BRITISH BROADCASTING CORPORATION *RADIO 4*

TRANSCRIPT OF "FILE ON 4" – "INSOLVENCY"

CURRENT AFFAIRS GROUP

TRANSMISSION:	*Tuesday 12th October 2010*	*2000 - 2040*
REPEAT:	*Sunday 17th October 2010*	*1700 - 1740*

REPORTER:	*Allan Urry*
PRODUCER:	*Paul Grant*
EDITOR:	*David Ross*

PROGRAMME NUMBER: 10VQ4857LHO

"FILE ON 4"

Transmission: Tuesday 12th October 2010
Repeat: Sunday 17th October 2010

Producer: Paul Grant
Reporter: Allan Urry
Editor: David Ross

ACTUALITY IN OFFICE, PHONES RINGING

HUNT: How are we going to break up the portfolio?

URRY: It's a busy time for insolvency practitioners. These are the corporate undertakers for firms which crash and burn. But how well do they fulfil their functions? Some creditors complain about unfair treatment at the hands of these professionals. In court cases examined by File on 4, judges have been stern in their criticism, the Office of Fair Trading is calling for far reaching reforms, even practitioners themselves admit their business is open to abuse.

HUNT: We have large sums of money in our possession, we have resolutions that allow us to draw fees almost with impunity. Against that background you would always have a tendency for more misconduct to occur in the insolvency field just simply because the controls are not in place in the same way that they are in other professions.

URRY: As the Government is facing calls for reform, File on 4 asks if we can trust Insolvency Practitioners to conform to their own standards and ethics when they bury the corporate dead or resuscitate the dying.

ACTUALITY ON STREET

URRY: Walk up and down any high street today and the scars of the recession are still very evident. Big names like Woolworth haven't been replaced, and the gaps in many shopping precincts present a rather toothless smile. Other national brands that got into trouble were saved by an insolvency regime which has proved rather good at turning around the fortunes of firms which might otherwise have gone under. But the problem is the wreckage that leaves behind.

PEACE: A large number of the insolvencies have been in the retail business. That means that as they have disappeared or as they have got into difficulty, then it's my members' property that they are actually vacating, and this is where, you know, the whole business of administration starts to bite quite hard on the landlord community.

URRY: Liz Peace from the British Property Federation speaks for many high street landlords.

PEACE: Generally speaking a retailer would take a lease from a landlord and he'll probably take a lease for five or ten years. If that business then goes into administration, goes bust basically after years two or three, then the landlord is no longer going to get any money. There are other parts of the administration process which actually allow a retailer to try and negotiate with a landlord over the problems his business is having, and then the landlord may or may not choose to accept, for example, a reduction in rent or that retailer giving up some of the premises. If he accepts it, he's suddenly got back on his hands a whole load of empty shops. You're transferring the risk, the pressure from the retailer onto the landlord.

URRY: This summer, matters came to a head in a court case.

ACTUALITY OF METQUARTER PROMOTION

PRESENTER: Metquarter's sale is now on. The greatest collection of fashion brands in the north west …

URRY: Metquarter is a boutique shopping centre in Liverpool. Two years ago it was home to the Sixty company, which sold clothes and accessories there from two stores under its brands, Miss Sixty and Energie. But they weren't proving popular with Liverpool shoppers. The company had seven of a ten year lease to run, but was making losses and wanted out. Negotiations with the landlord over a price to settle matters faltered and Sixty UK, which had nine other shops nationwide, was faced with debts it couldn't pay, so it went into administration.

HOWARD: We were told by the administrators that they wanted to do a CVA. That's a Company Voluntary Arrangement, which is a popular course of action for companies. It's to save themselves where they think that they needn't go into liquidation, which obviously ends the business, they think there is a way of saving the business by putting proposals to all the creditors whereby perhaps they will accept a little bit less money or they will vary contracts, that sort of thing.

URRY: Sounds equitable, but there are pitfalls. Caroline Howard, the lawyer who acted for the Liverpool landlord, knew that her client was in a vulnerable minority of Sixty's creditors. They all got a chance to vote yes or no on the CVA, but the law allows for a majority decision. Under this one's proposals there were four stores earmarked for closure, but seven others would carry on trading, which meant the landlords of those seven would carry on getting their rent.

