

1. General Information

1.1 This call for evidence will be of interest to entrepreneurs, business owners and directors, investors, financial institutions, insolvency practitioners, rescue professionals and the legal profession.

How to Respond

1.2 When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the call for evidence response form and, where applicable, how the views of members were assembled.

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1.7 The responses to this call for evidence will be used to inform the UK's response to the Commission's review of the Recommendation, which is likely to occur in autumn 2015. The responses will also be used to inform the Government's contribution to any further discussions the Commission may seek to have on business failure and insolvency in the EU.



response to call for evidence from

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member SME Alliance Ltd

London 17 March 2015
www.inthepublicdomain.net

Link to government publication page:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457708/combined-responses3.pdf

pages 213 to 240 of 240 page PDF

1. In general do you think the Commission's Recommendation, if implemented by Member States, would meet the objectives as set out in Section 1 of the Commission's Recommendation?

1.1. No they would not and plainly so. Further they can be predicted to give rise to perverse effects. The Commission is stated to seek to predict human behaviour but has no empirical data on which to base such behavioural theory. Recommendations are not law. They must be compatible with the laws of each of the nation states respectively. They should not be like "guidelines" which co-exist with the law yet allow the law to be ignored with purported impunity. "Recommendations" sound very much like "guidelines".

1.2. To date the October 2012 EU directive aimed inter alia at the victims of the "insolvency regime" has not been brought into UK national law. This European protection is running two and a half years late with no sign of being enacted domestically. It is perverse to be promoting opportunistic wrongdoers exploiting the status quo during this time lag. These should be the ones curtailed. They are the ones from whom the state is obliged to provide protection.

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

National Statistics

1.3. The relevant statistics fall into two categories. The first are those relating to loss of opportunity (including employment) and comparative measurements of returns to each of productive and financial capital. The second are those relating to the ease with which private sector wrongdoers can retain the proceeds of offending by locking into various devices that block come-back, with the risk disappearing in the global underwriting market. The mechanisms for achieving this are not mapped out (documented) by prosecutors. They continue unfettered. Consequently systemic breakdown has not been explicitly identified with the result that the aggregate "loss of opportunity" remains wholly unevaluated, both nationally and internationally.

1.4. Loss of opportunity in the current context manifests itself in enhanced returns to financial capital at the expense of returns to productive capital. Indicators are:

- the unlawful and irregular "pulling down" of personal and business estates (unchallenged) using straw "trustees", "receivers" or "administrators" with no standing, such that the risk of "come-back" can be extinguished (passed round the market anonymously until fully absorbed);
- the removal of barriers to change of ownership, "as though" estates have been abandoned and can be picked up by others who can register new title or permit such;
- the unchallenged theft of gross revenue streams involving bifurcating (contingent) liabilities, accounting on a "what you can get away with basis", together with the effective cancellation of the mandatory obligation to have a demonstrably independent audit;
- the complicity of limited liability partnerships (LLPs) with no assets at risk including those registered in places as Delaware, Caymen, BVI and with financial interest in the pre-determined outcome of transactions using financial instruments to defeat the statute of limitation, and
- disguised equity (or risk capital) wrongly branded as "debt", used to facilitate exit by dumping on the public market, together with insistence by government that debt is good and restorative.

1.5. BIS/IS produces its own statistics rather than using the professional services of the Office for National Statistics. The underlying data is not captured. This includes from HMCTS which calls IS a "stakeholder". Those with no standing can use IS, the courts and property market anonymously to launder the proceeds of crime. The IS publicly measures its success by the speed of liquidating its targets and the reported returns to the aggressors, yet publishes that the courts are responsible. Wrongdoers are protected by the IS from having to prove a claim by the mechanism of ensuring that it is a private sector person who is notionally "appointed" by the IS (an indemnified agent of the aggressor). It runs a secret bank account (reported as being with RBS), provides details only to its advertised asset stripping private investigators ("IPs"). These are networked to international bailiffs, fronted by those masquerading as law firms (in fact no more than a front for a bank, insurer or both), and otherwise neither financially independent nor independently audited.

The victims are blocked from knowing about this bank account. They have no route to find out from the IS who is behind the aggression. The IS ensures that it does not formally know or record. It claims this data is with HMCTS. It claims data controller privileges it does not properly have. HMCTS asserts this identification is "personal data" and refuses to divulge it. It has now anonymised payers of court fees by facilitating "accounts". BIS refuses to pay heed to its own staff and directors (PROSPECT) even where preferred by PAC, that state policing obligations cannot be funded by estates of the innocent public. BIS/IS staff salaries are paid from the proceeds of these activities.

No behavioural theory or empirical evidence

1.6. The purported belief of the Commission is stated by BIS to be:
'The discrepancies between national restructuring frameworks, and between the national rules giving honest entrepreneurs a second chance lead to increased costs and uncertainty in assessing the risks of investing in another Member State, fragment conditions for access to credit and result in different recovery rates for creditors. They make the design and adoption of consistent restructuring plans for cross-border groups of companies more difficult. More generally, the discrepancies may serve as disincentives for businesses wishing to establish themselves in different Member States.'

1.7. The problems therefore, as perceived by the Commission, are not properly analysed. Before starting, these should ask the question, what behavioural theory is there to support the propositions made and what is the empirical evidence? There is no international law that means this sort of cross-border legal arrangements could either be defined, introduced or implemented. The purpose of this call for response from witnesses is not clear. The exercise has been branded as a call for evidence to "hear from the horses mouth". BIS should publish publicly what the experience of the public has been, including those operating in multiple jurisdictions or supplying to them.

By calling for evidence on a solution to an unidentified problem, it has not complied with the Equalities Act. This exercise effectively endorses and prolongs the current status quo, rather than exposing it on grounds of perversity and aiming to throw out those aspects of BIS/IS operations which have neither appeared in a manifesto, nor properly been passed by Parliament. The identity and experience of the Chief Inspector of Companies must be published. The Companies Investigation Branch must be clearly identified, branded and benchmarked, with monthly progress reports published on clearing its prosecution backlog from at least the last decade.

2. Are the terms used by the Commission that are explicitly defined, clear?

"For the purposes of the Recommendation the Commission laid out the following definitions":

(a) 'debtor' means any natural or legal person in financial difficulties when there is a likelihood of insolvency;

(b) 'restructuring' means changing the composition, conditions, or structure of assets and liabilities of debtors, or a combination of those elements, with the objective of enabling the continuation, in whole or in part, of the debtors' activity;

(c) 'stay of individual enforcement actions' means a court ordered suspension of the right to enforce a claim by a creditor against a debtor;

(d) 'courts' includes any other body with competence in matters relating to preventive procedures to which the Member States have entrusted the role of the courts, and whose decisions may be subject to an appeal or review by a judicial authority.

