PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

RATING (CORONAVIRUS) AND DIRECTORS DISQUALIFICATION (DISSOLVED COMPANIES) BILL

Second Sitting

Tuesday 6 July 2021

(Afternoon)

CONTENTS

PBC (Bill 11) 2021 - 2022

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 10 July 2021

The Committee consisted of the following Members:

Chairs: †David Mundell, Christina Rees

† Baker, Duncan *(North Norfolk)* (Con)
† Baynes, Simon *(Clwyd South)* (Con)
† Grant, Peter *(Glenrothes)* (SNP)
† Hall, Luke *(Minister for Regional Growth and Local Government)*
Hunt, Jane *(Loughborough)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Mishra, Navendu *(Stockport)* (Lab)
Richardson, Angela *(Guildford)* (Con)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Scully, Paul *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Smith, Jeff *(Manchester, Withington)* (Lab)
Tomlinson, Michael *(Lord Commissioner of Her Majesty's Treasury)*
† Webb, Suzanne *(Stourbridge)* (Con)
† Whitley, Mick *(Birkenhead)* (Lab)
† Young, Jacob *(Redcar)* (Con)

Yohanna Sallberg, *Committee Clerk*

† attended the Committee

Witnesses

Adrian Blaylock, Lead Revenues Adviser, Chartered Institute of Public Finance and Accountancy

David Magor OBE IRRV (Hons), Chief Executive, Institute of Revenues Rating and Valuation

Sarah Pickup OBE, Deputy Chief Executive, Local Government Association

Andrew Agathangelou, Founder, Transparency Task Force

Kate Nicholls OBE, Chief Executive, UKHospitality

Duncan Swift, Past President of R3 (also a restructuring and insolvency partner at Azets), R3

Public Bill Committee

Tuesday 6 July 2021

(Afternoon)

[David Mundell *in the Chair*]

Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

2 pm

The Committee deliberated in private.

Examination of witnesses

Adrian Blaylock and David Magor gave evidence.

2.3 pm

The Chair: Good afternoon. We are now in a public session and I can welcome our fourth panel of witnesses: Adrian Blaylock, revenues adviser at the Chartered Institute of Public Finance and Accountancy, and David Magor, chief executive of the Institute of Revenues Rating and Valuation. Gentlemen, may I confirm that you can see and hear us? And can you each introduce yourselves?

Adrian Blaylock: I am Adrian Blaylock, lead revenues adviser for the Chartered Institute of Public Finance and Accountancy. My role in the institute is to provide specialist technical advice to local government on matters relating to council tax and non-domestic rates.

David Magor: My name is David Magor. I am the chief executive of the Institute of Revenues Rating and Valuation—I run a professional body; it's that simple. In a previous life, I was a chief officer in local government.

The Chair: Thank you. This session will run to 2.45 pm. As you will understand, you will be questioned by members of the Committee. Are you going to start the questioning, Mr Smith?

Q40 Jeff Smith (Manchester, Withington) (Lab): Yes. Good afternoon; thank you for being with us. I thought it might be useful to start by asking both of you to make some introductory remarks about, in particular, clause 1 of the Bill and whether you think that it is the appropriate way of dealing with the problems that the Government have flagged up.

Adrian Blaylock: Local government has faced significant financial pressure since the start of the pandemic—and before that, for other reasons—and the Bill attempts to address, potentially, some of the issues that local government could face if the covid restrictions are not prevented from being considered in the material change of circumstance appeals. The potential loss of income to local government could be pretty significant, and what local government really needs is continuity of funding and certainty of funding, so to carry the risk of material change of circumstances, which could be the case for many years, depending on how long they take to actually make their way through the system, is significant. I think that the Bill addresses that potential issue; it does what it is intended to do.

David Magor: Adrian is correct in his summary. Certainly the impact of the material change of circumstances and the challenges that were outstanding will have had a significant financial effect on local government, and of course that will have reduced Government revenues. The Chancellor, in the Budget, had not forecast the anticipated loss as a result of these material changes in circumstance. The rating professionals, the rating advisers to the ratepayers, had chosen what was the only route available to them at the time; the route that they lawfully had to take was to treat the coronavirus impact as a material change of circumstance and act reasonably on behalf of their clients, which they did. But of course the financial impact was going to be considerable and so we have a situation where Government have intervened and said that a better way of dealing with it is through a relief scheme. All things considered, and provided that the relief is paid in a timely manner and the amount of relief is appropriate, that is a satisfactory way of dealing with it.

That having been said, the reductions in assessment that were being mooted with regard to the material change of circumstance were quite considerable, and it has raised expectations of ratepayers. One hopes that when the Bill is passed into law, as we expect it to be, and the relief scheme is put in place, the amount of relief will be sufficient to satisfy the desires of those particular ratepayers. Certain sectors, like retail, hospitality and leisure, have done very well out of the reliefs that have been awarded to them. This measure, of course, picks up others, who were not covered by those particular rules. One hopes that, when the Bill becomes law and the relief scheme is put in place, it will meet the needs of the ratepayers.

Q41 Jeff Smith: Thank you; that is very helpful. We will probably come back in a second to the issue of the amount. I suppose that this measure can be considered as shifting the risk from local authorities to Government and businesses—well, hopefully not businesses if the Government provide the money. Do you have any comments on the view from business and whether there are businesses and sectors that are particularly concerned? We have been approached by, for example, the airports, which do not think the money that will be available will be enough to tide them through the problems that they are facing. Other businesses or sectors may have a similar view. I am just wondering whether you have a view on that.

David Magor: Obviously, the Chancellor made provision for the airports with a special airport scheme, but of course the rateable value of the major airports in England is very significant. One can look at Heathrow, for example. It has a very significant value, and the amount of relief that was made available to it was nowhere near its rates liability. You can look at all the airports in England and compare those airports with the way airports have been treated in, for example, Scotland, where they have had 100% relief. The expectations of the airport providers and the companies running the airports are very high. However, the amount does not appear to be sufficient to meet the desires of all the ratepayers who had outstanding challenges and large assessments, like the airports. The challenge for the Government is to ensure that those particular ratepayers are satisfied.

As far as businesses generally are concerned, there are of course those that have done very well through the pandemic: their trading positions and profits have remained stable. You can argue that giving relief to them, as well as to those that have really suffered—particularly companies in the supply chain—would be unfair. Of course, if the new relief scheme is going to be dealt with by application—companies can choose to apply—one hopes the criteria of that relief scheme will ensure that relief is paid to those who are entitled to it. Meeting the expectations of the ratepayers who have had challenges in is going to be the real problem with the outcome of this Bill.

Q42 Jeff Smith: That takes me on to another question, specifically for Mr Magor, but Mr Blaylock may have a comment as well. The IRRV written evidence that we received flags up the issue of how you differentiate between covid and non-covid challenges and says that a "transparent, evidence-based process" needs to be adopted. I completely agree. I suppose the big question is how you do that. Would you have any comments on how you might define the difference between a covid and a non-covid challenge?

David Magor: The challenges are laid down in legislation; we know what the challenges, and the circumstances surrounding those challenges, are. It is for the valuation officer to look at every individual challenge and how that challenge is made up, and to decide whether it is covid-related or related to a normal material change of circumstance.

The important thing is that the valuation officer inspects every challenge and makes a reasonable decision in every case. That will be absolutely critical. The ones that are covid alone will stand out quite clearly. However, with those where you perhaps have a change in the high street, with the closure of a major retailer because of trading patterns, you have to be very careful to make sure that you do not mistake the fact that the retailer was intending to close anyway for the impact of covid. Remember, the valuation officer is very experienced in this process. The material change of circumstance legislation has been around for a long time, and there is lots of case law. There is absolutely no reason why the valuation officer cannot act in a reasonable and transparent way.

Adrian Blaylock: What David says is absolutely right. It is important to recognise that there are material changes of circumstance that are not related to covid. These can still go through the normal process, and the Valuation Office Agency should be able to distinguish between the different types.

Q43 Seema Malhotra (Feltham and Heston) (Lab/Co-op): Thank you both for giving evidence to us today. I wonder if I could get your views on the value of what I think you have described as a "funding pot"—the £1.5 billion that has been allocated. Do you have concerns about the sufficiency of that, and what are those concerns based on?

The second question is more specifically to Mr Blaylock and relates to the IRRV's evidence, in particular to paragraph 6, where you are talking about the benefits of amending provisions of section 47 of the Local Government Finance Act 1988. It would be useful to talk through your argument there to help us understand it.

Adrian Blaylock: That is probably aimed at Mr Magor, rather than me. It is really hard to know whether the size of the pot—the £1.5 billion—is large enough or not. The way I expect this scheme to work is for the Government to release guidance on the types of business they expect local government to support. In the announcement on 25 March, they gave a couple of examples of types of businesses that have not been affected but would see a reduction due to a material change of circumstance, and one that has been affected but would not see a reduction through a material change of circumstance.

Local government has to follow guidance issued by the Ministry of Housing, Communities and Local Government. That is in the regulations; section 47 of the Local Government Finance Act 1988 says that it must be taken into account. Until we know exactly the types of business the Government are expecting local government to give support to, it is really hard to say whether £1.5 billion is enough. Airports were given as an example. If airports appear in the guidance as something that the Government want local government to support, as Mr Magor says, their rateable values are large, and therefore the pot probably would not be sufficient, but it is really hard to say at this point in time.

David Magor: On the size of the overall pot, we at the institute have the advantage of having a comprehensive database going back to 1990 of all non-domestic properties. We have been looking at that database and trying to do some early forecasting of how big the pot should be.

You can see from the ministerial statements that the Minister has made quite clear exactly the direction that he wants the relief to go in. You can do a rough calculation by taking out retail, hospitality and leisure properties, exempt properties, small businesses and so on, and you are left with an effective amount of rateable value and an effective number of properties that would get the relief. Of course, the Government have also added local economic factors into the decision on the distribution of the pot, and we do not know the detail of them.

If you look at the eligible rateable value and the eligible properties, once you take out the exempt properties and those that have already received relief, you start to come to a figure well in excess of £1.5 billion. You are starting to look at a figure perhaps three times that amount. Initially, that sounds quite frightening, but of course we do not know the economic impact of covid on individual companies. Again, the Minister said in his guidance that the scheme will be by application, so it will be for companies to choose whether they apply.

No doubt, if we see the draft guidance and it gives clear indications of the way local government is to work, you can frame an application form in such a way that it will target the relief at those in most need. Until we see the guidance, it is difficult to give a clear forecast of whether the pot is large enough, mainly because of the mysterious economic factor. The implication from the Minister's statements is that it will differ from area to area, so it will be impossible to know what figures the Minister has taken into account unless we have absolute transparency and those figures are made available.

Of course, there is a danger that individual local authorities will challenge the figure. If it is not sufficiently clear, the first thing that elected members will do is compare their figure with that of a similar local authority, and if it is significantly different, they will want to know why, so there are a few challenges ahead for the Minister.

Q44 The Minister for Regional Growth and Local Government (Luke Hall): Thank you both for your evidence this afternoon. You clearly both have a wealth of experience, so it is really useful to hear your thoughts. What has your experience been of how the scope and extent of MCC claims have evolved over recent years? Could you talk us through the changing landscape of using this type of appeal over the past few years?

