Joint Select Committee on the Draft Registration of Overseas Entities Bill

Corrected oral evidence: Draft Registration of Overseas Entities Bill, HC 2009

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.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.
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.

**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.

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.