

Is Companies House turning the tide against facilitators of fraud?

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The changes reforming Companies House implemented by the Economic Crime and Corporate Transparency Act 2023 (ECCTA) were introduced in March 2024. The new statutory objectives of the Registrars were designed to ensure that there is compliance in delivering documents, and accuracy of information, which would lead to greater confidence in the system which has come in for much criticism in the past.

Of interest to fraud practitioners however are the enhanced duties to ensure that records did not create a false or misleading impression to the public and importantly that the Registrars prevent companies and others from carrying out unlawful activities or facilitating others to carry out unlawful activities. New powers to proactively disclose information to law enforcement (and other government agencies such as the Insolvency Service) under s 102 of ECCTA balanced by the usual data protection legislation and exemptions from civil liability for doing so, whilst co-ordinating with HMRC is a demonstration of the loosening of the shackles when tackling serial offenders (such as phoenix companies). Its ability to impose civil penalties up to £10,000 from 2 May 2024 for breaches of the Companies Act 2006 without having to seek Court approval, is further evidence of its streamlines processes which reduce delay, bureaucratic administration and cost from the process.

By contrast, and in some ways to avoid further victimisation by people exploiting public records, protections are now afforded to companies or individuals by a special mechanism to suppress information from public view. All of these developments are welcome, but are they effective?

In a recent matter, a company had been set up using a false address linked to a genuine business and unlawfully using the details of a director whose name was already on Companies House. As the sole shareholder and director removal under the old regime would have been by application to the High Court. It is not clear how, when this entity was set up in 2023, it avoided scrutiny, but there it was, an apparent creditworthy vehicle clearly designed to commit fraud – with potential legal liability for the innocent victims of ID theft, now associated with it.

We invited the Registrar to use the powers under ECCTA to clean up the register to avoid potential harm and legal issues, noting that the Registrar has a duty under s 8 of ECCTA to not register companies whose sole intent is dishonesty and deception. Also to ensure the personal reputation of the unlawfully named director was not affected by association, invoking the right to anonymity by removing material under the general discretion under s 85 ECCTA and restricting public access to the Register under s 90 was necessary. Finally the power to strike off the Company was invoked.

Within 6 weeks the Company's false address had been sequestered to Companies House in Cardiff, the Director/shareholder details removed, and the dissolution of the company started via the Gazette. Within 3 months it was dissolved and the potential for further harm removed.

With Which? indicating that 10,000 people had asked their addresses to be removed and 2432 not consented to Director removals in 2022, it is clear there is a significant number of issues already before ECCTA. The fact that 244,717 incorporations in Q1 of 2024, and over 5.3 million entities on the total register, Companies House faces a massive task in the clean-up and rebuild of its reputation but with the new powers, and on the recent evidence it is clearly moving the right direction.

Key contact



Paul Wainwright

Partner

paul.wainwright@brownejacobson.com

+44 (0)121 237 4577

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