

Funding the Future

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I am well aware that my good friend, Prof Prem Sikka, is advising the Commons committee investigating the failure of BHS. I have shared opinion with him on the issue. I have no doubt at all that when that committee comes to report the accounting recommendations they make will, as a result, be well founded. It also means I will ignore the very many such issues that current disclosures are bringing to light.

What does concern me about the revelations from yesterday's hearings is something much more basic. What is very clear from what has been said is that some people who really do not have the basic skill set to be company directors but hold that office nonetheless.

I suggest that this may well be because there is no test of competence to be a company director. At the most basic level of a one person, no employee, company this might, just, be acceptable, but even then I am not sure. We do not let people drive until they can prove that within reasonable limits they can do so without major risk to themselves or others. The right to drive is not absolute: it is granted by society conditionally and only to those who prove they can use it appropriately. That is precisely because we know that driving imposes a substantial risk, not just to the driver, but also to others.

Being a director of a company also imposes risk, not just to the director but also to others. In fact, to others most especially. That is the whole reason for limited liability. It shifts the burden of risk from the owners and managers of a company onto those that they deal with. Most directly in the firing line are the company's employees and (in the case of BHS, for example) its pensioners but others very obviously at risk (and maybe considerable risk) are suppliers, regulators, tax authorities and society at large when issues such as pollution and other breaches of the law are involved.

So why aren't we, at the very least, requiring that people undertake a basic competence test to be a company director? If we can have written tests before you can drive these days (although not when long ago I got my licence, which I mention just to show that criteria can be changed) why not do the same for company directors?

The subject of such a test would not be hard to establish. Basic company, tax, employment, contract and environmental law should do for starters. A multiple choice

test would do in the first instance. More extended tests would be required for those wishing to be directors of medium and large companies with a substantial requirement for those wanting to be Plc directors. This is, after all, only the equivalent of those wanting HGV and PSV licences, who have to undergo additional training and testing.

And why shouldn't directors, in fact, be licenced? Doesn't that make sense, especially when we know we face so much corporate tax risk, let alone anything else?

And if we do licence, why not impose a penalties regime? Some penalties could be mandatory. Three points for failing to file a set of accounts or an annual return on time, for example. Twelve points and you face a mandatory twelve month ban on being a director. A second ban would be for twenty four months, and so on.

There could be other bans. Failing to act in the interests of creditors and employees could result in a long ban, for example. The BHS hearing might suggest some who might have risk if that were the case.

Using influence to impact economic outcomes whilst not formally a director (being a shadow director, in other words) might be subject to very long bans. If not the whole arrangement would not work.

And being a nominee director could be subject to a life ban.

Whilst tax offences could also mean penalty points.

I can hear the cries of protest already: in a group situation failure to file the accounts of a few companies on time could resist in an immediate ban from office. And I agree, that is true, and wholly foreseeable. So do the accounts three months early just in case is my obvious, and wholly reasonable, response.

This, I think, is an idea whose time has come, even if I admit I have only just thought of it.