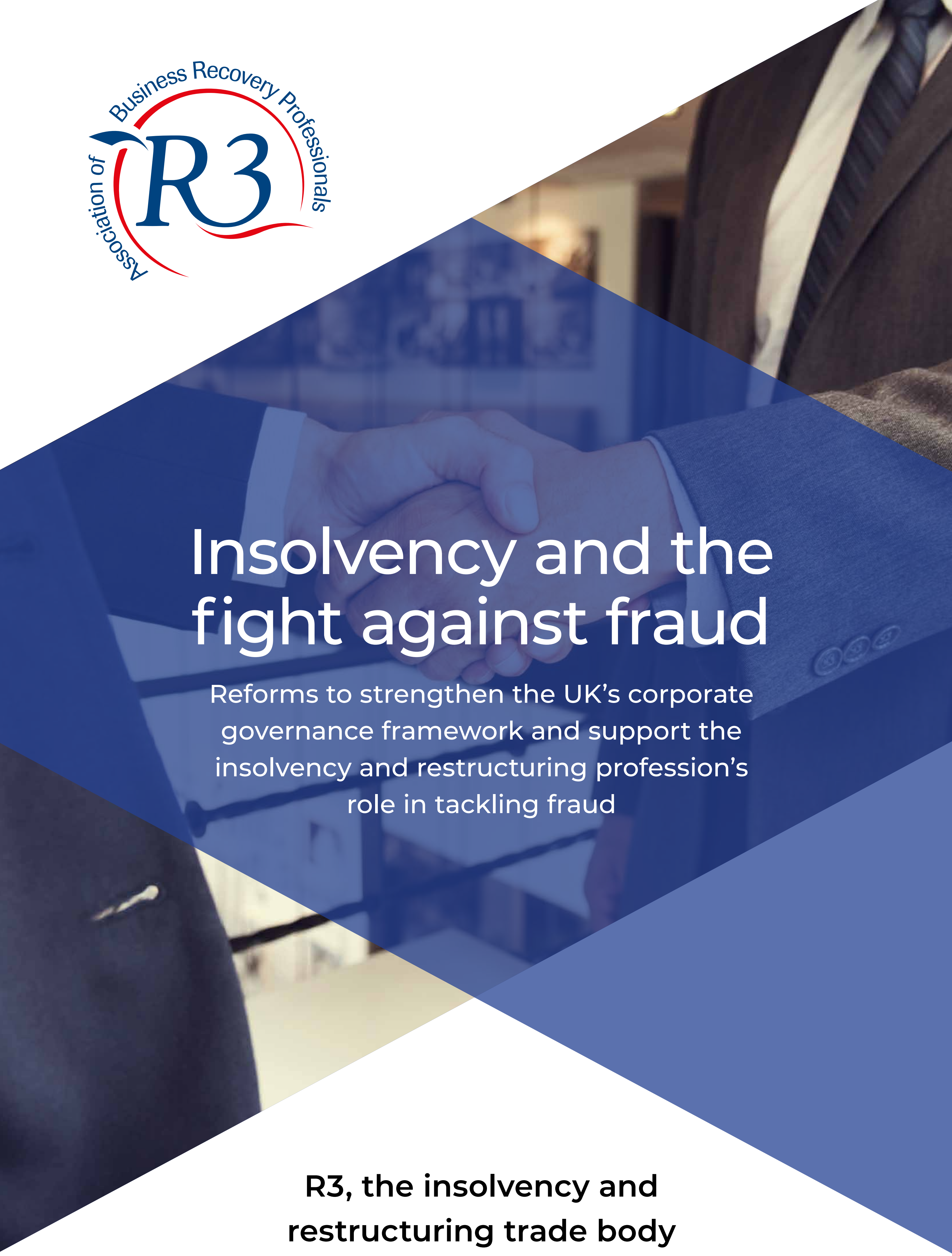

Insolvency and the fight against fraud

Reforms to strengthen the UK's corporate governance framework and support the insolvency and restructuring profession's role in tackling fraud

R3, the insolvency and restructuring trade body

The last few years have been tough for many businesses and individuals across the UK. One of the reasons for this, as well as one of the symptoms of other economic and social challenges, has been the rise in fraud, which is now the fastest growing form of crime in the country, having risen by more than 40% in the last two years.[1] The number of victims affected also rose by over 30% in the same period;[2] while over 60% of UK businesses were hit by fraud, corruption or other financial crime in the past 24 months.[3] With the full scale of fraud related to the various government COVID support schemes yet to come to light, these figures are likely to be just the tip of the iceberg.

The insolvency and restructuring profession plays an important, if not widely recognised, role in tackling fraud. Insolvency professionals have significant expertise and wide-ranging powers to tackle economic crime. Their extensive powers to investigate, and under insolvency legislation provisions, pursue those involved in fraudulent financial activities puts them in a distinct position to disrupt fraud and return money to victims. The profession is very willing to support the public sector where it can in combatting fraud, and in mitigating the devastating impact it can have on victims and the economy.

However, in order for this important work to be effective in light of new emerging trends and the growth in the scale of the problem, it is vital that the framework for tackling fraud is fit for purpose and kept up to date.

The simple proposals contained within this paper intend to ensure just that. Based upon our members' experience and expertise, these proposals aim to benefit the Government's and its agencies' strengthening of the UK's corporate governance framework by:

- increasing deterrents to fraud;
- enhancing pre-emptive measures to prevent fraud;
- bolstering and widening the measures in place to combat and disrupt fraudulent activities; and
- increasing the recoveries available for victims.

The report's recommendations on the reform of the company dissolution process will be particularly helpful in considerably improving the speed at which fraudsters can be investigated and prosecuted, and in reducing the costs to creditors and victims of pursuing unscrupulous directors. They will enable more culpable directors to be brought to book, more recoveries made to victims of fraud and creditors, and will provide a stronger deterrent for fraudsters going forward.

Government departments and agencies and other public sector bodies will be working hard to combat fraud. However, the sheer scale of the problem will likely require others to help them in this endeavour. While the insolvency and restructuring profession already extensively assists in combatting economic crime, it could do even more to help the government and other public sector bodies deal with the sheer number of cases that are already placing a huge burden on these organisations. The considerable expertise and powers that insolvency practitioners have to tackle fraud puts them in a unique position to support the public sector in this work. The insolvency and restructuring profession stands ready to do even more to support the fight against fraud, and these recommendations would help the profession to do so – for the benefit of victims, creditors and UK plc.

Christina Fitzgerald
R3 President

Frances Coulson
R3 Fraud Group Chair

[1] Office for National Statistics (2022). Crime in England and Wales, Appendix tables - year ending December 2021, Table A3
[2] Ibid
[3] PwC (2022). Global Economic Crime Survey 2022: UK findings

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The current fraud landscape

Fraud is a "hidden crime" with extremely damaging consequences. It deprives businesses and individuals of their money and causes various other negative effects, including a drain on public funds, an increased risk of some legitimate businesses failing (through being defrauded or through unfair competition), and psychological and emotional – as well as financial – damage to victims. There are many forms of fraud, incorporating a wide range of behaviours. These behaviours are all linked by deception, with the intention that it will result in some form of gain to the perpetrators.

Fraud accounts for up to 40% of all crime committed across the UK, according to Cabinet Office estimates.[4] Pre-pandemic, the National Crime Agency (NCA) noted that fraud cost the country around £190 billion a year.[5] Since the onset of the pandemic, fraud has continued to be the fastest growing form of crime in the UK. The Office for National Statistics' (ONS) report on crime in England and Wales for 2021 showed that the 18% increase in total crime in 2021, when compared to 2019, was "driven by a 54% increase in fraud and computer misuse offences".[6] Fraud itself had increased by 41% during this period, from 3.7 million incidents in 2019 to 5.2 million incidents in 2021.[7]

Fraud in the UK since the pandemic

Leading Fraud indicators since 2019

41% increase in fraud[8]

32% more victims affected[9]

64% of businesses hit by fraud or corruption[10]

Businesses and individuals alike have been hit by fraud during the pandemic – at a time when many were already struggling financially. Between 2019 and 2021, the number of victims affected by fraud increased by 32%, from 3.1 million to 4.1 million.[11] Meanwhile, the impact on businesses in the UK seems to have been particularly significant when compared to the global average. PwC's 2022 Global Economic Crime Survey showed that in the UK, 64% of businesses have experienced fraud, corruption or other financial crime within the past 24 months – a "substantial increase" compared to 56% in 2020, and 50% in 2018.[12] The Survey noted that this increase is higher than the global rise of 46% and is the second highest rise in the world (South Africa having the highest increase).[13]

Rise in types of fraud since the pandemic

Increases in different types of fraud in the UK from December '19 to December '21[14]

422% more fraudulent applications for grants from government funded organisations

135% more insurance fraud

64% more financial investment fraud

26% more pensions fraud

16% more banking and credit industry fraud

16% more consumer and retail fraud

14% more advance fee payments fraud

As can be seen from the graphic above, various types of financial fraud increased significantly from 2019 to 2021.

