

# View from the UK: A potential missed opportunity?

As the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill 2021 begins the final stages of its legislative journey, Duncan Swift looks at areas where the legislation could be improved



**The Government's plan to enable the Insolvency Service to investigate directors of dissolved companies, through new powers granted through the Bill, is well-intentioned.**

The change will help deter the use of dissolutions by directors to avoid scrutiny and liabilities, solving a longstanding issue highlighted by many of our members and many in the profession. However, it appears that this legislation is likely to only be used by the Government to recoup money in cases of significant Bounce Back Loan fraud and does not deal with the scale of the problem (it is estimated up to half of the typical 50,000 pre-pandemic dissolutions per year are insolvent).

While understandable, this limited application could undermine the Bill and the opportunity it has created to properly close this loophole to deter fraudulent behaviour. There is also the question of how the Insolvency Service will be funded as its new powers and responsibilities will significantly increase its workload.

## Funds for additional investigations

For this Bill to deliver on its aims, the expansion of the Insolvency Service's investigatory powers must be accompanied by additional resources. If it is not, there is a real risk that investigations into directors of dissolved companies will come at the expense of investigations into directors of insolvent companies. This cannot be allowed to happen

– especially given that, in light of challenging wider economic conditions, the Insolvency Service is likely to be called upon to investigate an increasing number of insolvent companies on top of its current caseload. It needs expanded resources to match these expanded powers if its other areas of investigation are not to suffer.

## Too limited a focus

While no-one would take issue with recovering fraudulently claimed taxpayers' money, making this the focus of the Bill means other creditors who have been victims of director misconduct will most likely miss out on redress or compensation. In part, this is because the legislation aims to address the behaviour of *directors* of dissolved companies, rather than looking more closely at the dissolution process and the dissolved entity itself. Companies House automatic strike-off routines account for 95% of dissolutions. Quarantining companies for Insolvency Service screening pre-dissolution will deter directors from the outset.

Restoring dissolved companies to the Companies Register to be placed into an insolvency procedure and then investigated by the insolvency profession could enable directors to be held accountable, assets to be identified and then realised for their creditors' benefit. But the overarching issue is the fact that this legislation appears to have been designed to tackle issues relating to Bounce Back Loan fraud, rather than the wider abuse of the dissolution process.

A more rounded approach would see the Government make it easier and less costly for creditors and the insolvency profession to restore a company to the Companies Register. Although this would be a late amendment to the Bill, it would benefit the profession, its efforts to tackle director misconduct, the Insolvency Service, and the victims of those who use the dissolution process to avoid investigations into their behaviour.

## Improvement at the final hurdle?

As this article was being written, the Bill was going through the Committee Stage in the House of Lords. Two Peers, Lord Fox and Lord Leigh of Hurley, have used this stage to query what measures will be used to recover funds from culpable directors, and suggested that the dissolved companies in question should be restored to the Companies Register to allow them then to be entered into an insolvency process.

Hopefully, the Government has a response to both of these points – as well as our concerns about the existing flaws in the dissolution process and Insolvency Service resources. If it can turn these responses into something that enables this legislation to benefit all those affected in these cases before it completes its journey to the Statute Book, this Bill could make a real difference to the Government and the profession's efforts to tackle director misconduct – and to those who suffer as a result of it. ■



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