HOWARD: What the CVA did was differentiate between closed stores and open stores. It described the closed stores as loss making and the open stores as, I wouldn't say that they were profit making, but that was clearly the implication. And those landlords were to be just treated as before and to be paid normally, so inevitably they voted in favour, as did everybody else who was to be paid in full.

URRY: Your clients were outnumbered in that sense?

HOWARD: Yes, it was quite obvious from the very beginning that it would be voted through.

URRY: And it was. It's the administrator, appointed by the court, who's supposed to ensure creditors aren't unfairly prejudiced in any arrangement, so this CVA had to do its best for the minority which lost the vote, and that included the Liverpool landlord, to make sure that they too got fair compensation. But it didn't.

HOWARD: What the CVA did was effectively what's called guarantee stripping, whereby my client could no longer pursue the guarantee for all the rent that was owed, because the CVA provided they had to accept a small sum of money instead and effectively take a surrender of the lease. And what that means is bringing the lease to an end immediately, whereas it did have another seven years to run. For my client, they were effectively completely lost out, and if they accepted the position and not challenged it they'd have just had to take a small sum of money and be left with an empty unit and lost the ability to pursue that guarantee. Totally unfair.

URRY: Take it or leave it offer really?

HOWARD: Yes, it was, because it was voted through, we had no alternative but to accept it or challenge it through the courts using the formal insolvency procedure.

URRY: The landlord of Liverpool's Metquarter challenged the CVA in the courts, asking for it to be scrapped. What emerged in the trial was evidence of bias by the administrators, favouring Sixty's parent company in Italy, which was determined to drive a hard bargain at the unfair expense of the landlord. The court was told the Sixty Group didn't want to pay a proper market price to get out of the leases. So, administrators put up an offer of £300,000 for the surrender of the Liverpool one. They told the landlord that was based on advice from an independent valuation. But what the evidence unearthed was that the independent valuation showed the true figure should have been much higher - £1 million. Sixty had decided they weren't going to pay that. The administrators had gone along with it,. And that really got the judge going.

ACTUALITY WITH PAPERWORK

URRY: I've got a copy of his judgement here dated the 23rd of July this year. He's highly critical of the two insolvency practitioners. The judge says this was a deliberate misrepresentation of the true position, and that Peter Hollis, one of the two, was unwilling to disclose the truth. Later he concludes, "The picture disclosed by the documentary evidence is a disquieting one. The administrators appear to have abdicated their responsibilities as office holders. They compounded their dereliction of duty by falsely representing that the figure of £300,000 was based on advice." The judge said that figure was a shameless substitution, impossible to justify. It's pretty strong stuff.

HOWARD: Insolvency practitioners have a duty of care, they have a duty to treat all creditors more or less the same way, they have to follow the insolvency rules. They didn't appear to do any of that. It looks from the paperwork as though they were following the instructions of the parent company in Italy. The judge said they completely lost their objectivity here.

URRY: What were you able to identify that caused you concern about the insolvency practitioners' behaviour in all this?

HOWARD: Well, I was pretty unimpressed from reading in the disclosure about the whole manipulation of the system and the fact that it appeared from the very start as though the insolvency practitioners never felt a CVA was viable.

URRY: I think that's what the judge thought, that this CVA should never have happened.

HOWARD: He did, he said it was fatally flawed and it should never have seen the light of day. He felt they misrepresented the position to all the creditors by the drafting of the proposal. He went so far as to order in his judgement that I must serve copies of the judgement on their two professional bodies so that they could be investigated.

URRY: Those investigations are underway. We wanted to interview the administrators. One, Nicholas O'Reilly, agreed to do so, but later withdrew based on legal advice. Mr O'Reilly is a former President of the Insolvency Practitioners trade body, R3, which says it promotes best practice. We would have liked to have asked

URRY cont: him and his colleague, Peter Hollis, why their standards appear to have fallen well short of best practice in this instance. Instead we were offered a statement from them.

READER IN STUDIO: We can confirm that we sought and acted upon legal advice throughout this case. Unfortunately, we are not in a position to comment at this time on any matters raised in Court, due to a preliminary investigation by our Regulators into this case.

