JOINT COMMITTEE ON THE DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL

COLLATED ORAL EVIDENCE VOLUME

Contents

Bright Line Law, Investment Property Forum, Royal United Services Institute (QQ 1 – 12)

Monday 4 March 2019

4.30 pm

Watch the meeting

Members present: Lord Faulks QC (The Chair); Peter Aldous MP; Baroness Barker; Emma Dent Coad MP; Lord Faulkner of Worcester; Lord Garnier QC; Lord Haworth; Mark Pawsey MP; Alison Thewliss MP.

Questions 1 – 12

Witnesses

I: Mr Tom Keatinge, Director, Centre for Financial Crime and Security Studies, Royal United Services Institute; Professor Jonathan Fisher QC, Barrister, Bright Line Law; Mr John Condliffe, Partner, Hogan Lovells and Member of the Investment Property Forum, Regulation and Legislation Group.

Examination of Witnesses

Mr Tom Keatinge, Professor Jonathan Fisher QC and Mr John Condliffe.

Q1 **The Chair:** Good afternoon, welcome and thank you very much for attending the first witness session of our Committee. This meeting is in public and will be webcast. The proceedings are recorded by *Hansard*, and a transcript will be sent to you for your correction, if necessary. Thank you very much indeed for coming.

In a moment, I will ask each of you to give a brief overview. I think you will be able to say what you want to say during the course of the questions, but you may have a few comments that you would like to make initially. I declare an interest in that Professor Jonathan Fisher and I were on the Commission on a Bill of Rights, and we have known each other for some time in connection with legal and constitutional matters. I believe that one other member of our Committee has had similar contact.

Lord Garnier: Yes, I have known Professor Fisher for some little while, professionally and as a personal friend.

The Chair: Thank you. Perhaps you could start, Professor Fisher, with a few general comments about the Bill.

Professor Jonathan Fisher: I come at it very much from the perspective of a practitioner in financial criminal law, and it strikes me as a very welcome development. At the present, there is an asymmetrical arrangement between a domestically registered company and an offshore company in the degree of information that needs to be disclosed about the

beneficial owner. On that point alone, it seems sensible to correct that and make it symmetrical.

In my particular practice interest, from my experience of financial crime and fraud cases and the use made of offshore companies, the importance of insisting on the declaration of beneficial ownership must be of value, so I welcome it for that reason. On a very broad and almost policy angle, I can see that this country would quite like to know who owns its property. For those three reasons, for my part, I am very supportive of this legislative project.

The Chair: Thank you very much. Could you give a few preliminary remarks, Mr Keatinge?

Mr Tom Keatinge: Certainly. Thank you very much for having me and for giving me this opportunity. I agree with everything that has been said.

Perhaps I could use an image. Over recent years, the Government have taken the economic and financial crime jigsaw out of the cupboard, where it has languished for many years, and are starting to find the edges of the picture of the solution we are looking for. The Bill is one of the important edges, but an awful lot in the middle still needs to be addressed, and I am sure that we will come on to points about resourcing, and all those sorts of things. But this Bill is a welcome edge, which we have found and are starting to implement.

Speed is clearly of the essence. There is a new revelation in the press this afternoon, this time about the so-called “Troika Laundromat”. As usual, our friend, UK property, features in that, so it is timely that we are talking about the Bill this afternoon. The legislation is overdue and welcome.

Mr John Condliffe: I am from the IPF regulation and legislation group. The IPF is the Investment Property Forum, which represents the investment market in real estate in the UK. Through the regulation and legislation group, we have been following the consultation on the Bill and the call for evidence before that, and we responded on both of those. We broadly welcome the Bill, because we are all for transparency in the real estate market, but it should not be at the expense of liquidity and problems for transactions in the market.

Q2 **The Chair:** Thank you very much. I have one question to address to all of you on which I would like your comments, in so far as you can help the Committee. What is the scale of the problem of money laundering in the UK property market?

Professor Jonathan Fisher: From my perspective, it is very difficult to put a figure on it. The essence of the activity of the fraudster is to conceal what they are doing and what they are gaining from it. Therefore, it will be incredibly difficult to estimate, if not impossible. All I can tell you is that, in my professional experience, I would not expect any competent fraudster to be without an offshore company; it is, de rigueur, part of the equipment.

For that reason alone, without question, fraudsters and corruption kleptomaniacs make very good use of offshore companies, although those

companies have a very valuable role to play that may well eclipse the fraudulent role that they play, but I make no comment on that.

The Chair: Why is London property and other property in the United Kingdom so attractive?

Professor Jonathan Fisher: If you asked the fraudsters that, they would tell you that it is a very stable regime. They are very comfortable with the political environment, even though the exchange rate has dropped; to some extent, that actually helps them. London property has always been a good bet. We see evidence of organised criminals buying property outside London as well. It is broadly the stability element that attracts them.

The Chair: Do either of the other two witnesses have anything to add?

Mr Tom Keatinge: Fortuitously, at RUSI about a month ago we published a paper called *The Scale of Money Laundering in the UK: Too Big to Measure?* We debated whether to include the question mark. The fact of the matter is that we are a global financial centre; if you want to store your assets somewhere that has the rule of law, stability and value and so on, the UK is a pretty good place, for all the reasons that have already been mentioned. We are inevitably going to attract illicit finance.

Money laundering is about laundering the domestic proceeds of crime and the proceeds of corruption that have been brought to the UK. That is perhaps what we are focusing on this afternoon. Then there is the role that the UK plays in moving money around the world, which might not actually end up in the UK. Estimates from the NCA are that there are many hundreds of billions; the numbers that people come up with are very broad. The bottom line is that we are an attractive place to bring that money, and we clearly need to make it less attractive. This legislation moves us along that road.

The Chair: Are we going to make it too unattractive?

Mr John Condliffe: I do not think that we will make it unattractive. It is worth noting that I am talking about investment property and not property acquired for living in. The property we are interested in produces income; it is investment for pension funds and similar bodies. We do not see financial crime, because by the time transactions get to me in my professional capacity, or to colleagues in the IPF, people have done their money laundering checks, and lawyers and agents who do money laundering checks have been instructed. I have no experience of that, but I echo the comments about market transparency and the rule of law being a very important part of the UK real estate market, which this legislation will only increase.

Professor Jonathan Fisher: To answer the question directly, there is one area where the measure could impact. It is not with the institutional investor, as you have just heard. I am not sure whether it will impact on the criminal fraternity, but it is certainly important that we have a go. The family office-type investment, where there is a need for the client to have privacy, for whatever reason, is something you may wish to take into account in your response.

The Chair: Absolutely.

Q3 **Baroness Barker:** What impact do you think the measure will have on the UK property market? Mr Condliffe, you made reference to liquidity in your opening statement.

Mr John Condliffe: Provided that it works properly and the mechanisms are set up properly, which we will come to later, I do not think that from an investment property point of view it will have a great negative impact. For reasons of symmetry or asymmetry in information provision, and being able to find out who actually owns the companies that own property, it may improve the liquidity of the market. It is worth making sure that it works properly, and we will come on to that.

Mr Tom Keatinge: There is some good analysis in the impact assessment that indicates where in the country the highest proportion of this kind of property is held—London—and then, within the boroughs, what percentage of that property is held through these kinds of offshore structures. It is less than 10%, even in the most concentrated areas, and we can imagine that that 10% will be a certain type of property. It is not obvious that we are talking about taking steps that will lead to a major impact on the UK property market.

Q4 **Mark Pawsey MP:** My question is directed mainly at Mr Condliffe and is about the effect on your members who operate in the property investment market. How will the legislation affect your members? What are the operational challenges going to be? Will they need to ask difficult questions of people?

Mr John Condliffe: It is worth thinking about what "overseas owner" actually means. Quite a number of UK investors invest through Jersey, Luxembourg and Guernsey entities, so on the face of it they will be overseas owners, when of course they are really not; they are UK investors. There will be an additional burden on them.

Mark Pawsey MP: Will it affect their relationship with their clients?

Mr John Condliffe: No. It would be an additional administrative burden.

Mark Pawsey MP: Nobody will object to them wanting to find out more information about the people they are acting on behalf of.

Mr John Condliffe: That is right. In fact, I do not think it is much more than a law firm or firm of agents would have to carry out anyway.

Mark Pawsey MP: Would it delay decisions or transactions if additional information was required that was not previously necessary?

Mr John Condliffe: The delay that may happen is at the time of a transaction being effected, rather than in the lead-up. One reason for that is that, in many transactions that involve a structure run through the Channel Islands or Luxembourg, the decision about the identity of the actual purchasing entities is made sometimes only a couple of days or a week before the transaction is completed.

Mark Pawsey MP: Somebody will start their transaction on the basis that one body may be doing it, but they will be doing it in a different name. Is that what you are saying?

Mr John Condliffe: No. Quite often everybody knows that the entities that will take the legal title to the property will not be known, for various good reasons, such as tax planning and structuring, until just before. The purchasing entity will be an organisation, but they will not have identified who is actually going to buy the property until shortly before.

Mark Pawsey MP: Will that affect vendors? Should people selling property be bothered about not knowing exactly who it is?

Mr John Condliffe: Generally not, because that is the way it goes.

Mark Pawsey MP: That is the way it always happens.

Mr John Condliffe: It is the organisation you are selling the property to, the pension fund or investment manager, and the identity of the entity that buys is—

Mark Pawsey MP: So there is no way this is going to reduce the speed of transactions or the rate of activity in the UK.

Mr John Condliffe: The point I alluded to earlier was that, if Companies House has to produce a registration number, it will need to be able to do that very quickly in order not to hold up transactions that involve overseas entities acquiring legal title.

Mark Pawsey MP: Do either of the other two witnesses wish to comment on those issues and how they might affect those choosing to invest in property?

Mr Tom Keatinge: No.

Professor Jonathan Fisher: No.

The Chair: I think you are suggesting that you need efficiency on the part of Companies House, which is a potential slowing-down of the process. We have to make sure that Companies House is properly resourced and appropriately skilled.

Lord Garnier: Do we know whether these transactions are mostly foreign entity to foreign entity, or are they domestic owners selling to foreign entities, or foreign entities selling to domestic owners? Does that matter, and is it information that you have?

Mr John Condliffe: I do not know the quantities, but it is worth drawing the distinction between the legal and the real owners. It may be a club of investors, some of whom are domestic and some are overseas. There is no real pattern to whether it would be problematic for an overseas owner to sell to an overseas owner.

Lord Garnier: If you are a pension fund, and you own a chunk of real estate here, is there an advantage to you? Do you get a better price by

selling to an overseas entity than you might to a domestic one, or is it just the market price?

Mr John Condliffe: Yes.

Q5 **Emma Dent Coad MP:** We have an awful lot of these properties in Kensington, and I am very worried that the people who own them are going to wriggle out of any new legislation that we are able to come up with. Are the thresholds for registrable beneficial owners clear? How do we nail that down, Mr Keatinge? Thank you for your report, by the way, which I read.

Mr Tom Keatinge: This is about the 25% threshold. We face a fundamental issue in the UK, which is that we are very good at building legislation and its architecture and, frankly, quite poor at executing it. Let us be honest. We have already alluded to Companies House. In the last couple of years, since the register of PSCs and so on came into effect, lots of journalists have had great fun digging around and creating companies that clearly have fraudulent names but are not identified. For this measure to work, we need to commit ourselves to ensuring that Companies House has the resources and capabilities to be effective.

To your point, there are myriad ways in which one could wriggle out of the measure. How much will offshore owners care about the enforcement penalties that come their way? There will be plenty of ways to avoid the measure, unfortunately. We have to start by identifying those who are trying to avoid playing ball, which will be by ensuring that Companies House has the ability to play the role that it is meant to play. You are right to be concerned that people will try to find ways to circumvent the legislation; those who want to do so will find it quite easy to circumvent.

Emma Dent Coad MP: We need resources for implementation and enforcement, if people have been identified who are wriggling out of it. Is that your point?

Mr Tom Keatinge: That would be my point, yes.

Professor Jonathan Fisher: If I was asked to advise, on the face of the draft legislation, the first thing I would say is, “Have you thought about setting up a trust?” With respect, one of the first things on your agenda must be to see whether you are going to capture trusts, and the European equivalents.

It goes beyond that. I might say to someone, “If you really want to do this in Technicolor, why don’t you have an offshore company and have the shares of the company put in trust, and when you set that trust up, why don’t you think about setting it up as a discretionary trust?” If it is a discretionary trust, the beneficiary does not rank as a beneficiary in law; all they have in law is the right to be considered by the trustee when capital income is distributed. If they really want to be nifty about it, they will use a discretionary trust and, in that way, put a spanner in the works of the UK Parliament.

There is something you can do. I am not going to suggest that it is the complete answer, but when there is a trust you may want to think

about looking for information not so much on the beneficial owner but on the settlor. Who put the money into that trust in the first place, and when was it put in? For the last five years and going forward, let us have a declaration about who is receiving capital and income from the trust. They may not be shown as beneficiaries on the trust, but if they are discretionary beneficiaries, unidentified, and it just so happens that they are receiving income and capital, that will take you a long way to identifying who is the beneficial owner.

There is work to be done to tidy up and tighten this piece of legislation. If you do that, you will improve it. Can you make something absolutely copperplate? Of course, you cannot. Crooks are clever and sophisticated; they are very adept at using false identities. Your heroin importer is not really going to worry about a two-year imprisonment when he is facing 25 years if he gets caught. Of course there will be a hard core, but there is much you can do to tighten up the legislation.

Emma Dent Coad MP: Thank you, particularly for the information about trusts, which was going to be my next question. I think we are giving them 18 months to have a bit of shuffling around. Your tip is to think like a fraudster. Thank you for your expertise. Do the other witnesses have anything to add?

Mr John Condliffe: No.

Mr Tom Keatinge: No.

The Chair: There is an attempt to define "registrable beneficial owner". Could changes be made to that to reflect what you think may be a way of avoiding the effect of the Bill?

Professor Jonathan Fisher: You need to think about it carefully, but I would suggest that, within the definition of beneficial owner, you also have a declaration of the settlor. When there is a trust, there will be declaration of the beneficiaries, but if it is a discretionary trust you may want to put in some wording to require disclosure of who is receiving that money. That could be part of the ongoing duty to update information.

Mark Pawsey MP: Would that need to be for every item of income, or would you want to attach a proportion? If somebody was distributing to a very large number of people, the information would not be a great deal of help.

Professor Jonathan Fisher: You could do that by setting a percentage, for example.

Mark Pawsey MP: What would you consider an appropriate percentage?

Professor Jonathan Fisher: If you wanted congruence with the existing legislation, you might look at 25%.

The Chair: In English law, we are aware of discretionary trusts, but I do not know whether there is the precise equivalent in the various overseas

jurisdictions where they might be affected. There may not be the same arrangements, I suppose.

Professor Jonathan Fisher: Obviously, the Crown dependencies are pretty close to us, so will be very familiar with that. It is the European side of things—the Anstalts, for example—that we would want to look at closely.

Q6 **Alison Thewliss MP:** To pick up some of the issues around Companies House and the gaps in the current system, it would seem that under the proposed legislation there will not be checks on the beneficial ownership information at registration stage, and that the responsibility to report suspicious activity or possible money laundering will instead lie with professional services, such as lawyers and accountants and those who create business structures.

Do you agree that that is how the Bill reads at the moment? Would you advocate further tightening at different stages? You mentioned Companies House, Mr Keatinge.

Mr Tom Keatinge: There is a risk of a kind of reinforcing loop of weakness. The register will be set up, and those required to do KYC might feel that they can rely on it; even though they may understand the weaknesses in it, they may choose to rely on it, so the information they get furnished with may end up being false in cases where people state the information falsely in the registry.

Moving forward with the legislation, there needs to be a commitment at least to resourcing Companies House sufficiently to deal with the extra onus that will come on it.

Alison Thewliss MP: Should Companies House be subject to the same AML obligations as all other organisations?

Mr Tom Keatinge: Companies House is becoming an increasingly important tool in securing the integrity of the UK financial system. It should be empowered to play that role, and if that means that we have to strengthen its responsibilities as a result, yes, absolutely, we should. We continue to see evidence that if Companies House had had a stronger statutory footing it could have played a role in identifying abusive UK corporate structures. If we keep producing legislation that piles more burden on Companies House, we need to address that issue.

Professor Jonathan Fisher: I agree with that 100%, and I do not have much to add. It is certainly right that Companies House has a role to play in delivering its own due diligence and making its own reports under the money laundering legislation. I agree entirely with what my colleague has just said.

Alison Thewliss MP: Mr Condliffe, you mentioned that Companies House having a role in registration might slow the process. Is there an efficiency that could be gained at that stage, or is there a different way of doing things that would be more efficient or effective?

Mr John Condliffe: The efficiency would be the one talked about in the BPF response: a fast track for producing the registration number quickly.

My colleague (referring to Mr Keatinge) mentioned that there might be a circle of negativity. For large transactions, big firms would do their own KYC and would not necessarily rely on things that they knew Companies House had not checked as being correct.

Alison Thewliss MP: Is that registration a resource issue? Do you feel that they do not have the resources to do that quickly at Companies House?

Mr John Condliffe: Yes.

The Chair: Are you more concerned that smaller firms, solicitors or accountants, may not be geared up to do the relevant inquiries?

Mr John Condliffe: Yes.

Mark Pawsey MP: Professor Fisher said earlier that crooks are clever. Would they not just avoid companies that they thought were more likely to report them? How easy would it be to avoid one of the professional companies that were more likely to report them?

Professor Jonathan Fisher: That is a double-edged sword, because if you are very sophisticated, in a way you want to recruit on your side and get through the gold-plated company that has a reputation for high levels of due diligence. Once you have done that, you are completely sanctified; nobody is going to question you. It is a double-edged sword in that sense.

The other side, as you posit, is that of course there will be criminals out there who think rather differently and may look for the softer target. The whole stretch of anti-money laundering compliance and regulation in this field is very much to drive those people out of business and raise the standards of those who are not delivering compliance at the level we would like them to.

Q7 **Lord Faulkner of Worcester:** I declare an interest as the owner of two houses in Oxford let to students, but I am a very small player in the business.

What impact is the Bill likely to have on existing owners of United Kingdom property? In particular, we have heard differing views on the length of the transition period and whether it should be 12 or 18 months. Could you share your thoughts on that?

Mr John Condliffe: The main impact is most likely to be on dormant owners—overseas owners who own property that is not an active asset, which they have forgotten about. Ownership of property can be a long-term thing, so I am not sure that it would make much difference whether it was 12 or 18 months. The impact will be on people who are not aware of the legislation or the need to do anything and find themselves having to do something.

Lord Faulkner of Worcester: Will there be lots of overseas owners who will not even get to hear about the Bill being passed?

Mr John Condliffe: I do not think that there will be a lot, but there will be an impact on dormant owners.

Lord Faulkner of Worcester: In which case, 12 or 18 months does not make any difference.

Mr John Condliffe: I am not sure that it makes a difference.

The Chair: Obviously, it is important that it is publicised so that we can catch everybody as regards their obligations, if possible.

Mr John Condliffe: Yes.

Mr Tom Keatinge: Where it might make a difference is at the other end. I do not want to make this whole discussion about Companies House, but clearly there will be a large number of properties looking to catch up with the legislation. The time required for the bureaucracy to turn in the UK is perhaps a question that we should ask ourselves.

Lord Faulkner of Worcester: Do you have a view on that?

Mr Tom Keatinge: No, I do not. I cannot emphasise enough that I think we should not progress with legislation such as this without making sure that we have the machinery to deal with what we are creating.

The Chair: You expect Companies House to have a lot of work to do in the 18 months, and you want to make sure that it is sufficiently resourced and skilled to make the legislation work.

Mr Tom Keatinge: It is a great opportunity for us to look at the resourcing of Companies House and bring it up to scratch, to where it should be today. I think everybody recognises that it is not where it should be.

Lord Haworth: Is it just about resources, or is it about powers as well?

Mr Tom Keatinge: Clearly, powers are important, but, first and foremost, a register needs to be able to look at everything that is registered in it and run checks to ensure that people aged two or three are not registering companies, for example. There are plenty of examples where there has been a failure of data entry, and so on; there are lots of reasons why shortcomings have been revealed at Companies House. The point is that, at the moment, it is not really fit for what we are asking it to do, and we are about to ask it to do more. I am afraid that the conclusion is obvious.

Peter Aldous MP: On the point about Companies House needing investment and needing to up its game, does that require major investment in IT? The government record on IT projects has not been all that good over the years, which might sound a note of caution.

Mr Tom Keatinge: I do not think you are saying that because the Government cannot deal with IT projects we should not embrace modern technology in securing a system that we are placing at the centre of our response to financial crime.

Peter Aldous MP: That is correct. I am asking whether it is something we need to be aware of.

Mr Tom Keatinge: I do not work for Global Witness or Transparency International, but they are fellow NGOs that do excellent work scrutinising that registry. Using open access, which I think the Government should be applauded for providing, they seem able easily to identify anomalies. It does not sound as if we are talking about some supercomputer that is beyond the wit of HMG.

Q8 **Lord Haworth:** We have already touched on my question, but I shall phrase it more precisely. Do you have any comments about the sanctions and enforcement measures proposed in the Bill? Self-evidently, as it relates to overseas entities, the people who may be falling foul are abroad, and not easily subject to penalties from being found in default, and so forth. What is your response to that?

Professor Jonathan Fisher: My response is that I think the sanctions put forward are probably about right. At the end of the day, this is essentially a regulatory matter, and the sentences that have been identified in the draft legislation are in line with equivalent legislation in other areas. I do not have a strong view. I can see that there is an issue of enforcement; there will be enforcement issues with any foreign entity operating here, which is why international co-operation is so important in this area.

It is easy to overlook, but important in practice, that whenever Parliament establishes a criminal offence in the commercial sector it inevitably has a knock-on impact under the money laundering regime. If, for example, somebody lies when presenting information to Companies House or, for that matter, does not keep their information up to date, and the accountant or solicitor handling the matter realises that the company is in breach and that criminal property has come into existence, it will require a report to be made to the National Crime Agency, and it will then be for the authorities to decide how they want to deal with it.

That means that the breach of the law is not buried, and in a rather circuitous route enforcement can come through the money laundering regime rather than directly. As the legislation is drafted, you cannot prosecute those offences without getting the director's approval. I cannot imagine that the director will be in a hurry to sign off on prosecutions of that sort, with other demands. But under the money laundering regime, that of itself will be part of the enforcement machinery.

Q9 **The Chair:** Unexplained wealth orders came in as a result of the Criminal Finances Act. So far, the Committee is of the view that that is complementary to the Bill, or might be. Do any of you have comments about how the provisions might work as part of a broader picture? Perhaps Professor Fisher, you might have a view on that, as regards trying to deal with criminality.

Professor Jonathan Fisher: They are all weapons in the armoury. I see them sitting together rather happily; there is certainly no inconsistency. I can see how the importance of identifying the beneficial ownership of an offshore company holding property would relate to an important investigation that the NCA was conducting on whether to get an unexplained wealth order.

Mr Tom Keatinge: I am sure you will hear from the NCA, if you have not already, about the challenges that it faces in piercing the opacity of the structures it is confronted with. As Professor Fisher rightly says, anything we can do to encourage or enforce transparency and find the edges of the jigsaw, which we have neglected for the best part of the last 20 years, is to be applauded, but we should be under no illusion that it will necessarily lead to the ability to suddenly use unexplained wealth orders more broadly. I know that the NCA is looking closely at the extent to which unexplained wealth orders can be used. This is another tool in a box that has been bereft of tools for quite some time.

Alison Thewliss MP: The persons of significant control regime for SLPs has not really been enforced, and there are still thousands of companies in breach that have not been fined. Would your contention be that resources have to go into the enforcement of those things? Obviously, bringing in that fine money would be good for the Treasury, but it does not seem to be pursued.

Mr Tom Keatinge: This is one of the confusing elements. As you rightly point out, there is, to coin a phrase, a money tree of unenforced fines. The ability in this case to close on those fines might be challenging, because the individuals may well be overseas, but we are leaving money on the table that could be used to strengthen the system we are creating. Enforcement is not just about sending a message that something is wrong; it is also, bluntly, about funding the solution, so enforcement needs doubly to be strongly considered. Where we have opportunities to enforce and are not taking them, that in itself is criminal.

The Chair: Real property will supply the potential for enforcement.

Mr Tom Keatinge: Precisely. You cannot put it in your pocket and run away with it.

Lord Garnier: I was struck by what Professor Fisher mentioned a moment ago in response to Lord Faulks's question about unexplained wealth orders. Touching on the example in the Criminal Finances Act of failure to prevent tax offences, and the provisions in the Bribery Act 2010 on failure to prevent bribery, is there room in this Bill to have failure to prevent compliance as an additional and bolstering offence? Would it overcomplicate the Bill and place a burden on professional advisers that they would chafe against, or would it be a useful addition to the armoury?