David Magor: When this legislation was introduced, you saw various significant events that triggered MCC changes. When you are looking for things that are similar to covid, you perhaps look at the crash of 2008 and things like foot and mouth disease. These are factors that are taken into account when you are looking at the broad picture. The covid situation, as we all know, is quite unique. The normal material change of circumstance is an essential part of the overall evaluation process. You need to reflect the changes in communities and in the environment, such as buildings being demolished or empty and so on—the material changes that happen in every neighbourhood from day to day. There are roadworks and 101 different things. Those have been dealt with very adequately by the Valuation Office Agency. The agents, on behalf of ratepayers, put in the challenges under the new challenge and appeal process, and it has worked very effectively. It has ensured that the distribution of the rate is as fair as it can be when you have got a five-year cycle of revaluations.

The special circumstances that come to mind are the crash in 2008 and foot and mouth disease. It worked quite adequately but, of course, it was nowhere near on the scale of covid, and the impact of covid on the economic wellbeing of communities.

Adrian Blaylock: The only thing I would add is the position since the end of March 2020. From 1 April 2017 to 31 March 2020, just short of 160,000 MCCs were lodged against the 2017 rating list. By the end of June, that had grown to just over 300,000, so had almost doubled in that three-month period. By the end of March 2021, 568,000 MCCs had been lodged with the Valuation Office Agency. There has been a significant increase, and it is fair to say a good proportion of those will be related to the pandemic.

Q45 Luke Hall: A lot of the early feedback we received suggested the potential scale of the appeals was causing concern in local government. We started to hear talk from local government about potential savings to frontline services that would need to be made. Could you tell us your experience of the way local government started to approach that potential task, and whether that started to impact on budgeting and forecasts for councils in setting their budgets?

David Magor: Since the introduction of the rates retention scheme, local authorities have had to forecast the impact of changes in the valuation list from year to year when preparing their budgets. You started with 50% retention, and moved to pilot schemes of 75% and 100%. When you have a rates retention scheme that works in that way, if you make a mistake in forecasting the reduction in value, you will significantly affect the finances of the local authority and the budgeting process.

Every chief financial officer has to make a forecast of the impact of a change. They would have to make a provision against that forecast and, of course, provisions prevent you from spending money, because you are providing for an event that is likely to happen. Certainly, as far as forecasting for the 50% rates retention scheme was concerned, every time you looked at your rateable value and the changes in that over the forthcoming year, you were conscious that any forecast you made, 50% of that reduction in value would fall on your budget.

That was the way the retention scheme worked, and it created a great deal of concern because chief financial officers were making very significant provisions. As I said, making provisions curtails the local authority's ability to spend. Elected members quite rightly get very concerned about that. Then the MCC checks and challenges came in, with the checks first. As Adrian said, the enormous number of checks has now reached half a million, and the challenges emanating from those are well in excess of 100,000. You are talking about a massive impact on the valuation resources of the list. Local authorities have to make provision for that.

Through this Bill you would remove that risk and, as the Chair said, transfer it to central Government, because you would fund it through a relief scheme. The real problem is whether the relief will be sufficient to meet the needs of the ratepayers who are expecting a reduction in rateable value.

Adrian Blaylock: That is right. The risk and the responsibility of a local authority to set aside sufficient funds to cover any potential losses to the rating list could be significant. If I can just give you some indication of where we were: at the end of 2019-20, local government had just short of £3 billion sat in provisions for alterations of lists and appeals. This is all pre-covid. This is nothing to do with the pandemic, just essential changes to the rating list. Every year, they have to forecast what they think they will lose in the forthcoming year and there is roughly £1 billion a year being added to that pot, regardless of covid. So the potential loss on top of those normal everyday changes to the rating list—well, I would not like to think what would happen to local government finances if it went ahead. You would need a significant level of provision to be able to carry that. We have already seen local authorities applying to MHCLG for capitalisation directions because they are struggling to pay the day-to-day costs of running their services. How many more authorities would need to go down that route if that is where we get to? That is what concerns me.

Q46 Ms Marie Rimmer (St Helens South and Whiston) (Lab): There are three very specific exemptions to the restrictions on appeals set out in clause 1(5), inasmuch as the valuation decision must take into account the effects of covid-19 on the quantity of minerals extracted and the quantity of waste disposal from the property, along with the physical state of the property being affected. Do you think those exemptions are reasonable and are there any other circumstances that you feel should be included?

David Magor: I must admit that the Bill is very well framed. We have looked closely at the Bill, clause by clause, and it meets its specific purpose. The approach to dealing with the material change in circumstances and to withdrawing or removing the covid ones is very sound. I find the provisions of clause 1 fit for purpose and they meet the needs of Government. That is a relief, in the sense that it seems to be fair. Of course, it is important that in making decisions in relation to the clauses that you have mentioned the Valuation Office

Agency is transparent and gives the ratepayer and ratepayer's agent every opportunity to make their case for other matters that are outside the covid situation.

Adrian Blaylock: I have nothing to add to that. I agree with David.

Q47 Ms Rimmer: How will the provisions affect local government income from business rates? I know you said "significant" earlier.

Adrian Blaylock: It is really hard to say because there was a suggestion of what level of reduction ratepayers would see in their rateable value from discussions between the Valuation Office Agency and rating agents. However, it is hard to say. Would that be across the board? Is that for a specific area? Is it for a specific kind of property? Without knowing exactly what the extent of the reductions in rateable values would be through material change of circumstances, it is really hard to say. The other thing to think about is longevity. Is it for the period of the lockdown? Is it from now to perpetuity? Forever? It is hard to say what the actual loss would be. There are too many unknowns, I would suggest.

Q48 Ms Rimmer: I can accept that.

David Magor: The problem with the pot of money is that when the Bill is passed and the relief scheme is released and we have guidance—of course, along with that guidance, one assumes you will have the distribution of the pot as well by individual local authorities—as well as making sure that they fully understand that individual pot and how it is made up, each local authority will then have to develop its own scheme and that scheme will be approved by members. In developing that scheme, you would have to look at the potential eligible properties in your area. From ministerial statements, you can take out RHLG properties, exempt properties and so on, because they will not get any relief, or it is the Government's intention that they do not get any relief. You will then be left with a number of properties that are entitled to relief. What you do not know is what the economic factor in the distribution will take account of, but one assumes that you will look at the economic factor from individual company to individual company, and a company that has traded satisfactorily through the pandemic will, no doubt, not qualify for relief. One assumes, certainly from the statements that have been made in Parliament, that that is the way the Government wanted it to work.

When you get to that situation, you have to decide exactly how much relief you will pay to each individual ratepayer. There is no indication of what a reasonable amount is. There were some press releases from certain rating agents suggesting reductions as high as 25%. A couple of examples were put forward in statements from the Treasury where the amount of relief granted was a good deal less than 25%, but at the end of the day a local authority has to be really careful because it has a cash-limited pot that it has to distribute fairly to everybody to ensure that it has sufficient resource to meet the needs of every applicant. That in itself will be a challenge.

As Adrian says, you have to know how long the pot will last. The problem is that, if it is a cash-limited pot and you cannot go back for more, local authorities will be in a really difficult situation with those ratepayers who may be entitled but you did not have enough money to go around. You then revert to your other discretionary powers, particularly the hardship power. Then the cost of that starts to fall on the shoulders of the council tax payer, so it really is a massive challenge to local authorities. On top of that, in a practical sense there have already been adverse reports from the ombudsman about a lack of transparency in some local authorities with regard to the grant schemes. That was a significant problem with the grant schemes, and local authorities handled it really well. This problem, I think, is greater.

Q49 Ms Rimmer: Of course, it then has an impact on the resources available to meet the statutory duties, because business rates are much more involved now than when it was grants from the Government. The business rates revaluation is currently taking place, to be concluded in March 2022. The Bill would prevent businesses from retrospectively making an appeal against rateable values as they are now, even when the new system is in place. Is that provision necessary in your opinion?

David Magor: When the new values come into force there will be rights to appeal against them. The effect of the Bill, of course, is to prevent any applications under the check, challenge and appeal process from going forward in relation to the pandemic. That seems to be the intention of the Bill. Due to that being the law—it has closed down that particular area of activity, and the impact of the pandemic on the material change of circumstances definition—they cannot make any more appeals about that, but of course they can still continue to make normal material change of circumstances appeals right up to the closing of the existing list.

Q50 Ms Rimmer: Do you agree, Mr Blaylock?

Adrian Blaylock: Definitely. The way I read it, the Bill prevents any announcements regarding the pandemic from being taking into account, but it does not prevent any other methods of check or challenge from being taken forward by a ratepayer if something different is affecting their rateable value.

Q51 Simon Baynes (Clwyd South) (Con): I thank our witnesses. Clearly there is widespread support for the restriction on rating appeals, given the trade-off of extra funding for relief from the Government, but picking up on the point about the rate revaluation—*[Interruption.]*

The Chair: For our witnesses, the Commons is being suspended for three minutes. It is not a vote or a fire bell.

Simon Baynes: Thank you, Mr Mundell. Is there a sense in which the timing of the rate revaluation is a helpful coincidence, in that it could mitigate some of the issues that ratepayers might have with the change to their business arising from coronavirus, perhaps particularly where a business has been badly affected and has to change its whole focus? Is the revaluation a way to mitigate that, and is that a helpful coincidence of timing?

David Magor: It is a helpful coincidence of timing. There is an antecedent evaluation date, and the rental evidence gathered to determine the values for the next evaluation list will reflect the circumstances of the pandemic and what is happening in the property market. The valuation officer has started to call for that evidence, which is required by statute and will reflect the current situation. Therefore, the list coming into force in 2023 will reflect the current difficult circumstances and, as you rightly say, potential changes in trading patterns and other things.

Adrian Blaylock: I agree. It is convenient it coincides, so will do exactly what David says.

Q52 Seema Malhotra: To ask a follow-up question, you were talking about local authorities and schemes they may need to set up, Mr Magor. What are you expecting in the guidance from Ministers? How soon does that guidance need to come? We heard concerns about how quickly this needs to happen. From your experience, could you share your view on how long that pot could last? Does there need to be reporting and review of expenditure? What do you expect from the Government on that and on working with local authorities on this?

David Magor: I know Adrian will pick up on the impact of it, but I will start. On the guidance, for reliefs under section 47 of the Local Government Finance Act 1988, the Minster is required to give guidance and local authorities to have regard to it. You would expect the guidance to be sufficient to enable local authorities to develop a scheme within the Government's wishes. From ministerial statements, we know that that scheme will not include awarding relief to retail, hospitality and leisure, or those in receipt of other reliefs that remove their rate liability, and that economic factors will be considered from company to company. I would expect the guidance to clarify those issues and make it clear how the individual pots will operate.

I would also expect it to give local authorities an element of discretion—after all, section 47 is about discretionary relief—to have a scheme shaped for their area. This is why it has to be done in stages. The first is passing the Bill into law. Then, you issue the guidance with the distribution, give local authorities a chance to analyse that distribution and understand whether it is fair, and what to do at a local level. Local authorities then have regard to that guidance and devise a scheme, which has to be done quickly.

If we had not had this proposed change in the law, the valuation officer and ratepayers' agents would be settling matters now, and I suspect refunds would have started to circulate. If this scheme is to replace those MCC challenges, you would like to think it would be in force later this year, and that any reliefs would be paid during the current financial year— that must be the aim.

The pot is a one-off that would be distributed as quickly as possible, because now is the time when the money is needed. The real issue for local authorities is devising a scheme and ensuring that they can distribute the pot fairly, and that they do not run out of money. That, in itself, will be a massive problem.

