June 2026

Corporate Civil Enforcement Reforms consultation

Response from ICAS

Corporate Civil Enforcement Reforms consultation

About ICAS

1.1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,000 of our members are based in Scotland and 10,000 in England.

1.2. We are one of the four Recognised Professional Bodies (RPBs) regulating insolvency practitioners (IPs) who can take appointments in the UK. We have an in-depth knowledge and expertise of insolvency law and procedure. We also have experience in other areas of regulation, as a recognised supervisory body (RSB) for statutory audit, and a professional body supervisor (PBS) for anti-money laundering.

1.3. Our charter requires us to primarily act in the public interest. Our responses to consultations and calls for views are therefore intended to place the public interest first. Our charter also requires us to represent our members' views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.

1.4. We, like our members and the public, are interested in ensuring that any changes to legislation and procedure are made based on a comprehensive review of all options, supported by evidence, with reasonable confidence that the changes will bring benefits to all stakeholders.

1.5. We are pleased to have the opportunity to give our views in response to the Corporate Civil Enforcement Reforms consultation. We would be happy to discuss any of the matters raised in this response in further detail with the Civil Enforcement Consultation Team.

General comments

2.1. The proposals are broadly welcomed insofar as they seek to modernise the civil enforcement framework, improve deterrence, and strengthen public protection.

2.2. We however strongly advocate that to improve the overall governance of corporate entities, and minimise the need for enforcement action, that greater attention and complementary reform is required to ensure that directors are aware of the requirements and standards that they are required to comply with prior to them taking up such positions.

2.3. Furthermore, greater attention should be given to more robust, positive and proactive measures during corporate life, again minimising the requirement for enforcement measures after the event. This is particularly relevant for government departments, agencies and local government where existing powers and proactive action could result in earlier interventions which would either mitigate against or discourage behaviours which currently end up as civil enforcement action.

2.4. Reform should nevertheless remain proportionate, evidence-based and operationally workable, particularly where proposals expand investigatory powers or introduce more automatic consequences for directors.

2.5. We note several of the proposed measures only cover England and Wales or Great Britain. Several of the proposals relate to areas where there is equivalence in Scottish and Northern Ireland legal jurisdictions. The situation is further complicated with a mixture of devolved and reserved responsibilities over Scottish corporate insolvencies. We would strongly encourage the UK government to engage with devolved administrations in Scotland and Northern Ireland to ensure that any proposed measures to be taken forward can also have relevant changes undertaken in Scotland and Northern Ireland as appropriate, ensuring a level playing field and consistency in approach across the UK. It is important that creditors and insolvency practitioners can operate across the UK in a consistent manner.

2.6. The success of the package will, however, depend on careful drafting, clear safeguards, and operational implementation that is both fair and efficient. Reforms that are too rigid may create new unfairness; reforms that are too broad may generate uncertainty and additional dispute.

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Specific questions

Business as usual

Question 1

Would reforming civil powers help the Insolvency Service tackle a wider range of misconduct? Please explain your answer.

Response: Yes. Reforming the current civil powers would, in our view, assist the Insolvency Service in tackling a broader range of misconduct. The existing framework relies heavily on relatively high-impact remedies, principally director disqualification and public interest winding up. Those remedies remain important, but in practice they can be resource-intensive and may not always be proportionate to lower-level or emerging misconduct. A more graduated toolkit would enable earlier and more proportionate intervention, improve deterrence, and allow more cases to be addressed where the present regime may lead to no action being taken.

Question 2

How could the Government raise directors' awareness of the civil enforcement regime to prevent misconduct, without legislative change?

Response: The government could improve awareness through a combination of clearer communications, better use of Companies House touchpoints along with improved working with other partners and agencies. Directors should receive concise guidance on core duties and the potential consequences of misconduct at key stages, such as incorporation, appointment, and filing events. Government should also strengthen relationships and embrace greater partnership working across government departments (for example HMRC) and externals partners (for example local authority enterprise companies, business organisations such as Federation for Small Business, Institute of Directors, and the wider accountancy sectors). In our view, improved education and visibility should complement, rather than replace, legislative reform.

Proposal 1: Requirement to disqualify as a result of a company being wound up on public interest grounds

Question 3

In what circumstances should a director be able to appeal their disqualification? Please explain your answer.