[4] House of Commons Public Accounts Committee (2021). Fraud and Error: Ninth Report of Session 2021-22, p.9
[5] National Crime Agency (accessed 2022). Fraud
[6] Office for National Statistics (2022). Crime in England and Wales: year ending December 2021
[7] Office for National Statistics (2022). Crime in England and Wales, Appendix tables - year ending December 2021, Table A3
[8] Office for National Statistics (2022). Crime in England and Wales, Appendix tables - year ending December 2021, Table A3
[9] Ibid
[10] PwC (2022). Global Economic Crime Survey 2022: UK findings
[11] Ibid
[12] PwC (2022). Global Economic Crime Survey 2022: UK findings
[13] Ibid
[14] Office for National Statistics (2022). Crime in England and Wales, Appendix tables - year ending December 2021, Table A5; Office for National Statistics (2019). Crime in England and Wales, year ending December 2019 - Appendix tables, Table A5.

Meanwhile, the largest percentage increase has been in “fraudulent applications for grants from Government funded organisations”. This figure above does not account for the loss to fraud incurred by most of the various temporary support schemes set up by the Government at the start of the pandemic, as final confirmed figures illustrating the scale of these losses have yet to be released.

COVID support scheme fraud

Government COVID support schemes, such as the Bounce Back Loan Scheme, Coronavirus Business Interruption Loan Scheme and Coronavirus Job Retention Scheme (the furlough scheme) were particularly vulnerable to fraud. According to the Public Accounts Select Committee, this was partly due to the Government “prioritis[ing] the need for speed when setting up new initiatives over reducing the risk of fraud and error. The increased risk was also due to providing support to people and businesses that Government did not have a prior relationship with, relaxing or modifying controls in place to prevent or detect fraud and error, prioritising its COVID-19 response over business-as-usual compliance activity; and a general increased risk appetite for fraud and error, as shown by ministerial directions accepting the risks identified by the civil service”.[15]

At the end of 2021, the Department of Business, Energy & Industrial Strategy (BEIS), estimated that £4.9 billion of the £47 billion issued through the Bounce Back Loan scheme could be lost to fraud.[18] While the full scale of fraud resulting from Government COVID support schemes is yet to be seen, the graphic below illustrates some of the estimates from the BEIS and HMRC:

COVID support scheme fraud

Percentage estimates of amounts lost to fraud from various Government COVID support schemes

10% of loans made under the Bounce Back Loan Scheme[19]

9% of payments made under the furlough scheme[20]

9% of payments under the Eat Out to Help Out scheme[21]

3% of payments made under the Self-Employed Income Support Scheme phases 1-3[22]

[15] House of Commons Public Accounts Committee (2021). Fraud and Error: Ninth Report of Session 2021-22, p.9-10
[17] Ibid
[18] National Audit Office (2021). The Bounce Back Loan Scheme: an update, p.4
[19] Ibid
[20] HM Revenue and Customs (2021). Our approach to error and fraud in the COVID-19 support schemes
[21] Ibid
[22] Ibid

Public sector resourcing to combat fraud

> "A very small number of…resources available to deal with what is a large problem"
>
> Angela McLaren, Police Assistant Commissioner for Economic and Cybercrime, City of London Police[23]

Public sector capacity to investigate and prosecute fraud has not kept pace with the sharp increase in this form of crime. The number of prosecutions for fraud and forgery carried out by the Crown Prosecution Services' (CPS) Principle Office fell by 38% in the year ending 2021 (7,353), when compared to the year ending 2019 (11,913).[24] Of the total number of CPS prosecutions each year for all types of criminal activity, fraud and forgery accounted for only 1.9% in 2021, 2.1% in 2020 and 2.7% in 2019[25] – despite Government estimates that it accounts for up to 40% of all crime.[25]

Meanwhile, in the three years from March 2017 to February 2020, the Serious Fraud Office (SFO), the specialist prosecuting authority which investigates and prosecutes the top level of serious or complex fraud, bribery and corruption, prosecuted only 17 offences – securing 8 convictions – under the Fraud Act 2006 during this period.[26]

Witnesses of Parliamentary Select Committee inquiries on fraud have repeatedly expressed concerns about the lack of public sector resource available to tackle economic crime. In 2021, the Director General of the National Crime Agency (NCA), Graeme Biggar, told the Treasury Select Committee that fraud is "a third of all reported crime but accounts for 1% of police resources", while City of London Police Assistant Commissioner for Economic and Cybercrime, Angela McLaren commented that it is "a very small number of police resources available to deal with what is a large problem".[27] Other witnesses who gave evidence to the Treasury Select Committee's recent Economic Crime Inquiry also noted the lack of resources available to other public sector bodies responsible for combatting fraud, such as the National Economic Crime Centre (NECC),[28] while parliamentarians have raised concerns that the NCA has suffered a "real-terms decline of 4.2% in its budget in recent years just as online fraud exploded during the pandemic".[29]

Scale of fraud compared to prosecutions for fraud

Comparing key fraud indicators to the numbers of prosecutions for fraud since 2019

Fraud accounts for:

40% of all crime committed across the UK[31]

2% of CPS prosecutions each year[32]

From 2019 and 2021:

Fraud rose by 41%[33]

CPS prosecutions for fraud fell by 38%[34]

[23]House of Commons Treasury Committee (2022). Economic Crime: Eleventh Report of Session 2021-22, p.19
[24]Crown Prosecution Service (2021). Prosecution Data Tables Year Ending December (2021), Table 2.1; Crown Prosecution Service (2019). Prosecution Data Tables Year Ending December (2019). Table 2.1
[25]Crown Prosecution Service (2021). Prosecution Data Tables Year Ending December (2021), Table 2.1; Crown Prosecution Service (2020). Prosecution Data Tables Year Ending December (2020). Table 2.1; Crown Prosecution Service (2019). Prosecution Data Tables Year Ending December (2019). Table 2.1
[26]Serious Fraud Office (2020). 2020-047 – Number of Prosecutions
[27]House of Commons Treasury Committee (2022). Economic Crime: Eleventh Report of Session 2020-22, p.19-20
[28]Ibid, p.16
[29]The Times (2022). Spring statement is a chance to kick dirty money out of Britain
[31]House of Commons Public Accounts Committee (2021). Fraud and Error: Ninth Report of Session 2021-22, p.9
[32]Crown Prosecution Service (2021). Prosecution Data Tables Year Ending December (2021), Table 2.1; Crown Prosecution Service (2020). Prosecution Data Tables Year Ending December (2020). Table 2.1;
[33]Office for National Statistics (2022). Crime in England and Wales, Appendix tables - year ending December 2021, Table A3
[34]Crown Prosecution Service (2021). Prosecution Data Tables Year Ending December (2021), Table 2.1; Crown Prosecution Service (2019). Prosecution Data Tables Year Ending December (2019). Table 2.1

Improving the situation

The Government has taken some significant steps to attempt to reform the corporate governance framework and tackle fraud in recent years, but these measures have not represented the 'game-changer' that many stakeholders have called for. Last year, the Government introduced legislation to grant the Insolvency Service the power to investigate directors of dissolved companies through the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021.

