Joint Select Committee on the Draft Registration of Overseas Entities Bill

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

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.

USE OF THE TRANSCRIPT

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

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.

**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.

**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.

**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.

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.

**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.