

Insolvency Bulletin



INSOLVENCY REVIEW ANNOUNCED

Business minister Jo Swinson recently announced a review which, she says, will ensure creditors achieve value for money from procedures carried out by insolvency practitioners.

The review, which follows on from a recent OFT study, will be led by Professor Elaine Kempson from the University of Bristol who will hear views from members of the insolvency profession as well as debtors and creditors. A report is expected in summer 2013.

“Insolvency practitioners are entitled to be paid for the work they do, but it is vital to ensure that creditors are being charged fairly to increase confidence in the insolvency regime,” commented Ms Swinson.

John Travers welcomes the move: “It is essential that confidence in our profession is maintained and that sufficient regulation is in place to identify any rogue elements.”

Agencies take tougher stance

BUSINESSES AT RISK FOR SWAPPING ONE PROBLEM FOR ANOTHER

Thousands of small businesses are being forced by their banks to make payments on interest rates swaps, despite the fact that many swap contracts have been identified by the FSA as mis-sold.

More than 40,000 interest rate swaps have been sold since 2001. The complex derivative looked attractive to borrowers keen to hedge against a rise in interest rates. But firms looking to get out of their arrangement, are now being crippled by significant exit or cancellation fees.

John Travers says: “The problem is also apparent when the underlying loans are paid off and the business finds that loans and swaps are two separate agreements so that the business has a continuing liability under the swap agreement, even if they have repaid their loan.”

A group of MP’s is now lobbying the Financial Services Authority (FSA) and the Treasury to push the banks for an immediate freeze on all swap payments,

The Financial Ombudsman Service also recently toughened its stance on the

scandal, finding in favour of victims and recommending that banks pay out settlements that would see businesses returned all the money paid out to cover their swaps as well as canceling break costs.

Eleven major banks have signed up to an FSA-designed scheme to compensate customers of mis-sold swaps. However, in the six months since the deal was announced, many businesses have complained they have been forced to continue making payments under swap contracts that have already been identified by the FSA as likely examples of mis-selling.

The FSA is currently reviewing the results of a pilot redress programme for swap victims, which it is expected to announce the results of at the end of January ahead of the full launch of a compensation scheme.

“Vulnerable businesses may find themselves teetering on the verge of insolvency as a direct result of their obligations under their swap contracts,” says John Travers.

Disqualification numbers continuing to increase

DIRECTORS BEWARE OF CLAMP DOWN ON MISDEEDS

The marked increase in the number of directors’ disqualifications over recent years is in part due to the extra pressure of the tough economic climate as directors become tempted to bend the rules, comments John Travers.

He said: “With so many so-called ‘zombie’ businesses struggling to survive, the risk is that directors will find themselves in breach of the rules, either wittingly or unwittingly, and could get struck off.

He advises directors who have delegated the responsibility of a company’s daily operations to fulfill their supervisory role with care and to ensure they oversee the conduct of fellow board directors - in particular executive directors.

“The risks of investigation and disqualification by the Insolvency Service for a breach of directors’ duties are the same for executive directors and for non-execs who may not have had an active role in running a company,” says John.

“It is vital that directors with non-executive responsibilities should, at the very least, attend annual general meetings and keep themselves up-to-date with the company’s accounts and general state of affairs.

“Directors should be extra cautious when fulfilling their legal duties. This is especially true when fellow directors are making decisions on behalf of their non-executive director colleagues,” he adds.

April 2013 will see new rules

INSOLVENCY EXEMPT FROM NEW RULES - FOR NOW

In a second climb-down in its bid to overhaul the civil justice system, the government has revealed that insolvency cases will be exempt from no win, no fee reforms until April 2015.

The Legal Aid, Sentencing and Punishment of Offenders Bill, which comes into effect in April 2013, seeks to abolish the recoverability of conditional fee agreements (CFA) success fees and after the event (ATE) insurance premiums leaving many in the industry to question how insolvency cases with limited funds available, would continue to be funded post 2013, if these two vital components were removed.

Currently, creditors rely on the regime of recoverable insurance premiums (ATE) and

CFA success fees for cases to be pursued against companies and individuals alike.

Many feared that if the reforms went ahead without exception, the vast majority of creditors would forego significant returns every year that they currently stand to recover.

Justice minister Jonathan Djanogly said that insolvency practitioners need longer to adjust to the new civil justice regime. In a statement to the House of Commons, he confirmed that insolvency cases merited a delayed implementation to allow time for those involved to adjust and make alternative arrangements.

John Travers comments: "The Government will no doubt have a keen interest in avoiding constraints on Insolvency Practitioners' ability to maximise recoveries as HMRC are often the biggest creditor in insolvency cases."



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NEWS ROUND-UP

LACK OF CREDIT STILL HAMPERING GROWTH

The Office for National Statistics (ONS) has revealed that overall lending fell by £2.8 billion in November 2012. This was the largest monthly decline since February 2012. Meanwhile, net lending to UK businesses contracted by £17.1 billion in the year to November 2012.

CHANGES TO PAYMENT LIMIT FOR EMPLOYEES

The limit on the weekly amount payable under the insolvency provisions of the Employment Rights Act 1996 Act is set to increase from £430 to £450. The new regime comes into effect on 1 February 2013.

NEW PROPOSAL COULD BRING HARMONY IN CROSS-BORDER INSOLVENCIES

The European Commission recently published the results of its consultation on the future of European insolvency law. New regulation is proposed that, they say, will make cross-border insolvency proceedings more efficient and facilitate the development of a corporate rescue culture.

ZOMBIES GATHER NUMBERS

There are now 160,000 zombie businesses in the UK, that is businesses only able to pay the interest on their debt but not the debt itself, according to the latest research by insolvency trade body R3.

GOVERNMENT INTENT ON RECOVERING DEBT

New initiatives aimed at recovering debt owed to central government include an increase to HMRCs debt management resource for the rest of this financial year and for 2013-14.

FUNDING FOR LENDING

In its first report on FLS late last year the Bank of England said just six banks or building societies had actually used the scheme. Together they had borrowed £4.4bn, and that this had boosted their net lending by only £496m.

**JOHN D TRAVERS
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