Response: A director should be able to appeal in very limited circumstances. Winding up on public interest grounds is reserved for the most serious of circumstances where widespread public harm is evident. It is well established that directors are collectively responsible for the actions of the company and they must remain accountable irrespective of their level of personal involvement in relation to the circumstances which give rise to the public interest winding up. We would therefore expect that appeals may be limited to circumstances, for example where an individual is subject to mistaken identity, has been appointed without their knowledge or where they have resigned but company filings have not been made. A narrowly defined but meaningful right of appeal is important to preserve fairness, particularly where the proposal would otherwise operate automatically.

Question 4

Does this proposal balance the need to act quickly to protect the public, whilst treating directors fairly? Please explain your answer.

Response: The proposal does seek to advance public protection by removing delay between a public interest winding up and the disqualification of those responsible. That objective is understandable and, in many cases, justified. However, the balance is only acceptable if robust safeguards are built in. In our view, the proposal is capable of striking a fair balance, but only if the identification and appeal safeguards are clear and workable.

Question 5

The proposed length of disqualification would be a set period of 5 years. Is this appropriate? If not, what do you think it should be? Please set out your reasoning.

Response: A fixed period of 5 years is a reasonable starting point and would provide clarity and consistency. However, a wholly inflexible approach may not be appropriate in all cases. A director whose involvement was marginal should not necessarily receive the same outcome as one who was central to the misconduct. As we have pointed out in response to question 3, it is important that all directors recognise that they have a collective duty and cannot claim a lack of direct involvement as a reason for their lack of culpability. We therefore favour a 5-year default with an ability to increase the period of disqualification against individual directors should the circumstances warrant a greater disqualification period.

Proposal 2: Director restrictions

Question 6

Do you support the introduction of a director restrictions regime to address low-level misconduct? Please explain your answer.

Response: Yes. We would generally support the introduction of a director restrictions regime. In practice there is a clear gap between the seriousness required to secure or justify disqualification and the position where no formal action is taken at all. A restrictions regime would allow proportionate regulatory intervention in cases of negligent or repeated poor conduct, whilst preserving the possibility of rehabilitation and future commercial contribution. That is likely to be more efficient than relying exclusively on full disqualification.

We would however caution that a director restrictions regime must not provide a ‘soft exit route’ for cases where director disqualification is appropriate. There is a risk that case management decisions could be taken to down classify cases to achieve more positive outcome statistics across both restriction and disqualification regime. It is essential that robust decision making on case management issues is undertaken.

As has been acknowledged, there is already a low confidence level in the director disqualification regime. Any new regime must ensure, through robust decision making and with adequate resources to pursue action, that it will add to and distract from increasing confidence in tackling director misconduct.

Question 7

Is 3 years a suitable timeframe for a restriction? If not, what should it be?

Response: A period of 3 years appears broadly suitable for many cases. It is long enough to create a meaningful period of oversight and deterrence, but not so long as to be disproportionate for lower-level misconduct. That said, there may be merit in allowing a degree of flexibility, for example through a range of one to three years or one to five years, to reflect the seriousness and persistence of the conduct in question.

Question 8

What other types of misconduct should be considered for inclusion in the restrictions regime?

Response: While we agree that a director restrictions regime should be targeted at negligent and incompetence, we think there is merit in including lower-level willful misconduct and misfeasance. The difficulty however is likely to be, across any of the categories, defining this adequately to ensure that the regime can be administered effectively and efficiently. Where behaviour is subject to interpretation, then it is more likely that the work required to substantiate claims and the level of dispute/appeals will be greater. Care should be taken to ensure that any list is sufficiently clear and objective to provide legal certainty.

In addition to the areas of misconduct in scope set out in the consultation, we would suggest that the following behaviours would also be suitable as evidence of lower-level willful misconduct and misfeasance:

- Overdrawn directors loan accounts.
- Failure to preserve accounting records.
- Breaches of Companies Act requirements (for example, dividends declared with insufficient profits, failure to obtain approval by the company for transactions where required).
- Failure to act in the interests of creditors (somewhat equivalent to wrongful trading but at a lower level and within smaller defined parameters).
- Misappropriate of funds or assets (below a defined limit)

Question 9

Do you think that restrictions provide sufficient weight to deter negligent behaviour? Please explain your answer.

Response: Potentially yes, provided the regime is visible and enforceable. Restrictions are less severe than disqualification, but that does not mean they lack deterrent effect. For many directors, the reputational impact, practical constraints, and risk of escalation to disqualification would be significant. The extent of deterrence will depend heavily on how consistently the regime is applied and how effective restrictions breaches are pursued (resource to identify as well as resource to escalate).

