CONFRONTING CORPORATE POWER:
THE ORDEAL OF TONY CHRISTER

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Introduction

Intellectuals have a capacity to reposition social subjects and render the familiar unfamiliar. Through public interventions they can ferment possibilities of emancipatory change. Unsurprisingly, they have long been considered to be the most powerful influences on contemporary life (Gramsci, 1971; Hall, 1988; Gill, 1990). Such an engagement is always constrained by contemporary centres of power, especially if it is seen to problematise the privileges enjoyed by dominant and powerful sections of society.

In the era of commercial sponsorships, title, credentials, research grants and pressures to raise external income, university academics, in their capacity as intellectuals, face some soul searching questions. Do they have a public role to critically address contemporary power structures or are they just careerists available for hire to the highest bidders as advisers, analysts and report writers? Should they use their socially endowed credentials to speak truth to power and give visibility to the marginalised and less powerful discourses to ferment possibilities of emancipatory change, or should they align themselves with the powerful discourses and thus narrow public choices (Said, 1994)? Such questions are even more relevant today as organised corporate interests have colonised the state and regulatory apparatuses to advance their narrow interests (Sikka et al., 1995; Neu et al., 2001). Their enormous, financial, legal and political power has the capacity to silence critics. In any case scholars might engage in voluntary censorship for fear of upsetting corporate interests and the unwelcome consequences which might follow. Acquiescence to organised interests is relatively easy as support for the status-quo rarely requires any comprehensive evidence whilst critics are usually placed in negative spaces and, despite the closed nature of corporations are expected to provide an overwhelming amount of evidence, which is always portrayed as incomplete. Supporters of the status-quo are rewarded with research grants, titles and accolades, whilst critics may be ostracised, exiled, sued and silenced.

The above issues form the background to the ordeal faced by the late Professor Tony Christer (hereafter "Tony"). He used his knowledge of operational research and applied statistics to intervene in the 1988 insolvency of Manchester based J.S. Bass Group of Companies (hereafter "Bass"). His interventions raised some important questions not only about the particular case, but also about the practices, regulation and accountability of insolvency practitioners, government departments and regulatory apparatuses. He enrolled radio/TV programme makers, members of parliament, journalists and a variety of opinion formers to examine the practices of insolvency practitioners. In response the UK arm of Ernst & Young, with fee income of £1,130 million[1], threatened to sue Tony and thus created considerable anxiety for him and his family. This chapter seeks to provide a brief insight into Tony's engagement with power. It is divided into four further sections. The first section provides a brief background to the UK insolvency industry. The second section provides some details of the Bass insolvency. The third section provides details of Tony's interventions and some of its consequences. The fourth and final section concludes the chapter through reflections on Tony's interventions.

The UK Insolvency Industry

The UK insolvency industry is primarily governed by the Insolvency Act 1996 and the Enterprise Act 2002. The 1986 Act was a particular landmark as it granted a monopoly of the insolvency industry to accountants and lawyers belonging to a select few trade associations (see Cork and Barty-King, 1988; Department of Trade and Industry, 1984; Halliday and Carruthers, 1996; Cousins et al., 2000). As a result, about 1,600 insolvency practitioners, mainly accountants and lawyers, handle almost all of the UK private and commercial bankruptcies, receiverships, administrations and liquidations (Hansard, House of Commons Debates, 24 Mar 2003, column 30). Nearly 50% of all insolvency practitioners are located in major accountancy firms where "the emphasis is very firmly on being commercial and on performing a service for the customer

[1] As per the 2006 annual review published by the firm (http://www.ey.com/Global/download.nsf/UK/EY_annual_review_2006_accounts/$file/EY_AR_2006_Accounts.pdf; accessed 6 April 2007)

rather than on being public spirited on behalf of either the public or the state. ..... [accountancy firms] have finally ditched any pretence of being public spirited" (Hanlon, 1994, p. 150).

