

RESPONSE TO THE BEIS CONSULTATION ON CORPORATE TRANSPARENCY AND REGISTER REFORM PUBLISHED ON 05 MAY 2019

The Fraud Advisory Panel welcomes the opportunity to comment on the consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities published by the Department for Business, Energy & Industrial Strategy (BEIS) on 05 May 2019, a copy of which is available from this [link](#).

We are happy to discuss any aspect of our comments and to take part in all further consultations on the issues we've highlighted or to provide evidence to the committee.

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The Fraud Advisory Panel (the 'Panel') is the UK's leading anti-fraud charity.

Established in 1998 we bring together fraud professionals to improve fraud resilience across society and around the world.

We provide practical support to almost 300 corporate and individual members drawn from the public, private and voluntary sectors and many different professions. All are united by a common concern about fraud and a shared determination to do something about it.

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INTRODUCTION

1. The Fraud Advisory Panel welcomes the current consultation paper to enhance the role of Companies House and improve transparency in UK corporate entities and believes many of the proposals are sensible and long overdue.
2. Since 2012 we have advocated the need for Companies House to perform a more robust gatekeeper function. However to be truly effective, Companies House must be properly resourced so that it can competently perform the new enhanced role proposed in the consultation paper, with greater proactive policing and active enforcement against instances of non-compliance. As an initial step towards this, the new 'report it now' feature, which allows anyone to notify concerns to Companies House, needs to be more prominently displayed on the home page.
3. Given the role and remit of the Fraud Advisory Panel, the primary focus our response is on the effective prevention, detection and deterrence of fraud and financial crime risks.

RESPONSES TO SPECIFIC QUESTIONS

PART A: KNOWING WHO IS SETTING UP, MANAGING AND CONTROLLING CORPORATE ENTITIES

Q1. Do you agree with the general premise that Companies House should have the ability to check the identity of individuals on the register?

1. Yes. Companies House ('CH') should have the ability to check the identity of individuals on the register to confirm that the personal information provided about them is true. This should include positive checks at the point of incorporation and/or appointment and the ability to call for enhanced due diligence where red flags are identified to ensure the integrity of the data held (for example, enhanced checks may be needed on directors based outside the UK where there is evidence of such directors being recruited to front companies used in fraud).
2. The abuse of the Register in its current form is well-known and well-documented. There have been many examples of directors using different spellings of their names, slightly different dates of birth, or even completely fictitious names.
3. Our 2012 report on '*The abuse of company incorporation to commit fraud*' recommended that CH improve the due diligence checks performed on company directors. It said:

"Greater safeguards are required to protect legitimate businesses, investors and the general public and to stop rogue directors setting up companies in the first place. This could be achieved in large part through Companies House performing a more robust gatekeeper function.

As a minimum, we believe that there should be an obligation on Companies House to perform more rigorous checks, particularly against the Disqualified Directors Register, when processing new applications for incorporation and new director appointments to ensure that directors with

a 'bad' history are unable to set up new limited companies or to become directors of existing ones. The current mechanisms in place to do this are flimsy at best."¹

Q2. Are you aware of any other pros or cons government will need to consider when introducing identity verification?

4. The introduction of new identity checks could give rise to the following benefits: earlier identification of inaccurate, misleading or false information, improved confidence in the accuracy of the information held on the register by users of that information, and improved crime prevention and deterrence.
5. In respect of the latter point, we know from our own interactions with the general public that many people (including businesses) wrongly assume that the information held on the register has undergone some sort of verification process and therefore rely on it as proof that a company is genuine which can lead to negative consequences in the event of any fraud.
6. On the flip-side we are aware the Government is concerned about potential barriers to business such as possible delays in entries becoming public and the enhanced cost of verification. However we believe that these costs are likely to be minimal and could be offset, at least in part, by a small increase to the cost of incorporation. Most other countries with limited liability regimes require greater capitalisation to set up a company. For example, in New Zealand it costs \$105 (plus GST) to apply to incorporate a company² and in Australia it costs \$495 for a proprietary limited company³.
7. Stringent safeguards will be necessary to protect personal data with careful consideration given to who can access it and whether it is held onshore given concerns about serious organised crime groups and foreign State interference and the huge fraud (particularly identity fraud) risks associated with any potential data breach.

Q3. Are there other options the government should consider to provide greater certainty over who is setting up, managing and controlling corporate entities?

8. Another option could be to require individuals to present themselves in person on setting up a company to a regulated professional, or if based overseas, to a similarly qualified notary to verify identity and control. If the officers are based abroad, then consideration should be given to whether it should be compulsory for the company to have a UK bank account or tax agent.