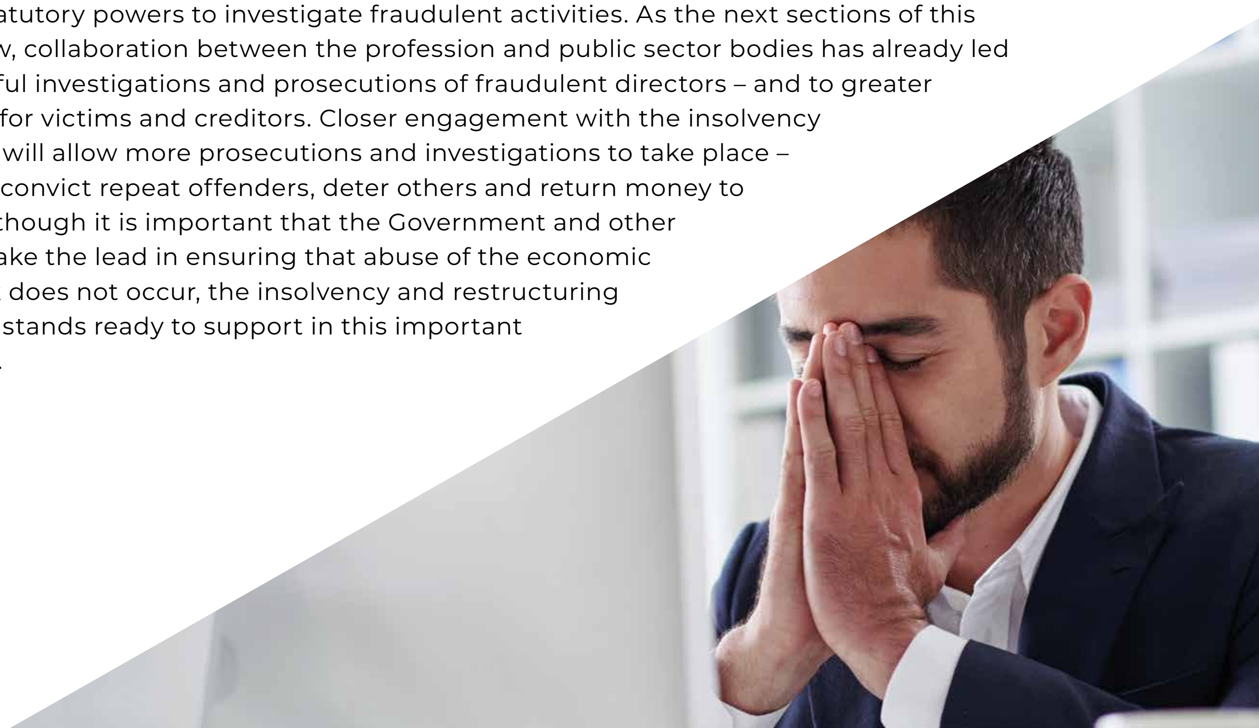
Then, following high levels of media interest in the Government's approach to pandemic-related fraud, as well as the war in Ukraine, the Government pushed an initial Economic Crime (Transparency and Enforcement) Act quickly through Parliament in the spring of 2022. It also announced during the Queen's Speech in May 2022 that it will publish legislation giving effect to long-awaited reforms to Companies House later this year, through the Economic Crime and Corporate Transparency Bill.

While we have welcomed the Government's efforts, R3 believes that there is still some way to go in reforming our corporate governance framework, in order to bring about truly significant and effective change to the way that economic crime is investigated and prosecuted.

The recommendations set out in this paper will help to do just that. Of particular importance are the suggested changes to the company dissolution process. Although we have strongly welcomed the planned reforms to Companies House, they would only be a partial solution if creditors continue to be left out of pocket when companies used as vehicles for fraud by rogue directors are dissolved and struck off the register automatically, with next to no due diligence carried out to ascertain the legitimacy of this corporate activity. In addition, to truly provide a deterrent to fraudulent directors, and ensure that returns are made to creditors, the Government should make it simpler to restore a company so that it can be placed into an insolvency procedure and the company's assets realised for the benefit of creditors.

In light of the rapidly growing scale of fraud, as indicated above, it is vital that, as well as providing adequate resource to law enforcement and other agencies dealing with fraud, the Government makes full use of the expertise of various suitably qualified individuals in order to supplement its capacity. Given that our members and other stakeholders report that fraudulent directors are often repeat offenders, with a number of individuals responsible for a volume of the frauds that take place within the UK, prosecutions and convictions are key to helping prevent the scale of fraud from growing even further. Disrupting attacks on the economy by Serious Organised Crime Groups (SOCGs) requires significant investment, whether this is in terms of funds or risk-based work by the private sector. The added capacity that the private sector could supply would provide significant savings to Government and legitimate businesses and individuals in the medium to long term.

Members of the insolvency and restructuring profession have significant expertise and wide-ranging statutory powers to investigate fraudulent activities. As the next sections of this paper show, collaboration between the profession and public sector bodies has already led to successful investigations and prosecutions of fraudulent directors – and to greater recoveries for victims and creditors. Closer engagement with the insolvency profession will allow more prosecutions and investigations to take place – helping to convict repeat offenders, deter others and return money to victims. Although it is important that the Government and other agencies take the lead in ensuring that abuse of the economic framework does not occur, the insolvency and restructuring profession stands ready to support in this important endeavour.