Under the law, the work of insolvency practitioners is overseen by a Creditors' Committee, but in practice most creditors are busy looking for new sources of income to replenish the lost ones and insolvency practitioners and the secured creditor(s) virtually dominate the proceedings. The industry is regulated by accountancy, law and insolvency trade associations rather than by an independent regulator and they do not owe a 'duty of care' to third parties. In general, insolvency practitioners only owe a 'duty of care' to the party appointing them, which in most cases is a secured creditor, such as a bank. The practitioners are not required to publish any meaningful information about their own affairs. Company directors and employees of insolvent businesses have no right to examine the files of insolvency practitioners. They frequently lack the necessary financial resources to seek legal redress against insolvency practitioners. Complaints against practitioners are not independently investigated and there is no ombudsman to adjudicate on disputes between the practitioners and insolvent stakeholders.

Insolvency is a highly lucrative business as the practitioners have a prior claim on any cash generated by the business placed under their control, i.e. they are paid first and before all creditors are paid. Since insolvency practitioners' fees are based on time, they have considerable economic incentives to prolong bankruptcy proceedings. Insolvency arms of accountancy firms operate as profit centres and thus need a constant supply of bankrupt individuals and businesses. The performance of their staff and partners is assessed by reference to fees and profits. Practitioners rarely accept appointment to a business with a negative cash flow potential because it would not be able to pay their fees. They usually rely on banks for business. Capitalism provides its own casualties, whilst others can be manufactured through close relationship with banks. Many companies have seasonal cash flows and rely upon bank loans and overdrafts to cover shortfalls. Periodically, banks hire major accountancy firms to report on the financial health of client

businesses. If the accountancy firm gives a clean bill of health, it will receive a one-off fee. On the other hand, if it reports that the client company is likely to become bankrupt and can persuade the bank to appoint it as a receiver or a liquidator, it could be managing that insolvency for years and receiving lucrative fees. As one seasoned observer put it, “Nine times out of ten, that [accountant’s] report will say your business is not viable, because, to start with, the accountants are mindful of the consequences to themselves if they say you are viable and then go under. Also they are likely to be appointed receivers anyway, and will receive a fee. There are rich pickings for insolvency departments" (Mallinson, 2000). In the words of Lord Evans, “Under today's insolvency laws, insolvency practitioners do not break any laws or regulations when they force viable businesses to close, sell assets at a fraction of their real worth and charge fees which are more related to the amount of cash available than the work which has been undertaken ..... insolvency practitioners, in their guise as receivers, gorge themselves on the cash and assets at the expense of the main body of ordinary unsecured creditors and shareholders (Hansard, House of Lords Debates, 26 January 1999, col. 942). The regulators show little concern about the longevity of insolvencies and some seem to last more than ten and even twenty years without any investigation (Hansard, House of Commons Debates, 20 Jun 2000, col. 139)

The above provides the regulatory context for understanding the insolvency of the Bass Group of companies.

J.S. Bass Group of Companies

The Manchester based Bass group of companies was a family owned business which had been trading for 150 years. The business group included J.S. Bass, timber merchant Southern & Darwent Limited, timber packing case firm James Mann (Newhey) Limited and a garage T. Ashcroft & Son Limited. Barrie Chapman ran the business with his brother and sister and it had around 130 employees. The Group had banked with Barclays Bank for 80 years and always met its financial obligations (Christer, 1992).

The Bass Group had a history of successful trading. Its pre-insolvency level of profitability is indicated by the following audited pre-tax profits.

Profit (£000)	**1984**	**1985**	**1986**	**1987**
Southern & Darwent	56.3	40.2	55.6	108.5
James Mann	68.5	41.7	109.0	44.3
J S Bass/T Ashcroft	(4l.4)	132.7	(149.9)	(151.5)
Group Profit(Loss)	83.4	214.6	(14.7)	(1.3)

