

--

HM Treasury  
Two Year Review

twoyearreview@hm-  
treasury.x.gsi.gov.uk

**Policy Unit  
Area 5.7  
PO Box 203  
21 Bloomsbury Street  
LONDON  
WC1B 3QW**

**Tel: 020 7637 6651  
Fax: 020 7291 6746  
e-mail katherine.parker@insolvency.gsi.gov.uk**

**DX address : DX120875  
DX exchange: Bloomsbury 6DX**

Direct Line: 020 7637 6651  
Our Ref: P/5/88  
Your Ref: 27 May 2004  
Date:

## **FINANCIAL SERVICES AND MARKETS ACT 2000 – TWO YEAR REVIEW**

Thank you for drawing to our attention the consultation paper on proposed changes to secondary legislation, following the two-year review of the operation of the Financial Services and Markets Act 2000.

The only parts of the paper which raise issues specific to insolvency are paragraphs 9.6 to 9.13 which deal with trustees in bankruptcy and other insolvency appointments in relation to an individual.

We can see that a trustee in bankruptcy might undertake activities of a financial services nature and agree that in those circumstances he should be regulated. We can see no difficulties with the approach outlined in paragraph 9.11.

So far as supervisors of a voluntary arrangement are concerned, we note from paragraph 9.12 that the decision not to provide for their regulation is based on the view that "...the supervisor would still in legal terms be acting as the agent of the individual who is an authorised person and so would have to comply with the FSA rules and requirements binding the individual."

I see from our files that my colleague Phillip Nicholls wrote to Peter McDermott on 23 August 2002 on this point, among others, and a copy of his letter is enclosed. As you will see, we had taken legal advice and were satisfied that supervisors were not acting as "agents" of their debtors. We also asked whether a reference to the supervisor "...in legal terms acting as agents..." might imply that you thought there may be some agency relationship existing other than "in legal terms". We have no record of any further



correspondence on this issue and would therefore be interested to know on what basis you remain of the view that supervisors are acting as agents.

We are also satisfied that interim receivers are not acting as agents of their debtors. We note that you do not propose to regulate the activities of interim receivers on the basis that it is unlikely that the interim receiver would carry on the business for any length of time but we are not sure that this is the case. Some interim receiverships can, and do, run for substantial periods of time. You may therefore take the view that it would be appropriate to regulate activities of a financial services nature carried on in the course of interim receiverships.

Finally, we asked in our earlier letter whether consideration had been given to the regulation of other forms of appointment referred to in section 388(2) of the Insolvency Act 1986 which would not be covered if regulation is restricted to appointments as trustee in bankruptcy, for example an administrator of a deceased person's estate. It may be that you have considered this point and have decided not to regulate but we should be grateful if you would confirm.

We should be grateful if you would let us have your comments on these points as soon as practicable and also that you would keep us informed as policy develops.

I will be very happy to discuss if you think that would be helpful.

Yours sincerely

Katherine Parker