We do not think that a minimum paid up share capital in a company is an effective or proportionate restriction. The proposal to require a joint bank account signatory may not be as effective as intended without a wider control framework or potential implications for the joint signatory.

Question 10

Are there additional restrictions you think should be considered to protect the public and prevent repeat misconduct? Please explain your answer.

Response: Additional restrictions might include limitations or prohibitions on director loan accounts, related inter-company transactions, and transactions with the director or related and connected parties. There should also be restrictions on being involved in the management or running of any other new business with the same or similar name or trading name.

We would suggest that consideration should also be given as to whether it is appropriate for such individuals to hold certain public appointments or positions of trust in other areas of life.

Restrictions should remain proportionate and should be clearly framed so that directors, advisers and counterparties can understand how they operate in practice.

Question 11

Should there be consequences for any co-director if an individual breaches their restrictions? Please explain your answer.

Response: Only in limited circumstances. A co-director should not face consequences merely by association. However, where there is evidence that a co-director knowingly facilitated or ignored a breach, or where there was a broader failure of governance in which the co-director was complicit, some consequence may be justified. The touchstone should be knowledge, responsibility and causative involvement, rather than simple proximity.

Question 12

Does this proposal provide sufficient opportunity for directors to challenge the decision to apply restrictions? If not, what else should be done?

Response: We consider a review with subsequent right to appeal to be appropriate. This approach has worked well in other situations, for instance in relation to decisions in Scottish personal insolvency where reviews of decisions are undertaken by the Accountant in Bankruptcy with a subsequent appeal to the Courts. We would however suggest that an independent panel be added to the framework charged with oversight of this process. This is an important element of the Scottish review process. In addition, there should be transparent and published reporting of review restrictions, review and appeal statistics which assists legitimacy, improves consistency, and reduces the risk of unnecessary court challenges.

Question 13

What are your views on offering a post insolvency educational course as an alternative to placing restrictions on a director? Please explain your answer.

Response: We do not support this proposal. While the theory may be attractive there is little evidence that post event education is effective. The Scottish personal insolvency regime introduced requirements around financial education in certain bankruptcy situations in 2016, however this has been completely ineffective. There is substantial cost in setting up such education and providing it on an ongoing basis with no evidence of ultimate benefit. It is highly unlikely that any similar corporate education for directors post restriction would be any more effective in achieving its desired outcomes.

Question 14

Please provide any thoughts you may have on the following: a. What should the aims of post insolvency director education be? b. What types of content should included? c. How should education be delivered? d. Who should deliver the education? e. How should it be funded? f. How should outcomes be measured?

Response: See response to question 13.

Proposal 3: Secretary of State to replace court as decision maker for disqualification

Question 15

Would the proposed system effectively improve the current court-based system? Please explain your answer.

Response: Potentially yes. A reformed administrative decision-making process could improve speed, reduce cost, and enable enforcement action to be taken more efficiently. That said, the success of the proposal will depend on the credibility and independence of the internal decision-making structure, the clarity of procedural rights, and the quality of the appeal mechanism. Efficiency gains should not come at the expense of fairness or transparency.

The Scottish personal insolvency framework has taken this approach, with many of the court functions transferred as administrative functions carried out by the Accountant in Bankruptcy since 2016. This has generally operated satisfactorily.

We would suggest that the proposed disqualification process has a review process added prior to the appeal stage. This would provide equivalency to the proposed restrictions process discussed above. We would suggest that the independent panel discussed in our response to question 12 could also have oversight of this review process also.

Question 16

Should appeals against a decision to disqualify be heard in the First-tier Tribunal? If no, please provide reasons and alternatives.

Response: Yes, in principle. The First-tier Tribunal could provide a more accessible and potentially cost-effective route of challenge than the current court process. However, this would only command confidence if the tribunal has access to members with appropriate expertise in insolvency, company law and regulatory decision-making.

We are cautious about the potential for significantly reducing costs through a First-tier tribunal over a court process as it is likely that in contentious matters parties involved will retain the instruction of legal professionals and other experts to maximise a successful outcome for them.

Question 17

Are there circumstances where you believe a tribunal-based approach would not be appropriate? Please provide details.

Response: Subject to access to members with the appropriate expertise in insolvency, company law and regulatory decision-making then it is likely that the tribunal-based approach will be sufficient in the vast majority of cases. A tribunal-based approach may be less suitable for highly complex or heavily contested cases involving substantial disputed evidence, credibility issues or novel legal points. In such cases, a forum with broader case management and evidential powers may still be preferable.

