PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

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

First Sitting

Tuesday 6 July 2021

(Morning)

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

Stephen Pegge, Managing Director, Commercial Finance, UK Finance

David Kerr, Fellow, Chartered Institute of Credit Management

Dr John Tribe, Senior Lecturer in Law, University of Liverpool

Public Bill Committee

Tuesday 6 July 2021

(Morning)

[CHRISTINA REES *in the Chair*]

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

9.25 am

The Chair: We are now sitting in public and the proceedings are being broadcast. Before we begin, I have a few preliminary announcements. Members will understand the need to respect social distancing guidance. In line with the Commission's decision, face coverings should be worn in Committee unless Members are speaking or they are medically exempt. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

We will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication and a motion to allow us to deliberate in private about our questions before the oral evidence session. In view of the time available, I really hope that we can take those matters forward without debate. I call the Minister to move the programme motion standing in his name, which was discussed yesterday by the programming sub-committee for the Bill.

Ordered,

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 6 July)

meet—

(a) at 2.00 pm on Tuesday 6 July;

(b) at 11.30 am and 2.00 pm on Thursday 8 July.

2. the Committee shall hear oral evidence in accordance with the following Table:

Date	*Time*	*Witness*
Tuesday 6 July	Until no later than 10.30 am	UK Finance
Tuesday 6 July	Until no later than 11:00 am	The Chartered Institute of Credit Management
Tuesday 6 July	Until no later than 11:25 am	Dr John Tribe, University of Liverpool
Tuesday 6 July	Until no later than 2:45 pm	The Chartered Institute of Public Finance and Accountancy; The Institute of Revenues Rating and Valuation
Tuesday 6 July	Until no later than 3:15 pm	Local Government Association
Tuesday 6 July	Until no later than 4:00 pm	The Transparency Task Force
Tuesday 6 July	Until no later than 4:45 pm	UKHospitality
Tuesday 6 July	Until no later than 5:15 pm	R3

3. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 8 July.—*(Luke Hall.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Luke Hall.)*

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Luke Hall.)*

9.27 am

The Committee deliberated in private.

Examination of Witness

Stephen Pegge gave evidence.

9.32 am

The Chair: We are now sitting in public again, and the proceedings are being broadcast. Before we start hearing from the witnesses, do any Members wish to make any declaration of interest in connection with the Bill?

Peter Grant (Glenrothes) (SNP): One of the witnesses this afternoon is from the Chartered Institute of Public Finance and Accountancy. I am a member of that institute.

Q1 The Chair: So noted. We will now hear oral evidence from Stephen Pegge, managing director, commercial finance, at UK Finance. Before calling the first Member to ask a question, I should like to remind all Members that questions should be limited to matters within the scope of the Bill and that we must stick to the timings in the programme motion the Committee has agreed. For this session, we have until 10.30 am.

Stephen Pegge: Good morning, and thank you for the opportunity to come along today. My name is Stephen Pegge. I am managing director, commercial finance, at UK Finance. UK Finance is the trade association for finance and banking. We have around 300 members, many of whom provide services to companies, and we are involved more widely in supporting small and medium-sized enterprise policy.

Q2 The Chair: Do you have any general remarks about the Bill?

Stephen Pegge: Yes. This is an important Bill, and one that certainly has the support of many in the business community, including lenders. I know that the consultation had widespread support. It does appear that closing this loophole should be beneficial in terms of the enforcement of good practice, the prevention of abuse and a certain degree of deterrence of the misuse of an important and useful facility that allows companies to be dissolved quickly and cheaply, where that is appropriate and justified, as an alternative to liquidation.

There have been instances over the years where companies have been dissolved with outstanding liabilities, as a result of creditors or those who are owed money. I should stress that it is not just a question of banks, but others who may be owed money and indeed consumers who have perhaps paid deposits on work that has not been done or who are unable to recover those funds, because there has been a deliberate attempt to avoid debts by seeking dissolution.

It is possible in current circumstances for action to be taken, but it can be time consuming and costly, and would usually involve restoring a company to the register if it has already been dissolved. The particular arrangements here will make it possible for the Insolvency Service to investigate directors where there is evidence of abuse, even in circumstances where the business is not insolvent, but instead has been dissolved. That is the loophole that the Bill is looking to close and one, as I say, that we would very much support being open.

The Chair: Thank you, Mr Pegge. We will now take questions from members of the Committee, if you would be so kind as to answer. The Opposition traditionally go first, so I call Jeff Smith.

Q3 Jeff Smith (Manchester, Withington) (Lab): Hi, and thanks for coming to give evidence. I am just trying to get a picture of the scale of the problem. To what extent do you think this is a problem? Are the measures in this legislation adequate to deal with the scale of the problem that you think is out there?

Stephen Pegge: To put it in context, the Insolvency Service estimates that there is currently evidence of misconduct or misuse of dissolution process in only 1% of cases. Given that there are something like 500,000 dissolutions a year, that might amount to only about 5,000 cases. There is some evidence that it is a rising problem and, given that the average company that is dissolved might have a loan of say £200,000, even 5,000 cases could amount to a risk to creditors of up to £1 billion. It is significant in scale because of the large number of companies, even if it is not currently a high level of risk in proportionate terms. I would emphasise that the vast majority of businesses are honest and straightforward and are not abusing this scheme.

The other factor that members of the Committee may be interested in is that quite clearly over the last year, during the covid crisis, there have been a significant number of companies that have taken finance. Given that the Government, through the British Business Bank, have provided guarantees, there would be an impact on the taxpayer if those loans were not repaid and a claim for repayment were made. Again, that is relevant to consideration.

Q4 Seema Malhotra (Feltham and Heston) (Lab/Co-op): Thank you for your evidence today, Mr Pegge. I understand that you helped to establish the covid-19 lending schemes. The Government have suggested that some companies have been dissolved to avoid paying back Government loans given as coronavirus support. Have you seen any evidence of that? If these measures go through, do you believe, from your experience and what you have seen, that the Insolvency Service is adequately resourced to deal with the expansion of powers it would have through the Bill?

Stephen Pegge: Yes, we have seen instances of this practice being used to try and avoid liability under bounce back loans. Back in May 2020, UK Finance with the British Business Bank established the bounce bank loan fraud collaboration group. It involves attendees from the Cabinet Office; CIFAS, the UK fraud prevention service; the Treasury; BEIS; and the National Investigation Service—NATIS. The aim is for intelligence to be shared, good practice to be developed and a threat log to be maintained and fed into the National Crime Agency and the National Economic Crime Centre. In fact, this was one of the practices which had been identified through that and has led to some efforts more recently to try to intervene and intercept these cases of dissolved companies involving Companies House and BEIS.

