BRITISH BROADCASTING CORPORATION *RADIO 4*

TRANSCRIPT OF "FILE ON 4" - "INSOLVENCY LAWS"

CURRENT AFFAIRS GROUP

TRANSMISSION:	*Tuesday 20 January 2009*	*2000 - 2040*
REPEAT:	*Sunday 25 January 2009*	*1700 - 1740*

REPORTER:	*Julian O'Halloran*
PRODUCER:	*Paul Grant*
EDITOR:	*David Ross*

PROGRAMME NUMBER: *08VQ4279LH0*

"FILE ON 4"

Transmission: Tuesday 20 January 2009
Repeat: Sunday 25 January 2009

Producer: Paul Grant
Reporter: Julian O'Halloran
Editor: David Ross

O'HALLORAN: With Britain's economy taking a battering, more and more companies are going into administration, which ring-fences them from the people they money to, while attempts are made to rescue the business or sell off assets. Six years ago, the Government brought in a new law - the Enterprise Act - which made administration easier, quicker and cheaper. Since then, the number of firms taking this route has rocketed, often leaving a trail of suppliers owed millions of pounds they will never see and having having to cut back their own staff drastically.

SMART: I was devastated. First reaction was, how can my business survive losing that amount of money? People that run any company that goes into administration should be held responsible.

O'HALLORAN: Ministers hoped the Enterprise Act would help save jobs. But is anyone counting the job losses inflicted on suppliers and creditors? Could it be that our insolvency laws, instead of aiding recovery, will actually further deepen Britain's recession?

SIGNATURE TUNE

ACTUALITY IN UXBRIDGE

O'HALLORAN: Here in the Chimes Shopping Centre in Uxbridge on the north west outskirts of London, I'm outside a clothing store which looks very much as though it has failed to weather the recession. It's got sale signs, reductions up to 70% off, and then in the middle of the window, 'closing down sale'. It was part of the USC fashion chain of 58 shops, of which a quarter are going to the wall. In fact, some of the stores have already put up the shutters for good.

JACKSON: It had been a longstanding retail fashion group and it had been going for a while and had a good brand name, and it had run into difficulties in terms of trading out of some of the outlets, really as a result of the whole sector rather than that particular business.

O'HALLORAN: Bryan Jackson, an insolvency practitioner with PKF in Edinburgh, was called in to advise the ailing company in December.

JACKSON: What was decided is, it couldn't carry on in its present state because there was too many loss-making stores in the group. It was felt, however, there were a number of stores where they could trade on in the future on a profitable basis and therefore it would be better to try and restructure and save part of the business rather than lose the whole business.

O'HALLORAN: The administration process can take many weeks or months. But in the case of USC, the owners opted for a high speed, so-called pre-pack administration, in which the actual sale of the business was over within hours. That was because of a pre-arranged deal for assets to be bought. USC's insolvency advisor, Bryan Jackson, was appointed administrator.

JACKSON: Pre-pack is really where the deal to sell on part of the business is actually agreed in advance so that it can be effected immediately. And the reason for that is to try and retain the brand value of the business. It's really all kind of bound up with the sort of rescue culture that has grown up in recent years, where it's better to try and rescue part of the business than let the whole business die.

O'HALLORAN: So a decision was made by USC or its directors to have a particular company come in and to rescue part of the business, was it?

JACKSON: Yes, more or less that's correct.

O'HALLORAN: Who were the possible saviours of the company then?

JACKSON: Well, the possible saviours were actually a new company that was set up, because it has to obviously fund the new company and take on the risk really all over again.

O'HALLORAN: The old company, USC, that went into administration was an arm of West Coast Capital, part of the business empire of Sir Tom Hunter, one of Britain's wealthiest businessmen. But what about the company that bought the viable assets of USC? It's called Dundonald Holdings Ltd, in the group of none other than the very same Sir Tom Hunter. The whole thing happened in the space of a few hours, and by the time most of the creditors - the people who were owed money by the old company - woke up to what was going on, it was pretty much over and done with.
In a statement, West Coast Capital explained that they were trying to save as many jobs as possible - perhaps up to eight hundred of the twelve hundred at risk.

READER IN STUDIO: The survival of the core business could only be secured through this deal. Ultimately we had to ask ourselves what's better, the loss of fifteen stores or all fifty-eight? The answer was unequivocal.