URRY: In the Sixty case, a landlord was bloody minded enough to go to court. The judgment underlined the need for professionals to strike a fair balance. And that's critical, according to David Stallybrass from the Office of Fair Trading. The OFT carried out a market study of insolvency and found there's little relationship between practitioners and unsecured creditors, usually the most vulnerable group in any insolvency because they have no experience.

STALLYBRASS: The difference between the secured and the unsecured creditors is that when they lend their money to the company, the secured creditors lend their money with an assurance that their money is secured against the assets of the firm. And in effect, it means that when the company can no longer pay the interest on its debts and it goes insolvent, the secured creditors get paid first. Because the secured creditors get paid first and because they're usually large institutions like banks, they are repeat purchasers of the insolvency practitioner's services, which allows them to exert both formal and informal control and oversight.

URRY: Pity the unsecured creditor then who's naïve and doesn't know.

STALLYBRASS: That's exactly the point and that's why you need a strong regulatory system that will protect that unsecured creditor. Because once a secured creditor has received their money, the only things constraining the actions of the insolvency practitioner is regulation and the practitioner's sense of ethics - and ethics alone is not enough.

URRY: Across the UK, ethics and codes of practice are largely drawn up by the governing bodies which license practitioners. The biggest of those is the Institute of Chartered Accountants in England and Wales. But Executive Director of Professional Standards, Vernon Soare, points out that the nature of the work means there's always someone who feels aggrieved.

SOARE: Insolvency practitioners have a very difficult job and there are always going to be creditors who feel they have not got what they should have got. And at the end of the day, the insolvency practitioner is making very difficult judgments in circumstances where there is a business failure. Now obviously their role is actually to make sure in the first place, if they can, the business doesn't fail, and I think one of the things that's not very well publicised is the number of times that insolvency practitioners go in and retain the business as a going concern, retain the jobs and retain business. In 2009 there were approximately six thousand businesses helped and saved through insolvency practitioner intervention, and about two million jobs.

URRY: I'm not so much speaking to you about the cases where people feel aggrieved because they've lost money, because in some cases everyone's done their best and that's life. I'm talking about cases that we've looked at that have gone through the courts, where judges have found people have been treated unfairly. I mean, do you recognise that's going on?

SOARE: If courts find that there has been, in their view, unfairness, that's obviously the right of the court to do that. At the end of the day these are judgments, difficult judgments being made in difficult circumstances. At the margin there may be judgments that are wrong, but insolvency practitioners are not infallible.

URRY: Figures from the Insolvency Service show last year there were 618 complaints to the regulators. Six practitioners had their licences revoked or withdrawn. The Institute of Chartered Accountants in England and Wales took disciplinary action against five of its members. Fines totalled more than £15,500 plus costs. It doesn't seem much when insolvency professionals earn £1billion in fees each year, especially when the ICAEW has powers to set unlimited fines. Perhaps it's because there's very little substance to most complaints … or perhaps not.

ACTUALITY IN OFFICE

URRY: There's quite a lot of work going on here, isn't there? But where are you taking me?

HUNT: Past the director investigation area we have the insolvency practitioner unit, the IPU, and this is the team that collates all the information where there is allegations in terms of practitioner misconduct.

URRY: Steven Hunt makes a living picking up where the regulators left off. From his offices in London, he's one of the few insolvency practitioners who has had a successful business investigating members of his own profession. He's really getting stuck in - and there's no shortage of work.
How many cases are you investigating at the moment?

HUNT: We have about five hundred insolvencies where we're appointed specifically to investigate or review the conduct of the previous insolvency practitioner.

URRY: That seems a lot.

HUNT: It is a lot. I think there's a steady flow of work which requires investigating. Thinking through the portfolio I've currently got on my books, I have situations where there's whole scale organised fee fabrication. One of the insolvency practitioners created a spreadsheet called 'the randomised time generator' and he typed in how much money he wanted and it created fake time entries, so he could charge about half a million on that spreadsheet, which was entirely fake time. In one case that comes to mind there was three levels of fraud. The partner was stealing money. Unbeknownst to him the manager was stealing different money, and unbeknownst to both of them the junior person was stealing the cash, and it was only when we investigated that we found contradictory documents that made us realise there was actually three frauds and not one. Some of this misconduct is not fraud, it's just negligence. In each case it's very very different and requires a lot of investigation as to working out who is responsible for what.