Adrian Blaylock: The only point I would add to that is timing. I think you questioned the timing and the need for haste; as David said, businesses need this money now. The only thing I would question is to ask what this relief pot meant to be compensating for. The majority of the lockdown measures and the restrictions applied during 2020-21 rather than during 2021-22, and there is a specific part of section 47 of the Local Government Finance Act that says that a local authority cannot take a decision more than six months after the financial year to which the decision relates. So, strictly speaking, as at the end of September a local authority will not be permitted to give discretionary relief rate back into 2020-21. That means that either everything needs to be in place and all the local schemes need to be up and running by the end of September, or the relief is not given for 2020-21 but is given for 2021-22 instead. However, what then happens to the businesses that had a material change of circumstances lodged for 2020-21 that are no longer in existence? They have missed out on that.

As for the timing, it is important that the Bill gets through as quickly as possible, but it is also important for people to understand that local government also have to go through their own governance processes. Devising a scheme is not just a case of somebody sitting at a desk and saying, "There you go, this is our scheme". It needs to go through the proper governance process, which will take time. It could take two or three months for all that to go through its own internal processes, on top of whatever time it takes for the legislation to be passed and the guidance and allocations to be issued by MHCLG. Timing is crucial in this process.

Q53 Jeff Smith: Looking at the parliamentary timetable, it seems very unlikely that the Bill will be passed before the end of September, which creates the problem that you have just identified. I think we are all fairly clear that the Bill will pass at some point. Is there any reason, in your view, why the Government cannot give indicative guidance ahead of—you talked about it being in three stages—stage 1 being completed? Is there any reason why indicative guidance and possibly indicative valuation amounts for each local authority could not be given?

Adrian Blaylock: I do not see why not. If the Government have already taken the decision on the value of the pot—I do not know what they are doing about the allocations, but if they can work out what the allocations need to be for each local authority, they must have a clue now what they want to support, what areas they want to support and where they want local government to focus their attention. If that was to happen, it would allow local government to start formulating plans and start going through the process of putting together their own local policies. I think that would be a positive step.

David Magor: I agree wholeheartedly with that. Draft guidance and an indicative figure of the amount for each local authority would be most welcome at this stage. It would enable planning to start; it would also enable the local authorities to challenge. Better those challenges come now, as we are preparing. We are going through—let us hope—a long, hot summer, and through that long, hot summer local government accountants have nothing better to do than to work out what their relief should be, so I am sure that they would be pleased to see some indicative figures and draft guidance.

Q54 Jeff Smith: Clause 1 is effectively trying to make retrospective the regulations that were passed in March. I appreciate that only three months or so have passed since then, so it may be too early to make a judgment, but is there anything we can learn from the way that businesses or local authorities have reacted to those regulations? Are there any lessons that we can take from those operations so far?

Adrian Blaylock: Not to my knowledge.

David Magor: I think the overall reaction to where we are now has been relatively positive. The Government are in the process of removing this element of the material change of circumstance, and are replacing it with a grant scheme—with funding of a relief scheme. I think the only problem is the timing—that is the issue. If there is any lesson to be learned, it is that ratepayers are expecting their relief now and local authorities need to provide it in the current financial year, because they are the customer-facing service. They face the ratepayer and have to deal with the complaints that the relief has not been paid promptly enough.

The Chair: Gentlemen, your timing has been excellent, because you have concluded answers to the questions just within the time limit. On behalf of the Committee, I thank you both for your evidence this afternoon.

Examination of Witness

Sarah Pickup gave evidence.

2.45 pm

Q55 The Chair: We will now hear from Sarah Pickup, who is the deputy chief executive of the Local Government Association. Sarah, can you confirm that you can see and hear us?

Sarah Pickup: I can, thank you.

Q56 The Chair: We have until 3.15 pm for this session. Could you confirm your details for the record?

Sarah Pickup: I am Sarah Pickup. I am deputy chief executive of the Local Government Association, with a lead on finance. I do not have the level of technical, detailed knowledge that your preceding witnesses had, but I can certainly bring you the LGA's views on questions.

Q57 Jeff Smith: By way of introduction, could I ask for the view of the LGA on the principle of the Bill, which I think you welcome, and your concerns about any of the detail?

Sarah Pickup: You are correct: we welcome the principle of the Bill. An unquantified amount of material change of circumstances resolved over an unspecified period of time would be a really difficult prospect for local government to manage, and the need to make provisions would have been substantial. We have spoken to Manchester City Council, for example, which said it had calculated that it might need to make provision of around £11 million in respect of these material change of circumstances, which obviously would have meant that it had to take that resource from somewhere else. We think that there is a substantial level of challenges—we understand around 50,000 nationally. Manchester alone has had a 569% increase in those appeals on the year before, and 88% of those were to do with material change of circumstances, so certainly something needed to be done.

We welcome the prospect of a discretionary scheme, because we think councils will be able to assess where the real damage and the hit is on businesses in their area, but there are of course some challenges in devising a scheme within a fixed sum of money, so we await the guidance. A plus to local discretion is that you can try to fit it to your circumstances, but of course you have to fulfil the promises you set out in your scheme, and the resources put a cap on that. There are some challenges here, but in principle we absolutely welcome this as a way forward.

The other thing I just refer to is the timing issue, which was referred to by the previous witness. Our understanding is the same—that if someone has not made a decision by September, they cannot relate the change to the previous year. The appeals that have come in have come in largely for 2020-21; certainly, the Manchester increase refers to 2020-21. I think that is what businesses were applying for. The fact that it is ongoing into 2021-22 raises another question. There is a question about whether this fund is intended to apply to 2020-21, 2021-22 or to an unspecified period over which coronavirus has an impact. Those things will need to be addressed in the guidance, and we will need to understand whether we are trying to meet the losses to businesses in one year or in more than one year, and the timing of the regulations is important there as well.

Q58 Jeff Smith: That is really helpful. My second question was going to be whether you feel that £1.5 billion sounds like an adequate figure based on the indications you have had from local authorities. Given that you find it difficult to work out the time period involved, I am guessing that it is even more difficult to judge whether £1.5 billion is sufficient. Do you have any view on that?

Sarah Pickup: It is extremely difficult, actually. If we assume that it is meant to be for one year, I think Manchester's assessment of £11 million represents about 1% of its rateable value. If in a very rough, back-of-the-envelope calculation you were to extrapolate that up to a national picture, it would take you to about £1.1 billion. However, that is a big extrapolation. Manchester has calculated what share it thinks it might get of the £1.5 billion pot, and it thinks that will permit it to offer reductions of around 10% to non-hospitality and leisure properties across its area. Of course, not all of them may need a reduction or will qualify for a payment from this fund, but I think it reinforces the point made earlier—that the expectations of business of what the fund might be able to deliver for them might not be realised in reality, for two reasons. First, more than one year is at stake here, and, secondly, people will have to design their schemes within the confines of the resources available through the distribution mechanism.

It is difficult without knowing how prescriptive the guidance will be. We understand there will be discretions here, for the very reason that you have to fit your scheme to the money available. What we do not want is some guidance that leads businesses to expect more than councils can possibly deliver within the sum available in their area.

Q59 Jeff Smith: Clearly, the guidance is absolutely key. Can you confirm whether discussions are happening with the LGA or individual councils about drafting that guidance?

Sarah Pickup: Not that I am aware of. The guidance would normally follow from the legislation. Obviously, people will have to give some thought to it alongside the passing of the Bill. We have not been involved to date in discussions about developing that guidance. We would welcome the opportunity to get involved in that with the Department.

Q60 Navendu Mishra (Stockport) (Lab): Can you comment about how these provisions will affect local government's income from business rates? We hear a lot about cuts to local government in the last 11 years, but how will this impact finances?

Sarah Pickup: These provisions mitigate against the need for having to make provisions against the material change of circumstances. In that sense, they are beneficial to local government, because it takes away that uncertainty, albeit we need the clarifications around timing and discretion as part of this.

If we stand back and think about business rates as a source of finance for local government and the Treasury's fundamental review of business rates, they form 25% of local government income and are really important. Alongside council tax, business rates are one of the two main sources of funding, but where we stand now is that there is a whole patchwork of reliefs and new provisions for relief to businesses against their core business rates commitment. It means that the future is very uncertain. The way in which the next revaluation will go is uncertain and, arguably, while business rates have a role going forward, some significant reforms are needed to make them a stable source of finance for local government going forward.

Q61 Luke Hall: Thank you for your evidence: I know the LGA conference is happening today. Can you think back and tell us when the LGA first heard about the potential scale of losses through MCC challenges and appeals? What was the reaction of local government at that time? What issues were they raising with you and how widespread was the concern? What time did it start to build up?

Sarah Pickup: Gosh, it is really hard to recollect precisely; so much has gone on in the last year. It was probably about a year ago; it may be slightly less. There was a lot of discussion at the point when the Valuation Office Agency started to discuss how it might address these appeals. I think there might have been some leaks in the press. That is when the discussion started to come to the fore a bit more, because there were some quite substantial proposals around the adjustments to valuations that might go forward. I think there was an attempt to address this on a uniform basis, rather than deal with every appeal and address it individually. We have gone from there to this scheme which approaches the issue differently, probably more straightforwardly and in a more timely way, certainly in the short term.

The anxieties around appeals are ever present and this was just an addition to the pre-existing issue about businesses' ability to put in appeals right up through a rating list with no time limit on it. The check, challenge, appeal process has made a difference to that, but we have not yet seen the end result of the number of appeals from the 2017 list, because the time window has not closed yet.

Q62 Luke Hall: It would be interesting to hear your view, from a local government perspective, on exactly why the LGA thinks that ruling out MCC appeals for councils provides extra certainty—I think that is what the LGA has said—and how big a difference that has made to councils and their planning of their finances.

Sarah Pickup: There is a greater degree of certainty, because they do not face a period of time of not knowing whether an appeal will be successful or not, nor the extent of that success, and therefore having to make additional provisions on their balance sheet. Instead, they have a scheme to operate that offers them resources to provide discretionary funds to local businesses, which is welcome. As we have said, there is still some uncertainty in relation to what the guidance says and whether the scheme delivers what businesses expect, and whether, if not, there is either a pressure on the council to fund beyond the resources that have been made available, or a pressure because businesses cannot manage without the relief that they had been expecting, and therefore some businesses start to fail.

Q63 Seema Malhotra: As a slightly different angle on this, I was just wondering about any contact that you may have had, or experience that you may have had, with the Valuation Office Agency at the moment, and whether it has the resources it needs for the work it is currently undertaking—its existing functions—as well. I would be very interested in your perspective on that.

Sarah Pickup: I do not have detailed knowledge of its precise funding at the moment, but over time, we certainly have made a case that we support the Valuation Office Agency being funded adequately to deal with the task in hand, because there has been a very big backlog of appeals on the books. It has been pulling those down, and the change to check, challenge, appeal has impacted on that. Nevertheless, there is still a backlog, and our fears were that if the Agency was not properly resourced, you would end up with overlapping backlogs of appeals from different rating lists creating ever more uncertainty and not really taking away that need for councils to keep assessing the provisions that they need to make on their balance sheets.

One of the things that we certainly would support is a time limit on the time when businesses can put forward checks, challenges, and especially appeals against any given rating list. We think that would help, and it is in place, I believe, in some of the other UK nations.

Q64 Ms Rimmer: The business rate revaluation that is currently taking place should be concluded in March 2022. The Bill would prevent businesses from retrospectively making an appeal against rateable values as they are now, even when the new system is in place. Is that provision necessary?

Sarah Pickup: This was probably picked up by your previous contributors. Because the basis of a valuation is based on rent as of March 2021, that valuation date sits in the middle of the pandemic, so the question is whether any adjustments are made to that or not. You would think that the impact of the pandemic on rental values would be reflected in the valuations going forward for the list starting in 2023, but clearly we will not know that until we go forward.

