



Corporate Transparency and Register Reform Further R3 response February 2021

About R3

1. R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession.
2. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices. Our members have direct experience of insolvencies and their impact on individuals and businesses across the UK.
3. The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession promotes economic regeneration, resolves financial distress for businesses and individuals, saves jobs, and creates the confidence and public trust which underpin trading, lending and investment.
4. This document sets out our feedback on the Government's response to its 2019 'Corporate Transparency and Register Reform' consultation, as well as our response to the three subsequent consultations published in December 2020 ('Powers of the Registrar', 'implementing the ban on corporate directors', and 'improving the quality and value of financial information on the UK companies register'). We have focussed our response to these three consultations on those themes, rather than the specific questions posed, where we can provide input based on our members' expertise.
5. R3 welcomed the opportunity to discuss this area of work with BEIS officials in July 2019, and we would be delighted to attend further meetings with officials to discuss any points raised below in greater detail. If you would like to meet us or if you have any other queries, please contact R3's Head of Press, Policy, and Public Affairs, James Jeffreys, at james.jeffreys@r3.org.uk or on 020 7566 4220.

Overview

6. R3 welcomes the continued focus on and development of this package of reforms, having called for a tightening of procedures around company formation and oversight for a number of years. The reforms will improve the integrity of the corporate governance framework, make a significant difference in the fight against fraud and increase confidence in UK plc.
7. However, the main issue we raised in our response to the 2019 consultation was that it lacked any reference to, or acknowledgement of, the unique role insolvency practitioners (IPs) have as users of Companies House, which plays an important part in enabling them to meet their statutory duties to investigate and tackle corporate fraud. While there is much to welcome in the Government's response, neither it nor the three subsequent consultations made any reference to this important consideration.
8. Although we make a number of points in response to issues raised in the Government's response and the subsequent consultations, we wish to highlight two key recommendations we believe will enable this package of reforms to fully benefit companies, stakeholders and the UK's wider corporate governance framework. We recommend that the Government:

- a. recognises the role of the insolvency profession as an extensive user of Companies House and a key component in the UK's anti-fraud toolkit, and reflects this fact in the further development of this important policy area. We would be delighted to convene a technical meeting of R3 members to discuss with BEIS and Companies House officials the ways in which this can be done.
- b. ensures that IPs are included in the category of those bodies able to access the proposed new range of additional 'back office' information collected by Companies House. As we set out below, this will ensure that IPs will be more able to effectively carry out investigations into companies' corporate affairs and director conduct, thereby identifying and disrupting more frauds. The support of Companies House in enabling our members to comply with these statutory duties is hugely important.

The insolvency and restructuring profession's unique role as users of Companies House information

9. Our response to the 2019 consultation set out the relevance of this package of reforms to the insolvency and restructuring profession, given the range of statutory duties that IPs are required to fulfil. We believe it is important to reiterate these considerations again:
 - a. Our members – the insolvency and restructuring profession – have a unique and important perspective on the issues and questions raised in this consultation.
 - b. The profession plays a key role in tackling fraud and ensuring that the UK remains a safe place to do business. IPs have significant expertise and wide-ranging powers to investigate fraudulent activities and are highly qualified and regulated professionals, who operate under a comprehensive framework of statutory duties.
 - c. Indeed, under this framework, when appointed over corporate entities, IPs are required to investigate the company's affairs and director conduct, in part by referring to the entity's books and records, in order to discharge their duties. Specifically, under the Company Directors Disqualification Act 1986, IPs are required to prepare a report about the conduct of each person who is or was a director of the company. There are also occasions where IPs, conducting investigative work, need to access information about companies over which they are not appointed.
 - d. Being able to access corporate records and information about directors, or quickly identifying where this information is missing or inaccurate, is therefore an important component of our members' ability to carry out their statutory duties.
 - e. As such, our members are regular users of information held at Companies House and therefore have a good understanding of where the current corporate register, and the framework around it, can be improved. By improving the range and accuracy of the information held at Companies House, alongside the introduction of the proposed ID verification requirements, these reforms will by themselves improve the efficacy of, and trust in, the UK's company register – but crucially, the reforms could also help the insolvency and restructuring profession's own anti-fraud work. This could see more effective investigations, more fraud disrupted and prevented, and more money returned to creditors.