In the meantime, it is always possible that these cases may well have got through and there is some evidence—again, reported by the Insolvency Service—that there could be around 2,000 such cases which are dissolved and where currently the powers to investigate do not exist, so it is a real problem. If it were to become a more popular route for fraud, while there are mechanisms to deal with it and creditors can object when they get notice through alerts when these situations are gazetted, unscrupulous individuals can still get through and it is important that it is closed as a loophole.

As regards the resources of the Insolvency Service, we have all been conscious that, while the number of insolvencies has been low during a period of suspension and the generous support that has been provided to businesses through public agencies and the finance industry, we would expect that to rise significantly in this next period. There is already some evidence that it will do so. It is important that the Insolvency Service is resourced sufficiently to be able to deal with this. The evidence at the moment is that they have been involved in disqualification of directors in something like 1,000 or so cases across the last year, so it is quite possible that there might be a rise in the amount of work that they will need to do. We would certainly support any investigation into what additional resources might be necessary.

Q5 Peter Grant: Good morning, Mr Pegge. You have described the loophole of company directors being able to dissolve the company in order to avoid their liabilities. Another way that directors can act is to set up two or three companies, transfer all the assets out of a company, dissolve the company with the debts and retain the companies with the assets. Is that a loophole that will still exist, even if the Bill goes through? If that loophole continues, is there a danger that that then becomes the route of choice for dodgy directors to avoid their liabilities?

Stephen Pegge: I think the practice you are describing is sometimes called phoenixing—setting up a company in the same location with the same assets purporting to be the same business with the same directors. It has certainly been a matter of concern for some time. Putting in place these measures should help to discourage and mitigate the risks of phoenixing: I do not think it entirely removes it. As you say, it is possible, even without these additional powers of investigation, for that to take place, but certainly where there is evidence of abuse, the fact that the Insolvency Service will have powers under the discretion delegated by the Secretary of State to investigate the directors, take action against them in terms of disqualification more generally, and seek compensation from them personally for losses suffered will discourage the practice of phoenixing, which I know is a concern. As I say, I do not think that it entirely removes it, but it certainly will discourage it, and to some extent remove some of the possibilities of it taking place.

Q6 Mick Whitley (Birkenhead) (Lab): Welcome, Mr Pegge. Do the Government proposals address all the problems that have been identified with the dissolution process in relation to liabilities and directors' conduct?

Stephen Pegge: This is certainly a very important contribution to addressing major issues, and it is the one that we have been most concerned about recently. We have seen, as I mentioned, real evidence of dissolution being used as an attempt to avoid liability, but I stress that in many cases dissolution is an efficient and appropriate way for companies to be removed from the register where there is no money owing and that business is ceasing, without going through the time and cost of liquidation, which obviously is available as an alternative—for solvent businesses through members' voluntary liquidation, or in insolvent situations through creditors' voluntary or compulsory liquidation. I am not aware of significant other means by which we need to deal with abuse of dissolution. This is the one that has been most to the fore in the evidence that we have seen of abuse, certainly through the fraud group.

Q7 Jeff Smith: I am trying to get a picture of the scale of the issue. You mentioned that the Insolvency Service was involved in about 1,0000 cases in the last year. I appreciate that you said that that is a low number for the year. Then you said that there may be around 2,000 cases where the powers to investigate currently do not exist. That sounds like a significant increase in work for the Insolvency Service, and I wonder whether you think that it will be able to cope.

Stephen Pegge: I am not close enough to its work and resource. One thing that I would say is that the Insolvency Service has very good experience in these sorts of investigations. I would also say that the other element of work, if it has found problems that meet the threshold of evidence and it takes action to disqualify a director, does not necessarily need to involve a court process. In most cases, the Insolvency Service will be successful in getting an undertaking from the director involved to be disqualified. It then has the powers to put that into effect, but certainly people may want to consider whether the resources are sufficient to deal with the case.

The other point is that these are situations where dissolution has been successful. We are also looking to these measures to act, to a certain extent, as a deterrent, in order to make it less attractive for those looking to abuse the system to try it on, as it were. So it may be that this event becomes less frequent in due course.

In fact, one of the processes that is clearly available is for creditors to object to an application for dissolution—and, indeed, the Insolvency Service at the moment is also able to object—on the basis of complaints at that earlier stage, where they have evidence of doing so. And because of evidence of significant numbers of attempts here, those objections have been done on a mass basis.

Q8 Ms Marie Rimmer (St Helens South and Whiston) (Lab): Good morning, Mr Pegge. Clause 2(14) states that the provisions

"have effect in relation to conduct…occurring, and in relation to companies dissolved, at any time before, as well as after, the passing of this Act."

Do you support making these provisions retrospective and, if so, how should the Insolvency Service make use of these retrospective powers?

Stephen Pegge: As I understand it, the support for this measure was confirmed as early as 2018 and it has really been a lack of parliamentary time that has made it difficult for it to be put in place. Given that we are aware of abuse that has happened in the meantime, I support this measure being retrospective. I appreciate that that retrospectivity is not often applied to such Bills, but we are talking about a fairly high evidence threshold and about situations where natural justice would support this measure being made with retrospective effect.

Q9 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): It is good to see you again, Stephen. That is an interesting point about the retrospective nature of the measure, given what you were saying about businesses taking on more debt throughout the pandemic. Obviously, the insolvency practitioners will work through things, as you have rightly said, in order of public interest. What do you think they may look to do to give lenders confidence, by approaching the pandemic response finance first?

Stephen Pegge: Clearly, when lenders are undertaking a credit assessment, they will consider both the willingness to repay and the ability to repay, the probability of default and the loss in the event of default. All those could potentially be, and I would say probably at the margin, factors that could be influenced by the use of dissolution as a means of avoiding liability.

Quite clearly, it is very difficult for a company that has been struck off the register to make payments under a loan, so there will be the avoidance of debt in those circumstances. Given that currently there is time and cost involved in restoring a company to the register, the ability then to take this action against directors after the event both to deter and, if the activity should still carry on, to investigate and take action against directors in a more timely and cost-effective way should reduce the ultimate losses to creditors. I think there has been an estimate that creditors could be saved around £1 billion as a result of this measure, which would be significant in terms of credit assessments.

The net effect is the ability to provide more finance with less time having to be spent on assessment up front, on better terms, and in circumstances that should help the recovery. However, I will emphasise, Minister, that this is only one factor and it is all operating at the margin. Nevertheless, it is certainly something that during the past year has become a matter of concern, especially in relation to bounce back loans.

