PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

Eighteenth Sitting

Thursday 24 November 2022

(Afternoon)

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not later than

Monday 28 November 2022

The Committee consisted of the following Members:

Chairs: Mr Laurence Robertson, Hannah Bardell, Julie Elliott, † Sir Christopher Chope

Anderson, Lee *(Ashfield)* (Con)
† Ansell, Caroline *(Eastbourne)* (Con)
† Byrne, Liam *(Birmingham, Hodge Hill)* (Lab)
† Crosbie, Virginia *(Ynys Môn)* (Con)
† Daly, James *(Bury North)* (Con)
† Hodge, Dame Margaret *(Barking)* (Lab)
† Hollinrake, Kevin *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Hughes, Eddie *(Walsall North)* (Con)
† Hunt, Jane *(Loughborough)* (Con)
† Kinnock, Stephen *(Aberavon)* (Lab)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Mann, Scott *(Lord Commissioner of His Majesty's Treasury)*
† Morden, Jessica *(Newport East)* (Lab)
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Stevenson, Jane *(Wolverhampton North East)* (Con)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Tugendhat, Tom *(Minister for Security)*

Kevin Maddison, Anne-Marie Griffiths, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 24 November 2022

(Afternoon)

[Sir Christopher Chope *in the Chair*]

Economic Crime and Corporate Transparency Bill

2 pm

The Chair: Order. Let me just tell Members about the dilapidations in this room. The thermometer does not work, so we are not able to confirm our own instincts that it is quite cold. I suggested the window be shut, and I am told that it will not shut properly. If Members are very cold during the course of the afternoon, we may have to suspend the sitting for five or 10 minutes so we can go out and get some collective exercise together.

New Clause 52

Beneficial owners: shares and voting rights held by immediate family

"(1) The Economic Crime (Transparency and Enforcement) Act 2022 is amended as follows.

(2) In Schedule 2, after paragraph 6 insert—

'(6A) For the purposes of subsection (6) above—

(a) Condition 1 is also met where 5% or more of shares are held, directly or indirectly, by X and one or more members of the immediate family of X; and

(b) Condition 2 is also met where 5% or more of voting rights are held, directly or indirectly, by X and one or more members of the immediate family of X.'"—*(Stephen Kinnock.)*

The intention of this new clause is to close a loophole in the current rules on registration of overseas entities, so that a threshold lower than 25% ownership or control is applied where a company's shares or voting rights are held by multiple members of the same family.

Brought up, and read the First time.

Stephen Kinnock (Aberavon) (Lab): I beg to move, That the clause be read a Second time.

Conservative Members will have gathered by now that the common theme of many of the new clauses tabled by the Opposition on the register of overseas entities is really closing loopholes. We may not, even will the best will in the world, be able to foresee at this stage exactly where any loopholes may arise, but we can at least act now to close the most obvious and predictable ones. In that spirit, new clause 52 seeks to address one of the most widely documented and understood means by which criminals attempt to conceal the true owners of property in places such as the UK.

As the Financial Action Task Force guidance on transparency and beneficial ownership explains:

"Criminals often use informal nominee arrangements whereby friends, family members or associates purport to be the beneficial owners of corporate vehicles. This can be particularly challenging given the informal and private nature of such arrangements. This issue can be addressed by placing obligations on the nominee to disclose to the company registry the identity of the person on behalf of whom they are acting and imposing sanctions for false declarations."

Going back as far as the Small Business, Enterprise and Employment Act 2015 as well as in more recent legislation, the Government have made significant strides toward eliminating legal loopholes used to conceal economic crime—for instance by abolishing bearer shares and providing for a requirement for company directors to be natural persons, which the Minister assures us will be brought into effect shortly.

Although I commend the Government for having taken those steps, it is clear that we need to go further. Given how high the Government have set the threshold at which ownership of a company's shares must be declared—at 25%—the need to tackle risks of concealing ownership by spreading shares among several different people becomes all the more urgent. Splitting ownership between family members would appear to be the easiest and most obvious way to do this. If the threshold for declaring ownership is set at 25% of a company's shares or voting rights, it takes little imagination to come up with a solution: simply break up the shares so that on paper, if not in reality, five members of the same family appear to own no more than 20% of the company each. As a result, none of them have to disclose their connections with the company under our current laws.

Although it should be acknowledged that similar issues involving the use of nominee directors, for example, raise some complicated legal questions, the use of family members to conceal the beneficial ownership of a foreign company is surely an issue that can be easily dealt with. New clause 52 provides a simple solution that I hope the Government will accept in the constructive spirit in which it is proposed.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kevin Hollinrake): Although I welcome the spirit of the new clause and the hon. Member's wish to close a loophole, I do not think there is one. Let me set out why. It is his position that persons might deliberately reduce their shareholding below the 25% threshold, or hold shares via multiple family members, in an effort to avoid scrutiny. The 25% threshold follows the UK's people with significant control regime, which similarly requires beneficial ownership information for UK-registered companies.

When the PSC regime was in development, significant analysis, including consultation, considered the question of thresholds. The threshold of more than 25% reflects the level of control a person needs in voting rights, under UK company law, to be able to block special resolutions of a company. It was considered that 25% represented the optimum opportunity to understand who is in a position to exert significant influence and control over a company. Collecting information on legal ownership below that threshold would be much more akin to what would be done to have the effect of creating a register of shareholders, rather than beneficial ownership.

In any case, reducing shareholdings will not allow an individual legally to evade scrutiny if they continue to exert significant influence or control. The Economic Crime (Transparency and Enforcement) Act 2022 already addresses that; anyone who has a right to exercise, or actually exercises, significant influence or control over

an overseas entity is still required to be registered under condition 4 of schedule 2, which states that,

"X has the right to exercise, or actually exercises, significant influence or control over Y".

Condition 3 states that,

"X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y."

There are other conditions within the definition, other than the 25%.

Information submitted about beneficial owners must be verified by a UK-supervised "relevant person", such as a lawyer or accountant. Where shares are held through multiple members of the same family, relevant persons are likely to notice that when verifying an overseas entity's application. Where a nominee holds shares for another person, the ECTE Act requires the other person to be recorded as the beneficial owner, not the nominee. That is exactly what the hon. Member for Aberavon set out. It is an offence to deliver false or misleading information to Companies House, and anyone who delivered, or caused to be delivered, such information would be at risk of prosecution—including, potentially, the lawyer or accountant.

From April 2023, UK anti-money laundering supervised relevant persons will be required to report material discrepancies to Companies House in the information contained on the register of overseas entities. That would include where a person has not been recorded as a registrable beneficial owner when a relevant person believes they should have been. The Government do not intend to lower the threshold at this time, but the Bill includes a power to amend the beneficial ownership threshold, which will be subject to the affirmative resolution procedure. I hope that these reassurances will persuade the hon. Gentleman to withdraw the new clause.

Stephen Kinnock: I thank the Minister for his response. I think the spirit of the new clauses is about prevention being better than cure. The Opposition feel that, if we look at the spectrum from deeply opaque business practices to fully transparent ones, when family members are involved we are almost by definition at the more opaque end of the spectrum. By definition, family members will be in a position to communicate with one another, things will not be on the record and the whole thing can be easily cooked up in the way that I outlined. For example, if five family members were given 20% each, they would come in under the 25% threshold.

Does the Minister agree that where family members are concerned things are more likely to be at the more opaque end of the spectrum and therefore the Bill should reflect that and have the lower threshold, as set out in the new clause?

Kevin Hollinrake: I go back to what I said earlier; I think there are all kinds of ways in which somebody could try to subvert the regulations. That is the reality and that is why we are putting the onus not only on the people concerned with the entity but on the people who represent the entity. That is the lawyer, or the accountant, and they should ask all the questions that the hon. Member set out. They should notice a family connection and potentially the person behind those individuals.

However, as I said before, someone could potentially have 0% ownership of an entity and still exert significant control. That is the point. What we are saying is that even if they have 0%, the rules still catch them if they are the person who is exerting control in a way that influences directors or shareholders, or indeed if they can appoint or dismiss directors. All those things are covered under the current provisions.

Stephen Kinnock: As I have said, we are very much about prevention being better than cure and a smart as possible approach to risk management. However, I take the Minister's comments on board and I have no further comments to make. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 53

BENEFICIAL OWNERS IN OVERSEAS TERRITORIES

'(1) The Sanctions and Anti-Money Laundering Act 2018 is amended as follows.

(2) In section 51, after subsection (5) insert—

"(5A) The Secretary of State must ensure that the Order in Council under subsection (2) above comes into effect on date no later than 30 June 2023."'—*(Stephen Kinnock.)*

This new clause would amend the Sanctions and Anti-Money Laundering Act 2018 to ensure that an Order in Council requiring open registers of beneficial ownership in the British Overseas Territories comes into force no later than 30 June 2023.

Brought up, and read the First time.

Stephen Kinnock: I beg to move, That the clause be read a Second time.

New clause 53 would amend the wording of provisions in the Sanctions and Anti-Money Laundering Act 2018 to require the introduction of open registers of beneficial ownership in each of the UK's overseas territories.

Some of the Committee's Members are veterans of the struggle to incorporate the requirement into the 2018 Act and will no doubt recall that it was only thanks to the persistent effort of certain Back Benchers against the determined resistance of Ministers that the necessary amendment was ultimately made. It would be remiss of me not to pay particular tribute to the efforts on this issue of my right hon. Friend the Member for Barking. The Minister also deserves recognition for his advocacy on the need for transparency to be extended to the overseas territories, albeit in his previous incarnation as a Back-Bench Member of this House.

Liam Byrne (Birmingham, Hodge Hill) (Lab): What has changed?

Kevin Hollinrake: Nothing.

Stephen Kinnock: My right hon. Friend asks a very good question, while chuntering from a sedentary position. I trust that the Minister's views have not changed with his recent promotion.