Feedback on the Government's response to the 2019 Corporate Transparency and Register Reform consultation

The importance of insolvency practitioners having access to 'back-end' information

10. Under 'public and non-public information', the consultation set out how the register will effectively comprise two parts: a 'front-end' that is accessible publicly, and a larger 'back-end' holding more 'behind-

the-scenes' information, including the additional information the Government intends Companies House to capture. This 'back-end' information would "only be accessible internally to Companies House and to public authorities." The Government's consultation response then noted that it would "consider how public authorities will access non-public information and will engage with credit reference agencies to further explore the circumstances whereby they can access this information."

11. As we stressed in our response to the 2019 consultation, it is crucial that IPs are included in the category of those able to access the new range of additional information collected by Companies House. Ensuring that licensed IPs can access the additional 'back-office' information will mean that a wider body of professionals will more effectively be able to carry out investigations into corporate affairs and director conduct, thereby identifying and disrupting more frauds.
12. In our response, we set out specifically:
 - a. We recommend that IPs should be able to access the 'back-end' information pertaining to any other corporates linked to that of the entity to which they have been appointed. In a group context, this would include the parent company, subsidiary companies, other subsidiaries in the group, as well as other companies linked via directorships and shareholdings.
 - b. While IPs, once appointed, require access to corporate information as previously described, other licensed IPs may seek access to the same information, either in a pre-appointment context, or as part of a more general investigation in to potential or suspected company fraud. IPs will also seek information regarding a bankrupt director's personal assets when appointed as a trustee in bankruptcy.
 - c. As well as ensuring that IPs are included in the special access category, we would urge the Government to consider a mechanism whereby all licensed IPs, appointed over an entity or not, are able to access this information. This could be achieved by simply including licensed IPs in the same special access category, introducing a separate mechanism to handle requests from licensed IPs, or by clarifying existing legislation to ensure that licensed IPs can request the information from Companies House through a Section 236 request (Section 236 of the Insolvency Act 1986 provides that "*the court may, on the application of the office holders, summon to appear before it...any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company,*" and to "*...require any such person...to submit an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company [in question]*"). IPs appointed as a trustee in bankruptcy will similarly submit a request, in line with Section 336 of the Insolvency Act 1986, in order to ascertain information regarding a bankrupt director's personal assets.

Making the restoration of a company an administrative process

13. We are very pleased that the Government has decided to maintain the current 20-year retention period for the records of a dissolved corporate. This historic information plays an important role in an IP's investigations into director conduct and the affairs of a corporate.
14. However, as noted in our consultation submission, there is currently a significant asymmetry between the cost to a director of avoiding scrutiny and the cost to the insolvency profession and creditors of putting things right. In many instances, restoration of a dissolved corporate requires an application to court. This can be costly in terms of both time and money, and thus all too easily allows directors to create a significant barrier to investigating their conduct. While there is opportunity to object to a dissolution and there are sanctions associated with misuse of the dissolution process or the failure to file accounts, R3 members report that these do not stop directors keen to avoid the spotlight.

15. To resolve this issue, the Government should remove the asymmetry described above and the restoration of a company should, in all instances, be an administrative process. This could be triggered by a company director or creditor once suitable requirements have been met (such as producing evidence of an unpaid debt or a commitment to petition for the winding-up of the restored company) and any fee for doing so should be similar to the cost of dissolving a company. Any such restoration process would need to be clear about what would happen to a company once restored.
16. Where work has been carried out by an IP in preparation for the restoration of a dissolved corporate (for example, working with creditors to find evidence of unpaid debts), it would make sense for the IP, subject to any objection, to be appointed over the corporate in any subsequent insolvency procedure. Alternatively, once a company is shown to have been insolvent and is restored, its directors could be required to begin a Creditors Voluntary Liquidation.
17. We would welcome a discussion about how this process could be improved for the benefit of creditors as currently, where a restored company is placed into a compulsory liquidation, there is a requirement for the Government's Official Receiver to be appointed in the first instance, and a creditors' decision process to be worked through in order to appoint an IP, which may or may not be the IP who undertook the initial work. There would be significant advantages for creditors should this process be simplified: it would reduce pressure on the Official Receiver's own investigations resources while increasing the overall resources available for investigations work and the pursuit of claims.
18. More generally, this recommendation would make it easier and less costly for creditors and the insolvency profession to restore a company so that it can be placed into an insolvency procedure and its assets realised for the benefit of creditors.