O'HALLORAN: In the six years since the Enterprise Act came into force, more and more companies in distress have resorted to pre-pack administrations. A detailed study of pre-packs has been carried out by an associate law professor at Nottingham University, Dr Sandra Frisby. She's found they now make up about half of all administrations, and they often involve the owners of the new company bearing a striking resemblance to the old owners

FRISBY: In just over half of those pre-packs that I've got on my database, the existing management or the existing owners buy back the business.

O'HALLORAN: So it's a phoenix rising from the ashes of the old company?

FRISBY: Yes.

O'HALLORAN: And what is the big difference between the new company and the old company?

FRISBY: Well, one would hope that where the directors have bought back the business, one, they will have learned some lessons from the initial insolvency, if you can properly put it down to them. But in terms of who owns the business and who runs it, there's very little difference.

O'HALLORAN: But typically, why have a group of directors or a managing director sent their company into administration and produced a new one out of a hat that's going to run the business in the future? What are they gaining by doing that?

FRISBY: The cynical answer would be that they are dumping the unsecured debt. Whether or not that's correct is debatable. I think that there are cases where that happens. You're absolutely correct to say that they are able to walk away from unsecured debt, but so too is the buyer of the business when that buyer is unconnected to the original company. Effectively he's getting a business free of its debt.

O'HALLORAN: In the case of the USC clothing chain, West Coast Capital rejected the idea there'd been a simple debt-dumping operation. It told File on 4 West Coast Capital was itself a creditor and had lost money, and it said efforts were being made to compensate suppliers and creditors of the old USC.

READER IN STUDIO: We are negotiating with our suppliers and landlords in a very positive manner to work with them going forward in a mutually beneficial manner that compensates for their support going forward over time.

O'HALLORAN: Nevertheless there's been growing concern in business and industry about the damage inflicted on creditors and suppliers by companies using pre-packs to dump their debts. That's led to new rules for administrators, which came into force this month. These are said to mean pre-packs will become more transparent. But it's far from clear that getting more information after the event will improve the bleak outlook faced by most unsecured creditors when companies they supply have gone into administration. .

MANN: Evesham had been established for a long time and had a great reputation, you know, everyone thought that Evesham Technology was too much of a strong brand to actually close its door for one final time.

O'HALLORAN: Too strong to fail?

MANN: I think that's what a lot of, a lot of people thought in the industry.

O'HALLORAN: Jag Mann was product manager at the computer hardware company, Evesham Technology, when it ran into trouble in 2007. Founded in the 1980s, it had been a British success story. But Evesham Technology hit treacherous waters over the shifting sands of Government policy. It became exposed over a plan to give tax breaks to companies leasing computers to their employees. When Gordon Brown abruptly axed the scheme in the 2007 Budget, Evesham Technology was in trouble and employees knew it.

CHAFFEY: The beginning of June 2007 it was getting very difficult to juggle where we could buy goods from. It was very widely rumoured that the company was for sale. Lots of closed door meetings and the whole atmosphere got a bit tense.

O'HALLORAN: Purchasing manager, Annette Chaffey, was worried and by early July she believed the company would very soon be going into administration. Yet it was her job to place large orders for goods. And she feared that some suppliers, who sent their products on up to sixty days credit, stood to incur serious losses if the administrators were suddenly called in.

CHAFFEY: I believed that I was buying goods on credit from people who we were never going to pay. There are a number of suppliers who I have very close personal relationships with. I really was not comfortable buying goods from them.

O'HALLORAN: What view did your boss take?

CHAFFEY: He said that they were trying to do everything that they could to save the company, that there were still discussions going on with people, there would be an outcome fairly soon.

O'HALLORAN: She was reluctant to expose suppliers to the risk of big losses and she opted to leave the company that same month, July. Evesham's product manager, Jag Mann, still at his post, was also troubled by certain orders for supplies. One consignment was a batch of thousands of microchips worth about a third of a million pounds.

MANN: Things weren't quite adding up, I'd say, the last couple of months. There were some unusual transactions taking place. For example, there was a couple of very large transactions with AMD, which is a very large microchip supplier, where orders were being placed which were above our normal requirements for manufacturing PCs. Normal requirements for those AMD microchips would be approximately a thousand units per month, but I know we placed a very large order of approximately five thousand units, which was larger than obviously our normal requirements.