Q10 Paul Scully: It is a complicated scene, as you say, and this is only one part of it. I think you are, therefore, suggesting that strengthening the regime in this way will give further confidence to lenders, and especially SME companies within the supply chains.

Stephen Pegge: Yes, exactly. It will, therefore, be possible to focus more time and support on those who deserve the finance, without the distraction of those who are abusing the process.

Q11 Paul Scully: Finally, what effect do you think there would be on lending if this regime did not come into place or the loophole were not closed? Would there be a chilling effect?

Stephen Pegge: As you say, it is a matter of a chilling effect. It is one other factor that would weigh on finance providers' minds when making lending decisions. This is a crucial time for lenders to provide finance. If you look at the latest Bank of England figures, for May, which were published last week, some £7 billion of new lending was provided to SMEs.

Latest surveys suggest that high proportions of loan applications are being sanctioned—something like 85%—and we want that to continue. The expectation that this sort of loophole is being closed should build confidence. It will ensure that there is discouragement of bad actors, so that it does not grow out of proportion, which we fear might otherwise be the case.

Q12 Peter Grant: Good morning again, Mr Pegge. I apologise because I think I mispronounced your name earlier because I tried to read it without my glasses on. In an earlier answer, you referred to the retrospective nature of parts of the Bill. You indicated that you supported them. In particular, you referred to the fact that the Government had made it clear since 2018 that the legislation was coming.

Clearly, we are not creating a new offence that was not illegal at the time. We are considering legislation to make it easier for the authorities to act against people who may have committed offences, which I think is an important distinction. Even given that, is there an argument that the retrospective power should apply only to the date when the Government first published their proposals to legislate? Would you still support the Insolvency Service if it wanted to take action in relation to things that had happened in, say, 2015 or 2016? Would you have any concerns about that?

Stephen Pegge: As you say, this is essentially a technical loophole, which the Bill seeks to close. All it does is confer powers of investigation, with significant and rigorous practices in terms of investigation. The risk of miscarriage of justice is relatively limited. I do not have a particular date in mind. The point I was trying to emphasise was that this has widespread support and has had for some time.

The Chair: Thank you for joining us today, Mr Pegge, and taking the time to give evidence to the Committee. We are grateful.

We should be moving on to the next panel now but apparently the next witness is not ready. I will adjourn the Committee for a short time. We will reconvene when we have the next witness online. Thank you.

9.59 am

Sitting suspended.

Examination of witness

David Kerr gave evidence.

10.4 am

Q13 The Chair: We will now hear oral evidence from David Kerr, a fellow at the Chartered Institute of Credit Management. We have until 11 for this session. Could the witness please introduce himself for the record and make a few remarks about the Bill? Thank you.

David Kerr: Good morning, and thank you for the invitation to join the proceedings today. My name is David Kerr. I am a fellow of the Chartered Institute of Credit Management, the largest such body for credit managers. It was formed approximately 80 years ago and provides professional support, training and representation for credit managers and the creditor community.

The CICM contributed to the 2018 consultation and broadly supported the proposed measure in relation to director disqualification. Creditors have often raised concerns about directors leaving behind unpaid debts; whereas in a formal insolvency process, there will be some inquiry by an insolvency practitioner, when a company is dissolved ordinarily there is not. As we have heard, at present, the Insolvency Service will rarely look at those cases because it would potentially involve the cost of restoring a company to the register. The Bill therefore plugs an important gap, as others have commented.

It is probably important to make the point that this was first considered as a suitable measure and had support back in 2018, and while the urgency to bring it in now is understood, this measure is not solely for the purposes of chasing after directors and recouping funds in relation to covid debts but potentially has wider implications as well. There has been reference to the fact that 2,000 or 2,500 companies with unpaid bounce back loans may have been dissolved over the last year or so. I do not think there is any suggestion that every one of those will be investigated, but presumably the Insolvency Service will apply the same public interest criteria as it has hitherto in relation to insolvent companies. That would certainly give it the power to investigate those companies where directors have left behind debts, whether they are bank or Government debts or any other. That should act as a deterrent, one would hope, to directors using this route to avoid liabilities, and will perhaps also restore some confidence in the creditor community, provided that the action taken is publicised and therefore serves its purpose, both in the compensation orders that might be made and the deterrent factor. Broadly, the CICM supports the Bill. With that, I will be happy to take any questions that Committee members may have.

Q14 Seema Malhotra: Thank you for giving evidence today, Mr Kerr. You talked about restoring confidence to the creditor community. Would you say that there has been a loss of confidence in the creditor community? In relation to the 2,000 or 2,500 dissolved companies that you mentioned as having received covid-related loans, would you say that a high proportion of those may require investigation? Based on your experience of the creditor community, do you think that there was the means to repay those loans that those companies then tried to avoid?

David Kerr: In relation to confidence, I would not go as far as to say that there is a lack of confidence in the system, but in order to enhance confidence this is a suitable measure. It removes one source of frustration among creditors, which is where they can see directors who are not taking steps to put their companies through a formal insolvency process and instead are seeking to avoid debts by using the dissolution route.

In terms of numbers, I have not made any inquiry into the 2,000 to 2,500 companies that have been mentioned, but there has to be a sense of realism about the extent to which any Government agency can inquire into their circumstances. A percentage of them, based on creditor inquiries, complaints or other information that may come into the hands of the Insolvency Service, would trigger some investigation.

In relation to insolvent companies, although perhaps insolvency practitioners and creditors may be frustrated from time to time about the number of cases that result in disqualification proceedings, again there needs to be a sense of realism around the extent to which that can be done. That will happen in cases where, despite all the information, there is also a public interest test that is passed to pursue those actions.

Q15 Seema Malhotra: If a case passes the public interest test, do you think there should be the resources to deal with that? There is concern that the Insolvency Service may not have the resources, and therefore the ability to follow up on the expansion of powers in the Bill in the public interest. Has your experience been that the Insolvency Service has been able to resource any investigations that might be needed? What tools should the Government use to pursue directors of dissolved companies that they identify as culpable? Do you have a view on that?

David Kerr: In terms of resources and the ability to pursue all the cases that the Insolvency Service might wish to pursue, I guess that is probably a question for the Department. Not all the cases that are investigated will pass the public interest threshold. To the extent that there are cases that pass the test but cannot be pursued for resource reasons, I am sure the Insolvency Service would welcome any additional resources that can be made available to it. From the point of view of creditors, if actions are pursued in relation to covid-related debts and not others, perhaps the measure works against them a bit.