The fundamental principle behind new clause 53 is simply that there should be no double standards in the legal requirements for transparency of beneficial ownership across different parts of the UK, including in the overseas territories. To put it bluntly, we have simply witnessed too many scandals involving money being laundered through territories for whose administration the UK is ultimately responsible to accept the idea that we must simply leave them to their own devices.

I will not name names here, but I think—

Dame Margaret Hodge (Barking) (Lab): I would.

Stephen Kinnock: My right hon. Friend may well wish to do so.

I think that any member of this Committee will understand what I mean when I refer to certain "usual suspects" in cases involving financial dealings that, even with the most charitable interpretation, can only be described as being questionable at best.

The language that was ultimately added to the Sanctions and Anti-Money Laundering Act 2018 reflected a recognition from Members of all parties and in both Houses that the same standards requiring open, publicly accessible registers of beneficial ownership should apply to both the UK and its overseas territories. It also reflected the widespread consensus that if we wanted to ensure that the overseas territories played by the same standards, we should be prepared to use sticks as well as carrots.

The result of that consensus was the provision in section 51 of the 2018 Act that any overseas territory that had not established a beneficial ownership registry in line with the standards of our own by the end of 2020 should be subject to direct legislation by an Order in Council. As I have already mentioned, the Government practically had to be dragged kicking and screaming to the point where they accepted that provision in the first place. However, as subsequent events have demonstrated, the real problem is that Ministers have interpreted section 51 of the Act so creatively that in effect they have completely undermined if not the letter then certainly the spirit of the law.

It seemed clear to those who pushed for section 51 of the 2018 Act that what it required was for beneficial ownership registries to be in place by the end of 2020, whether as a result of the overseas territories' own legislation or an Order in Council. According to the spin the Government chose to put on it, its obligation had been met simply by the publication of a draft Order in Council, regardless of when, or even whether, such an order might actually come into force. The result is that we are here yet again—almost five years later—still discussing how to ensure the implementation of registers to the same standards across all of the UK's territories. Surely it should not be beyond the wit of Ministers—even in this Government—to have sorted this out by now—*[Interruption.]* I am just checking that hon. Members are still awake on the Back Benches.

2.15 pm

I know exactly what the Minister will argue in response to this new clause. He will say that it is not the usual practice for the UK to legislate directly for the overseas territories. He will say that since each of the territories have already committed to introducing their own registers, there is no need for an Order in Council. These arguments are, at best, only partly true. For one thing, while it may not be commonplace to legislate directly for the overseas territories from Westminster, it is nevertheless perfectly permissible from a constitutional perspective and, in some cases, it may be constitutionally necessary—not least in cases where it appears necessary to ensure that the territories implement the laws that we expect and require them to abide by. If laws against money laundering do not fall within this category, I cannot imagine what does.

If the Minister intends to argue that assurances provided by the territories on the planned introduction of beneficial ownership of registries should be taken at face value, he will at least understand the reasons why at least Labour Members may be rather sceptical of that position. However, if any Member of this Committee wants to see an example of the problems that a completely hands-off approach to the overseas territories can lead to, I will gladly refer them to the 950-odd page report submitted to the Government by the British Virgin Islands independent commission of inquiry back in June.

Further examples in relation to other territories are not hard to find, which brings me back to section 51 of the 2018 Act and specifically the need to hold the Government to strict deadlines to ensure that registers of beneficial ownership are put in place across all parts of the UK and in each overseas territory without further delay. New clause 53 would help to secure that primarily by removing any scope for ambiguity or creative interpretation of the requirement for an Order in Council, which should take effect no later than six months into the new year. We have waited long enough for the promised registers to materialise, and we should not have to wait for another public scandal to jolt the Government into taking the action we all know is needed. Given the Minister's extensive understanding of these issues, I hope he will not argue against the new clause.

Kevin Hollinrake: I am certainly not arguing against the spirit of the new clause. I add my thanks to the right hon. Member for Barking and, indeed, my right hon. Friend the Member for Sutton Coldfield (Mr Mitchell), who took great action on this matter way before I became interested in the whole subject—although it is true to say that I took an active interest from the Back Benches on ensuring that we address this issue.

I do not accept the hon. Gentleman's characterisation of our approach as being hands off. I do not consider 250 pages of legislation as being hands off at all. There is much we want to do and agree on, and I have to agree with what I said previously. The hon. Member for Aberavon may regard me as poacher turned gamekeeper, but I do not see that at all. I still want to ensure these measures are in place. In fact, we should go further than his new clause, and I will explain that in a second.

When amendments were tabled to the Bill that became the 2018 Act several years ago, we were clearly in a very different place. All inhabited overseas territories have now committed to introducing publicly accessible registers of company beneficial ownership, and the UK Government expect them to be in place by the end of 2023, so there is a deadline on which the order could be placed. As well as overseas territories, we have committed to asking the Crown dependencies to also do that, and that does not feature in the hon. Gentleman's new clause, so it is important that this goes further than he set out.

Dame Margaret Hodge: The Minister is correct in what he says, but could he deny the rumour I have heard, which is that they are trying to get around ensuring public accountability by charging anybody who wishes to look at the register by entry? If a charge

is levied for entry to everything that appears on the register, that would diminish the intended public accountability.

Kevin Hollinrake: I am not aware of that. Clearly, it is important that the overseas territories and Crown dependencies respect the will of Parliament and the spirit of the will of Parliament, so we would be very concerned if that is the case.

Dame Margaret Hodge: I have raised this issue with the right hon. Member for Sutton Coldfield, who now sits in the Foreign Office, but I do not think it is entirely within his portfolio. Will the Minister agree to pursue the issue? If that is the way they have tried to avoid or play down the intent of Parliament, it is a very serious matter.

Kevin Hollinrake: I do not think we should operate on the basis of rumours, but I hope that the overseas territories and Crown dependencies will be following this debate with interest. We want them to follow both the spirit and the letter of the legislation that is implemented. The information should be publicly available—that is the clear intention.

This is a major commitment that will put the overseas territories and Crown dependencies ahead of most jurisdictions, and it will be a vital element of promoting greater transparency around the control and ownership of companies. I have sought assurances that it is not a hollow commitment. The FCDO is providing support to the overseas territories through Open Ownership, a respected and expert NGO, to ensure that each territory can progress its publicly accessible registers, and significant progress has been made. For example, Gibraltar's register is already live, so it will be interesting to hear about the right hon. Lady's experiences of that.

Dame Margaret Hodge: The Minister has jogged my memory. It was actually from the implementation of the Gibraltar register that I heard that, although it is live, there is a charge for accessing information.

Kevin Hollinrake: That may be something that the right hon. Lady will investigate. I am happy to make the commitment that we will do so as well.

The Cayman Islands has completed a consultation on the approach to its register, and the technical work to hit the target date is under way. The BVI recently passed primary legislation to enable the framework for regulations to be made for its register in preparation for the end of 2023. Smaller overseas territories are also working with the FCDO to update their systems to allow public access to this important information. Notably, in Anguilla the FCDO financed a completely new register, which is designed to allow public access.

The effect of new clause 53 would be to move the timeline forward by only six months for the overseas territories. All the territories are now willingly implementing publicly accessible registers and putting significant effort into the policy, despite the fact that most jurisdictions around the world are not doing so. To move forward an agreed timeline would not show good faith in our partnership with the territories. I can commit to keep the House regularly up to date on progress with the territories, and the UK Government will continue to work collaboratively, and as equal partners, with the overseas territories on their commitment.

Stephen Kinnock: I fear that it is a bit naive and complacent to think that this is going to be done by consensus. Five years have gone by since the 2018 Act was introduced and it is extraordinary that we may have to wait another 12 months, as the Minister says. Frankly, I remain sceptical that, without a stick as well as a carrot in this conversation, anything will ever happen. I would welcome any feedback that the Minister has on that point. I do not really have a specific question for him, but I am struggling to understand why we can possibly think it is acceptable that here we are, five years later, with a chasm in our ability to implement and go after the things that we want to go after. Does he really think it is justifiable to wait another 12 months, rather than just accepting the new clause?

Kevin Hollinrake: As Ronald Reagan used to say about the Russians: trust, but verify. It is important that we trust our partners but also that we see what they are doing to put these measures into effect. I quoted a number of examples where that has been done. All these overseas territories are putting the measures in place. It is right to work on a basis of good faith. We have the stick the hon. Gentleman requires, if necessary. Beyond the end of 2023, we can then use the Order in Council procedure, as he suggests. I will ensure that we keep watch over the situation very carefully, as I have committed to do. The hon. Gentleman can rest assured that it is our understanding that these measures will be in place. I urge him to withdraw the new clause on that basis.

Stephen Kinnock: Unfortunately, we remain unconvinced by the Minister's answers on these points and we wish to push the new clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 13]

AYES

Byrne, rh Liam	Malhotra, Seema
Hodge, rh Dame Margaret	Newlands, Gavin
Kinnock, Stephen	Thewliss, Alison

NOES

Ansell, Caroline	Hunt, Jane
Crosbie, Virginia	Mann, Scott
Daly, James	Stevenson, Jane
Hollinrake, Kevin	Tugendhat, rh Tom
Hughes, Eddie	

Question accordingly negatived.

New Clause 54

ENTITIES FROM HIGH-RISK JURISDICTIONS: PROHIBITION ON OWNERSHIP OF UK LAND

"(1) The Land Registration Act 2002 is amended as follows.

(2) In Schedule 4A, after paragraph 2 insert—

'(2A) No application may be made to register an overseas entity as the proprietor of a qualifying estate if the entity was originally incorporated in a jurisdiction which was designated as a high-risk jurisdiction for money laundering and terrorist financing at the time of the entity's incorporation.

(2B) For the purposes of section (2A) above, "designated as a high-risk jurisdiction for money laundering and terrorist financing" means—

(a) a jurisdiction included on the Financial Action Task Force list of jurisdictions under increased monitoring;

(b) a jurisdiction included on the Financial Action Task Force list of high-risk jurisdictions subject to a call for action; or

(c) any other jurisdiction which the Secretary of State may see fit to designate as a high-risk third country in Schedule 3ZA of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.'"—*(Stephen Kinnock.)*

The intention of this new clause is to prevent any company from registering in the UK for the purposes of acquiring land if the company in question was originally incorporated in a jurisdiction designated, either by UK or international authorities, as a high-risk jurisdiction for money laundering and terrorist financing at the time of the company's incorporation.