The other point is that it is a very changeable picture, and businesses will continue to be able to appeal based on changes in circumstances. Things that are currently due to covid could turn out to be long-term impacts on businesses, in which case I think they move into a different category. If you lose trade as a result of covid, that is one thing, but if your business goes into permanent decline, it becomes a very substantial and permanent change in circumstances, and that probably falls into a different category.

Q65 Ms Rimmer: Are you aware that three exemptions to the restriction on appeals are set out in clause 1(5)? They are very specific. The effects of covid-19 may be taken into account in valuation decisions when they affect the physical state of the property, the quantity of materials extracted or the quantity of waste disposal from the property. Those are the three specific reasons—losing trade or someone's business going down because of covid are not among them. Are you aware of that?

Sarah Pickup: Yes, we are aware, and we think that the exclusions seem reasonable—as you say, they are very specific. They would be limited to very small numbers of businesses. Loss of trade goes across a much wider range of businesses and therefore the scheme is aimed at addressing that.

Q66 Ms Rimmer: Earlier this afternoon, you talked about a backlog of rateable valuation appeals. Do you consider that the rate valuation officers will be resourced enough to catch up with the backlog and get on with everything that comes from this?

Sarah Pickup: That is something that they would have to address. We have had concerns in the past about whether the resource was sufficient to deal with the backlog quickly enough. It is in the interests of local government for there not to be a big backlog and for things to be dealt with as and when they arise. That is much more efficient in the long run.

Ms Rimmer: Thank you.

Q67 Jeff Smith: When we get the guidance—I imagine that the LGA would welcome an early indication of what that might look like—there will be quite a job for councils. They will have to design the scheme and agree it with their members. They will then have to do all the eligibility assessments. There might be IT updates to facilitate the new relief and there will presumably be some sort of reporting requirements. That is a lot of extra burden. I am guessing that the LGA might welcome some new burdens funding. Do you have any thoughts on that and what an appropriate amount might be?

Sarah Pickup: I could not give you an estimate of the amount of funding, but it is clearly a new burden. In most of the instances when new burdens have come along during the pandemic, some resourcing has been put in place to help with the design of new schemes.

Of course, revenues and benefits officers—in particular, finance officers in councils—have implemented a huge number of different schemes, some of which they have had to consult on and some of which have been much more directed and put in place by the Government. They have done that throughout the pandemic and this is another instance of something they will have to do.

The key thing, of course, is that those officers are given time. Sometimes, what we have found is that the money is announced, the guidance is passed or the regulations are put in place and then immediately everyone starts asking councils, "Where is the money? Why has it not been put out yet?". As you said, councils need to be given time to go through due process to put schemes in place. A lot will depend on what the guidance says—and yes, early sight of it or early drafts and indications of the direction of travel, as well as early indications of the sums of money available, would be extremely helpful in helping councils to prepare.

The Chair: There are no further questions for Ms Pickup. I thank you for your time this afternoon giving evidence to the Committee.

Sarah Pickup: A pleasure—thank you.

Examination of Witness

Andrew Agathangelou gave evidence.

3.3 pm

Q68 The Chair: As we have concluded the second panel slightly earlier than scheduled, we move to the third panel. I welcome Andrew Agathangelou. This session can run until 4 o'clock. I ask our witness from the Transparency Task Force to introduce himself for the record.

Andrew Agathangelou: Good afternoon. I am Andy Agathangelou, the founder of the Transparency Task Force. The Transparency Task Force is a certified social enterprise dedicated to helping ensure that consumers are treated fairly by the financial industry. I should also mention in passing that I am involved with two all-party parliamentary groups: one on pension scams and the other on personal banking and fairer financial services. My involvement is as the chair of the secretariat committee to both those APPGs. If the Chair would like, I would be very happy to elaborate on the work of the Transparency Task Force and our particular interest in this matter.

Q69 Jeff Smith: Welcome, and thank you for being with us. Following on from your last comment, it would be a helpful start if you could indicate your particular interest in this legislation, to what extent you welcome it and what the concerns around it are.

Andrew Agathangelou: The Transparency Task Force is all about trying to bring about regulatory reforms so that consumers get a better deal from the financial industry. An increasingly large proportion of our time and effort goes towards trying to sort out the terrible mess that occurs when people are scammed. We are very interested in cases such as Blackmore Bond, London Capital & Finance, Connaught, Lendy and Ark. There is a very long and very sad list of scams that have affected quite literally thousands of people in our country.

The reason I am particularly interested in the Bill is that we have noticed over many years that a colossal amount of carnage is being caused by a relatively small number of criminally minded individuals. It will not surprise you that one of their methodologies—one of the ways that they work—is phoenixing. As soon as they start to feel the temperature rise around them, they close down shop and reappear somewhere else. These individuals tend to be highly intelligent, very sophisticated and very good at planning and strategising their next step. They always have a plan B, C, D, E and F up their sleeves. Frankly, they have been running rings around the regulators and enforcement agencies. One of the most powerful weapons they have is the ability to dissolve their organisations and pop up somewhere else. That is why the Bill is of real interest to me. It will also be of enormous interest, I am sure, to the many tens of thousands of people out there who have lost as a consequence of criminal activity.

I do feel the need, if I may, to elaborate on the loss. When somebody finds that they have lost their entire life savings, quite literally in some cases, when they are in their 60s—in other words, too late in their life to do much about it—the financial loss is absolutely horrific, but the emotional consequences, the shock to the system, can be so bad that they find themselves self-harming. People find themselves under huge amounts of emotional stress and strain. It is particularly bad when, let us say, it is the husband who has had his entire pension savings taken from him by crooks; he is so fearful of the situation he has created for himself and his family that he has not even told his wife that it has happened. There are people out there who are living day by day with a horrific secret—that they have lost a lot of money—and they have not quite got it in them to tell their partners and families what has happened.

I am very deliberately painting this picture for you, Mr Smith, because the work that you are doing with the Bill is of great importance. If there is anything that can be done to mitigate the risk of that kind of emotional and catastrophic carnage, I would be very pleased to give it all the support I can, and I am sure everybody else would feel the same way.

The very, very worst manifestation of this—in fact, I will give you two. The worst manifestation is when you learn about children who self-harm routinely and repetitively because of the stress-induced state of the household resulting from the family's life savings being tricked away from them by criminals. Of course, one step beyond that is when people take their own lives. There have been many suicides as a direct consequence of this kind of malpractice. That is why I am so pleased to be here today to share whatever I can about this Bill.

Q70 Jeff Smith: Thank you. You make a very powerful case for the ability to take action against these kinds of individuals. The question that follows on from that is: do you think the measures in the Bill are significant enough to have a material effect on the kind of individuals you are talking about who dissolve companies? Are they enough of a deterrent to make a real difference to this issue?

Andrew Agathangelou: The short answer is yes. I would characterise this Bill as a worthwhile step in the right direction. However, there is ample scope for improvement in relation to all the other areas that it touches on. I see it, hopefully, as a spearhead that might lead to other things happening as a direct consequence.

I will give you one quick example. There has been so much in the way of catastrophic regulatory failure over recent years that all the related enforcement agencies and bits of the regulatory framework need to wake up to the fact that our country has a horrific situation on its hands, in terms of the amount of crime that is going on. I believe I am right in saying that the National Crime Agency says that the annual cost of fraud in this country is something like £190 billion. That is a very big figure. Just to put that in context, I think it is well over half what the NHS costs. However, according to Anthony Stansfeld, the former Thames Valley police and crime commissioner, who is a man we have admired for quite some time for reasons that I will go on to, something like 0.03% of the amount lost in fraud, white-collar crime and economic crime is being given to the police as a resource to go and fight it. I believe I am right in saying that only 1% of the police budget goes towards fighting those sorts of issues.

My point is: yes, brilliant, let us stop criminally-minded directors from phoenixing, but please understand that this is just one small part of the ecosystem. What Parliament might want to do as a consequence of this Bill is to sit back and say, "Fine. We've done something really worth while in moving this Bill forward, but let's not kid ourselves that the job is done. We've actually only just started to scratch the surface."

Organisations such as Action Fraud, which, by the way—I can't resist the joke—we call "Inaction Fraud", the Financial Reporting Council, the Financial Conduct Authority, the Pensions Regulator, the National Crime Agency, the Serious Fraud Office, City of London police, the Insolvency Service itself, the Solicitors Regulation Authority and the professional bodies for the accounting and audit professions are all part of the landscape. They all need sorting out because of the part that they play in allowing a lot of crime to go on that really should not happen.

Let me give one further quick example. I am aware that there are people who are at risk of being scammed by directors of organisations operating today that were doing exactly the same thing last year, the year before that and the year before that. I think we can go back as far as 11 years. We are aware of dodgy directors who were scamming people 11 years ago, and were known to be scammers, but are still operating. Frankly—excuse my language—it drives me nuts.

Q71 Jeff Smith: What tools should the Government use to follow and recoup the money from the directors identified as culpable in these circumstances?

Andrew Agathangelou: I am quite a plain-speaking person, so forgive me, but I am about to be quite plain. The regulators need to enforce. There is evidence to suggest that, for example, despite the fact that one of the most important statutory duties of the Financial Conduct Authority—our primary conduct regulator in the UK for the financial service industry—is to try to protect consumers from harm, it is a little reluctant to enforce. That is not my opinion; the chief executive and the chairman of the Financial Conduct Authority gave evidence to the Treasury Committee earlier this year—I will try to find the link for you—admitting, frankly, that they were risk averse, I think the phrase was, when it comes to enforcing and mitigating. That is not verbatim, but that was the gist of it.

Would it not be good, ladies and gentlemen, if as well as having rules in place designed to protect consumers, we had a regulatory framework that had the gumption to go after the baddies whenever it could? There are two very important reasons for that. First, we might get them locked up or make them pay fines, and so on. That is great. That is exactly what we want, but even more importantly than that, it will show that there is good reason for these dodgy directors to not carry on their wicked craft.

It is currently a very low-risk career path for somebody to become a criminally minded director of a company. The chances of their getting caught are very low. The chances of their paying a fine are very low. The chances of their being banged up are also very low. Why? Because the regulatory framework as a whole is not built to cope with the tsunami of criminal activity that is going on. I would say, from a long list of potential improvements, that one of them would be to please encourage our regulators to regulate robustly and enforce effectively.

Q72 Seema Malhotra: Let me follow up on that. Thank you for giving evidence. You laid out a broad landscape of institutions and organisations that you said were together allowing the crime to go on, on the scale that you believe it is. You went on to say that the regulation is not really built to cope with what is happening. As part of that systemic issue, what do you think the Insolvency Service is not doing as well as it should, and does it have the resources that it needs to perform its functions effectively?

Andrew Agathangelou: I will answer your question, but before I do I would like to elaborate on a small point that you made. I actually think that the regulatory framework has been built by Parliament to do what it is designed to do. The problem is not that it is not capable of doing it; it just does not do it. It is a bit like having a really fast car that is just not being driven fast by the driver. The problem is not the vehicle; it is who or what is controlling it. I just thought I would throw that in.

To respond to your question more specifically, again I am a plain-speaking person. The Transparency Task Force ran an event last Thursday, with the title "The Great Insolvency Scam". I can provide the Committee with the recorded video testimony of that. The reason why we ran an event called "The Great Insolvency Scam" is that we see insolvency as a very dark and murky part of the world of business and commerce. We believe that there is a pile of evidence suggesting that the Insolvency Service has been weaponised. That is where the Insolvency Service is frankly abusing its very extensive powers.

