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22 June 2026

Submitted in plain text via Insolvency Service's inquiry portal

CC: enforcement.reform@insolvency.gov.uk

Dear Sir/Madam/+

Corporate Civil Enforcement Reforms Consultation

The Chartered Governance Institute is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Chartered Governance Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 135 years ago, The Chartered Governance Institute UK & Ireland (the Institute) represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the leading professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements as board advisers, who are directly engaged in the application and oversight of directors' duties across a wide range of organisation. They are therefore well placed to understand the issues raised by this enquiry. Promoting good governance is core to the Institute's purpose including strengthening accountability frameworks, recognising that robust governance is fundamental to maintaining trust, protecting stakeholders, and supporting sustainable economic growth. In preparing our response we have consulted, amongst others, with our members. However, the views expressed are not necessarily those of any individual members, nor of the companies they represent. Our views on the questions asked in your call for evidence are set out below, together with some general comments on the issues raised.

General comments

We strongly support reform of the civil enforcement regime. However, these proposals can reasonably be understood as addressing a material gap in the UK's corporate governance enforcement architecture, rather than representing incremental policy adjustments. While we strongly support strengthening the role of the Insolvency Service, it is important to recognise that many of the issues identified in this consultation extend beyond insolvency-related misconduct and relate to broader questions of corporate governance, director accountability, and reporting integrity. As such, consideration should be given to how these powers align with the future role of the proposed Audit, Reporting and Governance Authority (**ARGA**), or any successor body taking forward those powers (e.g., a Corporate Reporting Authority (**CRA**)). This is particularly important given the government's recent decision not to progress proposals granting similar enforcement powers over directors to the Financial Reporting Council (**FRC**) in relation to director accounting and audit responsibilities. Whilst we did not entirely agree with some of the arguments made against the creation of these powers, it is therefore somewhat unclear why this consultation appears to revisit similar issues.

As widely noted in the Kingman (2018) and Brydon (2019) Reviews, and subsequent government reform proposals, the current UK framework remains heavily reliant on post-insolvency intervention, fragmented across multiple authorities, and dependent on slow, court-led processes. It may not consistently provide a sufficiently cohesive or proactive system of director accountability across the lifecycle of a company. This results in limited practical recourse where directors breach their duties outside of the most serious or terminal cases, particularly where conduct involves negligence, poor governance, or repeat low-level non-compliance rather than clear criminality.

In contrast, jurisdictions such as Australia (through the Australian Securities and Investments Commission (**ASIC**)), operate a more developed and integrated model of director accountability in certain respects. This includes administrative enforcement powers, civil penalties, director banning powers, and a coherent enforcement ladder that enables early and visible intervention. The UK system remains comparatively reactive, which may limit the overall deterrent effect.

From a governance perspective, reform must prioritise credible deterrence, regulatory agility, and consistent accountability. Directors must clearly understand that misconduct will result in timely and visible consequences. There may be a case for more targeted intervention in higher-risk live company scenarios (within a clearly defined risk-based remit), not only after failure. Enforcement tools must operate across a spectrum to allow proportionate responses (while ensuring escalation, where necessary). More broadly, the system must apply consistently across firms of all sizes to maintain confidence in the regime's integrity. Without change, there is a continued risk that enforcement remains too slow, too selective, and insufficiently visible to influence behaviour at-scale. The system must also recognise that entrepreneurship necessarily involves risk-taking which in some instances may lead to corporate failure and that this is therefore not necessarily the result of some form of director misconduct requiring public sanction. Failure to recognise this fundamental truth will disincentivise the risk-taking needed to achieve economic growth to which the Government is rightly committed.

Any governance framework is only as strong as its supporting enforcement mechanisms. A more integrated approach where governance-related enforcement sits within a body designed for ongoing supervision of corporate behaviour will require careful coordination to ensure coherence and avoid further fragmentation.

Response to the questions

Question 1: Would reforming civil powers help the Insolvency Service tackle a wider range of misconduct? Please explain your answer.

Yes, very much so. The current regime is constrained by reliance on lengthy court processes and lack of intermediate enforcement tools between no action and full disqualification. This creates gaps in addressing matters like mid-tier misconduct, repeated low-level failures, and misconduct occurring in live companies.

Reform would enable a broader and more flexible set of responses, allowing misconduct to be addressed earlier and more proportionately. This would increase enforcement throughput, reduce reliance on resource-intensive litigation, and create a more credible deterrence framework. A system with graduated enforcement stages, similar to that operated by ASIC, is better able to address the full spectrum of director behaviour and prevent escalation into more serious corporate failure.