Brought up, and read the First time.

Stephen Kinnock: I beg to move, That the clause be read a Second time.

Given the extensive discussions we have had on issues involving money laundering risks, including risks in relation to certain designated high-risk jurisdictions overseas, there is a fundamental question that we are not sure we have got to the bottom of. That question, which is addressed in part by new clause 54, is why we should allow a company incorporated overseas in a jurisdiction that operates on the basis of lax money laundering controls to do business in the UK at all, much less to own property or land here.

As we have already discussed, the primary purpose of the Treasury's list of designated high-risk countries is to mirror the list of jurisdictions identified by the Financial Action Task Force as posing serious threats of money laundering and terrorist financing on account of weaknesses in their laws, inadequate law enforcement or some combination of the two.

New clause 54 seeks to incorporate into the Bill what we on the Opposition Benches believe to be a matter of basic common sense: if a company was initially formed under laws designated by the Treasury, under international guidelines, as seriously deficient in their approach to money laundering risks, that company should not be allowed to own land or property in the UK. It is a straightforward solution to a very serious problem. It would go a long way towards driving tainted money out of the UK property market. I hope that, on this basis, the Government will support new clause 54.

Kevin Hollinrake: New clause 54 seeks to prevent the acquisition of land in the UK by companies registered in jurisdictions that are listed as high risk by the Financial Action Task Force or so designated by the Secretary of State under the UK's money laundering regulations. The Financial Action Task Force lists jurisdictions identified as having strategic deficiencies in their anti-money laundering and counter terrorist financing regimes that could pose an increased illicit finance risk.

The new clause is well intentioned and hon. Members are to be commended for their determination to rid the UK of dirty money. However, we do not believe that the new clause will have the intended effect. Jurisdictions that appear on the taskforce's list of jurisdictions under increased monitoring, which include some key UK partners and Commonwealth members, have committed to swiftly resolve the identified deficiencies within agreed timeframes. The list is updated three times a year, and under the UK's AML regulations, obliged businesses are already required to take enhanced due diligence measures for customers and transactions linked with individuals or companies established in high-risk jurisdictions.

2.30 pm

Liam Byrne: No one could accuse the Minister of being an innocent abroad in a world that is not innocent, but I have to ask him whether he seriously believes the content of the paragraphs that he has just read out. I have no doubt that there are countries around the world that have said that they are going to increase their AML supervision, but we now have a situation in this country where we have some very bad people, such as Usmanov and others, who own property portfolios of up to £50 million. We have allowed them to do that, and now we cannot take those portfolios off them, so could the Minister at least tell us how he is going to seriously get a grip on bad people from bad countries being allowed to buy assets here in the UK?

Kevin Hollinrake: We have applied sanctions on a targeted basis to some of those actors—*[Interruption.]* The right hon. Gentleman raises his eyebrows. Is he not aware of the sanctions we have applied to certain individuals from high-risk jurisdictions?

Liam Byrne: As the Minister knows, I am one of the Members who pushed for the Government to toughen up their sanctions after they left so many people off the sanctions list the first time around. Going forward, how is he going to stop bad people from bad countries who have no intention of improving their AML regulation buying mansions in London?

Kevin Hollinrake: It is entirely wrong to tar everybody from one country with the same brush. Clearly there are some deficiencies, but is the right hon. Gentleman honestly saying that every person from a jurisdiction that has deficiencies in its AML regime is a bad person? I think that is what he said, and I think it is entirely inappropriate.

Liam Byrne: I am grateful for the chance to put the question where it belongs, which is back on the Minister. The question was very simple: how is he going to ensure that bad people who happen to live in bad countries are prohibited from buying assets here in London? How is he going to do that? Tell us!

Kevin Hollinrake: Through the provisions in this 250-page piece of legislation; through the provisions in the legislation that was passed earlier this year, which both of us campaigned for; and through other things, such as the sanctions regime—through all those different things. It is our view that we should look at the people, not necessarily the jurisdiction. Of course, we work internationally to improve jurisdictions around the world, but it is wrong to suddenly say that countries, potentially including Commonwealth countries, are bad countries, which I think is what the right hon. Gentleman said.

Liam Byrne: We may as well pursue this to its death—I am grateful to the Minister for being so generous in giving way. Let us take the example of Usmanov. He has only recently been sanctioned, but when we read the indictment, we see that it is very clear that he has been an associate, colleague and enabler of President Putin for an awfully long time. The sanctions came ex post facto, after he had been allowed to acquire assets. How do we create a more preventive regime to stop this kind of nuisance on our shores?

Kevin Hollinrake: The right hon. Gentleman is saying that no Russian should ever be able to buy property in the UK—

Liam Byrne: I didn't say that, did I?

Kevin Hollinrake: That is exactly what he is saying. Russia is a high-risk jurisdiction; is he saying that no Russian can buy property in the UK?

Liam Byrne: I am grateful for the chance to clarify. The Minister is engaged in the old debating tactic of putting the question back on me, but the question is on him: how is he going to stop individuals like Usmanov buying property in London in the future? What safeguards does he think he has in place? When a sanction has not yet been put in place, how is he going to stop people about whom we have serious concerns acquiring that kind of asset?

Kevin Hollinrake: If the right hon. Gentleman is saying that people are guilty until proven innocent, that is entirely the wrong way to look at this issue. Of course, those decisions have to be information-led; many of the provisions in the Bill are about information sharing and being information-led, looking at the red flags, identifying the people who we potentially need to be concerned about, and preventing those people's actions on that basis.

Liam Byrne: Will the Minister give way?

Kevin Hollinrake: I think I have given way enough on this point.

Liam Byrne: It is my last one.

Kevin Hollinrake: One last time, then.

Liam Byrne: The Minister is being characteristically generous with his time. Is he therefore reassuring the Committee that if the provisions in the Bill had been in place, Usmanov would have been prohibited from buying a mansion three years ago—yes or no?

Kevin Hollinrake: He may not have been, because he was not on the sanctions list at that point, and he was not on a sanctions list anywhere else in the world, as far as I am aware. He may have been—I do not actually know that information—but Usmanov would have been treated like anybody else under our system. It is interesting how quickly the Opposition sometimes will jettison some of the fundamentals of our society, one of which being that a person is innocent until proven guilty. We need the evidence before we can sanction somebody. We will adhere to that principle—certainly I will as long as I am in Parliament.

This new clause would prevent the registration of titles by legitimate companies in any of the jurisdictions on the lists. That would have a detrimental impact on those companies wishing to invest in the UK, as not every company incorporated in those jurisdictions is a bad actor. Although the new clause would prevent registration of title by an overseas entity, it is not possible to prevent a transaction from taking place and money changing hands. Unintended consequences would be likely.

Any overseas entity applying to the Land Registry to register title must now be registered with Companies House and have an ID number. That provides a safeguard against bad actors, more transparency about the overseas entity, and information for law enforcement should it later transpire that the overseas entity is involved in criminal activity. Therefore, I politely ask for this new clause to be withdrawn.

Stephen Kinnock: We are really just going back to the point about prevention being better than cure. Of course, what is really important here is that it is our sovereign Government, our Treasury, doing the designations. It is our Treasury and other expertise in our British Government saying, "That jurisdiction over there is high risk. It has lax control on money laundering. It has no sense, really, of what is going on. It's a kind of wild west in its business environment." That should raise many red flags and set many alarm bells ringing. The constructive spirit of this proposal is to say, "Look, we know where there are red flags. We should be acting on those red flags in a preventive way," rather than, as my right hon. Friend the Member for Birmingham, Hodge Hill said, an ex post facto way, because once the damage is done, it is a lot more costly and a lot more insidious, because we have not dealt with the issue at source and then we are left to clear up the mess and pick up the pieces. That is the spirit in which the proposal is made. I invite the Minister to express any reflections that he has on what is actually a kind of philosophical point about the Bill. Is prevention better than cure—yes or no?

Kevin Hollinrake: Yes, undoubtedly, but I think that putting a blanket restriction on bona fide companies and bona fide individuals buying from those jurisdictions is disproportionate and wrong. I absolutely agree with the hon. Gentleman in terms of the spirit of the new clause and of his point about red flags. That is exactly the way the system works. Yes, certainly, the registrar should definitely look at the jurisdiction from which the person is purchasing a property, for example. That may well be the red flag that the hon. Gentleman refers to. To me, that is a more appropriate way of dealing with this matter than simply a blanket ban on purchase.

Stephen Kinnock: I thank the Minister for those points. We remain unconvinced by the position and would like to push this new clause to a Division.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 14]

AYES

Byrne, rh Liam	Malhotra, Seema
Hodge, rh Dame Margaret	Newlands, Gavin
Kinnock, Stephen	Thewliss, Alison

NOES

Ansell, Caroline	Hunt, Jane
Crosbie, Virginia	Mann, Scott
Daly, James	Stevenson, Jane
Hollinrake, Kevin	Tugendhat, rh Tom
Hughes, Eddie	

Question accordingly negatived.

New Clause 55

UPDATING DUTY: FREQUENCY

'(1) The Economic Crime (Transparency and Enforcement) Act 2022 is amended as follows.

(2) In subsection (9) of section 7, in paragraphs (a) and (b) for "12" substitute "6".'—*(Stephen Kinnock.)*

This new clause would require registered overseas entities to provide updates on any changes in beneficial ownership every six months, instead of annually as is currently required.

Brought up, and read the First time.

Stephen Kinnock: I beg to move, That the clause be read a Second time.