O'HALLORAN: Evesham Technology went into a pre-pack administration in early August, and AMD found itself in a queue of creditors who were owed up to £6.7 million. Also on the creditors list compiled by administrators was a company called Viewsonic. A couple of months earlier it had supplied to Evesham – on credit – ten thousand monitors worth around £300,000. When Viewsonic's then vice- president, Mel Taylor, learned Evesham was in administration, he judged that as the monitors hadn't been paid for, they should still be in the Evesham warehouse.

TAYLOR: We have something called retention of title when we sell products, so retention of title means that you're legally allowed to have products returned to you if they've not actually been paid for. We obviously tried to get those products back, but when we actually went, and the administrator agreed because we had retention of title, we could get them, and when we went back to get them we actually found out that not all of the products were there.

O'HALLORAN: How many were not there?

TAYLOR: Roughly of the ten thousand, half of them were no longer there. Five thousand were, in effect, missing.

O'HALLORAN: In the pre-pack administration of Evesham, assets were bought by companies owned by a Dubai-based computer businessman. He then granted a licence to a new company, Geemore Technology, to go on making computers at the Evesham site. And Geemore was headed by none other than Richard Austin, the founder and former boss of Evesham. He and Geemore now faced questions over the monitors. Viewsonic, who'd dispatched them, got word they might have ended up in a warehouse in Lancashire, says Mel Taylor.

TAYLOR: We sent some private investigators basically to stake out the warehouse, to sit outside and actually see whether they were there. They took an opportunity and found that in fact that our monitors were in this warehouse.

O'HALLORAN: So what did you then do?

TAYLOR: Well then we contacted the administrator. I mean, we actually did various things. We froze the assets, we got our lawyers to freeze the assets of Richard Austin, his personal assets, because we then felt that we'd been, you know, unfairly treated, so it took a couple of months before it was finally resolved and eventually we were allowed to collect our products back.

O'HALLORAN: How surprised were you really that goods that had been ordered by Evesham were somewhere completely different?

TAYLOR: That was very surprising, because we did have a level of trust with Evesham. We had worked with them for five years, so it was somewhat upsetting when we found they had taken half of the stock they had bought from us and effectively moved it on somewhere else without telling us.

O'HALLORAN: Did you ever receive any explanation or apology from Richard Austin, the former chief of Evesham Technology or then, of course, as the head of Geemore Technology?

TAYLOR: No, Richard Austin has never tried to contact us since.

O'HALLORAN: Mel Taylor says the delays, recovery process and rapidly falling computer hardware prices caused Viewsonic a loss of about £100,000 over the monitors. He was also unhappy that Richard Austin was at the helm of the new company, given that Austin's old company, Evesham Technology, had gone down owing unsecured creditors not far short of £7 million.

TAYLOR: £7 million. Wow! This kind of activity is just shocking really. We were selling under this trust that we had and we certainly didn't make any money out of it and we actually lost money, so that's shocking. I don't know how much debt Evesham had, I don't know what they owed other people, but certainly the new company carried on trading and looked remarkably the same as the old company, and one would assume was not burdened with that debt or those debts anymore.

O'HALLORAN: The new company, Geemore Technology, closed early last year. So what does Richard Austin, who was its boss and before that founder and head of Evesham Technology, have to say in response to critics? He refused to be interviewed, but he made a statement to File on 4 rejecting any impropriety by directors or managers at Evesham. He said they'd done all they could to keep the business afloat and secure the jobs there. On Viewsonic and the monitors, he said:

READER IN STUDIO: Your information regarding Viewsonic is inaccurate. It is correct that Viewsonic commenced legal proceedings asserting retention of title. In the course of those proceedings Viewsonic reached some hasty and highly inaccurate conclusions. Those proceedings were resolved on favourable terms. My personal integrity was exonerated.

O'HALLORAN: Richard Austin says a confidentiality agreement prevents him commenting further on the legal case brought by Viewsonic. He says retention of title issues are common in insolvencies and he believes all such claims were resolved. And he goes on to say:

READER IN STUDIO: Stock procured by the company in the weeks prior to its administration was purchased for the purposes of order fulfilment. However, there were cases of order cancellation at very short notice by powerful retailers, which had a significant impact on stock.