Professor Jonathan Fisher: We have to be careful with the failure to prevent model. Plainly, it has a very valuable role to play with bribery and, I would suggest, with financial crime generally; on the table for some time has been the consideration as to whether that model should be extended to embrace economic crime. I would ask rhetorically whether the better way to approach it is not by bringing in a more general offence that would be triggered, for example, by a failure to prevent criminal activity under this proposed legislation, rather than having its own piece of legislation or offence. Otherwise, we are in danger of sending a confusing message. You will have anti-bribery and anti-tax evasion, and then anti-overseas entity

policies and procedures to take on board. We could send out rather a confusing message, if we are not careful.

Q10 **Lord Garnier:** If you have the Bill in front of you, can I take you to Clause 8? It contains the first offences under the heading, "Failure to comply with updating duty". As I read it, it is a summary-only offence, whereas the offences under Clauses 14, 20 and 30 are either-way offences. If I am right about that, is that the right division to make in the circumstances?

Professor Jonathan Fisher: As I read it through and marked it up, it struck me as unexceptional.

Lord Garnier: Does it mirror the other legislation to which you have referred?

Professor Jonathan Fisher: Yes.

Lord Garnier: In relation to knowledge, do I understand Clause 8 correctly? Essentially, it is an absolute offence; if you have done it, you get caught whether or not you knew you were not doing it. Is that something that, as a practitioner, you would be happy with, in the circumstances of this piece of legislation?

Professor Jonathan Fisher: It certainly has a long and established history. Again, it is unexceptional in this context.

Lord Garnier: You touched on the need for consent from the DPP, which comes under Clause 33. The clause also says that it is "the Secretary of State or the Director of Public Prosecutions". As a practitioner and an academic in this field, are you happy that a political Cabinet Minister should have consent-giving power in relation to the bringing of proceedings?

Professor Jonathan Fisher: No, I am afraid that I am a Luddite. I rather believe that that is what we have an Attorney-General for—to superintend that sort of issue.

Lord Garnier: May I put these words into your mouth? Do you share with me concern that a Secretary of State should have anything to do with the initiation of proceedings?

Professor Jonathan Fisher: Correct.

Lord Garnier: Could I then take you to the exemptions provided in Clause 14, under the heading "Failure to comply with notice under section 11 or 12"? At subsection (5) we see, essentially, a criminal penalty for a Minister-made offence. It is a Henry VIII clause, enabling the Minister to create an offence with penalties that flow from it, both summary and on indictment. Does that accord with the existing regime in similar types of financial services or similar forms of legislation?

Professor Jonathan Fisher: I think it does. The example I have in mind is the new sanctions legislation, which is replete with authority for the establishment of criminal offences not to be found in primary legislation.

Lord Garnier: Finally, I take you to Clause 22, "Power to protect other information", where subsection (1) says: "The Secretary of State may by regulations make provision requiring the registrar … to make information relating to a relevant individual unavailable for public inspection, and … to refrain from disclosing that information or to refrain from doing so except in specified circumstances".

Subsection (2) says: "In this section 'relevant individual' means an individual who is or used to be … a registrable beneficial owner in relation to an overseas entity".

Would that permit a Secretary of State to require information to be made unavailable for political or other reasons? For example, a Secretary of State might not wish to embarrass a friendly tyrant and might, therefore, make unavailable information about him as a relevant individual.

Professor Jonathan Fisher: My understanding is that the wording will be sufficiently wide to enable that to occur. Of course, any exercise of ministerial power is always subject to judicial review. Plainly, the decision would have to be taken with the relevant considerations in mind. I appreciate what you will ask me next, which is how anyone will know whether to challenge it. I see that.

Plainly, one needs to look at the wide discretion that is being given; I hear your point, but I will add to the mix something I was tilting at earlier. There are cases where people have family offices and want to keep matters private. The Lloyd's market sells kidnap and ransom insurance for a reason. There may be cases when the Secretary of State could well be approached. It is a matter of view, but I understand why you would want sufficient latitude in the legislation to enable discretion to be exercised.

The Chair: Subsection (5) says that the regulations are "subject to the affirmative resolution procedure", so that should provide a degree of safeguard on the identification of particular individuals and making the information unavailable.

Lord Garnier: Or at least a class of individuals.

The Chair: Yes.

Lord Garnier: Thank you very much indeed. I have not deliberately kept the other two witnesses out of that discussion. If you would like to respond to any of those points, please do.

The Chair: You were going to ask about third parties.

Q11 **Lord Garnier:** Yes. Concerns have been expressed generally that innocent third parties could be unfairly affected by the legislation, irrespective of the propriety of the policy behind it. For example, tenants of a building or block of flats could be adversely and unfairly affected by action taken against the overseas entity. Is that a problem greater in theory than it might be in practice?

Mr John Condliffe: On our side, we have concern about joint ventures between a UK investor and an overseas investor holding property through

a vehicle, where non-compliance by the overseas investor would mean that the asset could not be sold.

Lord Garnier: At the other end of the tenant argument, could lenders be adversely affected when they lend against a building?

Mr John Condliffe: Enforcement by lenders is specifically carved out as exempt, so that should not be held up by the legislation.

Lord Garnier: They would not lose that security.

Mr John Condliffe: No.

Q12 **The Chair:** I want to finish with a more general question. Do you have any views about what might improve the Bill? You have already been very helpful; in particular, Mr Keatinge, you identified that it is only part of the jigsaw, and you, Professor Fisher, mentioned the problem of discretionary trusts or their European equivalent, or any other sort of arrangement that might be able to escape the tentacles of the Bill. We have heard about joint ventures and so forth. Are there any other particular changes that strike you as worth considering by the Committee?

Professor Jonathan Fisher: For my part, those are the ones that struck me as particularly important to deal with. I cannot think offhand of anything else that leapt out from reading the draft legislation.

The Chair: What about you, Mr Keatinge?

Mr Tom Keatinge: I agree with Professor Fisher once again.

The Chair: You have all stressed the importance of making sure that Companies House is adequately resourced and sufficiently skilled to deal with the impact of the Bill.

Mr Tom Keatinge: Yes, I do not think that that needs repeating. If this is the moment that causes the Government to realise that it needs to happen, terrific.

Mr John Condliffe: I have a couple of points. One is quite technical. The length of leases caught as a disposition is different across the UK, which is only because of the underlying land registration law. It is seven years in England, 20 in Scotland and 21 in Northern Ireland. Apart from that, there is no reason for them to be different.

The second point is that guidance on how the legislation would apply to complicated but normal ownership structures would be a good idea.

The Chair: You may have further thoughts. Indeed, there may be further matters that you would like to bring to the Committee's attention after you have left this afternoon. We would be most grateful to have your thoughts and observations, just as we have been most grateful for them this afternoon. On behalf of the Committee, I thank you very much indeed.

Companies House, HM Land Registry, Land Registers of Northern Ireland, Registers of Scotland (QQ 13 – 22)

Monday 11 March 2019

4.30 pm

Watch the meeting

Members present: Lord Faulks QC (The Chair); Peter Aldous MP; Baroness Barker; Emma Dent Coad MP; Lord Faulkner of Worcester; Lord Garnier QC; Lord Haworth; Mark Menzies MP; Mark Pawsey MP; Lloyd Russell-Moyle MP; Alison Thewliss MP.

Questions 13 - 22

Witnesses

I: Martin Swain, Director of Policy, Strategy and Planning, Companies House; Jennifer Henderson, Keeper of the Registers, Registers of Scotland; Jonathan McCoy, Deputy Registrar, Land Registers of Northern Ireland; Chris Pope OBE, Chief Operations Officer, HM Land Registry.

Examination of Witnesses

Martin Swain, Jennifer Henderson, Jonathan McCoy and Chris Pope.

Q13 **The Chair:** Good afternoon, and thank you for attending this Committee session. The session will be recorded; it is webcast. There will be a proper note of it. You will be sent a copy of the transcript for any corrections if there has been any misrepresentation.

If you would like, each of you, briefly to introduce yourself and make an opening statement, that would be very helpful. You need not make it too long, because we will ask you some of the questions that we are interested in and I think you will have an idea of what we are going to ask you.

Martin Swain: I am director of policy, strategy and planning at Companies House. I have responsibility in Companies House for delivery of the legislative programme that comes from the UK Government.

Jonathan McCoy: I am the Deputy Registrar in Belfast, Northern Ireland. I am responsible for a legal team. I am also responsible for senior management of the Land Registry and innovation within it.

Jennifer Henderson: Good afternoon. I am Keeper of the Registers at Registers of Scotland, so I am responsible for the implementation of land registration in Scotland.

Chris Pope: Good afternoon. I am the chief operations officer at Her Majesty's Land Registry, which covers both England and Wales. I am responsible for all registration services.

Q14 **The Chair:** Thank you very much. The first question will be directed mostly to you, Mr Swain, and is about the Companies House role in all this,

which is a critical one. In particular, how will it be possible for Companies House to provide any form of verification that the information provided pursuant to this Bill is correct?

By way of background, you will be aware of the PSC register, which commenced in 2016, and that various problems—implausible details being provided to that register—have been identified. Although the Government have said that they intend to do various things to follow up matters, who will find out about the inadequacies, and what means are there? Is there anything that might be included in the Bill to give you more powers to do that? It is a long question, but I think you know what I am directing at.

Martin Swain: I will take the question in a few stages. The department and the Minister would probably be best placed to answer your question on verification. They have made a commitment to consult later in the year on reforms to Companies House. Companies House certainly agrees that there is a need for reform.

On the accuracy of the register when it comes in, our powers to verify the accuracy of the information are limited, but we work hard to ensure that the information that we get is correct, working in relation to the legal framework that we have at this time. We are clear that we are limited in that respect. We invest heavily in integrity in Companies House. When we have data on the register, we work hard to ensure that it is correct. Where it is highlighted to us that it is not—

The Chair: Who highlights it to you?

Martin Swain: Other law enforcement bodies, civil society groups, members of the public—there is a variety of routes, depending on the nature of the breach of the correctness of the information. Where it is highlighted to us, we will take action, but again within the constructs of the legal framework that we have now.

The Chair: Are you saying essentially that, for the most part, it needs a third party to bring to your attention that some aspect of the information that you have recorded needs further investigation?

Martin Swain: The principle of the Companies Act is that information is properly delivered to us. If it is correct within the constructs of the Companies Act, it is the responsibility of the registrar to place that on the register. We do not have the power to check the accuracy at this time. The principle of the Companies Act is about proper delivery. If it is delivered in that way, we legally have to put it on the register. Through our own investigation, sometimes we will identify ourselves where we think information is incorrect and we will then refer that to other law enforcement bodies. If it is highlighted to us, we will take action.

The Chair: You said, “Sometimes we ourselves”. Can you give the Committee an idea of the process whereby you might yourselves become aware of these things?

Martin Swain: Where we have identified suspicious activity with a company, we have processes in place in our integrity unit to identify individuals or companies that we have already flagged to another agency.

We would automatically look to flag. We are looking to develop within Companies House that ability to identify risk, but I reiterate that we have to operate within the legal framework that we have now.

The Chair: The legal framework is something that we could perhaps recommend be changed. Do you feel that you could do a better job if more scope were provided by the legal framework?

Martin Swain: It is a matter for the Committee to make a recommendation to the Government, but we are clear that we support and are working closely with BEIS on the potential reform of Companies House.

Lord Garnier: To follow up on what Lord Faulks just asked you, perhaps I may paraphrase what you have said: that your agency is essentially a recorder of information provided by other people.

Martin Swain: We are a register of the information, yes.

Lord Garnier: So long as the informant, overseas entity or any other body that provides you with information fills in the form in the right way, you cannot interrogate the truth or otherwise of the information inside the relevant box.

Martin Swain: That is right.

Lord Garnier: How many times in, say, the past year has somebody highlighted to you that something is untruthful in a PSC entry or even a general companies entry?

Martin Swain: I would not want to try to put a figure on it today, but if it helps the Committee I will get that information to you.

Lord Garnier: That would be helpful. Thank you.

Lloyd Russell-Moyle MP: You mentioned that if something was highlighted to you, you could take some limited action. Can you explain what that limited action is? If someone highlights a manifest lie or if someone has registered Donald Duck, what can you do? Do you take it down yourselves rather than just referring it?

Martin Swain: We would act within the legal framework that we operate in. If, for example, somebody is appointed a director of a company and it is clear that they are not related to it, and if that is highlighted to us by somebody else or by the individual, we can contact that individual and start a process whereby we notify the company that we had received notice that that person was not a director. If they do not provide evidence within 28 days, we can remove that director from the register.

There are things that we can do within our current powers. We also work closely with other enforcement agencies, so where we may not necessarily have a power ourselves we highlight to others.

Lloyd Russell-Moyle MP: Are you able to issue any fines along that process, or is it just about removing things from the register or putting things on it?

Martin Swain: There are certain things that we can fine people for, such as late-filing penalties.

Lloyd Russell-Moyle MP: What about false filing?

Martin Swain: I think it would depend on the offence. Perhaps I can provide more detail to the Committee on it.

Alison Thewliss MP: To pick up on my colleague's question, for Scottish limited partnerships there is an enforcement regime and fines can be issued. How many fines have been issued to those who have not filed the proper information for SLPs?

Martin Swain: Again, I do not have that precise information, but I am happy to write.

The Chair: The PSC has now been in operation for something like two and a half years. Have you learned lessons from that in relation to the various points that have been made, for example by Global Witness, about the anomalies and obvious nonsenses?

Martin Swain: As an organisation, Companies House is learning from implementing legislation. In implementing the DROE Bill, we would like to learn from lessons in previous legislation, SLPs being one and the PSC regime being another.

Q15 **Baroness Barker:** In addition to what you have already said, including about the work of the integrity unit, it will be important that you identify suspicious activity and have mechanisms in place to deal with it. Can you tell us a bit about how you see that working under the Bill?

Martin Swain: We already have fairly well-worked avenues to identify suspicious activity to other enforcement agencies, so that is already in place and we would look to replicate it. Increasingly we want to make use of digital technology, where we can use digital systems and increase the number of people using them, so that we can use that data potentially to flag much more quickly when we can see suspicious activity and, where necessary, refer that to other enforcement agencies.

Baroness Barker: Will you need further powers under this legislation to take that on?

Martin Swain: I do not think we would need primary powers to create the digital systems. It is different when it comes to the action that we could take as Companies House, because we would still default to our existing powers, but we can create the digital systems that would capture the information and the data.

We would then have to look at the legal issues in sharing that, because there are issues about sharing certain data with other agencies, but again there are ways in which we can do that with agencies that it is specified in law we can share information with.

Baroness Barker: Presumably that can happen under the Proceeds of Crime Act.

The Chair: That leads neatly on to broadening the questions to the panel.

Q16 **Lord Garnier:** I will address this question to all four of you, although if you think that another witness has already answered it, please do not feel the need to repeat the answer.

Would I be right in thinking that the Companies House register and the Land Registry are essentially huge and sophisticated filing systems containing information about companies and land holdings?

Chris Pope: You could summarise it that way, yes.

Lord Garnier: As we were discussing with Mr Swain a moment ago, they are not interrogators of the information, they are simply receivers of it and under a duty to put it in a place where people can look at it.

Chris Pope: In Her Majesty's Land Registry, we certainly look at the information that is presented to us.

Lord Garnier: Do you have any ability, either in resource or in legal power, to get back to the person who has provided you with the information and say, "This really doesn't look quite straight to us"?

Chris Pope: Yes. In fact, in about 20% of applications that we receive we have to revert to our customers, who are mostly conveyancers or solicitors, either to ask for more information or to clarify technical issues relating to the registration itself, which might concern restrictions, covenants or easements on the title. There is a fairly high volume to and fro between the Land Registry and solicitors and conveyancers.

Lord Garnier: The high volume will inform how you take on this new work. Do you feel that the two agencies will need to interact a lot more than they perhaps do at the momentin order to ensure that the registration of overseas entities is properly done so that it is truthful and accurate and does not allow crooks to game the system?

Chris Pope: First, we think that the number of applications to the Land Registry for England and Wales will be relatively small—less than 1% of our annual number of applications—but we are designing a digital interface between Her Majesty's Land Registry and Companies House that would automatically check that an overseas entity is registered with Companies House and provide the registration number, which would allow us to ensure that the registered restriction had been complied with on the title. It will be a two-way interface so that, for example, where an overseas entity wished to be removed from the register, we could confirm that they owned no other property when they declare that as part of this legislation.

Lord Garnier: Is this in design or is it modelled already?

Chris Pope: It is being designed, and we are in the advanced stages of being able to build it once we confirm exactly what we need to build.

Jonathan McCoy: From a registry point of view, there is obviously a big difference between us and Companies House. The Land Registry of Northern Ireland, and I believe the other registries, guarantee title, which

effectively means that once we have a title registered in the Land Registry the Government essentially guarantee the ownership of that and any financial consequences that come out of wrongful acts.

Most of our focus at the minute is in relation to fraud, because fraud is where those compensation claims come in relation to our register. We check and note suspicious activity, but it is from a point of view of protecting our register and our compensation fund.

The Chair: So you are concerned that you might be sued for getting something wrong.

Jonathan McCoy: I do not believe that the way in which the legislation is framed would lead to any liability in the registries. I think it is a case of us assisting Companies House and Companies House assisting BEIS.

Jennifer Henderson: We are in the same position as our colleagues. Registers of Scotland rejects a reasonable number of applications that we receive if they are not correct or if there is something that we are not happy with, and we are in the same position as Northern Ireland in relation to the payment of compensation if we have guaranteed title and it turns out not to be valid.

The Chair: Have you been consulted about any secondary legislation that might be necessary?

Chris Pope: Yes. We have been working very closely with BEIS officials to look at the secondary legislation that would be required to support the primary legislation. In Land Registry, a number of our forms and processes are prescribed in secondary legislation, so those will need amending. There are also one or two other specific rules in the Land Registration Rules 2003 that would need altering, in particular to take account of being able to register the unique ID number of the overseas entity.

The Chair: As far as Northern Ireland, Scotland and Companies House are concerned, do you feel that you have been involved in any potential secondary legislation?

Jennifer Henderson: From a Scotland point of view, discussions are ongoing about whether a legislative consent Motion will be needed in relation to changes that would be made to my powers. We have been closely involved with BEIS and other colleagues in all those discussions.

Q17 **The Chair:** There is a view, which was expressed during the consultation, that there might be some delays in registration and that this could have some impact on the property market generally. Do any of you have views on that, if you feel that it is within your expertise?

Martin Swain: At Companies House, we have a lot of very good, recent experience of developing digital services. We would look to implement the same kind of systems as we have for company incorporation, where digital transactions are generally completed within 24 hours but quite often can be as quick as 10 minutes.

The other thing that we would do when the Bill comes in and the register goes live is consider customer demand—whether they want same-day service. The issue there is that, in mirroring company incorporation, the fee increases. In essence, we are building that capability into our thinking. The idea behind the register to digital is to drive as much traffic as possible, so we are looking at completion within 24 hours.

Lloyd Russell-Moyle MP: Except in Scotland, my understanding is that the Bill envisages putting a marker on entries in the land register preventing overseas owners from making dispositions, unless they have complied with the Bill's requirements. In the view of Northern Ireland and HM Land Registry—I have a follow-up for Scotland—is this an effective enforcement mechanism to stop dispositions of land?

Chris Pope: It is an effective mechanism to stop the registration of dispositions of land. It will not in and of itself—this is probably what your question pointed at—prevent the sale going through. However, with a restriction on the registered title, it should be completely apparent to any prospective purchaser that the current owner is subject to this legislation. Therefore, as part of the due diligence process pre completion and pre contract, the buyer's agent will need to ensure that the seller—in this case an overseas entity—was compliant with the legislation.

The Chair: What will the entry actually look like? What would it say?

Chris Pope: We are still working on exactly what it would say, but it would be something along the lines of, "No disposition may be made of this title without evidence that the current proprietor is compliant with this legislation".

Lloyd Russell-Moyle MP: Just so I am clear on the legal status, if the sale or disposition went ahead but was not then registered with the Land Registry, who would be the legal owner of that land?

Chris Pope: The existing proprietor.

Jonathan McCoy: In Northern Ireland, under the legislation the registration gives the transfer of title; it is what gives effect to the written transfer. Therefore, conveyancers are obviously keen to make sure that it is registered. In the same way as colleagues have indicated, the transaction would go through. Most transactions are backed by finance, and the person financing that transaction would expect the registration to be completed quickly and efficiently and the documents returned to them.

Lloyd Russell-Moyle MP: Are the foreign entities that you see mostly backed by finance, or is it cash payments?

Chris Pope: Purchase or sale?

Lloyd Russell-Moyle MP: Purchase. My assumption would be that most foreign entities are not backed by finance; they are backed by cash assets or cash liquidity that they have themselves. Therefore, that is a stop itself, but I am not the expert.

Chris Pope: If a purchase was financed by a legal person out of their own financial capability, whether as an individual or a company, no charge would be registered. In this case, the overseas entity would have to comply with the legislation to be registered and a restriction would be applied on the register at that time, but if the seller was a private individual who had a mortgage, the mortgage charge would be removed as part of that registration transaction.

Lloyd Russell-Moyle MP: In Scotland, will third-party purchasers be sufficiently protected? We have heard how in England they will not be able to be registered and therefore the position is clear, but in Scotland it will be slightly different.

Jennifer Henderson: We will not place a note on the face of the title sheet; that is not a concept that we have in Scotland. The way the law works in Scotland is that restriction on sale or registration arises as a matter of law. Solicitors in Scotland are used to the idea that they need to go to other places to check whether anything is inhibiting the property transaction.

For example, we keep a separate register of inhibitions for things like bankruptcy, and we have a very active search community that does all that legal due diligence to support solicitors. If an overseas entity is selling, whether they are appropriately registered or exempt will just be another thing we envisage being checked as part of that process before a purchaser is advised to go ahead.

It will be completely clear on the face of the title sheet that an overseas entity is the current owner of the property. We think that will trigger with no issue the solicitor or the searcher following up and checking that the right legal basis for them to transact on the property is in place.

The Chair: So you go for a search at Companies House.

Jennifer Henderson: Yes.

Q18 **Peter Aldous MP:** My first question is very much directed to you, Ms Henderson, and is about the situation in Scotland and how this draft legislation ties in with the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations. I would be grateful if you could give us an overview of this to see how they tie in with each other.

Jennifer Henderson: The register of controlling interests currently going through its scrutiny process, assuming it comes in as planned, will be a register of persons who hold a controlling interest in land—not just overseas entities but any kind of trust and so on.

I know that Ministers have agreed that we should avoid double reporting if we can, so there is certainly an aspiration that if this register covers overseas interests they will not be then included in the Scottish register that comes in. Again, that would just mean extra places that solicitors and searchers needed to check.

It is also worth saying that the Register of Controlling Interests in Land is for a very different purpose: it is to enable people to find out who owns land in Scotland and who controls it. It is not for the same purpose as this register.

Peter Aldous MP: I may have misheard you, but you emphasised "if they can" as if there might be some doubt as to whether the two will be able to complement each other.

Jennifer Henderson: Until they are both in and we can see that what is covered in this register meets what the Scottish Parliament wants in the register of controlling interests, we cannot be absolutely sure that it will be covered, but certainly the aspiration is to avoid double reporting if we possibly can.

Peter Aldous MP: So you are happy that the two pieces of legislation complement each other.

Jennifer Henderson: Absolutely.

Peter Aldous MP: And are you happy that they are also fully transparent together.

Jennifer Henderson: I believe so.

Q19 **Peter Aldous MP:** My next question is opened up to everyone. The draft Bill would require overseas entities owning land in Scotland, England and Wales to register their beneficial ownership information if they registered ownership of that land after 1999 for England and Wales and 2015 for Scotland; I do not think there is yet a position for Northern Ireland. I am interested in all your perspectives. Do you have any information that could help to identify overseas entities that registered before those dates?

Chris Pope: Simply, yes, we do. The issue is the extent to which we can be confident that we have a sufficient view of entities that were registered as owners prior to—in the case of England and Wales—1 January 1999, which is when we required overseas companies to provide the territory of incorporation as part of their registration process. We can carry out a number of data trawls looking further back, but our level of confidence in that data set is much lower; we have a very high level of confidence about those who have registered since 1 January 1999.

There is also the question of what value that would be. If this is about tackling money laundering, how long do you want to hang on to your property in the UK to launder your money?

The Chair: So you have some information that would help, but you are not sure how much it will really help in the long run.

Chris Pope: We are not sure how comprehensive that view is.