New clause 55 also provides a simple solution to what appears to be a flaw in the Bill's current drafting, which could be exploited by criminals seeking to exploit any legal loopholes left open to them. Under the Economic Crime (Transparency and Enforcement) Act 2022, companies required to register their ownership of UK property are required to provide annual updates on any changes to their beneficial ownership. It is not hard to see how that could be used as a loophole to conceal the ownership of property by, for instance, an individual designated by UK sanctions. A company could, at least in theory, report to Companies House that its beneficial owner was the same as it had been the previous year, without disclosing the fact that another individual had been a beneficial owner at some point during the intervening 12 months.

New clause 55 is intended to probe the Government's thinking in this area and, as with the previous new clause, to provide the Minister with an opportunity to set out in detail how the Government plan to ensure that the laws leave no foreseeable loopholes open for exploitation by criminals.

Kevin Hollinrake: I might get into trouble with you, Sir Christopher, but on the previous new clause, countries on the high-risk jurisdiction list include Israel, Turkey and the Czech Republic. Is it honestly the Opposition's intention to prevent individuals and companies from those jurisdictions from buying property in the UK? We should think again.

I thank the hon. Member for Aberavon for new clause 55. I wholeheartedly agree that keeping the information on the register up to date is critical. The annual update requirement is intended to provide certainty for third parties transacting with overseas entities. Property transactions often take many months to complete, and during that time a third party transacting with an overseas entity must have certainty that the entity remains compliant with the requirements of the register so that transactions are not disrupted. The key sanction for non-compliance with the register, which interferes with existing property rights, is to make it impossible for a buyer to register a title if purchasing from a non-compliant overseas entity. The onus is therefore on the buyer and their agents to ensure that they do not transact with a non-compliant entity.

In order to protect the buyer, likely to be an innocent third party, it follows that there must be absolute legal certainty about the compliance status of the overseas entity throughout the duration of the transaction. An annual update provides that certainty, giving enough time for transactions to be completed before the requirement for an update kicks in. If an update is not made on time, the overseas entity is regarded as non-compliant, and the restrictions on land transfers will bite.

The hon. Member talked about somebody switching ownership between the two reporting times. I cannot honestly see what the benefit to anybody of doing that would be, but he may wish to give me examples.

The ECTE Act includes a power to amend the update period by regulations. Should it become clear, once the register has bedded in, that the update period is too long or too short, that power can be exercised to change the update period. I therefore ask that the probing new clause be withdrawn.

Stephen Kinnock: I thank the Minister for those clarifications. This was an opportunity to set out those assurances, which we are happy to accept. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 56

LIMITED PARTNERSHIPS: REGISTRATION OF PERSONS OF SIGNIFICANT CONTROL

"(1) The Secretary of State must by regulations make provision about the registration of persons of significant control in relation to limited partnerships.

(2) For the purposes of regulations under this section, 'persons of significant control' may include persons with a right to—

(a) 25% or more of the surplus assets on winding up,

(b) a voting share of 25% or more,

(c) appoint or remove the majority of managers,

(d) exercise significant influence or control over the business, or

(e) exercise significant influence or control over a firm which would be a person of significant control if it were an individual.

(3) No regulations to which this section applies may be made unless a draft of the statutory instrument containing the regulations (whether or not together with other provisions) has been laid before, and approved by a resolution of, each House of Parliament."—*(Dame Margaret Hodge.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 15]

AYES

Byrne, rh Liam	Malhotra, Seema
Hodge, rh Dame Margaret	Newlands, Gavin
Kinnock, Stephen	Thewliss, Alison

NOES

Ansell, Caroline	Hunt, Jane
Crosbie, Virginia	Mann, Scott
Daly, James	Stevenson, Jane
Hollinrake, Kevin	Tugendhat, rh Tom
Hughes, Eddie	

Question accordingly negatived.

New Clause 59

PUBLICATION OF INFORMATION ABOUT TRUSTEES

"(1) The Economic Crime (Transparency and Enforcement) Act 2022 is amended as follows.

(2) In subsection (1) of section 22, omit paragraph (c)."—*(Dame Margaret Hodge.)*

Brought up, and read the First time.

Dame Margaret Hodge: I beg to move, That the clause be read a Second time.

We touched on this issue last week. The new clause is what I consider to be another perfectly sensible, rational, pragmatic amendment that enhances transparency and accountability. It would ensure that the legislation worked effectively rather than ineffectively, as we think will be the case at the moment.

2.45 pm

The new clause is designed to close a loophole in the Economic Crime (Transparency and Enforcement) Act 2022. As I understand it, the register of overseas entities will require trusts that currently own property in the UK to declare the name of a trust; its creation date; and the name of all the trustees, the beneficiaries, the settlers, the granters or the interested persons. However, on the actual register all that will appear is the name of the trust. There will be no details of who actually owns the trust and has the ownership control and benefits of the assets that exist within that trust.

I understand that the information would be available to enforcement, HMRC et al. I get that. The whole point of much of the legislation, however—and I know the Minister knows this is true—is to extend the accountability beyond the enforcement agencies, so that, for example, businesses, civil society, the press and we as Members of Parliament can all understand who is really behind the overseas entity that owns the property here in the UK. That is what our little new clause would enable.

My right hon. Friend the Member for Birmingham Hodge Hill has reminded us that when we try to sanction assets, particularly those of Russian oligarchs—the friends of Putin who sustain him in his wicked endeavours—those oligarchs hide their assets in trusts. We have seen that in recent times. The Economic Crime (Transparency and Enforcement) Act 2022 calls on trusts to tell Companies House the names but it does not require them to do so. Let us consider the Usmanov example to which my right hon. Friend referred.

I am sad to say that Usmanov is an ex-Arsenal shareholder. He put millions into an irrevocable trust and was once said to be one of the UK's richest individuals. The Russian asset tracker, which works in partnership with *The Guardian* and the organised crime and corruption reporting project and other international news organisations, has found out a little bit about where those assets went. He had a £350 million private jet and a helicopter, which he deregistered from the Isle of Man on the day that he was sanctioned here in the UK. His close relatives now own various properties in Italy, Latvia and Germany that he acquired with money stolen from the Russian people. And he has a private yacht, which has a concession to moor in Barcelona port until 2036.

That individual also owns two properties in London and the south-east, Beechwood House in Highgate, which is worth £48 million—it has probably gone up since I got that figure—and a 16th century house and estate: Sutton Place, in Surrey, which is worth about £34 million. That is getting on for £100 million. We tried to freeze those assets when we sanctioned him, but Sutton Place is owned by a company based in Cyprus, and Beechwood House is owned by a company based in the Isle of Man. If there is no transparency on who is behind trusts and ownership, bad people can obfuscate where they put their stolen assets. It is very difficult for us not just to freeze, but to seize the asset—as we will come on to on Report perhaps.

If we do not have the information out in the open, it is impossible for us as MPs, for civil society, for the non-governmental organisations or for journalists to follow the money. That is all we are trying to do. I urge the Minister, in the interests of making the Bill an effective bit of legislation, which is what we all seek, to accept the new clause and not to put forward any tenuous argument that belies common sense. The new clause is a common-sense proposal that would simply increase transparency and accountability, making it easier to follow the dirty money that has entered the UK.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship this afternoon, Sir Christopher, and to speak briefly in support of the speech of my right hon. Friend the Member for Barking. The new clause is short and, on that basis alone, the Minister might want to look closely at it for inclusion in the Bill. It is important and significant.

We almost thought we would not have this conversation when we debated the Government new clause 15 on Tuesday, until the Minister made it clear that information about trustees would not be published. That feels like a space that is a black hole for more to be hidden in. If we do not do this, the Minister will probably see a rise in the use of trusts to achieve less transparency.

For all the reasons my right hon. Friend the Member for Barking outlined, it is important that the information about trustees is available for public inspection. I will welcome the Minister's comments. Perhaps he has thought further on the arguments since Tuesday. Here is further room for him to consider information on trustees, where it is held and its being published for public inspection. That would be in the public interest.

Kevin Hollinrake: The word "trust" in this context sends shivers down all our spines. I understand the rationale behind the new clause, but the right hon. Member for Barking is right in that I will state my position.

[Kevin Hollinrake]

There is a key matter here. The right hon. Lady cited a couple of examples, one a trust and one a company, where she implied a disguised ownership of certain assets. The current requirements of legislation are that information about a registrable beneficial owner of a trust is displayed publicly. If someone is a beneficial owner, their name is revealed publicly. She might argue that that person could be lying, but they can lie about ownership of anything—"I don't own any of this and do not exert control"—as we have discussed before.

The amendment makes all trust information available, even if that sits below the 25% or whatever ownership there might be of the trust or its benefit.

Dame Margaret Hodge: Usmanov is the better example, although I could have talked about Gutseriev or Fedotov, or about Azerbaijan—I had a debate in the House on the leading family of Azerbaijan. The reason all those things hang together is that the beneficial ownership is passed to a daughter or sister, or the shareholding is below 5%, and we are creating all these legal loopholes that enable the Usmanovs, Gutserievs, Fedotovs and all those people to hide their real control of an asset. That is really the point. That is what we are trying to get at—having it out in the open. What we have said constantly with our amendments is that if there are minor flaws with the way we have put them together, we are happy to listen, but I am absolutely certain that the principle behind them is correct.

Kevin Hollinrake: I just do not think that is right. The right hon. Lady might not have meant this exactly, but even if ownership is reduced—this goes for a company more than a trust—to below 5%, the amendment would not even solve that issue, would it? The legislation requires the beneficial ownership to be registrable and for there to be openly available information. Of course the person who is entering that information could lie. A lawyer or accountant could lie. But now they are subject to a criminal sanction for doing that if it is proven. As has been mentioned, information around trusts is a concern. It should raise red flags with Companies House. That information can of course be shared.

The other thing I would say is that trusts are used for legitimate purposes, including to protect the privacy and safety of children, for example, and other vulnerable individuals. The ECTE Act allows the registrar to disclose protected trust information to HMRC, and regulations will soon be made to allow the registrar to disclose the information to other persons with functions of a public nature, such as tackling crime.