O'HALLORAN: He says the pre-packaged administration was a last resort, but that full protection was given to customers. He concedes that some trade creditors lost, but claims the pre-pack was structured so as to increase value for creditors as a whole. But for the unsecured creditor, Viewsonic, the losses caused by Evesham going into administration soon led to it having to lay off some of the workforce, says Mel Taylor.

TAYLOR: I can assure that because of these kind of things, we, the vendor, have had to lose people as well, because we actually lost money, so jobs are affected, you know. Four, five months after the Evesham problems, Viewsonic had to let a hundred people go, and a great deal of the trading problems that we had that year were because of this problem we had with one of our largest customers, Evesham, who actually were our largest customer in UK. Obviously when we lost that business, we had to lose people. There definitely needs to be some kind of legislation or Government involvement to actually stop these kind of things happening again in the future.

O'HALLORAN: So on the one hand many jobs can be lost when a long list of creditors lose millions of pounds. And on the other, supporters of pre-packs routinely claim they help to preserve jobs. A possible clash of evidence. So what light is thrown on the

O’HALLORAN cont: situation by the work of the leading researcher in the field, Dr Sandra Frisby?
It’s a major claim that pre-pack administrations help to save or preserve jobs. From your research, how true is that?

FRISBY: That’s very clearly made out on my research. If you look at pre-packs, what happens in 90% of cases is that all of the employees transfer over to the new company, so their jobs are preserved. If you look at other forms of sale, the employers only transfer over in around 60% of all cases. So more employees are transferred through pre-packs.

O’HALLORAN: In a pre-pack administration, what happens to the companies, the suppliers, the unsecured creditors – what happens to employment in those companies?

FRISBY: That’s a form of research I haven’t done, it’s very difficult to say, but that is a common feature of large numbers of insolvencies. It’s the domino effect. So one large firm goes down leaving swathes of unsecured debt.   That tends to lead to other smaller suppliers of that particular company themselves becoming insolvent.

O’HALLORAN: So, despite the many claims made for pre-packs saving jobs, it appears no one is counting the jobs lost by suppliers. How far does that undermine the argument that pre-packs do save employment? Our request to interview the responsible minister at the Business and Enterprise Department was rejected. But the Department’s Insolvency Service did agree to speak. Its Chief Executive is Stephen Speed.

SPEED: Pre-pack administrations in some cases undoubtedly preserve economic value and they preserve jobs in ways that other techniques available to administrators may not.

O’HALLORAN: How can you know that if the work hasn’t been done on the loss of jobs and loss of money in the creditor supplier companies, the unsecured creditors?

SPEED: Well I agree; we would like more research in that area but …

O'HALLORAN: So you can't know that really? It's an instinct, but you can't know it.

SPEED: No, it isn't an instinct. I've seen cases recently in the press of some quite big companies which have gone through pre-packs….

O'HALLORAN: But no one's counted the damage?

SPEED: … where a very significant feature. Where a very significant feature of the pre-pack has been that significant numbers of jobs have not been lost and that the business has been able to be rescued.

O'HALLORAN: But no one has counted the damage done to scores or hundreds of creditor or supplier companies.

SPEED: That is not a function of a pre-pack administration. That is what happens in insolvency.

O'HALLORAN: But the pre-pack is an ideal vehicle, isn't it, for phoenix operations where people very close to the old company – or the same people – can just take off again with a new company, having just dumped millions of pounds of debt?

SPEED: I don't think you'd expect me to use language like 'phoenix' or 'dumping debt'. I don't see any systematic evidence that that's the case.

O'HALLORAN: The growing use of pre-packs is part of a marked rise in the use of administration generally in the wake of the Enterprise Act, which came into force six years ago. By design it made administration faster, cheaper and more user-friendly. Not least in the printing industry, where it's become a huge bone of contention. For there, it's claimed, it's employees as well as trade suppliers who can suffer serious consequences.

ACTUALITY AT PRINTING WORKS

O'HALLORAN: I'm on the site of a high quality printing works in Frome, Somerset, where until nine months ago nearly three hundred people worked. It was one of no fewer than ten companies which were drawn into a printing empire in South and South West England whose boss claimed big ambitions and seemed to offer staff a glowing future. Most the companies were acquired out of administration. But within about two and a half years of its birth this network lay in ruins with hundreds of workers on the scrapheap and hundreds more suppliers and creditors owed millions of pounds they will never receive. The printing going on today at the Frome site is under the totally new ownership of millionaire publisher, Felix Dennis. It's what happened before he stepped in that's at issue. In early 2006, a new player in the industry, Media and Print Investments, began buying printing works in South West England. This holding company was headed by entrepreneur Mike Dolan, recalls Ann Field, national officer of the trade union, Unite.