Peter Aldous MP: So from your perspective—what I think is the sasine tradition—is there more information in Scotland?

Jennifer Henderson: There could be, but we are in the same position as HMLR. After the Land Registration Act 2012 came in on 8 December 2014, it was mandatory for overseas entities to declare their country of origin. Prior to that, it was not mandatory, so we could have an incomplete dataset. We would have some data, but we would not be sure that it was complete.

Jonathan McCoy: From a Northern Ireland point of view, we are in that situation. There is currently no obligation for an entity to declare its country of incorporation.

We have another issue in relation to the structure of the data in that it is held in our systems in an unstructured way. In the same way in which our colleagues cannot carry out that exercise pre-1999 and pre-2014, we are at the point where we currently do not do that. Obviously we aspire to get up and running in time for the Bill coming in, which is where the difference comes in, as well as the transition periods.

Martin Swain: We are very much dependent on the data and information that we get from the Land Registry. We will work closely with the land registries to build a system that responds to the data that we collect.

The Chair: You said quite clearly that the information may not be comprehensive. If you happened to know, or had a pretty strong suspicion, that someone should have registered, would it be helpful to have the power to investigate?

Does your pause mean that you are thinking hard about this?

Chris Pope: I am not sure that a power to investigate would necessarily add anything to our ability to identify overseas companies or entities that had purchased land prior to 1999.

The Chair: So you do not feel inhibited at the moment if you have enough information. You are saying that you do not need extra powers to do it.

Chris Pope: No.

Lloyd Russell-Moyle MP: Do you think it would be a problem if the Bill extended scope to registrations that might have been registered before, but for other reasons you have knowledge that they are overseas entities, because they voluntarily told you or for whatever reason? Would that be a problem for you?

Chris Pope: I do not think it would be a problem for us per se, but it might not be proportional to all overseas entities that could not be identified through the data checks that we carry out. The obvious thing to do, if we have an overseas entity that has been registered since January 1999, is to do a name search on the same name and then investigate. What we cannot do is guarantee that every overseas entity, or overseas company particularly, would be captured prior to 1999, because we cannot identify them all.

Lloyd Russell-Moyle MP: So proportionality would be a problem, but it could apply.

Chris Pope: If we could identify an overseas entity that purchased a property at any time and we had the power to enter a restriction, we could enter a restriction.

Q20 **Lord Haworth:** My question is about consistency. We are aware that there are differences between the land registries. Nevertheless, the Bill is overarching for the UK as a whole. Do you think that the Bill's objectives will achieve consistency across the whole of the UK, or will responses of necessity be patchy and variable?

Jonathan McCoy: From the start, all the jurisdictions have worked very hard with BEIS to try to bring that point to bear. Their restriction is that the land law and the registration law are slightly different in each jurisdiction, but I believe that they have made very good endeavours to try to flatten those out as much as possible.

Jennifer Henderson: I agree. We cannot do a lot about the differences in land law, but within that we can obviously make sure that we are applying consistently.

Chris Pope: I agree. We are dealing with three distinct land-law systems, so the registration regimes differ. There has been sufficient flagging out to ensure that the legislation achieves the same effect across the UK.

Q21 **Emma Dent Coad MP:** There are going to be a lot of new things that you have to deal with, between Companies House, the land registries and the interaction between them. Do you feel that you will have the resources to deal with all the new issues that you will need to tackle, or do you think you may need additional resources? Clearly there is a lot of extra work to be done.

Martin Swain: There will no doubt be resource implications, but until we see the content of the final Bill it is difficult to assess that precisely. From a Companies House perspective, we would say that we have really good experience of developing digital services to underpin a register, notwithstanding that this is a completely new register—it is not a case of adapting the companies register or adding things to it; it is a whole new one.

We work on a cost-recovery basis, so we would charge fees to pay for the services that we provide. As I mentioned earlier, we would have to make some assessments of that, but it is just too early for us to be able to put a figure on it.

Chris Pope: From our perspective, it is probably helpful for the Committee to understand that a vast majority of registered titles already have a restriction on them, so we and the conveyancers are very used to dealing with them. Once the digital interface between us and Companies House is up and running, there will be virtually no resource impact of this legislation.

Emma Dent Coad MP: Any other comments on this aspect?

Jennifer Henderson: For us in Scotland, the number of organisations that will be caught by the legislation is quite small. We anticipate the resource implications being small once it is up and running. Obviously there will be some resource applications to get it up and running, such as providing Companies House with a list of companies that it needs to notify so that they know to register, and making some small IT changes.

As your colleague has asked already, we are gearing up to bring in the register of controlling interests, which is going to be broader, so we have already factored in the resource implications for that.

The Chair: You told the Committee that there have been good links between you and BEIS and that you have been consulted regularly. There are going to be some changes for those using the Land Registry and Companies House in future. Do any of you have particular plans as to how you will increase awareness of the people—who are mostly professionals, I take it—who will using your services, so they are aware of the obligations that the Bill will bring?

Chris Pope: Aside from telling the proprietors who will be caught by this and engaging with the conveyancing industry more broadly, we produce a number of practice guides that explain how conveyancing and land registration work in England and Wales, and we will be updating those. We will be putting more information on GOV.UK and using informal messages—email and other channels—to let them know the specifics of how this might impact on land registration.

Jennifer Henderson: From a Scotland point of view, because we have the register of controlling interests coming in, which has already been widely discussed in Scotland and the legal profession is well aware of it, we will be able to use the mechanisms that we already have open to share with people how they will need to comply with that to broaden out and explain how they will need to comply with this legislation too.

Those discussions are already under way and people are aware that this is coming because it has been discussed as part of the register of controlling interests legislation that is going through.

Jonathan McCoy: The Law Society is our main conduit. Our main client as a land registry is the legal profession, and we tend to issue directives and notices through the society.

Martin Swain: We are working closely with BEIS and the land registries to be able to notify those who are already affected by the register, and with professional networks to make sure that they are aware of the requirements.

Emma Dent Coad MP: While we are moving on to this new way of digitising existing information, is this an extension of software programmes that we already have, or are these in development?

Martin Swain: From outside Companies House, these are in development, but we will be looking to use our expertise.

Emma Dent Coad MP: They are a development of what already exists.

Martin Swain: Yes. We would look to use the expertise that we have to develop a new register. Sorry, I missed the first part of your question.

Emma Dent Coad MP: I am just worried about whether we already had the software in existence which these programmes are just an extension of, or whether they are still being developed.

Chris Pope: Apart from the interface, the systems are already in place. All we need to do is to add into our systems the new form of restriction, which would allow it to be applied by a caseworker on to the register. We deal with that all the time.

Q22 **The Chair:** Finally, unless the Committee has any further questions, can you all identify—I know that strictly speaking this is not your job, but using your own experience—any matters in the Bill that you thought would make your task easier or the policy objectives of the Bill more capable of realisation? If you cannot think of anything now, by all means come back to us in due course.

Chris Pope: There is one thing that we think might be helpful: whether transfers by operation of law should not be caught by the restriction—for example, a transfer as a result ofa compulsory purchase order—and whether the Bill might be explicit about those particular issues. We have raised that with BEIS officials and are confident that they are thinking about it.

Jennifer Henderson: From a Scottish point of view, we are satisfied that the provisions in the draft Bill will work for Scottish land registration.

Jonathan McCoy: From our point of view, there is a minor point: whenever a company seeks to come off the register, there is an obligation on Companies House at that stage to come back to us and verify that that company longer holds any property. We see no real need for that additional check, and we do not see that the company would have any benefit in making that declaration falsely. If it were then to seek to deal with the property it would have to reregister, so you would assume that the company would do that only by mistake.

Martin Swain: I have nothing to add.

The Chair: Thank you all very much indeed for attending the Committee and giving your evidence. As I said at the outset, if there are further comments—I know Martin has further information that he will provide to the Committee—that would be very helpful. You can see that there are a number of aspects of interest to the Committee generally, and with your particular experience you may be able to provide us with further insight. Thank you very much for coming.

Department for Business, Energy & Industrial Strategy (QQ 56 – 71)

Monday 25 March 2019

4.30 pm

Watch the meeting

Members present: Lord Faulks QC (The Chair); Peter Aldous MP; Baroness Barker; Emma Dent Coad MP; Lord Faulkner of Worcester; Lord Garnier QC; Lord Haworth; Mark Menzies MP; Mark Pawsey MP; Lloyd Russell-Moyle MP; Lord St John of Bletso; Alison Thewliss MP.

Evidence session No. 6

Questions 56 - 71

Witnesses

I: Kelly Tolhurst MP, Parliamentary Under-Secretary, Department for Business, Energy and Industrial Strategy; Jacquie Griffiths, Policy Lead on the Draft Registration of Overseas Entities Bill, Department for Business, Energy and Industrial Strategy; Matthew Ray, Deputy Director of Company Law, Transparency & Tax, Department for Business, Energy and Industrial Strategy.

Examination of Witnesses

Kelly Tolhurst MP, Jacquie Griffiths and Matthew Ray.

Q56 **The Chair:** Good afternoon, Minister, Mr Ray and Ms Griffiths. Thank you all for coming this afternoon. The Committee has met you before, Ms Griffiths, but thank you for your return visit. As you will know, our proceedings will be recorded by Hansard and in a webcast, and you will receive a transcript of the evidence that you gave and will have an opportunity to correct or amend anything that you think needs it.

I will ask a few general questions, but before I do so, if any of you feel like making an opening statement, that is your right, and the Committee and I will be happy to hear it. Minister, would you like to say anything to start with?

Kelly Tolhurst MP: Yes please, Chair. First, I would like to thank members for the way they are conducting the pre-legislative scrutiny of the Bill, and I thank the clerks. In working with my officials I have had feedback on the smooth running of the Committee and the speed with which you have been able to take evidence and move the scrutiny on. Obviously, the Government have responded to the call for evidence, and I look forward to answering questions today.

Perhaps I could just outline the context of the Bill. The UK has a global reputation as a good place to do business. Transparency International, which gave evidence to the Committee last week, assessed the UK as one of only four of the G20 nations with a very strong framework for beneficial

ownership transparency. The Financial Action Task Force recently completed a landmark review of the UK's regime for tackling money laundering and terrorist financing, and concluded that we have some of the strongest controls in the world.

However, there remain widespread concerns about the lack of transparency about who ultimately owns land in the UK where it is registered to overseas entities. The information currently available is limited to the name of the entity and the place of incorporation. We want to be clear who really owns and controls entities and the land itself.

The *National Risk Assessment of Money Laundering and Terrorist Financing* makes clear that the risks relating to the abuse of property are most acute where property is owned anonymously. Illicit finance underpins organised crime, which costs the UK at least £37 billion each year. Some £4.4 billion-worth of UK properties have been identified as bought with suspicious wealth.

The Bill tries to target the issue of anonymity by establishing this register of overseas beneficiaries. It compels overseas entities to register and provide their beneficial ownership details to Companies House if they own UK properties. If an overseas entity fails to comply with the registration and updating requirements, there are consequences for their ability to register the title to the land with the three land registries in the UK, and certain dispositions with the land. Compliance is also enforced through the use of criminal sanctions.

The Committee has been made aware of the benefits of a public register like the UK's people with significant control register. The register will be publicly available and easily accessible. As the PSC has increased trust in UK business, so the register will increase trust in the UK's property market.

I look forward to working with the Committee over time, and I look very much forward to receiving the recommendations of the Committee after you have concluded your evidence gathering and have formulated your report.

The Chair: Thank you very much. Would the other witnesses like to say anything at this stage?

Jacquie Griffiths: No, thank you.

Matthew Ray: No, thank you.

Q57 **The Chair:** Thank you very much, Minister, for that introduction.

One of the issues that is concerning the Committee, and I am sure BEIS as well, is how we can guarantee the reliability of any information that will be on the proposed register of overseas entities, and in particular the verification of that information. Companies House will have the task of doing that, but it is not generally accustomed to that sort of role, or at least not to the extent that I think some of the Committee think would be helpful.

One suggestion that we have received—I am sorry that this is a long question, but it should give you a chance to comment on this—is the possibility of some professional verifying the beneficial ownership so that they, further to their duties anyway under the anti-money laundering directives, will have a duty to verify that information and will therefore be on the hook, as it were, if the information is inaccurate. The fifth anti-money laundering directive seems to demand that registered information is accurate, so we have to put appropriate mechanisms in place anyway.

That is a long question, but the Committee and I would very much like to hear your comments about how we will try to make sure that the information is accurate.

Kelly Tolhurst MP: I will start by saying—please interrupt me if you do not feel that I am answering correctly—that the fundamental aim of the Bill and what we are requiring in it is for the onus to be on entities to put their details on the register but obviously to provide evidence to suggest that they are not a beneficiary. The onus is completely on the beneficiary to provide that information. You are right to say that there may be concerns about how we verify this data.

With regard to Companies House, I would like to say from the outset—I know that you have heard evidence from it during this inquiry—that I am currently speaking with colleagues and other Ministers about a plan to consult on a wider reform of Companies House and some of the things that it will be required to do in the registers that it currently holds, which may alleviate some of your concerns about the verification of information relating to ROEBO.

Kelly Tolhurst MP: The Registration of Overseas Entities Bill targets one particular area. I am referring to wider reform of Companies House. Obviously, people quite rightly want to know that the data on the register is correct and to have confidence in it.

One of the beauties of a register is the openness and transparency of the data that is on it. The Companies House register, for example, is already accessed by more than 5 million people[1], who are looking up data and information on it. Currently, if you are an overseas beneficiary and on the Land Registry, all you will have is your name and a place of territory. The register opens up that information. That is one of the key things.

The Chair: Yes, but we want to know that the information is accurate, not simply that the register opens it up. At the moment, Companies House has a slightly restricted view. We had additional written information explaining how it has various ways of becoming aware of possible nonsenses. We know that the PSC register, for example, has a history of people putting flagrantly inaccurate information on it, although we have been told that even that can be quite useful.

How are the Government going to respond to the possibility of some professional acting on behalf of the overseas entity being responsible for the accuracy of the information?

Kelly Tolhurst MP: I go back to my point about the wider reform of Companies House. There have, or have not been, questions about the current registers and the accuracy of the information submitted to them and the checking of it.

One thing that we are going to consult on with regard to the reform of Companies House is the validity of checks. I will bring that forward. Actually, I anticipate bringing it forward as quickly as possible. I would like to have been able to share further detail with the Committee ahead of today, but I recognise, not necessarily in relation to this Bill, the absolute necessity of verifying that data.

This has been discussed widely across government. Ministers have spoken about Companies House and the data, and obviously our wider objective is to make sure that the UK remains, and continues to be, at the top in combating this crime, but we recognise that we need to go further in giving assurances on that.

I can understand your concern, but this is one of the reasons why we are looking at the reform of Companies House.

The Chair: Sorry, but you have not quite answered the question about the regulated professional. By all means defer to anyone else on that. That has been discussed, and I think that other countries in different contexts have notaries, regulated professionals, who are, as it were, on the record with regard to the information. That is further and beyond any duty that Companies House might have.

Kelly Tolhurst MP: Yes, but Companies House is already a regulated profession with regard to undertaking anti-money laundering checks. Part of the consultation on further and wider reform of Companies House involves testing different areas for which we would have system-wide reform. So I take your point, but Companies House is already in that space and we want to make sure that it has the right statutory framework and underpinning to make sure that it can go further and that our registers are correct.

But I am open to suggestions, which is why this will be in the form of a consultation. We want to hear evidence and to have feedback from individuals, particularly those involved. We know that a lot of people have a lot of questions.

The Chair: So you have not ruled out further checks or further means of verifying the information as part of this Bill, but it is certainly not part of wider action.

Kelly Tolhurst MP: As I have tried to express, I am looking at wider reform of Companies House. That is something that I am committed to, not just in relation to this Bill but in relation to the wider data that is held by Companies House. It is important. We need to make sure that the professions, individuals, businesses and everyone who takes part can have confidence in the registers.

That is why I am very keen to do this. As I say, I would have liked to be in a different position here today before the Committee, but unfortunately I am just not ready. It needs to be done as soon as possible, really.

Q58 **Lord St John of Bletso:** My question might be a little wide of this inquiry, but what scope is there for the Land Registry records to be put on blockchain to make it more accountable?

Jacquie Griffiths: Forgive me, but I am not sure that I understand what blockchain is.

Lord St John of Bletso: This is being done in Sweden, Ghana, Dubai and Estonia, and it gives a greater level of transparency of records. It is just one example.

Jacquie Griffiths: I am not aware that the Land Registry has any plans to do that. At the moment, even under this Bill you can search against any address, as I am sure you are already aware, and you then have to pay a fee to find out who owns the land. I am not aware that it will put any more in the public domain than it currently does. It has, for example, an overseas entities dataset, which you may or may not have looked at during the inquiry. However, it is about numbers rather than actual data about the properties, if that is what you are asking—"This number of properties are owned by … "

Lord St John of Bletso: It just gives a greater level of transparency and accountability. That is all it is. It obviously increases transparency and accessibility.

Q59 **Alison Thewliss MP:** Can I ask about a requirement for Companies House to be subject to the anti-money laundering directive? Under the plans that you are bringing in, will Companies House be registered as part of that just now? Third parties have to be registered under the anti-money laundering legislation, but Companies House itself is a bit of a loophole at the moment.

Kelly Tolhurst MP: Companies House, for the purpose of anti-money laundering, is a regulated professional.

The Chair: Is that right? I am afraid to say that I was not aware of that.

Matthew Ray: To clarify, Companies House is not subject to the anti-money laundering regulations as they stand, but it conducts many checks of the validity of information that comes to it.

Kelly Tolhurst MP: That is what I meant, sorry.

Matthew Ray: That is the point that is being made.

On your question about whether the Government will specifically bring Companies House into the framework of the anti-money laundering regulations, conversations are under way and the details will be brought forward soon in the consultation, as the Minister has already articulated.

Kelly Tolhurst MP: At the moment, for example, the Treasury is looking to consult on the fifth anti-money laundering legislation and its

implementation, which is one of the things that are happening at the same time. There is a lot going on in this space, and we welcome that and any improvements that can be made.

Ultimately, we are bringing the Bill in, and, as I have signalled, reforming Companies House more widely, in particular to make the UK as unattractive as possible for criminals. That is a basic way of saying it.

We have recognised where the risks are. Things may not necessarily always be perfect when it comes to their being implemented, but ROEBO in particular will be the first register of its kind in the world. We do not have a framework to copy, so we are bringing this forward in the hope of making it as unattractive as possible for overseas people to commit these crimes.

The anti-money laundering directive is another of the tools, along with Companies House reform and registering.

The Chair: The factsheet on the directive states—I will give you a chance to comment on this—that "Member States will have to put in place verification mechanisms of the beneficial ownership information collected by the registers to help improve the accuracy of the information and the reliability of these registers". It might be thought, in view of that, that there is an opportunity to reflect precisely that in the Bill.

Kelly Tolhurst MP: With regard to whether there is an opportunity to put it in the Bill, obviously the Treasury will consult more widely on how that will be implemented. During the passage of the Bill there will be opportunities to make recommendations and comments. The Treasury will consult widely on how we reach the requirements in that directive.

Matthew Ray: Our internal view at the moment is that the PSC register is pretty much compliant with the requirements of the new directive, the fifth anti-money laundering directive. Clearly you have looked closely at what the new directive says. It says that the national registers for beneficial ownership should be accessible to the general public, and clearly the PSC meets that test. It has certain new requirements regarding sanctions and obligations on beneficial owners, and again in our view our legislation already meets the standard.

The biggest amendment that we see possibly needing to be made to our beneficial ownership framework is the requirement in the directive to create feedback loops from the regulated professions—the banks and accountants—back to the national register. Essentially, where those banks or accountants are doing due diligence and have found an inconsistency between what they are uncovering and what is on the national register, there should be a mechanism and a requirement on them to inform the registrar.

How exactly that is done is one of the points on which the Government will need to consult. It is the main area that we see having an effect on our framework, and it is one that we welcome. It is very sensible to try to build a positive feedback loop whereby the uses of the register help us improve its accuracy as we go on, thus building in more trust in the accuracy of the information.

Q60 **Lord Garnier:** It is a long time since I had to conduct a piece of government legislation, but I remember it being important to get everything that you want into a Bill at the first shot during the development process, because it is very difficult to find a slot in the legislative programme later. I dare say that is true of this Bill. It might not be a politically controversial Bill, but it is as well to get all that we want into it at the earliest opportunity.

There are two things that I wanted to follow up on. One relates to the accuracy and usefulness of the information that will be required to be registered by overseas entities. At the moment, as I understand it, registered owners, or shareholders in a registered owner, only have to declare bands of ownership in cohorts of 25% to 50%, 51% to 75%, and 76%to 100%.

Would it not be more sensible to make it a requirement, in order to enable the register to be more accurate and useful, for people to have to provide the actual and accurate amount of their ownership of a particular entity?

The Chair: Just before you answer that question, it is not entirely clear yet what the percentages are. Because it is a power, they may be required in these bands, or not.

Kelly Tolhurst MP: The example used in the Explanatory Notes to the draft Bill was the bandings for ownership. However, we are not using the percentage brackets in the Bill, so that will not be the case.

Lord Garnier: Will you now require people to give precise numbers, such as "I own 20% of this entity", or, "I own 23% of this entity"?

Kelly Tolhurst MP: There will be a number of conditions. Say you have a number of shares and voting rights that currently say 25%. At the moment, the conditions include owning more than 25% of shares, and under condition 2 having more than 25% of the voting rights. They also have to satisfy other benefits.

I know that the Committee has heard evidence on this. We have not put in the bands, because you can have a very small share and potentially have significant control or influence over that entity. So that is one element: putting in the meaning of a beneficial owner on the voting rights. However, even if it does not meet those two thresholds but you still have significant influence or control, you still need to register.

Lord Garnier: Forgive me if I have misunderstood you, but it looks as though the information will be fairly broad-brush. I am interested in getting the utmost transparency into the Bill now rather than by later amendment when we have digested this.

Would it not be open to the drafters of the Bill to say, "This person owns 2% of the shareholdings but has 98% of the voting rights", so that there is unassailably accurate information about the relationship between the individual we are talking about and the entity, and his or her powers within that entity? Is that not doable?

Jacquie Griffiths: Perhaps I can provide a bit more detail on that. We have deliberately sought for now to have the requirements as close as possible to those for the persons with significant control regime. There are good reasons for doing that, one being that it would be disproportionate to ask overseas entities perhaps to do more than UK companies.

On the exact percentages point, we have taken a power to amend the percentage thresholds should circumstances change. The Minister has already explained our conditions at the moment. If you hold more than 25% of the shares in the entity, you will be obliged to declare that you are a beneficial owner of that entity.

Lord Garnier: But only to the extent of saying, "I've got more than 25%". You will not have to say, "I've got 56%".

Jacquie Griffiths: Not at the moment, because at the moment we are applying the Financial Action Task Force's global standard for declaring beneficial ownership information. However, we have deliberately included a power to amend that should circumstances change, or indeed, even if the global definition did not change, if we realised later that we needed more, or less for that matter. We do not consider that knowing the exact percentage that somebody owns necessarily tells us more about how much influence or control they have.

Lord Garnier: Because they could be nominees.

Jacquie Griffiths: Nominees are catered for in the Bill, so if you are a nominee shareholder the name of the beneficial owner of those shares should be the one that appears on the Companies House register, if I can just reassure you on that.

We do not believe that with the world-first, ground-breaking register that we are trying to put in place it would necessarily be helpful to use non-globally understood, non-global standard definitions; nor do we necessarily believe that it would give us more information.

As the Minister explained, we have our condition 4 on beneficial ownership, which is worded: "Condition 4 is that X", the beneficial owner, "has the right to exercise or", more importantly, "actually exercises significant influence or control over Y". That is specifically to capture somebody who owns 5% of the shares but who for historical reasons—they may be the patriarch or matriarch of the family—makes all the decisions.

As I said, we are just not convinced that, for this Bill at this time, it would be right to insist on exact percentages anyway, and because they might be more difficult for more complex entities to work out—there is that burdensome thing as well. However, I reassure you that we have deliberately included a power in case circumstances change.

Lord Garnier: The policy surely must be to ensure that those who are overseas entities, be it human beings or other forms of legal personality, are available to be discovered so that we know who owns what. That is the trick, is it not? While it might be inconvenient for the registrant, and indeed

for the Government, it must be fairly essential to get to the nitty-gritty of this and work out a system, a mechanism, which—

Jacquie Griffiths: I am sorry if I have given the impression that we are not doing it because it is inconvenient. That is not the impression that I meant to convey.

Lord Garnier: No, that is my word, not yours. I am being unfairly provocative just to jog you along.