Dame Margaret Hodge: The Minister often says this, but there are two issues here. If the trust or any of these entities are for legitimate purposes, the people involved should have absolutely no fear of transparency. That is the fallacy in the argument. If nobody is doing anything wrong, they should not worry about the information being public. If there are really good reasons, as there occasionally may be, for keeping confidential the name of a particular individual in a particular trust, we can and we are putting in legislation that covers those exceptional circumstances, but using the exceptional circumstance to justify the general rule is simply not good enough.

Kevin Hollinrake: We may have to agree to disagree. The requirement to register somebody of beneficial ownership is quite clear. If there is a beneficial owner, that person will have to be publicly named. That is what we seek to achieve through this legislation, and that is what we think it does. There are some points in the amendment that we think are relevant, including potentially widening access to information in certain circumstances with certain authorities. We will consider that, but we cannot accept the totality of the amendment at this time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 16]

AYES

Byrne, rh Liam	Malhotra, Seema
Hodge, rh Dame Margaret	Newlands, Gavin
Kinnock, Stephen	Thewliss, Alison

NOES

Ansell, Caroline	Hunt, Jane
Crosbie, Virginia	Mann, Scott
Daly, James	Stevenson, Jane
Hollinrake, Kevin	Tugendhat, rh Tom
Hughes, Eddie	

Question accordingly negatived.

New Clause 60

REPORTING REQUIREMENT (ENFORCEMENT CAPABILITIES)

"(1) The Secretary of State must, no later than six months from the date on which this Act comes into force, carry out and publish the results of a review of the capacity of the Financial Conduct Authority to regulate the activities of cryptoasset businesses as required by the relevant legislation.

(2) For the purposes of subsection (1) above, 'relevant legislation' includes—

(a) the Money Laundering Regulations 2017, as amended;

(b) the provisions of Part 4 and Schedules 6 and 7 of this Act.

(3) For the purposes of subsection (1) above, matters relevant to the assessment of the capacity of the Financial Conduct Authority to regulate the activities of cryptoasset businesses include—

(a) the projected budget during the current spending review period;

(b) the total number of full-time equivalent staff;

(c) the level of relevant expertise within its workforce; and

(d) challenges related to the recruitment and retention of staff.

(4) The review must also include an assessment of whether the current legal powers of the Financial Conduct Authority provide an adequate basis for consumer protection in relation to cryptoassets."—*(Stephen Kinnock.)*

Brought up, and read the First time.

Stephen Kinnock: I beg to move, That the clause be read a Second time.

The Chair: With this, it will be convenient to discuss:

New clause 61—*Reporting requirement (overseas territories)*—

"'(1) The Secretary of State must, no later than six months from the date on which this Act comes into force, carry out and publish the results of a review of the level of regulation of cryptoasset businesses for the purposes of tackling economic crime in—

(a) each of the Crown Dependencies; and

(b) each of the UK Overseas Territories.

(2) Following the publication of such a review, the Secretary of State must prepare and publish a strategy for enhancing the level of regulation of cryptoasset businesses in any of the jurisdictions mentioned in subsection (1) above which may have serious deficiencies in their regulatory frameworks in relation to such businesses.

(3) For the purposes of subsection (2) above, criteria for identifying serious deficiencies shall include—

(a) the level of compliance by each jurisdiction with international standards set out by the Financial Action Task Force and affiliated regional bodies;

(b) the level of compliance by each jurisdiction with its legal obligations under any relevant international agreements to which it is a party; and

(c) the level of enforcement in each jurisdiction of relevant laws applicable in that jurisdiction.

(4) The strategy required by subsection (2) above must include specific plans to ensure parity between—

(a) legal frameworks; and

(b) law enforcement efforts

between the UK and each Crown Dependency and Overseas Territory."

Stephen Kinnock: New clause 60 takes us back to some of the issues we touched on during Tuesday's debate on part 4 of the Bill in relation to cryptoassets. Considering how many new regulations there are in this area, it is worth taking stock of how well the regulations already in place have been implemented to date and what more needs to be done to ensure that those responsible for enforcing the measures in the Bill have the powers, the expertise and the capacity they need.

3 pm

As the primary regulator of cryptoasset businesses, the FCA is a case in point. Following changes to the anti-money laundering regulations, cryptoassets were brought under the FCA's supervision at the beginning of 2020, but, as I mentioned in Tuesday's debate, the FCA has reported that the overwhelming majority of crypto firms required to register have either failed to do so or withdrew their applications once it was clear that they would not meet the requirements. As a result, there appear to be well over 200 firms doing business in the UK without permission, outside any supervision under anti-money laundering regulations.

Therefore, it should be apparent to every member of the Committee that there is an urgent need to address the growing shortfall between expectations and resources in the context of cryptoasset regulation. However, rather than implementing the strategy required to match the Minister's ambition, with the requisite staffing, funding and expertise, the Government risk making a bad situation worse.

Under the Bill, Ministers are bringing in new regulations at the very same time as civil service budgets and staff are struggling to deal with unprecedented strain. It is by no means clear that the Bill, particularly in its provisions on cryptoassets, will achieve anything more than to ask more of regulators and law enforcement agencies while providing them with less resource to do it. New clause 60 represents an attempt on the Opposition's part to require a comprehensive and strategic approach to tackling risks of economic crime in the crypto sector. It is tabled very much in the spirit of seeking to ensure that legislation is properly implemented.

The Minister for Security (Tom Tugendhat): I am sympathetic to the intent of new clause 60, but I cannot agree to it. It remains vital to maintain a robust supervisory regime for cryptoasset firms, but that is something the FCA already does.

The FCA's approach to assessing firms in the initial stages through registration removes poor-quality firms and bad actors from the UK system, reducing the risk of domestic firms being used to launder the proceeds of illicit activity. That robust gateway has already prevented over 200 firms that were unable to manage anti-money laundering and counter-terrorist financing risks from being registered.

Cryptoasset firms approved to operate in the UK are subject to ongoing supervision by the FCA to make sure they continue to meet those standards. The regime also provides the FCA with a number of powers in relation to those who do not meet the UK's standards. For example, the FCA can direct a firm to make disclosures, implement additional controls and oversights, and issue injunctions to prevent potentially illicit cryptoasset activity. Furthermore, the FCA is already subject to oversight by His Majesty's Treasury, the lead Department for anti-money laundering regulations, and, as a statutory regulator, it is also directly accountable to Parliament.

I turn to new clause 61. Again, I am sympathetic but do not support it. As we have discussed, FATF sets international standards on anti-money laundering and counter-terrorist financing, including in relation to the regulation of cryptoasset businesses, or "virtual asset service providers", as the taskforce calls them.

FATF and its regional bodies are responsible for assessing their members against international standards. That includes assessments of the Crown dependencies and overseas territories on their regulation of cryptoasset businesses. A UK review of the Crown dependencies and overseas territories would not add value to that. The Crown dependencies and overseas territories co-operate with the UK and are committed to meeting international standards on fighting financial crime and countering terrorist finance. I therefore ask the hon. Member for Aberavon to withdraw the proposed new clauses.

Stephen Kinnock: I thank the Minister for that feedback. We want to ensure there is a mechanism to check and verify that the FCA is able and resourced to do what we want it to do. Our worry is that if we take a hands-off approach and leave it to its own devices without looking at whether it is achieving what we want it to achieve, in

[Stephen Kinnock]

this fast-moving world, we could potentially lose control of the situation. I am sure that that would be a matter of regret to the Minister and the Committee.

New clause 61 is about ensuring that UK authorities can keep a close watch on developments in the overseas territories and take any necessary steps to ensure that we avoid the same kind of race to the bottom that has turned some of those territories into a magnet for a host of dodgy—and often outright criminal—financial transactions in recent decades. There are already reports of rapidly growing cottage industries springing up in places such as the Cayman Islands, aiming to facilitate the incorporation of cryptoasset businesses with, we can only assume, minimal regulatory oversight.

I thank the Minister for his comments, but will he say a bit more about how we are ensuring and building robust approaches to regulating crypto-related risks in our overseas territories, as well as the Crown dependencies, in the light of those growing cottage industries, the increasing risk, and our responsibility for what is happening there? Does he feel that there is anything more that could or should be done?

Tom Tugendhat: The hon. Member raises some important points. I do not in any way wish to disabuse him of the view that there is a risk with this industry; crypto has posed challenges to many areas. It is worth pointing out that the FCA has a budget of £600 million and co-operates extremely closely with the overseas territories and their regulatory bodies. It provides not just an oversight function here, but an education function for many others, and it sets an example that many other jurisdictions seek to emulate.

I urge the hon. Member to look at the way in which the FCA actually works, and at the way in which the overseas territories and Crown dependencies already co-operate. That is not to say that there are not problems—there are often problems in such regulatory environments, which we need to address—but the correct thing to do is to work with the FCA, as it is already doing an excellent job, and ensure that it is properly resourced. As I said, £0.6 billion seems like quite a lot, and there are various ways in which we are supporting further improvements via co-operation.

Stephen Kinnock: I thank the Minister for those points. We feel that it is a bit of a leap of faith but, on the basis of the assurances that he has given, I am happy to withdraw the clauses. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 64

DISCLOSURE OF INFORMATION IN THE PUBLIC INTEREST LIKELY TO BE RELEVANT TO THE INVESTIGATION OF ECONOMIC CRIME

"(1) It is a defence to an action based on the disclosure or publication of information for the defendant to show that—

(a) the disclosure or publication complained of was likely to be relevant to the investigation of an economic crime, and

(b) the defendant reasonably believed that the disclosure or publication complained of was likely to be relevant to the investigation of an economic crime.

(2) Subject to subsection (3), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

(3) In determining whether it was reasonable for the defendant to believe that the disclosure or publication complained of was likely to be relevant to the investigation of an economic crime, the court must make such allowance for editorial judgement as it considers appropriate.

(4) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion."*—(Liam Byrne.)*

Brought up, and read the First time.