URRY: How easy is it for an insolvency practitioner to sit there, not do the best job that he's capable of doing, draw big fees, walk away and for that never to be properly looked at?

HUNT: I would say it's easier than any other profession I could think of.

URRY: All the more reason for effective oversight. In the UK that largely rests with the seven professional bodies who license and regulate their members, plus the Insolvency Service, which is the state agency and which also oversees the other seven. The OFT's report says this system goes back to 1986, is complex and inconsistent. To find out why, we've looked at a case which started with a tragedy.

EXTRACT FROM NEWS REPORT

REPORTER: CCTV recovered from the house shows a man who we strongly believe to be Mr Foster in the grounds of the property during the early hours of that Tuesday, with what appears to be a rifle in his hands. It also shows outbuildings going up in flames around the same time …..

URRY: Two years ago, millionaire Christopher Foster died in a blaze at his Shropshire mansion, which made national headlines. It emerged he'd committed a terrible crime. At the family home, he'd shot his wife and daughter in the head and then lay down on his bed to take his own life in the smoke from the fire he'd started.

REPORTER: Foster's business had failed. It's been suggested that the Georgian manor house was to be repossessed. Detectives have confirmed this is one line of enquiry they're investigating. Another crucial …

URRY: He murdered his family because he couldn't face up to his mounting debts. A tragic end to the collapse of his business the previous year. What's less well known is that Foster was also a crooked businessman. He had a company called Ulva, which sold protective coatings for pipes in the oil and gas industry. But he ran up tax debts to the Inland Revenue and was successfully sued in July 2007 for breach of contract by a company called DRC for reneging on an exclusive agreement to buy materials from them.

URRY cont: That meant Ulva owed more than £1.5 million in total to the Revenue and DRC. But, according to Alan Walker, chairman of DRC's parent group, instead of trying to settle those debts, Foster began stripping assets from Ulva and putting them into another company.

WALKER: He set up a phoenix company and he procured that the intellectual property - ie the brand of Ulva - moved into his own name, and that the cash moved across to the phoenix in the shape of £300,000 and that the various items of plant equipment, tooling, orders, computers, all aspects of the Ulva business were transferred into the new Phoenix. The idea clearly was that he would have a seamless transfer of the business and pay no consideration for it.

URRY: But in addition to that the debts were left behind in the old company, which was now a carcass.

WALKER: Absolutely, the old debts, of course, were principally Her Majesty's Revenue & Customs for a substantial amount of money and the £800,000 of damages that were due to DRC. It was designed to dump the large creditors of Ulva Limited and to preserve the integrity of the relationships with the other suppliers by settling those through the new phoenix company.

URRY: This is illegal. Foster was in breach of his duties as a director. Shortly afterwards, Ulva became insolvent and two administrators were appointed. With the assets heading south, DRC was concerned about the recovery of more than three-quarters of a million pounds it was owed. Alan Walker called for an urgent meeting with the administrators.

WALKER: I visited them in Birmingham for a full and frank discussion about what had been going on. The purpose behind any administration is, of course, that the administrator is duty bound to gather the assets with a view to onward selling those assets for the benefit of the creditors.

URRY: One of the reasons DRC was concerned about the assets recovery was because it wanted to buy them. DRC pledged to overmatch any offer from the only other contender, who was none other than Foster himself.

WALKER: I was asking quite a lot of things at that time and I wasn't getting the sort of replies that I expected. I was also obviously very interested in bidding for the assets. It became very obvious to me that if Mr Foster was going to succeed in transferring the business from the insolvent company to a new company, he needed some form of deal to make that happen. Now that deal has to be made available to everybody else in the marketplace and therefore I began to push the administrators fairly strongly in terms of our ability to bid for those assets.

URRY: But you didn't really know what you were bidding for, did you, because the accounts were so confusing that nobody knew who owned what?

WALKER: Well, that is that is absolutely right. I would have expected the normal stewardship that you're entitled to expect, namely that the administrators would spring into action and ensure that they got control over the assets and then sold those assets to whomsoever came forward to bid, for as much as they could in order to apply the proceeds for the benefit of the creditors.