That comes to the second part of your question. There are two elements to this. First, there is the potential disqualification of individuals who are proven to have acted inappropriately. Secondly, and on the back of that to some extent, there is the possibility of compensation orders against those individuals, with a view to putting money back into the hands of creditors. Again, I am sure CICM creditors would wish that to be as effective for its members as for any Government debt.

Q16 Jeff Smith: Mr Kerr, you said that the CICM is broadly supportive. Do you have any particular concerns about the Bill? Is there anything that you think is missing from it, or could it be improved?

David Kerr: I think the point has been made about resource. I have heard comments from others on Second Reading and elsewhere about that. It would be unfortunate if the emphasis were entirely on dealing with bounce back loan fraud and if that took resources away from other directors' conduct investigation cases. That point is not, I suppose, directly relevant to the provisions in the Bill; it is more a question of how it is implemented and taken forward. There have also been some comments about the retrospective element; the previous witness touched on that. I think these cases have to be taken within three years of the relevant date—the date of insolvency or the date of dissolution. I do not think the Department would be able to go back before 2018 in any event, and that was the date on which the consultation was conducted, so I suppose one could argue that directors have had notice of the intended provisions for the relevant period.

Those were probably the only points where there might be concerns to a limited extent, but generally I think the provision is a sensible one that gives the service powers that it does not have currently and which can only be helpful, I would have thought, to trust and confidence in the insolvency regime.

Q17 Jeff Smith: That is very helpful. On the three-year cut-off, are you concerned that that is likely to have implications on other investigations that the Insolvency Service carries out if it is not funded properly?

David Kerr: I was referring partly to the point that had been made by the Committee to the previous witness about whether there would be any issues around natural justice if the retrospective provisions pre-dated the consultation. I do not think that, in practice, that would happen. Going forward, the compensation laws that might be sought can be obtained after the disqualification order or undertaking, so there may be more than three years available to the service from the date of dissolution. There has to be a cut-off. I do not think there is any suggestion that the provisions of the disqualification have to be changed in that respect, merely that they would be applied to these circumstances. They have proved to be satisfactory since 1986 in relation to director disqualification in the insolvency proceedings, so I have no reason to believe that, going forward, those time limits will not be effective in relation to dissolved companies.

Q18 Seema Malhotra: Are any sanctions that are currently available to use against directors who may have dissolved companies to avoid liabilities not being used as much as they could be?

David Kerr: None that I can think of immediately.

Seema Malhotra: If you change your mind you can always let us know.

Q19 Peter Grant: Good morning, Mr Kerr. May I come back to the retrospective nature of parts of the legislation? The three-year period will be permitted because that is what the current timescale is. Given the notorious complexity of a lot of financial misconduct cases and the fact that they are long drawn-out processes, is there an argument for that three-year period to be extended in cases where there is an indication that there is not only misconduct, but potentially criminal fraud? I am thinking about cases in which the potential fraud runs into the tens of millions of pounds. Is there an argument that in those cases, there should be no hiding place for criminals of that scale, simply because of the length of time they have managed to get away with it?

David Kerr: That is a fair point. I suppose the statute of limitations could be considered a relevant backstop, but I will come back to my previous point that we have a three-year limit in relation to investigations into directors' conduct in insolvent situations, and that has been with us for 35 years. I have not heard any suggestion from the Insolvency Service that that has proved to be inadequate. This is effectively an extension of the same power into dissolved company circumstances. I have not seen or heard any evidence to suggest that it is an inadequate period.

Q20 Peter Grant: You say that you have not heard any such representations from the Insolvency Service. Have you had any such representations from lenders or creditors? They may take a different view from the Insolvency Service if it is their money that is at stake.

David Kerr: Perhaps some in the creditor community would like it to be a six-year period, but I do not think they have argued strongly for it, and I do not think there is a necessarily a case made for that. From a creditor perspective, in an ideal world, perhaps it would be open ended. That may be unrealistic.

Q21 Paul Scully: Thank you for giving evidence, Mr Kerr. Can you talk a little bit more about the deterrent that you spoke about? How much of an impact do you think the measure, and especially the threat of disqualification, will have on providing the necessary deterrence?

David Kerr: The current disqualification provisions act as a deterrent to some extent, because directors know that, in respect of every company that goes into an insolvent liquidation or administration, there will be some inquiry. There is an obligation on the insolvency practitioner to carry out a certain amount of inquiry into the conduct of the directors of those companies and make a report in each of those cases to the Insolvency Service on their conduct. The provisions do not provide for the same report. It will have to be triggered by something else, whether that is a creditor complaint or other information, but it will provide the opportunity for the service to make the same inquiry.

Q22 Paul Scully: You talked earlier about the public interest test and prioritisation. Obviously, we are trying to strengthen the enforcement regime to deal with the most egregious cases of fraud in relation to the financial support that the taxpayer has given throughout the pandemic. In your experience, has the insolvency practice been prioritising this work? As well as having the public interest test, or threshold, has it prioritised approaching the most serious cases at the earliest stage?

David Kerr: Do you mean the work of the Insolvency Service?

Paul Scully: Yes. We are talking about Insolvency Service resources. We would have expected the Insolvency Service to prioritise the work that it does on the most egregious cases, and that would indeed be how we would anticipate it moving forward. Have you seen that first hand?

David Kerr: This may not be a direct answer to your question, but the concern of the creditor community might be that, if this provision were used almost exclusively for the purposes of pursuing bounce back loan fraud, perhaps it would not have the wider benefit that could come from it. Perhaps that has to be the emphasis in the short term, but in the long run—it is a provision that was considered worthy of introducing back in 2018, before covid came along—one would hope that it will be of broader use.

Quite how the service will prioritise its limited resources and decide which cases to look at is a matter for it to work out once it gets the powers. One would hope that the cases that come to its attention through the insolvency practitioners' reports will receive equal attention and that it will not be to the detriment of those cases that these other cases are being pursued.

Q23 Paul Scully: We heard a little bit in the earlier panel about phoenixing. Do you think this measure will help to combat that malpractice, where one company is shut down and dissolved and another takes its place, with the same directors, doing the same business from the same premises with the same staff?

David Kerr: That can happen, whether it is through an insolvency process or a dissolution. To the extent that it has happened through dissolution, the measure plugs that gap, because it is gives the same investigative powers to the Insolvency Service. It comes back to the deterrent point that you made previously. If the service is seen to be taking action in these cases and publicising the fact that it has done so, that will, one would have thought, have a deterrent effect.

Q24 Paul Scully: Finally, in terms of your role in credit management, what do you think this will do for the confidence of lenders and supply chains, in particular SMEs in those supply chains?