Liam Byrne: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 65—*Economic crime: power to strike out statement of case for abuse of process*—

"The court may strike out the whole or part of any statement of case which can be reasonably understood as having the purpose of concealing, or preventing disclosure or publication of, any information likely to be relevant to the investigation of an economic crime."

Liam Byrne: It is a pleasure to serve with you in the Chair, Sir Christopher. I thank the Minister for Security, along with the right hon. Member for Haltemprice and Howden (Mr Davis) and the hon. Member for Isle of Wight (Bob Seely), who have worked assiduously on this issue over the course of this year.

In many ways, we have debated this issue a lot during our consideration of the Bill. There is a shared belief across the Committee that sunlight is the best disinfectant and, because this is the Economic Crime and Corporate Transparency Bill, it is important that we empower everyone who brings transparency to the business of investigating economic crime, including journalists.

Yet I am afraid that, to many people, "global Britain" now means that our country is a global centre for lawfare. Our courts, which have been sanctuaries for justice for 1,000 years, have become arenas of silence where expensive lawyers—Schillings and others—are used systematically by bad people to try to rack up enormous costs for journalists, to such an extent that they are no longer able to bring important information and news into the public domain.

The issue is now so serious that, when the Foreign Policy Centre surveyed investigative journalists around the world, it found that three quarters of them had received legal threats designed to shut them up. The origin of those threats is, by and large, this country; in fact, this country was responsible for more legal threats than the United States and the European Union put together. We have become a global centre for lawfare against people who are being so courageous and brave in trying to bring crime to public attention.

We have so many of these strategic lawsuits against public participation, as they are called, that there is now a clear playbook. First, the company or oligarch will try to target an individual. They will always try to target the individual journalist rather than the organisation they work for because, frankly, they know that they can intimidate the individual far more than they can intimidate

a corporate organisation. That is exactly what brave journalists such as Carole Cadwalladr and Catherine Belton had to face.

Secondly, the company or oligarch will then file the most ludicrously exaggerated claims. Look, for example, at the claims that Mr Mohamed Amersi has filed against a former Member of this House, Charlotte Leslie. It is the most ridiculous, conflated nonsense that he is trying to put through the court, but that is par for the course, because, of course, they are not interested in winning the case; all they are interested in doing is racking up as much cost as possible to damage the poorer party.

Thirdly, the claimant will go to enormous lengths to try to intimidate the individual. In "Kleptopia", the journalist Tom Burgis, the author of that and other wonderful books, tells a story of how private investigators from Eurasian Natural Resources Corporation suddenly turned up at a meeting in an underground car park between him and a former director of the Serious Fraud Office. There is no way they could have known that meeting was taking place unless they were hacking and bugging his phone, but that is the kind of intimidation that these individuals think is acceptable.

Fourthly, these oligarchs will try to co-ordinate with others. Look at the way Roman Abramovich tried to intimidate Catherine Belton: he sidled up with all sorts of cronies and mates to try to bring a concerted action against her and her publisher, HarperCollins. Finally, they will try to file claims in multiple jurisdictions, such as Australia, in order to maximise the costs.

If anyone thinks that this is something of the past, there is one case in particular that shows that it is very much of the present. The Nazarbayevs are trying to take the Bureau of Investigative Journalism to court. That is a great example, frankly, of this whole playbook being thrown at journalists trying to expose economic crime.

The Nazarbayev Fund's holding company, Jusan Technologies Ltd, issued defamation proceedings in the High Court on 16 August. It has also filed against the *Telegraph* and openDemocracy. Its lawyers, Boies Schiller Flexner, the firm, incidentally, that represented Harvey Weinstein, are trying to use the Defamation Act 2013 to attack and shut down the team of investigative journalists for the crime of exposing the network of funds—$7.8 billion-worth of gross assets—held through a company registered in the UK that recently had just one employee. Documents revealed by the journalists in October 2021 showed that Jusan Technologies was the centre of a sprawling corporate operation, with private interests held by well-connected members of the Kazakh elite and businesses connected to the ruling family of the United Arab Emirates, and assets held through dozens of businesses scattered throughout Kazakhstan, Luxembourg, the UAE, the UK and now the United States.

All the tactics I mentioned are now being used against the Bureau of Investigative Journalism. It is simply outrageous that a country that prides itself on being the home of free speech is now home to courts being used to silence journalists. New clauses 64 and 65 seek to take the regime set out in clause 155 onwards, related to protected disclosures, and say, "Well, look, if we are going to protect disclosures, then among the group that we should be trying to protect are journalists, and the disclosures that we should be trying to protect are of information relating to the investigation of an economic crime."

With my thanks to the Clerks and others, we have taken a slightly different approach in the new clauses, but that is basically the intellectual and philosophical approach that we seek to take, and that is why people are happy that the new clauses are within the scope of the Bill. Crucially, the new clauses seek to equip a judge—not us here in this House—with the power to dismiss legal actions clearly designed to silence journalists and others investigating economic crime.

3.15 pm

Because the Minister was such a vociferous supporter of the anti-SLAPPs campaign, I know that the Government will accept the new clauses straight into the Bill. If not, there will have to be a pretty good explanation. This subject is of wide interest to Members across the House. We know—this is why we are here today—that economic crime is morphing enormously and that those behind it are bad people who are determined to try to silence free speech and damage our democracy. We know the truth that Václav Havel gave us, which is that the best way to fight totalitarians, bully boys, dictators and their friends is to live in truth. That is what these new clauses seek to do.

Stephen Kinnock: I will be brief. I fully support the comments made by my right hon. Friend the Member for Birmingham, Hodge Hill, and I fully support the new clause. I pay tribute to the other Members he mentioned who have played an important role in raising the profile and awareness of this very important issue. The Committee has an opportunity to reflect on the need for urgent action by the Government to crack down on abuses of our legal system by the wealthy and powerful individuals who seek to shut down dissenting voices whose investigations are inconvenient to them.

Surely, the Government have been aware for some time of the most flagrant cases of jurisdiction shopping by oligarchs and kleptocrats in British courts, but recognition of the problem has not been backed up by the necessary legislation. The Government have missed repeated opportunities to legislate against SLAPPs, and although consultations have been launched and expert advice and evidence has been reviewed, we still have not seen meaningful action to deal with these problems. It remains unclear when, or even if, new legislation will be forthcoming. I look forward to hearing what the Minister has to say on this important subject.

Alison Thewliss (Glasgow Central) (SNP): I very much to support everything that the right hon. Member for Birmingham, Hodge Hill said. In his evidence to the Committee, Thomas Mayne of Chatham House said:

"This is a perfect opportunity for some kind of anti-SLAPP legislation to be put in the Bill."—[*Official Report, Economic Crime and Corporate Transparency Public Bill Committee,* 25 October 2022; c. 80, Q166.]

If the new clause is not going to be accepted this afternoon, will the Minister explain exactly when we will pass this legislation? Not "in due course", not "at some point", not "when legislative time permits"—when precisely will we legislate on this issue, if not now?

Tom Tugendhat: It is a huge pleasure to speak on this new clause. None of what I am going to say to begin with will particularly surprise the right hon. Member for Birmingham, Hodge Hill, because—

Liam Byrne: Because he is going to accept it.

Tom Tugendhat: He knows very well that I am not going to accept it. The way in which the new clause is set out cuts across many other aspects of law, and it would quite severely affect jurisprudence in this country. However, he is absolutely right to point out the issue, and it is worth taking a bit of time to explain how we intend to address it.

The right hon. Gentleman is correct that the Under-Secretary of State for Business, Energy and Industrial Strategy, my hon. Friend the Member for Thirsk and Malton, and I are extremely clear that this is an important aspect of legal reform that we need to see in the United Kingdom. It is important because it affects freedom of speech in this country, as the right hon. Gentleman rightly says, and because it has a certain negative influence on the legal environment in which, sadly, people have to operate. He rightly spoke about Catherine Belton, whose work in exposing many of the crimes of the Putin regime has been frankly exemplary and heroic.

It is important that we address this. The way to do that is not to treat it simply as an economic crime, which it is not. It is not just a crime that affects the economy of our country or the movement of dirty money. It is a crime that is about freedom of speech and the access to justice that many people in our county need. We should look at it more as an offence against a fundamental democratic value than as an economic crime. That is why the work is being done with the Ministry of Justice, for rather obvious reasons. We are ensuring that we have a piece of anti-SLAPPs legislation, as the right hon. Gentleman correctly calls it, that addresses the whole problem.

The UK is still leading the way on the issue at national level. We are not yet where we wish to be, but we are doing better than many others. It is worth remembering that many different groups are working on this. The Solicitors Regulation Authority is already doing a lot of work to review the 20 firms suspected of involvement in SLAPP activity. The SRA is shortly to issue its regulated professionals with another warning notice, which will provide guidance on conduct in such disputes. It has already outlined guidance on certain oppressive behaviours, and has expressly linked those to the growing focus on the use of SLAPPs in England and Wales.

As the right hon. Member for Birmingham, Hodge Hill knows, there are many different tactics—aggressive letters, labelling correspondence and seeking to run up bills, as he rightly identified—that challenge people's access to justice. They are exactly what the SRA is looking at and will be communicating with the MOJ about.

Dame Margaret Hodge: First, will the Minister describe the action that, according to him, the Government are taking? I do not understand what action they are taking.

Secondly, the new clauses that my right hon. Friend the Member for Birmingham, Hodge Hill tabled were written by a group of lawyers who support the UK Anti-SLAPP Coalition. They are not like the new clauses that we put together—they have been given considerable consideration—so I do not quite see how they could be bad law. They have thought this through.

Thirdly, there is a real tendency—I say this with the greatest respect and affection for the Minister's work—for Ministers to shift a bit a paper to the left or right and do nothing with it. It is the easiest thing to do. We have described this as a once-in-a-lifetime opportunity to change the world; I plead with the Minister to grasp it and accept the new clauses. Let us move forward, rather than shifting the paper aside.