Jacquie Griffiths: Our reasons for doing so were twofold: first, because we wanted to be consistent with the persons with significant control regime—there are very good reasons for doing that, as I am sure you can appreciate; and, secondly, because we decided that for this register we would stick with what are for now the Financial Action Task Force's global norms for interpreting beneficial ownership for the purposes of registering on a register.

Matthew Ray: I do not think that the purpose of the Bill here is to try to catch people out—for example, they have a 56% shareholding but in error or for some other reason have put down 55% or 57%. The purpose here is obviously just to capture whether someone is a person with a controlling interest over the company or not, or the entity or not, and thus whether they are the person benefitting from the property. I am not sure that getting to that granular level of control adds that much to the transparency point.

Lord Garnier: Are you telling me that the information that you hope to gather will be information that actually means something?

Jacquie Griffiths: Yes. We are seeking to find the decision-makers for those entities, whether they own 5% or 95% of the entity.

Q61 **Lord Garnier:** Okay. There are just a couple of other points. Other witnesses have asked us why there is no requirement for the nationality of the individual or their status as a politically exposed person to be given. Do you think that is covered already?

Jacquie Griffiths: I am not entirely sure what nationality would add, but is an interesting idea. The status of a politically exposed person could be a bit controversial, could it not, because how would you capture that?

Lord Garnier: Well, we deal with controversy in Parliament.

Jacquie Griffiths: I suppose we could say in guidance "if you are X, Y or Z", but I am not sure that you could capture everybody that way. They are interesting ideas. If you are a politically exposed person now, and you are on the register and have noted that you are a PEP and whether that is public information or not, what happens when you are no longer a PEP?

Lord Garnier: Then you put in another return. This leads on to my next question—and my last, I promise you. At the moment, I think, it will be an annual requirement to update. I register my overseas address on 1 January, but on 2 January it has changed. However, I do not have to do

anything about that until the following 1 January, as I understand it. So for jolly nearly 12 months the register is inaccurate, as far as I am concerned.

Should there not be an event-based requirement, so that every time there is a significant change that change should be notified to the register?

Kelly Tolhurst MP: You are quite right, and, as I say, if you register your entity on the 1st and there is a change on the 2nd, you have right up until the 1st of the following year to do a return. We believe that event-driven updates will increase uncertainty for investors in and parties to the sale, lease or transactions with regard to land.

Lord Garnier: Why does it create uncertainty?

Kelly Tolhurst MP: One requirement will be for an entity to have a valid number that will have to be lodged at the Land Registry. The people using that information on the register need to have confidence that when they making these transactions, which are sometimes quite complicated and time-consuming, they have an ID and are registered at that particular time.

There is nothing to stop an entity updating its register within that timeframe, which will give it another 12 months, so it can do it early. There is nothing to prevent it updating its registered ID, but it is very important that the people who are using the register have certainty, at that particular time for the purposes of this, that it has valid ID.

Q62 **The Chair:** Can I just ask you one question about condition 4, Jacquie, which you referred to? Condition 4 is one of the conditions under the definition of beneficial ownership. It says that, "X has the right to exercise or actually exercise significant influence or control over Y". I think you suggested that that might catch someone who does not reach a very high threshold of ownership but is nevertheless responsible for the way the company or entity is being run.

That is all very well—they would be a beneficial owner and would therefore be captured by the Bill—but they do not have to identify themselves as a beneficiary, notwithstanding the disadvantages, unless they decide to do so. Would it not therefore be a good idea to have somebody, a third party, verify who is actually exercising control—coming back to the question I asked the Minister—so that we know who the person is?

Jacquie Griffiths: In your question about the regulated professional it was not clear whether you thought it needed to be a UK regulated professional or some other regulated professional. We can see the attractions in that for any number of reasons, some of which Committee members have mentioned. However, there are a couple of points to make here. First, if we decided that it had to be a UK regulated professional, we would then have to decide what kind of professional.

The Chair: What about one regulated under the UK anti-money laundering regulations?

Jacquie Griffiths: Yes, we could go quite widely with that kind of definition: solicitors, accountants, estate agents, lawyers—they could be all sorts of people.

At the moment, the stakeholders have told us that the vast majority of those who undertake land transactions in the UK, particularly high-value or complex ones, will already be using a UK regulated professional—usually, in England and Wales, some kind of conveyancing solicitor, a solicitor in the other jurisdictions.

So we consider that there is already due diligence. We have considered whether we would want to make due diligence compulsory, but that might be easier in some jurisdictions of the UK than in others, for one thing.

We also need to take into account what it would add to the burden on overseas entities seeking to invest in the UK. We are trying hard to strike a balance between getting the information that we need and making sure that it is valid and accurate, but also not disincentivising people from, say, having to pay extra money to have a UK professional verify their identity. At the moment, we are on the side of sticking with what we have.

The Chair: But are we not talking here mostly about high-value properties from overseas legal entities? Are we really worried about the possible inconvenience and expense of this?

Jacquie Griffiths: There is something about equality of treatment, though, that we need to bear in mind. When we are balancing all this, we need to think about the potential for discriminatory treatment or it being regarded as such. We are trying hard to strike a balance between keeping the Bill as robust as we can and breaching any of those conditions. That is not to say that they cannot be breached—there are certain instances in which they can—but we are seeking the best balance that we can have, which is why currently we have come down on the side of no regulated professional. Does that help?

Lord Garnier: Is there not the argument— I don't think we need to be too precious about this —that you are comparing one oligarch with another oligarch?

Jacquie Griffiths: It is probably prudent to point out that the vast majority of overseas entities holding land here are probably legitimate. Although we are doing this for a particular reason, many of those entities are legitimate, and we are trying to find that balance.

Q63 **Lloyd Russell-Moyle MP:** Apologies for arriving late. You have mentioned a number of times the person of significant control regime and how you want parity with that. If you are a registered company, you have to fulfil the person of significant control regime, but you also have to give updates within a number of months on the exact percentages of shares that you have issued and the names of where those shares have gone.

I live in a house that is owned by all 20 shareholders in the flats, and I have to fill in the forms every time. If I do not do it within a month, I get a slap on the wrist from the regulator. Surely equality, which you mentioned just

now, is providing the detail of where every single share is issued. That is what a British company would have to do. Just to understand, you are talking about equality with the PSC but you have not recognised that there is another counterpart to that which you are not seeking equality for.

Kelly Tolhurst MP: To start with, the difference is in identifying controlling interests in UK companies. The difference with what we are requiring in the Bill is in establishing who the beneficial interested parties of a piece of land are. If we hold in our minds that the predominant focus of the Bill is on trying to make it difficult for criminals to use UK land for money laundering, it is different because, while we have gone for the percentages, it is about establishing who the individuals with significant control are.

With regard to the percentage rate, as Jacquie has already outlined it does not necessarily mean that that person is the controlling person of that land. It is slightly different, because obviously with UK law we need to understand who the owners of the UK companies are.

Lloyd Russell-Moyle MP: I get that you are saying that for the UK companies we need a bit more information, so we will be lighter touch with foreign companies, but that is totally different from what you have said in all your previous answers. There is a real inconsistency and problem there.

The other issue that I want to raise with you is regular updating. My honourable friend here asked about it, and in your answer was a case for why you would want it, which is that it would give uncertainty if buyers did not know who the real owners were, and so on.

That is a reason for regular updating and against annual updating. Can you give me a reason for annual updating, or would you consider putting regular updating in the Bill? You have not given a reason. I do not want to be rude, but what I heard was a reason in the opposite direction.

Matthew Ray: The point about providing certainty in transactions is that if you are making a purchase from an overseas entity, you and your solicitor obviously want to be absolutely certain that the entity with which you are transacting is, throughout that transaction, a legitimate, law-abiding and registered entity under the new law.

Our concern about an event-driven approach—you are absolutely right to point out the disparity with the PSC regime—is that it adds to the likelihood that that entity might at some point not be a fully lawful registered entity. If, say, we introduced a rule saying that you have to provide us with updated information within 14 days of the information changing and they were, for whatever reason, a bit slow in doing that, that would add a legal question mark as to whether they were therefore a lawfully registered entity, which might put question marks in the mind of the purchaser of the land from that entity.

Lloyd Russell-Moyle MP: So it is a kind of “don’t ask, don’t tell” policy—it is better that we do not know that there might have been some changes in ownership, because then no questions will be asked later on.

Matthew Ray: I do not think that is a fair representation of what I have just tried to articulate. We need to bear in mind that this is also different from PSC in that we are proposing a pretty significant sanction here with regard to taking property rights away from that entity. PSC has various offences associated with it that are in keeping with general filing offences under the Companies Act.

To take away from someone their right to sell or lease out their property is a pretty major step, and with that in mind we have taken steps to move away from a direct mapping on to the PSC approach. We need to take great care when we are talking about potentially disrupting property transactions for both the seller and the buyer.

We think it will be better for both parties, including the innocent buyer, if they can be absolutely certain when they look at the register that, "Right, this entity was due to file its annual updates last January. They did it. Fine, we can transact with this body". With an event-driven approach, there will always be that slight worry in their mind: "How do we know that they are keeping their information up to date?" There will be no way of knowing that for certain.

Lord Garnier: But surely there is the equal worry on 2 January: "How will I know that it will not be changed in the next week and I will be dealing with an entity that has registered something inaccurately?"—not maliciously, but it just happens as a matter of fact to be inaccurate from the second week of January.

Can we not find a balance here? What about making sure that it is updated every quarter or every six months? A year is a long time, even for quite a big transaction.

Lloyd Russell-Moyle MP: Or we give them slightly longer to update their information, understanding that a foreign entity might need more than 14 days—it might need 30 days or 60 days—not this "They were okay a year ago" kind of approach. Has that been considered?

Matthew Ray: Should we just say a bit about the stakeholder reactions?

Jacquie Griffiths: We went for annual updates, because when stakeholders undertake a lot of transactions with overseas entities, which tend to be very large and in many cases commercial property transactions, they can take well over a year. They told us—I think it was in the 2017 consultation—that they would have preferred updates every two years and that event-driven updates would create so much uncertainty for them that it could disrupt transactions.

That was why, after the consultation, we finally settled on an annual update, hoping—as we are trying to do all the time with this quite controversial policy—to find the balance between making something as robust as we can and not interrupting legitimate transactions. It is a tricky balance to get and we absolutely get your point, but we also need to be realistic about the implementation of this and what it might mean for some people.

Baroness Barker: As we understand the situation at the moment, Companies House tells us that it does not have much capacity or power to determine whether the information it is given is accurate or not. It is reliant on as much information as it can piece together.

One piece of information that could be significant would be a significant turnover of changed detail, would it not? I am quite prepared to accept that some bits of information may not be as indicative of a fraud as others. Would you therefore accept that we might need to look at the different elements of information that you are asking about? Could a change of over 25% of the registered shares, for example, be considered a significant event, as opposed to a change of whoever is acting as the UK lawyer or accountant?

Lord Garnier asked about registering nationality. What do you think of the requirement to register where the owners are domiciled for tax purposes, rather than their nationality?

Kelly Tolhurst MP: I would also highlight, to make it clear, that the Bill gives the Secretary of State a power also to change the update period. If it is suggested that an update period is changed, the Secretary of State has the power under the Bill to do that via secondary legislation.

Your point about significant details that might warrant different changes is well made. Some of the things you outlined would definitely have more significance than a name or something like that, and we can consider that. I said at the outset that we have given the reasons why we are where we are. This is pre-legislative scrutiny; we have decided to do it this way to get feedback from the Committee and will look at those suggestions. I cannot give you guarantees here today, but we can absolutely look at that and test it to see whether it has any validity. Is that okay?

Q64 **Lord Faulkner of Worcester:** Going back to something you said a little while ago, Minister, you made the point that the 25% threshold might not capture organisations, firms and individuals who perhaps had only 10% or 15% of the ownership but were exercising significant control. That is very much in line with some of the evidence we have been receiving from the transparency organisations. They told us that they would favour either very low thresholds or none at all. Are you prepared to look at that?

Kelly Tolhurst MP: Yes. As I say, I am open-minded and look forward to seeing your report about that. Those two elements are within the meaning of a beneficial owner and we can play around with the thresholds, but fundamentally that is why we have that condition, which has no percentages attached.

The whole point of having a very wide, broad-scoping definition of beneficial owner is to make sure that we capture anybody who has any control of that entity. It does not necessarily equate to the position of share ownership. It could even be somebody who does not control voting rights—who does not have a 25% or even a 5% share. This is about making sure that we keep the definition as wide as we can: to catch—excuse the phraseology—anybody that has a significant degree of control.

This is one of the things that we are keen to do. We are just starting the Bill. We are looking forward to bringing in the register in 2021, which is obviously some time away. The intention is to work on guidance on significant influence of control and make sure that we keep up to date with it. But the whole essence of it is to keep it so that everyone is captured.

Lord Faulkner of Worcester: Are you confident that your definition of beneficial owner is flexible enough to capture the genuinely true beneficiaries?

Kelly Tolhurst MP: We believe so, which is one reason why we have deliberately tried to keep it flexible—to capture the individuals who are beneficiaries of the entities. That is why the significant influence and control condition is in there. It may not equate to having any shares or particular voting rights.

The Chair: Lord Faulkner, do you want to ask about pre-1999 and pre-2015 Scotland entities? They are, of course, before the obligation to register, but information is still available. Do you think it might be worth extending the provisions in the Bill to cover this, Minister?

Kelly Tolhurst MP: You have obviously taken evidence about the registers and access to information prior to 1999. We have stuck to 1999, and 2014 for Scotland, because while there is a suggestion that some of those individuals, entities or beneficiaries can be identified, it is not clear that everyone could confidently be identified.

There was obviously a need to notify at that time, so we can be clear that people are then approached and asked to comply with the regulations. It comes down to fairness. It would be very difficult, and it might be unfair to subject to this some who are being identified and some who are not. That is why we have put those dates in, and that is the rationale for it.

Q65 **Lord St John of Bletso:** In cases where it is difficult to define an overseas entity for the purposes of the draft Bill, is there a need for an adjudicator?

Kelly Tolhurst MP: We have not considered an adjudicator for the Bill, because, as I outlined in my answer to an earlier question, the onus is on the beneficiary, the entity, to provide that information. There are many different entities globally that could constitute a legal entity. The entity itself should know whether it is a legal entity in the country in which it is based. Therefore, there would be no need for an adjudicator, because the onus is on the entity to make sure that it either registers or provides evidence to show that it is not.

Lord St John of Bletso: Clearly, professionals are likely to err on the side of caution and recommend registration if they are uncertain, but there will be cases where entities may believe that they do not meet the requirement to register which statutory bodies such as the Land Registry would.

Kelly Tolhurst MP: Obviously, there are different entities. If you are a legal entity, you will need to apply for registration. The individuals concerned will know that they are a legal entity in the country in which they are based. Therefore, we may adapt guidance and examples, but we

cannot possibly dictate all those potential entities. The onus is on the entity. It needs to assure us that it is legal. It will not be down to Companies House to test that; the onus is on it to provide that evidence.

The Chair: Is it always that straightforward? There are lots of different jurisdictions. People might argue that they are not an overseas legal entity and Companies House may say, "Yes, you are". There could then be a disagreement, because if you are a legal overseas entity you have obligations under the Bill.

Jacquie Griffiths: If an entity truly believed that it was not a legal entity in scope of the Bill, Companies House would never hear about it. That is because they would not go to register.

The Chair: What if they said, "We don't think we are, but we would like you tell us"?

Jacquie Griffiths: Companies House would go back and say, "No, you provide us with the evidence that you have that you are or are not".

However, just because Companies House does not know about them does not mean that they can get away with anything. If they then apply to register title at any of the three land registries and believe that they are not a legal entity, they must provide evidence that will satisfy the relevant land registry. Whether it would be some kind of solicitor's certificate or articles of association, this would be written into guidance.

We are still consulting stakeholders and delivery partners on that. The onus would be on them to show that they were not a legal entity or were exempt. However, we believe that the definition is broad enough for it to be a rare entity that did not know its status. We do not think it would necessarily be a big problem. If it was, you could have questions about the entity.

Matthew Ray: To put it simply, if you are proposing something on one of the three land registries and there is not an individual's name, questions will be asked.

Q66 **Emma Dent Coad MP:** I sense a bit of reluctance to tighten up the rules to stop people with evil intent. We know that we have plenty of benign oligarchs with forgetful lawyers in Kensington and Chelsea. There are 6,000 properties with no known owner, many of them empty, and that has a serious effect on us.

Apart from the teams of forgetful lawyers, we also have some genuine crime lords looking for loopholes. I am very worried about this issue of trust generally. The Bill does not cover trust, but the fifth anti-money laundering directive does. Will the Government implement the directive even after a no-deal Brexit?

Kelly Tolhurst MP: My understanding is that, yes, they will. As I said at the beginning, and I stand by it, we have shown that we take this matter seriously. Tackling money laundering in the UK is a priority across government. That is another element in our toolbox. As I have already outlined, the Treasury will consult on its implementation. Yes is the answer.

Emma Dent Coad MP: In addition, will anyone holding land in a trust have to register details of their beneficiaries, including those with discretionary trusts? I am looking for loopholes, because they will have highly paid, forgetful lawyers or very cunning lawyers finding their way around it. The issue of trust is going to be a get-out.

Kelly Tolhurst MP: Obviously, a new trusts register will be developed that will come in before this Bill, if it is passed, for 2020. HMRC will administer it. It is about identifying individuals in the trusts who have land ownership in member states and relates to the directive. That will be implemented here.

On the register of overseas beneficiaries, if an entity is owned by trustees or the beneficiaries of that entity are trustees, they would still be registered as part of this legislation. I will try to explain it as best as I can. If the beneficiaries of the entity are a trust—a trust is not a legally defined group; obviously, it is a set of individuals—all those beneficiaries will be registered for the purpose of this Bill.

Jacquie Griffiths: I will expand a little on discretionary trusts and express trusts.

As the Minister rightly says, the HMRC registers will cover both those things and include settlers and beneficiaries. It will include discretionary trusts because there is no distinction in the approach to registration depending on the type of trust. As the Minister has already said a couple of times, HMT intends to consult imminently, so you will be able to see that for yourself. I hope it will provide even more reassurance for you that the expansion of registration requirements is to all UK express trusts and all non-EEA trusts that acquire real estate in the EEA. So for UK purposes, you can read that as non-UK trusts that acquire real estate in the UK; it does not matter where those trusts are based. It includes discretionary trusts.

HMRC already has a register of trusts that incur a UK tax consequence. Such trusts are not necessarily based in the UK. In the vast majority of cases, any trust on whose behalf land is held will incur a tax consequence on that land via the annual tax on enveloped dwellings. Therefore, it should already be on that register at HMRC.

I hope you can be reassured that, while it may look to you as if trusts are completely excluded and we are letting them go, HMRC has it covered. HMT will consult on the implementation of that imminently.

Emma Dent Coad MP: Do you think that HMRC has the resources to enforce this proactively rather than reactively?

Jacquie Griffiths: I am not sure that I can comment on that.

Matthew Ray: I think that is a question best put to colleagues in the Treasury.

The Chair: I suppose that with discretionary trusts there is a difference between who is named as a potential beneficiary under the trustees' rights

to distribute, but there is a difference between that and who actually receives the income. The register will not tell us that, will it?

Jacquie Griffiths: As far as I am aware, it will list settlors, beneficiaries, trustees and protectors. In among all that, one would hope that there would be the information you are seeking as regards to whom a trust is actually distributing money.

Q67 **Mark Pawsey MP:** Good afternoon. In addition to trusts there are some exemptions in the draft Bill. The Committee is concerned to make certain that those exemptions do not become loopholes. Are you satisfied that the existing exemptions will not create loopholes?

Kelly Tolhurst MP: Yes. The conclusion we have come to is that they should not create any loopholes. We have included a power to exempt on certain types of entities, and obviously there will be a power under the Bill to make those exemptions. Any exemption would have to be tightly defined, but there are no current exemptions in the Bill.

Mark Pawsey MP: Clause 30(6) of the draft Bill gives powers to the Secretary of State to exempt where the Government consider that it would not be appropriate to require that type of overseas entity to comply. The example given is foreign Governments or public authorities. Why should they be exempted?

Kelly Tolhurst MP: In some cases, even if a foreign Government were exempted as a beneficiary of an entity, they would still come within the scope of this Bill. If it was a Government directly owning a piece of land, for these purposes they would appear in the land registry register as the owners anyway.

There is a way of identifying who the individual or the entity is. We are still looking at public authorities and testing what we may need so as to decide whether there is the potential for an exemption. Again, one of the reasons why it is not in the Bill is because we need to make sure that any exemptions that are applied are tight and do not create loopholes, because that would destroy the whole intention of the Bill. That is why we have put that in the Bill: so that it can be dealt with through secondary legislation.

Also, if we were to exempt Governments now, or if we decided to do so in the future, if that was already in the Bill at this point it would make it difficult for us to go back and put through primary legislation to try to make changes if things change. Things can change quickly, so we want to be in a position where we can act relatively speedily.

Mark Pawsey MP: Thank you, Minister. Clause 16 provides for the Secretary of State to exempt persons if there are special reasons. What would those special reasons be, and would the grounds for such reasons be set out in the regulations that you have just referred to?

Kelly Tolhurst MP: That would be used very rarely and on the basis of national security or something like that.

Mark Pawsey MP: What reassurance would there be for the general public that those measures would be used rarely? On the face of it, a

Minister could bend the rules, and suddenly the benefits that we are hoping to achieve from this legislation might be lost.

Kelly Tolhurst MP: Absolutely. I believe that there would be further guidance. Also, as I think I have outlined, that power will be brought forward via secondary legislation, so it would have full scrutiny. It would not be done as a side point; it would need to be done through secondary legislation.

However, it is important to have the power in case there are legitimate and genuine situations where a person or people have to be exempted for reasons of national security. That is not an unusual concept.

The Chair: Whose national security?

Kelly Tolhurst MP: Our national security, I would hope. That power would be used rarely. Personally, I would find it hard to understand—

Mark Pawsey MP: The check on the abuse of that power is the fact that there would be a statutory instrument.

Kelly Tolhurst MP: Absolutely.

Baroness Barker: Can I just follow up on that point? In UK domestic law HMRC operates an exemption under Section D, and that applies to individuals. There are certain individuals whose information is not made available. They are treated as special exemptions, but that is not done solely on the grounds of national security. Is what you are talking about, based on a similar system?

Kelly Tolhurst MP: I am not familiar with that section. The intention behind having the power that gives the ability to exempt is for us to have the option to do so if we need to act in that way. If we were in a position where we had to exempt, if the power was not in the Bill we would have to do it through primary legislation. That would be very difficult to do. We are trying to future-proof this legislation in some respects so that we can adapt to changes. On that particular point, I am happy to offer the Committee more advice on our thinking and how it relates to the particular legislation that you have outlined.

The Chair: I think that in fact Clause 16 does not have parliamentary scrutiny. It simply gives the Secretary of State the power to exempt a person. As you rightly say, there are special reasons why someone should be exempted, but actually the Secretary of State will have a power under the Bill as it is currently formulated simply to say, “I do not think it’s appropriate for you to register, because you might be at risk in your own country”. It could be something of that sort. That is why I have mentioned other people’s national security. A foreign owner might say, “I don’t want to be identified”.

Jacquie Griffiths: That would have to be applied for under a different part of the Bill. It would be done under the so-called protection regime. Someone can apply saying that they would be at risk in their own country. Clause 16 allows the Secretary of State to make an exemption in special

circumstances. It is the national security exemption on which we are not able to give further details. The protection regime is that under which a beneficial owner who would otherwise appear on the public register can apply to the Secretary of State saying, "I am at risk for these reasons". That does not prevent them from giving the information, which is really important, but it will be suppressed in the public register. That is a slightly different thing.

The Chair: Thank you, that is very helpful.

Q68 **Lloyd Russell-Moyle MP:** In what circumstance, be it national security or whatever reason, would someone need to be exempted rather than repressed from the register? I understand the reasons why details may not be made public, but I cannot think of any reasons why the Government for national security reasons would not at least need to hold or want to hold the data. Can you explain why there is the possibility of exempting rather than just the repression, which seemed perfectly acceptable to me?

Jacquie Griffiths: I would explain it in terms of the notices that are required to be sent. If there was an individual who, for whatever reason, could not be seen to be associated with an entity, we would not wish them to be required to respond to those notices, because that might associate them with the entity, to the knowledge of the entity or people within it.

I am sorry that I cannot be much more specific. I understand what you are saying about the Government knowing. The Government would know, because it would be the Secretary of State who would be exempting them.

Lloyd Russell-Moyle MP: Who will be exempted? Are we talking about individuals?

Jacquie Griffiths: I am not aware of any circumstances. Matt and I talked earlier about whether we had used this in PSC. We do not think it has had to be used yet, but it is there for a couple of very specific reasons.