The net result is that people sometimes have their homes or businesses taken away from them, as a consequence of engineered bankruptcies. It really is an horrific, dark area. It sometimes results in people self-harming, committing suicide and all the rest of it. I will now answer your question directly. Personally, the Insolvency Service is a can of worms. I will repeat that it is my personal opinion. I think the Insolvency Service, in part, is a can of worms that needs to be opened up and looked into. It needs to be properly regulated.

I have enormous concern about giving the Insolvency Service lots more money to carry out the additional work that is going to be necessary as a consequence of this Bill going through, if it does, without first ensuring that the service is fit for purpose. These are very strong views. I am not an extreme individual who has crazy ideas. I have just listened to and seen the testimony of people who have suffered as a consequence of the types of things I am talking about.

Think of this Bill as the start of an ongoing process of reform. Please do not think of it as the end point. Please do not make the mistake of thinking that it is a "job done" situation. It really is not. There is so much to be looked at. I ask the Committee to do all it can, on behalf of the British public, to ensure that the Insolvency Service stops doing what it sometimes does.

Q73 Peter Grant (Glenrothes) (SNP): Good afternoon, Mr Agathangelou. Picking up on your last point, I do not know if you are aware that a couple of amendments have been tabled that would require the Minister to come back to Parliament and report at a future date, first, on the extent to which the powers of the Bill had been used and, secondly, with an assessment of how effective the Bill had been in addressing the problems that had been identified. In your view, would those amendments strengthen the Bill, make it weaker or make no difference?

Andrew Agathangelou: If the purpose of the Bill is to have a positive effect, of course they would. You manage what you are monitoring. If things are being looked at and checked, and if the progress you are hoping will happen does not, you have a chance to review, to modify and to ask challenging questions about why what Parliament wanted to happen has not.

There is a great parallel. I was involved in giving evidence on the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021-22 a while ago. The parallel there applies here. It is absolutely vital that there is a requirement for those responsible for executing the will of Parliament to be accountable and to be able to demonstrate that they have done so.

I would be disappointed if it took an amendment to make that happen. It should go without saying that you do not just abdicate your authority, pass the Bill and hope it happens. That to me would be a very poor approach to governance in terms of ensuring that legislation is effective. Essentially, if you want the Bill to work, you must ensure that what is supposed to happen after it is passed does actually happen. To my mind, frankly, that is very clear and obvious, and I cannot begin to think what the argument against that would be. How on earth could somebody argue against the idea of making sure that something you hope works does work? I could not even begin to think about how to argue that.

Q74 Peter Grant: One of the questions we looked at in quite a lot of detail this morning was the retrospective nature of part of the legislation. It does not create a new offence or mean that something that was lawful at the time is retrospectively made unlawful, but it gives the Insolvency Service powers to look back at previous events that it could not have looked at in the same way before. First, do you agree with the principle that the Bill should be retrospective? Secondly, what are your thoughts on the three-year time limit that says that the Insolvency Service can look only at things that happened in the three years before a company is dissolved?

Andrew Agathangelou: First, yes. In my opinion this most certainly should be made retrospective. Why not make it retrospective? If the purpose of the Bill is to catch the baddies and to mitigate the risk of others deciding to go about doing this stuff as a direct consequence of the very powerful deterrent effect, why on earth would you not make it retrospective? To my mind that is really clear. I cannot imagine why you would not want to make it retrospective, if you had the power to do so. You are Parliament and obviously you do have the power to do so, so why not do it?

Three years is the blink of an eye in this context. There are all sorts of things that directors can—and do—do to play the game. They know the rules and regulations, and they know how to dance in, on and around them. The longer the time that you can go back, the more good you are going to do. It is as simple as that. The further you can go back and prosecute people who have broken the law, and wilfully and callously committed offences, the better. Why not make it 10 years or 15 years? I do not know what the right timeframe is, but to my mind three years seems like a very short period of time.

If the objective is to try to clean up our country, then make the timeframe as long as you can. I make this point because on the international scale I should mention that we have about 1,000 members outside the UK. It shames me to know that outside the UK, the UK is considered to be one of the worst places in the world when it comes to economic and financial crime and fraud. Some countries think the UK is the laundromat of the world. There are huge concerns over money laundering and over international drug money, terrorist money and so on.

Given how bad the level of fraud, white-collar crime, corruption and those sorts of things are within the UK, I would suggest that Parliament should come at this from the point of view of, "We should now be as powerful as we can be in opposing these dark and dangerous forces, unless there is a really good reason not to, because we have a national duty to do so." I was brought up with the idea that the UK was a world leader when it comes to these sorts of things, but frankly the evidence really does not show that.

I want to make one particular point, Peter, if I may? There is a very powerful database called Violation Tracker that tracks the levels of violations by companies against the US authorities. When you look at the data in there, you find some startling trends, and the first is this: there are about $667 billion-worth of infringements against the US authorities by all kinds of industries. I think 52 industries are listed. The worst offending industry on the Violation Tracker database is the financial services sector, despite the fact that there is a long list of reasons why the financial industry actually ought to be the most trustworthy industry of all. That is not the case; it is actually the worst offender out of all of them. In fact, it is so bad that roughly half of all the infringements in that $667 billion total are directly attributable to the financial sector. In other words, it equates to all of the other industries put together.

My point is that the jewel in our crown, in terms of UK plc, is our financial services sector. I am of the opinion that if similar analysis to that which has been done in the US market were done in the UK, it would likely show a very similar picture. Therefore we should be fighting extremely hard to hunt down all perpetrators, all criminal dodgy directors. From my point of view, given the interest of my organisation, I think we should be relentless when it comes to chasing down people who operate scams such as Blackmore Bonds, Connaught, LCF, Premier FX, Lundy & Associates, and all the others.

Q75 Peter Grant: One final question, if I may, that ties together two of your previous answers. You said that you had certain knowledge of the type of scams that you just described, perpetrated by company directors who were doing the same thing many years ago. It is up to you if you want to name names in answer to this question, but are you aware of people conducting these scams now who could be disqualified from office as directors if the Insolvency Service went back and looked at the conduct of directors of companies that were dissolved earlier than the time limit of three years set out in this Bill? Does the three-year rule actually prevent the Insolvency Service from investigating directors currently conducting scams who, without that time limit, could be held to account and disqualified from holding office?

Andrew Agathangelou: Yes, that is absolutely the case. I will elaborate on my answer, if I may. Last year, the Work and Pensions Committee led by Stephen Timms MP opened an inquiry on pension scams. Many of our members are victims of pension scams, so as a consequence it is a topic we know rather a lot about. I will share a document with the Committee produced by the Transparency Task Force as part of our response to that inquiry, and that document will evidence without any doubt why it is absolutely necessary that the three-year limit is extended to five, six, seven, 10 years, however far back you can go.

I say this because I am working on the basis that if the regulators, the enforcement agencies and the Insolvency Service can prosecute criminals and have them pay fines or be locked up, or whatever it might be, they would want to do that. Why would they not want to prosecute the baddies? To my mind it is simple, and I absolutely assure you that in the document I will provide to the Committee, as well as other supporting documents and evidence, you will see named individuals who have been dancing around prosecution over many, many years—I think one is 11 years. This Bill, if extended to a proper duration of time, would become a problem for them.

I would take great satisfaction if this Bill helped to finally lock up individuals who are currently in very expensive villas in Florida, with properties all over the world, with all kinds of fancy cars and fancy homes, all paid for by the life savings of British pension savers and investors. That would be very rewarding to know.

Q76 Navendu Mishra: I believe that all 650 MPs will have constituents who have been victims of the practice of phoenixing. I believe you made reference to law enforcement agencies, Action Fraud and the National Crime Agency. Could you tell us a bit more about how big the problem of phoenixing is—directors using legislation to dissolve companies to avoid liabilities and further investigation?

Andrew Agathangelou: I cannot answer your question directly, forgive me—I do not have that data and have not done that research. Let us think of it like this: roughly four or five years ago, a man called Roberto Saviano, an investigative journalist, became quite famous for a period because he did some investigative journalism on the mafia, and as a consequence of that investigative journalism, he now lives, I believe, under police guard 24 hours a day because he lifted the lid on a whole load of really bad, really heavy stuff.

I am mentioning Roberto Saviano because about five years ago, at something called the Hay Festival, he made the point that London is the heart of global financial corruption. That is a pretty powerful thing for somebody to say, especially if they have been investigating the mafia for years and years. You can google it and find it yourself. This is a very serious heavy-duty investigative journalist.

I mention that because it is reasonable to assume that a lot of that corruption involves entities and companies set up for special purposes. If the UK is the worst country in the world when it comes to global financial corruption—or if it is not the worst, let us say it is in the top quarter of really bad countries when it comes to financial and economic crime and corruption—it is reasonable to assume that the artful dodge of phoenixing is part of the modus operandi of the "community" that does this kind of stuff. I cannot give you any facts or figures, but a little deduction suggests that it is a massive problem.

I will make one further point, if I may. One of the reasons why it is a problem is Companies House. It is still shocking to me that, despite about nine years of Parliament having an interest in Companies House, finally getting its act together and asking even really basic questions about the people behind a new company that is being set up, Companies House has been allowed to carry on behaving in the nonchalant way that it does, with its casual, risky and dangerous way of granting companies the chance to come into existence when no proper due diligence has been done.

Similarly, in the pensions world, there was a period of about three years when Her Majesty's Revenue and Customs was happy to authorise the setting up of new pension schemes with the lightest-touch due diligence you can imagine. Basically, people were allowed to go online, fill in a form and create a new pension scheme, which would then be the perfect vehicle for scammers to use. That has happened so much.

While I am on this little rant, allow me to stay there with one more point. When the pension freedoms legislation was being introduced, many people said, "Woah, woah, woah, woah, woah! Before you go allowing people to transfer their entire pension savings in a lump sum, why don't we stop and think what the risks of this are? Why don't we have a conversation about whether this might lead to some kind of fraudster's paradise?" But no, pension freedoms legislation was rushed through, and now, many years later, even the regulators, such as the Financial Conduct Authority, are making the point that not enough thought was given to the risks associated with that kind of casual, fast policy-making.

So there we go. Companies House is effectively advertising to criminals, "Come and set up a company in the UK. Don't worry, we'll turn a blind eye to pretty much anything that happens because, frankly, we won't know what you're doing or what you're about because we won't bother asking you." That is one example of these sorts of issues. The second example I have given you is in relation to HMRC, and it goes on.

I honestly think that if anybody was to do some kind of independent, objective, evidence-based evaluation or analysis of the work of City of London police, the Insolvency Service, Companies House and the financial regulators—that very long list that I mentioned—around how effective they are at preventing crime from happening in the UK, I am pretty sure that report would be rather scathing.

Navendu Mishra: Your contribution is quite depressing, but thank you for making it.

Q77 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I am here with my corporate governance hat on, but I am also Minister for Consumers. The issues that you raise about scams are really important, and it is really important that we continue to address that. We just had Scams Awareness Week; we have been raising awareness so that people do not get involved, but it is also important that we make sure that institutions and networks are addressed in these sort of ways.

It is interesting: you talked about the amendment, which actually asks for a single report in a year. Clearly, we want to be managing the situation and making sure that it is effective. In terms of the time that you are looking at, obviously that does not negate the ability for criminal action to be taken; it is to restore directors.

I really want to focus on the Bill itself, and the focus within that and what we are doing positively to try to tackle some of these issues—including on phoenixing, which you started off talking about. I know you talked about lots of other things, and other things that we can be doing and are doing, but do you agree that the Bill adds an extra weapon to tackle phoenixing itself?