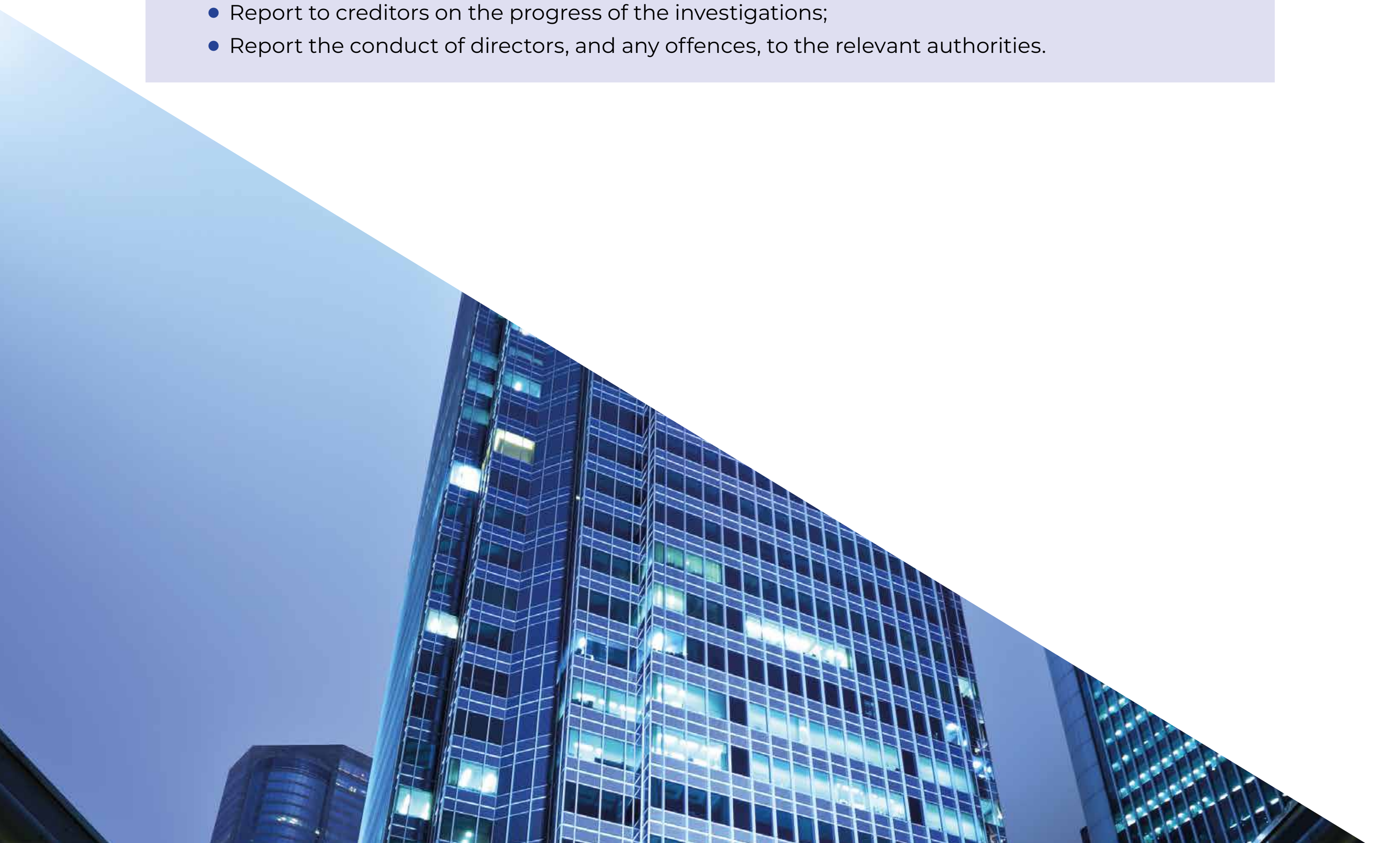


The role of insolvency practitioners in tackling fraud

The insolvency profession has a key role to play in tackling fraud and ensuring that the UK remains a safe place to do business. Insolvency Practitioners (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. Their extensive powers to investigate, and under insolvency legislation provisions, pursue those involved in fraudulent financial activities, puts them in a unique position to disrupt fraud and return money to victims. It also puts them in a distinct position to be able to support the public sector in its important work.

When a company becomes insolvent, an IP is usually appointed as an office holder (for example, as a liquidator or administrator). When acting as an office holder, IPs are personally responsible for protecting the interests of all the company's creditors, which, where fraud has occurred, will include the victims of that fraud. They can also be held personally responsible for the company's actions. As part of their legal duties as an office holder, an IP is required to investigate the company directors for evidence of misconduct and report the conduct of directors, and any offences to the relevant authorities. In order to fulfil this requirement, they will:

- Locate, secure and analyse the company's books and records for evidence of misconduct;
- Interview or send written questionnaires to the directors and senior employees of the company;
- Invite creditors to provide information on any concerns they may have about the conduct of the directors;
- Determine the extent of the investigations needed, taking account of the public interest, potential recoveries, the funds likely to be available to fund an investigation, and the costs involved;
- Decide whether further investigation or legal action should be taken;
- Report to creditors on the progress of the investigations;
- Report the conduct of directors, and any offences, to the relevant authorities.



Alongside their legal duty to scrutinise the conduct of directors, IPs have extensive powers to investigate and, under civil litigation, to prosecute those involved in or assisting in fraud under the Insolvency Act 1986 and supporting legislation. These powers include the ability to:

- Interview under compulsion;
- Hold private or public examinations of persons with relevant knowledge before the court to aid investigations and recover assets for the benefit of victims;
- Bring civil recovery action;
- Search and seize property or evidence associated with fraud;
- Obtain freezing orders against assets of those involved;
- Overturn transfers to third parties;
- Obtain passport orders (where the individual is ordered to surrender their passport to prevent them leaving the country).

All of these powers can prove invaluable in detecting, investigating and disrupting fraudulent activity and in making recoveries for victims. IPs also benefit from extensive international recognition powers to enable them to pursue fraudsters and their assets internationally, although this has been complicated by the loss of mutual recognition of UK insolvency proceedings in the European Union (EU) as a result of the UK's exit from the EU, which has meant that obtaining recognition of insolvency procedures and judgements in Europe has become more delayed and costly.

Investigations by IPs are carried out under civil litigation, which requires a lower burden of proof than criminal law. IPs also have the power to pursue criminal prosecutions where they have uncovered evidence of criminal activity. The evidence that IPs can uncover with their statutory powers means that they are more likely to have the evidence necessary to pursue both civil and private criminal proceedings. This puts IPs in an almost unique position to support the public sector's criminal authorities. While these powers are also available to the Government's Official Receiver,[35] IPs often undertake this extensive investigatory and recovery work on risk and unfunded. In appropriate cases, IPs' investigations can contribute to the work of law enforcement and other Government departments by improving the evidence available to obtain criminal prosecutions or a disqualification order against a fraudster.

[35] The Official Receiver is a body of civil servants within Government that are automatically first appointed by the court in bankruptcy and compulsory winding up procedures

R3's priorities for reforming the corporate governance framework

In light of the growing rate of fraud, and, in particular, the scale of COVID support scheme-related fraud, there are two key areas which R3 believes should be prioritised in order to substantially improve the UK's efforts in preventing and tackling economic crime. These are:

1. Reform of the company dissolution process and corporate director liability; and
2. Effective public-private sector engagement to prevent and disrupt fraud.

Reform of the company dissolution process and corporate director liability

In the Queen's Speech in May 2022, the Government committed to introducing legislation which would give effect to Companies House reforms through an Economic Crime and Corporate Transparency Bill. This commitment followed four consultations on Companies House reform in 2019 and 2020, and a White Paper on the subject, published at the beginning of 2022.

Insolvency professionals have a unique perspective as users of Companies House. When appointed over insolvent companies, they are required to investigate a company's affairs and director conduct, partly by referring to its books and records, in order to discharge their duties. Furthermore, the ability to access corporate records and information about directors and quickly identify where such information is either missing or inaccurate is key to the work of IPs, as part of their legal duties to prepare a report about the conduct of any person who has been a company director. To this end, Companies House plays a crucial role in enabling IPs to carry out their work to tackle fraud.

R3 has long called for reform to Companies House and we have welcomed the Government's proposals for change, particularly the introduction of identity verification for directors and Persons of Significant Control (PSCs). However, we believe that there are other key areas which are crucial to properly preventing and tackling economic crime – and therefore to significantly improving the UK's corporate governance framework and increasing confidence in UK plc.

These recommendations relate primarily to reform of the company dissolution process. Without reform of this process, the proposed reforms to Companies House will be limited in their efficacy to bring about real change to preventing and disrupting fraud. We therefore believe that these further recommendations should either be incorporated into the existing package of reforms, or introduced in addition to the existing proposals.

Reforming Companies House's automatic strike-off process

Year	Dissolved companies[36]	Percentage of companies struck off and dissolved[37]	Percentage of companies wound up voluntarily or subject to the supervision of the Court under the Companies Acts[38]
2019/20	531,590	95%	5%
2018/19	504,307	94%	6%
2017/18	486,671	94%	6%
2016/17	432,347	94%	6%
2015/16	395,606	94%	6%
2014/15	365,881	93%	7%
2013/14	329,245	93%	7%
2012/13	299,700	92%	8%
Average	418,168	92%	6%

Each year, Companies House automatically strikes-off around 94% of the total number of dissolved companies due to failures to file accounts or confirmation statements, rather than at the request of directors or the courts. This can be seen in the above table.

Since the Rating (Coronavirus) and Director Disqualification (Dissolved Companies) Act 2021, the Government has been able to investigate and disqualify a director of a dissolved company for fraud, wrongful trading or director misconduct. These disqualifications are overseen by the Insolvency Service.

However, our members report that disqualifications alone have had little to no effect on fraudulent directors, and that 'serious' rogue directors do not see being disqualified as a significant deterrent, and will often go on to commit repeat frauds. Our members frequently see disqualified directors contributing to successive business failures or breaching the terms of their disqualification by working as shadow directors or 'advisors.' A much more significant deterrent for directors is being held to account for the assets that have been misappropriated and incurring personal liability for wrongful actions – such as when the company is put through an insolvency process.

It is estimated that 50% of the automatic strike-offs by Companies House are of insolvent companies – around 12 times more insolvent companies than the annual number of corporate insolvencies. The automatic dissolution of an insolvent company means that the company must first be restored in order for investigation into the conduct of its directors and the recovery of its assets to take place.

It would result in more effective investigation of insolvent company dissolutions – and crucially provide a much stronger deterrent to culpable directors – if instead of companies being automatically struck-off, those that have failed to file accounts when due were automatically placed in a compulsory liquidation procedure, a process which would be overseen by the Government's Official Receiver. This would allow for earlier investigation into the conduct of directors and for the earlier recovery of misappropriated company assets – for the benefit of all of the company's creditors.