Q4. Do you agree that the preferred option should be to verify identities digitally, using a leading technological solution?

9. Yes. Technological solutions are increasingly being used by other organisations to verify identity because they typically afford the following benefits: speed, cost (cheaper than manual paper-based checks), ease of use, accuracy, and the ability to search a greater number of data sources.

¹ Fraud Advisory Panel (1 November 2010). *The abuse of company incorporation to commit fraud.*

https://www.fraudadvisorypanel.org/?s=company&taxID=25&taxonomy_type=resource-category

² New Zealand Companies Office. *Incorporating a company.* <https://companies-register.companiesoffice.govt.nz/help-centre/starting-a-company/incorporating-a-company/>

³ Australian Government. *What are the set-up steps and costs?* <https://www.business.gov.au/change-and-growth/restructuring/sole-trader-to-a-company/difference-between-a-sole-trader-and-a-company/what-are-the-set-up-steps-and-costs>

10. However, the mass collection of data and the risk to individuals of any breach or misuse is a very serious consideration. It is, therefore, of paramount importance that this is not done 'on the cheap'. The ICO's guidance should be sought on best practice in this area.

Q5. Are there any other issues the government should take into account to ensure the verification process can be easily accessed by all potential users?

11. Consideration should be given to applicants with disabilities, without access to a home computer or who distrust the security of the internet. A paper-based alternative may be needed (perhaps in certain prescribed circumstances) with identity verified by an AML regulated professional. We note a word of caution about the use of terms such as 'legal professional' (paragraph 67 of the consultation paper) and 'accountant' which we believe are too wide and include unregulated occupations.
12. Enhanced verification may be needed for non-UK based individuals where permitted, unless there is confidence that technological solutions can properly verify identity and flag discrepancies.
13. We believe that government may also need to consider the potential need for an appeals process for instances of delay or where verification or enhanced verification means a refusal to register. We suggest that in the first instance this could be to a senior CH officer and thereafter to a court or tribunal.

Q6. Do you agree that the focus should be on direct incorporations and filings if we can be confident that third party agents are undertaking customer due diligence checks? Please give reasons.

14. Yes. However CH must have confidence that the customer due diligence checks performed by third parties are thorough and risk-based. This is especially important given that the 'majority of new incorporations still use a third party agent' (paragraph 45 of the consultation paper) and '...evidence from UK law enforcement agencies and from civil society investigations suggests companies deployed in criminal activity are overwhelmingly using third party agents, wittingly or unwittingly, to help conceal their identities or their activities ...' (paragraph 46). This points to a need to ensure that appropriate action is taken against third party agents who are shown to have performed lax checks or been associated with criminal activity.

Q7. Do you agree that third party agents should provide evidence to Companies House that they have undertaken customer due diligence checks on individuals?

15. Yes. As a minimum third party agents should confirm that they have performed customer due diligence checks. However third party agents may cease to be in business and/or only retain data for a period of six years which is inconsistent with the data retention periods suggested for CH later in the consultation questions.

Q8. Do you agree that more information on third party agents filing on behalf of companies should be collected? What should be collected?

16. Yes. We agree that this should include details of the third party agent's AML supervisory body, AML registration number, and fuller contact details.

17. We also support the sharing of relevant information with supervisors including for verification purposes.

Q9. What information about third party agents should be available on the register?

18. We suggest the name of the third party and their supervisory body should be made available on the register so that members of the public can raise concerns if necessary.

Q10. Do you agree that government should (i) mandate ID verification for directors and (ii) require that verification takes place before a person can validly be appointed as a director?

19. Yes, for the reasons set out above. There is well-known abuse of the system at present and this will reduce the incidence of inaccurate and/or dishonest information being filed. We would also recommend stronger warnings to directors upon appointment about their liability should they allow others to control them.

Q11. How can verification of People with Significant Control be best achieved, and what would be the appropriate sanction for non-compliance?

20. No comment.

Q12. Do you agree that government should require presenters to undergo identity verification and not accept proposed incorporations or filing updates from non-verified persons?

21. Yes, for the reasons set out above.

Q13. Do you agree with the principle that identity checks should be extended to existing directors and People with Significant Control?

22. Yes, we believe that identity checks should be extended to existing directors to ensure they treated in the same way as new ones and for consistency in approach. However CH should establish its processes to verify new directors first and then work towards extending these checks to existing appointments using a phased approach.

23. We have no comment to make in relation to PSCs.

Q14. Should companies be required to collect and file more detailed information about shareholders?