David Kerr: Generally, if the system is seen to be working well and those who abuse it are brought to account, then it helps enhance the confidence of those engaged in providing credit, whether it is through loans, trade credit or anything else. In that sense, it is a welcome provision that, if resourced and used as intended, should have the desired effect.

Q25 Seema Malhotra: To follow up on a couple of points, there have been critics of the proposals in this small piece of legislation. From your experience and that of your members, how long can it take for companies that have been dissolved to be restored to the register? In 2019, over half a million UK companies were dissolved but only 33 restored. In terms of the time it takes in practice, what could that look like?

David Kerr: I think the cost issue is the bigger disincentive for creditors that previously might have wanted to take steps to try and get somebody appointed to investigate. The service itself has made the point that there are legal costs and other costs associated with that process, and it would not be practical for creditors to mount that kind of action alone or, in many case, at all, given the amounts of their own debts.

The bigger disincentive is probably the cost and this avoids that. You are right in the sense that if there is a lengthy time process and if it takes several months, that eats into the three-year time limit that we have talked about, so that could be a problem. I think here, with this measure, we avoid that because the Department can have the ability to make appropriate inquiries and take action, without the need to go through that process.

Q26 Seema Malhotra: How much could it cost? What sort of range of costs could creditors see?

David Kerr: I do not have those figures in front of me but I have seen the fees involved. They amount to a few hundred pounds, but that does not include the cost of a solicitor to spend the time doing the necessary work. I would imagine that it would be a few hundred running into a thousand or more pounds to get a company restored, but I could not give you any exact figures.

Q27 Seema Malhotra: May I probe you a little further on the three year issue? You are right that within legislation there is provision for courts to make disqualification orders within three years after a company

[Seema Malhotra]

has been dissolved. This legislation extends that in line with that current time limit. In light of the fact that we have very unusual circumstances at the moment, with potentially thousands of companies that could require investigation, do you think that with that increased workload for the Insolvency Service, the question about available resources and the court backlogs, there could be a particular issue with directors effectively being culpable but the Government running out of time for courts to issue disqualification orders against them?

David Kerr: We might have touched on this slightly previously. First, there is no suggestion, as far as I am aware, that the whole of the 2,500 companies that have been mentioned would be the subject of an investigation. We are talking about dissolutions in the last 15 months or thereabouts. The time limit is relevant, obviously, because the service has to work to that, but the previous witness made the point, which we should bear in mind, that the majority of the cases that it takes do not necessarily involve court proceedings. In a lot of cases, having presented the evidence to the directors and with the threat of court proceedings available to the service if necessary, many are resolved by the director giving an undertaking, which has the same effect as an order, so a lot of them will not involve court proceedings and that helps the service to achieve what it is seeking to do within that timeframe. Many of the cases in these instances of dissolved companies, I imagine, would result similarly in a relatively high proportion of those being concluded by undertaking.

Q28 Simon Baynes (Clwyd South) (Con): Thank you, Mr Kerr, for your evidence. I have two questions. These measures clearly have widespread support. Can you give us a feel for the scale of the problem with dissolved companies? We have discussed quite a lot of different figures this morning, but do you feel this is a very significant problem, or a manageable problem, just to get some more idea anecdotally on that?

Secondly, clause 2 allows "easier investigation". Can you give us some idea of the way in which the Bill improves that process of investigation?

David Kerr: I will deal with the second point first. We know that this provision means that we do not have to go through the process of restoring a company and instead the Department can commence an investigation in circumstances where it deems it appropriate without any barriers to doing that. In that sense it makes the process easier to commence the work it needs to do.

Many companies are dissolved every year, but I do not think there is any suggestion that all those, or even the majority, involve any misconduct by directors and by those who have opposed or supported the measure. I do not think there is any suggestion among those who proposed or supported the measure that that process should be removed as an option for companies in appropriate circumstances. The question is really how many of those represent some form of misconduct or where misconduct might be hidden, or where there is some abuse. I have not seen any statistics on that and do not know if anybody would know for certain. Again, it comes back to the point that the service would have the power to investigate in circumstances where something was brought to its attention, suggesting a need for investigation. In that sense, it is a welcome provision.

The Chair: Thank you for giving evidence, Mr Kerr. If there are no further questions, we will move on to the next panel.

Examination of witness

Dr John Tribe gave evidence.

10.33 am

Q29 The Chair: We will now hear oral evidence from Dr John Tribe, senior lecturer in law at the University of Liverpool. We have until 11.25 am for this session. Please introduce yourself for the record and make some remarks about the Bill.

Dr Tribe: Thank you very much for the invitation and opportunity to address the Committee on this important Bill. I will address the second half of the Bill and the clauses on directors disqualification. Like all the contributions on Second Reading in the House of Commons, I welcome and support the changes that the Bill introduces to the Company Directors Disqualification Act 1986 and the extension of the public protection provisions in that Act to unfit directors of dissolved companies.

The measures are a welcome addition to the insolvency framework and system that work effectively and are well managed by the Insolvency Service and its diligent and hard-working staff. This new statutory addition to their armoury is a necessary power to maintain public confidence, to protect the public from unfit directors, and to maintain the integrity of the limited liability company form.

My contributions to this Committee come from an academic viewpoint, as a senior lecturer in law at the University of Liverpool. For 20 years, I have been researching and writing about insolvency law, both corporate and personal. For much of that time, I have been interested in the role and accountability of office holders, including company directors. I have been editor of the *Mithani: Directors' Disqualification* newsletter, and continue to sit on the editorial board of that publication. More recently, I have written about the disqualification proceedings in Kids Company and Carillion. I have five brief points or observations to make on the Bill: if the Chair allows, I can run through those. They are brief, if you want me to address them at this point.

The Chair: Yes, of course.

Dr Tribe: The first is on limited liability and corporate form abuse. I view the corporate form as a statutory privilege—a concession of the legislature that should be managed properly and should be used by individuals adhering to the highest standards of commercial morality and probity. Put simply, directors should know their duties and live up to them. They should be held to account if they do not, and certainly if they stray further into the realm of the unfit.

My second point is on phoenixing. Contributions from across the House of Commons on Second Reading of the Bill, the explanatory notes to the Bill, and the Parliament Library document on the Bill have all mentioned the phenomenon of phoenixing, and comments suggest that the misuse of limited liability companies and of the bounce back loan scheme is the latest example of this sort of undesirable behaviour, or "unfit" behaviour, to use the language of section 6 of the Company Directors Disqualification Act 1986. I agree with the comments that have been made: phoenixing has been a perennial problem with the limited liability form because of the damage that misuse of that form can do to creditors, and it is right that it is troubling us now in the context of the bounce back loan system as part of the Government's package of support during the pandemic. The taxpayer stepped up and provided these bounce back loans; the taxpayer should be protected now at this point, and the Insolvency Service needs the tools and, most importantly, the funding to do that work.