In 1987, at the bank's suggestion, the company replaced its smaller firm of accountants with a larger one and this led to delays in producing the 1987 accounts. The company had a bank overdraft facility of £530,000 and was drawing some £348,000 against it. It asked for an increase in its overdraft and Barclays Bank sought assurances on the security and health of the business. In September 1998, Barclays Bank asked Bass directors to appoint consultants from Ernst & Whinney (now part of Ernst & Young) to undertake a study of the Group's viability. The directors agreed and the next day two representatives of Ernst & Young arrived. They allegedly spent a total of one/two hours within the company with access to Directors and Members. Within the next 48 hours, their report was ready and circulated. The report contained criticisms of the group's management structure, the quality of its financial information and reporting systems and stated that J.S. Bass suffered from "severe creditor pressure" and an "inherent lack of profitability". Ernst & Young's report claimed that the bank's security was at risk. Rather than recommending any restructuring of the business, or voluntary liquidation, the firm recommended enforced insolvency. Barrie Chapman, the Bass group chairman, queried the weight given to the possibility of re-financing the Group and argued that 99.4% of the creditors had been paid on time. He disputed the claim that the group was facing a loss of £136,000 for the 15 months to 12 October 1988. He was also unhappy with a variety of arbitrary negative adjustments made to the company's accounts. The accountant writing the Ernst & Young report said, "Given all the facts I am firmly of the view that the

Group, as a whole is insolvent. There is an urgent need for Bass to follow one of the statutory insolvency procedures[2]".

Barclays petitioned the High Court for an administration order and on 12 October 1988, Mr N. Hamilton and Mr J. Warren of Ernst & Young informed Barrie Chapman that they had been appointed Administrators. The letter was accompanied by a copy of an Administration order for the Bass group made out to Manchester District Registry and stamped by Leeds High Court. Mr. N. Hamilton and Mr J. Warren of Ernst & Young assumed the position of Administrators of the entire Bass Group. In accordance with the normal insolvency practices, the administrators sacked all the directors and most of the staff and proceeded to sell the assets of the Group over the next few months. Some five months after the commencement of administration, Bass group finally ceased trading and Ernst & Young became liquidators for J.S. Bass & Co.; Ernst & Young and Grant Thornton became joint liquidators for Southern & Darwent and James Mann (Newhey) Ltd and Grant Thornton were also appointed liquidators for T. Ashcroft.

The information filed by the Administrators at Companies House shows that at 15th May 1989, the Bass Group had creditors of £1,397,540.

Creditors	**Amounts**
Preferential	£ 122,926
Non-Preferential	£ 926,614
Bank Overdraft	£ 348,000
	£1,397,540

The fees taken by the Administrators over the period 12 October 1988 to the date of Liquidation (approximately 5 months) are as follows

Company	**Professional Fees**	**Date of Liquidation**
J S Bass & Co Ltd	£222, 094	May/June 1989
Southern & Darwent Ltd	£157, 363	April 1989
J Mann (Newhey) Ltd	£ 79, 212	March 1989

[2] As per transcript of BBC Radio 4, 'File on Four' programme broadcast on 21 June 1994.

£458, 669

At the same time, the sale of assets (excluding properties in Cyprus) produced £2,752,319. As of 26 May 1989, £1,219,192 of creditors had been paid, as shown in the Administrator's statements filed at Companies House, leaving a surplus of £1,532,127 to pay the remaining creditors of £178,348. By December 1995, the liquidator ran up fees of £555,233. By 1998, some ten years after the commencement of the insolvency some creditors had still not been paid in full.

Barrie Chapman faced three unsuccessful attempts to personally bankrupt him to pay Bass creditors and liquidator's fees. Each of these prolonged the completion of the insolvency and had a bearing on the fees paid to insolvency practitioners. The Bass insolvency was finally completed in late 2000, but it left many questions unanswered. Many of the issues were investigated by Tony Christer who shared Chapman's sense of grievance at the loss of his family business and jobs of his employees. He supported and guided Chapman through turbulent times and explored the failings of institutional structures and insolvency practices.