24. No comment.

Q15. Do you agree with the proposed information requirements and what, if any, of this information should appear on the register?

25. No comment.

Q16. Do you agree that identity checks should be optional for shareholders, but that the register makes clear whether they have or have not verified their identity?

26. No.

Q17. Do you agree that verification of a person's identity is a better way to link appointments than unique identifiers?

27. Yes. Unique identifiers are open to abuse. A director ID number would have to be password protected or protected in some other secure way so as to ensure it was only used by the relevant individual.

Q18. Do you agree that government should extend Companies House's ability to disclose residential address information to outside partners to support core services?

28. Yes, but only within strictly specified, carefully controlled and monitored parameters.

PART B: IMPROVING THE ACCURACY AND USABILITY OF DATA ON THE COMPANIES REGISTER

Q19. Do you agree that Companies House should have more discretion to query information before it is placed on the register, and to ask for evidence where appropriate?

29. Yes. We support a more proactive approach being adopted by CH and agree that it should have more discretion to query the accuracy of information before it is placed on the register, and to ask for evidence where appropriate. There should also be an appeals process to handle instances of disputed information.

Q20. Do you agree that companies must evidence any objection to any application from a third party to remove information from its filings?

30. Yes. Companies should have to evidence any objection to any application from a third party to remove information from its filings.

Q21. Do you agree that Companies House should explore the introduction of minimum tagging standards?

31. No comment.

Q22. Do you agree that there should be a limit to the number of times a company can shorten its accounting reference period? If so, what should the limit be?

32. No comment.

Q23. How can the financial information available on the register be improved? What would be the benefit?

33. We believe that measures already outlined in the consultation paper, such as the verification of directors, additional information about third party agents and presenters, and the ability for CH to ask for evidence should help to improve this. A review of the existing guidance on filing accounts may also be needed.

34. A cross-checking process with HMRC could also be considered. Encouraging third party reports of incomplete, inaccurate or false financial information will also help improve the accuracy of the data available on the register.

Q24. Should some additional basic information be required about companies that are exempt from people with significant control requirements, and companies owned and controlled by a relevant legal entity that is exempt?

35. We believe that companies registered in the UK should have equality of transparency as to ownership.

Q25. Do you agree that company records should be kept on the register for 20 years from the company's dissolution? If not, what period would be appropriate and why?

36. Yes, 20 years is an appropriate length of time to keep company records on the register from the company's dissolution and is consistent with the timeframe after which HMRC can potentially raise tax assessments.
37. An ability to show a pattern of behaviour can be useful in tackling fraudsters. HMRC and other creditors may wish to pursue restoration much later, once new information comes to light after a different vehicle fails or is discovered.

PART C: PROTECTING PERSONAL INFORMATION

Q26. Are the controls on access to further information collected by Companies House under these proposals appropriate? If not, please give reasons and suggest alternative controls?

38. Yes. We agree that public information should be restricted and limited in scope and that non-public information should comprise two tiers of access: broader access for specified public authorities and more limited access to credit reference agencies.
39. We also agree that credit references agencies should not have access to the additional information set out in paragraph 168.
40. As previously stated, data security should be paramount. Individuals should be told that their information may be shared with other agencies.

Q27. Is there a value in having information on the register about a director's occupation? If so, what is this information used for?

41. No. There is limited value in continuing to collect a director's occupation, especially if, as suggested in the consultation paper, 40% state their occupation as 'director'.
42. Removing this provision will also likely address concerns that some occupations listed by directors are misleading and open to abuse, or may put directors unnecessarily at risk of harm given the nature of the work they do (for example, police officers and private sector fraud and financial crime specialists).

Q28. Should directors be able to apply to Companies House to have the 'day' element of their date of birth suppressed on the register where this information was filed before October 2015?

43. Yes. This information should be automatically removed from the public register in the interests of crime prevention (especially identity theft and fraud). In the absence of this, existing directors should be able to apply for the day element to be suppressed from historic filings.
44. We also wonder whether there is merit in further consideration being given to suppressing date of birth information in its entirety (i.e. day, month and year) from the public register, instead replacing it with a director's current age in years. This would reduce the opportunity for criminals to successfully use genuine director's identities in connection with the registration of other companies and/or commission of crime.

Q29. Should a person who has changed their name following a change in gender be able to apply to have their previous name hidden on the public register and replaced with their new name?

45. Yes. If a person is able to change their name with other government agencies then they should be able to do so with CH, regardless of any change in gender.