The Chair: That is very useful. It would be very helpful if you could tell the Committee if that is the case.

Jacquie Griffiths: I am afraid that we may not be able to tell you if it is the case, because we may not have the clearance to know, but we can ask the question.

The Chair: Asking the question would certainly be helpful.

Q69 **Mark Menzies MP:** Minister, does the Bill pose any risk for third parties?

Kelly Tolhurst MP: We are very mindful of the fact that, with some of these issues, the Bill could create risks in relation to third parties who may get caught up in it. Examples might be purchasers or leaseholders, where restrictions on land in the middle of transactions may cause innocent third parties to become wrapped up in difficult situations.

That is why we included some exceptions in the Bill for third parties in pursuance of a statutory obligation or court order, or for a charge-holder

or receiver exercising the power of a sale or a lease, so that a third party would not be deliberately disadvantaged.

Mark Menzies MP: On that point, what protection is there for the innocent and unsuspecting purchaser who has paid the purchase price but cannot register the title?

Kelly Tolhurst MP: If there was already a registered entity, it would be denoted on the Land Registry anyway, so they would know straightaway that the entity would fall under these rules. We obviously hope that the legal professionals would do the due diligence checks for those individuals. So that would obviously be followed through.

That is why we are looking at having the powers to exempt the block on the registry: so that those innocent third parties do not fall foul or lose out completely, or are at fault for not being registered, or there is a difficulty with the entry.

Mark Menzies MP: Another category—I have raised this with previous witnesses—is tenants of a non-compliant landlord. If they are paying their rent, they think everything is as it should be, but in fact action is being taken against the landlord without the tenant's knowledge. What risk could that tenant find themselves in?

In the worst case, for example, could they find themselves being evicted from the residential property or shop that they have rented? Could they suddenly find themselves caught up in it and threatened with eviction? At what point could that tenant be notified that the property they lived in, and were paying rent on, was subject to proceedings?

Kelly Tolhurst MP: The example you have just outlined is one of the reasons why, through the Bill, we are looking at the power to disapply any land restrictions where the third party is stuck in this difficult situation through no fault of their own. That is the reason for the exceptions to the Bill where a court order is made, for example if someone has entered into a contract or the entity was registered at that time and there is a charge.

You are quite right; we are very conscious of this and I have posed the question to officials. There are lots of different examples. We can all come up with a scenario where an innocent third party could be caught out. That is why, as part of this process, we are looking at this power. If we can, we will put in a power to disapply.

Mark Menzies MP: Just so that I am clear in my own head, would there be any ability for that tenant to be informed that all was not right? Let us go back to the situation where someone has rented a property for a considerable number of years. During that time, the beneficial owner of the property has changed, or has become a subject of concern. The tenant continues as if everything is normal. Then one day they get an enforcement notice, or a knock at the door, and suddenly find themselves caught up in this morass.

Kelly Tolhurst MP: My understanding is that, in that example, if the entity was not a legitimate entity during the period when the individuals

were renting the flat, there would be restrictions on the sale, lease or change relating to that land. Although they would have uncertainty about the particular entity, it would not necessarily have a direct impact on them unless they were in a lease situation or something like that. If it was a straightforward renting situation, they would not necessarily be adversely caught up. There would be restrictions on any changes to the land at that time, so nothing can happen; it does not affect them directly.

The Chair: It does not affect them directly.

Kelly Tolhurst MP: You are quite right; it does not. I have asked quite a lot of questions about a number of scenarios, because I see that there is a risk. You are right that there is a larger proportion of residential than commercial properties. That is why we are investigating and looking further into the power to disapply. I would hate innocent individuals in those situations being caught out. Is there anything further, Jacquie?

Jacquie Griffiths: No, you have explained that perfectly. It is not our intention to disadvantage innocent third parties, as we have explained before. We completely appreciate that some people will not get it, so we also want to try to communicate as widely as possible about the requirement to check before you enter into transactions.

In the example you gave, as the Minister has aptly described, the adverse effect on the tenant is that they cannot register their lease, rather than any risk of eviction. We would not necessarily expect somebody to bang on the door telling them that they had to leave, for example, but I am not saying that not being able to register their lease would be a nice thing.

Kelly Tolhurst MP: We have quite a long lead up to the Bill coming forward and the register happening, so one of the other things we will have is a communications plan, and we will even think about making sure that we advertise, and not just through the traditional estate agents and professionals; we might look at running a campaign on Gumtree, and so on, to reach people who would not necessarily tap into legal professionals, so that they understand when they sign up to something that if it comes under this register some things might change.

The Chair: Thank you very much. You have been very generous with your time. We are coming to an end, I assure you.

Q70 **Peter Aldous MP:** Taking a similar line to Mr Menzies, some of our witnesses have expressed concern that the unsuspecting purchasers or entities could be caught up by the Bill's requirements or could fall foul of them, but that those who wish to avoid them would be able to do so. One of our witnesses, Mr Keatinge from RUSI, said that, "There are myriad ways in which one could wriggle out of the measure" requiring registration. Have you taken this into account in the drafting?

Kelly Tolhurst MP: You are asking me whether I think there are myriad ways in which people can avoid coming under the Bill. If someone is a true criminal and their intent is to circumnavigate it, I am not sure that any Bill could legislate against that to completely stop anyone doing so.

At the moment, we do not have anything in place—this is a new register—so we will be in a better position after the implementation of this Bill. We have the broad scope and definition of who is a beneficial owner, which helps us not to limit who that beneficial owner could be.

Also, remember that under the Bill there could be criminal sanctions, and sanctions on land. The whole point is to encourage compliance and transparency. It would be very difficult in any Bill to completely and utterly weed out people who are dead set on criminal behaviour, but this is a step forward in tackling that.

Matthew Ray: I agree with all that. None of these registers can stop people lying, but they can make it more transparent and obvious where someone is lying.

Kelly Tolhurst MP: Although the transparency will be there for those individuals, even if for example someone is being put up to say that they have a controlling interest, this—together with information sharing and our enforcement agencies—is just one of the tools that we know work together to combat criminality, money laundering and all those things. This will add part of the intelligence. Things may be picked up in this register that ring bells with our other law enforcement agencies, and this might help. Some of these criminals may not necessarily be charged with these particular offences, but this law will make it easier for enforcement agencies to gather the information required to take action.

The Chair: As we have heard, it is part of the overall toolbox that enforcement agencies and the police have, together with unexplained wealth orders and a number of other powers.

One of the questions that arise from this is whether the restrictions are proportionate. Although we are obviously keen to catch people who we want to catch, there are some innocents who might be caught by the perhaps arguably onerous restrictions. Are you satisfied about the proportionality involved?

Kelly Tolhurst MP: Yes. I believe that the restrictions that are being put in place under the Bill are proportionate and strike a balance, and that we are putting enough restrictions in place to carry out the intent of the policy, which is to stop criminals. However, we are looking a bit further on the power to disapply, because we are concerned about any third parties being swept up in this.

You have heard a lot of evidence over the three weeks you have been sitting, and I would welcome any comments that you have on that.

Peter Aldous MP: On that, I assume that you have looked at the anti-money laundering directive's permissions with regard to proportionality and you are satisfied that if this ever got tested in the courts your permissions would not be declared incompatible with that.

Kelly Tolhurst MP: The information I have, which I have tested with my officials, is that we are satisfied that our requirements here are proportionate.

Peter Aldous MP: My final point is that fines in England and Wales can be enforced against land, but that is not the case in either Scotland or Northern Ireland. In that context, have you discussed any such sanctions with the Scottish Government, and with regard to Northern Ireland have you considered extending such sanctions there for the purposes of the Bill?

Kelly Tolhurst MP: We have not explored this as such, because the powers do not already exist across the whole of the UK. The criminal sanctions in Scotland and Northern Ireland would be a fundamental change, so any devolved Administration would need to be comfortable with that new concept and the unintended consequences of that. It would need careful consideration, and we are not sure that the Bill would be the right framework for that.

Peter Aldous MP: So you have not discussed it with the Scottish Parliament.

Kelly Tolhurst MP: No, we have not.

Q71 **The Chair:** Thank you all very much for your time; you have been very generous. As you can see, the Committee had a lot of questions and is very engaged on this piece of legislation. We understand that it is a ground-breaking piece of legislation, which is why a number of areas remain untested.

Are there any other matters that any of you would like to draw the Committee's attention to at this stage, either as a result of evidence you have heard or any further thinking on what is going on?

Kelly Tolhurst MP: I would just like to say that this is a step change; it will be the first register of its kind in the world. We are committed to making sure that it is right, which is why it has not been brought forward in a finalised Bill.

We welcome what the Committee has to say. It is right that these things are tested—we want to get the best out of the Bill—and we look forward to further engagement with you. I mean that genuinely. I would have loved to have been here to discuss further Companies House reform with you and how we see that—in answer to some of your first question—as I am particularly interested in that area. I hope that will become clearer as soon as possible so that you can feed back further as a Committee on that basis at a later date.

The Chair: Just one small point. When the Bill team gave evidence, members of the Committee asked if it might be possible to see some kind of mock-up of the register so that we could have an idea of what it might look like and what the user would need to deal with. If it would be possible for the Bill team and your department to send us something, that would be useful. It may not be possible, but it would be helpful.

Jacquie Griffiths: We apologise that you have not received that already. We are meeting with delivery partners on Wednesday.

The Chair: Thank you very much indeed. The Committee is grateful for your evidence, and we hope to provide some further scrutiny.

[1] Note by witness: Companies House's register of companies was viewed more than 5 billion times in the last year.

Financial Conduct Authority, National Crime Agency, Serious Fraud Office (QQ 45 – 55)

Watch the meeting

Members present: Lord Faulks QC (The Chair); Peter Aldous MP; Baroness Barker; Emma Dent Coad MP; Lord Howarth; Mark Menzies MP; Mark Pawsey MP; Lloyd Russell-Moyle MP; Lord St John of Bletso; Alison Thewliss MP.

Evidence session No. 5

Questions 45 - 55

Witnesses

I: Donald Toon, Director, National Economic Crime Centre, National Crime Agency; Alison Barker, Director of Specialist Supervision, Financial Conduct Authority; Mark Thompson, Chief Operating Officer, Serious Fraud Office.

Examination of Witnesses

Donald Toon, Alison Barker and Mark Thompson.

Q45 **The Chair:** Good afternoon. Thank you very much for attending the Committee. I am sorry we had to keep you waiting rather longer than we had originally intended, but your predecessors were very forthcoming, and I am sure you will be too.

I remind you before you start to give any evidence that, as I think all of you know, this session will be webcast and recorded in *Hansard*. You will get a transcript of what you say and if you want to make any corrections as a result of misunderstandings, or whatever, we will be very happy to receive them.

Perhaps we could start by inviting each of you briefly to explain who you are and your perspective on the Bill generally by way of an opening statement. Because we sent you the questions in advance, I think you know that most areas will probably be covered in the questions that follow.

Alison Barker: I am the director of specialist supervision at the Financial Conduct Authority. I have responsibility for financial crime supervision, which is supervision of the anti-money laundering regime as it covers the financial sector. I also have responsibility for the newly formed Office for Professional Body Anti-Money Laundering Supervision, which was set up by the Government last year to increase standards of consistency across the professional bodies for the legal and accountancy sectors. It is the supervisor of the supervisors in that context.

It is very welcome to have the additional transparency that the register will bring in. It is part of an overall framework of legislation covering money laundering, including the money laundering regulations.

Mark Thompson: I am chief operating officer at the Serious Fraud Office. I am responsible for the operational divisions of the SFO and for four years I was head of the proceeds of crime division, so I feel this is home territory to some degree. I was involved in the development of the policy over a number of years, with Donald and others.

I think the main advantage of the Bill is that it is another step in closing the space for anonymity in the offshore world, and it is a helpful step as far as we are concerned.

Donald Toon: For four and a half years I have been the National Crime Agency's director responsible for economic crime and I am now with the National Economic Crime Centre. On behalf of the UK, we have responsibility for understanding and leading the response to serious and organised economic crime, including money laundering. We work very closely with partner agencies, including specifically the SFO and FCA, which are represented here this afternoon. I have responsibility for the UK Financial Intelligence Unit. I heard in the last session some discussion of the suspicious activity reporting regime; we of course sit at the heart of that regime.

Q46 **The Chair:** Thank you very much. May I start by asking you all if you can help with an assessment of the overall scale in the United Kingdom of money laundering using property? Do any of you have an idea of the scale?

Donald Toon: It is hard to give a very accurate estimate of the scale involving property. Indeed, it is extremely hard to give a clear assessment of the scale of money laundering affecting the UK. If you look at the national strategic risk assessment of money laundering and terrorist financing, from the NCA's perspective, we think that the overall money laundering risk into and through the UK is somewhere in excess of £100 billion annually, but breaking that down is extremely difficult. We have no particular reason to quarrel with the estimates from Transparency International that in 2018 £4 billion-worth of property in the UK was purchased with suspicious wealth. From our perspective, that does not seem an unreasonable estimate.

Mark Thompson: Like Donald, I have no reason to think the estimate you have had from Transparency International is unduly high.

Alison Barker: Yes, I agree that it is difficult to estimate the total amount of money laundering. It is by its nature covert. I agree with Donald and Mark.

Q47 **The Chair:** The Bill, if it becomes an Act, will be only part of the picture of anti-money laundering activity. For example, unexplained wealth orders were brought in by the Criminal Finances Act, and various other tools in the box—as they have been described to us—are available to law enforcement agencies. How do you see the Bill fitting in with those other tools?

Donald Toon: We see it as an extremely useful step forward. You highlighted the unexplained wealth order point. We have quite a pipeline of casework on unexplained wealth orders at the moment. One of the key

issues for us in seeking a UWO from the courts is being able to link an individual with an asset. That of course is extremely difficult in the case of property where structures are deliberately designed to obfuscate beneficial ownership. This will be a significant step forward.

At the moment, we can get quality beneficial ownership information from the overseas territories and Crown dependencies. That is useful, but it is simply a subset of the total overseas register problem. Certainly the measure will be of assistance, but it has to be seen alongside all the other tools, the suspicious activity reporting regime, the PSC register, the changes that are likely to strengthen the position under the fifth anti-money laundering directive, as well as the prioritisation and targeting of that activity by law enforcement. It is a step forward and it seeks to close a current significant gap in a situation where we do not have a global standard on access to beneficial ownership information.

The Chair: It can give you information apart from anything else. We have heard that even if the information put on the register is obviously inaccurate, as is sometimes the case with the PSC, it can still be of some assistance. Is that right?

Donald Toon: Yes.

Mark Thompson: Throughout this process, in discussion with the policy officials in trying to explain to them how we investigate this stuff, making them go on the record is important. It is the same with the PSC register. As you say, sometimes false information is jolly useful, because lying consistently over a long period and across a lot of documentation is difficult.

The Chair: Or even lying inconsistently.

Mark Thompson: Exactly. That is what helps us to build our picture over a range of different sources of information, over different times, and perhaps in combination with production orders on bank accounts for the regulated sector. It gives us information that we can cross-check. This is another perfect example of that. As Donald said, we already have access to beneficial ownership information in respect of the overseas territories and Crown dependencies, but there are lots of other jurisdictions where we do not have that information and this will help to close that gap, so to that extent it is very helpful.

The Chair: Do you have any comments along those lines, Ms Barker?

Alison Barker: The register itself would not change the obligations on the financial sector or regulated sectors to do due diligence, but it would provide additional information, particularly for smaller entities that are trying to do due diligence. They would have more information at hand to look up, to do the work they need to do.

Q48 **Emma Dent Coad:** Could you talk us through the kind of structures you have seen that are being used to conduct illicit activity in the property market?

Donald Toon: We see overseas corporate and trust structures throughout our asset-focused investigations. In the serious investigations we are running, we almost invariably find overseas territories, but a much broader ownership structure and a much more layered structure. It is quite unusual to find a single corporate structure. There is a multiple corporate structure, often a multiple jurisdiction structure, and there may be a trust structure within that. From our perspective, the complexity of those structures continues to increase.

Over the last five years, certainly in the kinds of cases we are dealing with, we have seen an increase in the use of layers and an increase in the use of distant jurisdictions. We were mildly surprised recently when we had one particular BVI structure in relation to an unexplained wealth order where we were able to identify five layers of ownership in the BVI, all through corporate structures.

From our perspective, the problem is the range of jurisdictions that are prepared to offer sufficient secrecy services around both trust and corporate structures that we cannot get through with our current investigative tools in the vast majority of cases. That is where the Bill comes in.

The Chair: I suppose part of the attraction of some overseas territories—I do not mean that as a term of art—is that they allow those complicated corporate structures to exist.

Donald Toon: There is certainly an attraction. As I said, we are able to get the necessary information from those jurisdictions. Of course, it becomes much more complicated when you discover that the BVI structure is backed up by an ownership structure in the Marshall Islands.

Mark Thompson: Obviously, the SFO's cases tend towards complexity. With the type of people we deal with at the very top end, it is almost as if there is an offshore fraudsters' manual. I have seen the same structure a number of times. There is typically a discretionary trust at the top, incorporated outside the UK, and then any number of intermediate holding companies, as Donald said, three, four or five, which could be multiple jurisdiction. Then there are asset-holding companies; for example, a flat in Mayfair is held by one company and a yacht elsewhere is held by another company, and any number of intermediary steps can be inserted in the end. That is what we are up against.

Emma Dent Coad MP: Alison, is there anything you want to add?

Alison Barker: There is a whole range of different ways in which money is laundered through the financial sector. The only thing I would add from an OPBAS point of view is what might happen in the legal sector. Somebody who has bought a property, and got validation through being registered at that point, might get other services added to that, so the money laundering can broaden from just the purchase of property into the other services that can be offered by professional service providers. That will start to facilitate money laundering more broadly, perhaps through the financial sector, with the opening of bank accounts, or other types of things. Once you have

established yourself with the purchase of the property, what else does it enable you to do?

Q49 **Lord St John of Bletso:** As this is my first evidence session, it is incumbent on me to declare any conflict of interest. I have no conflict of interest to declare. The only property-related issue is that I am a director of Albion Venture Capital Trust, which owns pubs and schools.

To revert to my question, how are investigations on money laundering in the property market triggered?

Donald Toon: There is a broad range of different ways in which they can be triggered. We have everything from individual to collective suspicious activity reports. Analysis of those certainly brings us directly to particular casework. Alongside that, we have proactive casework, where we look to develop an intelligence picture in relation, for example, to what we see as a problem jurisdiction. You will probably be aware that we are leading work at the moment that is focused on the problem of assets held by corrupt elites. We use targeted intelligence collection to identify that.

Equally, we have referrals from partner agencies, and we are unashamed about the fact that we will take material from non-governmental organisations. We have followed up and used open source material developed by Transparency International and others. There is a very broad range. It occasionally includes referral from organisations that have become involved in a chain and have then raised, through a whistleblowing structure, a potential problem.

Mark Thompson: There are a couple of others on offer from our point of view. A lot of our major asset-tracing work has arisen from our normal casework. If we are investigating a major investment fraud, we look at the protagonists to see what they had. A standard criminal confiscation investigation involves a lot of that sort of work for us.

One other avenue that might be of interest to you is that we action mutual legal assistance requests from foreign states, and sometimes from the information they provide about criminality they are investigating it becomes obvious that the people they are interested in have assets in the UK. A number of times we have taken that information and, with their agreement, launched civil recovery proceedings here. That is another relevant use of the tools that, as Donald said, we all use. That is quite pertinent as regards corrupt elites.

The Chair: I suppose if you have real property it presents quite an opportunity for enforcement in civil recovery proceedings.

Mark Thompson: It does.

Donald Toon: Yes, absolutely.

Alison Barker: From a financial sector point of view, as Donald mentioned, there might be a number of entities in the chain. We would raise intelligence and information and feed that in through the NECC or the NCA itself. We would also assess whether financial institutions were actually doing their due diligence and properly reporting anything

suspicious they see. The financial sector has a high degree of reporting to the SARs regime so that intelligence sits within the FIU for further analysis. In many instances, we would be a giver of intelligence around property transactions.

Lord St John of Bletso: You spoke about suspicious activity reports. How effective are they? Surely, there must be scope for reform. We understand from a House of Commons Select Committee inquiry that fewer than 0.1% of estate agents submitted SARs. We notice in the draft Bill that there is scope for professional advisers to have whistleblowing responsibilities. That will be another more effective way of getting information. Could I ask that in concert with this supplementary? Surely the advances in artificial intelligence and the whole fintech revolution will help your cause as well.

Donald Toon: The short answer is yes. The longer answer is that in 2017-18 there were 464,000 SARs, of which 83% came from the banks. Our fundamental problem with SARs is that we have a very high proportion from a very small set of reporters; about one-third of that total comes from one bank. The problem from our perspective is that there is more reporting than is necessary from major banks and a dearth of reporting from some of the professional services sectors. Duncan Hames from Transparency International commented, and I completely agree with him, that there are situations where SARs from banks lead to effective law enforcement action when professionals are involved in those transactions, usually lawyers, accountants, company service providers and estate agents. They do not report. It is unusual for us to see relevant linked reports from them.

There is a SARs reform programme in place at the moment. It is led by the Home Office with heavy involvement from the Treasury, the FCA and ourselves. That is a real opportunity for reform of the system, to improve the targeting and the quality of suspicious activity reporting and make sure that we see more reporting from the underreported sectors and more linkage and feedback. There is something about the effectiveness of our feedback. Are SARs effective? Yes, they are, but they could be much more so.

Alison Barker: I agree with Donald. OPBAS was set up a year ago, and over that year we have assessed all the professional bodies for consistency of supervision and worked on intelligence-sharing, which is, as Donald says, a very important part, because without the intelligence and information raised through those sectors, there is no opportunity to get a better picture of what is going on.

That is what the intelligence is there to do. Over the course of this year, there has been work to start bringing together the capabilities to do that type of intelligence-sharing and to start working through to the types of things we need to see more of and get the feedback loops working. We have been running expert working groups to try to bring that intelligence-sharing out more. It is work in progress.

Lord St John of Bletso: How can there be more effort taken to ensure that AML compliance officers are more stringent in the policing of their clients?

Alison Barker: In a professional body context, one of the objectives of OPBAS as the supervisor of supervisors is to ensure that professional body supervisors are more challenging of the firms they supervise, and provide more consistent assessment of the risks in their areas, thus ensuring that the firms they regulate identify the risky people, and then have appropriate supervisory regimes around them. In turn, asking those questions is designed to create more focus on what people are meant to be assessing.

In the financial sector, there is a more advanced system. There is a high degree of both supervision and enforcement from the FCA that holds people to account for the internal assessments firms are meant to be doing to prevent them being used for the purposes of laundering money.

Q50 **Mark Pawsey MP:** We touched very briefly just now on the requirement for a UK-regulated professional to be responsible for verifying information for overseas entities. Alison and Mark, would it be helpful if that were a requirement in the Bill?

Alison Barker: It would be helpful in checking that the information is accurate if somebody was there to do that, and for people who wish to rely on that register to do more of the assessments themselves. They would have the comfort of knowing that it had been verified.

I guess the challenge is both the cost of implementing that and whether, if it is done for the verification of information for overseas entities, it is in place for UK entities.

Mark Pawsey MP: We have lots of information on UK entities. We do not have lots of information on overseas entities. Most of them have a UK representative, whether it is a lawyer, an accountant or an estate agent. Why should we not make those professionals responsible for providing information and have some sanction against them if they do not? I was really struck by the evidence of Mr Toon that fewer than 0.1% of estate agents provided any information and a third of the SARs came from just one bank. Something is clearly not working there.

Alison Barker: There is nothing against providing verification. That would be a very good idea.

Mark Pawsey MP: Perhaps the Government should put that provision in this legislation.

Alison Barker: It would certainly be something for the Government to consider.

Mark Pawsey MP: Would you argue that it should be part of the legislation? Do you think it is lacking? Do you think it would be stronger if that power were there?

Alison Barker: It would certainly help to ensure that the information was there and was accurate.

Q51 **Baroness Barker:** What difficulties do you face when you are investigating suspected cases of money laundering?

Donald Toon: You heard some of them, in the sense of the complexity of the structures that are put in place. We are also often dealing with a situation where it is difficult to identify the illicit structure from many thousands of legal structures that look very similar. It is money laundering in the round, not just the use of property assets.

The fundamental problem is that, if a complicit or wilfully blind professional is involved in creating the illicit structure, they are, to all intents and purposes, slightly perverting what they do legally. It is often incredibly difficult to get behind that. It becomes more complicated of course if you are talking about the legal profession. For very good reasons, legal professional privilege exists. That can in itself become a difficult issue. Much of the illicit activity we might be investigating is legal overseas. The secrecy jurisdictions are the obvious point for that.

