Joint Select Committee on the Draft Registration of Overseas Entities Bill

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

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.

USE OF THE TRANSCRIPT

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

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.

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.
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.

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.

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.