(up to £71,000), the relief will be non-existent; neither will it reduce the tax payable on the remainder of the estate since the chargeable value for aggregation is not affected. Even in those larger cases where the taper does come into play the full effect can only be enjoyed by the very wealthy who can afford to make lifetime gifts which attract Inheritance Tax at the top rates. It is difficult to imagine that these bizarre results represent the original intention of the legislators.

It may be expected that in many cases where a lifetime gift is to be made, the donor will make his gift by means of a Potentially Exempt Transfer (a PET) rather than an immediately chargeable transfer, especially if the gift would take him above the nil rate band. He then has the chance to avoid the tax altogether if he survives by 7 years. If unfortunately he does not survive the 7 years the resulting tax calculation may be reasonably compared to a folly built in the park of a stately home. It may be faultless in structure and design but it is difficult to find any useful purpose for it.

DIRECTORS & OFFICERS LIABILITY FOLLOWING THE INSOLVENCY ACT

by N.H. Stanbury, F.C.A., of Directors & Officers Limited

The New Legislation

Within the last year, major new legislation has materially affected the personal exposure of directors and officers when carrying out their duties in a company. Initially contained in the Companies Act 1985 and the Insolvency Act 1985, the legislation has now been consolidated into the Insolvency Act 1986 and the Company Directors Disqualification Act 1986, the remaining provisions of which came into force on 29th December 1986.

All directors and officers have always been at risk, both in respect of their failure to discharge their duties properly and (as representatives of their company) for breaches of the law by the company and/or employees. However, personal financial risk was (with certain exceptions) largely limited to damages flowing from a successful claim for breach of duty. The Insolvency Act has now posed a significant further risk to the director in respect of his potential liability to be called upon to contribute to the deficit arising from his company's insolvent liquidation. This is a marked dilution of the traditional concept of "limited liability" (at least as far as creditors and directors are concerned) and is yet another example of the trend in 'piercing the corporate veil" which has, over the years, been regarded in some quarters as an aim rather than anathema.

The Net Widens

Whilst directors personal liability following an insolvency will generally depend on the proof of "wrongful trading" in the period prior to liquidation, the persons to be regarded as directors for this purpose are more numerous than might be supposed from the traditional definition of "director". The law now formally recognises the concept of a "shadow director" who may be, for example, a senior officer, an external financier or even a parent company – any of whom may effectively control or direct the appointed directors and who, therefore, are unable to avoid the principal responsibilities attaching to their assumed office.

Apart from the financial penalties, directors (including shadow directors) of a company in insolvent liquidation will be the subject of a report by the liquidator which, in appropriate cases, can result in the director being declared unfit to be a director or manager of any company for a period of upto 15 years. There are also sanctions against directors effectively preventing them from carrying on business under the same or a similar name to that of the insolvent company – this could prove most damaging to a parent company held to be a shadow director.

In apportioning penalties in respect of contribution to the deficit and liability to disqualification, the Court will take into account both the duties and any finance-related qualifications of each director of the insolvent company. Managing Directors and Finance Directors are, therefore, likely to be most at risk but no director – executive, non-executive or shadow – can ignore this exposure, nor can he avoid it by strategic resignation as anyone deemed a director within the three years before the insolvency can be brought into the net. Whilst the practical effects of the new provisions remain to be tested in the Courts, tested they will be as the intention is clearly to cure as much as it is to prevent.

Insurance Developments

Never before has the need for effective D & O cover been so apparent or, indeed, so topical. Yet it is a fact that all too many directors and officers remain without cover. Despite recent hardening of the market (particularly in respect of the North American exposure), cover is available for the majority of risks. It should be emphasized that the indemnity provisions of the standard D & O policy do not embrace fines or penalties, nor can they compensate for the effects of disqualification. However, in the absence of circumstances otherwise excluded (such as the dishonesty, fraud or malicious conduct of the director), the liability of a director for the debts of his company will normally be regarded as a loss within the indemnity.

Traditionally, D & O policies have been generally written on a board basis for a specific company or group (usually with separate policies for the company and its directors) but this has not been of very much help to the "professional director" who sits on the boards of several unconnected companies, probably of varying size and status. Whilst individual cover has been available, it is often more difficult to write and/or uneconomic. However, economical individual cover is now much more readily available with the fairly recent introduction of group schemes, such as that exclusive to members of the Institute of Directors and administered by Directors & Officers Limited. There can be little doubt that the demand for D & O cover, in one form or another, will continue to grow – even without the lessons to be learned from decided cases in due course – and so it should, as there are still far too many directors and officers at risk, whether they realise it or not.

REVIEW OF PERSONAL INJURIES LITIGATION
by Roger Doulton, Solicitor, Winward, Fearon & Co.

(This is Part 1 of our Non Marine Liability Correspondent's article; Part 2 will appear in the May issue).

The Lord Chancellor's Review of Personal Injuries Litigation and the reply to that Review by the National Consumer Council (about which I am asked to write) together total 88 pages. In an article of this length, therefore, it is possible only to cover some of the issues raised.

Broadly speaking there are four main propositions advanced by those who criticise the present system for compensating accident victims. These are:-

1. That too few of the persons injured are entitled to compensation. This has a near-identical twin namely that all persons injured in accidents should be entitled to compensation.

2. That too few of those who are entitled to claim compensation under the present system recover any.

3. That the system is fraught with delay; and

4. That the system is far too costly.

The Lord Chancellor's Review is not intended as a Pearson Royal Commission Mark 2. Its expressed objective is to improve the machinery for bringing claims on the basis of the existing law, i.e. tort. To be entitled to compensation the victim must prove that his injury was caused by the negligent conduct of another person or by breach of statutory duty.