Identity of individuals on the register

19. We are pleased that the Government has decided to make identity verification compulsory for company directors, people with significant control (PSCs) and individuals filing information (presenters). We also welcome the proposed extension of the identity verification requirement to members of LLPs. However, we recommend that companies should be required to state on their confirmation statement (CS01) to Companies House the names of all directors 'howsoever described' rather than just the appointed directors, to mitigate the risk that those directors who have been disqualified may continue to operate behind the scenes. We would also recommend requiring directors to specify whether they are de facto directors, shadow directors or 'advisors' to a company and to name anyone with management control. Further, it would be helpful for the CS01 form to require individuals and other parties with large (e.g. 5% or more) shareholdings to be named, as at present, PSC confirmation is not readily verifiable by Companies House or other organisations with the information currently provided on the CS01 form.
20. The CS01 form should contain a 'health warning' of what may happen to directors who break the terms of their disqualification order and to other directors who are complicit in allowing disqualified directors to be involved with the management of a company. This is now particularly important given the COVID-19 pandemic, and the levels of fraud suspected and, in some cases, already detected in relation to Government support schemes.
21. We would suggest that in aiming to reduce the burden on directors by replacing the Annual Statement with the requirement to submit a confirmation statement, the value of the director information contained therein has been undermined – our suggestion would help to rectify this situation.
22. It would also be helpful if Companies House was able to identify and block bankrupt directors from registering transfers and/or removing charges on the Companies House site. Members of the insolvency and restructuring profession have cited issues with cases involving these activities. We would also suggest that that a trustee in bankruptcy should be able to simply, and immediately, register control of a Bankrupt's shares upon production of a certificate of appointment.

Third party agents

23. We reiterate our caution against the Government's decision to use third party agents to carry out ID verification on behalf of Companies House. While we welcome the checks that Companies House will put in place to attempt to ensure the integrity of the system in this regard, we would suggest that such an important and sensitive improvement to the UK's corporate governance framework should be the responsibility solely of the Government.

Verification of insolvency practitioners' identities

24. We noted the positive decision the Government has taken to ensure that presenters should only be required to verify their identity once when they set up an account with Companies House and not every time that they file information, but would welcome clarity as to whether this would also apply to IPs. Moreover, IPs should have to provide a copy of their insolvency license, rather than their personal ID containing a home address for verification. The latter would represent a real security risk, given the often contentious and sometimes dangerous nature of the insolvency profession's work. We would be grateful for further consideration of this point.

Reporting anomalies to Companies House

25. While recognising the rationale for the Government's recommendation that anti-money laundering (AML) regulated entities should be required to report anomalies to Companies House, we would urge the Government to consider further how this requirement would affect IPs appointed as an office holder over a corporate entity. From an IP's perspective, they already have a number of statutory duties to highlight with relevant authorities any fraudulent activity or breaches of the law by directors, including under the AML regulations themselves.

Improvements to the process for dissolving corporates

26. As at paragraphs 13-18, we strongly suggest that the Government considers improvements to the process for dissolving corporates. At present, there is little to prevent the abuse of the dissolution process. For example, not enough is done to verify claims made when filing a DS01 form that there are no outstanding creditors, or that creditors have been informed of the planned strike-off.

Powers of the Registrar consultation

27. We broadly agree with the proposed new power for the Registrar to query information. As we have set out previously, the insolvency and restructuring profession has long called for a more proactive approach from Companies House and this power will be an important component in enabling the organisation to carry out this role.
28. The consultation sets out the proposed risk-based approach Companies House will take to prioritising the querying of the relevant cases. Given the range and amount of data held by Companies House, this type of approach is understandable. However, in the list of sources from where the Government expects to receive information, intelligence or evidence to inform the prioritisation and indeed the querying decisions themselves, no reference is made to IPs.
29. Given the important role played by IPs in tackling corporate fraud issues, we urge the Government to ensure that matters highlighted, and information provided, by IPs are given sufficient weight, and reviewed promptly, by the Registrar. We would welcome express reference to IPs in this list.
30. More generally, we welcome the proposals for reform of the Registrar's existing powers, all of which would address issues that R3 members have highlighted for some time.

Company names power

31. As noted in our original response, R3 members often report seeing instances where fraudsters use the simplicity of the company register to create multiple registrations using slightly different spellings of company names and as such, we very much welcome this new power for Companies House. We would just note, however, that the abuse of company names is more widespread than the consultation document suggests.
32. While the consultation sets out in some detail how these powers will operate in practice, it would be helpful to understand how interactive the information, intelligence and evidence sharing process will be. Particularly in the case of an IP acting as an office holder in an active insolvency procedure, it will be important that this process should involve more than simply submitting a form and receiving a cursory receipt.