Andrew Agathangelou: I certainly do. As I said earlier, it is a significant, valuable, worthwhile step in the right direction. My plea—forgive me; I guess I am repeating myself here—is that we look at the whole ecosystem. For example, why on earth are we not including fraud and so on in the online safety Bill? I know that is another topic, but can you see how, from my point of view, these are all interconnected issues—this is all the ecosystem?

I guess I am saying that Parliament can take one of two views here. You can either deal with this tactical, ad hoc Bill, which is of course worthwhile, in isolation of everything else. However, for goodness' sake, please do not do that; actually look at the bigger picture here—the interconnected matrices of other issues that Parliament ought to be grabbing by the scruff of the neck and finally sorting out.

Paul Scully: I appreciate that. If you look at corporate governance and Companies House reform and all these issues, and indeed at the online harms Bill, I am sure you will have plenty of opportunity to comment on that. As I say, this deals with one specific issue because of the impetus now. That is all I wanted to raise.

The Chair: If nobody else has any questions for our witness, I thank you on behalf of the Committee for your evidence, Mr Agathangelou. I am sure the Committee welcomed your frank speaking throughout. Thank you very much.

Andrew Agathangelou: Thank you all.

Examination of Witness

Kate Nicholls gave evidence.

3.43 pm

The Chair: We move on to our fourth witness panel for this afternoon. The next witness we will hear from is Kate Nicholls, the chief executive of UKHospitality. We have until 4.45 pm for this session. Ms Nicholls, could you formally introduce yourself for the record?

Kate Nicholls: I am Kate Nicholls, chief executive at UKHospitality, the national trade body representing hospitality businesses—pubs, clubs, bars, restaurants, hotels and holiday accommodation. We have 700 member companies, which between them operate 95,000 sites across the UK, which is about 90% of the total hospitality market.

Q78 Jeff Smith: Welcome, Kate. We are keen to get the view of business about how this legislation will affect businesses. Of course, UKHospitality will primarily be about hospitality businesses, but I am sure that you have supply chain businesses—and you will certainly be concerned with supply chain businesses that are some of the targets for the funding in this package.

I suppose my first question is this: what is the general view of UKHospitality of the measures, allied with the £1.5 billion funding package that goes with them?

Kate Nicholls: The key point that we would make is that we have had a high degree of support from the hospitality sector and the supply chain that goes alongside it throughout the course of the pandemic. We have a challenge in the supply chain in so far as the discretionary grants made available to our businesses within the supply chain have been allocated by local authorities, and by and large that has not flowed through as swiftly or as seamlessly as could possibly have been the case.

In addition, the business rate support made available to the supply chain businesses, and those businesses operating in the wider hospitality community that have been excluded from the hospitality and leisure grants, is not flowing through to the level that it needs to. Perhaps that is an indication of the large volume of businesses that are trying to get to grips with things and trying to get part of the wider funding available. There is a relatively small pot for a large number of businesses, particularly small and medium-sized enterprises.

Q79 Jeff Smith: I suppose the question that follows on from that is this: if the discretionary grants have not really been swift and seamless, as you have said, for various reasons, what lessons can we learn in trying to put in a regime for the grants that go along with this package to help businesses and local authorities in particular to manage the grant regime better?

Kate Nicholls: Part of what would be really helpful would be to have greater guidance made available to local authorities about the types of businesses that are particularly impacted by the pandemic and particularly dependent on the hospitality sector.

Hospitality is quite unique in that it has a supply chain that almost exclusively derives its income from hospitality businesses; with hospitality businesses, either 90% or 100% of their income comes from hospitality, but 75% of supply chain businesses within the sector gain more than 80% of their income from hospitality. More detail needs to be given to local authorities. Local discretion is meaningless unless you have really clear national guidance about the type of businesses that are to be supported and the impacts that they have had.

Greater clarity and economic advice centrally would help, as well as a comprehensive overhaul of the central guidance to make it clear that a multiplicity of funds have been available throughout this process—some of which have closed now, some of which remain open and some of which have been extended. That would be helpful: to provide greater clarity to those local authorities about the types of businesses that are able to be supported and how long this money is expected to last. There has been a general reticence about giving out funds when you might have a further call on income going further forward. However, now that we are towards the end of the pandemic, overhauling that guidance and providing greater certainty would be helpful.

Q80 Jeff Smith: In terms of the quantum of the figure—the £1.5 billion—do you have a view on whether that is sufficient? What kind of businesses ought to be prioritised in the guidance when it comes through?

Kate Nicholls: The businesses that need to be prioritised are those that have been most significantly affected by the covid crisis: both those frontline businesses in hospitality that have not benefited from the grants and the supply chain businesses to tourism, hospitality and leisure—and also those that are not business-based.

One of the areas that has been missing in a lot of the grant distribution has been food wholesale and food distribution—logistics companies wholly dependent on hospitality—but also our event caterers, business caterers and contract caterers. Those are the businesses that operate from a museum or an office, and not from their own units. They have therefore been totally excluded from grant support going forward.

In terms of the quantum available, we need to look at the allocation per local authority and make sure that that is given on the basis of the number of businesses they have that are disproportionately affected, so that we do not end up with the situation that we have had in the past, where constituencies in local authority areas that have a high concentration of these adversely affected businesses get a relatively small pot of money, because it is allocated per head, or per resident, or it reflects a different form of demographic.

We need to look at the pockets of deepest concern. As we come out of this, we want to avoid a whole-economy approach and be much more targeted and specific with the funds that need to be available in a greater volume to businesses particularly affected.

Q81 Jeff Smith: Finally, have you had any conversations with the Government about that mechanism and guidance? Are they taking soundings from hospitality businesses in particular about how that might work?

Kate Nicholls: Yes, they are. We are having conversations with the three main Departments that we work with—the Department for Business, Energy and Industrial Strategy, the Department for Digital, Culture, Media and Sport and the Department for Environment, Food and Rural Affairs, on the food supply and wholesale side—to ensure they are pushing to make sure that grant guidance is as comprehensive as possible and identifies the businesses that need to be caught that have been missed in the past but are disproportionally affected by covid. We are also urging that concern and care are taken to include businesses that have been particularly adversely affected as a result of the delay in step 4.

Q82 Seema Malhotra: Thank you very much, Ms Nicholls, for your evidence. Do you want to add anything further about businesses that have been excluded from other support that you believe should be within the scope and remit of—and therefore eligible for—this funding? Secondly, are you concerned about delays to the funding? How quickly do you think it needs to be made available?

Kate Nicholls: The quicker, the better is all I can say. A lot of hospitality businesses and their supply chains are clinging on by their fingertips, particularly given that they have had an extra month of restrictions imposed on them. A quarter of hospitality businesses have not been able to open and legally cannot until 19 July.

The remainder are subject to severe restrictions, meaning a loss of revenue of £3 billion. That impacts up the supply chain because if we are not operating at full capacity, we cannot get our supply chain kickstarted. The delay and cooling effect of that month of extra restrictions is significant, particularly in our town and city centre businesses.

We need to have that money as rapidly as possible, particularly because business rates bills started to kick in again for hospitality from the 1st of this month. Some £100 million of business rates bills started to be felt by the most affected businesses; that flows up through the supply chain as it tightens the credit and liquidity within the market.

The money needs to come as rapidly as possible and local authorities need to be given incentives to make that payment as rapidly as they can through the mechanism, so that delays do not hit. The danger is that if you leave it too late, you fail to get support to the businesses that are teetering on the brink and nearly surviving. We have lost an awful lot within hospitality in our supply chain, and we need to make sure we can keep those that are on the brink. The more swiftly we get money to them, the better.

On those businesses that have not benefited and need to be prioritised in this round of funding, the main ones highlighted are events, contract and office catering, particularly those in town and city centres where the delays will happen. You need a concentration on activities in central London, where businesses will not get back on their feet until we get international travel and office workers back in significant volumes. London hospitality is operating at about 20% to 30% of normal revenue levels; in the rest of the country, it is about 60% to 70%.

There is a severe lag on the central London activity zone and a heavy concentration of affected businesses in those two local authority areas, as well as Southwark on the south bank. You need to have focus on town and city centre areas, as well as the other businesses such as catering, weddings, events, conferences and banqueting, the freelance support and supply chain businesses that sit alongside those, and food wholesale, distribution and logistics.

Q83 Seema Malhotra: Thank you; that was very helpful. Within the sector, and from wider discussions you have had with those excluded, are you aware of businesses that have put in MCC appeals? What is the general feeling about this legislation?

Kate Nicholls: Yes, we had businesses that started to put in MCC appeals midway through the pandemic, when it was obvious that its effect was going to be much longer lasting than was first anticipated at the beginning of last year. A number of holiday parks, camping and caravan parks, golf courses and bigger holiday and hotel resorts put in MCC appeals. A number had been lined up for town and city centre pubs, bars, restaurants and hotels. Then there was the announcement that the MCC appeals would not be allowed under covid—that would not be a legitimate reason for an MCC appeal.

In our sector, MCC appeals are one of the few ways in which we can adjust our rateable value and our rates bills, which are incredibly high: they are the second biggest overhead as our businesses adapt to structural changes in the economy. While we might have thought that covid would be a temporary blip and a temporary impact on the economy, it is quite clear that for many businesses, particularly in towns and city centres, where there are changes to ways of working and to retail office accommodation, we are seeing a structural change that will have a longer-term impact.

People are very concerned, particularly as we move through this period when we have support and a tapering of relief on business rates at hospitality venues that comes to an end in April 2022. The concern is about what happens when we revert to rateable values and rates bills as normal in April 2022, because those bills will be set according to rateable values that were set for rents in 2015, at the height of the property market.

We are going to come back to rates bills at the highest levels we have ever seen them, having had a delay in revaluation. We will have had a long term without a market adjustment and therefore there is a concern that those businesses for which there is clearly a structural change in the marketplace are prohibited from making an appeal now that allows them to get ready for April 2022.

Q84 Seema Malhotra: Finally, have you seen a rise in businesses that may have experienced debt and other challenges being dissolved? What does the data in your membership say about what has been driving that? Are there any wider issues around the dissolving of companies that we should be aware of?

Kate Nicholls: Thankfully, we have seen very few companies in this sector go into liquidation. We have seen some administrations and some companies being revived with inward investment, particularly in the late-night sector. The areas where we have seen the biggest contractions are office-based and London-based.

We have seen a high number of business failures of individual sites and small and medium-sized enterprises. In particular, we have had contraction in the market of 12,000 hospitality businesses from covid from April 2020 to March 2021. That is a contraction of about minus 8% for pubs and bars, plus 10% for restaurants and hotels, but in major conurbations in the heart of our cities, one in five businesses has failed through the covid crisis. Part of that is very high levels of debt, and that will continue to accelerate business failure and business closure as we come out of this. The first date at which our sector can go cash positive is 19 July, but it is estimated it will take two years before the sector can recover to 2019 pre-pandemic revenue levels and profitability.

As we come out of this, we see a heavily in-debt sector. Previously, debt was used to fund growth and further investment. Pre-pandemic, we were opening two sites a day as we expanded our pubs, bars, restaurants and hotel chains; that was funded largely through the debt and earnings of the businesses. Over the course of the pandemic, we have seen that while the rest of the economy has corporate deposits that are twice the level of corporate debt, in hospitality it is exactly the opposite. We have twice the level of debt as corporate deposits, which means that our sector is going to come out with an anchor on its potential growth and recovery, because it will have to pay down and service that debt and that will delay the recovery further.

