

View from the UK: An end in sight?

As the UK begins to open up after the ending of the third lockdown, Duncan Swift, Chair of the Policy Group at insolvency and restructuring trade body R3, looks at the key trends and policy decisions affecting the profession



Since my last Eurofenix column, the UK has passed through two stages of lockdown restrictions, consumer spending has increased, and the economy has started to recover more strongly than was initially predicted.

As a result, individuals and businesses have cause to be optimistic, but the experience of the past 12 months means this is tempered by the prospect of further restrictions if COVID-19 cases rise once more.

At a challenging stage

Looking at insolvency case numbers, it's clear the Government's support measures are continuing to prevent corporate insolvency numbers increasing as a result of the economic effects of the pandemic.

March and April numbers at 997 and 925 were respectively 20% and 23% down on the prior year. April's number was particularly surprising as April 2020 was itself 16% down on April 2019.

The Government has a challenge on its hands in terms of managing the withdrawal of its support, and the approach it takes will determine if business failures spike or if insolvency numbers simply return to around pre-pandemic levels in the near future.

A window for planning and action

On 19 May, the House of Lords debated the Government's Statutory extension of the temporary measures introduced by the Corporate Insolvency and Governance Act 2020.

The Insolvency Minister, Lord Callanan, highlighted the need for Government to "continue to support businesses by giving them every chance to survive, fully reopen and get through this period of uncertainty" amid ongoing social distancing restrictions.

While the Government's efforts to support businesses are very welcome, and we were delighted R3 was mentioned in the debate by both Lord Callanan and Lord Leigh, we hope this extension will encourage company directors to plan ahead and explore their options in order to determine how they will manage when it ends.

Of course, a key element of any business' survival is the support of their creditors, so it was positive Lord Leigh also raised the point that HMRC's support for viable restructuring proposals will be critical – especially in light of HMRC's new status as a secondary preferential creditor, which will give it a right of veto in most Company Voluntary Arrangements.

New powers for the Insolvency Service?

At the time of writing, a new Bill has been laid in Parliament which would grant the Insolvency Service (IS) powers to investigate directors of dissolved companies.

The Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill contains measures that would close a legal loophole around the misuse of the dissolution process and would also give the Insolvency Service a means of tackling directors of companies who have taken advantage of the raft of

Government COVID funding schemes only to have subsequently been dissolved so as to avoid having to pay these funds back.

The Bill is something we welcome. The proposal to bring the behaviour of directors of dissolved companies under the Secretary of State's investigatory powers was first proposed in 2018, and we supported it then, so we're pleased legislation has been tabled that could bring it into effect.

However, one key question is whether the Insolvency Service will have the resources available to conduct these investigations alongside those they already carry out into directors of insolvent companies.

Annually the IS secures about 1,200 adverse proceedings against directors from 20,000 corporate insolvencies, whereas over 500,000 companies are struck-off by Companies House, usually for not filing accounts, which flags errant director behaviour.

We have suggested it would be better if Companies House invoked compulsory liquidation, the latter yielding earlier IS investigation of the affected company's affairs through its Official Receiver unit, and urge the Government to consider how it can work with the insolvency and restructuring profession to support its investigations into the conduct of directors of dissolved companies.

The profession's support in this, as in all areas of insolvency policy, will be crucial – as we continue to emerge from the pandemic and into an uncertain economic future. ■



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