Question 2: How could the Government raise directors' awareness of the civil enforcement regime to prevent misconduct, without legislative change?

There is scope to improve awareness through non-legislative measures, but these will only be effective if supported by visible enforcement outcomes. Mandatory onboarding education for directors, potentially triggered through Companies House registration processes, could go some way to improving baseline understanding of duties. This could be complemented by targeted publication of enforcement outcomes, ensuring that consequences are widely understood. Director-focused risk alerts, like those issued by ASIC and other regulators, could reinforce emerging risks and expectations. Embedding compliance prompts within filing systems would also encourage better behaviour at key points of interaction.

However, awareness alone will not materially change behaviour or conduct. The deterrent effect is driven by credible enforcement rather than simply guidance.

Proposal 1: Automatic disqualification following public interest winding-up

- **Question 3: In what circumstances should a director be able to appeal their disqualification?**
- **Question 4: Does this proposal balance the need to act quickly to protect the public, whilst treating directors fairly?**
- **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?**

Proposal 1 is strongly supported, notwithstanding the need to ensure proportionality in cases where culpability may vary across directors. The current average delay in securing disqualification following a public interest winding-up creates a significant risk to the general public, allowing directors to continue operating during the investigation period. From a governance perspective, this undermines confidence in the system and weakens deterrence.

Automatic disqualification at the point of public interest winding-up reflects the principle of collective board responsibility and ensures timely removal of individuals associated with harmful activity. This approach is more aligned with jurisdictions such as Australia, where regulatory action can be taken more swiftly following findings of misconduct.

A baseline disqualification period of five years is appropriate. However, the system should allow for adjustment based on culpability, with shorter periods in cases of limited responsibility and longer periods in cases involving serious misconduct. Fairness will depend on clear evidentiary standards, accessible and timely appeal mechanisms, and the ability to revisit the duration where further evidence emerges. Safeguards should include narrowly defined statutory defences, particularly for individuals who were unaware of misconduct or were subject to fraud or misrepresentation, along with a fast-track appeal process. These enhancements must be accompanied by robust safeguards to ensure proportionality, procedural fairness, and clarity of regulatory expectations.

Question 6: Do you support the introduction of a director restrictions regime to address low-level misconduct? Please explain your answer.

This proposal is strongly supported and represents a critical missing layer in the UK regime. The absence of a proportionate enforcement tool for lower-level misconduct has led to a situation where authorities must either pursue full disqualification or take no action whatsoever. A restrictions regime introduces a more effective and flexible response that encourages behavioural correction while simultaneously protecting the public. Elements of the ASIC model (particularly its graduated enforcement approach) is frequently cited in international comparisons as an example of an integrated enforcement framework and offers useful lessons. Directors may be restricted, monitored, or subject to conditions before more severe sanctions are imposed, particularly in areas of reporting and governance oversight.

Question 7: Is 3 years a suitable timeframe for a restriction? If not, what should it be?

A three-year restriction period is appropriate, providing sufficient time to influence behaviour while remaining proportionate. Extensions should be available where repeated or continued misconduct is identified.

Question 8: What other types of misconduct should be considered for inclusion in the restrictions regime?

The regime should include failures to maintain adequate internal controls (in line with Provision 29 of the UK Corporate Governance Code), persistent audit issues or qualifications, failure to engage with regulatory authorities, and misleading or inaccurate filings. These behaviours reflect governance weaknesses that may not meet the threshold for disqualification but still pose a material risk where these behaviours are linked to misconduct or heightened risk of creditor harm. The government will need to consider carefully where these powers sit.

Question 9: Do you think that restrictions provide sufficient weight to deter negligent behaviour? Please explain your answer.

On its own, the restrictions regime risks being insufficiently deterrent. Its effectiveness will depend on the certainty of escalation to disqualification where breaches occur and the extent to which compliance is actively monitored. In other jurisdictions, the impact of similar measures is driven by sustained oversight rather than passive application.

Question 10: Are there additional restrictions you think should be considered to protect the public and prevent repeat misconduct? Please explain your answer.

Additional measures could include requirements for independent governance oversight, restrictions on related-party transactions, regular compliance certifications, and limits on the number of directorships an individual may hold, subject to proportionality and alignment with existing company law frameworks. These measures would reinforce accountability and reduce the risk of repeat misconduct.

Question 11: Should there be consequences for any co-director if an individual breaches their restrictions? Please explain your answer.