Rules governing company registers

33. While recognising the rationale for removing the requirement for companies to keep and maintain their own Register of Directors in light of the introduction of director ID verification, we would caution against applying this rationale to all of the other statutory registers.
34. R3 members often deal with insolvent companies where directors have taken, to varying degrees, a lax approach to meeting such corporate governance requirements; indeed, R3 members have often made the point that directors are often unaware of these obligations, with the lack of any real qualifying criteria for becoming a director a real issue for the integrity of the UK's corporate governance framework. Removing these requirements as proposed may set the bar even lower still. While R3 members would recognise the potential administrative benefits of doing so, it will be important to avoid the perception that directors' corporate governance responsibilities have been reduced.

Consultation on implementing the ban on corporate directors

35. We broadly support the proposal to ban corporate directors as set out in the consultation document, provided that the suggested principles-based exemptions are included in this reform. We also welcome the Government's recognition of the impact that the COVID-19 pandemic has had on companies and that this will be reflected in the timetable for the policy's introduction. We would also welcome the extension of this prohibition to corporate members of LLPs.
36. While this consultation relates to the issue of corporate directors specifically, we would like to use the opportunity to reiterate our previous comments concerning individuals, who may have already been disqualified as a director, acting as shadow directors – an issue which R3 members would suggest is a more widespread issue that the problem posed by the misuse of corporate directorships.
37. As at paragraphs 18 and 19 of this response, we hope that the Government will make full use of the opportunity provided by introducing these reforms to also put safeguards in place to protect against directors (those acting behind the scenes as de facto directors, shadow directors or 'advisors' to a company) who are repeatedly acting improperly. R3 believes that companies should be required to state on their confirmation statement (CS01) to Companies House the names of all directors 'howsoever described' rather than just the appointed de jure directors.

People with Significant Control (PSCs)

38. The Government has confirmed its intention to apply the ID verification requirements to PSCs, in addition to directors. In our response to the Government's original consultation, we noted that the effectiveness of this policy may be limited where "...the PSC is a corporate (or other non-individual registrable person), knowing the identity of the corporate will only reveal one 'layer' of information if it is unknown who owns this corporate, or if the corporate is based overseas."

39. In light of the focus of this consultation, it would be helpful to understand whether the issue of corporate PSCs has been given any further consideration.

Consultation on improving the quality and value of financial information

40. As noted in our response to the Government's 2019 consultation, R3's view on the suggested reforms set out in this consultation is limited:
- a. "R3 members have noted that there may be little that can be practically done to improve the financial information on the register – in part due to the essential nature of the process: a company's financial information is out of date by the time the data is filed...In R3's view, the prime benefit of these reforms arise from the verification of director ID and the wider set of changes to enable Companies House to more proactively query and verify information across the register."
41. That said, there are likely to be significant potential benefits from a "file once with government" approach, with simplified processes for filing information across Companies House, HMRC and government more generally, although the practical difficulties associated with putting this system into place should not be underestimated.
42. The consultation notes specifically that "developing cross-government rules, standards and processes to collect, store, record and manage company data will bring benefits for preparers and users of financial information and create efficiencies for government." Although we do not respond directly to the subsequent consultation questions, we would note that these rules will need to take into account the existing framework and processes in place for IPs to submit information, particularly in relation to companies in insolvency procedures. R3 is relaxed as to the detail of how the 'file once with government' approach can be achieved, provided that consideration of the insolvency profession's use of this system is incorporated into the final policy.
43. The consultation refers to the areas of shared interest with HMRC's Making Tax Digital programme, and notes that Companies House will "work with HMRC to understand their consultation responses and consider opportunities to jointly develop future proposals." R3 agrees that this dialogue and joint work will be critical for both organisations. Given these projects have a number of implications for IPs, a joint approach which also considers the insolvency profession's perspective will be important in ensuring the policy's success.
44. This consultation also seeks views as to why some companies continue to file on paper. While this question is not aimed directly at IPs, we should note that several IPs who started to use Companies House's electronic filing process in the summer of 2020 subsequently returned to filing by paper due to the cumbersome and bug-ridden nature of the system. Some of those IPs have discovered that submitting documents by paper resulted in quicker and less time-consuming filing than submitting electronically. It is essential that Companies House establishes a workable process for IPs to file electronically quickly, especially so that new statutory insolvency processes are registered as soon as possible.