Tony Christer's Interventions

In 1988, just before Bass's insolvency, Tony had started a "joint teaching and research project" (Christer, 1992, p. 3) which consisted of a study of Bass's system for managing its inventory levels and a friendship with Barrie Chapman developed[3]. Indeed, following Bass's insolvency Tony was frequently the first port-of-call for Chapman. Though not an accountant, Tony analysed the company' accounts, order book, finances and prospects and felt very uneasy about the insolvency. He prepared lengthy counter reports which problematised the analyses and conclusions reached by Ernst & Young. Tony agreed that Bass was likely to make a loss in the period to October 1988, but this was not that unusual for seasonal and expanding businesses. He rejected the loss of £136,000 produced by accountants and felt that at best it may be around £36,000.

[3] Tony and Barrie knew each other as their children shared the same school.

Tony felt that Ernst & Young's report, which became the basis of Bass's insolvency, contained "errors, omissions and misrepresentations". He was critical of the many arbitrary adjustments made to Bass accounts by Ernst & Young. The adjustments depleted the trading accounts and resulted in lower profit and asset figures. Some of Tony's concerns seemed to be vindicated by some subsequent events. For example, Bass had a property in Adelphi Street on its books at £300,000, but Ernst Young placed a valuation of £170,000 on it. Within weeks of becoming administrators Ernst & Young sold the same property for £40,000 more than their own valuation to a company called Phoenix Construction and that company had the property professionally valued at a figure of £300,000[4]. Some months later the same property was resold for £360,000, i.e. at over twice the figure assigned by Ernst & Young. Such transactions raised questions about the valuations obtained by Ernst & Young. When asked to provide copies of any professional valuations obtained by the firm, Ernst & Young partner J. Warren replied, "It is not my firm's policy to provide copies of professional valuations obtained during the course of our work. This is because the valuations are obtained to give the office holder specific advice in relation to the asset. However, I can assure you that proper professional valuations from a reputable firm of surveyors had been obtained and the Administrators acted on their recommendation and advice" (Letter from Ernst & Young to Sir Fergus Montgomery MP[5], 21 July 1992). The UK Department of Trade and Industry (DTI), responsible for oversight of the insolvency industry, was content with this position and a minister told Austin Mitchell MP[6], "Ernst & Young have confirmed to my officials that valuations were obtained for the company's properties, including Adelphi Street ….. I have not seen the Adelphi Street valuation ….. I have no power to require its production, but I see no reason to doubt its existence" (letter from Minister for

[4] BBC Radio 4, 'File on Four' programme broadcast on 21 June 1994.
[5] Sir Fergus Montgomery was a Conservative member of the UK House of Commons from 1950 to his retirement in 1997. From 1974 to 1997, he represented, Altringham and Sale, Tony's local constituency. Tony sought his assistance for the Bass case from very early on.
[6] Austin Mitchell has been a member of the UK House of Commons since 1977. He has been critical of accountancy firms and insolvency practitioners.

Corporate Affairs to Austin Mitchell MP, 11 November 1993). Further correspondence elicited the reply that "Ernst & Young have told my officials that they have declined to produce the property valuations to the directors [of Bass] on the basis of legal advice. That remains their position although it is, of course, open to directors to ask the liquidators to reconsider. I do not propose to write to the liquidators in this respect" (letter from Minister for Corporate Affairs to Austin Mitchell MP, 29 December 1993). Such frustrations were soon to become a common feature of all inquiries made by Tony.

The viability of all businesses depends on future cash flows and these in turn depend on product innovation, sales, market penetration and profits. Tony felt that Ernst & Young's report failed to attach adequate weight to the future prospects and viability of the Group. In sharp contrast to the conclusions reached by Ernst & Young, Tony told a radio programme "that the overall future was bright. He was particularly impressed with a new packaging material Bass was working with – a foil backed plastic that was more waterproof than anything else on the market[7]". Tony knew that the development of the new product had been "going on for about five or six years and had been doubling its turnover every year, growing very beautifully. The company had started exporting to six, seven, eight countries overseas, these Bass products, it had unique quality approval for its manufacturing systems, and the whole thing was very exciting and quite promising[8]". This was in direct contrast to the claims by Ernst & Young, whose report claimed that the supply of raw material for barrier foils was in jeopardy. The report noted, "it is manufactured in France and has been supplied to Bass under an oral agreement. The French supplier has recently been acquired by another company and it follows the continuation of the oral agreement must be in question. We are informed that the new owners of the business are seeking to set up direct supplies to other parts of the world to the exclusion of business[9]". Tony rebutted such arguments and stated, "What the report could equally have said was that they have lost their traditional supplier, but they have now