3.2 Government seeks to understand whether any of the terms used in the Recommendation are unclear, or problematic, from a UK perspective. In particular, two concepts that have been highlighted as being potentially unclear or problematic are:

a) 'an honest bankrupt'
b) 'a second chance'

3.3 It is the Government's view that the UK system already makes some distinction between bankruptcy cases. If a bankrupt's behaviour is deemed to have been dishonest or blameworthy, they can be made subject to a Bankruptcy Restriction Order (BRO). This can extend some of the conditions of bankruptcy for up to fifteen years and the BRO is placed on a public register1.

3.4 When a company enters into administration or liquidation, office holders have a duty to report upon the conduct of the director(s) to the Secretary of State. If a director's conduct is deemed 'unfit' they can be disqualified, for a specified period, from becoming a director of a company, or directly or indirectly being concerned or taking part in the promotion, formation or management of a company without permission from the court.

3.5.It is also the Government's belief that the UK insolvency system is strongly focused on giving entrepren eurs 'a second chance'. In personal insolvency, the restrictions laid upon a bankrupt are normally lifted and debts generally discharged in full after 12 months.

2.1. Definitions of words and terms are neither clear nor correct. A definition "for a purpose" also makes no sense. Making a recommendation based on definitions which are neither clear nor correct in natural language is to resort to "make belief".

2.2. "Make belief" is dangerous but has had a dominant role in the UK. This is where "*statements of insolvency practice"* or "*SIPS"* have been invented, used in examinations run by examining bodies which have no standing, and administered by those bodies whose by-laws are not compatible with such statements and whose members can neither take part nor condone in others. The IS term "grandfathered in" recognizes the absence of license.

2.3. A "debtor" is a country, organisation, person, company or individual who owes money. If the debt is in the form of a loan from a financial body, the *debtor* is referred to as a borrower. If the debt is in the form of securities, such as bonds, the *debtor* is referred to as an issuer. There is no inference of "financial difficulty". Any employer who pays salaries and pensions at the end of a month is a debtor and the staff creditors (before month end payroll).

2.4. "Restructuring" is a corporate law and management term for the act of reorganizing the legal, ownership, operational, or other structures of an enterprise or estate for some purpose. Restructuring may be associated with segregating parts of business including in anticipation of sale of part and retention of part. The form of restructuring should always be the subject of proper tax accountant input to ensure that retained earnings are sufficient and that the transaction is properly accounted for in regard taxation, corporate and employment law. Gammie and Ball "Tax on Company Reorganisations" 1981 remains the seminal text on a systematic analysis of restructuring and what is lawful and what is not.

2.5. The term "restructuring" has been hijacked for a plethora of alternative uses. The empirical evidence in regard the pernicious and destructive nature of such transactions has been the subject of a series of reports from the Office of Fair Trading ("OFT") from at least June 1010. The response of BIS (a prosecutor) has been to close down the OFT, taking with it its prosecution powers. Consequently there is (i) no baseline of empirical evidence from which to measure "loss of opportunity" to the economy and neither (ii) curtailment nor (iii) accountability of offenders.

2.6. Importantly junior minister Jo Swinson has continued her and Jennie Willott's promotion of corporate raiders, vandals, asset strippers, opportunistic scavengers, private investigators and bailiffs (now privatized by MoJ). Where these have gained control over lucrative lines of business, using their plethora of BIS sponsored devices, BIS will assist them by the maintenance of continuity of essential supplies, such as energy. A retrospective veneer of purported legitimacy is given to that which cannot otherwise be countenanced in law. The devices are represented by various forms of surrogacy together with action to block "come-back" by owners, contingent creditors, as employees, tax authorities, victims, and others interested and/or prejudiced.

2.7. BIS has continued its aggressive push to exclude the courts and judiciary. It publish the identity of some of the targets on the privatized London Gazette, in contravention of TNA's contract, and its own website. It asserts that the "courts" are administrating the liquidation of the estate, whereas the true position is that BIS itself is both the facilitator and the driver. BIS remains uncurtailed, with irreversible loss of opportunity to the economy and entrepreneurship.

2.8. It promotes the disingenuous but intended mixing-up of "liquidity" (insolvent) with that of insufficiency of capital (bust); brands subordinated risk capital or capital/income contribution as a "loan"; and allows the (mis)-use of various forms of (pseudo) attachments with no true substance.

2.9. There is no proper concept of "restructuring" the estate "of the debtor". The restructuring of the estate of a person or persons is a matter for those persons solely without BIS intrusion. Importantly the formal schemes of the past as section 425 Companies Act 1985 permitted capital restructuring such that debenture holders could agree with equity holders that their debentures would be converted to equity: this would apply for example where there is exploration for resources and the need for site development before a return is realized. Terms of continued support may need to be altered or restructured part through if timescales slip. Change is controlled by the owners.

2.10. Regretfully the DTI was broken up in the haste to create a free-for-all without accountability. Skimming on "transactions" to change ownership and rights is called by the IS "business services to IPs". It issues secret "sanction notices". These activities massacre the provisions of the Companies Acts, making a further nonsense of that of 2006.

The relevant explanatory notes read:

COMPANIES ACT 2006
Part 26: Arrangements and Reconstructions1165.

The provisions of this Part enable companies to apply to the court for an order sanctioning an arrangement or reconstruction agreed with a majority of members or creditors. They restate sections 425 to 427 of the 1985 Act.

In addition to drafting changes resulting from the re-arrangement of the provisions, there are two changes of substance.1166.Section 899(2) makes clear that the persons who may apply for a court order sanctioning a compromise or arrangement are the same as those who may apply to the court for an order for a meeting (under section 896(2));1167.Section 901 requires a company to deliver to the registrar a court order that alters the company's constitution.

It also requires that every copy of the company's articles subsequently issued must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment. These changes are included for consistency with other provisions in the Act concerning such orders.

2.11. In other words, by court order, the DNA of the company (its constitution) can be altered. This is the corporate equivalent of a child born of more than two parents, almost impossible to understand. The opportunism this opens up is manifest. Rather than a "scheme" being to facilitate a re-ordering of what is there, in circumstances where the status quo is not sustainable (eg debenture holders become equity holders), the "schemes" now facilitate transactions in which controlling stakeholders can oust the minorities. The rigours of a share re-purchase are by-passed. The courts are used to provide a veneer of pseudo legitimacy. A "challenge" requires a masterly understanding of corporate law, independent of the vested interests (scheme promoters), who are also the controllers of access to the courts.