In order to cover the costs to the Official Receiver for undertaking these liquidations, the directors of the companies that have failed to file could be made personally liable for the cost of the process. This would greatly increase the deterrent to culpable directors who, as explained above, will often go on to commit repeat offences even when disqualified. If required, the insolvency and restructuring profession could support the Government by providing additional capacity to assist with the additional number of compulsory liquidation cases the Official Receiver would have to undertake.

In addition, directors of companies that have failed to file accounts when due could automatically be disqualified for two years. This may help to save costs and time for the Insolvency Service, by reducing the resources needed to investigate and disqualify directors. The Government has said that it does not record the average cost of a disqualification, but it has noted that it takes the Insolvency Service an average of 21 months to realise a disqualification from the date of insolvency[39].

An alternative solution would be for companies that would have been struck off the register to be 'quarantined' for review by the Insolvency Service, in order to assess whether or not they were insolvent. Any company identified to be insolvent could then be placed under the appropriate compulsory liquidation procedure, a process which would be overseen by the Government's Official Receiver. Companies House could increase the penalties it levies on companies for filing failures (that currently trigger automatic strike-off routines) and funds raised from such penalties could be used to fund the Insolvency Service investigations of those companies put into the quarantine.

Through the current automatic strike-off procedure there is very little due diligence carried out by Companies House and others to identify whether or not fraud has occurred. This allows directors to

[36]Companies House (2021). Companies Register Activity 2020/21, Table A9: Companies removed from the register, 2012-13 to 2020-21
[37]Ibid
[38]Scully, Paul (2022). Answer to Directors: Disqualification – Question for Department for Business, Energy and Industrial Strategy

either rack-up debts or sell company assets ahead of the company being dissolved, and to effectively abscond with the proceeds. While the Government can use Compensation Orders to recover losses to creditors where a director of a dissolved company has been disqualified, Compensation Orders were introduced to benefit a narrow group of creditors directly affected by the misconduct of a director, rather than the overall body of the company's creditors. Given that culpable directors often go on to commit repeat frauds, using a Compensation Order means that the many other frauds that may be carried out by these same directors simply will not get investigated or identified because the company is left dissolved.

It is only by putting the company through an insolvency procedure that misplaced assets and other frauds can be identified, in turn leading to further actions that can be taken against these directors.

R3 recommends that Companies House's automatic strike-off power be reformed so that rather than being removed from the register, companies that have failed to file accounts when due are automatically placed in a compulsory liquidation procedure, overseen by the Insolvency Service's Official Receiver. The directors of such companies could be made personally liable for the costs of the liquidation, which would simultaneously cover the costs to Government and provide a much stronger deterrent to fraudsters.

In addition, R3 recommends that directors of companies that have failed to file accounts for 12 months could automatically be disqualified for two years. This may help to save costs and time for the Insolvency Service, by reducing the resources currently needed to investigate and disqualify directors.

Alternatively, companies that would have been automatically struck-off could be quarantined so that insolvent companies could be identified and investigated prior to those companies being removed from the register. Companies House could also increase the penalties it levies on companies for filing failures (that currently trigger automatic strike-off routines) and funds raised from such penalties could be used to fund the Insolvency Service investigations of those companies put into the quarantine.

Making the restoration of a company an administrative process

As noted above, in our members' experience, disqualifications do not provide much deterrent for culpable directors. A much more significant deterrent occurs when the company is put through an insolvency process and the directors are held to account for the assets that have been misappropriated and incur personal liability for their actions. If a company has been dissolved and automatically struck-off the Companies House register (and therefore effectively no longer exists) this can only take place if the company is first restored.

However, in many instances, restoration of a dissolved corporate requires an application to court, which can deter creditors from pursuing it as a procedure, partly due to the costs and time involved. Directors are therefore all too easily able to create a significant barrier to investigating their conduct. The table below shows that only 2% of dissolved companies are put through a process to restore them to the register each year.

Year	Dissolved companies in Great Britain[40]	Percentage of companies restored to the register[41]
2019/20	531,590	2%
2018/19	504,307	2%
2017/18	486,671	2%
2016/17	432,347	2%
2015/16	395,606	2%
2014/15	365,881	2%
2013/14	329,245	2%
2012/13	299,700	2%
Average	418,168	2%

To resolve this issue, 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). While this change will not necessarily reduce the overall cost of investigating a company, it is an important step to aid this process and would provide less of a deterrent to creditors when it comes to deciding on whether or not to restore a company.

R3 recommends that the restoration of a company be an administrative process, in place of the current requirement to obtain a court order, to make it simpler for a company to be put through an insolvency process so that the company's directors can be held to account for the assets that have been misappropriated and incur personal liability for their actions.

Holding corporate directors to account

Currently, the law only requires that one director on a company's board be a real or "natural" person. Any number of others can be "corporate directors", such as other companies or legal entities. Other nations, such as Germany and the United States, do not allow corporate directors to be appointed to company boards.[45]

The Government has recognised that this poses an issue to the UK's corporate governance framework, noting that "evidence suggests that the use of corporate directors can muddy waters around ownership and provide a screen behind which to conduct illicit activity. More generally the opacity they create can weaken corporate governance by preventing individual accountability".[46] In 2020, it consulted on "implementing the ban on corporate directors".[47]

In its White Paper published in February 2022, the Government concluded that companies will be allowed "a maximum of one 'layer' of corporate directors, which must be based in the UK, and the natural persons directing that corporate director will be subject to identity verification".[48]

However, R3 members have raised concerns that this reform allows a loophole to remain which can be exploited by fraudsters: the natural persons that are directors of the corporate director can remain unaccountable if the corporate director is involved in fraudulent activity, because they cannot be treated as a "de facto director" – directors who are not properly appointed and notified to Companies House but who are still subject to the "same legal duties, responsibilities and potential liabilities" as "de jure directors" – those who are actually appointed to the board and registered with Companies House.

R3 therefore recommends that the definition of "de facto director" is extended to include those natural person directors of corporate directors – so that they can be held personally liable when fraud occurs.

[40] Companies House (2021). Companies Register Activity 2020/21, Table A9: Companies removed from the register, 2012-13 to 2020-21
[41] Ibid
[45] Department for Business, Energy & Industrial Strategy (2020). Corporate Transparency and Register Reform: Consultation on implementing the ban on corporate directors, p.9
[46] Ibid
[47] Ibid, p.4
[48] Department for Business, Energy & Industrial Strategy (2022). Corporate Transparency and Register Reform White Paper, p.20

Effective public-private sector engagement to prevent and disrupt fraud

While the scale of fraud in the UK is rapidly increasing, as seen above, public sector resourcing constraints have restricted the number of prosecutions and convictions for fraud in recent years. This has enabled culpable directors to commit repeat offences. Given the current cost of living crisis and potential impending recession, competition for Government resource is only likely to increase. It is therefore even more important than ever that the Government turns to the expertise available within the private sector to help tackle the issue.

The Government itself has acknowledged the importance of "develop[ing] strong public-private and private-private partnerships" to tackle fraud.[49] The key strategic priorities within its Economic Crime Plan 2019-22 include "ensur[ing] the powers procedures and tools" within "the private sector are as effective as possible; "strengthen[ing] the capabilities of...[the] private sector to detect, deter and disrupt economic crime" and "build[ing] greater resilience to economic crime risk in the private sector...",[50] with a key action within the Plan noting the need for Government bodies such as the Home Office, HM Treasury and the NECC to "better engage with sectors and organisations not currently represented in economic crime governance".[51]

Use of insolvency in combatting fraud

Making use of the extensive powers available to IPs under insolvency legislation, as detailed on p.[8-9], is a highly effective method to increase the amount and type of fraud that can be tackled, particularly given public sector resourcing constraints.

The Government does not currently record how much it costs the Insolvency Service to secure a director disqualification for fraud, wrongful trading or unfit conduct.[52]

However, resourcing and capacity constraints at the Insolvency Service appear to have impacted the number of serious breaches of the law that the organisation is able to investigate. R3 members report that they often encounter cases involving significant breaches by directors of Insolvency Act 1986 and Companies Act 2006 requirements that are not investigated and acted upon, which would suggest that the Insolvency Service is somewhat resource or capacity constrained.