[7] BBC Radio 4, 'File on Four' programme broadcast on 21 June 1994.
[8] BBC Radio 4, 'File on Four' programme broadcast on 21 June 1994.
[9] BBC Radio 4, 'File on Four' programme broadcast on 21 June 1994.

five other suppliers, two of which are now based in the UK, a number of suppliers supply at lower unit costs. So far as the product was concerned, and the supply of raw material, it had never been more secure in the whole history of the product ….. [10]". In November 1988, Tony prepared an alternative report which was sent to accountants and directors of Bass. Throughout the Bass insolvency Ernst & Young claimed that Tony's analysis was flawed.

With advice from Tony, Barrie Chapman explored the institutional structures. In the absence of independent regulators, an independent complaints investigation system, or an ombudsman to adjudicate on disputes, insolvency stakeholders can only complain to the relevant trade associations who also function as statutory regulators. As Ernst & Young partners were licensed by the Institute of Chartered Accountants in England & Wales (ICAEW) a complaint was lodged in December 1988. The complaint drew attention to arbitrary adjustments to the Bass accounts, excessive fees, and inappropriate disposal of assets and lack of professional valuations[11]. A long period of silence resulted in reminders and requests for action. In October 1992, a spokesperson for the ICAEW stated that he hoped to reach a conclusion before too long. In July 1993, the spokesperson for the ICAEW stated that Mr J Warren had recently retired on health grounds, and following discussions with Ernst & Young, he did not see how the complaint could be pursued any further. It would be recalled that fees were paid to Ernst & Young. This attempt to shelve the complaint led to some press publicity (for example, the Independent on Sunday 12 September 1993; Private Eye, 26 February 2003, 26 March 2003). After exposure on a radio programme (BBC Radio Four 'File on Four', 21 June 1994), the ICAEW was pursued and in January 1995, it claimed that the complaint was being actively progressed. In September 1996, some 8 years after the initial complaint, the ICAEW changed the person

[10] BBC Radio 4, 'File on Four' programme broadcast on 21 June 1994.

[11] The court judgement in *Medforth v Blake and Others [1999] 3 All ER 97* established that the receiver who sold charged assets but failed to take reasonable care to obtain a proper price may be liable notwithstanding the absence of fraud or *mala fides*. A receiver managing mortgaged property also owes duties to both the mortgagor and anyone else with an interest in the equity of the redemption (also reported in The Times, 22 June 1999).

handling the complaint, who was again changed in October 1997. On 12 October 1997, the 9th anniversary of the collapse of the Bass Group and aided by BBC TV's 'Here and Now' TV Programme, a birthday cake was presented to the Office of the ICAEW to commemorate their nine years of "investigative inactivity". This publicity prompted a reaction from the ICAEW and it claimed that "there was no prima facie case to answer".

In keeping with the ICAEW procedures, no reason or justification for its conclusions was given. Tony and Barrie Chapman referred the matter to the ICAEW's Reviewer of Complaints (selected, appointed and remunerated by the ICAEW), a Mr. Anthony Surtees. For ten months nothing was heard from him. A revised complaint submitted to the ICAEW Reviewer on 13 January 1999 included a considerable volume of fresh supporting evidence including, for the first time, questions about the inconsistencies in the court records (see below). In April 1999, after 15 months of silence, the ICAEW Reviewer, Mr Surtees was replaced by a Mr S J C Randall. This Reviewer eventually reported in early 2000 saying that he could see no problems with the conduct of the administration and liquidation. However, the Reviewer's files, correspondence and evidence are not available for scrutiny. The complaints procedure does not show how the regulators filtered or weighted any of the evidence submitted to it. The complainants cannot appeal against the findings of the Reviewer. Government departments routinely cite the ICAEW reports to brick-wall any calls for inquiries (Cousins et al., 2000; Mitchell et al., 1994, 1998). When asked to intervene in the Bass case, a DTI Minister said, "my official has concluded that the Institute's decision that there was no prima facie case of misconduct by any of the professionals about whom Mr Chapman complained was not an unreasonable one for them to reach and I can therefore see no further basis of investigation to be carried out by my Department"[12]. In the absence of public availability of DTI files or correspondence with the ICAEW, the Minister's assertions remain incapable of being verified or tested.