Question 18

Does the proposed system give a fair way for directors to appeal/challenge disqualification? Please explain your answer.

Response: It may do so, see comments above, provided that the process is clearly explained, sufficiently independent, and supported by appropriate procedural safeguards. The reduced exposure to adverse costs is generally a positive feature, although this may also encourage applications which are unfounded and ill-conceived resulting in additional public costs defending actions which have little or no chance of success. However, fairness will depend on the tribunal's expertise, the standard of disclosure, and the practical ability of directors to understand and respond to the case against them.

Proposal 4: Ensuring a fair distribution of a company's assets upon insolvency

Question 19

Will reversing the burden of proof by making the recipient demonstrate to the liquidator or administrator that the transaction was for value increase the effectiveness of these powers for the benefit of creditors? Please explain your answer.

Response: Possibly. In connected-party cases, reversing the burden of proof is likely to make the remedy easier to pursue by office-holders. In practice, officeholders often face significant evidential difficulties where records are incomplete or where the commercial rationale for the transaction is known primarily to the connected recipient. Requiring the recipient to justify the transaction is therefore both practical and consistent with the underlying risk profile of such cases.

It must however be acknowledged that there is a risk that transactions which were not undertaken with ulterior motives may also be caught. In the same way that a lack of documentation and records may hinder an officeholder pursuing a claim just now, the lack of documentation may hinder a director in the future. Two years prior to insolvency is a considerable time and it may be that the parties either were not aware of the potential for insolvency or indeed had genuine belief that insolvency could be avoided. Most businesses in the UK are SME's with unsophisticated directors and as a result contemporaneous documentation is often not in place, not necessarily through willful neglect but due to a lack of knowledge and understanding of the implications.

We note that this proposal is intended to cover only England and Wales. There are equivalent provisions in the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 for Scottish and Northern Ireland jurisdictions. Should this proposal be taken forward, we would encourage the UK government to engage with devolved administrations with a view to ensuring that there is consistency in approach across the UK legal jurisdictions.

Question 20

How might reversing the burden of proof improve corporate governance and company conduct overall? Please explain your answer.

Response: Subject to our comments above about unsophisticated directors, it should strengthen discipline around transactions with connected parties and encourage directors to maintain clear records and properly evidenced decision-making. If directors and connected persons know that they may later need to justify a transaction, that should improve governance standards and reduce the temptation to dissipate value before insolvency.

Question 21

Should there be a presumption that a company is insolvent when a preference is made to a connected party? If possible and appropriate, please share examples or evidence of how the market is currently acting, or to demonstrate how this will work in practice.

Response: A presumption of insolvency in connected-party preference cases would reflect the practical reality that such transactions often occur in circumstances of financial distress and where the connected party has awareness of the company's position. The presumption should remain rebuttable, which preserves fairness where the company was in fact solvent.

Please see also our comments above in relation to question 19 and 20.

Question 22

Have you used, or tried to use, the extortionate credit provisions? If possible and appropriate, please share examples.

Response: The provisions are rarely used in practice. We agree with the view in the consultation that the main reason is the difficulty of satisfying the current legal test, coupled with the evidential and funding burdens of litigation. Practitioners therefore tend to regard the provision as being of limited practical utility in its current form.

Question 23

What, if any, are the unintended consequences on businesses of the above proposal?

Response: The main risk is that legitimate lenders or distressed finance providers may perceive greater uncertainty, especially if the revised test is unclear. If that occurs, the cost or availability of rescue finance could be adversely affected. Much will therefore depend on how a revised threshold is framed and whether clear guidance or judicial interpretation develops around it.

Question 24

Should section 244 Insolvency Act 1986 be revised to allow 'commercially disproportionate' (or similar wording) transactions to be challenged in court? Please explain your answer.

Response: We are skeptical whether the proposed revised wording is likely to make a significant difference to the level of claims that will be brought. While the test level may be less stringent, the underlying difficulties in being able to evidence that the test can be met remains. Risk, and therefore pricing, is inherently subjective and based on individual and specific circumstances relating to lending. Building a case where the rate applied in such circumstances would meet the test will remain challenging.

Should this proposal be taken forward, we would be pleased to engage further and provide comment on detailed proposed legislative wording.