There is also often an issue when money laundering is not a stand-alone offence. If we are talking about effective international co-operation, in some countries we may be investigating money laundering per se, but they will want to see that it is money laundering linked to a particular predicate offence. It is the predicate offence that will enable them to support us. That is an ongoing problem in some jurisdictions.

On top of that, there is often the sheer scale and complexity of documentation. Mark is better placed than I am to comment on that as a particular issue, but many complex investigations are very data intensive. That brings with it problems with the assessment of the material. It also brings problems with being able to identify, for example, LPP issues in material. In a number of partner agencies, we have seen major issues with material that has within it professionally privileged material.

The management of that process can be incredibly difficult, as is our ability to manage our disclosure responsibilities under the Criminal Procedures and Investigations Act. You will be well aware from the media, as well as from your personal knowledge, of difficulties with disclosure in what are generally, in investigative terms, relatively simple cases. The list could go on. Part of our problem is the level of international engagement.

The Chair: Could you be a little more specific about the disclosure problems vis-à-vis money laundering?

Donald Toon: With large-scale material, it is the identification of material that involves legal and illegal activity and being able to be absolutely certain, when you have terabytes of material, that you have identified anything within that which is potentially disclosable, where you have to agree search terms with the defence. It is incredibly resource intensive.

It is also a problem for us that in that type of casework having skilled people able to do the work has become steadily more difficult. The skills we need are very attractive to the private sector. To speak for my own organisation, we lose staff regularly to the private sector because of the attraction of private sector salaries and a different work burden—the work-life balance, for example.

It is a very difficult area to work through, not least because it is almost always international. If we are dealing with a problem jurisdiction, often we cannot rely on the material produced by that jurisdiction, or we may get material that is clearly designed to entirely undermine our investigation. If I take an unexplained wealth order investigation as an example, we are dealing with a situation where someone may be investigated by us and we are looking at them from an assets perspective here in the UK. They may be a member of a regime or a member of a previous regime. If they are a member of a current regime, we have a problem in relying on anything that has been produced. If they are a member of a previous regime and have been attacked by the current regime, we hit a challenge because there will be an argument that anything produced by the current regime is politically motivated.

That is an area where the International Corruption Unit in the NCA does a huge amount of work. We factor into that work continual legal challenge, continual judicial review, and continual challenge to the quality, accuracy and completeness of the search warrants we seek. We get every potential challenge you can think of, because these are usually rich people who are able to afford the best legal representation, up to and including challenges on the basis that we should not be investigating someone because they have sovereign or state immunity. I could go on.

The Chair: You have been very helpful.

Mark Thompson: The fundamental issue Donald touches on is that it may be correct, as Transparency International or the NGOs say, that there is a lot of dodgy property in London, but people like Donald and me are not going to be going to the High Court, let alone a criminal court, on the basis of a couple of Google articles that say someone is an oligarch. As you will appreciate, we need to go to court with something better than that. In a lot of jurisdictions, we will not get that co-operation. That is our starting point. We cannot even commence the money laundering investigation properly because we will never get any evidence that it derived from a crime that we can investigate here. That is the fundamental challenge, to answer your question.

Q52 **Lloyd Russell-Moyle MP:** It has been suggested that the threshold for the definition of beneficial owner in the draft Bill—25%—will allow significant interests to evade the registration requirements. We heard from the last panel a suggestion that it could even go down to 1%. Do you think that the 25% is a cause of any problems in investigating possible cases of money laundering, or in knowing who is in control and is the beneficial owner of those companies?

Mark Thompson: We had this discussion about the PSC register because it has a similar threshold. If I remember rightly, there is a catch-all sweep-up that says “or otherwise substantially controls the company”. I cannot remember whether this legislation has the same type of approach.

In essence, the way we approach them as investigators is to look at the substance of the arrangement. If four people had 24% and someone had the remainder, we would be looking critically at those four and seeing what we could do. There seems to be an approach in this measure whereby, if

there is no defined beneficial owner, someone else has to report on it. That gives us a name, and that is the first thread we can start pulling at. There is still a way through and there is still merit in it.

Donald Toon: I see merit in it. There will always have to be some threshold. Whatever threshold you put in, some people will determinedly create structures designed to manipulate the threshold. As Mark says, there is an opportunity with the measure to identify those sorts of structures, but there is a very difficult balancing act around being able to identify those who are truly in control without getting to a point where you are looking at control being defined as a small percentage point.

Lloyd Russell-Moyle MP: For the purposes of control, should the threshold level be the same or should there be slightly higher requirements because of the challenges that you have discussed about delving into greater information through national courts that might be out of our control? Should we be asking for more up-front information if it is unlikely that we will be able to get information through other means later on?

Mark Thompson: It is quite difficult to answer that. You would be at risk of having quite a convoluted regime if you had completely different thresholds in different forums.

To go back to what was said earlier, for me it is about forcing somebody to go on the record. If they do that correctly, happy days, we get the information. If they do not and someone else has had to lie for them, it will have introduced an extra layer of dishonesty. Think of it as if you are a prosecutor building a case. If we establish that they have put in a false declaration, the SFO might not prosecute the failing to declare offence, but it helps us to build our case on dishonesty, and that is at the heart of all the fraud cases. For us, there is still benefit in all this.

Lloyd Russell-Moyle MP: It has been suggested that the draft Bill could not only contain delegated powers to allow the altering of thresholds in future but that, if you spotted particular patterns of beneficial ownership that were becoming suspicious, or were clearly being used to evade the law, they would become prohibited. Would that be a useful power or is it an overreach of the Secretary of State?

Mark Thompson: It sounds useful to me.

Donald Toon: We would see it as a useful power. Part of the problem, as so often if you are dealing with an issue that is in primary legislation, is the speed of response. Of course, there is always an opportunity for things to be prohibited or action to be taken for a defined period.

Lloyd Russell-Moyle MP: Did you want to say anything, Alison? I do not want to exclude you.

Alison Barker: I have nothing to add.

Q53 **The Chair:** I would like to ask all of you whether you think the information that the Bill requires to be recorded on beneficial owners will be helpful in

investigating suspected cases of money laundering. If not, are there things that might be included that are not in the Bill?

Donald Toon: Yes, it will be helpful, but in the context that it is not a panacea. As we have been through before, it will be helpful and it is a step forward, but it has to be seen as part of a wider system from a UK perspective, and it has to be seen as a step towards a stronger international regime that enables us to get access to information more effectively than we can at the moment.

The Chair: One of the themes that has emerged during this inquiry and from the previous panel, which I think you at least heard, Mr Toon, is the likelihood during an 18-month period of transition, and even afterwards, of people who want to use dirty money rearranging their affairs and/or setting up trusts that obscure the beneficial owners. Do you have any comments about that?

Donald Toon: If their professional advisers are worth their salt, they will be making that change now.

The Chair: In anticipation.

Donald Toon: Because this is going on and the legislation is under consideration. I am not sure the 18-month period makes any significant amount of difference.

The Chair: What about the use of trusts generally?

Mark Thompson: I outlined the fraudsters' handbook, which suggests that an offshore trust is a good starting point, and experience suggests that it is often used. Trusts are obviously outside the direct scope of the Bill, so that is an issue. It is aimed at companies. That is the basis of the Bill.

The Chair: The fifth anti-money laundering directive dealing with trusts is due to come into force shortly. We had a suggestion that it might be as well for the Bill to anticipate that. Do you have any comment on that?

Mark Thompson: From the SFO's point of view, trusts are a problem, or at least some trusts, not UK ones generally, so we would welcome the implementation of the fifth money laundering directive when it arrives.

Q54 **Alison Thewliss MP:** What are your views on whether the sanctions contained in the Bill are practicable? Will they provide sufficient deterrent against non-compliance?

Donald Toon: There is an issue with the sanctions. The drafting is positive. It is reasonable. The key effectiveness point in the sanctions is the inability to go ahead with transactions if you have not registered. Given that we are dealing with overseas entities, there is a difficulty with the enforceability of criminal offences, and there is certainly a difficulty with taking action against identified individuals overseas.

That does not mean you should not have them there. The sanctions will be useful on some occasions, but you should not expect to see massive

numbers of enforcement actions taken, because they will be difficult. They will happen in some circumstances, and those circumstances will have a significant deterrent effect. The underlying main sanction is the ability to continue with transactions, from our perspective.

Mark Thompson: That must be the reality of it. By the nature of its being extraterritorial, it is difficult for us, first, to get hands on people and, secondly, as prosecutors, for the SFO and the NCA to look at more serious offending. If it was the only offence, you would probably not be looking at the SFO prosecuting it. You would be looking at something more serious and this would be a feature of the offending. Donald is right; the sanctions are helpful but they will not be the end of the matter.

The Chair: It strikes me that the Bill is not there fundamentally to create an offence giving rise to the sanctions with all the limits you describe. It is there as part of the overall ability that prosecutors and investigators have to pursue money laundering, fraud or whatever, as part of the overall picture. Is that fair?

Mark Thompson: Absolutely.

Donald Toon: Yes.

Q55 **Alison Thewliss MP:** I want to ask about comparisons with the PSC register. You might have caught my question earlier about Scottish limited partnerships and the lack of fines. What kind of lessons have you learned from your experience with the PSC register that could be usefully applied here, and is there anything further that could be added to the Bill to make it more effective?

Donald Toon: I am not sure that we would draw conclusions yet on enforcement around the PSC register. There are positives in the PSC register, and Mark highlighted a lot of them, even when you have false information and false declarations. The fact that we have seen the PSC register used very heavily by NGOs and others is good. I am not sure that we are in a position to draw any conclusions from an enforcement perspective, certainly not for the NCA, given where we are from the serious and organised perspective.

Mark Thompson: It has not yet filtered through into enough of our casework for me to give you a proper answer to that.

Alison Barker: From an FCA point of view, we would not enforce on that legislation anyway. The FCA's enforcement powers are derived from the Financial Services and Markets Act and they are very extensive. We have criminal powers as well under the money laundering regulations, but often what we do is enforce against firms that fail to meet their obligations to properly protect themselves by doing proper checks and due diligence, and do not have the right systems to do it. We have very extensive powers to do that already. That is where our enforcement effort is often focused.

Alison Thewliss MP: Finally, I want to ask about cases that are passed to you from Companies House, because the answers I have had to Parliamentary Questions are that it is not its job to do the enforcement,

and it passes things over to prosecutors to look at. Are you aware of any cases of those who have been non-compliant with the PSC register being passed on?

Donald Toon: Not to the SFO that I know of.

The Chair: We have heard evidence from Companies House, and the Committee is still interested in the capacity for Companies House to verify information. To what extent do any of you feel that you would be assisted by its having more powers, more ability or more resources to enable verification to take place, or do you think that is more your province?

Mark Thompson: It helps us if Companies House is able to filter out information and has a stronger intelligence function to provide information to us, but at some level I suppose it has to decide how much resource it is going to put into that. That is a matter for it, I guess.

Donald Toon: There would be value from our perspective in strengthening effective enforcement around the PSC register. I certainly can see that. Interestingly, I think there would be a lot of value from the international angle, and that would come out in the extent to which our analogues in other jurisdictions could make effective use of the PSC register in their own investigations and have confidence in that register. As a public register, it is open to other law enforcement agencies as well as to the general public.

The Chair: Thank you all very much indeed for attending. Before you go, would you like to draw our attention to any other aspect that might help to improve the Bill? If you cannot think of anything now, this is not the last chance. We will very much welcome any further thoughts you have in due course.

Donald Toon: There is nothing from my perspective.

The Chair: Thank you very much. It has been very helpful indeed. We are sorry to have kept you for slightly longer than the scheduled time.

Global Witness, Tax Justice Network, Transparency International UK (QQ 33 – 44)

Monday 18 March 2019

4.30 pm

Watch the meeting

Members present: Lord Faulks QC (The Chair); Peter Aldous MP; Baroness Barker; Emma Dent Coad MP; Lord Haworth; Mark Menzies MP; Mark Pawsey MP; Lloyd Russell-Moyle MP; Lord St John of Bletso; Alison Thewliss MP.

Evidence session No. 4

Questions 33 - 44

Witnesses

I: Duncan Hames, Director of Policy, Transparency International UK; Ava Lee, Senior Anti-Corruption Campaigner, Global Witness; Alex Cobham, Chief Executive, Tax Justice Network.

Examination of Witnesses

Duncan Hames, Ava Lee and Alex Cobham.

Q33 **The Chair:** Good afternoon. Thank you very much for attending the Committee. Just to warn you, if you do not know already, that this is being televised by webcast and reported by Hansard. You will be sent a transcript of any evidence that you give. If you want to correct it, you will have an opportunity to do so.

Perhaps we could start by each of you introducing yourselves and, if you want to—it is not compulsory—making a brief opening statement. In the course of questions, there will probably be a chance for most of you to say what you want, and please feel free to do so.

Duncan Hames: I am director of policy at Transparency International UK. We are very glad to see the draft Bill for your scrutiny. It represents something that has been government policy for three years. Indeed, the Government had committed to introduce primary legislation by April last year, so from our point of view, in light of the things we have found in our own research, the case for the Bill is increasingly pressing and urgent.

Ava Lee: I speak on behalf of Global Witness, an NGO that works to break the links between corruption, natural resource exploitation and human rights abuses worldwide. We have been investigating corruption for 25 years. Throughout that time we have consistently uncovered criminals, corrupt politicians and oligarchs using high-end property in places such as London to launder and invest dirty money. Yesterday, we published new research that revealed that over 87,000 properties are

owned anonymously in England and Wales. Of those, over 10,000 are here in Westminster. We estimate that the value of those properties is over £100 billion. We strongly believe that the draft Bill will help to deter the corrupt from using the UK as a safe haven to invest their criminal proceeds.

Alex Cobham: I am from the Tax Justice Network. We are an international network of economists, lawyers, accountants and others working on the scale of and the solutions to tax evasion and tax avoidance, and the international financial secrecy that underpins them. Our interest is less in fixing the UK and more in the role that the UK can play in helping to move towards stronger international standards in this area.

Q34 **The Chair:** Thank you very much. I would like to ask you a general question. Looking at the Bill, do you think that the thresholds that define a beneficial owner, under the crucial definitions in the Bill, are adequate, or do they need any alteration?

Ava Lee: From Global Witness's perspective, we are particularly concerned by the 25% minimum threshold. If I was a criminal using the UK property market to launder money right now, I would simply use the 18-month transitional period to restructure my ownership. I would get five companies, each of which owned 20% of my property, and then I would not be covered by the register.

That loophole is easy to exploit, and it is not just hypothetical. Global Witness has shown that corruption can flourish through shareholdings as small as 5%. I have a few examples. In Moldova, billions of dollars were stolen from Moldovan banks through secretive offshore companies. One of the key factors that helped to facilitate the scheme was that none of the offshore companies owned a stake higher than 5%, which meant that they avoided scrutiny by the Moldovan central bank. Since then, Moldova has lowered the threshold to 1% to try to stop that ever happening again in future.

A UK company purchased a stake in a gold mine in Azerbaijan that was allegedly controlled by the daughters and the wife of the Azeri president, President Aliyev. They ultimately owned only 11% of that company, so they would not be picked up.

Finally, in one of our investigations in Zimbabwe, we discovered that a diamond mining concession was allocated to a company called Mbada. Just under 25% of that company was passed on to a third party, Transfrontier, which has an opaque company structure based in tax havens. We are still unsure who the real owner behind Transfrontier is.

As regards to what other jurisdictions think about the issue, the European Commission has said that the 25% threshold is fairly easy to circumvent. The Nigerian Ministry of Justice has stated that the 25% threshold is being exploited by businesses to avoid full compliance with reporting rules.

We are not only concerned about the thresholds. We think there are challenges resulting from using a banding of the ownership stakes. Right now, there is a range from 25% to 50%, from 51% to 75% and so on. That will always result in imprecise figures and will make it really difficult to

compare data across other jurisdictions. That will make the job of law enforcement and investigative journalists much harder. Ideally, there should be no ownership threshold, and companies should be required to report their holdings of shares or voting rights in exact percentages.

The Chair: Do you have any views on that, Mr Hames?

Duncan Hames: We would acknowledge that one has to start somewhere. This is a threshold that features in the fifth anti-money laundering directive as well as in the UK's existing register of persons with significant control, and Ava ably outlined the limitations of that. Equally, one only has to look at some of the controversy around implementation of the Barker plan for EN+ to see that thresholds are a fairly blunt instrument for effecting policy objectives.

On reflection, given that the register would currently apply to 87,000 companies, as opposed to more like 4 million for the whole of the UK limited company register, we consider that the impact of requiring a lower threshold for registration for this particular register would be less. Indeed, given some of the research we have done and the heightened risk associated with this particular problem, it may be that the reporting effort is more proportionate. We would be very comfortable with Parliament choosing to set a lower threshold than the one that is applicable to the PSC register.

The Chair: Do you have any sort of threshold in mind?

Duncan Hames: Ten per cent has been suggested. Clearly, Committee members will be concerned about companies that do not reflect the characteristics of the kind of shell companies we are concerned about being used to envelop properties. In the past, when one has looked at the persons with significant control register, one has not wanted to place a burden on companies that have nothing to do with the kind of activities that become the money laundering that is of principal concern to us here today.

Alex Cobham: I would strongly favour low or no thresholds and the removal of bands. We are talking for the most part about how we report information that will take the same compliance costs in order to report. We can have better or worse information on the basis of those compliance costs. We could go with higher thresholds and large bands, and wait to see the same problems Ava talked about occur here, or decide at the outset not to do it, which seems rather more sensible.

Lloyd Russell-Moyle MP: Ava, you mentioned proportioning up. My understanding was that it was directly or indirectly, so if an individual just set up five companies and proportioned it, and the same individual had the beneficial ownership of those five companies, it would still need to be reported. Am I wrong in that assessment? The description you gave was of one person setting up another layer of five companies.

Ava Lee: In our experience, it might be one person and one of their daughters, one of their neighbours and one of their best friends. Ultimately,

the real beneficial owner would be the same person, but they would use family members and friends to do that.

The Chair: Are you at all concerned about the fact that, given what most of you are suggesting, there would be a different threshold for the PSC from the register of overseas entities?

Ava Lee: We would recommend that the threshold is also reduced for the PSC register.

Q35 **Emma Dent Coad MP:** I am quite concerned about the position of trusts and their being exempted from the Bill. You describe that in your submissions, but perhaps you could elaborate any concerns you have about it.

Alex Cobham: You mentioned the possibility of divergence between this and the PSC. At the moment, the bigger divergence is between overseas and UK entities. The remaining divergence would be the one with trusts. Underpinning all the work that you are doing in the Bill is the idea of a quid pro quo, that in order to benefit from access to UK markets—financial services, property and so on—there are responsibilities and the rule of law in compliance with regulation and taxation. If, in effect, we carve out certain types of entities from those responsibilities, we are creating, or leaving in place, the incentive to avoid or evade that regulation in taxation. In effect, we are creating a subsidy for a certain type of entity or overseas actor.

It seems to me that the spirit of the measure, if not yet the letter, is to remove that. We would say that, for any entity that is not an individual, this reporting should apply; both legal and beneficial ownership ought to be captured in the full beneficial ownership chain, not just the ultimate owner and entity at the end of it but the steps in between, in order that that beneficial ownership can be verified. Trusts should certainly not be a carved-out entity, unless we want to create a large incentive to use them even more than they are used already.

Duncan Hames: The OECD and the Financial Action Task Force both identify trusts as a money laundering risk. There will be a need to address trusts as part of the UK's implementation of the fifth anti-money laundering directive. Whether we are ready to do that in this legislation, or as part of our conformity to 5AMLD later on, will depend on how quickly this legislation ends up being tabled in the House, but at some point it will need to be addressed.

It is not just a theoretical question. In the Petrobras corruption scandal, a family member of one of those implicated used trusts to purchase two UK properties worth £8 million in 2015. If we leave big loopholes, at the same time as taking strong action in one area, we should not be surprised if they are fully exploited.

Ava Lee: For the register to deliver its policy aim, we would want it to ensure that all parties to a trust disclosed their entities. That would include the settlor, the trustee, the protector, the beneficiary, or class of

beneficiaries, and anyone who receives income from the trust, and that would be in line with the fifth anti-money laundering directive.

I have a couple of examples to add to Duncan's. One of them is Prince Jefri, the former Finance Minister of Brunei and the chair of the Brunei Investment Agency, the country's sovereign wealth fund. During his time in office, he siphoned $14.8 billion out of the fund and into his personal bank accounts, and at the same time undertook a prolific spending spree, which included buying property in Mayfair, as it often does, using an offshore company owned by a Jersey trust.

By using the trust to hide his ownership, he may have been able to hide the property from the BIA to prevent it being returned to the Brunei Government. Even if this register had been in force at the time of Prince Jefri's investments, it would likely not have captured information that would have supported the BIA to recover its assets. That case, which came to light only as a result of the Panama papers, demonstrates how the secrecy afforded by trusts can create huge legal barriers.

Another more recent example is that a UK court found that a discretionary trust was used by Zamira Hajiyeva, also known as Mrs A, the first recipient of a UK unexplained wealth order. That highlights how much trusts are used for these kinds of issues.

The Chair: You are saying that during the 18-month period it might be possible, if not to reorganise the proportions of your ownership, to set up a trust, or to do both or either.

Ava Lee: It probably has not been done so much to date, because it would be easier and cheaper to do it through an overseas company, whereas, once the Bill comes in, I think it will be more likely, if the loophole is not closed.

Q36 **Lloyd Russell-Moyle MP:** At the moment, property owned by a trust is in the name of the trustees, the custodians or the individuals. If trusts were included, how do you envisage the register reflecting that?

Alex Cobham: As Ava said, per the fifth anti-money laundering directive, rather than shareholders in proportion you would have settlors, beneficiaries and anyone who would take an income from the trust, so anyone with a potential stake would necessarily be identified. With a discretionary trust in particular, you do not know how the income or ownership will ultimately be divided, so everyone who has a potential stake in it would need to be identified. That is more or less what the fifth anti-money laundering directive does, so it provides a good model.

Lloyd Russell-Moyle MP: You get that from the tax, but my understanding is that the trust cannot be named in the Land Registry. The Land Registry names the individuals of the trust, or individuals nominated by the trust, so it is an individual's name. Just looking at the Land Registry, you would have no idea if it was an individual with that name owning the trust or if they owned it on behalf of a trust. At the moment there is no link. It just so happens that there is a basis of legal documents that requires that.

Are you saying that there should be a way in the Land Registry documents of identifying that a person is holding it on behalf of a trust and therefore the trust needs to be registered, or are you saying that all the names of the beneficial owners should be listed on the registry, because at the moment there is no ability for names of trusts to be on it? Have you thought about that, or has it not been thought of yet?

Alex Cobham: Not by me.

Ava Lee: I can come back to you on that.

The Chair: You mentioned the fifth anti-money laundering directive. As you quite rightly say, the question is about when the Bill becomes law, as we hope it does. Should the Government be anticipating what they will have to do anyway, or do you think it would be more appropriate for them to wait until after the directive comes into force?

Duncan Hames: It would not be more appropriate to wait. The Government are used to making changes to regulations in light of directives. They may not have to do it very often for much longer, but they know how to do it. It is much better to proceed with getting legislation that will help to improve our efforts to create a hostile environment for dirty money here. As you have heard, it is a non-trivial matter. If getting that right will take a bit of time, it is much better first to get on with the rest of the legislation required to introduce the register.

Q37 **Peter Aldous MP:** I would welcome each of your assessments of the beneficial ownership information that the register is going to hold. Is that information the most relevant to collect? Are there glaring omissions?

Duncan Hames: Broadly, we think it is right. It is informed by practice on the existing register for limited companies. One addition we would make, which I hope we will come to when we discuss verification, is a piece of information that enables one to hold accountable those who are submitting information to the register. That is likely to be the name of a regulated entity in the UK acting on behalf of a company. Its regulators may hold it to account if it is found not to be discharging its anti-money laundering duties appropriately in the course of that activity.

The other thing I am quite keen to get across is the use case for the register. It is not just some kind of nosiness on behalf of civil society and potentially Parliament. The UK's company register, the public register of persons with significant control, is incredibly well used. The volumes of downloads of information from that register are enormous, so there are clear benefits for people trying to do business in our economy from having confidence in information that is readily available to them.

You will speak to law enforcement later. You will have heard their estimates of the scale of the money laundering problem in this country. We have done research. You have heard from Ava about the number of companies being used to hold property in the UK. We did research for Thomson Reuters that identified, thanks to the information made available in major leaks such as the Panama papers, nearly 1,000 politically exposed persons connected to those companies.