Yes, there should be conditional accountability for co-directors where they knowingly facilitate or fail to challenge misconduct. This reinforces the principle of collective responsibility and reduces the prevalence of nominal or inactive board members.

Director Education

- **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.**
- **Question 14: Please provide any thoughts you may have on the following:**
    - **What should the aims of post insolvency director education be?**
    - **What types of content should included?**
    - **How should education be delivered?**
    - **Who should deliver the education?**
    - **How should it be funded?**
    - **How should outcomes be measured?**

Director education is supported as a supplementary measure to teach good practice but should not be viewed as a substitute for enforcement. Programs should be mandatory for individuals subject to restrictions and should focus on fiduciary duties, financial management, and early identification of business distress. Delivery should be through accredited providers and may be funded through cost recovery mechanisms. This approach is consistent with international practice, where education is used alongside enforcement to improve governance outcomes.

Proposal 3: Secretary of State as decision-maker

- **Question 15: Would the proposed system effectively improve the current court-based system? Please explain your answer.**
- **Question 16: Should appeals against a decision to disqualify be heard in the First-tier tribunal? If no, please provide reasons and alternatives.**
- **Question 17: Are there circumstances where you believe a tribunal-based approach would not be appropriate? Please provide details.**
- **Question 18: Does the proposed system give a fair way for directors to appeal/challenge disqualification? Please explain your answer.**

While care will be needed to ensure that the shift does not dilute perceived independence of decision-making, this proposal is supported and represents a positive change towards a regulatory enforcement model. The current reliance on court processes introduces structural delay, increases costs, and limits enforcement capacity. Transferring decision-making to the Secretary of State, with appropriate safeguards and tribunal oversight, enables faster and more efficient outcomes. While recognising structural differences, this could contribute towards building a graduated enforcement ladder, resembling that of ASIC and other regulators.

The expected benefits include improved timeliness, increased case throughput, and reduced barriers to enforcement – but this cannot occur without appropriate safeguarding. There must be clear separation between investigation and decision-making functions, transparent decision criteria, and robust independent appeal mechanisms through the tribunal system. Tribunals must also have sufficient expertise in corporate governance and complex financial matters.

Proposal 4: Asset recovery

- **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?**
- **Question 20: How might reversing the burden of proof improve corporate governance and company conduct overall?**
- **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**
- **Question 22: Have you used, or tried to use, the extortionate credit provisions? If possible and appropriate, please share examples**
- **Question 23: What, if any, are the unintended consequences on businesses of the above proposal?**
- **Question 24: Should section 244 Insolvency Act 1986 be revised to allow 'commercially disproportionate' (or similar wording) transactions to be challenged in court?**
- **Question 25: How might 'legitimate' rescue finance be affected by this change?**

These proposals are supported. Strengthening recovery powers ensures fairer outcomes for creditors and reduces opportunities for abuse prior to insolvency. The reversal of the burden of proof for connected party transactions, the introduction of a presumption of insolvency in preference cases, and the adjustment of the test for extortionate credit transactions would all strengthen the effectiveness of the regime. As above, these measures reinforce director accountability at an earlier stage and align the UK more closely with international best practice, where directors are expected to manage creditor interests appropriately as financial distress emerges.

Proposal 5: HMRC securities breaches

- **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.**
- **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.**

This proposal is strongly supported. Failure to comply with HMRC securities requirements represents a serious breach of obligations and often indicates deliberate or repeated non-compliance. Allowing disqualification following a single summary conviction is proportionate given the scale of potential harm, provided safeguards exist to ensure proportionality in individual cases.

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?

We consider there to be theoretical risks relating to over-deterrence, disproportionate impact on smaller businesses, inconsistent application, and the perception of duplicate sanctions where criminal penalties are already applied. However, in the current UK context **the more significant risk is under-deterrence**, given the historically limited and delayed consequences for such behaviour. These risks can be mitigated through clear enforcement criteria, tribunal discretion in applying and calibrating sanctions, and the provision of limited safe harbour protections for directors acting in good faith to rectify issues.

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?

Yes, clarification of section 447 powers is supported. Directors should have a clear statutory duty to cooperate with investigations – ambiguity in the current framework risks delay and obstruction.

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.

A review of the disclosure framework is supported. While existing provisions provide strong confidentiality protections, they are overly rigid and restrict effective information sharing. A modern enforcement environment requires greater flexibility to enable collaboration across agencies while retaining appropriate safeguards.

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.

The balance between confidentiality and transparency should be achieved through a tiered approach. Investigations should remain confidential at an early stage to protect legitimate businesses, but information should be capable of being shared where there is a clear public interest. Strong governance controls, audit mechanisms, and post-case transparency are essential.