2.12. "Stay of individual enforcement actions" purportedly by a court is another made-up term. Courts are empowered to grant STAYS, i.e. OBLIGED to grant them, where the relevant circumstances prevail and are pointed out. The IS has no right to be heard.

2.13. There is no concept of "pooling". If there is an amount owing to each of the gas provider and phone provider, there is no mechanism for these two suppliers to get together, exchange personal data they hold on the user and mount a collective enforcement exercise. One is enforcing a gas bill and the other a phone bill. These are two different parties with two different contracts. Debts must come to trial to be proven in separate not "pooled" action. Avoiding proving should block enforcement regardless of mechanism deployed. It does not.

2.14. BIS has continued to promote “the majority of creditors”; private sector private investigators operating to liquidate valuable estates by by-passing the obligation to prove a debt; and new forms of structure as “protected cell companies” which shelter assets from disgorgement by ring-fencing them. Disasters as City-Link proliferate, with no accountability of scheme manufacturers, promoters and vendors. They follow in the wake of tax evasion and other arbitrage product which activity remains wholly uncurtailed (eg Eclipse 35).

2.15. BIS has been seen operating in the Chancery Division, supported by the Chancery Bar, actively seeking to circumvent due process including when a STAY is requested or granted. BIS/IS/OR (Official Receiver) have, for reasons understood by them and no-one else, intercepted the process of such requests. They lobby, without standing, for immediate advantage, “just in case” (i) an appeal is not successful; (ii) there is a state of bankruptcy; (iii) there is a creditor who has proven his debt; (iv) there has been attendance for means testing; and (v) compromise has been exhausted. The terrified public are lambs to the slaughter.

2.16. There are no circumstances under which this approach can be lawful or acceptable. BIS comes out with UNDERTAKINGS, the effect of which are that contraventions give rise to penal sanctions (prison). Their targets must provide affidavits (which require a notary and are expensive); and make commitments to complete intrusive illegal questionnaires. This includes being compelled to sign documents TO WHOM IT MAY CONCERN giving (a) personal data access rights; and (b) rights of access to (i) personal bank accounts; and (ii) personal tax records. The choice given to the victim boils down to abandoning their standing or facing prison.

Without an UNDERTAKING, BIS threatens arrest by police (a target can be held for 36 hours without charge); and public XX on means. It runs a secret SANCTIONS department that authorises lawyers and barristers, fronting the major banks to secure orders for forced eviction, forced sale of property, the court stepping in to “order” that the asset strippers can with impunity give a good receipt contrary to their own websites. The public can rely only on the judicial system to protect it from BIS/IS and its abuse of judicial law enforcement.

2.17. No member state can designate a forum, which is not already a court, as a court. The creation of a plethora of tribunals and other artificial constructs has meant that those who should properly have been charged with indictable offences have not been. The prosecution backlog has consequentially and predictably grown exponentially, as “what you can get away with” has taken over as a preferred implicit accounting standard and policy.

2.18. There is no such person as a “bankrupt” per se. An individual cannot be born a “bankrupt”. By contrast, a notional corporate can be fraudulently trading from inception, e.g. where it has sought to “incorporate” without accounting for fatal contingent liabilities and filed a VAT tax indemnity to which it and those responsible are not properly entitled.

2.19. "Honesty" does not currently feature in the published activities of BIS/Insolvency Service "policy" and "legal" teams. If it did, "dishonesty" would also feature and so would the duty on BIS prosecutors to prosecute wrongdoing including by the vested interests. BIS would have long since filed for the compulsory winding up of R3, mafia of asset strippers, as well as those operations masquerading as law firms and their auditors which are in fact facades for insurers, underwriters, banks and international bailiff operations. Oddly, R3's CEO refuses to explain the qualifications of R3 members which are advertised on R3's web-site.

2.20. BIS (/IS) currently has difficulty distinguishing between "debtor" and "creditor" and in turning up in court when required to so do by court order, on time or at all.

2.21. Instead it classifies the creditors of bust businesses and individuals as "bankrupt". It threatens these with arrest by police, to be publicly cross examined on means, including months and years after the real bankrupts have been required to attend for means testing. It does not file for compulsory winding up in regard those reported to it as fraudulently trading or those who are part of mafia style gangs including those advertised by it and working for BIS as private investigators, masquerading as "trustees" on behalf of the state, yet hired by no-one.

2.22. Both state organs (BIS/IS and the courts they use) operate in contravention of DPA laws. They traffic large amounts of personal data on secret electronic communications, purportedly "sanction" private investigators listed as "IPs" but not VAT registered, therefore accountable to no-one. This is to "investigate" including the estates of the dead, the dying, the voiceless, the unknowing as well as of foreigners with no connection to the UK. These can be plundered without objection from owners by means of their exclusion and/or purported representation by the state (Official Solicitor/ Public Guardian/ Official Receiver/ private sector "trustee").

2.23. The "sanction" includes authorized use of international networks of lawyers (LLPs) operating in the Crown Dependencies, Delaware and tax havens, facilitating the disappearance of estates plundered from under the control of international banks. They include forced evictions and sale of UK properties in secret or layered chain operations, skimming on the turn represented by the difference between notional "drive past" valuations and the true transaction values after laundering through the London property market.

2.24. Transparency International UK's recent report "Corruption on your doorstep: how corrupt capital is used to buy property in the UK" published in March 2015, provides the "tip of the iceberg" statistics that BIS (/IS) has omitted to collate and publish. Further BIS/IS cannot now do this since the OFT has been shut down, including without public consultation under the Equalities Act, or indeed by inclusion in any manifesto. The statistics and prosecution void that has been created has left no-one charged with protecting the public and estate owners or even curtailing wrongdoers. "Investigation" has replaced prosecution.

2.25. TI's website reports:

Corruption on your Doorstep looks at how corrupt money is used to buy property in the UK

The research – analysing data from the Land Registry and Metropolitan Police Proceeds of Corruption Unit – found that ***75% of properties*** *whose owners are* ***under investigation for corruption*** *made use of offshore corporate secrecy to hide their identities.*

Key statistics

- ***£180m****+ worth of property in UK have been brought under criminal investigation as the suspected proceeds of corruption since 2004. This is believed to be only the tip of the iceberg of the scale of proceeds of corruption invested in UK property. Over* ***75%*** *of the properties under criminal investigation* ***use offshore corporate secrecy***
- *The* ***average price*** *of a property under criminal investigation in the UK is* ***£1.5m****. The minimum is £130,000, the maximum is £9m and the median is £910,000. 48% of properties investigated were valued at over £1m*
- ***36,342*** *London properties totalling 2.25 sq miles* ***are held by offshore haven companies****. Of these, 38% in the British Virgin Islands, 16% in Jersey, 9.5% in Isle of Man, and 9% in Guernsey*
- *Almost one in ten properties in the City of Westminster (9.3 per cent), 7.3 per cent of properties in Kensington & Chelsea, and 4.5 per cent in the City of London are owned by companies registered in an offshore secrecy jurisdiction. TI-UK has launched an* ***interactive map of London*** *which reveals the statistics for each borough – ukunmaskthecorrupt.org*
- *In* ***2011*** *alone,* ***£3.8bn*** *worth of UK property was* ***bought by British Virgin Islands-registered companies***
- *According to the latest figures, which cover October 2013 to September 2014****, estate agents contributed to only 0.05% of all Suspicious Activity Reports (SARs) submitted.*** *This figure does not match the risks posed by money launderers to the UK property market*

Transparency International makes 10 recommendations for reform, calling for buy in from the UK Government, lawyers, and estate agents to ensure that the UK property market is no longer a safe haven for corrupt funds. Action from the British Overseas Territories is also necessary to end this crisis.