Q30. Should people be able to apply to have information about a historic registered office address suppressed where this is their residential address? If not, what use is this information to third parties?

46. Yes, for the same reasons set out in Q28 above. It is another key protection against identity fraud.
47. In addition, by keeping this information on the public register (which may no longer be the directors' current residential address) other people may also be put at unnecessary risk of harm like other family members or the new homeowners/tenants of the registered address.
48. We are also aware of examples of former directors' residential addresses being publicly available on the register as their 'correspondence address' even though this was not the companies registered office address.

Q31. Should people be able to apply to have their signatures suppressed on the register? If not, what use is this information to third parties?

49. Yes. Signatures should not be shown on the register because of the fraud risks associated with their public availability, but perhaps should be available to those able to access the enhanced data.

PART D: ENSURING COMPLIANCE, SHARING INTELLIGENCE, OTHER MEASURES TO DETER ABUSE OF CORPORATE ENTITIES

Q32. Do you agree that there is any value in Companies House comparing its data against other data sets held by public and private sector bodies? If so, which data sets are appropriate?

50. Yes. In addition to the bodies listed in the consultation paper we would suggest the Charity Commission, DWP, local authorities and possibly credit reference agencies.

Q33. Do you agree that AML regulated entities should be required to report anomalies to Companies House? How should this work and what information should it cover?

51. We note that regulated entities will have an obligation to report under the 5th money laundering directive ('5MLD') therefore any benefits associated with reporting to CH as well will need to be clearly articulated.

52. On a wider but related point, CH should do more to encourage non-regulated individuals and organisations to voluntarily report any suspicious information on the register to it. However for this to be effective it must be quick and easy for them to do so, and this requires the new 'report it now' feature, which allows anyone to notify concerns to CH, to be more prominently displayed on the home page (or ideally on every page).

Q34. Do you agree that information collected by Companies House should be proactively made available to law enforcement agencies, when certain conditions are met?

53. Yes. This is essential and the general public would probably expect this to occur. However it should only occur within set parameters with existing criteria for obtaining cross-departmental data met.

Q35. Should companies be required to file the details of their bank account(s) with Companies House? If so, is there any information about the account which should be publicly available?

54. No. Large companies may operate a number of different bank accounts for entirely legitimate purposes. Requiring them to provide this information to CH – and keep it up-to-date – would be an unnecessary burden on business. We understand that under 5MLD a UK register of bank accounts will have to be established by a party other than CH, so requiring CH to also collect and hold this data would be an unnecessary duplication.

Q36. Are there examples which may be evidence of suspicious or fraudulent activity, not set out in this consultation, and where action is warranted?

55. Our members have suggested that foreign directors of a very young or old age or with multiple directorships and/or directors who have a long history of dissolving or liquidating companies, can sometimes be an indicator or suspicious or fraudulent activity.

Q37. Do you agree that the courts should be able to order a limited partnership to no longer carry on its business activities if it is in the public interest to do so?

56. Yes, to bring into line with other corporate structures such as limited companies.

Q38. If so, what should be the grounds for an application to the court and who should be able to apply to the court?

57. We agree that the grounds for striking off in the public interest should be equivalent to those for winding up of companies and not just be limited to the commission of offences in Schedule 1 of Part 1 of the Serious Crime Act 2007 (ie. Money laundering, fraud, cybercrime and drug trafficking). The grounds for an application to the court should be the same for LLPs and limited companies.

Q39. Do you agree that companies should provide evidence that they are entitled to use an address as their registered office?

58. No. However if the use of the address is challenged then the company should be required to provide evidence that they are entitled to use it as their registered office address.

Q40. Is it sufficient to identify and report the number of directorships held by an individual, or should a cap be introduced? If you support the introduction of a cap, what should the maximum be?

59. There may be many legitimate reasons why an individual holds multiple directorships. The introduction of any cap would need to be carefully assessed to avoid any unnecessary burden on genuine businesses, particularly groups of companies.

Q41. Should exemptions be available, based on company activity or other criteria?

60. No comment.

Q42. Should Companies House have more discretion to query and possibly reject applications to use a company name, rather than relying on its post-registration powers?

61. Yes, with the right to seek further evidence and for the applicant to access the appeals process.

Q43. What would be the impact if Companies House changed the way it certifies information available on the register?

62. We are unsure about the value derived from Good Standing Statements given that the information provided is largely publicly available information on the register. As the matter stands it seems to be little more than a certificate of incorporation.

Q44. Do you have any evidence of inappropriate use of Good Standing statements?

63. No. However we would suggest that care is needed to ensure that CH is not open to action for any liability for certification.