Year	Disqualifications by the Insolvency Service of directors of insolvent companies[53]
2019/20	1,280
2018/19	1,243
2017/18	1,231
2016/17	1,214
2015/16	1,211
2014/15	1,210
2013/14	1,282
2012/13	1,034
Average	1,213

[49]HM Government and UK Finance (2019). Economic Crime Plan 2019-2022, p.66
[50]Ibid p.9
[51]Ibid p.6
[52]Scully, Paul (2022). Answer to Directors: Disqualification – Question for Department for Business, Energy and Industrial Strategy
[53]Insolvency Service (2021). Insolvency Service Enforcement Outcomes, 2020/21, Table 1A: Director Disqualification Order and Undertakings by Section

The table to the left shows the number of disqualifications made by the Insolvency Service of directors of insolvent companies by year in Great Britain. It shows that around 1,200 disqualifications are made by the Insolvency Service each year – and that this number is fairly consistent each year, irrespective of economic conditions, trends or fluctuations in the total number of corporate insolvencies. Again, this suggests a resourcing issue for the Insolvency Service.

Furthermore, the table below shows the average length of time it takes the Insolvency Service to secure a director disqualification, from the date at which an office holder's report on the director's conduct is submitted. It shows that a director disqualification takes the Service between a year and a half and two years to complete:

Year	Average length of time taken by the Insolvency service to secure a director disqualification, from the date of insolvency[54]
2021/22	22.1 months
2020/21	21.7 months
2019/20	19.8 months
2018/19	19.9 months
2017/18	20.4 months
Average	20.8 months

While disqualifications are the first step to preventing culpable directors from abusing the system, as explained in the previous section, they do not usually provide an effective deterrent to fraudsters. In order for this to occur, it is important that director disqualifications lead to prosecutions. Unfortunately, the Insolvency Service does not record how many legal proceedings it issues against disqualified directors.[55] The fact that these figures are not published makes it more difficult to evaluate the Government's performance in this regard, and we would strongly recommend that these figures are made public going forward.

Making greater use of private sector capacity and expertise to support the Government in this work would allow more director disqualifications and prosecutions to take place – preventing directors from committing repeated frauds, improving the deterrent for fraud, and reducing costs to Government. It would also allow for the ability to undertake an increased number of large cases, as well as for a focus on wider targets – such as the corporate entities through which the fraud is perpetrated and those individuals either directly or indirectly involved in the fraudulent activities. As a result, the recoveries for victims can be increased and the benefits for fraudsters reduced.

An example of effective public-private sector collaboration to combat fraud for the benefit of victims and creditors, has been through the Economic Crime Prevention Group (ECPG) Insolvency Pilot, established in 2012 as a collaboration between members of the insolvency profession and a number of public and private sector organisations. The Pilot has aimed to provide Government departments and agencies and law enforcement, as well as private sector organisations, with additional processes with which they can combat fraud. Cases referred to the pilot would typically not otherwise be taken forward for reasons of resource or due to the fact that, as yet, they are evidentially or otherwise unsuitable for criminal prosecution. In certain cases, the investigations by the IPs have also contributed to the work of law enforcement, BEIS or the Insolvency Service in obtaining a disqualification order or criminal prosecution of a fraudster at a later date by improving the evidence required.

[54] Scully, Paul (2022). Answer to Directors: Disqualification – Question for Department for Business, Energy and Industrial Strategy UIN 11673
[55] Scully, Paul (2022). Answer to Directors: Disqualification – Question for Department for Business, Energy and Industrial Strategy UIN 11672

Case studies

The examples below illustrate two different cases where members of the insolvency and restructuring profession recovered money from fraudulent directors to Government authorities, through the ECPG.

In the first case, members of the profession prosecuted directors who had scammed vulnerable people out of their money. In the second, members of the profession returned nearly £1 million to law enforcement.

Case Study A – directors prosecuted by insolvency professionals and Government authorities after scamming £1.5 million from elderly individuals

The case below shows how members of the insolvency profession were able to return money to Government authorities in the UK and Ireland after a company scammed elderly people out of £1.5 million.

Two companies, run by the same directors, scammed elderly people out of £1.5 million. The companies were then dissolved.

Government authorities had initially investigated and were about to issue the company directors with criminal charges. However, the directors had fled to Ireland. The case was brought to the attention of members of the insolvency profession through the ECPG.

Members of the insolvency profession acted for two creditors free of charge to restore the dissolved company and place it into a compulsory liquidation procedure, which was then overseen by an IP. They sued the directors and were able to recover 10% of the directors’ assets for the Irish authorities.

Case study B: £950,000 of fraudulent money returned to law enforcement by members of the insolvency and restructuring profession

In the case below, members of the insolvency profession worked closely with law enforcement through the ECPG to return nearly a million pounds of money held by a fraudulent director.

A law enforcement agency was approached by a bank about a suspicious account containing £1 million which had been inactive for a significant period of time. The agency then brought this case to a member of the insolvency and restructuring profession, through the ECPG Insolvency Pilot. This member worked with the agency, free of charge, to issue a special petition to restore and then wind-up the dissolved company to which the bank account belonged, placing it into a compulsory liquidation procedure, overseen by an IP.

The IP was able to recover the money within the bank account and immediately pay back the costs of the winding-up petition, as well as almost immediately pay an interim dividend of £750,000 to the law enforcement agency.

The IP then commenced investigations into the conduct of the company's director. They ascertained that the director had left the UK and was in mainland Europe. The IP employed agents to track the director's location, but this proved unsuccessful. The IP liaised very closely with the law enforcement agency and at this point they came to a mutual decision to close the investigation down. Just before the case was closed, the IP was able to make a final distribution of £200,000 to the agency.

In total, the IP was therefore able to recover £950,000 from the fraudulent company for the law enforcement agency.

R3 believes that IPs can provide the much-needed extra expertise, capacity and additional processes required to boost the fight back against fraudulent activities and can tackle cases that are otherwise unlikely to be progressed.

R3 recommends that making greater use of private sector capacity and expertise to support the Government in disqualifying and prosecuting culpable directors would help to increase the number of disqualifications and prosecutions that could be made, as well as increase the number of large and complex cases that could be tackled, and reduce costs to Government.

R3 recommends that the Government records and publishes the number of legal proceedings issued by the Insolvency Service against disqualified directors for the recovery of assets each year, to help benchmark performance against underlying economic crime trends.

Further recommendations for improving the fight against fraud

As well as the two key priorities for reform discussed above, R3 believes a number of further changes can be made to better prevent and disrupt economic crime.

1. **Facilitating the recovery of assets of foreign companies subject to investigations for suspicious wealth or sanctions**

In March 2022, the Economic Crime (Transparency and Enforcement) Act received Royal Assent, following an accelerated passage through parliament. This process was expedited in order to allow the Government to more easily identify and freeze Russian assets which were subject to sanctions as a result of the war in Ukraine, with the Government noting that "the new legislation will mean [we] can move more quickly to impose sanctions against oligarchs".[56]

The Act introduced a Register of Overseas Entities, requiring directors and beneficiaries of foreign companies which own UK property to list their details or potentially face criminal charges, in the aim that this would facilitate investigations by law enforcement agencies of suspicious wealth. The Government would then be able to freeze the individual's assets, should the individual's wealth be considered suspicious or in breach of sanctions.

However, simply freezing a fraudster's assets without a clear avenue for recovering the assets' value would only offer a partial solution. Assets that are kept frozen for long periods of time risk losing most of their value and subsequently providing no returns through confiscation orders. Furthermore, it is a burden on the public purse for high value assets (such as a yacht worth tens of thousands of pounds) to be physically kept by Government for long periods of time while they are under a freezing order.

To help solve these issues, the Proceeds of Crime Act 2002 (POCA) powers should be extended so that a receiver-manager can be appointed to manage these assets, and oversee the recovery of their value for creditors. Allowing this process to move more quickly, before the value of the assets depreciate, would enable more to be returned to creditors – which could include the Government. It would also reduce the burden on the public purse for holding the assets while they are under a freezing order.