Tom Tugendhat: I am surprised to hear the right hon. Lady speak so negatively about her other amendments and new clauses. New clause 64 is not the only one that is well drafted; others have been as well. New clause 64 focuses, quite rightly, on getting anti-SLAPP provisions into the Bill, but it would extend the reach a bit further than we could take. I am happy to look further at the issue. I am happy to listen carefully to the opinions not only of the right hon. Lady, but of the people who advised the right hon. Member for Birmingham, Hodge Hill, on different approaches to the question. I am extremely happy to listen, but I am afraid we will not accept the new clause.

Seema Malhotra: When the Minister talks about looking more closely at this new clause, does he mean in the proceedings on the Bill?

Tom Tugendhat: I will be looking closer at the new clause in the proceedings on the Bill, but whether it makes it through will not necessarily be my final decision, as she knows very well. I would be interested to hear the arguments of the people to whom the hon. Lady has spoken.

Liam Byrne: I am grateful for the chance to intervene, because I sense that the Minister has almost reached the conclusion of his remarks without giving the Committee the date on which a more comprehensive proposal, which is what he argues for, will be presented to the House. We know that the Ministry of Justice has already conducted its consultation, and that the consultation responses have been analysed, but we have not had a hard date from either the Leader of the House or the Justice Secretary. If the Minister is in reassuring mode, he could perhaps furnish us with that date now.

Tom Tugendhat: I am afraid I will have to ask the Ministry of Justice for that information, but I am happy to write to the right hon. Gentleman. With that, I rest.

Liam Byrne: The truth is that people will be appalled by this debate. We gathered an enormous number of campaign groups and journalists together in the House on Tuesday evening, at a function that I had the privilege to co-sponsor with the right hon. Member for Haltemprice and Howden. The kinetic energy behind reform is significant. The law will change—we will get there—but the question is whether this Government want to be the authors of that change or continue to oppose it.

Every single day that the law does not change, bad people and bad lawyers will be racking up millions of pounds in legal costs in order to intimidate and stop

publication by journalists who are hunting the truth. I am afraid that is not a good place for this Government to be in.

James Daly (Bury North) (Con): I refer the Committee to my entry the Register of Members' Financial Interests. The question I have is not a challenge to what has been said. As a practising solicitor I agree with the points the right hon. Gentleman is making, but the new clause would impact upon some general points regarding the professional duties of solicitors to their clients. A solicitor accepts a brief and then has to act in the best interests of that client and do various other things. If that involves criminality, it is a different question altogether. The Law Society is very much behind these proposals; what further regulation or advice should there be for solicitors to ensure that they can act within legislation such as that proposed?

The Chair: Order. The hon. Gentleman referred to his entry in the Register of Members' Financial Interests but did not specify what it was or how it was relevant to his question.

James Daly: I apologise; I said I was a practising solicitor part way through my intervention. I mentioned that because I was touching on the legal profession, how it interacts with legislation and professional duties, as also mentioned by my right hon. Friend the Minister for Security.

Liam Byrne: The hon. Member is not just a practising solicitor, but clearly also a recovering solicitor. The SRA has been on the front foot in wanting to crack down on some of the bad behaviour. We had this debate in January on the Floor of the House; it was one of the best debates I have seen in 18 years in this place. What became clear was that, although there are some in the legal profession who do have to operate on that cab-rank rule—they have to step forward and plea in favour of people who are at the front of the queue—there are others who have choices about who they represent. The truth is that here in London there are groups of lawyers, such as Schillings—there are many others—who are making millions out of some very bad people. In fact, those people are so bad that they have subsequently been sanctioned, in this country and around the world.

Dame Margaret Hodge: Does my right hon. Friend agree that if the SRA were to fine those solicitors who engaged in that sort of false litigation—it is phony litigation—it would be a little cost on business given the millions they are making? Abramovich, for example, is worth, as far as we know, £12 billion. If he spends £50 million on a legal case, it is peanuts to him, and it is certainly peanuts to the solicitors who are subject to fines by the SRA.

Liam Byrne: My right hon. Friend is absolutely right that the whole strategy behind a strategic legal action against the public participant is not to win: they just want to damage their opponent to such an extent that they cannot afford to tell the truth.

It has been a disappointing debate, and it will disappoint many of the people who are watching and following it. It is unfortunate timing, because the anti-SLAPP coalition is coming together for its second annual conference on Monday, when it will publish a draft and more comprehensive law. We have not had a date from the Minister as to when the Government may have listened and brought forward a more comprehensive argument. If the argument is that the measures I am moving today are too fragmented or nugatory, that is fine, but let us hear the date for when a more comprehensive solution will be proposed. The Secretary of State for Justice has said it will be forthcoming but has not provided the date. That was the point of the new clauses: we want to know the date.

3.30 pm

I will not press my new clauses to a vote because I do not have the numbers in Committee, but I suspect I will on the Floor of the House. That is why they will come back on Report, in due course. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 66

DEFAULT SUPERVISORY AUTHORITY FOR INDEPENDENT LEGAL PROFESSIONALS

"Where an independent legal professional is not a member of any of the professional bodies listed in Schedule 1 of the MLRs 2017 but undertakes regulated business within the scope of Regulation 12 of the MLRs, the Solicitors Regulation Authority will be the default supervisory body for that independent legal professional."—*(Liam Byrne.)*

Brought up, and read the First time.

Liam Byrne: I beg to move, That the clause be read a Second time.

In a way, new clause 66 builds on the debate we have just had, but it takes the proposed reform in a slightly different direction. The Minister is well aware that in earlier debates we touched on the problem that when lawyers engage in work that falls squarely within the scope of money laundering regulations, there is a risk that regulated activity can slip through the cracks in the supervision regime because of the lack of a default supervisor for the legal sector. When a lawyer is engaged in regulated activity but is not a member of a particular legal supervisory regime, high-risk work is in effect unsupervised. I do not think that is where the Committee wants things to be.

In particular, the problem can occur in relation to wills, estate planning and estate administration, but it potentially extends to quite a wide range of individual legal professionals. For example, unregistered solicitors who do not have a practising certificate are prohibited by law from acting as solicitors, but may still offer other regulated services without being subject to the SRA's supervisory authority. As the Government's recent review of the anti-money laundering regulatory and supervisory regime highlighted, the absence of a default supervisor for those lawyers leaves us with a significant supervisory gap. I think it is a hole in the supervisory regime that the Minister will want to fix. We tabled the new clause to uncover what his strategy might be.

Seema Malhotra: It is a pleasure to speak briefly in support of new clause 66, tabled by my right hon. Friend the Member for Birmingham, Hodge Hill. He laid out clearly his reasons for doing so, and I think we all share his concern.

[Seema Malhotra]

The new clause concerns the introduction of a default supervisory authority for independent legal professionals, and includes provisions such that when an independent legal professional is not a member of any of the professional bodies listed in schedule 1 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, but undertakes regulated business within the scope of regulation 12 of them, the Solicitors Regulation Authority should be the default body for that independent legal professional.

As my right hon. Friend outlined, it is concerning that legal professionals who are not members of any professional legal bodies are still undertaking activities and taking cases. It is effectively a loophole that can enable rogue actors to act as legal professionals without the supervision or membership of a professional body, thereby avoiding scrutiny of their actions, which could facilitate economic crime and money laundering. Clearly, we need a solution. My right hon. Friend suggested that it is a problem that the Government need to fix; we would be keen to work with them on how that will happen. I think we all want to find a solution, and to do so before the Bill goes much further through the House.

Tom Tugendhat: I thank the right hon. Member for Birmingham, Hodge Hill for tabling the new clause and the hon. Member for Feltham and Heston for her comments on how it is designed to elucidate answers for procedure rather than to push for a change in the law. There is a lot that really does need further investigation, but the reality is that although we should all seek to prevent legal professionals from undertaking activity connected to money laundering, the new clause would not quite do that.

As the hon. Member for Feltham and Heston will know, there are currently nine UK professional body supervisors—known as PBSs—that supervise legal professionals for anti-money laundering purposes. Of course, the SRA is one of them. They cover different professions and the different jurisdictions: England and Wales, Scotland, and Northern Ireland. Supervisors already work closely with the Office for Professional Body Anti-Money Laundering Supervision—OPBAS—which we spoke about earlier, to ensure full compliance.

The vast majority of legal professionals are already carefully conducting strong anti-money laundering work. However, the Government's review of the UK's AML regime, published in June, identified concerns in the legal sector that a small number of professionals may be unsupervised. The examples are limited to some specific and small subsectors, such as specialist wills and estate planners and one or two unregistered barristers.

The review concluded that further reform of the supervisory regime is necessary to improve its effectiveness and proposed four options for reform, which could include giving the SRA, or other legal sector supervisors, a greater role. The review committed to taking forward a public consultation to develop the options further, which is necessary given the potential scale of the reform and the need to ensure that we fully understand the risks and impact of our final decision. I reassure Members that the Government are focused on ensuring that the reform addresses the problems identified in the review, including that of supervisory gaps.

The new clause would require the SRA to supervise independent legal professionals in Scotland and Northern Ireland who are not regulated by any of the professional bodies listed in the money laundering regulations. Additionally, each AML supervisor currently represents different legal professions with diverging practices and processes. In the absence of broader AML reforms and appropriate resourcing, it would be difficult for the SRA to supervise those who are not currently members of its own regulated community, as the new clause would require.

I share the desire of the right hon. Member for Birmingham, Hodge Hill to strengthen our supervision regime; however, given the ongoing reforms to AML supervision that would be interrupted by the new clause, and its likely impact on the SRA, it would not be appropriate to accept it at this moment. I therefore urge the right hon. Gentleman to withdraw the motion.

Liam Byrne: The Minister made the case for the new clause rather well. I am grateful for his confession that significant numbers of businesses are in effect not covered by a default supervisor. If anything, he will have alarmed those listening from the other place who will, no doubt, want to pick up the new clause and build on it, especially given the Minister's intention—sotto voce, I think—to try to move in the direction of reform.

