

No comment.

Agenda Item 6.

I have no comment; a technical paper but I agree with the sentiments expressed therein. There is one important fact however, presumably our future deliberations will be determined by the outcome of the discussions taking place between the Department with the Home Office and the D.P.P. referred to in the final paragraph of the Department's paper DT5, which, of course, links in with Muir's final comments in his paper, page 16.

Agenda Items 7 and 8.

No comment.

Agenda Item 9.

John is preparing a short note which may be of interest on this particular subject and which he will have available for you on Wednesday for distribution then, or if we don't cope with this item on Wednesday for reference purposes subsequently.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'J. Muir', written over a horizontal line.

INSOLVENCY LAW REVIEW

Minutes of the Forty-second Meeting of the Review Committee on
13 June 1980

Present: Sir Kenneth Cork (Chairman)
PGH Avis
J S Copp
AIF Goldman
MVS 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
G A Weiss

1 The Committee met at 10.00 am. The minutes of the forty-first meeting held on 21 May were agreed and signed.

SECRETARY'S REPORT

2 The Secretary said that apologies for absence had been received from Mr Drain, Mr John Hunter, Mr Taylor and Mr Jack.

3 The Secretary said that comments by Mr John Hunter on 23 May had been circulated and a reply had since been received from Mr Taylor who agreed wholeheartedly with the contents and in particular with the final paragraph. Mr Goldman added that Mr Drain had told him that he felt that it would be disastrous for any member of the Committee to contemplate resignation so long as, where anything which was done with which the Committee did not agree, the Committee retained its freedom to dissent.

4 The Secretary went on to say that reports from Mr Goldman, Mr Penny and Mr Graham had been circulated regarding the meeting held with officials, followed by a draft letter to the Minister prepared by Mr Goldman and Mr Graham.

5 The meeting on 25 June might be held in a different venue and a buffet lunch was being arranged; members were therefore asked to inform the Secretariat as soon as possible if they would not be attending the meeting or the lunch.

GOVERNMENT'S PROPOSALS ON THE OR'S ROLE IN BANKRUPTCY

6 The chairman said that following the meeting with officials Mr PAR Brown and Mr W Armstrong had asked to come and see him. They said that the Department did not want a conflict with the Committee and hoped that some alternative proposals might be acceptable, bearing in mind that the Government was determined to go ahead with the basic principles of their plan. Their proposals were that there should be no Green Paper but a statement should be sent to all interested parties, in particular, to the Committee's consultees explaining the changed

circumstances and requirement to cut staff and setting out the Government's plan. Secondly, to set up an inter-departmental committee of officials plus two or three representatives of the committee to work out the details of the plan. He had asked for the proposal to be put in writing for consideration by the committee. Later he had told Mr Brown that irrespective of what was in the letter he thought that the committee would want to continue and produce their report as though nothing had happened. He had now received a letter from the Secretary of State and this was circulated to those present.

7 A long discussion followed. It was remarked that the proposed statement was a travesty of what officials had told members. Most members felt that the suggestion that members should be invited to take part in the process of translating the Government's ideas into firm legislative proposals would place an impossible burden on any member concerned; concessions would only be wrested, if at all, if the members had the full backing of the committee and to keep coming back for instructions was not feasible.

8 The Chairman pointed out that if the Government implemented their proposals it would mean that implementation of anything in the committee's report would be delayed for a long time. Mr Weiss referred to the proposal in the Minister's letter that a consultative document should be sent to bodies which had given evidence to the committee and suggested that, unless such consultation was "phoney", the White Paper would not be published within the time scale referred to. Mr Millett thought that consultation would be limited to implementation of the proposals and Mr Muir Hunter remarked that the Government would get "dusty" answers from the consultees. The committee had referred to them in the Interim Report and had to keep faith with them. It was not possible to separate matters; if the present procedures for preferential creditors were retained it was even more unlikely that any creditor would use the Government's proposed procedure as he would get nothing. There was an anomaly between the small trader and the £2 company which was socially quite unacceptable. The proposals were likely to lead to a switch to private trading in order to avoid the OR.

9 It was suggested that the final report would be out before the Government could implement their proposals and, if necessary, publication of the report could be forced through political pressure.