R3 recommends that the Proceeds of Crime Act powers be extended so that a receiver-manager can be appointed to manage and recover assets frozen by the Government as a result of them being identified as suspicious through the Register of Overseas Entities.

2. **Considering the impact of fraud in new legislation: preventing a "fraudster's charter"**

New legislation is often passed by Government quickly, without any automatic requirement to consider the potential implications for fraudulent activity. Unfortunately, this has meant that, quite often, well-intentioned legislation can in fact enable new types of fraud to flourish. R3 members have raised concerns that this has led to certain legislation becoming a "fraudster's charter".

[56] Home Office, Department for Business, Energy & Industrial Strategy (2022). New measures to tackle corrupt elites and dirty money become law
[57] Department for Work and Pensions (2015). Pension freedoms protected and new breed of pension schemes become law
[58] House of Commons Work and Pensions Committee (2021). Protecting pension savers – five years on from the pension freedoms: Pension scams, p.3
[59] Ibid

An example cited by our members, where more consideration for the impact for fraud should have been made before the legislation was finalised, is the Pensions Schemes Act 2015. The Act brought into force new pension freedoms, allowing savers to flexibly access their defined contribution pension from the age of 55. In 2021, the Work and Pensions Select Committee published a report looking at scams related to the 2015 introduction of pensions freedoms, and noted that "by offering pension saver access to a much wider range of investments, the freedoms also put people at risk of a much wider range of scams and financial fraud". Meanwhile, the Government is "still putting in place the necessary support framework to tackle scams" five years later. The report cited an estimate by the Pensions Scams Industry Group that around £10 billion has been lost by 40,000 people to pension scams since 2015.[61]

Analysing the scale of fraud as a result of these freedoms, stakeholders have pointed out that the legislation was "rushed through too quickly, and if more time was given any potential issues could have been ironed out", noting that had there been time for proper consultation with the pensions providers, "many of the complications that have emerged over the past six years would have been identified by the industry".[61]

It is understandable that legislation must sometimes be sped quickly through Parliament, due to the need for an immediate response to a specific situation or sudden problem. However, it is important that, under these circumstances, the wider implications of how the legislation could inadvertently lead to an increase in fraud or scams, should not be neglected.

One solution to this issue would be for the Impact Assessments of Bills to be amended, to contain a section where Government must detail the potential risk of fraud as a result of the legislation, including an estimate for the amount that could be lost by Government or victims, and detailing what has been drafted within the legislation to mitigate this risk.

It would also be helpful if new legislation which looks to tackle economic crime were to contain a clause requiring an annual assessment of the legislation's efficacy in doing so. This would help to better ensure that legislation designed to prevent and disrupt economic crime is up to date and fit for purpose.

R3 believes that all new legislation must detail the potential risk of fraud, including an estimate for the amount that could be lost by Government or victims, and what has been done to mitigate this risk.

R3 believes that legislation which aims to tackle economic crime should always contain a clause requiring an annual report to assess the efficacy of the legislation in preventing or disrupting fraud.

3. Targeting longstanding suspicious bank suspense accounts

When a bank suspects that dubious financial activity is taking place involving a particular account, it will suspend the suspicious account and report it to the NCA. Often the culpable individual will make no attempt to regain the money within the account. This results in the account remaining suspended, sometimes for many years.

In some cases, where the suspended account is linked to a company, members of the insolvency profession have been able to work with the NCA to place the company into liquidation. The IP acting as liquidator can then distribute the funds within the account to the company's creditors.

[60]Ibid
[61]Ft Adviser (2022). Pension freedoms: were they really a good idea?
[62]inews (2021). 'Wall of silence': Financial Ombudsman accused of failing victims of bank account closures

It is unclear how much money is sitting within bank accounts that have been suspended for suspicious activity in the UK, but estimates are that this value could be in the billions of pounds, with the number of bank accounts suspended for suspicious activity estimated to be in the millions. In the summer of 2021, tens of thousands complained that their accounts had been wrongfully suspended for suspected financial crime. The number of accounts suspended, where financial wrongdoing has been taking place, is therefore likely to be many times higher. The Government has said that it does not currently record information on the value held within suspended accounts.[63]

With many of these accounts sitting unclaimed for many years, the value of these accounts remains in limbo, when it could be used by Government to fund the fight against economic crime. It would therefore make sense for Government to take over these accounts, where the money has remained unclaimed for several years and where it is therefore highly likely that criminal activity has taken place.

R3 recommends that, where bank accounts have been suspended for more than six years on the suspicion of criminal financial activity, the value within the account should be passed to the Government.

4.Public interest petitions against individuals

The Secretary of State can currently petition to wind up a company in the public interest under section 124A of the Insolvency Act 1986. The presentation of the petition can take place in various situations, including where the company has been used for an unlawful purpose, such as a vehicle to conceal fraudulent activity.

However, while such petitions can be presented against companies, there is currently no provision for individuals to be made bankrupt in the public interest. R3 believes that such a provision would strengthen the tools available to tackle fraud and increase the opportunities for recovering funds for victims of fraud from the individuals responsible.

In appropriate cases, making an individual bankrupt on public interest grounds would ensure that the individual's assets could be removed and realised for the benefit of creditors or victims of any fraud and would hamper the individual's ability to obtain credit and trade on their own account in future, thereby hindering the opportunity for them to start up new businesses to the detriment of the public.

The bankruptcy order would also prevent that individual from acting as a director, would warn the world of his or her previous behaviour and could give rise to a Bankruptcy Restrictions Order (BRO), where the restrictions of bankruptcy that the individual is subject to can be extended for between 2 and 15 years, once again hampering their ability to set up new enterprises to the public detriment in future. BROs can already apply to bankrupt individuals whose financial behaviour leading up to their bankruptcy is judged to be reckless or culpable. It would therefore be consistent to extend the applicability of this existing insolvency tool to those individuals who have engaged in criminal activities in order to protect the public from future harm.

Public interest petitions against individuals would therefore ensure that those fraudulent enterprises which are not incorporated as companies could be shut down via the bankruptcy of the trader, reducing the threat of fraud to the public and other businesses and acting as a deterrent to other individuals who are inclined to act against the public interest.

[63] Hinds, Damian (2022). Answer to: Bank Services: Freezing of Assets UIN 21207

The cost of this measure could also be 'self-funding', as although there is a cost associated with issuing the bankruptcy petition against the individual, this petition cost would be recovered as a first charge on the bankruptcy estate when assets are recovered and sold.

R3 also suggests that directors of companies wound up in the public interest should face automatic individual public interest petitions for bankruptcy and/or directors' disqualification, acting as a further hindrance to repeat offenders setting up new businesses against the public interest and as a deterrent to those inclined to do so in future. The bankruptcy or disqualification could be dealt with at the same hearing as the public interest petition against the company, thereby saving any costs associated with a separate bankruptcy or disqualification hearing.

R3 believes that the Secretary of State should be able to issue petitions to make individuals bankrupt in the public interest in order to provide a further method via which returns can be made to creditors and victims of fraud, unincorporated entities trading to the detriment of the public can be shut down and to reduce the ability of dishonest traders to set up new businesses in future.

R3 believes that directors of companies wound up in the public interest should face automatic individual public interest petitions for their bankruptcy and/or disqualification from acting as a director.

5. Criminal bankruptcy

As originally enacted, criminal bankruptcy enabled a court to make a criminal bankruptcy order against a defendant where loss or damage was suffered by another person/persons as a result of the offence committed by the defendant and the amount of the loss or damage exceeded £15,000. Through the imposition of a criminal bankruptcy order, the defendant could be forced into bankruptcy for the purposes of realising all of his/her applicable assets in order to cover the loss or damage caused by their criminal activities. This power was then abolished by section 101 of the Criminal Justice Act 1988.

In the absence of a clear rationale for abolishing criminal bankruptcy orders in the past, R3 believes that the power to make a criminal bankruptcy order should be reintroduced in order to act as a further tool to tackle the activities of fraudulent individuals. The reintroduction and use of the power to make such orders would involve little or no extra cost, as the order could be made at the criminal hearing and would therefore not require its own separate hearing.