My third point is on directors disqualification and public protection. Through the history of our corporate insolvency laws, we have grappled with the balance between entrepreneurialism on the one hand and the kind of behaviour we are discussing today—unfit behaviour and malpractice—on the other. Indeed, directors disqualification provisions were first introduced in the Companies Act 1928, and there have been several reforms and updates over time since then—and hopefully, in my view, also with this 2021 Bill, if it is passed.

Over the past 20 years or so, we have also gradually increased the number of entities that are subject to the disqualification regime, and dissolved companies are the latest vehicle in a long-running trend, because there will always be some misuse. We need to ensure that the relevant regulator has the powers and funding to combat that unfit behaviour when it does arise, because public protection is, in my view, the main driver of the directors disqualification regime. As we know, the limited liability form is the basis of our credit system: if it is not protected properly, the whole system could ultimately be damaged.

My fourth and penultimate point is on the dissolution statistics. We know that dissolution is an important part of keeping the Companies House register in order. Dissolution is part of the normal life cycle of the company; dissolution keeps the register tidy and up to date. It happens regularly, and it is necessary. As you perhaps already know, there were approximately half a million dissolutions per year over the past six years, and the explanatory notes to the Bill explain that in the first quarter of 2021, we saw some 170,000 dissolutions. It is appropriate that these take place, for the reasons I have outlined—namely, keeping the register in good order—but unfortunately, among those dissolutions, there could be some of the unscrupulous activities that we have been mulling over, namely the dissolution of a company that has taken out a bounce back loan and has been dissolved before the loan has been paid back to what is ultimately the taxpayer-creditor. This is a loophole, and it should be closed so that directors of live companies, directors of insolvent companies and directors of dissolved companies are all treated the same way for the purposes of section 6 of the Company Directors Disqualification Act 1986.

In late June 2021—I think it was the 21st—the Public Accounts Committee projected a loss of between £16 billion and £27 billion of bounce back loans, from a total of approximately £90 billion that was lent by the British Business Bank via the banks. As you know, PricewaterhouseCoopers is due to report on the extent of fraud and credit failure within that £27 billion. There could be a huge loss to the taxpayer, unfortunately. Any loopholes that may have helped facilitate those losses, which, in turn, help evade responsibility for those losses, should be closed.

My final point is on funding. The Insolvency Service needs to be properly funded to ensure that this additional disqualification work can happen. Until appropriate funding is hammered out, the provisions in the Bill still provide a deterrent to those who seek to use limited liability forms in an unfit manner. The Bill's clauses, and any compensation orders which may follow directors disqualifications, go some way to ensuring that limited liability corporate forms are protected, and that delinquent directors have an immediate, powerful deterrent against abuse of conduct, so that trust in our system is maintained. In short, the bigger the stick, the better the deterrent. That is my introductory statement.

The Chair: Thank you, Dr Tribe. We will now take some questions from Committee members.

Q30 Jeff Smith: Thank you Dr Tribe, that was a very helpful overview, and pretty unqualified support for the principle of the Bill. It did seem that your main concern is about resourcing it. You said that until appropriate funding is handed out to the Insolvency Service, the Bill will, at least, be a deterrent. Do you have a view as to the nature of the problem, and the funding that the Insolvency service would need to actually make this work?

Dr Tribe: It is my impression that this new work to deal with directors of dissolved companies who have potentially behaved in an unfit manner would be subsumed into the general run of business of the disqualification unit at the Insolvency Service. They prioritise the most egregious cases, or those that help send out a public protection signal to the public. In the interim, I think this kind of work would fall into that part of their function. My point about hammering out or ensuring funding is in place is partly in response to some comments on funding made on Second Reading of the Bill. Since the Companies Act 1928, and perhaps most famously in the Cork report of 1982, this question of whether the disqualification regime is properly funded has always existed. Its lack of efficacy between 1928 and 1982 was put down to a lack of resourcing.

That point is very important, because in essence this is the system that protects the limited liability form, the engine of capitalism that drives through our commercial activities. Unless the Insolvency Service is able to properly resource and ensure that this work is undertaken, we have a problem when we try to pursue those who are responsible for the loss of between £16 billion and £27 billion. This potentially unknown—we will find out when the PwC report comes in—and potentially large gap will need to be addressed in terms of where the money went and who was responsible for causing that money to be dissipated.

Q31 Jeff Smith: Thank you, that is helpful. Just as a follow-up, are you concerned that there might be a focus on making use of these new powers at the expense of current work on other insolvent companies?

Dr Tribe: Not necessarily. Going back to my prioritisation point, the Insolvency Service obviously has finite resources that it needs to deploy in the best way possible—I suppose that is a problem for many public bodies—if other types of abuse manifest over time. The most obvious and recent problem is the bounce back loan phoenixism problem, but in due course other things might come about that require us to tinker with our corporate and insolvency law so that we have an effective system that maintains trust and confidence in it. What the Insolvency Service wants to do in terms of prioritising threats to the system will depend on its internal guidance.

Q32 Seema Malhotra: Dr Tribe, I want to ask first whether you have a view about the existing sanctions that are available to use against directors who may be abusing the dissolution process—perhaps powers that are currently available but are not used as extensively as they might be. That is one of the challenges that critics of this legislation may make.

Secondly, are there any other more general problems with the dissolution of companies that are important to discuss at this time while changes are being made? Should changes be made to the eligibility criteria on dissolutions? What steps need to be taken prior to dissolution?

Dr Tribe: I will take the first question first. I think you are drawing attention to the compensation order regime, and you did so on Second Reading, too. There is some interesting research by Dr Williams at Cambridge in 2014, who looked—he sort of future-gazed—at how successful the compensation system might be. In that research, he highlighted that some of the directors in small closely held companies, which he argues the regime mainly targets, might end up being adjudicated bankrupt—they might go through the bankruptcy process, I should say—in due course. That would mean, of course, that any pursuit of those individuals would run into another layer of difficulty in trying to get to the value that might be there for the insolvent estate of the company or dissolved company that we are dealing with. His work future-gazed in that way at some of these issues.

It is true to say that, on the compensation regime, we saw one case in 2019, the Noble Vintners case, where insolvency and companies court Judge Prentis made a 15-year disqualification order. That is right at the top of what we call the Sevenoaks scale, after the case in which Lord Justice Dillon set out the various types of malpractice and where they fall on the scale, from two years up to 15. In the Noble Vintners case, it was the most unfit behaviour on the facts of that case that you could have—up at the 15-year period. Then, of course, that was followed by a compensation order that recouped for creditors just over half a million pounds—£559,000.