In our efforts to create a hostile environment for dirty money in the United Kingdom, we need to improve our regulatory environment. We believe that having information available on the register would be a very useful step forward, certainly for those who are not already in a more privileged position for accessing information overseas, such as law enforcement or Her Majesty's Revenue and Customs, but who none the less, as we see from the work of investigative journalists, have a very real contribution in helping to make life very uncomfortable for those looking to hide the proceeds of crime and corruption in the UK property market.

Ava Lee: I echo what Duncan said. It is to be hugely applauded that the information in the register will mirror that of the PSC register, and it is truly fantastic that it will be in the public domain. We have done lots of work on the PSC register since its introduction. To speak to what Duncan said, we know that there are over 2 billion data searches of the PSC register each year, compared with the UK exchange of notes system for overseas territories and Crown dependencies, which was used just 70 times since 2016 and 2018. The numbers speak for themselves. There is a huge appetite from people wanting to access that information.

However, we also know from our work on the PSC register that its effectiveness could be undermined by the fact that self-reported information collected by Companies House is not subject to systematic verification or scrutiny.

The Chair: We will come on to verification in a moment, but you make an important point.

Alex Cobham: I echo all of that. On tax, there are two clear ways in which the information is critical. One is simply that, bypassing ownership of an anonymously owned company that owns UK property, capital gains tax is no longer something to worry about.

More broadly, we know from the evidence that the IRS has put together in the States that compliance rates, when there is an alternative notification of information, are about seven times higher, and that is for what is probably still the most powerful tax authority in the world, which could get any information it wanted.

The difference is in whether that information is automatically available to it. The fact that this measure puts the information there means that we can expect it to have a very substantial impact both on tax evasion and tax avoidance, and on the use of anonymously owned companies in the UK.

Q38 **Alison Thewliss MP:** Duncan, you said it was important to add nationality, including dual nationality, and the relationship to a politically exposed person to the information recorded on the register. Can you tell us a wee bit more about why that would be particularly important?

Duncan Hames: Our particular interest is in corruption and the abuse of entrusted power for private gain. In that, politically exposed persons—those who hold public office, or are closely connected to them—are a heightened risk for laundering the proceeds of corruption, whether through

embezzlement, kleptocracy or particularly lucrative bribes in benefit to them from a particular government decision.

With that heightened risk comes a justification for and a benefit in having more information disclosed in those cases. I think I mentioned research we did a little over 18 months ago that found 986 politically exposed persons associated with overseas companies that own property. We only had that number from major leaks such as the Panama papers, so it is very likely to be a gross underestimate of the proportion of the 87,000 companies where that is the case.

The Chair: Do you think it is useful to collect information on the managing officer when beneficial owners cannot be identified for one reason or another? There are exceptions where they may not be able to be identified.

Duncan Hames: That is something we are coming to in relation to foreign government-owned property.

The Chair: More generally, we are talking about what information should be provided about beneficial owners. There are exceptions in the Bill as to when beneficial owners cannot be identified. Do you think it is useful to have information about managing officers? It is obviously better to have information about beneficial owners.

Duncan Hames: There is an exemption in the persons with significant control register, and it is not widely used. Therefore, we are very comfortable about that exemption. We would be very wary about a much wider exemption being drawn on this register, and therefore the scope for providing the additional information becoming rather limited, unless you are suggesting that we might collect it in cases where the 25% threshold was maintained and no beneficial owner was declared.

The Chair: I think we are talking about where you cannot find information about the beneficial owners, but the managing officer might be the route by which you are able to find that information; you have somebody to go to, as it were.

Ava Lee: We know from our work on the PSC register that only about 2% of companies said they had not been able to find a beneficial owner, so it is very small. There should be follow-up by law enforcement and Companies House for beneficial owners to be found, and potentially in the interim it would be useful for that information to be recorded, but not as something instead.

Alex Cobham: There seems to be a very legitimate question about whether the UK would want companies that are so badly run that they do not know who owns them to be allowed to do business here. I do not think I would want to buy a house from a company that did not know who owned it, so I am not at all clear whether we would want them to be doing business more widely.

Q39 **Lloyd Russell-Moyle MP:** A second ago we touched on exemption from registration requirements by virtue of the ownership structure. Under the Bill, the Secretary of State would be able to identify and exempt types of

entities case by case. What is your take on exemptions in general? I guess you have already touched on how they are used under the current arrangements.

Duncan Hames: I gave an opinion on that just now. Foreign Governments are a particularly interesting case, because a Government will be very conscious of their inability to follow through with sanctions and their requirements. None the less, we would argue that the reporting requirement should be no less stringent, not least because property that is owned by another country's Government will in a number of cases be at particular risk of the kind of corrupt acts I described. We often see state-owned companies and enterprises as part of the arrangements whereby public assets leak into private hands. Even if there is an acceptance that you cannot pursue this information while it is the property of a foreign Government, it is very important that at the moment it ceases to be the property of a foreign Government that event triggers the release of information that would be entirely relevant.

Lloyd Russell-Moyle MP: Do you think that having a foreign Government exempted is probably the kind of thing we need to accept, or would there be a way of having a named individual who was responsible in the case?

Duncan Hames: I am not supporting an exemption; I am acknowledging that the means of sanction might not be as open to us as otherwise. We should still require the information.

Lloyd Russell-Moyle MP: If the exemption did not exist, what would the beneficial ownership information for a foreign Government look like? Would the registered representative be the ambassador in this country? Would it be the Head of State? Would it be Ministers? I am generally interested in what you think it would look like.

Alex Cobham: I am not sure that a state can be considered a registrable entity for this purpose. There is no beneficial owner behind it. In a sense, accountability in this case is both ways, because you would also expect or hope that it would support the accountability of that Government to their own people.

Ideally, you would be looking to link that with published information from that state that it was effectively declaring its ownership at home as well as in the UK register, partly to confirm the quality of the information but also for accountability at home. I do not see a loss, as it were, in having the name of the state officially.

Lloyd Russell-Moyle MP: Schedule 2 set outs the grounds on which some beneficial owners may be exempt. It is a rather complicated list, but it includes when you have an interest through one or more legal entities—if you create lots of structures beyond, at more than one level—whether it is not held in all of those structures, and other points that would exempt them. Do you feel that that creates quite a complicated system of exemptions that people could take advantage of, or not?

Ava Lee: I think so. From my perspective, the exemptions from the PSC register, as it currently stands, solely for people at serious risk of violence or intimidation seem appropriate for the property register as well.

On the point about foreign Governments, I think it would be much more useful if it was literally named as the state so that you could see the breadth of what states own. Having them separated is probably less useful.

The exemption should go no further than in the PSC register. It should be specifically laid out within the legislation and granted case by case in the same way it is in the PSC register and be subject to the same reporting requirements as the PSC register. That means that the number of successful applications would be published on an annual basis so that we can see what the scale is.

Lloyd Russell-Moyle MP: Is exemption the right word in this case, or should it be just that the information is withheld from the public but the state records the information? For example, in Britain there are three forms of voter registration. One is the public commercial register; one is the closed register, but parties can get it; and one is a secret register, in effect, where you are given a number that nobody knows about, so that you can vote. Would that be suitable for people who fit into the class of violence, or is exemption the right kind of thing, and you just do not need to fill in the paperwork?

Ava Lee: I think what you have laid out is what we would support.

The Chair: Generally speaking, there is an argument that exemptions should be laid out specifically on the face of the Bill rather than left somewhat in doubt depending on what the Secretary of State might decide. Do you three consider that they ought to be more narrowly and specifically described in the Bill?

Duncan Hames: Yes. I think we have given you pretty limited circumstances where we think they are appropriate, so I see no reason why that could not be the case.

Q40 **Lord Haworth:** How can we ensure that the information held in the register is up to date? I am aware of the provision in the draft Bill for an annual update, but there is a suggestion from some quarters that, as things change, it should include an event basis. I would be grateful for your thoughts on that.

Alex Cobham: We agree that the risk of annual reporting being exploited is fairly clear. One way to turn that around is to think of the register as a list of active entities, so that when you are properly registered you are able to benefit from things such as the legal protection of contracts and your ability to take part in transactions; the register becomes constitutive rather than declarative, so the incentives are fully aligned. Anyone who wants to use the overseas entity has an incentive to make sure that it is properly registered and therefore on the active list. If they are found not to have kept it up to date, that becomes in question.

The Chair: Do you foresee any difficulty in defining what an event basis might be?

Ava Lee: I do not. It would be the same as the PSC register.

The Chair: It just mirrors the PSC.

Ava Lee: Yes. Having it as an annual reporting standard, as opposed to triggered by events, would put UK companies at a competitive disadvantage and might encourage people to get foreign companies because they would have to register less regularly.

Duncan Hames: We certainly support an event-driven update requirement. If we do not do that, anyone seeking to take action on the basis of the information available on the register cannot have confidence.

The Chair: They would not have full information.

Duncan Hames: Yes.

Ava Lee: In conversations we have had with Companies House, they said the move from annual to event-driven reporting for the PSC register was a big boost for proactive compliance, and has been key in making it possible for Companies House to follow up with companies on their PSC filings. We have evidence that it is working well on that register.

Lord Haworth: You could in theory have an event-based update and an annual check as well. Would that be necessary? If an event has triggered it, would it need an annual update as well?

Duncan Hames: It becomes an opportunity to confirm that there have been no events in the year.

The Chair: So it is okay.

Duncan Hames: Yes.

Q41 **Mark Pawsey MP:** One or two of our witnesses have already started to touch on this question. There is obviously no point in the Government creating the register if it is not accurate. We know that it will mirror the PSC register, so what are your views on the ability to ensure that the data are accurate? What can we learn from the PSC register?

Alex Cobham: Verification is crucial. If there is an opportunity to set a path for the PSC register to be strengthened on the verification side, that is very welcome. It is crucial that you have information that is cross-checked regularly with other government information.

Mark Pawsey MP: Are you happy that there are powers in this legislation to require that to happen?

Alex Cobham: No. That is perhaps the key area.

Mark Pawsey MP: Is it a weakness of the Bill, in your view?

Alex Cobham: Indeed.

Mark Pawsey MP: How would you like to see it changed?

Alex Cobham: A lot can be done to align it with other sources of government information, but a key piece to make that work is having taxpayer identification numbers so that we know we are talking about the same John Smith, born on 31 August 1975, when we are looking at the register.

With the PSC, you often get into algorithms using fuzzy logic to try to line that up. That should not be what we rely on. Knowledge of taxpayer identification numbers is not terribly complex.

Mark Pawsey MP: Ava, do you think that Companies House should be required to verify the accuracy of the information?

Ava Lee: Yes, absolutely. We think it should be given more resources and the powers to do that, including powers not just to verify but to police the register when it is not being adhered to properly.

Mark Pawsey MP: Would that be too radical a change from what the Government are intending to do?

Ava Lee: No. It would be a positive move forward. We know from the PSC register that over 335,000 companies have declared that they have no beneficial owner, which could be because they are below the 25% threshold; 345 companies have a beneficial owner who is also a disqualified director, and, while that is totally legal, right now there is no one to follow it up; and 7,848 companies share a beneficial owner and officer or a registered postcode with a company suspected of being involved in money laundering. Again, right now there is no one to follow that up. We would like to see Companies House given the mandate to do that job.

Mark Pawsey MP: Duncan, if there is no power in the Bill to make sure that the data are accurate, is it not a bit of a waste of time?

Duncan Hames: The advantage of the public register of persons with significant control is that there have been many eyes on the register, including those in front of you today. That has enabled us to challenge Companies House and the Government on the quality of the register, which appears to have produced a reform agenda that seeks to remedy that problem. It would still represent progress, but we should use what we have learned from that register to try to get it right first time on this one. We think that there are obligations not just on the registrar but on those submitting information to the register.

Mark Pawsey MP: How would you mandate those submitting information to ensure that the data are accurate?

Duncan Hames: We would require a UK professional registered with a UK anti-money laundering supervisor to verify the beneficial ownership information that is being filed for any overseas entity seeking to buy UK property.

Mark Pawsey MP: What if they simply ignore that requirement? What powers would you want to see given, and to whom, to enforce that proposal?

Duncan Hames: There are already powers in place in that regard. They would be entities that are already supervised under our existing anti-money laundering regulations, whether Her Majesty's Revenue and Customs, the Financial Conduct Authority or other supervisors, or indeed those overseen by OPBAS. There are bodies empowered to take sanctions against professionals who are failing to uphold Britain's anti-money laundering defences, which is exactly what would be happening in the case you describe.

Mark Pawsey MP: Do either of the other witnesses have other proposals that would make certain that this register is up to date, accurate and useful?

Alex Cobham: I would go back to the idea of it being a list of active entities, so that the validity of contracts would be in doubt if people were seen not to have complied. The impetus would be very much on those filing to make sure their filing was correct in order for their subsequent actions to benefit from the protection of the rule of law.

Mark Pawsey MP: Ava, do you have anything further to add?

Ava Lee: No, but we support Duncan's suggestion to require a UK professional registered with a UK anti-money laundering supervisor to verify the beneficial ownership information that is being filed for any overseas entity seeking to buy UK property.

Q42 **Alison Thewliss MP:** I want to ask about something that seems to be a bit of a gap in the system. If you are a professional organisation registered with OPBAS, there are things you have to comply with, but if you are not registered with a professional body to carry out your work, is sufficient work done by HMRC at the moment to fill that gap, and could more be put into the measure to ensure that that happens?

Duncan Hames: There are shortcomings in our anti-money laundering supervisory regime. They are well set out in the House of Commons Treasury Select Committee report, which I think was published last week. HMRC has itself been challenged by that Committee on that. I think the answer is to improve the regime.

There is also a problem, which we identified in our report *Hiding in Plain Sight,* when the trust and company service providers forming companies, and therefore providing information to Companies House, are not necessarily UK entities. We understand that in a number of the most problematic cases Baltic banks have been acting as trust and company service providers to their clients, and they fall outside the UK anti-money laundering supervisory regime, which is why in the suggestion I made to your colleague a moment ago I specified that the professional held accountable for the quality of information being submitted to the register should be registered with a UK anti-money laundering supervisor.

The Chair: I suppose that could be said to be a suggestion that you might want to read across into the PSC.

Duncan Hames: Yes, indeed.

The Chair: What about the possibility, for such information, of having a duty to prevent? It is something one can pick up from the bribery legislation, for example. Do any of you have a view about that?

Duncan Hames: The Government issued a call for evidence on extending corporate liability in that manner, using failure to prevent offences such as that in Section 5 of the Bribery Act. We are awaiting the Government's response to that call for evidence, which I think is now two years old. We believe there is a case for reforming corporate liability in UK law in that way, and money laundering is an area where there would be particular benefit.

Some parts of the regulated sector are very active in reporting suspicious activity. In particular, banks produce those reports in large volumes, but the proportion of suspicious activity reports filed by other professionals, such as conveyancing solicitors or estate agents, is far smaller. Indeed, there have been times when transactions were reported as suspicious by banks, and advisers working on those same transactions did not see fit to file them as suspicious activity. Clearly, there is a deficit in the responsibility that some parts of the private sector are taking in relation to mounting those defences to the UK economy.

Q43 **Mark Menzies MP:** Do criminal sanctions in the draft Bill provide sufficient deterrent against non-compliance?

Duncan Hames: The fines in the sanctions outlined in the Bill are not sufficient. We are talking about premium property. The fines applicable to Scottish limited partnerships that have failed to file beneficial ownership information are supposedly £500 per day, although as far as I can tell that is an entirely notional figure because the fines are not being imposed. If you apply that to premium property in a corporate envelope worth in excess of, say, £5 million, it is likely to be appreciating in value even faster than a fine accumulating at £500 a day. Using fines, even if you impose them, which does not seem to be the case at the moment, is a totally insufficient deterrent for someone seeking to hide dirty money in a high-value property asset.

Ava Lee: We would echo that entirely.

Mark Menzies MP: Given that overseas entities are by definition based abroad, is a criminal offence punishable by imprisonment practicable?

Duncan Hames: That might be a good question to put to your next panel. We have been advocating using existing anti-money laundering regulations to place accountability on people who fail to provide accurate data to the register, and there, ultimately, you have the potential of imprisonment as part of the sanctions available.

The whole question of what are effective sanctions for economic crime is a challenge. Even if you get what looks like a very intimidating sanction in law, the question arises: will law enforcement seek to have it imposed, and will the courts consider it a proportionate response to the wrongdoing that is brought before them? It is not even as simple a matter as whether it looks credible or appropriate to you as the legislation is being passed.

Mark Menzies MP: Although the overall aims of the Bill are admirable, we have the old law of unintended consequences. Having looked at the Bill, are there any circumstances you can see as a result of the Bill in its current form that would have negative implications for people we do not want it to have an impact on?

Alex Cobham: Few good things happen when behaviour is more hidden, in tax and elsewhere. The only thing you might worry about is that the more you have requirements for registration that demonstrably are not met with subsequent response or punishment, the more you put into question the credibility of Companies House or the other parts of the arrangement.

There is an argument that we have undergone severe regulatory austerity. We have not changed the rules to weaken them; we have simply changed the ability or willingness to enforce them in a lot of areas, and the process of doing that ultimately is pretty much on a par with taking away the rules. In this case, we are adding rules that might not be enforced, and the ultimate effect of that might be to weaken rather than strengthen belief in the norms of respect for the rule of law. Whether you could load that into the Bill is not clear; it is just a wider caution.

Duncan Hames: We touched on unintended consequences earlier, in the discussion of the 18-month grace period. I understand why officials may have drafted that to be as reasonable as possible with the introduction of the legislation, but I would argue that, given that the Government committed to introducing legislation that would have this effect at the time of the London anti-corruption summit nearly three years ago, quite a lot of notice has been given already.

An unintended consequence of the 18 months is the sort of thing we were discussing earlier: people seeking to continue to hide a list of assets in the UK and using that grace period to rearrange their affairs. It is a sad fact that the 87,000 figure Ava quoted earlier has been pretty consistent throughout the period during which organisations such as ours have been campaigning on the matter. Those who have used these vehicles to hide dirty money in the UK property market have not to date felt any kind of heat on their collar to cause them to rearrange their affairs, and at the moment they are getting told by the Government that they will have plenty of time, even after the legislation has come into effect, to cover their tracks.

Lloyd Russell-Moyle MP: The biggest sanction in the Bill is that you cannot sell on your property. We heard in a previous evidence session that one way of getting around that would be to sell the shares in the company, and then you would not be restricted on the sale of the property. Is that

something you would be worried about or that you have seen in some of your investigations into money laundering? Rather than avoid registering here, people just transfer shares or proportions of company ownership.

Alex Cobham: That is already the position we are in. To the extent that it continues to be an issue, it will still be partly addressed by this measure. It goes back to setting norms. Do we think it is okay to own property anonymously through offshore entities, or not?

On the point about whether people could enforce prison sentences, such a great deal of this is round-tripping that there is more enforcement here than we might think, but the question of whether you maintain it through anonymity, even with further regulation coming in, is clearly an issue. If we put into question the validity of any contracts made where ownership is inappropriately registered, we start to create something that is more than just a cost of doing business; it is uncertainty over the entirety of the transaction, which becomes a more significant deterrent.

Ava Lee: If we were in a position where there were updates based on events, and you could see that someone had refused to register the beneficial ownership of the property and then passed on the shares that should be updated because of that, it would be a red flag that it should be pursued by law enforcement.

Alison Thewliss MP: On Duncan's point about Scottish limited partnerships, when I asked a parliamentary question last week to inquire how many people had been fined, I was referred to an answer in November that had referred me to an answer to a question I tabled in June, all of which said that nobody has been fined, so I agree that there is an issue with enforcement.

Q44 **The Chair:** A number of helpful suggestions have been made, which we will take on board. We are moving on to the next session where we are going to hear about sanctions. Would it be fair to say that, despite the shortcomings you have identified, nevertheless you think this is the correct direction of travel?

Duncan Hames: Yes.

The Chair: Are there any other particular changes you would make, other than the ones you have discussed? If you cannot specify them now, by all means write to us later. Thank you too for what you have already put in writing.

Duncan Hames: We have a full written submission for you. I mentioned at the beginning that the Government's anti-money laundering action plan involved introducing this legislation in 2018. Unfortunately, nothing can be done about it now, but the delay of a year in the legislation finally being enacted is not one that we wanted. Therefore, we hope there will be no further unnecessary delay.

The Chair: Thank you very much indeed.

HM Land Registry, Companies House, Land Registers of Northern Ireland, Registers of Scotland (QQ 13 – 22)

Transcript to be found under Companies House

Investment Property Forum, Bright Line Law, Royal United Services Institute (QQ 1 – 12)

Transcript to be found under Bright Line Law

The Law Society of England and Wales, Law Society of Scotland, Society for Licensed Conveyancers (QQ 23-32)

Monday 11 March 2019

5.15 pm

Watch the meeting

Members present: Lord Faulks QC (The Chair); Peter Aldous MP; Baroness Barker; Emma Dent Coad MP; Lord Faulkner of Worcester; Lord Haworth; Mark Menzies MP; Mark Pawsey MP; Lloyd Russell-Moyle MP; Alison Thewliss MP.

Questions 23 - 32

Witnesses

I: Valerie Holmes, Chair, Society of Licensed Conveyancers; John Sinclair, Member of the Property Law Committee and Property and Land Law Reform Sub-Committee, the Law Society of Scotland; Philip Freedman CBE QC (Hon), Member, Conveyancing and Land Law Committee, the Law Society of England and Wales.

Examination of Witnesses

Valerie Holmes, John Sinclair and Philip Freedman.

Q23 **The Chair:** Thank you very much for attending this Committee. I think that some if not all of you were here for the preceding session, so you have an idea of how the Committee functions. Your evidence will be recorded and you will have a chance to correct the transcript if anything in it does not fairly represent what you said in answer to questions. The proceedings are being webcast and they will be in *Hansard*.

I invite you briefly to introduce yourselves, explain how you come at this Bill and make any preliminary remarks. Just before any of you ask any questions, I have to declare an interest. Although it was for nothing connected with this, I have been instructed by Mishcon de Reya in the past.

Valerie Holmes: I am the current chair of the Society of Licensed Conveyancers and am here today representing it.

Philip Freedman: I am a property law partner at Mishcon de Reya. I am a member of the Conveyancing and Land Law Committee of the Law Society of England and Wales, which, as most of you will know, is the professional body that supports and represents 180,000 solicitors and sets professional standards. I am also on the editorial board of the Law Society's *Conveyancing Handbook*.

I would like to make a couple of remarks, if I may. The Law Society supports the aims of the legislation and is aware of the need to take further steps against money laundering. We are grateful to the Government for consulting us some time ago at the early stages of preparation of the

legislation and for taking on board many of the points that we made at the time on protecting innocent parties who have to transact with overseas entities, whether as a buyer, a seller, a mortgage lender, a landlord or a tenant.

In general terms, we are happy with the draft Bill, but we have a few concerns. Perhaps I may mention them.

The Chair: Please do.

Philip Freedman: First, if the overseas entity is selling property, granting a lease or creating a mortgage in favour of a lender, as the Bill is drafted there is an anomaly between the position where the overseas entity is already registered at the Land Registry as the owner of the property and the case where it is not yet registered because it may have only just bought the property and have applied for registration at the Land Registry but registration has not yet been completed.

In the first case, where the overseas entity is already registered as the owner of the property, the provisions of the legislation as drafted are that if the Land Registry has placed a restriction on the land register that there cannot be a disposition unless the entity is up to date in its registration at Companies House, then—but only then—would a disposition by that entity be unlawful, prohibited and unable to be registered at the Land Registry.

A buyer, a tenant or a lender doing business with that entity will see from the register whether they have to be worried about this legislation. If there is no restriction on the register, they can go ahead and buy the property, take the lease or grant the mortgage and forget about the legislation. That is governed by paragraph 3 of new Schedule 4A.

On the other hand, if the entity has only just bought the property, it is allowed under the Land Registration Act to deal with the property before it is registered at the Land Registry. That has always been the case since 1925. Paragraph 4 of new Schedule 4A says that the transaction, the disposition, the mortgage, the lease or the transfer will be prohibited unless the entity, if it is required to have lodged the details at Companies House, has done so.

In such a case, there will be nothing to prompt the buyer, the tenant or the mortgagee other than perhaps their awareness of the existence of this legislation. They are required to find out whether the entity should be registered at Companies House, unlike in the case where the entity is already registered as owner of the land and you just have to look at the land register and somebody else has decided whether the entity should have been registered at Companies House—because the Land Registry, Companies House or someone will have made that decision and put the entry on the register.

In this case, where the property has been bought but the ownership has not yet been registered, the burden is placed on the buyer, the mortgagee or the tenant to ask questions and try to work out for themselves whether their seller, landlord or borrower should be registered. There seems to be

no mechanism for doing that, for working out the answers to the question, apart from getting someone to look at the legislation and asking questions of the entity, its legal representatives or somebody else.

