

Written evidence submitted by Mark Hardy (ECCTB21)

“Call for written evidence: Economic Crime and Corporate Transparency Bill” 17.10.2022

Dear Members of the Committee,

1. My name is Mark Gregory Hardy (former member of The Institute of Chartered Accountants in England & Wales) and, acting in a personal capacity, I wish to provide the Public Bill Committee with evidence relating to the functions carried out by the Registrar of Companies and the proposed civil penalties set out in the Bill.
2. I am delighted to note that the Secretary of State has finally proposed to adopt my previously submitted evidence to him and the Treasury Select Committee that directors should be liable for civil fines for late or non-existent filing of accounts and Confirmation Statements. This is likely to raise more than £250,000,000 annually for the Consolidated Fund and significantly reduce the scope for, and extent of, money laundering and similar offences.
3. This letter and its attachments are my outline written evidence, but I believe that your work would benefit from hearing oral testimony from me to more fully explain the abuse that the present law permits, which the Secretary of State has written to me deliberately encouraging. I attach a schedule of proposed amendments and additions to the Bill that I believe are necessary to achieve the stated objects. I propose to attend the meetings if they are to be held in public contrary to the statements on Parliament’s website that states that, presently and unusually, all hearings are to be in private.
4. I am probably the person with the most experience in this area in the whole of the United Kingdom. I am sure that the Secretary of State for BEIS and Lord Prem Sikka will concur.
5. The present situation is that many rogues and fraudsters simply fail to file obligatory documents and rely upon the Registrar almost invariably exercising his discretion to remove an entity from the register at the earliest available opportunity, and by so doing the entity disappears into the ether and never files any information about its dealings. HMRC will rarely be in a position to intervene/object, and significant revenues are lost when fraudsters create a series of successive new companies that last only a maximum of 15 months before the Registrar strikes them off.
6. This course of conduct is particularly prevalent among those who are property developers and agents who set up a company or limited liability entity, open bank accounts and trade for a year, with the deliberate intention to close all bank accounts etc. and avoid any filings of the entities dealings.

7. Many of the COVID loan frauds and collection problems have been perpetrated by this simple and continuing ruse.
8. As the Secretary of State has been told endlessly, the remedies are very simple:
 1. Levy and enforce civil penalties against miscreant directors and officers.
 2. Prohibit the Registrar striking-off any entity unless it has met **all** its compliance obligations.
 3. Require Statutory Auditors to certify in their reports that the directors have confirmed to them that **all** compliance obligations have been met, and to verify the reasonableness of those representations.
 4. Impose a duty on Recognised Supervisory Bodies, such as ICAEW and SRA, to automatically discipline any of their members in breach of these two obligations.
9. There is negligible additional cost to the Registrar because the failure to timeously deliver accounts and confirmation statements is automatically generated by existing computer systems and immediately stated on the landing page of the Companies House website. It is a simple step to run this database and generate Penalty Notices – even outsourcing would be easily controlled at minimal cost.
10. This submission does not relate to the current litigation in the King's Bench (ref QB-2021-003636), where as against the Secretary of State the principle remedy I seek is Declaratory relief that neither he nor the Registrar are entitled to exercise their discretion to remove the name of a company, or limited liability partnership, from the register of companies unless and until that entity and its directors/partners have filed all overdue Accounts, reports and Confirmation Statements, and paid any and all civil penalties. That litigation has in any event already been part heard in open court so that, with a few minor exceptions, all documents are in the public domain. I am happy to discuss or make such documents available to the Committee should you wish, but it may be easier to make direct enquiries of the Secretary of State. If the Committee accepts the need to legislate then the legal proceedings, as against the Secretary of State, may become moot.
11. The entire UK financial system relies on the integrity of the records of the Registrar, and it is simply impossible to monitor the external data that triggers the requirement to notify the Registrar and that is why the Confirmation Statement is of critical importance.
12. The Confirmation Statement is sworn testimony that **all** notifications have been made to the Registrar and there must be an effective means of ensuring it is timeously submitted.
13. The present criminal sanctions are rarely if ever exercised, not least because some of the external non-executive Directors of Companies House have been proven to be guilty of so many offences under the Companies Act 2006.

14. Only the automatic imposition of Civil Penalties on individuals stands any chance of procuring/ensuring compliance with the laws that Parliament has already enacted. Those penalties must be diligently pursued and collected and persistent miscreants must be automatically banned from being a Director or Designated Member of partnerships as is proposed. This is a proper case for the presumption of guilt where a ban should be automatic, on notice, unless the individual can prove mitigating circumstance.

If I can be of further assistance please let me know.

Yours sincerely

Mark Hardy

ECONOMIC CRIME and CORPORATE TRANSPARENCY BILL

SUBMISSION OF WRITTEN EVIDENCE

to the House of Commons Public Bill Committee

by Mark Gregory Hardy

Suggested detailed amendments to the Bill.

s1(3) Delete “seek to” in line 3.

s96(3) New s1132A(1) Line 1: Replace “may” with “shall”

New s1132A(3) Line 1: Replace “may” with “shall”

New s1132A(5)(b) Line 4: after “...that conduct” insert “by the Secretary of State or any other person without permission of the Director of Public Prosecutions”.

S131 New s7A(1) Line 1: Replace “may” with “shall”

NEW CLAUSES:

To amend s453(1) Companies Act 2006

Insert after “...reports, the company...” the words “and every person referred to in s451(1)”

To amend s453(2)(a) Companies Act 2006

Delete “penalty” replace with “penalties”.

Insert after “..complied with,” the words “or if later the date on which the registrar removes the name of the company from the register”

To amend s453(2)(b) Companies Act 2006

Insert after “public company.” the words “For the purposes of this section a majority owned subsidiary of a public company shall be deemed to be a public company.”

To insert new clause 453(2)(c)

“Penalties shall be calculated and accrued on a not less than quarterly basis and shall become due and payable immediately.”

To **replace** s453(3) Companies Act 2006

New clause to read: “The registrar shall use all reasonable efforts to recover the penalties, which amounts are to be paid into the Consolidated Fund after making provision for the payment of any costs reasonably incurred by or on behalf of the registrar”

To **insert** new clause 853M Companies Act 2006

“Civil Penalty for failure to file confirmation statements”

REPEAT WORDS OF S453 as amended above, replacing the words “accounts and reports” with the words “confirmation statements”.

To **amend** s1000 (4) Companies Act 2006:

Insert after “..strike its name off the register” the words “if and only if the Registrar has received all accounts and Confirmation Statements due to have been filed by the Company on or before the expiration date”

To **amend** s1003 (3) Companies Act 2006:

Insert new sub clause (c):

“(c) unless the company has filed all accounts and confirmation statements required to have been filed before the date of the application, and all civil penalties imposed on the company and directors have been paid.”

Insert new sub clause (d):

“(d) All applications for the removal from the register shall be accompanied by:

- (1) accounts and reports prepared to, and as if, the date of the application was the end of a relevant financial period; and
- (2) a confirmation statement prepared to the date of the application”