There has been some success with the compensation scheme. It is in its early days, in a certain sense. Although the reforms came in in 2015, there was a delay in implementation. You are right to say that we should pause for thought and mull over how effective that is. That takes us back to the resourcing and funding point, for one thing. Secondly, it takes us to the idea of that prioritisation agenda and how fruitful a claim that you are going to bring might be to get compensation. It is a power that exists and should exist. It goes some way—as you can see from the case of Noble Vintners—to getting value back into the insolvent estate for the creditors. It is a positive thing for creditors, and something that the disqualification regime did not do until that reform in 2015. Of course, it provided a protection mechanism, but in terms of getting value back into the estate, that is a good reform. That is your first question.

Your second question was on dissolution problems. I think you might be driving at the process of dissolution and how the registrar at Companies House deals with dissolution. After the directors have signed their form, made their declaration, paid the £10 and noted that there is going to be a striking off and that is published in the *London Gazette,* there is a period of two months where all the parties that should be informed—shareholders, creditors, employees and pension managers, for example—might know of this potential dissolution and should then, therefore, perhaps act on it as creditors. Some of the witnesses who have gone before me may have addressed this, particularly those from the credit community. In due course, as part of a wider analysis of what Companies House and its function is, that step in dissolution may be looked at.

As I said earlier, there are approximately half a million dissolutions per year, and many of those are for very good reasons in terms of, as I have said, maintaining the integrity of the register and getting rid of companies that have been through the insolvency processes but then get dissolved as well. The guidance for the Bill and some other sources note that among those half a million dissolutions, there could be about 5,000 that are potentially problematic that we would want the Insolvency Service to be able to investigate. Obviously, 5,000 is a lot more than the current levels of disqualification under the current provisions. Over the past decade or so, there have been about 1,200 a year, so you can see there is quite a significant upshift in the work that the Insolvency Service might have to do.

A Companies House review perhaps in due course mulling on what its function is—is it a regulator, is it a repository of information?—might look to dissolution, but in the short term I think you have this £17 billion to £26 billion problem, and there seems to be a loophole that needs to be closed.

The Chair: Thank you, Dr Tribe. Peter Grant next.

Q33 Peter Grant: Thank you, Ms Rees, and good morning, Dr Tribe. Following on from that last question, there are three kinds of sanctions available now: the director disqualification, the compensation order and, ultimately, criminal prosecution. Are there significant differences, first, in the burden of proof required for each of those actions, and secondly, in the cost and time taken to bring any of those actions to fruition?

Dr Tribe: I think you are right to point out that there are different avenues that could be visited on the directors that we are talking about. We are not necessarily talking about directors in the general run of business; we are talking about people, as perhaps you suggest, who engage in criminal behaviour. For example, with the bounce back loan scheme, a form of fraud could lead to a prosecution.

What we are dealing with today, though, particularly with this amendment to the Company Directors Disqualification Act 1986, is a regulatory function, so we are dealing with a lower burden of proof than we would if it was a criminal sanction for any subsequent prosecution for fraud. In that sense, on the Insolvency Service's work on what is known as a jury question in the context of directors' disqualification, with each case being looked at on its facts, the determination whether whatever has occurred has been deemed to be unfit does have that lower evidential burden than any subsequent criminal activity that the prosecuting authorities might address. In that sense, the disqualification regime is perhaps better able to get deterrent-type results than mounting subsequent criminal prosecutions. We know, of course, that the criminal justice regime is also having some problems with funding. If the disqualification regime is able to achieve any public policy outcomes in terms of deterrent, in a regulatory manner, that is perhaps quite effective.

Q34 Peter Grant: You also mentioned, as some other witnesses have, what is known as phoenixing. There is a variant of that practice whereby, rather than creating a new company immediately after the old one has been dissolved, you create what looks on the surface like a legitimate group company structure, and then over time, you very quietly shift all the assets over to one company, leave all their liabilities in another one, wind up the company with the liabilities, and then the directors help themselves to the company with the assets. Does this legislation do anything to address that particular loophole, and if not, what further changes are needed to prevent, or at least strongly discourage, that practice?

Dr Tribe: That is an interesting question because it highlights the long history of English and Welsh and Scottish company provisions when we are thinking about the nature of groups of companies and then single entities, and how structures and groups are used and how we move value between one entity and another.

There is the quite interesting case of Creasey *v.* Breachwood Motors Ltd where, because of an employment claim, value was moved into a new entity, and of course the claim was left with the original company, meaning that that employee had an empty shell through which to pursue their claim, which was problematic. The judge at first instance was able to say, "No, in the interests of justice, you can switch your claim to that new entity." That judgment was overruled subsequently, but it does raise an important point. Indeed, in the case that overruled it, the group reconstruction that occurred was held to be legitimate for tax reasons. There are instances of the kind of behaviour that you are talking about that can perhaps be problematic in the pure phoenixing sense, but then there are legitimate reconstructions that happen where the intentions of the directors were for tax efficiency or some other purpose that is not unfit or nefarious in the way that we are discussing.

In terms of the misuse of the corporate form, one can go right back through our company law history to recite many examples of essentially what we are talking about—phoenixing, or what has been called centrebinding—and some of the critique of pre-packaged administration is around the same point. Is it appropriate that the corporate form is able to be used in this way so that the creditors of company A are left languishing while all the value is moved into company B in the way you have described?

That takes me back to my introductory response point, which is that in English and Welsh and Scottish law, for a very long time we have used the separate juristic person—the company as a thing. It is a really sacrosanct idea that, just like I am not responsible for your debts, and you are not responsible for mine, we have that structure in place for policy reasons, and have done since the 19th century originally, to aggregate wealth and entrepreneurial activity. I suppose you as the legislature expect that, as part of that privilege that you have allowed incorporators to use, over time you will get some form of abuse, and that element, which is hopefully as small as possible, has to be dealt with, like we are trying to do today, or, to some extent, tolerated.

Q35 Peter Grant: Finally, I want to look at the retrospective nature of some of the provisions from a legal point of view. First, do you have any concerns not about the principle of creating a retrospective offence, which the Bill does not do, but about retrospectively giving powers to an enforcement agency that we used not to have? Do you have any concerns about the natural justice issues that that might raise? Alternatively, are there circumstances where the three-year time limit is too short and where you would be in favour of allowing the Insolvency Service to go back more than three years before the dissolution date?