FIELD: He seemed to have the money, he hadn't been involved in the industry before, so if he wants to come and save the industry, people were prepared to accept him on that basis. Media and Print Investments Ltd expanded at a rapid and phenomenal rate. He was buying up companies left, right and centre in the Hampshire, Dorset and Somerset area. Butler and Tanner was the very biggest acquisition in August 2007.

O'HALLORAN: Mike Dolan's MPI holding company bought Butler and Tanner out of administration in a pre-pack. He says that was a means of his group avoiding having to make good a multi-million pound deficit in the old company's pension scheme.

DOLAN: We didn't set out to have anything particularly to do with administration. Our most successful acquisitions were straightforward going concerns that we bought. Butler & Tanner was the first business that we actually bought in a pre-pack arrangement, where we had actually negotiated with the previous owners to acquire it without it going into administration.

O'HALLORAN: So is it fair to say that pre-pack administration in that case enabled you to avoid very substantial liabilities really in terms of the old pension scheme, which apparently had a pretty large black hole in it?

DOLAN: Oh, it had an enormous black hole. It had a black hole at the time of a minimum shortfall of £13 million and a maximum shortfall of about £35 million, so we couldn't take on, we would not buy the company with that kind of liability and of course we didn't. The pre-pack arrangement enabled us to acquire the business and continue the employment of 285 people without taking on the former owners' obligations to the pension fund.

O'HALLORAN: The work force accepted the move to save their jobs. But within months the Unite union's relations with Mike Dolan, MPI and Butler and Tanner were heading rapidly downhill. An industrial dispute began, and near the end of April the company was suddenly shut down one Saturday morning. It was put into administration soon after. Ann Field of Unite was shocked.

FIELD: There are many concerns arising from the Butler and Tanner debacle, not least of which is the fact that an employer, a company can get away scot free with not paying any of the suppliers, leaving millions of pounds of debt, owing about £850,000 of unpaid wages, unpaid redundancy pay, unpaid notice money, unpaid holiday pay and pension contributions, including workers' own personal contributions. Now that is an outrage that has to be dealt with.

O'HALLORAN: A couple of months before the closure a new pension scheme had been set up to which staff paid their first contributions at the end of March, through salary deduction. But it's what happened to those pension contributions in relation to Butler and Tanner going into administration that has especially galled the union.

FIELD: What happened in March 2008 was that a whole number of workers elected to pay back contributions to the new pension scheme, and that money was taken out of their wages in March and never forwarded to the new pension scheme. £44,000 of workers' pension contributions. In one case, one individual had paid £1,600 of pension contributions in March and that money was taken, it was never paid over

FIELD cont: to the pension. And as soon as it emerged that there was a query over the pension payments, the administrators of the pension scheme immediately investigated with Standard Life, who confirmed that the money had not been paid over.

O'HALLORAN: So you're saying there was £44,000 of missing money?

FIELD: Yes.

O'HALLORAN: And what happened to it?

FIELD: It's never been discovered and the state, the taxpayer has paid it.

O'HALLORAN: So what does Mike Dolan, then boss of MPI, know about those pension contributions deducted from the pay of Butler and Tanner staff? Can you explain what happened to £44,000 of pension contributions made by staff at Butler and Tanner?

DOLAN: I don't have any first hand knowledge of that. I mean, any payments that the company would have been required to have been making, I mean, would have been handled at a local level, meaning at Frome, and they would have been paid or not paid if you, if you're saying they weren't paid in the ordinary course of events.

O'HALLORAN: But what do you think could have happened to that money? Where did that money go?

DOLAN: Well if if …

O'HALLORAN: If it was £44,000 as the administrator …

DOLAN: It would go into the company's ordinary coffers, I mean, I don't think there's any suggestion anywhere that anything untoward went outside of the business.

O'HALLORAN: But do you agree that money's never really been traced?

DOLAN: When you say never really been traced, I think that mis-states it. I don't think there's any mystery about where money went within Butler and Tanner.

