

Going for broke

BUSINESS FAILURE IS NEVER GOING TO BE MUCH FUN. BUT IT NEEDN'T BE THE END OF THE WORLD SAYS **NEIL BROMAGE**

With a dot.com millionaire seemingly made every day there doesn't appear to be a better time to go into business. But what happens when it all goes wrong?

At his death in 1826, former US President Thomas Jefferson owed his creditors the then staggering sum of \$100,000; more recently Kevin Maxwell was bankrupted owing the equally staggering sum of almost £500m.

The stories of entrepreneurs who have lost fortunes before going on to make another are almost legion. Jeffrey (Lord) Archer lost a small fortune before going on to make a large one, though he was never actually declared bankrupt.

But the British attitude to failure is often not encouraging for genuine entrepreneurs. Imagine you are a banker reviewing two lending proposals. Both have merit, are based on potentially good ideas and require similar amounts of borrowing. One is proposed by a middle manager who has recently taken voluntary redundancy. The other comes from a thirty-something serial entrepreneur whose last venture failed when the bank pulled out, forcing him into bankruptcy. In which proposal would you invest money?

If you're an American the chances are you would recognise the invaluable experience of the bankrupt, but as a Brit you are more likely to see him as a failure and invest in the untried manager. But British attitudes are changing.

The UK has tended to view business failure in much the same way as leprosy or the Black Death, with directors and owners stigmatised as 'unclean, unclean'. In the US the only way to have failed is to have never tried.

Peter Forsey, an insolvency practitioner with BKR Haines Watts, says: "The UK system offers little incentive for genuine entrepreneurs to try again and I would welcome a cultural shift which actually offers a pat on the back for having tried rather than condemnation for having failed."

Ken Davies is managing director of Everwhite Plastics, based in Aberdare, South Wales and quoted recently by the *Sunday Times* as 'one of Britain's fastest growing private companies'. Its sales have risen 74 per cent a year, from £913,000 in 1995 to £6m last year. But Davies has achieved this having already experienced a failed venture.

His skills in managing construction projects were recognised by his previous employers and rewarded with a directorship. But he "never saw accounts or signed cheques". When the company eventually failed and the husband and wife ownership team bankrupted, the DTI tried to ban Davies from becoming a director of another company.

Davies battled over four years, losing his home and marriage and even struggling to open a bank account. "I was determined to make my new business so successful the DTI couldn't ban me from being a director," he says. He has done that and is now planning another business to add to Everwhite.

With statistics for the last quarter of 1999 showing that more individuals are already filing their own petition for bankruptcy (indicating they are less fearful of the procedures) it may be that the stigma is being gradually eroded.

But this relaxed view is now coming under scrutiny in the US. According to the *Wall Street Journal* recently, the Bankruptcy Code's leniency was intended to spur risk taking but also stimulated "one of the world's great waves of consumer debt-skipping". Under the 1978 code it's possible to go bust and keep the house, the car and the pension. It can also be used to evade maintenance, rent and college loan payments.

Since 1990, consumer bankruptcies in the US have escalated more than 80 per cent to 1.4 million in both 1998 and 1999. The overwhelming majority of debtors file under Chapter 7, which effectively wipes out their debt. In the UK last year total bankruptcies and company winding up petitions reached just over 40,000.

Forsey is clear on the need to "protect against rogues and help genuine people to have another go" but is not sure how this might be formulated into law. He also says: "The general attitude within banking circles is becoming much more tolerant of past failures."

This may be as a result of comments from government ministers. Peter Mandelson when he was trade and industry secretary said the UK should consider removing the stigma from bankruptcy and encouraged 'risk-taking entrepreneurs' to try again and his successor, Stephen Byers agrees (see box).

According to Michael Hay of the London Business School: "The churn - the birth, life and death of businesses - is very healthy. But we need to increase the quantity of start-ups, increase the water-table so to speak. That also means increasing the tolerance of failure."

The government's attempts to shake up insolvency regimes have come under criticism, though. But the overall aim - to bring the UK more in line with the US - is generally applauded. "It's not going to be easy to get the law exactly right as a lot of this is to do with people's attitude in the UK, but I'm sure there's a balance in there somewhere," says Forsey.

British business needs the likes of Davies. He recalls his schoolteachers, frustrated with his academic performance, saying: "Thank God there's only one of you." If the UK is to have a true enterprise economy it needs the determination of the likes of Davies, Maxwell and ... oh yes, some chap called Branson. ■

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Better luck next time

Government proposals to lift the stigma of bankruptcy aim to give honest failures a second chance at business. Trade secretary Stephen Byers wants to encourage start-up businesses and entrepreneurs, and is shaking up the insolvency laws to do so. "Too many people are unwilling to set up businesses because they are worried about the consequences of failure," he says. The proposals will allow those who file for bankruptcy when their business has failed for reasons beyond their control to trade again within six months of becoming insolvent. Dishonest bankrupts would face severe penalties and up to 15-year bans.

Following a ruling in the Court of Appeal in April, bankrupts can also expect their personal pensions to be raided by creditors. The personal pensions of bankrupt accountants Leslie Lesser and John Dennison were made available to their creditors in a landmark case which means insolvency trustees can now take personal pension funds from bankrupts since the start of the insolvency legislation, 29 December 1986.

The judgment highlights the discrepancy between the treatment of company schemes, which often have protection clauses, and personal pensions.