Dr Tribe: On your first point, which was about retrospective activity, it is much like the Corporate Insolvency and Governance Act 2020 reforms, which have successfully been passed. We have seen lots of new cases on the provisions that were in that Bill; it has been very successful. The reforms in that statute were mooted much earlier, in 2018. It is the same with this suggestion to close the dissolution loophole. Much like with the 2020 CIGA provision, the coronavirus has freed up legislative time to get both sets of provisions—the CIGA activity and the dissolution activity—in front of you to get it on to the statute book. Some of this was discussed by Sarah Olney on Second Reading.

What does it mean in terms of the retrospective nature of what you are doing? We had the idea some time ago, and corona has meant that we have had to address it against the backdrop of the bounce back loan scheme. Unfortunately, the abuse of that scheme seems to be so massive—as we have seen, there is a £16 billion to £27 billion projected shortfall, or loss—that we need to go back in time to look at some behaviour. Of course, we are not generally speaking about breaches of duty in the general sense of directors' duties. We are talking about what could be seen as the use of the corporate form purposely to avoid the insolvency provisions and the oversight that they can give, with the powers that are currently in the Act that we are dealing with.

That needs to be dealt with, and if it is in a retrospective way—you may have seen in late June that there was a disqualification order for 12 years because of some fraudulent activity that had occurred with a Mr Khan and his Birmingham-based business, where he had forged documents to get a bounce back loan of £50,000. The Insolvency Service successfully brought that action following administration. Some Glasgow-based companies have also been wound up in the public interest because of bounce back loan abuse. To answer your question briefly, it is the bounce back loan fraud that has meant we have had to act retrospectively. No, I do not have any issues on that point.

On your question about three years, I suppose that again goes back to funding and time limits, and whether the Insolvency Service is adequately resourced to deal with the amount of dissolutions—whether it is 5,000 as predicted, or whether the forthcoming PwC report shows that it is much worse. If it is well resourced, the time issues might not be such a problem. If it is not, they perhaps will be.

Peter Grant: Thank you.

The Chair: I call the Minister.

Q36 Paul Scully: I have just two brief questions, because you opened up and summarised well. The point about funding has come up quite a lot, and I wonder if you could expand on some of your comments. You talked about the public interest test and the prioritisation of the Insolvency Service's cases, so that it would look at the bigger, most egregious issues first. Obviously, with the number of cases you are talking about, it would also presumably look at the ones where there is a realistic likelihood of a successful outcome, rather just investigating every case.

Dr Tribe: In some writing on this point in relation to Carillion, I suggested the reason that the Insolvency Service might be looking at a large public limited company to bring these mechanisms to bear is because that is a pretty well known, massive liquidation, which has lots of Government contracts linked to it and taxpayer money bound up in its activities. You can see why it would perhaps be appropriate, much as with previous well-known disqualifications, for the Insolvency Service to bring the action or the proceedings if the relevant public interest tests are met. That is because it helps with the agenda of sending out the appropriate messages to the commercial community that you should use corporate vehicles and corporate forms in an appropriate way, and that you should live up to your duties in an appropriate way generally, as well as facing some of the consequences if you misuse the form and harm creditors and other stakeholders.

On the prioritisation point, you could go for good messaging, in the sense of prioritising cases. I suppose that the problem with the bounce back loan scheme and this dissolution issue that we are dealing with is that, as I think one of the previous questions hinted at, the volume of cases could be so great that with prioritisation you will need to have quite a large group of civil servants working on the issue.

As for the question of how likely it is that we might get a result in a case, and therefore whether we should bring proceedings, we have seen recently that once the Insolvency Service's tests are met, it is wholly appropriate that it should bring these proceedings, even if in due course the result is not what it thought or what its specialist advisers—the QCs and so on who have advised it—would have predicted. Hopefully, the money will be well spent in bringing proceedings, but sometimes we do not get the result for factual reasons, basically.

Q37 Paul Scully: I have a final question. You mentioned Carillion, which you wrote about and studied. Within Carillion and a number of other cases—Carillion is an interesting one, because there are a lot of supply chains in there—as I asked previous panel members, what extra confidence does plugging these loopholes bring to small and medium-sized enterprises?

Dr Tribe: Carillion, because it is a large plc, has messaging on the plc side of our regime, thinking about how directors behave in relation to those types of companies. This perhaps goes back to Mr Grant's question about group structures—do not use group structures in a way that is problematic. That will be interesting to monitor on what is a live case; I do not want to mull on the facts of that case too closely.

Sorry, what was the second part of your question?

Q38 Paul Scully: It was about the fact that Carillion obviously has a large supply chain within it, and you have been dealing with and writing about cases with complex supply chains. What confidence can this measure to close that loophole give to SMEs in particular?

Dr Tribe: Thanks for that clarification. If we can ensure that any vehicle that is used in any form of creditor relationship with different entities has an individual put-off effect by going down this dissolution route that we have identified, it will hopefully increase confidence in the way people use the corporate form. The more loopholes we can close down that have caused us to think the form is being used inappropriately, the better.

Unfortunately, phoenixing, as we have discussed, has been going on for literally decades, and perhaps in the future we might be back here again with some other problem that has arisen because of nefarious activity.

Q39 Jeff Smith: I will just ask one final question. We have had some written evidence suggesting that the current regime is adequate. If you do not mind my quoting from it, it says:

> "Applying the current controls properly, putting dissolved companies into liquidation and publicising that new policy will be a far more effective deterrent…That requires no new legislation at all."

Do you have a view on that?

Dr Tribe: The trouble is that to get to that liquidation point, you have to go through the restoration stage. I think that submission might have also talked about the idea of restoring an entity to the register and then going through that insolvency route. I think the Insolvency Service did 33 of those in 2019—pre the bounce back loan issue and pre corona, obviously. Each one of those 33 will have cost it court fees, process fees at Companies House and so on, which means there is this extra layer of procedure that it has to get through before it can ultimately investigate the unfitness activity. I think the dissolution reform in this legislation ensures that that extra layer of bureaucracy—getting the companies back on the register, through restoration, then going through the insolvency processes—is cleared out, and we move straight to the enforcement section.

The other problem with restoration is that you perhaps undermine the integrity of the register itself if you take 33 companies off it, but you then want to put them back on because you need to go through the steps that we want for enforcement and so on. It is an interesting point, but I think you have a quicker public protection mechanism process that you can do now that gets you to a less costly enforcement outcome.

Jeff Smith: Thanks.

The Chair: If there are no further questions, I thank you, Dr Tribe, for giving evidence this morning. It is much appreciated. I thank all the witnesses for appearing this morning.

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

11.11 am

Adjourned till this day at Two o'clock.