O'HALLORAN: It was meant to go to the pensions administrator or to Standard Life.

DOLAN: I understand what you're saying, but where the inference of when you say it's never been traced is that it went somewhere that is unknown or secretive. Any funds that Butler and Tanner had were in Butler and Tanner's bank accounts that the administrator has had total access to and no issue has been raised as to whether any funds went anywhere that they shouldn't have gone.

O'HALLORAN: But when they say, when the union says that money should have been, should have gone to the Standard Life company for those people's pensions, how do you answer?

DOLAN: Well I don't answer, I think I have given the only answer I can - that those matters were dealt with at a local level and they would have been paid over in the ordinary course of events. If there were some that hadn't been paid at the point of administration, then obviously those liabilities would be an unsecured creditor liability of the company in administration.

O'HALLORAN: All told, in the Butler and Tanner administration, creditors, including many suppliers, were said to have been owed £4 million. But MPI 's printing operations continued at a number of other sites, including the Goodman Baylis works in Worcestershire. However there too there were ominous signs. One supplier to the firm was John Garbett, a haulier with just three drivers. He says at the end of last July he began to be sent cheques for work he'd done on credit for Goodman Baylis. There was just one problem. The cheques were dated October and later. Those post-dated cheques were

O'HALLORAN cont: never to be honoured. For the whole of the remaining MPI group, including Goodman Baylis, went into administration last September. Again hundreds of suppliers were owed millions of pounds. John Garbett was one among many.

GARBETT: Payment problems began on July 31. Goodman Baylis sent us post-dated cheques for October and November.

O'HALLORAN: You've got several cheques in front of you here.

GARBETT: That's right.

O'HALLORAN: Now this one here ….

GARBETT: Is for October.

O'HALLORAN: Dated 6th October.

GARBETT: Yes.

O'HALLORAN: When did you get that one?

GARBETT: 31st July.

O'HALLORAN: That's for a lot of money - £14,000.

GARBETT: That's right. Another cheque for the next month.

O'HALLORAN: Dated the 6th November.

GARBETT: Yes.

O'HALLORAN: For £15,850.

GARBETT: That's correct.

O'HALLORAN: So how much money did you lose?

GARBETT: Just a fraction under £54,000.

O'HALLORAN: And what was your reaction?

GARBETT: It's a big blow, it was. It's, oh we've been penny wise, so I've never been into debt. I should have retired in eighteen months' time, it was my retirement fund in a way.

O'HALLORAN: So you've had to bail your business out with your own retirement fund?

GARBETT: That's right, yes.

O'HALLORAN: Mike Dolan told me that as head of MPI he had authorised both Goodman Baylis and another company in the group to send post-dated cheques to suppliers. So what does he have to say about the £54,000 loss suffered by John Garbett?

DOLAN: I'm not familiar with him, but I mean I obviously feel bad for anybody that loses money as a result of administration. I have great sympathy with John.

O'HALLORAN: Did you ever say sorry to him or any of the other creditors?

DOLAN: I've never spoken to him, so I mean you have to appreciate that I wasn't operational within these companies, so there'd be very few people like that that I would actually have a direct dialogue with.

O'HALLORAN: John Garbett says he was sent a series of post-dated cheques that summer from Goodman and Baylis. What was behind that?

DOLAN: Well again, those were decisions of the managing directors of the individual operating companies, that they were, because of the withdrawal of credit facilities from a lot of suppliers, they were trying to negotiate a, if you like, debt moratorium where they would take care of the old debts over a three to six month period. We convened the shareholders meeting in August with a view to raising additional capital, so had that been raised it wouldn't have flowed until probably September, October, so I'm guessing the logic of it would have been that that fresh capital would have been in place to enable those payments to be made from capital funds.

O'HALLORAN: Would you agree that it looks bad that post-dated cheques are issued in July with dates of October and November, and then the whole of your company, Media and Print Investments and all of its operations really go into administration in September? Is it possible those cheques were issued in the knowledge by someone or other that they would never, the sums would never be paid?

DOLAN: Well no, absolutely not. I think that's kind of altering perceptions after the event really. No decision was taken to put any of the companies into administration until early September, so no, it's inconceivable, what you're saying.

O'HALLORAN: But can you understand why that suspicion might arise?

DOLAN: I can absolutely understand how somebody could misinterpret events like that, but you know, what can you say about something like that?