The point I want to underline is that the challenge we are presenting is not about firms that are covered by a supervisory regime; our worry is about firms that are not covered. The Minister wisely began his remarks by talking about the nine different sets of legal sector supervisors. He may know that almost a quarter of legal firms visited by these nine supervisors were assessed as being non-compliant with AML rules, and 71% of the firms visited by the biggest legal sector supervisor—the SRA—have not put in place an independent audit function to gauge the effectiveness of their AML policies, controls and procedures. He may also know that 60% of the firms that were subject to a full on-site inspection by the SRA were not fully compliant with requirements to have in place adequate AML policies, controls and procedures. This is a significant problem.

I think the Minister is indicating that the Government are open to reform. It was not clear to me precisely which aspects of the new clause were being opposed, but we think that the place to really get this done in a thorough way may be the other place, safe in the knowledge that the Bill will come back to the Commons in a much healthier state. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 67

CIVIL ASSET RECOVERY IN CASES OF ECONOMIC CRIME

"The Secretary of State must by regulations make provision for costs in civil recovery proceedings involving economic crime to be awarded against the enforcement authority only where the respondent can show that the enforcement authority has acted unreasonably, dishonestly or improperly."—*(Liam Byrne.)*

Brought up, and read the First time.

Liam Byrne: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 68—*Criminal asset confiscation in cases of economic crime*—

"The Secretary of State must by regulations make provision for the parties to bear their own costs in criminal confiscation proceedings following an unsuccessful prosecution of an economic crime."

Liam Byrne: The new clause would cap legal costs where the Government try to bring unexplained wealth orders into effect. That point was picked up by the Foreign Affairs Committee when it was ably chaired by the Minister for Security. It also featured heavily in the economic crime manifesto which the other Minister helped launch in Westminster Abbey not too long ago, in the heady days of summer, when he was among the leading campaigners for cleaning up economic crime—his apprenticeship for the Bill in many ways.

You will know, Sir Christopher, that we have a real problem in this country, in that we introduced a brilliant legal reform back in 2018—I cannot remember whether that was one, two or three Governments ago, but it was introduced by a Conservative Administration and supported by Members across the House. Indeed, when I was in Washington with the Minister earlier in the year, unexplained wealth orders were lauded by the Department of Justice, the Department of the Treasury and everyone else we met as a really serious bit of legal innovation that the rest of the world could learn from. It fell to us to explain that all four of the unexplained wealth orders that have been moved so far have failed. Of course, one reasons that they are failing is because the poor National Crime Agency—I mean poor financially—is having to go up against some of the richest people in the world, and is simply being outgunned and outspent in court.

The case of Aliyev is a good example. I think it was the second unexplained wealth order, and the National Crime Agency sought to target properties owned by Ms Nazarbayeva and her son Nurali Aliyev. It was always going to be a difficult case, because the mother was the Speaker in Kazakhstan's Senate and a successful businessperson—she was named in *Forbes* and all those kinds of things. Her son, who is an investor and entrepreneur, had founded Capital Holdings JSC, a business that manages about 25 different companies. However, the National Crime Agency suspected that the source of Nurali's property wealth was his father, who had held several senior public roles in Kazakhstan and had fallen out with the Government. Unfortunately, he died in suspicious circumstances in 2015. The NCA suspected that the father had been involved in bribery, corruption and money laundering, and it had prayed in aid lots of good evidence in order to substantiate its case.

The enormously complex legal structures involved in the case meant that the National Crime Agency had to serve the unexplained wealth order against a host of offshore companies that owned the properties. It had to serve against the London solicitor Mr Andrew Baker, who was a trustee of the complex arrangements. Two of the properties were bought by companies in the British Virgin Islands and sold on to Panamanian companies. A third was sold from a BVI company to a company in Curacao, and then to another in Anguilla. It was the classic type of case that the Bill is designed to police.

In early April, however, Mrs Justice Lang discharged the unexplained wealth order that had been granted, because of new evidence that had been presented. Reuters subsequently reported that the protagonists in the case were seeking £1.5 million-worth of costs from the National Crime Agency, which had to fork out an interim payment of £500,000. Given that the NCA's anti-corruption budget was only about £4 million in the year in question, Members can see what kind of impact such tactics can have. In the United States, which is much better at this than we are, there is a much stronger cost-control regime.

Again, this measure that has cross-party support. I think the hon. Member for Amber Valley (Nigel Mills) sought an amendment to the Criminal Finances Act 2017 that would have changed the law so that costs could not be awarded on an indemnity basis. I am no expert on that particular amendment, but it was rejected by the Government. None the less, there have been efforts by hon. Members across the House to try to get a handle on the matter.

3.45 pm

Kevin Hollinrake: The right hon. Gentleman says that there is a much stricter cost-control regime in the United States. He is clearly not aware that there is no such regime in the United States, because no adverse costs are awarded. It is a completely different legal system.

Liam Byrne: I meant, in summary, the economic effect. The impact is that agencies have much greater latitude to bring cases against bad people in American courts without fear of what it will do to their enforcement budget. That is exactly where we need our enforcement agencies to be. If we are going to strengthen their hand, to really effectively police the problem and to respect what the Government need to do, namely, to ensure that we maximise the effectiveness of our enforcement agencies within tight budgets, the measure should, I hope, be accepted by the Government. I am delighted to have had the opportunity to move the new clause.

Stephen Kinnock: I wish briefly to concur with my right hon. Friend's every word. He has made a powerful case about unexplained wealth orders. That was something of a false dawn for the reasons he set out. Similar to what we said about SLAPPs, we are concerned about the chilling effect—the vast disparity between the financial firepower of the people that the UWOs seek to go after and that of the NCA and, frankly, the British state.

My right hon. Friend's new clause would absolutely push the Bill in the right direction. It provides a means for us to level the playing field. On the basis of that common-sense proposal, we can start to have serious conversations about how to crack down on some of the kleptocrats. I thank my right hon. Friend for his clause and the manner in which he has proposed it. I hope that the Minister will seek to champion it rather than oppose it.

Tom Tugendhat: I am grateful for the intent behind new clause tabled by the right hon. Member for Birmingham, Hodge Hill. He has an absolutely valid point—we need to equalise the firepower between some of the organisations. We have a fundamental challenge,

[Tom Tugendhat]

because we cannot assume that arising from the actions of a UWO, which is not a human rights action but to do with civil litigation, costs should fall on the losing party. We must look at how to balance the different elements.

My own inclination would be look more at how we fund our agencies to do this work. Some members may have heard that I once was in the Army. The way the armed forces does such things is by having two different forms of budget—the ongoing budget and the war reserve. I am much more inclined, and much more persuadable, towards the argument that we should be making sure that the agencies that take on such claims have a war reserve to ensure that they can meet the costs without that affecting their ongoing work, rather than changing the law in a way that would affect civil liabilities in many different areas.

Dame Margaret Hodge: To be honest, I do not think that would prevent the impact that the fear of incurring costs would have on how any of the agencies operate. Everyone in the House has great respect for Bill Browder, and I am sure that the Minister will have talked to him about the issue, and I know that the Under-Secretary has, too. Bill Browder is completely shocked and astounded by the fact that we allow any costs at all to be claimed by successful litigants when they challenge Government action.

I do not know whether either Minister had the chance to meet Judge Mark Wolf, who is over here campaigning for an international anti-corruption court. I do not know whether they have come across him. He was here last week and, when we talked about such litigation, he expressed absolute astonishment that defendants in any of these cases, have the right to any of their costs being met. In America, looking at those figures, great success comes from that hugely important lack of ability to claim costs.

Tom Tugendhat: It is worth pointing out that the Americans do not use unexplained wealth orders, which, after all, are civil litigation, because they do not have them. Therefore, the question of costs does not apply in the same way.

Dame Margaret Hodge: I would not use the example of unexplained wealth orders. They have not worked in the way that we had all hoped and intended. On the failure to prevent bribery, if we think of the acts that the Serious Fraud Office has been engaged in—I think it is with Serco, where they face a couple of million pounds in claims and costs. It goes right across the panoply of tools that we have to fight economic crime.

Tom Tugendhat: This new clause clearly focuses on the Proceeds of Crime Act 2002 and the different ways in which it would be affected. I will not accept it, for the reasons that I have given; I believe it expands far too far into other areas of civil litigation. I do, however, take the right hon. Lady's point entirely. The ways in which our agencies can defend themselves has already been on my plate for many, many weeks.

Liam Byrne: The Minister has had quite an education since becoming a Minister and joining the ranks of the Government, because, of course, it was in the Foreign Affairs Committee report on tackling illicit finance in which he authored a number of quite strong words about the need to reform and improve the regime for unexplained wealth orders, which are an important legal innovation. They are looked up to by enforcement agencies from around the world, and it is a national embarrassment that they are not working. It could well be, as the Minister argues, that the right answer is to create a war-fighting fund for our enforcement agencies, but that would have been possible if the Government had not opposed all the amendments that we suggested to create and restock the war chest that might be needed.

I appreciate that in this business a politician's first instinct is to want to have their cake and to eat it, but unfortunately the Minister voted against putting us in that position at an earlier stage in the Bill. It is therefore important to send a clear signal to the other place that this is an important set of reforms for the Government to focus on and get right. I will therefore press the new clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 8.

Division No. 17]

AYES

Byrne, rh Liam	Malhotra, Seema
Hodge, rh Dame Margaret	Morden, Jessica
Kinnock, Stephen	Thewliss, Alison

NOES

Ansell, Caroline	Hughes, Eddie
Crosbie, Virginia	Mann, Scott
Daly, James	Stevenson, Jane
Hollinrake, Kevin	Tugendhat, rh Tom

Question accordingly negatived.

Ordered, That further consideration be now adjourned. *—(Scott Mann.)*

3.53 pm

Adjourned till Tuesday 29 November at twenty-five past Nine o'clock.

Written evidence reported to the House

ECCTB 28 UK Anti-Corruption Coalition

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