Question 25

How might 'legitimate' rescue finance be affected by this change? Please explain your answer.

Response: While this question is best answered by lenders, there is a risk that some lenders may become more cautious if they are uncertain whether a transaction may later be challenged or ultimately withdraw from the market.

Question 26

Should the legislation be amended to make it clear that misfeasance actions against shadow directors of companies in liquidation are possible? Please explain your answer.

Response: Yes. It is difficult to justify a position in which those who effectively direct the company's affairs can avoid accountability simply because they were not formally appointed. Clarifying that shadow directors can be pursued for misfeasance would promote fairness, consistency and deterrence.

Question 27

Is there any doubt about the application of other sections of Chapter X Insolvency Act 1986 to shadow directors? Please explain your answer.

Response: Where there is scope for ambiguity, clarification would be welcome. The law should be as clear as possible about the extent to which shadow directors fall within the relevant recovery and accountability provisions. Uncertainty creates avoidable litigation risk and may undermine the effectiveness of officeholders' remedies. We would prefer that legislation states the scope of provisions as clearly as possible, avoiding the need to rely on case law where appropriate.

Proposal 5: Company directors disqualification for failure to comply with HMRC securities legislation

Question 28

Should the courts have the power to disqualify a director for failing to comply with HMRC securities legislation? If not, please explain, considering the need to protect public funds and maintain market integrity.

Response: Yes. A failure to comply with HMRC securities legislation may indicate serious non-compliance and can expose the Exchequer and wider market participants to substantial loss. It is appropriate that the courts have access to disqualification powers in such cases, particularly where the conduct demonstrates disregard for legal obligations and a risk of repeated abuse.

We note however the very small number of cases which HMRC pursue and are successful in achieving a prosecution and therefore the overall impact of this change will be limited.

Question 29

Do you think a single summary conviction is an appropriate threshold for director disqualification, or should a higher threshold apply? Please share your views on how best to balance effective deterrence with fairness in setting the threshold for director disqualification.

Response: A single summary conviction is likely to be appropriate. The small number of HMRC prosecutions and the tests which require to be applied to achieve a successful prosecution mean that these are likely to be at the more serious end of security breaches. However, the court should retain discretion as to whether disqualification is warranted in the circumstances and, if so, for what period. That would preserve fairness while still allowing the measure to operate as a meaningful deterrent.

Question 30

What do you consider to be the main risks or unintended consequences of introducing this power and how might these be mitigated to protect both the Exchequer and legitimate businesses?

Response: As noted in our response to question 29, we would expect successful prosecutions only to be achieved in the most serious of cases. This substantially reduces the risk associated with this power being granted.

Proposal 6: Expansion and legal clarification of examination powers for live companies

Question 31

Should the Secretary of State's powers under section 447 Companies Act 1985 be clarified to explicitly require any person to respond to investigators' questions? Please explain your answer.

Response: Yes. Clarification would be helpful. An explicit statutory basis for requiring responses would improve efficiency and reduce avoidable challenge, provided the scope of the power remains proportionate and subject to appropriate safeguards.

Proposal 7: Modernisation of disclosure gateways

Question 32

Should the Insolvency Service review the section 447 Companies Act 1985 disclosure framework? Please explain your answer setting out the positives and negatives of the current framework.

Question 33

How can the Insolvency Service best balance the need for confidentiality with the requirement for transparency and accountability in investigations under section 447 Companies Act 1985? Please explain your answer.

Response: We support the principles to reform for proposal 7 as set out in the consultation but are not able to provide detailed comments as this area is outside our expertise.

Proposal 8: Information gathering powers for investigating the conduct of directors of live and solvent companies

Question 34

Should the Secretary of State have the power to request additional information from directors of solvent companies before initiating disqualification proceedings under Section 8 Company Director Disqualification Act 1986? If no, please explain your answer.

Response: Yes. If proposal 8 is to operate effectively, investigators need an adequate means of obtaining information before proceedings are issued. Without such powers, there is a risk that potentially serious misconduct by directors of live or solvent companies cannot be fully examined simply because the evidential record is incomplete.

Question 35

Should, as proposed, the powers mirror those in section 7(4) Company Directors Disqualification Act 1986? If no, please explain your answer.

Response: Yes. Mirroring the structure of section 7(4) would promote consistency and make the regime easier to understand.

Question 36

Are there any limitations or safeguards you think should be included? If yes, please explain your answer and, if possible, provide suggestions.