You are looking at about £2 billion or £2.5 billion of rent debt. We are waiting to see the Government's proposals in the detail of the Bill that will help to resolve that. There is also £6 billion of Government-backed loans, which many businesses started to repay this month. That is very challenging when they have limited revenue coming in or heavily restricted revenue. Paying down that debt will to take a lot of time to get through and to get over, and we fear very much that the level of business failure that we saw during the covid crisis will be replicated in the two years as we come out of it, as we try to recover.

Q85 Jeff Smith: Can I follow up on a specific question that follows from something you said earlier? I was interested to hear you say that the hospitality trading levels in London are 20% to 30% of what they would normally be, and in the rest of the country it is around 60% to 70%. That is partly down to international travel, and I am guessing that there might also be areas—maybe coastal towns—that might be similarly affected by lack of footfall. I am wondering whether there is an evidence base for those regional or city-based variations that the Government might take into account in guiding the allocations, or is that a little bit too sophisticated to get into?

Kate Nicholls: It is certainly challenging to be able to get into, and I am not sure it would drill down as closely as local authority by local authority level, but there are certainly indications. You can measure footfall drops by high street data: there is good data from Springboard about footfall in our high streets, towns and city centres, as well as shopping centres. They are measuring it for retailers, but that would also apply to hospitality businesses. It is not just the international tourists: it is the offices, the work from home, and it affects different city centres differently according to the demographic that uses them. It is less to do with our coastal towns—they are benefiting from more domestic tourism and domestic footfall—but you are seeing it in London, Edinburgh, Glasgow, Manchester, and to a lesser extent Leeds, Sheffield and Newcastle. They are seeing a drop, but London is particularly badly affected because 70% of London hospitality is inbound tourism, and we are not going to see any pick-up in inbound tourism any time soon.

I think there are broad regional differences that you can apply: it is a very rough and ready crude assessment that you can place on it, but there is a possibility of looking at footfall data. However, I would urge the Government to look at the areas of the country and the constituencies where you have a disproportionately dense population of hospitality and tourism businesses—many of which will be SMEs—and where you have the supply chain businesses that support them. They tend to be local supply chains and to be geographically co-located, so that would be a good indicator of where that support needs to be directed.

Q86 Luke Hall: We are clearly moved to give 100% rate relief to many businesses with a £16 billion pot. Of course, I understand that some of the businesses you work with and represent will have been disappointed about where the line was drawn, so to speak. I just wonder, notwithstanding the point you made earlier in answer to the question about guidance, whether there is anything you would like local authorities to start thinking about as they start to draw up their own guidance schemes in response to some of the early challenges that have been faced by some of the businesses you will be working with.

Kate Nicholls: We would urge local authorities to work with us to identify themselves where the areas of greatest need are. One of the things that has frustrated a lot of our businesses is that there is a central message from Government, and it is not necessarily interpreted on the ground as fluidly as Government might have hoped. When you look at some of the local authority areas, we have had businesses that are clearly designed to be captured and covered by the support mechanisms that are available, but local authorities have often taken the view that if it is not directly specified in guidance and it is not a named company or a named type of business, they are precluded from using their discretion and being able to provide support to those businesses. That is the frustration that our businesses have had on the ground going forward.

It would be helpful if local authorities could be a bit more permissive in identifying the businesses that they know are hurting at a local level, rather than applying a prescriptive approach that says, "If your name's not down, you're not coming in," or "Here's a tick, you are covered." That would help immeasurably in those businesses that tend to fall between the cracks because they are not clearcut: if you are a coach operator, are you a tourist business or are you not? A local authority should be able to understand its local area and know which ones are and therefore need to be helped, and which ones actually managed okay. Those are the kinds of areas in which we would like local authorities to use their own discretion, not wait to be told specifically by Government that they can help those businesses.

Q87 Paul Scully: Briefly, with my hospitality Minister hat on, and following on from that question, Kate, you will remember that Minister Huddleston and I wrote to local authorities asking them to use their additional restrictions grant before they access their top-up. Have you seen any evidence of any local authorities responding to that, either by giving more money to businesses on their books or by widening the base to fill some of the cracks that you are highlighting?

Kate Nicholls: There are a few notable exceptions, but you can measure on the fingers of fewer than two hands the local authorities and businesses we have been able to help that have had a positive response to that request. All too often, the response has been that the grants that we are talking about are closed, there is no more money, and they will get back in touch with the businesses if more money becomes available.

It is incredibly frustrating that you have this disconnect at a central level. We hear what is being pledged, and we hear and understand the work that is being done by Ministers to communicate to those local authorities, but the operators on the ground just get a "No". Some local authorities have been more creative than others, and some have been more proactive than others, but generally speaking it has been a long, slow process, and it has been very difficult to get money out of the local authorities for the businesses that desperately need it. It has been too slow in being processed. We know, because of the work we are doing we are doing at a central Government level, that it is there and has been made available; it is just not cascading out.

Q88 Simon Baynes: Ms Nicholls, I have heard you speak on many occasions about hospitality businesses with great authority. One of the points that occurs to me is that they have the capacity to spring back quicker than some other businesses. That has certainly been the experience, particularly of last summer. They also benefit from the restrictions on travel, in terms of domestic demand. Do you think that to that extent it is quite difficult to judge exactly what the situation would be like at this particular point, because they may spring back better than we fear in, say, the late summer or the autumn?

Kate Nicholls: There is clearly a value judgment that needs to be made, and local authorities know their own local markets and the businesses within them, but these businesses will be coming out with such high levels of debt that, however quickly they spring back with revenue, it will take them years to repair the damage that covid has done to them. In the past 16 months, the hospitality sector has been closed with no revenue for 10 months and so severely restricted by the social distancing restrictions that it is not profitable for the remaining six. Businesses in our night-time economy, late-night businesses and entertainment businesses, many of which have struggled to access this grant support, have been closed for 16 months with no revenue. That takes an awfully long time to recover from. The sector has lost £280 million a day. Although certain parts of the sector had a strong performance last summer, the best they achieved was 60% of normal revenue, and that is below break-even.

Yes, demand is strong, and we anticipate that people will be coming to our venues this summer, but there are still constraints that will prevent those businesses from rapidly bouncing back into being sustainable and profitable, and they remain wobbly. Debt is one that could topple them over. There are issues to do with driver and labour shortages across the supply chain. They remain in a very fragile state and there is no resilience left in the industry, so we need to work to make sure we have strategies in place and build back resilience into the hospitality sector. We can then support our supply chain. A bit of pump priming and support now will pay dividends in the longer term.

The Chair: Thank you very much, Ms Nicholls, first, for your evidence and, secondly, for your flexibility with your timings so that you were able to join us early. We appreciated that very much.

Examination of witness

Duncan Swift gave evidence.

4.9 pm

The Chair: I now come to our next and final witness of the day. We are going to hear from Duncan Swift, formerly the president at R3, and we have until 5.15 pm for this session. Mr Swift, could you please introduce yourself for the record?

Duncan Swift: Thank you. My name is Duncan Swift. As you have just heard, I am the immediate past president of R3, which is the UK's trade association for restructuring and insolvency professionals. I am a chartered accountant and a licensed insolvency practitioner with over 30 years in practice, and I am a partner in Azets restructuring and insolvency practice.

The Chair: We are grateful to you, too, for your flexibility on timing.

Q89 Seema Malhotra: Thank you for giving evidence to us today, Mr Swift. I wonder whether you might want to make some opening remarks about your general views of the Bill and whether you support the measures in it.

Duncan Swift: I will be pleased to do so. It is fair to say that the Bill is regarded by R3 and the profession as a step in the right direction. It has been something that we have been seeking for several years now. However, I have to say that it is not a complete solution to the use of company dissolution as a vehicle for fraud.

To expand on that point, the shortfalls relate to the scale of the problem, which the Bill does not address. It also does not necessarily address fully what remedy is applied in the prosecution of directors or in relation to gaining redress for creditors who have lost out in the use of company dissolution for fraud.

Q90 Seema Malhotra: Could you say more about the scale? You talked about what you saw as the scale of the issue. What is your experience of that?

Duncan Swift: There are two things in the context of scale. One is that the Insolvency Service undertakes company director disqualification in relation to the 17,000-odd UK corporate insolvencies that occur annually. It typically achieves about 1,200 disqualifications per annum. R3 members report that they often encounter cases involving significant breaches by directors of Insolvency Act 1986 and Companies Act 2006 requirements that are not included in the company director disqualifications at all, which would suggest that the Insolvency Service is somewhat resource-constrained.

On the flip side, there are about 400,000 to 500,000 company dissolutions per annum. Nobody is quite sure just how many of those are insolvent company dissolutions, but the last time it was looked at in any detail, it was thought that about 50% of that total might be insolvent company dissolutions. That is 10 to 15 times greater than the corporate insolvency volume I talked about earlier. One has to ask whether the Insolvency Service will be scaled up 10 to 15 times to deal with that magnitude of investigation into insolvent dissolutions, or whether the investigation of insolvent dissolutions will come at the expense of investigations into errant director behaviour in insolvencies.

Q91 Seema Malhotra: You have written in, but not formally, I do not think, to the Committee with evidence. I think you have written to Members of Parliament before. I wonder whether you might be able to put some of those ballpark calculations in a note to the Committee.

Duncan Swift: Yes, R3 will be happy to supply that to you.

Q92 Seema Malhotra: Thank you. You raise some quite serious concerns about the resourcing of the Insolvency Service. Are you and your members concerned, then, that action is not being taken against directors against whom action should be taken? Are you seeing that result in phoenixism? Have you seen that and have your members seen that?

Duncan Swift: From the reports of R3 members, we are seeing surprise that adverse director conduct reports on serious misconduct have not resulted in disqualification of the directors. Whether that caused phoenixism or meant that the directors went on to commit the same type of misbehaviour in other corporate situations, I am not able to advise.

As a trade association, our member feedback is that the number of 1,200 disqualifications per annum, which is a fairly regular number over the past several years, appears to be fewer than the volume of cases where adverse director conduct reports have been submitted, which would warrant such disqualifications being issued.

Q93 Seema Malhotra: That is very helpful—thank you. Could I ask further about when you have submitted reports and where action has been taken by the Insolvency Service and the Government? How do you think the Government should facilitate the repayment of loans from disqualified directors? Do you see that as through compensation orders? What other tools do you think could be used?

Duncan Swift: That is one area where the Bill, as presented, appears to be incomplete. Mention is made to using things such as compensation orders, but that ordinarily benefits only a single creditor. I would anticipate that in this scenario that would be the public purse in the form of HM Revenue and Customs. Director disqualification in itself, which is the investigation and prosecution process that is envisaged, does not yield compensation to any party. All it yields is a decision that the behaviour of a director is such that they should be disqualified from acting as a director in future. It does not set the compensation mechanism or the process for compensation, whether to a single creditor or the creditor body as a whole.

Q94 Seema Malhotra: To follow up on that briefly, in your view there is an inadequacy in the legislation at the moment. Do you think that there is more that needs to be done? What would you want that to look like?

Duncan Swift: On what needs to be done, disqualifications that prevent directors doing the same errant actions again is clearly a step in the right direction. Other actions that could be taken include enabling restoration of dissolved companies more readily to the register where such errant behaviour has taken place. I mentioned the number of 400,000 to 500,000 dissolutions—as in strike-offs—per annum, of which it is estimated about half are insolvent. Yet only 1% of strike-off companies are put through a process to restore them to the register. We are talking about 4,000 to 5,000 companies a year. That process, from experience, is a court-driven process that typically costs the applicant, normally a creditor, a few thousand pounds in legal costs, to get the company restored to the register, in order to have a licensed insolvency practitioner appointed to it, whether in a compulsory liquidation or a creditors' voluntary liquidation, so as to investigate the company's affairs, and recover assets that might have been misappropriated by its directors.