2.26. BIS does not (i) publish statistics on the laundering of the proceeds of crime through the property markets; the courts; the official receiver; or (ii) measure the loss of opportunity in terms of the estates pulled down. It should, or better, ask ONS to do it, for the protection of the public including from BIS and its agencies, including its unelected anonymous policy staff.

3. Are any of the explicit definitions problematic in a UK context?

3.1. Yes. All the advertised definitions of BIS and its agencies, the Insolvency Service, the Land Registry, Companies House, its websites, and those of outsourcers through others such as the Ministry of Justice. There is particular offensiveness at the Land Registry where the world is carved up in two, being "solicitors" and everyone else. The first are absolved from statements of truth; are labeled "customers"; and can operate on secret letters without application. The regime allows anyone to place a claim on property. If the owner does not object in time (eg they are overseas), the property is lost. Seemingly BIS thought this was a good approach in anticipation of privatization, deferred only to post election. Unfettered "ownership" is not understood or respected, nor is the right to respect for private life.

3.2. The IS has adopted "branding" as a methodology. A person is a "creditor", "debtor", "bankrupt", "administrator", "auditor", as though one were born as one of these categories. It has pursued these delusions into the courts by inventing its own forms and adding "IN THE HIGH COURT OF JUSTICE" with a purchased court number. This concoction has been given to the private sector, with permission to add "crown copyright" and use in the courts, supported by its illegal website "*the court is administering these bankruptcies"*. It will be forced to bring this website down on the first massive claim against the Permanent Secretary.

4. Are there any other terms, aside from 'an honest bankrupt' and 'a second chance', used in the Recommendation that would benefit from being better defined or that could be problematic if they were developed into law?

4.1. Definitions need to come from the Oxford English Dictionary not from BIS policy staff. This required curtailment applies in particular to those who do not put their name, grade and contact details on their work. They are currently allowed to preside over a "regime" that recasts creditors as debtors and seemingly cannot tell the difference.

5. To what extent does the UK regime adequately provide for elements (a) to (e) of the Commission's Recommendation?

5.1. Not at all. The creation of a regime which contradicts the law and operates in parallel to it, such that the law can be effectively ignored with purported impunity, is plainly wrong.

6. Is there anything in the UK regime which is not in the Commission's Recommendation but delivers the Commission's objectives?

6.1. No.

7. Where you believe the UK regime does not meet the criteria, would the Commission's Recommendation improve the UK regime?

7.1. No. Recommendations have no part to play in company law.

8. To what extent does the UK regime already deliver the elements in this section of the Commission's Recommendation?

8.1. Not at all. BIS does not publish statistics on the laundering of the proceeds of crime through the property markets; the courts; the official receiver; or the loss of opportunity in terms of the estates pulled down. In the absence of statistics, no country by country comparison can be made.

8.2. The UK landscape has stopped the obligation on enterprises to have sufficiency of capital (going concern basis of valuation). This means that suppliers (including employees); customers; and others have no certainty of continuity. The public is not protected. The outcome is unpredictable.

9. Is there anything in the UK regime which is not in the Commission's Recommendation but delivers the Commission's objective?

9.1. No. The UK "regime" needs to be thrown out and restarted based on the Bankruptcy Act 1914. It is not fit for purpose. It deliberately obfuscates between INSOLVENCY (meaning illiquidity) and INSUFFICIENCY OF CAPITAL (meaning bust).

10. Where you believe the UK regime does not meet the criteria, would the Commission's Recommendation improve the UK regime, for example by introducing additional options for a stay on enforcement action by creditors?

10.1. A "recommendation" has no standing. The sovereign states respectively are those responsible for national law. Europe cannot and does not interfere in national law.

10.2. The question of a "stay on enforcement" "by creditors" is an important one because of the illegality of the operations of BIS and its unsupervised agency the IS. Those pulling down others are absolved from "proving" any entitlement. So long as a notional "majority" agree, they can plant their own straw man. BIS will put its whole force behind them. A STAY means a STAY from BIS and its intrusion into the private lives of its victims. The IS admits the large number of council tax driven "bankruptcies" it processes. Regretfully it takes no responsibility to tell local authorities that driving people to suicide to get their homes is not the correct way to calculate the proper amount due, if any, including after reliefs, nor is outsourcing delivery of core obligations (like help with filling in forms and housing benefits), including to "charities" and others siphoning public money without any duty to deliver or means to be held accountable.

11. Do you agree with the Recommendation that a restructuring plan process should be commenced without court involvement?

11.1. There are two pillars of a democracy, an elected Parliament and an independent judiciary. Excluding the independent judiciary means democracy is abandoned: this requires introduction in a manifesto as it cannot properly be executed otherwise (but will not be accepted). It would not succeed not least because the courts are here to stay. The UK public has no protection from BIS and its policy and internal legal teams, seemingly scrambling to bury wrongdoing and fete the wrongdoers whilst pillorying entrepreneurs, SMEs, estate owners and whistleblowers.

12. To what extent does the UK regime deliver the elements in this section of the Commission's Recommendation?

12.1. Not at all. It is destructive, not constructive. It presumes that returns to financial capital (vested interests) are more valuable than returns to productive capital (entrepreneurs, SMEs, self-employed, quoted companies outside financial sector etc). It collects and publishes no empirical data on loss of opportunity. It has no protections like support for Citizens Advice, or OFT. The UK regime does not provide commodity banking services delivered by those who are not loaded with the costs of compensation schemes and can survive.

12.2. The UK landscape is based on secrecy, lack of transparency, fatally flawed change of control reporting and relies on the creation of contaminated evidence laundered through lawyers, examined after six years have passed, whilst the underlying wrongdoing is buried.