URRY: DRC's bid was rejected by the administrators. So the company launched legal action, seeking to remove the two officials. But the day before the hearing the two men applied to the courts to stand down from their positions and instead to put Ulva into liquidation, after learning that Foster wanted to exclude from the deal assets he had already transferred. The hearing went ahead. The judge said in any event he would have removed them had they not done so themselves. And he was critical of their standards.

READER IN STUDIO: Administrators are highly qualified and respected professionals, and whilst their honesty is not in question, the exercise of their functions comes at a cost, and one is entitled to expect those who carry on business in this highly specialised field of insolvency to show conscientious and competent standards of behaviour. They have fallen short of that.

URRY: The judge also awarded costs against the two men and Foster. The practitioners appealed, but they lost and the costs order was upheld. While the appeal judges agreed some of the criticism from the previous hearing was more than the two deserved, the more senior judges also had something to say about their professional standards.

READER IN STUDIO: The administrators' conduct had the potential for disaster written all over it, and disaster is what happened. They failed to take elementary steps which ought to have been taken in an attempt to make their appointment a success.

URRY: The appeal court decided that in Foster, the insolvency officers knew they were dealing with a man bereft of the basic instincts of commercial morality, and that he was not to be trusted. Neither Martin Coyne nor Matthew Hardy, the two administrators, would be interviewed for this programme. In a statement they told us they'd taken extensive legal advice about taking out an injunction against Foster to prevent him dealing with the assets, but that advice told them they couldn't be certain of succeeding. On the reasons for declining the bid from DRC to buy the remains of Ulva, they told us DRC wouldn't offer guarantees they asked for and that led them to:

READER IN STUDIO: … question the commitment and confidence in DRC to complete the deal.

URRY: Funnily enough, DRC did buy Ulva's assets and brand from the liquidator and turned it into a successful business. Alan Walker of DRC's parent company is also a chartered accountant, and he took a dim view of the behaviour of two fellow members of his profession. He made a formal complaint to their professional body, the Institute for Chartered Accountants in England and Wales. The Institute investigated. But almost a year after the appeal court judgment and the criticisms it contained, a panel decided against any disciplinary action, explaining that their byelaws allowed such action only if the members' behaviour was discreditable. The Institute decided there'd been no professional misconduct.

WALKER: They came to no meaningful conclusion. In my professional opinion, the matter was completely whitewashed. It seemed to me that they found any and every excuse possible to basically give the administrators the benefit of the doubt. It seems to me that, from the experience I've had or the limited experience I've had in relation to insolvency, it seems to me that regulation is not high on the list of priorities. I would say generally that administrators and liquidators are, by and large, able to regulate themselves and do much as they wish.

URRY: In their statement to File on 4, the two practitioners pointed out that administrations are often time pressured affairs and conflict situations, where opposing interests need to be dealt with. They said commercial decisions have to be made quickly – without the benefit of hindsight. For the insolvency practitioner Steve Hunt, what happened in the Ulva case comes as no surprise. Although he's got fifteen years of investigative experience, he admits even he struggles to get governing bodies to uphold complaints.

HUNT: It's a considerable challenge. I've looked at a range of complaints against insolvency practitioners and I would consider myself a sophisticated professional person with a deep knowledge of insolvency, and even I would have difficulty constructing complaints to comply with the various regulations to succeed in a complaint. I've had several complaints upheld by the regulators, I've had several which have been dismissed, and some of those dismissals have subsequently been considered by a court of law and I've made a recovery from the insolvency practitioner for misconduct. Yet the same evidence was put before the regulators and they considered there was no case to answer.

URRY: On this point, Vernon Soare, Executive Director of Professional Standards at the Institute of Chartered Accountants, tried to argue both ways. He said he wouldn't comment on specific cases, but when we tried to raise general points with him, he said he couldn't answer because he didn't have specific details.
We've looked at a case in which insolvency practitioners have been criticised by a judge in a trial and yet your regulatory body says effectively they have no case to answer. How can that be?

SOARE: I don't know which case you're referring to.

URRY: I can give you the details of the case if you wish.

SOARE: Insolvency practitioners are making judgments. Nobody is saying that insolvency practitioners always make perfect judgments, they're human beings like the rest of us.

URRY: Well a judge is finding that there is a case to answer and your people are finding that there aren't. So is the judge getting it wrong?

SOARE: Well, I can't obviously comment on that because I'm not sure of the case you're referring to.