10 The Chairman suggested that the committee should go no further on bankruptcy than what was in the Interim Report, but most members were against this. Mr Penny said that the Government's proposals were only a small part of bankruptcy - merely changing the Court and supervisory procedures. The Working Groups, etc of the committee had broken the back of bankruptcy and in his view the committee should not get involved but should comment on the proposals in its final report. Mr Goldman endorsed this. Mr Millett said that the alternatives were to resign or to produce a report as quickly as possible which would include bankruptcy and say why the Government's proposals were unacceptable. He favoured the latter. In the interim the committee should say that they were not prepared to co-operate in the implementation of proposals with which it could not agree. Mr Penny added that if the committee was represented on the inter-departmental committee it could be said subsequently that we approved the Government's plan.

11 The committee then agreed on a draft letter for the Chairman to send to the Secretary of State.

12 It was agreed that even if the Government persisted with its proposals, the committee should finalise its work on bankruptcy and get out its report as quickly as possible.

13 It was further agreed that if the Government issued a statement, the committee should make no press statement, but members would be free to answer questions put to them.

FUTURE WORK

14 It was agreed that the quicker the report could be produced the better. Mr Walker-Arnott thought that too much time in full committee was spent in discussing technical points. He suggested that when reports from Working Groups were circulated, comments on technical points should be dealt with in writing and only points of principle should be considered and decided upon in committee.

15 The Chairman suggested that the discussion on the matters in the next agenda (which would be that originally proposed for 21 May) should be speeded up and further items included.

16 As to oral evidence, it was not now thought necessary to see members of the judiciary. Oral evidence would be limited to the CCAB, the lawyers (Senate of the Inns of Court and the Bar jointly with the Law Society), the Committee of London Clearing Bankers, the Department of Trade, and the Revenue Departments (in one group). Each of these five groups would be seen in a half-day session and different members might be present in the morning and afternoon sessions. The Chairman and the Secretary would work out when these sessions could be held; it would probably be during September.

17 It was agreed that the committee would meet next at 10.00 am on Wednesday, 25 June.

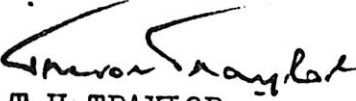

INSOLVENCY LAW REVIEW COMMITTEE

FORTYTHIRD MEETING

Meeting to be held in Scottish Life House, 36 Poultry, on Wednesday 25 June 1980 at 10.00 am.

A G E N D A

- 1 Minutes of the meeting on 13 June.
- 2 Matters arising.
- 3 Secretary's report.
- 4 Powers of the Court on setting aside voidable transactions (Mr J Hunter's note of 27/11/79 para 9).
- 5 Committees of Creditors (ILRC's 113 and 115).
- 6 Criminal Bankruptcy (ILRC 114).
- 7 Compulsory Bonding (ILRC 117).
- 8 The Authority and Personal Liability of a Receiver under Contracts and Leases (ILRC 118).
- 9 Minimum paid-up capital (ILRC 116).
- 10 Partnership Bankruptcy (ILRC 120 and DT6). *next meeting.*
- 11 Public Utilities (ILRC's 121 and 122).
- 12 Any other business.
- 13 Agenda for next meeting (16 July).


T H TRAYLOR
17 June 1980 

THE BANKRUPTCY AND COMPANIES OFFICE

ROYAL COURTS OF JUSTICE

CHICHESTER STREET

BELFAST BT1 3JF

Telephone 35111 ext. 237

12 May 1980

Dear Trevor,

Main Committee meeting 21 May 1980

I have just completed my preliminary study of the papers for this meeting. I have no points of substance to raise on the excellent papers in connection with items 5-9, but I have noted the following small points and queries.

ILRC 113- Committees of creditors

Para 13. I think we should refer to the T.U.C's recommendations re representation of employees' interests and if we do not agree, say so.

Para 15. I am not clear as to what court order is referred to.

ILRC 117- Compulsory Bonding

Para B 3. Line 11, "nominally" should read "normally".

Para D 10. Line 8, "reliable" should read "liable".

~~ILRC~~-Criminal Bankruptcy-Draft Chapter of Final Report

Para. 8. Prefer to omit last sentence.

Para.9. Was not another reason for the "two tier" system the idea that the D.P.P., as O.P. should, in considering the public interest, have regard to the potential charge on public funds of the bankrupt's family if an adjudication order were made?

Para 20. First sentence. Should this not also refer to paras. 23 & 24.?

Para. 28(8). First sentence. ~~Should~~ Is (c) not embraced in (a)?

Yours sincerely,

Commander T.H. Traylor M.B.E.,
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Department of Trade,
2-14 Bunhill Row,
LONDON EC1Y 8LL

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