12.3. Confidence in the regime is undermined by the focus on destruction, corruption, wastage and inefficiency. It speaks volumes that the informative statistics were collected privately over three years and that BIS had not itself commissioned these vital informative statistics from ONS or OFT, nor had NAO provided them. The empirical evidence is published in ***The Elephant in the Room: An Evidence Based Study of Government Waste, Error and Inefficiency,*** 31 January 2015 by Eamonn Hamilton. The description reads (Extract): "…*Government waste is caused by fraud, error and inefficiency, and this first evidential study into the subject has identified that, in the five-year period reviewed, government wasted over GBP230 billion of taxpayers' money. This astronomical figure would meet the NHS budget for two years, so when you read about Cameron, Milliband or Clegg offering to increase the NHS budget by GBP1 billion, the sheer scale of waste can be seen in perspective. This book is evidence-based and is believed to be the first book to approach the issue on such a basis. Nine hundred Public Accounts Committee and National Audit Office reports were examined, of which 78 were selected for deeper research. It is these 78 reports which are examined in depth and which together account for the loss of over* ***GBP230 billion of taxpayers' money****. The book is apolitical, but because of the period examined researches projects mostly initiated by New Labour."*

12.4. Decision-making on an informed basis must be supported by published empirical data. Ad hoc statistics by the private sector are not good enough in a developed country, let alone one which is purporting to export its own toxic "insolvency regime", based (i) on how quick and efficient it is in liquidating its targets (those with a valid cause of action who can hold wrongdoers to account); and (ii) how much it realizes. Whether what the "regime" is doing is right or wrong, or even properly considered, is not reported. The burial of OFT and PROSPECT reports including those to Parliamentarians and PAC, as well as the closure of the reliable, independent and highly respected OFT, are not hopeful indicators. This approach by BIS/IS and those unidentified and unelected staff in "policy", is neither fit for purpose nor therefore can it be recommended or used as a robust UK path-finder for export to Europe.

13. Is there anything in the UK regime which is not in the Commission's Recommendation but delivers the Commission's objectives?

13.1. No.

14. Where you believe the UK regime does not meet the criteria, would the Commission's Recommendation improve the UK regime, for example the ability to 'cram down' classes?

14.1. No.

15. To what extent does the UK regime already provide protection for new financing?

15.1. Not at all. The regime aims to target new finance. New capital is risk capital, or equity. It includes use of accumulated retained earnings after any new capital is injected. The "regime" such as it is, involves a plethora of devices and attachments to extract value (rather than de-risk enterprise), including free of the tax which would properly be due on alternative exits.

15.2. The "regime" promotes contravention of company law on sufficiency of distributable earnings; unlawful financial assistance; and involves the complicity of auditors (LLPs) on (i) "what you can get away with" accounting policies, reporting with qualifications (in place of adverse reports); (ii) "rotating" rather than resigning; and (iii) accepting accounts of operations which are in fact merely a façade for another; financially unstable; or a "virtual operation".

15.3. BIS does not publish statistics on the laundering of the proceeds of crime through the property markets; the courts; the official receiver; or the cumulative loss of opportunity in terms of the estates pulled down. It should. Perhaps if told often enough, it might.

16. Is there anything in the UK regime which supports rescue finance which is not in the Commission's Recommendation but delivers the Commission's objective?

16.1. There is no such thing as "rescue finance". There is risk capital.

17. Where you believe the UK regime does not meet the criteria, would the Commission's Recommendation improve the UK regime?

17.1. No. The UK does not (but should) oblige agents to (i) be licensed in accounts preparation, (ii) reveal the identity of their principals, (iii) record independence verification or (iv) sign their reports in their own name. This is the basic protection of the public by the state. The state omitting to deliver that protection is where it all goes wrong. State obligations cannot be outsourced or left to the private sector.

BIS allows Chartered Accountants (independent) to be "IPs" (agents) despite the fundamental contravention of the respective institute's by-laws. It permits disciplinary to be carried out by those being disciplined or their colleagues (the vested interests). It has created micky mouse "tribunals" which permit auditors to sign off on mixing of client monies by banks. Tribunals have allowed barristers to invent the notion of an "HONEST MISTAKE", which under FSMA 2000 or the Companies Act would be reckless or knowing conduct.

17.2. None of this has brought BIS credibility, nor has allowing "Limited Liability Partnerships" to facilitate arbitrage including globally; raising the threshold for audit; or not filing for compulsory winding-up of manufacturers and vendors of tax evasion product. There is no certainty that wrongdoers are prosecuted, or curtailed with proceeds of crime disgorged.

17.3. The signals are of a wholesale abdication of the obligation of the state to protect, regressing the country to before the jailing of the directors of the City of Glasgow bank, 1879. It was not necessary to prove beyond reasonable doubt that they had personally made each entry in the books for them to be found guilty. The reports of Chartered Accountants were relied on. The case gave certainty of outcome on financial statements which were false.

17.4. One hundred and thirty five years later, the "regime" is operating in reverse: instead of holding wrongdoers to account, including for false accounting by banks and insurers thereby giving confidence to all concerned, "policy" has been (i) to paper over what is there; (ii) operate illegal bail-outs without any theoretical basis for expecting them to stabilize anything; and (iii) run like fury to promote asset stripping the nation. The only conceivable purpose is to create balance sheets for banks and "insurers" that do not otherwise exist, by incentivizing those agents "skimming" through layered securitization, without audit or ownership trail.

17.5. In one fell swoop, confidence in banking systems and the public market has gone with equities trading now virtually obsolete. A central bank (BoE) that admits to the Treasury Select Committee its variance in Central Bank reserve requirement could be 1/3 trillion pounds and would take over six months to establish, is one which is saying "we do not know".

17.6. It is against this background that the dogged determination to "pull down" and exclude the voice of objectors (estate owners and those interested) must be considered.

17.7. The danger of the approach adopted by authors of this "consultation" is in ignoring this context and instead to forge ahead with promoting the government taking over the courts; turning them into gambling casinos; with "probability outcomes" underwritten by the estate of the "loser", using "lawyers" who are in fact financially interested transaction managers.

17.8. With all that has been thrown out and ex MoJ policy staff now resourcing the post of CEO of the Insolvency Service, the required independence of the judiciary has effectively all but gone. The process is unstoppable. Judiciary are resourced from barristers who themselves experienced this industry as indemnified agents and function no differently.

17.9. As a result the basic principles of access to law and findings of contempt, when access is blocked, have gone, the very principles that in 1900 were very well known and certain.

17.10. BIS must stop and re-think, if confidence is to be restored and earned by certainty.



The Lord Justice-Clerk's Charge.

Lord Justice-Clerk.