URRY: There are a number of cases we were told about and if I go through them with you, you'll tell me you can't comment on individual cases.

SOARE: Yes, well carry on.

URRY: I'm wondering how to understand the disparity between what a court of law finds and what your panels find when they look at the same evidence.

SOARE: All I would say again is, if somebody believes that one of our, or more of our regulatory or disciplinary panels has come to a wrong conclusion, it's open to them to go through our own appeal processes, it's open to them to complain to the Insolvency Service.

URRY: But there's little confidence in that route, according to the findings of the Office of Fair Trading, which recently published the results of its market survey of insolvency. Project director David Stallybrass says people don't trust the regulatory system operated by the professional bodies.

STALLYBRASS: We interviewed over a thousand unsecured creditors. Of those who had complained, the vast majority felt like the outcome of the complaint process was unreasonable and also the vast majority felt like the way in which their complaint was considered was unreasonable. We did ask insolvency practitioners themselves whether they felt like their regulatory bodies had dealt with rogues in the profession well and we were surprised to find that 41% of insolvency practitioners said that their own regulators did not deal effectively with rogues in the profession. And that's a particularly strong result, I think, because there are eight different regulatory bodies, and if 41% say their own regulatory body doesn't deal with it well, and we also know that they all

STALLYBRASS cont: think their own regulatory body is the best regulatory body, then I don't know what that says about the rest of the market.

URRY: Which raises more questions for Vernon Soare, who speaks for the largest regulator,

SOARE: If somebody makes complaints to our institute, there is a process which is quite open, there are appeals, there is transparency, there are lay people involved in chairing these things. At the end of the day, of course, a lot of these issues are a matter of judgment.

URRY: 41% of the practitioners surveyed by the Office of Fair Trading, people in the profession say it doesn't work. They don't feel they're regulated properly. It doesn't deal well with rogues.

SOARE: There's a particular issue here around the complaints system. One of the recommendations in the OFT report is that there's an independent complaints body set up. Now I've had some discussions with the OFT on that particular point. The fact is they didn't actually come to us and look at any of the complaints that we've handled. They did it by, as you say, taking a sample of insolvency practitioners …

URRY: They've heard it from the horse's mouth, haven't they?

SOARE: Well, they've taken a view from insolvency practitioners and others, and of course insolvency is an area where you will not satisfy everybody's expectations.

URRY: Now, concern about the oversight of insolvency practitioners has increased because of a controversial form of administration known as pre-pack. What makes pre-packs different is that the terms of the rescue are worked out in advance of the company formally going bust, and the person who's acting as paid advisor then usually becomes the court appointed administrator after it becomes insolvent. It's that dual role which has led to calls for an investigation into conflicts of interest in Britain's biggest ever pre-pack deal.

DES PALLIERIES: You need trust in the system. Everywhere you see bankruptcy, it's always revolved around certain principles. Those principles involve that you can't have a pillaging of the companies by various creditors. All of them has to sit at a table, they need to be forced together and you can't have one stealing the furniture, the other stealing the chairs, the other stealing the comfy chairs. You've got to have them sitting at a table and find a common solution to the problems. No back room, no black corners. The pre-pack law has recreated exactly that.

Bertrand Des Pallieries is a hedge fund manager whose clients have lost £200 million following the sale through pre-pack of a Greek telecoms giant called Hellas Telecommunications 2. Hellas is a complex international group, which was ultimately owned by an Egyptian billionaire. Its principal asset was its trading company, Wind Hellas, which last year was in severe financial difficulties as the Greek economy spiraled downwards, and mobile phone use dwindled. In a move which some term bankruptcy tourism, Hellas transferred its headquarters to London so that it could carry out an administration here. So where is this impressive HQ?

ACTUALITY IN LONDON

URRY: It's in the heart of the city of London, at a place called New Broad Street House. It looks traditional on the outside, a rather grand stone building, but according to its marketing blurb is cutting edge on the inside. It is though just office space for rent. And this is where Hellas Communications UK Ltd did whatever a new general partner of a Greek telecoms business does - it occupied Suite 304, a six person office. But there was only one director.