Unrepresented parties may be dealing with this. For example, a tenant may be trying to rent a little shop in a building that an overseas entity has just bought and wanting to sign a seven-year or 10-year lease—something that has to be registered at the Land Registry. They may not be legally represented because they have a small business and have decided just to get a surveyor to look at a lease or whatever. They may have no idea that this legislation is there and is saying to them, "Your lease can never be registered at the Land Registry", because the legislation as drafted is saying that, although the disposition is not invalid, it cannot ever be registered at the Land Registry.

The Chair: That is very useful. I suppose that caution would be exercised by professional advisers, but you are particularly concerned about those who are unrepresented.

Philip Freedman: Yes. Finally, the Law Society has looked at the corporate provisions in relation to some of the information issues relating to different management structures of offshore entities and has made detailed comments on some of those provisions.

The Chair: The representation you made during the consultation was very helpful.

John Sinclair: I am a consultant at Burness Paull. I am here representing the Law Society of Scotland. I am on the Property Law Committee and on the Property and Land Law Reform Sub-committee at the Law Society of Scotland.

As an opening statement, I would simply say that the Law Society of Scotland fully supports the aims of this legislation and is keen to do what it can to be part of generating legislation that is effective and efficient in combating money laundering.

Q24 **Mark Pawsey MP:** I want to follow the questions of the Chair and some of the points just made by Mr Freedman about awareness of this legislation. As professional bodies, you are aware and have made representations, but how aware is the average practitioner, solicitor or conveyancer that this legislation is on its way?

Valerie Holmes: At present, I do not think that a lot of conveyancers are aware of this new legislation and the Bill that is looking to go through. However, the Society of Licensed Conveyancers has a quite a large membership, both in solicitors' practices and licensed conveyancing practices. We send out quite a lot of information to our members, so we would look to channel it through our membership to promote evidence and information on this Bill.

Mark Pawsey MP: There has been quite a lot of publicity about money laundering.

Valerie Holmes: There has been a lot of publicity about money laundering.

Mark Pawsey MP: But you do not think that your members generally are aware that this legislation is on its way.

Valerie Holmes: I do not think they are generally aware of this specific legislation, but they are totally aware of the anti-money laundering—

Mark Pawsey MP: Mr Freedman, are solicitors more in the picture?

Philip Freedman: Some will and some will not, but again the Law Society of England and Wales has ways of disseminating information. It has a periodical, the *Law Society Gazette*, email distribution to members of the property sector and a regular weekly letter by email from the president of the Law Society drawing attention to major developments. So it has means of disseminating the matter.

Mark Pawsey MP: Mr Sinclair, moving on from the advisers, how aware are the overseas entities themselves that they are going to be captured by this new need for registration?

John Sinclair: I do not know. It is as simple as that.

Mark Pawsey MP: Okay. Valerie Holmes and Mr Freedman, you, or your members, deal with these people. How aware might they be that they are going to be subject to additional regulation?

Valerie Holmes: I do not believe that they are aware, not at this time.

Mark Pawsey MP: They do not know anything at all about it? Okay.

Philip Freedman: I think it depends. There are two situations. One is where you have a trading company based somewhere else that wants to acquire premises over here in a perfectly normal transaction. The other situation is where you have entities that have been set up in tax havens for various reasons. They will probably be aware, because the operators of those companies—in the BVI, Luxembourg or wherever—will have knowledge of changes in the law that affect their sector.

Mark Pawsey MP: Do you think that once the legislation is enacted, word will quickly get around, because part of the objective here is for it to be a disincentive—we do not want money being laundered in UK property? Do you think the Bill will achieve that objective?

Valerie Holmes: I personally do, yes. I think it will make a massive difference for the conveyancing sector in so far as ensuring that we, our insurers and the public are protected more.

Philip Freedman: In general, yes. When we had initial discussions with BEIS about this, we asked, a question that I note was asked previously, how one can verify the truth of the information that you get; the Donald Duck example was given.

The response that we were given at the time was, “It’s not critical that the information is accurate. It’s critical that the information is being required. Even inaccurate information would be useful to the police and the investigative authorities”. The regime itself may well discourage money laundering, even if the information is not given accurately.

Q25 **Mark Pawsey MP:** Mr Sinclair, your organisation has had an opportunity to look at the Bill, and I am sure it has commented on it. There are three areas where the Committee would like your views collectively. One is about the use of the term “significant influence” as an indicator of who is a beneficial owner. Is that adequate? Is it appropriate in the legislation? Is it clear what that means?

John Sinclair: On its own, I think it is a difficult concept. In the context of the PSC there is scope for statutory guidance to support the meaning of “significant influence”. In the Register of Controlled Interests in Land there is additional statutory language to expand upon that term. I think it is a term that will acquire more detailed meaning as time goes on, but at present I anticipate that the idea of either having the right to or actually exercising significant control is one of the areas which our members will have difficulty knowing whether or not, or how, to test if they are required to do so.

Mark Pawsey MP: Mr Freedman and Valerie Holmes, do you share that view?

Philip Freedman: Yes. Plainly it is a tricky area. We are already required to look at it, because we are already required by money-laundering regulations to ascertain who the beneficial owner might be and how the entity is controlled. We also have an obligation as solicitors to check the capacity of our client before they enter into a property transaction to ensure that we know whether they are the legal entity or not in whichever place they are incorporated.

So some of these concepts are already used for other purposes, but there are some grey areas.

Mark Pawsey MP: And your members are happy with the term “significant influence?

Valerie Holmes: I am. I agree exactly with what you have just said. I believe that making more information available about who the beneficial owners are can only be of benefit to the UK.

Mark Pawsey MP: Okay. In the schedule defining a majority stake causing a person to be a beneficial owner, is that term sufficiently clear, in your view?

Valerie Holmes: Having read through it both as a lay person and as a conveyancer, I believe there is enough clarity there.

Mark Pawsey MP: Gentlemen?

Philip Freedman: I also have to confess to being a property lawyer, not a corporate lawyer, so this is not really my field.

John Sinclair: I would agree, but I also note that there is a difficulty that practitioners will have with this legislation. I am a Scottish lawyer and Mr Freedman is an English lawyer. I can advise on Scots law, but I cannot advise on legal structures in foreign jurisdictions. One of the issues that arises with this Bill is that you will have a UK Act being advised on by Scottish, English and Northern Irish solicitors but which will at some point require a knowledge and understanding of legal structures in a foreign jurisdiction. The concept of 25% of votes or 25% of shares is relatively simple, but it is a relatively simple concept only when we apply it to what we know. The Bill is likely to be applied to a range of legal entities that are wider than those that we are used to dealing with.

Mark Pawsey MP: So what are the natural consequences of that? What will it mean in practice?

John Sinclair: The practical consequences are that if the solicitors that are associated with the submission of an application form feel the need, to a large extent, to test the information that they are being given, in a number of circumstances they are likely to end up obtaining opinions from foreign jurisdictions.

Mark Pawsey MP: And will your members act on the side of caution so they will actually end up registering overseas entities when they may not actually fall within the rules? Is that what you are saying?

John Sinclair: Yes, I think that is what the outcome will be where there is uncertainty as to whether the organisation is an entity in terms of the Act. As an adviser, you are likely to err on the side of caution and make an application to Companies House. If you err on the side of caution, what can go wrong? You end up either with the application being rejected, but at least you have a paper trail showing that your client has made the application, or with the application being accepted when perhaps it should not have been. There is little downside in having over presentation on that trail.

Mark Pawsey MP: Mr Freedman, do you see that danger?

Philip Freedman: I agree with that. There is evidence for this in the suspicious activity reports, where solicitors are so fearful of being sent to prison if they do not report something that might just be reportable that they report all sorts of things just to be on the safe side. That is being looked at by the Government at the moment. There is a risk that people will be cautious.

Mark Pawsey MP: Do you think therefore that the number of registrations that are anticipated is being understated because practitioners will be cautious and register things that may not actually need to be registered?

Philip Freedman: I think first of all they will want a legal opinion from lawyers in the jurisdiction in which the entity exists, which is very often the case at the moment. It adds to the costs of the transaction, but many overseas buyers are aware that they may have to produce these and bear the cost. That would be the first step: we would want to know from a lawyer practising in that jurisdiction whether the tests had been met where there

was an entity that was registrable under this law and who the beneficial owner was, and then use that as the basis of the application.

Mark Pawsey MP: Valerie Holmes, the Bill requires overseas entities to take reasonable steps to identify beneficial owners. Do you think the definition of "reasonable steps" is fully understood by your members?

Valerie Holmes: Yes, I believe that "reasonable steps" is understood fully, mainly because of the anti-money laundering requirements, due diligence and ID checks. If anything, if you were acting for a purchaser and an overseas entity was a seller, you would carry out your usual due diligence and make inquiries. Under Dreamvar you would rely on the solicitor's responses.

Q26 **Lord Faulkner of Worcester:** I have a question first for Ms Holmes. Will it be obvious to your members who are acting for purchasers whether the overseas vendor is a legal person under foreign law?

Valerie Holmes: Among the first things that we would obtain from the seller solicitors are official copies of the registers of title, which go back to the Land Registry and the information that it registers. If it was in the transition period when the overseas entity was not registered with a restriction because of the requirements not having come in at that time, we would not be aware so due diligence would apply there in carrying out inquiries. But once the Bill came in and the restriction was there, it would be quite evident from the proprietorship register that the seller was in fact an overseas entity.

Lord Faulkner of Worcester: Following from that, Mr Sinclair, your evidence expresses concern about the definition of "legal personality". You would rather have a statutory definition. Could you expand on that?

John Sinclair: I will give you an example. In Scotland, a partnership has a separate juridical personality—it is a separate legal entity. In England, as I understand it, it is not. Given that we can see that this situation exists in the UK, where something north and south of the border is equally badged as being a partnership but, for the same word, one would qualify as an entity under the Act and the other would not, it is easy to anticipate that equivalent situations will arise in foreign jurisdictions where it will not be clear whether or not an entity is a legal entity.

If I may go off at a slight tangent, monetary costs will be incurred not just in checking that the overseas entity is registered and has done its updates. If an entity or an organisation clearly has not been registered but has an overseas component to it, will there be any way of capturing the information that it has been tested by Companies House as being an overseas organisation but not an overseas entity? If not, every time that company tries to do something with its land, the party dealing with it is likely to want to test that over and over again.

Q27 **Lord Faulkner of Worcester:** I would like views from each of you on whether there should be some sort of appeal mechanism if there is a dispute. There is no provision within the Bill for an overseas entity to appeal. Do you think there should be?

John Sinclair: The phraseology “dispute resolution mechanism” may not be one that we would use, but some form of clearance system, whereby it would be possible to access the body of information that will have been built up at Companies House about the nature of certain organisations, would be a very useful tool. In terms of a dispute resolution mechanism, it is hard to see where the dispute would arise.

The Chairman: Let me suggest where there might be a dispute. The assertion is that I am not an overseas entity that has the relevant legal personality, but Companies House says, “Yes, you are”. How do you resolve that?

John Sinclair: That is a good point, but if you did nothing else, either the Scottish land register would reject the application if it had concerns—there is a question there of the degree to which the Scottish land register would itself then be under a duty to form a view and investigate—or alternatively the offence mechanisms would still apply.

Philip Freedman: It certainly seems to me that there needs to be some sort of adjudicator. We tend to focus on where someone is buying from an overseas entity, but it is just as much of a concern where someone is selling. As was mentioned earlier today, they would remain the owner if, having thought that they had sold the property, the disposition could not be registered at the Land Registry. They would still be the legal owner of the property and there would be all sorts of ramifications for someone who thought they had sold a property but were still the owner, particularly if the property was let and they had duties to tenants, obligations to pay council tax and all sorts of things. A seller to an overseas entity is just as interested in making sure that everything goes through to registration at the Land Registry.

If that overseas entity has not done business here before and is not yet registered at Companies House, they will want to be sure that the entity does not need to be registered or has been registered. It is no good having a dispute procedure between the parties. It needs to be a dispute procedure the outcome of which, for the purposes of the legislation, is binding on the Land Registry and on Companies House. Some adjudicator who makes a ruling that binds the Land Registry and Companies House seems to be what is needed.

Valerie Holmes: I agree. There is always someone who thinks that they are the exemption to the rule. The guidelines set out the parameters and requirements in relation to an overseas entity being registered. Those are quite clear, but there may be instances where someone needs to sit down and clarify them with the overseas entity that has a dispute and believes that it does not fall within that remit.

Lloyd Russell-Moyle MP: Reflecting on what you just said, Philip, about purchasers who were overseas entities, would it make sense not just for dispositions to require to be registered beforehand but for purchasers of land to be registered prior? That would also solve the problem that you mentioned at the beginning.

Philip Freedman: I am sorry, I do not quite understand. Are you saying that all purchasers would have to be cleared in some way by the Land Registry? My concern is that if you are dealing with an overseas entity, the legislation as drafted says that the transfer cannot be registered if they had not been registered at Companies House at the date of the disposition. That means, of course, that you cannot resolve the matter afterwards by them registering late, which also needs to be considered.

Q28 **Alison Thewliss MP:** We talked with the previous witnesses about the differences between Scotland and England and Wales in respect of restrictions on land dispositions. Can you tell us a wee bit more, Mr Sinclair, about the impact that the Bill would have on purchasers in Scotland and any changes you would see?

John Sinclair: In relation to the lack of a restriction, I think we will end up in pretty much the same place. I cannot put words in the Keeper's mouth, but I would anticipate that, as part of the ongoing evolution of the land registration forms, questions will be asked about whether an applicant is an overseas entity.

There will be ways in which the nature of a proprietor or purchaser as an overseas entity will be flagged other than through the land register. In the context of the register of controlled interests in land, we have been asked the same question about whether the existence of a controlling interest should be stated on the title sheet. Our evidence at that stage was that it should not be, and the principles behind the 2012 Act land register were to keep the title sheet relating purely to property matters.

On that basis, it should not contain the register of controlled interest provisions. However, if it was decided that the title sheet should contain an overseas entity note, our view would be that, for the sake of consistency and subject to how the two registers are reconciled, if one was to be noted then both should be noted.

On the impact on the profession, it is largely the issues that have already come to the fore: first, additional costs and, secondly, the additional risk of not knowing whether a disposition that has been handed over with a price paid would ultimately be registered. We will get to the same place as in England, but it may be by a slightly different route.

Alison Thewliss MP: If you are going by a slightly different route, would that have an impact on costs or time?

John Sinclair: Our view is that the estimated average costs of the Registration of Overseas Entities Bill are understated. Our understanding is that the costs were calculated on the basis of the PSC register, which involves fewer issues and would generally avoid a need to investigate any other jurisdiction. There would also be the cost of establishing that an overseas organisation was not an overseas entity, so the costs would not appear just whenever there is a registered overseas entity. There will be a cost associated with testing that a given organisation is not a registrable overseas entity.

Q29 **Emma Dent Coad MP:** I am quite concerned about people who might abuse loopholes in the draft Bill. Do you see anything that would allow these entities to avoid obligations in declaring their beneficial ownership information? These could be criminals or perhaps people living in protection who either are exempt or want to apply for exemption for security reasons—or anything else; overseas royal families or whatever it might be, of which we have many in my constituency. I am concerned about people who might use and abuse any loopholes.

Valerie Holmes: I do not have enough experience in any drafting of Bills through the House of Lords and Parliament, but the Bill appears to have sufficient clarity that there is no room for avoidance. It clearly sets out the requirements and timelines. I hear and take on board what you say about certain people who are under protection and may look to be protected from disclosing their information, but that information is only fed back to the same entities, for example in government, who are already aware of these people anyway, so there should be nothing to hide in that respect.

Philip Freedman: Plainly, there is a lot of detail in relation to the definition of control and people with indirect interests and so on. The Law Society has made some comments on those aspects.

There is one thing that I am not sure you would categorise as a loophole. If an overseas entity already owns property here and wants to dispose of it without filing the necessary information at Companies House, the beneficial owner may decide to sell the entity rather than get the entity to sell the property. If the entity is an SPV, a special-purpose vehicle, that was set up just to buy that property and is capable of being sold—it may be a limited company offshore where the shares could be sold—that would be a way for the person to dispose beneficially of the property without involving any transaction that hits the Land Registry and without the triggering the need, apart from the general obligation, to be registered at Companies House. I am not sure that you can do anything about that.

The Chairman: I suppose there would be obligations on the professionals involved under money laundering regulations.

Philip Freedman: Those sorts of transactions could be done wholly abroad, in which case there would be nobody here to comply with anything.

Mark Menzies MP: On propriety, Mr Freedman, if the shares in an overseas entity set up purely to own a single property were to transfer from one beneficial owner to another, how would that be flagged up and identified?

Philip Freedman: It would not. No one here might know anything about it.

Mark Menzies MP: So it is possible that shares could go from a legitimate owner to someone of concern.

Philip Freedman: Or the other way round. Indeed, I am not sure how one can legislate for that.

Mark Menzies MP: That is quite a big loophole.

Lloyd Russell-Moyle MP: If the beneficial owner changes, does that not trigger a change in the Companies House—

Philip Freedman: That would be the obligation to update the information, but on the basis that no one would know about it here, how you police it in the real world is another matter.

Lloyd Russell-Moyle MP: So the restriction is effectively onshoring the cash or resources, but as long as the cash stays offshore there is no restriction that we could put on it.

John Sinclair: There you are reliant upon the obligations to register overseas entities. There are obligations, even without a transfer, for those to be registered over the course of—I think—18 months. Then your obligation to update should pick up a change in beneficial ownership.

On the Scottish Law Society's response to the loophole question, we have no particular loopholes to identify. We would say simply that there are inherent limitations to this Act, and I will comment on two in particular. The first is the fact that it does not apply to individuals who are subject to significant influence or control, and the second is the limitation on the ability to stress-test the information that is provided in the application for registration and in the annual updates.

Philip Freedman: Under paragraph 5 of new Schedule 4A, the offence is committed by the overseas entity that has failed to register if it makes a disposition of land at a time when there is a restriction that the Land Registry has placed on the register. That paragraph is framed in such a way that if you make the transfer in breach of the restriction on the register, it is an offence. It is not an offence if the Land Registry has not got round to putting the restriction on the register, and I am afraid I cannot quite see the logic.

Q30 **The Chairman:** I want to ask you all if you have any comments about the amount of information that the Bill will require beneficial owners to give. Schedule 1 in particular provides quite a lot of information. There may be suggestions that it is something of an overkill in the sense that all this information has to be provided, and of course we bear in mind the fact that not all the information is available for public inspection.

Do you think this is a reasonable amount of information? Do you think there are any omissions? What do you think about it? I know you have to go shortly, Mr Sinclair; I have not forgotten. Perhaps we can start with you.

John Sinclair: The only comments that we have are in relation to the obligation to provide a residential address. In some circumstances, that might be too much information, even if it is a protected residential address. We think that the ability to provide a service address for an individual would be sufficient.

Philip Freedman: I think the Law Society has already identified and made submissions—I can go further if you wish—about case where the

management is divided. As I mentioned earlier, some overseas entities have two tiers of management structure, and in some cases identifying the people who are caught for the purpose of providing the information may not exactly match the constitutions of these bodies. There may be too much or too little information and it is not exactly clear who is needed to be identified.

Valerie Holmes: I completely agree with what has just been said. However, the more information that is available, the more the UK can benefit from the knowledge and provision of such information that might assist with completing and adding to the current Land Registry and other government data, as well as with verification of where the funding has actually come from when it comes into the UK.

The Chairman: Mr Sinclair, we have a couple more questions but by all means go at any time you want.

John Sinclair: No, I am feeling lucky.

Q31 **Peter Aldous MP:** The Government estimate that the average cost to entities of obtaining external advice will be £35.60 for learning about the new Bill and £9.10 for identifying the beneficial owners and collecting their information. Do you think these estimates sound realistic?

Philip Freedman: I have no idea where those figures come from. You cannot buy an awful lot for £9. Unless that is the cost of an electronic search of some sort by a worldwide provider or something else, it sounds very limited to me. Certainly if you wanted to get a legal opinion from a lawyer in another jurisdiction about whether what you are looking at is a legal entity, who the beneficial owner is and whether they meet the various tests, the cost would be likely to be a hundred times that.

The Chairman: So anything involving lawyers is going to be much more expensive, particularly in different jurisdictions. I think the figures come from the BEIS impact assessment, but that is a useful piece of evidence. Any comments, Mr Sinclair?

John Sinclair: The figures in the BEIS assessment are based on the PSC figures, which were averaged across every entity, so the range of costs will be huge. Even then, we struggle to see how those figures represent the actual likely cost, given the issues that will arise with overseas entities.

Lord Haworth: So it is all about averages, effectively.

John Sinclair: Even averaging over the number of overseas entities that were considered to be active in the UK, it is unlikely to be met.

Peter Aldous MP: Does it alarm you that such figures have been produced?

Philip Freedman: It seems like a heavy load.

Valerie Holmes: For me too. I do not know where the first figure has come from. For my part, I think it should have a few noughts added to it. I understand the figure for identifying, collecting the information and doing

any more checks on a single person, but that increases if there is more than one beneficial owner. If there were five, for example, it would be five times that amount.

Q32 **The Chairman:** Thank you, that is very useful. Lastly, I would like to ask all of you—perhaps we could start with Mr Sinclair—if you have any comments on the draft Bill generally and about where you think there might be improvements or particular problems other than those that have already been identified in the course of this session.

John Sinclair: If I were to pick one proposal—we will come back in more detail in the written responses—it would be to look at the protection of in-good-faith purchasers. A scenario where your enforcement mechanism is to result in the overseas entity both retaining the property and having the cash from the sale of the property seems counterintuitive, so we should have measures to protect a good-faith purchaser.

Part of what drives us in this is that in Scotland the process of the registration of land, from the date on which you submit your application, can take in excess of nine months. Within that period there is always a risk that the application is bounced and you have to re-present. Your purchaser's solicitor may do all the diligence to establish that the seller is an overseas entity and is up to date with their annual updates, but if that entity ceases to update after the date of settlement and if the application is then bounced after that date, the ability of the purchaser to get title would be dependent upon the overseas entity continuing to comply with its obligations to update.

So looking at some measure of protection for a good-faith purchaser or tenant would be of some interest to us.

Philip Freedman: I completely agree. The legislation is framed in such a way that, certainly in relation to a disposition by the entity, the disposition can never be registered, as I said earlier, if at the date of the disposition the entity was not registered at Companies House or up to date with its own information.

Where something goes wrong and the innocent buyer or tenant realises and the information gets put right at Companies House, there does not seem to be any mechanism for it to say, "Okay, we can now register the disposition". That seems to go hand in hand with trying to help innocent parties dealing with overseas entities.

Valerie Holmes: I agree. Going back to the good-faith situation, I think there is sufficient authority now in case law, especially recent case law, for the owners to fall back on the seller's conveyancer. If they are carrying out their job properly and doing all the due diligence and have checked the beneficial owners, that should give more protection to any good-faith purchaser.

If the Bill goes forward, which I hope it does, I feel that it would be beneficial not only to government and to offices such as HMLR but of course to conveyancers and their PI insurers in reducing fraud and money laundering.

The Chairman: Thank you all very much. You have been very helpful. You may have further thoughts or information that, in light of the questions that we have endeavoured to ask you, you think might help the Committee. We would be very grateful to receive any such further information. In the meantime, thank you for your written contributions and all your help this afternoon.

Land Registers of Northern Ireland, Companies House, HM Land Registry, Registers of Scotland (QQ 13 – 22)

Transcript to be found under Companies House

Law Society of Scotland, The Law Society of England and Wales, Society for Licensed Conveyancers (QQ 23 – 32)

Transcript to be found under The Law Society of England and Wales

National Crime Agency, Financial Conduct Authority, Serious Fraud Office (QQ 45 – 55)

Transcript to be found under Financial Conduct Authority

Registers of Scotland, Companies House, HM Land Registry, Land Registers of Northern Ireland (QQ 13 – 22)

Transcript to be found under Companies House

Royal United Services Institute, Bright Line Law, Investment Property Forum (QQ 1 – 12)

Transcript to be found under Bright Line Law

Serious Fraud Office, Financial Conduct Authority, National Crime Agency (QQ 45 – 55)

Transcript to be found under Financial Conduct Authority

Society for Licensed Conveyancers, Law Society of Scotland, The Law Society of England and Wales (QQ 23 – 32)

Transcript to be found under The Law Society of England and Wales

Tax Justice Network, Global Witness, Transparency International UK (QQ 33 – 44)

Transcript to be found under Global Witness

Transparency International UK, Global Witness, Tax Justice Network (QQ 33 – 44)

Transcript to be found under Global Witness