The VERDICT was recorded as follows:—"The jury unanimously find the panels Lewis Potter and Robert Summers Stronach guilty of the first, second, and third charges, as libelled, and find them not guilty of the remaining charges; and find the panels John Stewart, Robert Salmond, William Taylor, Henry Inglis, and John Innes Wright, guilty of using and uttering, as libelled, under the first, second, and third charges, and find them not guilty of all the remaining charges."

The LORD JUSTICE-CLERK (to the Jury)—I have to thank you for the great attention you have paid to this very important case; and to announce that in respect of your service on this occasion you will not again be required to act as jurymen for the next five years.

The LORD JUSTICE-CLERK then intimated that sentence would be pronounced next day at half-past ten o'clock.

At the meeting of the Court on the following day, the LORD JUSTICE-CLERK, addressing Lewis Potter and Robert Stronach, said—Lewis Potter, Robert Stronach, the jury, after a long investigation, and after full deliberation, have found you guilty on the first branch of the three charges of falsifying and fabricating the balance sheets of the Bank. I think it is proper to say, in explanation of the sentence which must now follow upon that verdict, that, had the other two charges contained in the indictment, or either of them, been proved to the jury, it would have imposed upon us the duty of inflicting a very severe punishment, because not only would these charges have inferred a crime of very great magnitude, but they would have brought into the case the element of personal advantage as the motive of the act which you committed; and I am desirous to say that, as the case now stands, the act which was done by both of you did not necessarily involve, and probably was not actuated by, any design or desire of personal advantage, but was a criminal act committed, as you thought, for the benefit of the Bank. That does not remove it from the category of crime—very far from it—but it does remove from the crime of which you have been convicted the element, as I have said, of corrupt personal motive for personal ends. That consideration has weighed with the Court in the sentence which I am now to pronounce, being short of one of penal servitude. The sentence of the Court on you, Lewis Potter, and on you, Robert Stronach, is that you be imprisoned for the period of eighteen calendar months.

The LORD JUSTICE-CLERK (addressing the other prisoners)—The jury have found all of you guilty, not of fabricating or falsifying the balance sheets, but of uttering and publishing them, knowing them to be false. We have considered also your case, and looking to the crime of which you have been convicted,

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Clerk LJ "*…….the jury have found all of you guilty, not of fabricating and falsifying the balance sheets, but of uttering and publishing them, knowing them to be false.*"

Lord Justice-Clerk. and the distinction that may be drawn between you and the other two prisoners, and considering that you have been in jail now since the month of October, the sentence of the Court is that you be further imprisoned for eight calendar months.

The LORD JUSTICE-CLERK added—It has been represented to me that, in my observations in charging the jury yesterday, I made some remarks upon the officials of the Bank that might be misunderstood. Some of the gentlemen who were witnesses, at least one who was a witness at the trial—I mean Murdoch—it has been said, might possibly feel hurt, and might be injured if my remarks were intended to apply to him, and I wish it, therefore, to be clearly understood that in the remarks that I made about the officials of the Bank I referred to three of the witnesses, viz., Morison, the accountant; Morris, the private clerk; and Turnbull, who gave the false return to the Inland Revenue.

Raymond v Honey [1981] UKHL 8 (04 March 1981)
URL: http://www.bailii.org/uk/cases/UKHL/1981/8.html

Lord Wilberforce :

" In considering whether any contempt has been committed by the appellant, there are two basic principles from which to start.

First, any act done which is calculated to obstruct or interfere with the due course of justice, or the lawful process of the courts, is a contempt of court. These are the well known words of Lord Russell of Killowen C.J. in Reg. v. Gray [1900] 2 Q.B. 36, 40.

Since 1900, the force of this principle has in no way been diminished. In A.-G. v. Times Newspapers Ltd. [1974] A.C. 273, Lord Diplock, with whom Lord Simon of Glaisdale agreed, clearly stated that to inhibit suitors from availing themselves of their constitutional right to have their legal rights and obligations ascertained and enforced by courts of law, could amount to contempt of court (1.c. p.310): whether the particular action there involved had that effect is immaterial to the present case. The principle has been strongly affirmed by the European Court of Human Rights in the case of Golder (1980) 1 E.H.R.R. 524. The court there decided that access to a court was a right protected by Article 6 of the European Convention, and, while not expressly ruling upon the compatibility with the Convention of Rules 33, 34 and 37 of the Prison Rules 1964 (as to which see below), and while accepting that the right might be subject to limitations, applied this ruling to a convicted United Kingdom prisoner, who (inter alia) wished to direct proceedings against a member of the prison staff, and to a hindrance of a temporary character.

Secondly, under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication—see Reg. v. Board of Visitors of Hull Prison [19791 1 Q.B. 425, 455 and Solosky v. The Queen (1979) 105 D.L.R. (3d) 745, 760, Canadian Supreme Court per Dickson J.

…….The action of the appellant was clearly such as to deny, albeit temporarily, the respondent's right of access to the court and, on the principle above stated, constituted a contempt. "

18. To what extent does the UK regime deliver a second chance for entrepreneurs through existing insolvency laws?

18.1. Not at all. Entrepreneurs are amongst the targets of the current landscape, not least because revenue streams and goodwill are the subject of unlawful and irregular trade. Track-record and relationships take three decades to develop especially in private wealth, and inter-generation. Without exception, vast sums paid by the banks to become private banks to target the wealthy has created customer and staff attrition, discontinuity and failure.

18.2. This is not entrepreneurship. It is transaction based skimming, set on "guaranteeing" there is no come-back. Those harmed are not an organized group, not informed and cannot fight back. The public is not protected. The public will not be protected until prosecutors prosecute on sight of sufficient evidence (unless informants/covert human intelligence are at work, "public interest") and give up on their own made-up additional discretionary test (that there is no prosecution unless the prosecution is "in the public interest"). Prosecution on sufficiency of evidence is not the same as no prosecution unless a discretionary arbitrary hurdle is overcome. This is a perverse form of certainty, that entrepreneurial rewards (return to productive capital) will attract the vultures (return to financial capital) yet the DPP, the AG and BIS will do nothing to protect the former from the latter. Equity fund managers are not entrepreneurs. The landscape is a free-for-all with no rules or accountability. No-one is responsible. The law requires certainty of outcome. A decision dependant on an incumbent decision-maker, with the baggage of their own limitations and competence, prejudice, experience, interests, etc. simply does not do it.

18.3. Instead of addressing this worrying lack of protection, the IS has actively marketed bankruptcy: it has no commensurate plan for those harmed as a result, including from big players in debt as Reichmann with billions dumped on the market (1998). There is no mechanism to stop the IS, apart from to close it down and redeploy valuable staff usefully.

19. Is there anything in the UK regime which is not in the Commission's Recommendation but delivers the Commission's objective?