Having established its new London headquarters in a tiny office, the company duly went bust. Once in administration, Hellas was quickly bought back by an arm of the Egyptian billionaire's own empire. But here again it's the unsecured creditors which have lost out, big time. Subordinated bondholders, as they are known in this case, are out of pocket to the tune of £1.4 billion. Although this sort of pre-pack is much criticised, it's perfectly legal. The firm brought in to review the company's restructuring plans is one of the so-called big four accountancy houses, Ernst and Young. Hedge fund manager, Bertrand Des Pallieries, is crying foul. He's not alleging wrongdoing, but conflict of interest for Ernst and Young, whose partner, Margaret Mills, had a dual role - first as a paid advisor reviewing the plans for administration, and then as the court appointed administrator.

DES PALLIERIES: My concern is that a senior partner at Ernst and Young was first recruited by the company to investigate its finances and got fees for doing so. That same person was then appointed as administrator working on behalf of the then bankrupt company and effectively supervises and approves the process by which the company is then sold back without the debts to the previous owner, that were the very same people that had paid very generous fees a few months before. We believe that raises very serious issues of conflict of interest we would like to be investigated.

URRY: Mr Des Pallieries says at the court hearing which approved the administration, the judge reminded the bondholders that creditors could challenge an administrator's decision if they felt aggrieved, so he wrote to the Ernst and Young insolvency official Margaret Mills, asking for an inquiry.

DES PALLIERIES: Unfortunately through the bankruptcy process as it is run, for now the same administrator is the one which has to investigate whether there was a conflict in the role they occupied as consultants for very generous fees and then the one as administrators where the insolvency benefited to the previous clients and was highly unfavourable to the bondholders, which have lost the entire £1.4 billion amount. We believe it is beyond absurd that she obviously finds that there was no conflict between the two roles. She's declined to understand whether the fees she's getting from a party that seems to benefit from the processes she's watching in the public function is raising issues.

URRY: We asked Ernst and Young whether they thought there was a conflict of interest in this case. No one would be interviewed, but we were told in a statement:

READER IN STUDIO: It is normal practice for prospective administrators to undertake an element of pre-appointment work with the company so as to satisfy themselves that the stated purpose of the administration order is likely to be achieved, before confirming to the Court that they will act. The administrators have always conducted themselves in accordance to law and insolvency regulations, and do not consider a conflict exists.

URRY: One of the governing bodies of those involved in this case is the Institute for Chartered Accountants in England and Wales. The Institute wouldn't comment on the specifics of the Hellas pre pack. But Director of Professional Standards,

URRY cont: Vernon Soare, says professional ethics are there to guide those who find themselves at the centre of these scenarios, but failing that, there's always the complaints system.

SOARE: Insolvency practitioners will be faced with conflicts. It's how they deal with them that matters.

URRY: If you have something like one of these pre-pack administrations, you're as a shadow administrator almost advising what to do and then suddenly you become the administrator. It looks conflicting to a lot of people.

SOARE: The area of pre-packs, first of all to say that obviously pre-packs as one alternative available to an insolvency practitioner actually often do produce the best result.

URRY: Yes, but we're talking about conflict at the moment though, do you see the potential for conflict there?

SOARE: There's always potential for conflict because these are difficult situations that insolvency practitioners work in. The ethical code for insolvency practitioners makes it very clear that if they do perceive they are conflicted, they should not act. If people believe that insolvency practitioners are working in a conflicted environment, or where they are conflicted and have not recognised it, then they are able to complain to bodies like ours.

URRY: Which is what Bertrand Des Pallieries has done. But he won't get his £200 million pounds back that way. He'll have to find more money to take legal action in the courts to see if he's entitled to any kind of recovery. In its report, the Office of Fair Trading acknowledges there may be insufficient oversight of pre- packs. Among its main recommendations for far reaching reforms, streamlining the current way in which the regulatory regime makes decisions, which the OFT calls inefficient. And, centrally, industry-funded independent complaints handling body with broad powers to review practitioners' fees and actions, impose fines and return overcharged fees to creditors.

URRY cont: The Government's response to the OFT's recommendations are expected before the end of the month. Meanwhile the future of the OFT itself hangs in the balance as the Government decides whether it will merge into a new consumer protection agency. We wanted to interview Business Innovation and Skills Minister Edward Davey, whose portfolio includes the Insolvency Service, about the issues raised in this programme, but we were told he was too busy to take part.

SIGNATURE TUNE