[12] Letter from DTI Minister to Austin Mitchell MP, 10 March 2002.

To draw attention to what Tony considered to be questionable insolvency practices, he had been in touch with Ministers and members of parliament for some time. Subsequently, this became highly problematical. Since July 1989, Tony had corresponded with Sir Fergus Montgomery, his local member of parliament and encouraged him to take an interest in the Bass insolvency in particular and the practices of the insolvency industry in general. Tony and Barrie also had meetings with Sir Fergus. Sir Fergus forwarded Tony's letters and documents to John Redwood, the then Minister of Trade, and invited him to intervene. He also forwarded the letters to Ernst & Young and on occasions elicited some responses from Ernst & Young to the questions raised by Tony and Barrie Chapman (for example, a letter from Ernst & Young to Sir Fergus on 21 July 1992). In November 1991, Tony's sister (Mrs. M.P. Byrne) also began correspondence with Austin Mitchell MP (for example, see Mitchell, 1994, 1999; Mitchell et al., 1994, 1998).

On 19 November 1991, Tony wrote to Sir Fergus and John Redwood. His letter contained critical comments on the Ernst & Young report which paved the way for liquidation of the Bass group of companies. This letter eventually found its way to Ernst & Young who sought legal action for libel against Tony and his employers, the University of Salford, as the correspondence was conducted on the university's headed notepaper. The contentious matter was that "In summary, Professor Christer alleged that Ernst & Young and Messrs Warren and Hamilton were guilty of impropriety relating to property transactions, false accounting and forcing their appointment as compulsory liquidators when members wanted a less expensive voluntary liquidation" (per a "Statement in Open Court", 1993 E No.1775). An injunction was served on Tony just before the delivery of his inaugural lecture on 13 February 1992 (Christer, 1992) and prevented him from talking about the particular case of Bass and Ernst & Young practices. Tony thought that correspondence with his local member of parliament was protected by the law of 'qualified privilege' and thus could not be used by third parties to instigate legal proceedings against him, but the legal experts felt that the letter was tantamount to a 'publication'. Tony sought legal advice from his employers, the University of Salford. Within the limits of the University's insurance policies, considerable

advice and support was extended to him. The threat of lawsuit a was mediated on 17 March 1992, with Tony signing a letter addressed to Ernst & Young and giving an undertaking to "not directly or indirectly to republish or to procure or assist in republishing the letter or to use any of the words complained of in any like words in consideration of Ernst & Young agreeing not to commence proceedings against him "(per a "Statement in Open Court", 1993 E No.1775).

This settlement, however, did not and could not preclude Tony from enrolling members of parliament, regulators and journalists and drawing the public's attention to the failures of the insolvency industry. Tony continued a watchful eye on the Bass insolvency and continued to support Barrie Chapman's quest for justice. In common with the rest of the insolvency industry, one of Ernst & Young's arguments had been that in the preparation of the 1988 report, the firm only a owed a 'duty of care' to the party appointing it (i.e. the bank) and not to the company, or members, or directors of Bass. With advice from Tony, Chapman contested it. In a court hearing[13] at the High Court, (*R B Chapman v Ernst & Young*), His Honour Judge Gower QC in his judgement of 11 July 1995, stated, "That having regard to all the relevant circumstances the defendants owed the plaintiff a duty to use reasonable care and skill in the preparation of the report. That they failed to discharge it in that they founded the report's recommendations upon inaccurate information as to the company's financial position whereas with the exercise of reasonable care and skill they would have discovered the true facts".