19.1. No. The UK's "regime" such as it is, requires throwing out and open recognition that its operations are perverse and its systems are both legacy and contravene the DPA. It is not acceptable that perversity is severally and collectively facilitated by the Official Receiver; HMCTS; the London property market; the supply chain to prosecutors and that to so-called "regulators"; purported "independent" "experts"; those mandated to enforce orderly conduct; each hoping the independent judiciary will "legitimize" that which should be stopped. This laundering and layering "permits" the vested interests to profit to the total exclusion of owners and those entitled. Enforcement against wrongdoers is blocked.

19.2. The DTI, the OFT and the Chief Inspector of Companies should all be reinstated. The BIS policy and legal teams need review. BIS prosecutions must cut its toxic dependence on a supply chain comprising the vested interests, with a stake in the outcome of transactions and no regard to public duty (caveat of hope: Parker J Administrative Court, re KPMG, 24.4.15).

20. Where you believe the UK regime does not meet the criteria, would the Commission's Recommendation improve the UK regime?

20.1. No. These are human rights issues. Since OBG v UK was decided, the landscape in the UK has been most bleak. The result says that agents or catalysts have no responsibility whatsoever for accepting "appointment" (see also Brandon Barnes v CPS etc, Supreme Court). Banks are able to move assurances given to one party "A" in respect of another "B" (no underlying debt), to a third "C". C can pull down the principal, B, draining cash, and liquidate itself, with no come-back whatsoever. ECHR will only check to see if the law exists on paper, not that it is operationally effective in the courts, the true obligation. ECHR does not like to be seen to "interfere" in national courts. The "effective" criteria, means it is entitled to conduct an operational audit of how and why a case went wrong. It does not do this.

20.2. UK judges feel most comfortable with examples on which to build their experience, and routinely have regard to Strasbourg jurisprudence. MoJ policy bureaucrats attempt to restate this as excessive control by Europe, giving rise to the BALANCE OF COMPETENCIES consultation by a deadline of mid January 2014. This attracted few contributions which were not published until 22 July 2014, as Parliament and courts were closing for the summer.

https://www.gov.uk/government/consultations/balance-of-competences-fundamental-rights-review

Review of the balance of competences fundamental rights evidence: individuals

published: 22 July 2014 PDF, 345KB, 55 pages – **ref: 12 pages from page 43 to page 54 inclusive**

(last) para 40: *"The current judicial system in the UK has given new meaning to humiliating and degrading treatment and proves that, in the UK at least, there is no such thing as the sanctity of human life, and respect for the citizen including by the state. Only ECHR can come to the rescue of UK citizens."*

21. In addition to the issues considered in the recommendation, are there other aspects of insolvency across the EU which the Commission should consider?
For example:
o Developing EU principles for fast, efficient out of court rescue procedures for small companies.
o Developing the conditions for rescue finance.
If so, what should the Commission consider?

21.1. Rescue is as old as the hills. It does not require meddling by bureaucrats and cannot be improved by them.

21.2. "Rescue finance" means equity risk capital. The principle is, if it is too hot in the kitchen, stay out.

21.3. The courts have now effectively been replaced by the "regime" involving financing arrangements, speculation, and "winner/loser" criteria, rather than law enforcement. If the courts are not accessible as law enforcers, an "improved" surrogate can never succeed.
There is little that can be added to the glee of the litigation financiers, championed by Justice Minister Lord Faulk:

http://www.litigationfutures.com/news/litigation-much-optional-activity-says-justice-minister-defence-court-fee-rises

21.4. The assets of any financially independent person or SME are fair game for grabbing yet owners and those interested are excluded, i.e. not heard, even if attending and speaking. Under the "regime" the financially independent are vulnerable to their estate being used by their suppliers (informed of the true standing) to underwrite the outcome of transactions against them: opportunists operate on what is not theirs, thus have "nothing to lose" even if caught. SMEs are already identified as losers, along with employment and injury claims.

Article Litigation Futures (extract) 5 March 2015
Litigation is ***"very much an optional activity",*** says justice minister in defence of court fee rises House of Lords: strong criticism

Justice minister Lord Faulks yesterday defended the imminent court fee increases by stressing to peers that litigation is "***very much an optional activity",*** and suggesting that solicitors should help their clients by advancing them the money.

Meanwhile, leading administrative law QC Lord Pannick expressed confidence that the judicial review of the increases would be successful.

In a debate on the statutory instrument to introduce the increases – to which Lord Pannick sought to attach a 'motion of regret' – criticism rained in from other peers, with a focus on the difficulties they will cause in bringing mid-size claims, such as those brought by SMEs and people suing over personal injuries or clinical negligence.

The new fees are set to come into force on Monday. Lord Faulks suggested that the current fees are ***"very modest***", adding: ***"It is also worth bearing in mind that litigation is very much an optional activity. Anybody who is deciding whether or not to sue will have all sorts of factors that they bear in mind.***

"There are plenty of reasons for not bringing proceedings, one of which is uncertainty of outcome. Anyone advising a claimant will probably need to satisfy that claimant that there is at the very least a better than even – probably a 75% – chance of success before they commence proceedings. Another relevant factor is the solvency of the defendant or the likelihood of recovery.

"All those are matters that will inhibit somebody in deciding whether or not to sue. Of course, there is also the factor of the cost and extent of their lawyers' fees. What is important is that the court fees generated here would be recoverable from any defendant in the event of a successful claim."

He said this was relevant both to the question of access to justice "***and also as to whether a solicitor will feel able, as is often the case in personal injury or clinical negligence cases, to provide assistance with the upfront costs on the basis that they will be recovered in the fullness of time".***

Similarly he thought after-the-event insurers could help in personal injury claims. ***"In appropriate cases where an insurer thinks that a claim has merit, it enables court fees to be incurred, which are, as I said earlier, recoverable from the other side."***

The minister also highlighted the fee remission provisions and that the government did listen to consultees by amending some of its proposals. He insisted that it bore in mind the wider choice of jurisdictions that international claimants have. ***"[We] are satisfied, having consulted widely, that this is a reasonable and proportionate increase for these large claims."***

Asked about the 80% fall in employment tribunal claims since fees were introduced, Lord Faulks agreed with the comments of crossbencher Lord Brown of Eaton-under-Heywood, who in a speech otherwise hostile to the rises, said that while the tribunal fees had ***"no doubt"*** discouraged a number of meritorious claims, ***"I suspect that it has discouraged at least as many unmeritorious claims – speculative claims, which used regularly to be brought and then bought off or settled because, frankly, that was a cheaper option for the defendant employers than successfully resisting them and then being left to bear their own costs, which were quite likely to be very substantially more".***

Lord Pannick ..... notion of litigation as an optional activity. ***"As the minister well knows from his experience as a very successful barrister, for many people – those suing for debts or to recover compensation for personal injury – litigation is often a necessity to keep your business alive or to maintain any quality of life...***

"The fee remission provisions to which the minister, perhaps somewhat desperately, referred are not going to assist other than in exceptional cases." The power to charge court fees at above cost price is contained in section 180 of the Anti-social Behaviour, Crime and Policing Act 2014. Lord Pannick asked: ***"But is it a fair, reasonable or proportionate exercise of that power? Plainly not. For litigants to have to pay such substantial sums in advance of bringing a legal claim will inevitably, in practice, deny access to the court for many traders, small businesses and people suing for personal injuries.***

"The government have suggested that court fees will be a small fraction of the legal expenses which a claimant will incur, but many claimants will not have to pay their legal expenses at the outset of proceedings. They will not have such a substantial sum of money available at the outset of the case, or they may be able to pay these court fees only by doing without competent legal representation."