While under the previous legislation, the Official Receiver – a Government official – would act as Trustee of the bankrupt individual's estate, R3 believes that under a reintroduced criminal bankruptcy regime, it would be more effective for IPs to act as Trustees of all criminal bankruptcy cases in order to take advantage of IPs' experience of investigating the affairs and assets of bankrupt individuals and of using their powers to realise those assets for the benefit of creditors and victims. Any such reintroduced regime would therefore involve no extra burden for Official Receivers or Government associated with dealing with such cases.

Although the imposition of a criminal bankruptcy order may prevent Government from retrieving funds through a confiscation order, it is likely that Government would not actually lose money, as any realisations made under the criminal bankruptcy would be required to be paid into the Insolvency Service Account and therefore subject to a levy by the Insolvency Service.

It is also likely that, as IPs would be involved in the process of realising assets under a criminal bankruptcy by acting as Trustee of the bankrupt's estate, the level of returns on asset realisations would increase given that the IP's powers under a bankruptcy order have distinct advantages over criminal orders. These elevated powers under bankruptcy include overseas recognition to enable recovery of overseas assets, such as the stereotypical 'Spanish villa'.

In addition, the bankruptcy order would enable the IP to realise all of the individual's assets, in contrast to a confiscation or criminal order which only covers the proceeds of crime. Government would therefore still benefit from the funds available from the realisations made under criminal bankruptcies, albeit a different part of Government to that which currently benefits from the proceeds of confiscation and criminal orders.

R3 also believes that there is merit in introducing a presumption that a defendant will be made bankrupt in criminal cases where there is a loss to victims or the defendant is ordered to pay a defined compensatory payment to victims above a specified minimum amount. In practice, this would see a defendant being given 28 days following a guilty verdict within which to either pay the loss/ compensatory payment to the victim, or prove their solvency to make the payment in due course, or else they will be made bankrupt.

R3 believes that Government should take steps to reintroduce the courts' power to impose criminal bankruptcy orders on defendants as a further means to tackle fraud, disrupt fraudulent activities and increase recoveries for victims.

R3 believes that there is merit in introducing a presumption that a defendant will be made bankrupt in criminal cases where there is a loss to victims or the court orders the defendant to pay a defined compensatory amount above a specified amount, thereby ensuring there is a more effective method in place to recover assets for the benefit of victims.

6. Review of the operation of the Crown Prosecution Service

The length of time, often years, it takes to obtain a confiscation order and to appoint a criminal Enforcement Receiver frequently leads to a substantial loss in value of the asset base in criminal cases, and creates difficulties in making recoveries.

R3 therefore recommends a review of the Crown Prosecution Service (CPS), both from an operational and funding perspective. To this end, we would welcome the creation of a separate joint public-private unit which is responsible solely for the recovery of criminal property.

Further, for those Receivers who have already successfully tendered to be on the CPS panel, the method of awarding appointments is often slow, with the cases awarded generally being small. This stands against the principal and stated aims of the various anti-fraud agencies, of causing maximum disruption to serious fraudsters.

The process of applying for a Receiver for cooperative and un-cooperative defendants is the same. One solution for cooperative defendants could be for the court, at the point of conviction, to require the defendant to seek advice from specialist insolvency or criminal enforcement professionals to advise on the most effective way to enable those defendants to realise the amount required to meet their confiscation amounts.

R3 recommends a review of the Crown Prosecution Service (CPS), both from an operational and funding perspective, and the creation of a separate joint public-private unit which is responsible solely for the recovery of criminal property.

R3 believes there is merit in the court requiring cooperative defendants to seek advice from specialist insolvency or criminal enforcement professionals to advise on the most effective way to enable those defendants to realise the amount required to meet their confiscation amounts at the point of conviction.

R3's recommendations

Priorities for reforming the corporate governance framework

Reforming Companies House's automatic strike-off process

Companies House's automatic strike-off power should be reformed so that rather than being removed from the register, companies that have failed to file accounts for 12 months are automatically placed in a compulsory liquidation procedure, overseen by the Insolvency Service's Official Receiver. The directors of such companies could be made personally liable for the costs of the liquidation, which would simultaneously cover the costs to Government and provide a much stronger deterrent to fraudsters.

In addition, directors of companies that have failed to file accounts for 12 months could automatically be disqualified for two years. This may help to save costs and time for the Insolvency Service, by reducing the resources currently needed to investigate and disqualify directors.

Alternatively, companies that would have been automatically struck-off could be quarantined so that insolvent companies could be identified and investigated prior to those companies being removed from the register. Companies House could also increase the penalties it levies on companies for filing failures (that currently trigger automatic strike-off routines) and funds raised from such penalties could be used to fund the Insolvency Service investigations of those companies put into the quarantine.

Making the restoration of a company an administrative process

The restoration of a company should be an administrative process, in place of the current requirement to obtain a court order, to make it simpler for a company to be put through an insolvency process so that the company's directors can be held to account for the assets that have been misappropriated and incur personal liability for their actions.

Holding corporate directors to account

The definition of "de facto director" should be extended to include natural person directors of corporate directors – so that they can be held personally liable when fraud occurs.

Effective public-private sector partnership to tackle fraud

Making greater use of private sector capacity and expertise to support the Government in disqualifying and prosecuting culpable directors would help to increase the number of disqualifications and prosecutions that could be made, as well as increase the number of large and complex cases that could be tackled, and reduce costs to Government.

The Government should record and publish the number of legal proceedings issued by the Insolvency Service against disqualified directors for the recovery of assets each year, to help benchmark performance against underlying economic crime trends.

Further recommendations for improving the fight against fraud

Facilitating the recovery of assets of foreign companies subject to investigations for suspicious wealth or sanctions

The Proceeds of Crime Act powers should be extended so that a receiver-manager can be appointed to manage and recover assets frozen by the Government as a result of them being identified as suspicious through the Register of Overseas Entities.

Considering the impact of fraud in new legislation

All new legislation should detail the potential risk of fraud, including an estimate for the amount that could be lost by Government or victims, and what has been done to mitigate this risk.

Legislation which aims to tackle economic crime should always contain a clause requiring an annual report to assess the efficacy of the legislation in preventing or disrupting fraud.

Targeting longstanding suspicious bank suspense accounts

Where bank accounts have been suspended for more than six years on the suspicion of criminal financial activity, the value within the account should be passed to the Government.

Public interest bankruptcy petitions against individuals

The Secretary of State should be able to issue petitions to make individuals bankrupt in the public interest in order to provide a further method via which returns can be made to creditors and victims of fraud, so that unincorporated entities trading to the detriment of the public can be shut down, and to reduce the ability of dishonest traders to set up new businesses in future.

Directors of companies wound up in the public interest should face automatic individual public interest petitions for their bankruptcy and/or disqualification from acting as a director.

Government should take steps to reintroduce the courts' power to impose criminal bankruptcy orders on defendants as a further means to tackle fraud, disrupt fraudulent activities and increase recoveries for victims.

A presumption should be introduced that a defendant will be made bankrupt in criminal cases where there is a loss to victims or where the court orders the defendant to pay a defined compensatory amount above a specified amount, thereby ensuring there is a more effective method in place to recover assets for the benefit of victims.

Review of the operation of the Crown Prosecution Service

A review of the Crown Prosecution Service (CPS) could be undertaken, both from an operational and funding perspective, and a separate joint public-private unit which is responsible solely for the recovery of criminal property could be created.

There is merit in the court requiring cooperative defendants to seek advice from specialist insolvency or criminal enforcement professionals to advise on the most effective way to enable those defendants to realise the amount required to meet their confiscation amounts at the point of conviction.

For more information or to discuss the findings of the report, please contact Pim Ungphakorn, R3's Public Affairs Manager by emailing pim.ungphakorn@r3.org.uk

"The insolvency and restructuring profession stands ready to do even more to support the fight against fraud, and these recommendations would help the profession to do so – for the benefit of victims, creditors and UK plc"

R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. From senior partners at global accountancy and legal firms to practitioners who run their own small and microbusinesses, our members have extensive experience of helping businesses and individuals in financial distress.

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