Q95 Seema Malhotra: From your experience, how long was that process taking?

Duncan Swift: From experience, in terms of restoration pre-pandemic, you could be looking at 12, maybe 18 months. With the restrictions on court time in the pandemic, it is taking a lot longer.

Q96 Peter Grant: Good afternoon, Mr Swift. May I pick up on something you referred to and which was mentioned in the submission to us yesterday from your colleagues at R3? You said that there are a number of reports of potentially serious misconduct by directors that have been submitted by your members that do not seem to be acted on. I can understand that, as a representative body, R3 might not be privy to the details, but are you telling us that you will have had members who have acted as administrators or liquidators who have submitted highly critical reports to the Insolvency Service and have then seen the same directors coming back, setting up a new company and essentially restarting the same kind of misconduct? Is that the information that you are getting back from your members, even if they are not allowed to tell you which companies they are referring to?

Duncan Swift: Yes, sir, that is correct. Although director disqualification—banning a director or person from acting as such—is a deterrent, we also see instances of disqualified directors continuing to act as though they are the controlling party in corporate affairs subsequently. The serious rogue directors do not see being disqualified as a significant deterrent. A more significant deterrent is being held to account for the assets that they may have misappropriated and incurring personal liability for such actions that they have wrongfully undertaken while holding the office of director. That goes to the heart of the fact that more thought needs to be given by Government to how they will actually prosecute those directors. It is not just a matter of disqualifying them as directors. Crucially, what are the Government going to do in terms of revisiting the dissolved company that those directors have inappropriately dealt with through dissolution, rather than conducting an office holder investigation of their affairs, to enable some form of redress through the company's position to recover assets and to compensate creditors who have lost out as a result of that individual's actions?

Q97 Peter Grant: One solution that has been mooted—a partial solution—is that where an administrator or a liquidator makes a report beyond a given standard of belief that there has been serious misconduct, the fact of that report being submitted should be in the public domain. At the moment, it is a public fact that a report has been submitted, but the content of it is not published. Creditors of the dissolved company, and potentially investors in and creditors of a phoenix company, do not know whether any misconduct has been identified by the liquidator or administrator. Where do you see the balance of public interest in that case? Is there a question of potentially damaging the reputation of a director who turns out to have done nothing wrong? Or is it more important to protect the next generation of investors by flagging up that that particular director has had almost a yellow card—a report against them—that has not quite been followed up?

Duncan Swift: That is a very difficult question to answer. I am not a lawyer, so I am not entirely certain where the legal privilege lies. There is the risk that a well-intended but adverse report by an office holder based upon, more often than not, incomplete information might open up that office holder to legal action by the person who is the subject of that adverse report for defamation and impact on their character. It is a very difficult area.

In terms of the position of directors and dissolved companies generally, certainly suppliers, the providers of credit and those who rely upon the good name of an individual as a director are able to assess the quality of that name by dint of Companies House records on the track record of dissolutions and formal insolvencies of those individuals, as long as the Companies House data upon which that assessment is made is known to be accurate. Although this sits somewhat outside the Bill, reforms have been proposed to improve the veracity of the data that Companies House provides to all its users for that assessment.

To go back to an earlier question on improvements that can be made, and going back to the scale of the problem that this Bill currently does not really address, one thing I have not mentioned is that 95% of all company dissolutions are actually at the behest of Companies House. They are not at the behest of directors. Companies House has automatic strike-off for non-filing of accounts and non-filing of conformation statements. It is no surprise that those who would abuse the position of director choose not to file accounts and choose not to file confirmation statements.

One clear improvement would therefore be to remove the automatic strike-off power of Companies House, and to have that 95% of companies that would be struck off put into some form of quarantine or screening process—whether that screening is done by the Insolvency Service or some other Government body—as a precursor to deciding what to do with those companies earmarked for strike-off, and also for their registered directors. What was their behaviour leading up to the circumstances where such strike-off was being contemplated? At the moment, there is a huge volume of companies coming up for dissolution at the behest of Companies House, not at any other party's behest.

Q98 Peter Grant: Would it make rogue directors less comfortable or less complacent about having one of their companies compulsorily struck off for what I think you described as non-compliance with reporting requirements? Would they be less likely to do that if there were also an automatic disqualification of all the relevant directorships at the same time? Would that act as an effective deterrent?

Duncan Swift: It would certainly act as an effective deterrent. I would have to ask—not having considered the question before—whether that would proportionate to the size of the problem. It would certainly be a proportionate deterrent in the context of this Bill if, rather than it being left to the Insolvency Service to investigate dissolved companies that were found to be insolvent after the event, the companies about to be automatically struck off for non-filing of accounts and confirmation statements had their position reviewed by the Insolvency Service at that point, pre-strike-off, to identify whether they should go through a compulsory liquidation process to address and fully investigate the director's behaviour, and to recover assets for the benefit of creditors.

Q99 Peter Grant: May I play devil's advocate for a moment and mention the fact that a lot of what you have suggested would generate a lot more work for insolvency practitioners? How do you persuade members of the Committee that what you are asking for is actually in the best interests of creditors, investors and suppliers of these companies, and is not simply trying to drum up more business for your employers?

Duncan Swift: I understand where the question is coming from, but actually what I am proposing is a lot more work for the Insolvency Service, which is the party that this Bill identifies as performing it. What I am saying is that that work should occur a lot earlier than after the event of a company being struck off—more than likely at the behest of Companies House—and subsequently found to be insolvent.

Pre-strike-off by Companies House, that review is undertaken, ideally, by the Insolvency Service, if it is scaled up to do that investigation. But as I say, the volumes are 10 to 15 times more than the volume of insolvent companies. Should it go into a compulsory liquidation process following that investigation or initial review by the Insolvency Service, it is the official receiver that is first appointed by the court to be the liquidator in the compulsory liquidation—so, it is Companies House, Insolvency Service, Insolvency Service. That is not a direct benefit to the private sector members of the insolvency profession.

Q100 Peter Grant: I have one final question. The legislation as it stands would set a three-year time limit on any application for disqualification, starting from when the company was dissolved. What are your views on that three-year time limit? Is too short, too long, or just about right?

Duncan Swift: I have to say, from experience, it is too short. Rogue directors or individuals who abuse the position of director go to great pains to extract all the asset value out of the companies that they are abusing and to provide a false, or certainly incomplete, trail of their actions as directors of the company. As an office holder coming in after the event, it is like pulling together a 3,000 or 4,000-piece jigsaw puzzle when holding only about five pieces to start with. You are having to make inquiries with multiple stakeholders, as well as interviewing the directors and their associates, to start to get the bits of the jigsaw puzzle necessary for a picture of what actually went on, in order to convince a court that what went on was actually a fraud upon the creditors and that the director had not acted properly. Again, from experience, although a relatively speedy pulling together of the jigsaw puzzle and convincing of the court takes three years, there are many cases where it takes far longer.

Q101 Paul Scully: To expand on a few of those areas, starting with the three-year time limit to file a disqualification application, the Insolvency Service or the Secretary of State can already examine historic conduct, but they have three years to file the application for disqualification. Can you expand a bit on what you meant about the court process, which presumably comes afterwards?

Duncan Swift: What I was explaining about the timeline was that for the office holder—whether it be the Insolvency Service or the official receiver as liquidator, or the Insolvency Service coming in to pull together a picture of the company's financial dealings and the director's conduct in the course of those dealings—it takes time. In the first phase in particular, it can take two years to get a reasonably complete picture before one can be confident of putting forward an application to court, either for a recovery of assets or, I would have thought, the disqualification of a director in circumstances where that individual may well be using the proceeds of such activities to defend their position, as well as seeking to confuse it to defend against the likelihood of such claims being brought against them.

Q102 Paul Scully: We talked a little about compensation orders earlier, which already exist for insolvent companies. This legislation would effectively extend them to dissolved companies, so that compensation can affect all creditors—individual and classes of creditors. A lot of the stuff you talked about at the beginning related to a wider piece of work that you would like to see on Insolvency Service reform and corporate governance. However, do you find the fact that we are bringing compensation orders within the realm of dissolved companies of benefit to—

Duncan Swift: Forgive me, but my understanding and experience of compensation orders is that they are brought on behalf of a single creditor or a few creditors. I suggest a more comprehensive approach: that the insolvency process that already exists is applied, and if a dissolved company is found to be insolvent, it is readily restored to the register and put through the insolvency process. That will have two consequences: a full investigation by the office holder, who in the first instance of the compulsory liquidation is the official receiver of the directors' conduct; and for that process to recover such assets that are available for the benefit of all creditors of that company, not only a few.

Q103 Paul Scully: Okay. The other issue I want to clarify is the resource issue that we started off talking about. In some of the conversations that we had with earlier panellists, we were talking about the public interest test and the prioritisation of the cases that were most likely to get a result, frankly. Is it purely a resource issue that you are raising? Is it one of those that is not working as well? Are you saying that the filters may be wrong within those tests? Could you expand on that?

Duncan Swift: All I can go on is the statistics issued by the Insolvency Service on disqualification orders or undertakings from directors for misconduct relative to the total number of corporate insolvencies per annum, and the member feedback that R3 receives. At an anecdotal level, members report that they have submitted serious adverse conduct reports against individuals, only to find that no action has been taken against said individuals by the Insolvency Service. We are not told why. Clearly there is a threshold.

Coming back to the statistics, it would appear that the Insolvency Service is consistently—year in, year out, irrespective of fluctuations in the total number of corporate insolvencies—disqualifying about 1,200 individuals per annum. That suggests to me that there is a resource issue. I am not in a position to ask the Insolvency Service whether that is the case, but that is what it feels like.

Q104 Paul Scully: That is interesting—thank you very much. Obviously, we consulted on this back in 2018, but there is a particular compulsion to do this now, to tackle the most egregious cases of fraud involving the financial support given by the taxpayer throughout the pandemic. Presumably you welcome that, and therefore the drive to get this measure—albeit that it is not as wide as you would like—through now?

Duncan Swift: Yes. As I said at the start, this is a step in the right direction, but unfortunately it does not go far enough.

Q105 Paul Scully: Sure, but going back to the numbers—I know that it is anecdotal so it is difficult to tell—what sort of deterrent effect do you think this will have?

Duncan Swift: I repeat: it is a step in the right direction, but it is not enough. Individuals who would choose to abuse the benefits of directorship of limited liability companies are not dissuaded by the prospect of being disqualified—that is my experience and that of the members of R3. A more significant deterrent is that they are not only disqualified but the ill-gotten gains of said actions that led to their disqualification are required to be repaid and recovered for the benefit of those who have suffered as a consequence of those actions. If that also includes criminal liability, so much the better; I am sure that will add to the weight of the deterrent. They are far less likely to do it if they can see the routes to the gains that they obtain from such behaviour being readily recoverable.

The Chair: There are no further questions, Mr Swift. We thank you for your evidence this afternoon, and for your flexibility on timing, which we greatly appreciate. That brings us to the end of today's sitting. The Committee will meet again on Thursday 8 July to begin line-by-line scrutiny of the Bill.

Ordered, That further consideration be now adjourned.—*(Paul Scully.)*

4.40 pm

Adjourned till Thursday 8 July at half-past Eleven o'clock.

Written evidence to be reported to the House

RDDB01 Anton Smith, Partner, Ashton Bond Gigg solicitors

RDDB02 Institute of Revenues, Rating and Valuation (IRRV)

RDDB03 Paul Sewell BSc., Managing Director of The Machinery Users' Association Inc.