He said section 180 does not alter the Lord Chancellor's legal duty under section 92 of the Courts Act 2003 to ***"have regard to the principle that access to the courts must not be denied".***

Lord Pannick argued: ***"The courts will interpret the powers conferred by section 180 as not intended to authorise regulations which impose an unreasonable or disproportionate barrier to access to the courts...***

"If you wrap yourself in Magna Carta, as Mr Grayling sought to do last week at the Global Law Summit, you are inevitably and rightly going to invite scorn and ridicule if you then throw cold water over an important part of our legal heritage."

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22. Does the current EU landscape of different domestic insolvency laws create problems in practice? Is it a barrier to cross-border trade and investment in the EU?

22.1. At present the UK is said to lead the world in terms of an easy regime which facilitates transactions that could not otherwise happen. This "advantage" is economically destructive. Brits looking to do business elsewhere in order to escape the hostile UK enviroment in particular for entrepreneurs, eg SMEs and self-employed, find it very hard because other countries usually prefer to buy locally, if they can. A non UK investor into the UK now needs to consider how risky the UK is, and how easy it is to lose your shirt, because someone else decides that it should be theirs and the state supports them, without asking who owns what.

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23. Should there be greater harmonisation or convergence of insolvency regimes across the EU? What are the benefits and risks to UK businesses?

23.1. No. Where an international group goes down, the individual subsidiaries each appoint their own administrators: these protect the position locally and have no commercial interest in joint activity to save a central function which sprawls the group, such as a telecoms network operating centre ("NOC"). An example is Carrier 1 which went down post millennium. The operation had not been profitable at gross profit level.

23.2. In circumstances such as this, it is necessary to consider what happened from the start, such as excessive exit profit-taking by an equity house as a principal on float. Unstable trading with false financials post float and thereafter is inevitable (colloquially, "dumping").

23.3. It becomes clear that the problem is that the market is being used for short term profit-taking. This creates instability. Its "success" is totally reliant on there being an "auditor" who is not truly independent and who believes there will be no "come-back" in practice.

23.4. That which is being cast as an "international problem" is in fact a national one. Destabilizing excessive upfront profit-taking is allowed; the market is misused to "dump", thereby creating the need to pull down vehicles just before the six year limit under limitation law (eg sale of DMG (Direct Marketing Group) to European Home Retail (Farepak) by Barclays private equity in 2000, pulled down October 2006, with the auditor and IP the same party).

23.5. The UK has yet to provide proper protection for private estates and businesses including SMEs from the UK "insolvency regime" and the Insolvency Service. This includes those operators who function without accounts preparation license, VAT number or service address, effectively private investigators, with an interest in liquidation and trading the turnover and goodwill that is up for grabs (conversely warding off fatal risks by conversion and spread) as well as profiting from selling the target's tangible property to pay themselves.

23.6. The threat of a referendum on Europe post election means that pan European planning is not a good use of effort at present. The UK "insolvency regime" must be ended not exported.

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24. Do you have any other comments?

24.1. Yes. The outstanding work of the OFT from 2010 has not been used nor has the evidence of PROSPECT, senior management or regional operations in the definition of the problem; formulating the questions; or indeed evaluating the evidence, including making it public immediately.

24.2. In 2014 the Insolvency Service ran two consultations on the Rules and another on the industry. It did not mention that, after these closed, it would publish reports by a "strategic adviser to Baker Tilly on its relationship to government" the procurement of which was shrouded in secrecy. This promoted "pre-pack administrations". A second report by private sector consultants with vested interests branded "University of Wolverhampton" paid for by R3 provided false statements of law.

24.3. This work refers to IPs as the agents of the banks, proving that operations are about asset stripping. It high-lights that BIS has done nothing to warn off the public from any engagement or compelled the IS to stop giving out IP numbers "as though" it had vetted the people and could quote copy ACCOUNTS PREPARATION LICENCE and VAT number. To the extent such indemnified agents are holding themselves out as performing a public function (imposing duty), they will be adversely affected by the ruling by Parker J (Administrative Court 24 April 2015). This is in regard Barclays Bank compensation in respect of consequential losses on interest rate swap mis-selling. Permission against KPMG, the bank's agent evaluating compensation, has been granted.

24.4. Under the EQUALITIES ACT BIS must consult those adversely affected: not only has it not done so but it has run irrelevant consultations whilst there was another secret agenda to be revealed piecemeal after the first closed. It was stated to be "independent" yet independent it was not.

24.5. BIS has miscalculated. It must now quietly come to terms with the fact that the public is not stupid. It should not rely on and resort to only QCs, as "professionals" to think, read, write and speak.



Mira Makar MA FCA (Miss), witness
member SME Alliance Ltd
London
17 March 2015 (minor updates April 2015)

About the witness:

The witness has operated in the rescue market since 1982, mainly as principal, with exits on the unlisted and main market quoted list. Sector specialization has been operating systems in central government, telecoms, space (ground control, simulations), defence, intelligence, trust and fiduciary, administrative, pharma, private banking. Principal customer sites include UK, Germany, Netherlands, Brussels, Switzerland, Crown Dependencies, Hong Kong.

She has been a witness to the Companies Investigation Branch of the DTI from September 2005, from which time many of the developments described above have matured and become ever more toxic and anonymised.

Royal Charter of the 11th May 1880

Victoria by the Grace of God

of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING!

That the Profession of Public Accountants in England and Wales is a numerous one and their functions are of great and increasing importance in respect of their employment in the capacities of Liquidators acting in the winding-up of companies and of Receivers under decrees and of Trustees in bankruptcies or arrangements with creditors and in various positions of trust under Courts of Justice as also in the auditing of the accounts of public companies and of partnerships and otherwise.