Response: Consideration should be given to the burden imposed on third parties and to the need to avoid disproportionate disruption of legitimate ongoing business activity. Accountants and tax advisers are possibly in the category of those most likely to be a party with information which may be relevant to the activities of the company and the director and the impact of them co-operating with investigations and providing information can be considerable, in both time and costs. Where a third party not under investigation is being required to co-operate with information gathering, then this should not come at the detriment and a cost to themselves.

Question 37

Do you believe the proposed powers would improve the effectiveness of director disqualification investigations? Please explain your answer.

Response: Yes. In appropriate cases, they should improve the quality and completeness of the evidence base and enable better-informed decisions as to whether disqualification is justified. That should in turn improve both enforcement effectiveness and procedural fairness.

Question 38

Should the proposed clarification in proposal 6 be replicated in section 7(4) Company Directors Disqualification Act 1986 and for section 8 Company Directors Disqualification Act 1986 disqualifications? Please explain your answer.

Response: Yes. Consistency across related information-gathering powers would be beneficial. If the law is clarified in one context but left uncertain in another, unnecessary procedural disputes are likely to remain. Alignment would make the framework clearer for investigators, directors and advisers alike.

Proposal 9: Procedural changes

Question 39

Do you think these are the right changes to make to the procedural rules to ensure timely and effective action can be taken? Please explain your answer.

Question 40

How else might the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 be changed to improve the disqualification procedure? Please explain your answer.

Response: We support the principles to reform for proposal 9 as set out in the consultation but cannot provide detailed comments as this area is outside our expertise.

Proposal 10: Introducing flexibility for the court procedure used for disqualification proceedings

Question 41

Should disqualification proceedings have the flexibility to follow either Part 7 or Part 8 of the Civil Procedure Rules, depending on the nature of the case? If no, please explain why.

Question 42

If answering yes to above question - in your view, what types of disqualification cases would be appropriate for using the Part 7 procedure (e.g. cases involving complex or disputed evidence)? Please provide examples or reasoning.

Response: We support the principles to reform for proposal 10 as set out in the consultation but cannot provide detailed comments as this area is outside our expertise.

Proposal 11: Extension of the limitation date for certain cases

Question 43

Are these the right factors for determining if a case is complex? If not, please explain why and provide alternatives/additions.

Response: The factors identified are broadly appropriate. The complexity of group structures, size of the company, volume of records and complexity of the alleged misconduct are all relevant indicators. The number of directors is unlikely to give rise to being regarded as complex unless the numbers are highly significant. Consideration might also be given to cross-border elements and parallel proceedings or interaction with other regulatory regimes.

We would also suggest that there may be occasions to consider factors which would mean that the case was not suitable to be designated as complex to keep the investigation period within the normal timescale parameters. This may include for example the health or other personal circumstances of those being investigated where an extended period of investigation might have a significantly detrimental impact on them.

Question 44

Is 5 years the appropriate timeframe for this measure? If not, what should it be?

Response: Subject to the comments above around the criteria and safeguards around complex case designation, a maximum of 5 years appears reasonable for genuinely complex cases. It should allow sufficient time for proper investigation without creating open-ended uncertainty. The key issue is less the headline period and more the discipline around when a case is designated as complex, how that decision is reviewed, and whether progress is monitored.

Question 45

Is it appropriate for the Secretary of State to make the decision of what constitutes a complex case? If no, please explain why and if possible, suggest an alternative decision maker.

Response: It can be appropriate, provided the decision is made independently of the investigation team, against published criteria, and challengeable where necessary. What matters most is not the identity of the decision-maker in abstract, but the quality, transparency and accountability of the decision-making process.

We would suggest that Judicial Review as the only route to challenge the decision is undesirable. We would suggest that a decision review procedure be available to those impacted prior to legal processes. This would be consistent with proposed changes in moving director disqualification proceedings onto an administrative basis from the judiciary.

Considered impacts

Questions 46

What evidence is available to suggest what the technological costs would be to banks to accommodate the restrictions measure? Please explain your answer.

Question 47

What evidence is available to suggest what proportion of directors would successfully appeal against proceedings under the new process? Please explain your answer.

Question 48

What evidence is available to suggest what would be the legal cost, on average, under the new system for directors who successfully appeal? Please explain your answer.

Question 49

If you have any equality related concerns for any proposals in this consultation: a. Which proposals raise concerns? and b. What are your concerns?

Response: We cannot provide any evidence in relation to the above questions.

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