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.

Yes, extending information gathering powers to directors of solvent companies is supported. This enables earlier intervention and reduces reliance on post-insolvency enforcement.

Company Directors Qualification

- **Question 35: Should, as proposed, the powers mirror those in section 7(4) Company Directors Disqualification Act 1986? If no, please explain your answer.**
- **Question 36: Are there any limitations or safeguards you think should be included? If yes, please explain your answer and, if possible, provide suggestions.**

Mirroring existing powers is appropriate, provided safeguards are in place to ensure proportionality, protect legal privilege, and allow for reasonable challenge of requests.

Question 37: Do you believe the proposed powers would improve the effectiveness of director disqualification investigations? Please explain your answer.

The proposed powers would materially improve the effectiveness of investigations by enabling better attribution of responsibility and reducing reliance on incomplete information.

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.

Consistency across different enforcement regimes is essential and strongly supported. Aligning powers reduces ambiguity and improves compliance.

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?

The proposed procedural updates are supported. Moving from affidavits to witness statements and enabling electronic service reflects modern practice and improves efficiency.

Question 40: How else might the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 be changed to improve the disqualification procedure?

Further improvements should include digital case management systems, standardised evidence formats, and stronger case triage processes.

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.

Flexibility between Part 7 and Part 8 procedures is strongly supported. Complex cases involving disputed evidence require more robust processes than the current one-size approach allows.

Question 43: Are these the right factors for determining if a case is complex? If not, please explain why and provide alternatives/additions.

The proposed criteria for complexity are appropriate but should also include cross-border elements, multi-agency involvement, and the use of complex or opaque corporate structures.

Question 44: Is 5 years the appropriate timeframe for this measure? If not, what should it be?

A five-year timeframe for complex cases is appropriate, provided it remains exceptional and is subject to regular review.

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.

It is appropriate for the Secretary of State to determine complexity, provided decisions are based on clear published criteria, subject to independent oversight, and open to challenge.

Question 46: What evidence is available to suggest what the technological costs would be to banks to accommodate the restrictions measure?

We do not have evidence to comment on this point.

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.

While there is limited direct evidence, comparable tribunal systems suggest that appeal success rates are likely to remain within a moderate range. The shift to a tribunal model may increase the volume of appeals due to improved accessibility, but this is unlikely to significantly change overall success rates. A moderate increase in appeals should be viewed as enhancing fairness rather than weakening enforcement.

Importantly, the current UK context demonstrates that low challenge rates are not necessarily evidence of a strong or effective enforcement regime but may instead reflect structural limitations in how director misconduct is pursued. For example, breaches of directors' duties under section 174 of the Companies Act 2006 (duty to exercise reasonable care, skill and diligence) are very rarely pursued through standalone court action. As reflected in the very limited body of standalone case law in this area, there are few instances in which this duty has been tested independently in enforcement proceedings. In practice, such breaches are typically only examined indirectly, for example within insolvency-based disqualification proceedings, rather than as part of a proactive civil enforcement framework.

By way of comparison again to the Australian model, ASIC actively enforces the equivalent duty under section 180 of the *Corporations Act 2001* (Cth) as part of its core regulatory remit. While precise annual figures vary, ASIC typically brings multiple civil penalty proceedings each year involving alleged breaches of director duties, often including section 180 alongside related breaches (i.e., duties to act in good faith, and duties to avoid improper use of position, etc.). These actions form part of a broader enforcement strategy that generates a substantial and evolving body of case law, as well as clearer benchmarks for acceptable director conduct. The result is that Australia has a far more developed and contested enforcement landscape, in which appeal dynamics are better understood and embedded within the regulatory system. By contrast, the UK currently has relatively few

contested cases testing core director duties, suggesting that appeal rates may be less indicative of system effectiveness and more reflective of limited enforcement activity.

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?

We do not have evidence to comment on this point.

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?

The proposals are broadly neutral but may have indirect impacts. Individuals operating smaller businesses or with less access to professional support may be disproportionately affected. There may also be barriers to accessing appeal mechanisms and perceptions of bias in administrative decision-making. These risks can be mitigated through clear and transparent enforcement criteria, monitoring of outcomes, accessible guidance, and robust independent oversight through the tribunal system.

Should you wish to discuss any of the above comments in further detail, we welcome you to contact our Policy Department at policy@cgi.org.uk.

Yours faithfully,

Kayla Schembri
Head of Policy

The Chartered Governance Institute UK and Ireland

Cc Department for Business and Trade