Alongside the above activities, Tony continued to correspond with members of parliament and once again felt the full weight of the might of Ernst & Young. On 13 October 1993, Tony again wrote to Sir Fergus Montgomery, his local member of parliament, to draw attention to the fees charged by the firm. A copy of the letter was also sent to Austin Mitchell MP. Tony's letter to Sir Fergus found its way to Ernst & Young[14] and was construed as suggesting

[13]Barry Chapman was represented by Mr. Anthony Scrivener QC.
[14] On 27 April 1994, Austin Mitchell wrote to Sir Fergus saying "I can't agree at all with the view of Ernst & Young ….. as detailed to me in your letter. It

"that the substantial sums of money spent on professional fees and other activities by the Plaintiffs [Ernst & Young and its partners] was not due to an accident, or to incompetence, but a policy to prevent the members of Bass regaining company books to prove misfeasance" (per a "Statement in Open Court", 1993 E No.1775). In December 1993 Tony was formally served with a writ[15].

Under severe pressure and with advice from the University's legal officers, a settlement was reached. On 7 July 1997, Tony's lawyers, Messrs Crockers Oswald Hickson wrote to inform him that on 4 July 1997 the "Statement was duly read in open Court". The Statement recorded that "Professor Christer abandons his suggestion that the Plaintiffs were motivated by dishonesty or any other improper purpose or that they were guilty of false accounting and apologises to them for the attack on their integrity. Furthermore he has agreed to write to Sir Fergus Montgomery, and to Mr. Austin Mitchell MP, to whom a copy of the letter of 13 October 1993 was sent, to withdraw the allegations. While Professor Christer considers that the effectiveness of the regulation and administration of public companies and the level of professional fees thereby incurred is a matter of public interest, and this is a legitimate subject for comment, he recognises that the allegations contained in his letter of 13 October 1993, namely that the Plaintiffs had spent the said sums of money in the liquidation of J.S. Bass with a dishonest motive, did not constitute a sustainable judgement of the Plaintiffs' role in the J.S. Bass liquidation. Rather, his language reflected his passion for reform of the system. He is here today by his solicitor publicly to withdraw the allegations of improper purpose, dishonesty and false accounting. In addition, he is willing to give an undertaking to the Court not to republish the allegations contained in the above mentioned letters or any such like allegations" (per a "Statement in

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seems to me that there is a legitimate case for enquiry into the way J.S. Bass was liquidated, there are questions about the behaviour of Ernst & Young which need to be answered and Professor Christer is quite right to raise them and to draw the attention of Parliamentarians …. I will therefore be raising this matter in the House of Commons unless the Writ against Professor Christer is withdrawn". This letter found its way to Ernst & Young and elicited a three page response on 9 May 1994 from its partner D. Bailey.

[15] Letter to Austin Mitchell MP, 22 December 1993.

Open Court", 1993 E No.1775). On 9 July 1997, the University of Salford's legal officer wrote to Tony to say "I am greatly relieved to see that the matters have come to an end". On 14 July 1997, upon instructions from Ernst & Young lawyers (Farrer & Co), Tony's lawyers informed him that the court order now contained a clause stating that "if you the within named Anthony Christer fail to comply with your undertaking you may be held in contempt of court and liable to imprisonment".

Despite considerable difficulties, Tony and Barrie Chapman continued to examine the institutional processes relating to insolvency. In 1997/1998, some ten years after the initial administration they decided to search for the original administration order. Their inquiries failed to find any court files at Leeds Court relating to J S Bass & Co Ltd, Southern & Darwent Ltd, or James Mann (Newhey) Ltd. There is no recording within the Court Record Book at Leeds relating to J S Bass & Co Ltd, Southern & Darwent Ltd, or James Mann (Newhey) Ltd. The number of the J S Bass Administration Order sent by Ernst & Young to Mr Chapman on 13 October 1988 was 5A Petition No 5 of Leeds District Registry. It relates to a debtor company called Forlines Ltd, which was dismissed on 11 October 1988. They were unable to find an entry within the Administration Book at Leeds or Manchester for either J S Bass & Co Ltd, Southern & Darwent Ltd, or James Mann (Newhey) Ltd. These problems could be due to clerical errors, non-retention of some earlier files or something else (see Cousins et al., 2000 for further details; The Independent, 31 July 2000). However, they were unable to persuade any regulator or government department to investigate the matters. A typical response from the UK's Department of Trade and Industry (DTI) Ministers is that "I am not persuaded that there is merit in your allegation that the liquidations of the Bass companies are invalid and I do not propose to investigate the matter further[16]". A question in parliament elicited the ministerial reply that "I am not persuaded that there are any grounds to justify the commission of an independent inquiry into the liquidation of John S Bass & Co. Ltd., or other