O'HALLORAN: When MPI went into administration all its printing operations were sold in a pre-pack to another company, but within two months that company too had gone into administration.

LUFF: In the last few weeks I've been hearing a great deal more expressions of concern about administration in general and pre-pack administrations in particular. They've featured very largely in the representations my committee's receiving ahead of its session with the Insolvency Service in a few days time.

O'HALLORAN: Peter Luff MP, whose Worcestershire constituency is close to one of the printing sites, is chairman of the Commons Business and Enterprise Committee. It's about to start an inquiry on insolvency, and Peter Luff says he's concerned about whether the present set-up puts creditors at too much of a disadvantage.

LUFF: Companies must be allowed to fail, that's what happens. Sometimes those firms can be saved by new management. The principle of administration is sound. But you've got to make sure that the administration process is working in a way that doesn't disadvantage people and impose other costs on the economy. And the question in my mind now is, what about the creditors, what about the suppliers? Is excess pain being inflicted in them, even though the jobs in the main company might actually be secure? Have we got the balance right?

O'HALLORAN: One man whose views might fascinate the committee is an avowed asset stripper who has been involved with around fifty companies.
John Batchelor goes into companies with one main aim. Not preserving jobs, not producing goods, but extracting as much cash and assets as possible and then moving on. He claims the Enterprise Act of 2003, meant to help the companies in distress and save jobs, has actually made his job much easier.

BATCHELOR: By introducing the Enterprise Act in the way that they have done it, it's made it extremely simple for people to go in and tear a company to pieces for their own gain.

O'HALLORAN: Really?

BATCHELOR: Uh-huh.

O'HALLORAN: As simple as that?

BATCHELOR: Yes, absolutely. It's a pirate's charter really, yes.

O'HALLORAN: A pirate's charter?

BATCHELOR: U-huh.

O'HALLORAN: Is that how you see yourself sometimes, as being a pirate?

BATCHELOR: On occasion.

O'HALLORAN: So you go into a company knowing all you want from it is the cash and assets?

BATCHELOR: Correct.

O'HALLORAN: Quite ruthlessly?

BATCHELOR: If I don't think there's a potential for the company to produce an income stream moving forward then yes, that's exactly what we do. I believe cash and asset stripping has returned with a vengeance, aided by the Government, aided by its legislation and aided by the economic environment that we're in. And I think it'll happen on an unprecedented level over the course of the next twelve months.

O'HALLORAN: Again we'd have liked to question a Government minister but none was available. However the head of the Insolvency Service, Stephen Speed, admitted to being concerned about such claims.
A self-confessed asset stripper has told us he sees the present setup as a pirate's charter. He says it's made his job of asset stripping much much easier.

SPEED: Well I think it would be very interesting to hear first hand what he's got to say, which I haven't, but as I say, we don't have any systematic evidence which would suggest that that is the case. I'd say to this to everybody out there, you know, bring the evidence to the table. One of the great strengths I think about insolvency law in this country is that we are always after doing the best that we can to strike the right balance. We're now actively working with the regulatory bodies for the profession, and indeed, you know, we would like to hear from people like the gentlemen you quoted earlier if he's got stories to tell us, they would be of great interest to us.

O'HALLORAN: See, the Government tell us that you are their advisors, so when are you going to start ringing alarm bells about this?

SPEED: The Insolvency Service talks to ministers extremely frequently about all matters relating to insolvency. It is absolutely true that the economic circumstances we're in have brought insolvency to centre stage in a way that has not been the case for some time, but it is wrong to draw an inference from that that somehow insolvency law is therefore not fit for purpose. I'm afraid we believe that it is.

O'HALLORAN: But the Commons Business and Enterprise Committee chairman, Peter Luff, who'll be questioning Mr Speed in a few days time, is far less sanguine. He wants to put the Insolvency Service, and indeed the Government, on the spot to see if their defence of the current insolvency regime really does stand up to scrutiny.

LUFF: The principle of easier, quicker and cheaper administration - I can understand the case for that. But you've got to make sure that the administration process is working in a way that doesn't disadvantage people and impose other costs on the economy, or is it actually inflicting high levels of damage on the economy rather than actually high levels of benefit? It could be that pre-pack administration actually drives the economy deeper into recession.

SIGNATURE TUNE