[16] Letter from Trade Minister to Austin Mitchell MP, 20 Jun 2002.

companies in the same group" (Hansard, House of Commons Debates, 6 Mar 2003, col. 1142).

With some questions inconsistencies about the court papers, Tony increasingly felt that he needed to speak up. His reputation for dogged pursuit of justice spread and he was also being approached by a number of other individuals going through the insolvency procedures. Following the completion of the Bass liquidation and the implementation of the European Convention on Human Rights (ECHR) into the UK's Human Rights Act 1998, Tony felt that he should challenge the 1997 undertaking given to Ernst & Young, which had effectively gagged him forever. He talked about such a challenge which would have required a (re)visit to the courts, either with or without his University's support. However, his health began to deteriorate and he was not able to mount the final challenge.

Summary and Discussion

Contemporary society is marked by huge asymmetries in power, wealth, influence and access to legal and political resources. In the case described above Tony was facing the full might of Ernst & Young, a multinational organisation and one of the UK's largest accountancy firms. His engagement with the firm was not planned, but rather unfolded through his friendship with Bass chairman Barrie Chapman. Tony undertook analysis of the Bass accounts and insolvency and prepared excellent reports and analysis to highlight some questionable practices. As his involvement with the Bass case increased he came face-to-face with irresponsible and opaque institutional structures. He sought to mobilise public scrutiny of insolvency practices through newspapers, magazines, radio/TV programmes and correspondence with ministers and members of parliament. Whilst there had been criticism of Ernst & Young in newspaper, radio and TV broadcasts, the firm did not sue any of them. It instead slapped a lawsuit on Tony, possibly because he was considered to be the source of such criticisms. In a parliamentary statement, Austin Mitchell MP interpreted this as "Professor Tony Christer of Salford University complained about the behaviour of Ernst and Young in a letter to

his Member of Parliament, Sir Fergus Montgomery. Sir Fergus passed it on to Ernst and Young, which then took out a writ against Christer to shut him up and to stop his accusations against Ernst and Young" (Hansard, House of commons Debates, 15 July 1997, col. 300). Whether Ernst & Young could have enforced its lawsuits without mobilising considerable negative publicity is open to conjecture. Nevertheless, the threats were sufficient to cause considerable anxiety to Tony and his family. The threats modified Tony's approach but did not stop him from exposing the failures of the insolvency industry.

It may be argued that had Tony been a professionally qualified accountant, he may have acted differently or that his analysis may have been given more credibility and he may have couched his criticisms in a different language. Having personally seen many of his documents, it is extremely doubtful that any accountant could have improved upon his analysis. The above observations fail to note that professionals invariably close ranks, become accustomed to thinking within very narrow boundaries and rarely travel beyond the ordinary to shed new light on social practices. Others become involved in issues, not because of personal financial gain or accolades, but because they passionately care about the quality of life and justice. In this quest, they are willing to take risks to expose institutionalised practices and structures to foster possibilities of reform and emancipatory change. Through his engagement with the institutions of insolvency, Tony showed that insolvency practices destroy businesses, jobs, families, investment, pensions and savings. Unlike the insolvency industry he championed the need for greater openness, independent regulation, an independent complaints investigation system, an ombudsman and practitioners who owed a 'duty of care' to stakeholders. Such an irresistible agenda resonates with many citizens and one day will become reality.

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