

Why doesn't the UK punish people who break company law?

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Why doesn't the UK government care about the fact that UK company law is not enforced? What is the point of having law that they will not impose, at considerable cost to society?

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This is the transcript:

Why doesn't the UK punish people who break company law?

There are more than 5 million companies in the UK.

There are now as many companies created a year as there are children born in this country. It's as absurd as that with regard to our fetish for creating and owning companies in this country.

And yet, despite the fact that there are so many of these organisations floating around inside the UK economy undertaking most of the trade on which we are dependent,

there is quite simply no one inside the UK who is tasked with enforcing company law.

The police don't have to do it.

The Registrar of Companies, which exists in Cardiff, does not have to do it because it is, as its name says, a registrar. All it does is record the information that companies are required by law to send it. It does not have the job of prosecuting those who do not send information or even send the wrong information.

So we have a complete void in company law in the UK. If a company wants to prepare false accounts, there's almost nothing that could be done about it, and even, HM Revenue and Customs do not have the resources to work that out in far too many cases.

Companies that are set up to fraudulently trade, never intending to file accounts, let alone pay tax, do exist. And there are probably hundreds of thousands, at least, of those in operation in the UK right now, many of which will disappear without trace within a year or so to be replaced by new ones set up by the same people to undertake the same fraud, time and time again.

It makes absolutely no sense that the government has never gone after these fraudulent companies. If only they did, they would massively increase their tax yield. I reckon that at a minimum, they will collect an extra £6 billion a year, but it could be very much more than that when we take into consideration the VAT and the PAYE that is lost in addition to the corporation tax that they do not pay, which is the basis of the figure that I've just given.

So it is economic madness not to have a company law regulator and enforcer in the UK, but it's not just small company law that worries me. Large company law does as well.

We do understand that most small companies exist for the benefit of their members. After all, the members, the directors, the shareholders, the owners, whatever you wish to call them, are all one and the same group of people in the case of most small businesses. So, there is no differentiation between the owners of the business and the management of the business and those who might benefit from any dividends paid by it. This is clear. Therefore, the rules in company law on how we separate the obligations and who the directors of a company have duties to does not really apply in the case of small companies, and they are well over 90% of all companies in the UK.

But, of course, we do also have large companies in the UK. In real terms, fewer than 10,000 are probably of concern to anyone, but in their cases, there is a very specific piece of company law that does not appear to be enforced at all.

It is section 172 of the Companies Act 2006 to be precise, and this is what it says.

So if we break down what that legalese really means, what that section of the

Companies Act actually says is that the directors of any company have a duty to run the company in the interest of the members but when doing so, they also have to take into account a series of other things.

For example, they must not just think about the short-term interest of the members. They must think about the long-term interest too. In other words, they can't fleece the company for profit now if that means that there isn't money available to invest for the future.

They must also think about the employees and have an absolute legal duty to do so.

They must consider the interests of customers, suppliers, and others with whom the business interacts, for example, its bankers, and they must ensure that those people are fairly treated by the company.

In addition, there is an obligation, I stress, a legal obligation, for a company to consider its impact on the communities in which it operates, and the environment, which is not just the local environment, but the worldwide environment.

And beyond that, the business has to engage in good business conduct. Ethics matter, and the law says that they do.

Finally, it says that the directors must not favour one group of shareholders over another, which would appear obvious, but is commonly abused in many smaller companies and sometimes in larger ones as well.

Put that list together, and you will note two things. The first is that nothing says that a company must maximise its profit. That is not an obligation in UK company law. It isn't included in this statute, which is what governs UK company operation now, and nor is it present in UK decided cases which have gone before the courts. There isn't an obligation to maximise profit for one, very good and obvious reason. Nobody knows how to do that, and nobody would know how to interpret the obligation if it was imposed because you can never prove what a maximum is when it comes to profit. So that claim, which is commonly made by every right-wing commentator under the sun, as if this is what the goal of corporate activity is, is completely and utterly wrong. That obligation is simply not there in law.

More than that, what we have got in law is a series of conditions that actually would constrain the ability of the company to maximise profits at expense to its employees, to its customers, to its suppliers, to the community, to the environment, to good business conduct, and of course, tax authorities because they would fall into these categories somewhere along the way. All of those things would be constrained because the law says that the company must take those factors into account.

But who enforces this law is my question? And the answer is, of course, no one. There is

no one at all who actually is there to enforce this unless somebody, an aggrieved party, decides to bring a court case against the company.

Now, this is happening in some environmental cases right now, and I applaud those who are doing it, and I applaud the lawyers in particular who are working on these cases, often at an underpriced rate, although they do get their fair share of the winnings if that happens. But my point is that actually, we need a regulator who's actually there to enforce this law? Who should be able to say to a company, you are not protecting the environment.

Let us give an example of a company that isn't Thames water is not. It is acting in breach of the law. The directors should be prosecuted for that very basic reason, but nobody is doing that.

There is nobody who is standing up for employees and saying they should have union rights; they should have fair pay; there should be no discrimination, for example.

There is nobody who's standing up and saying community interests matter and companies who are major employers in their communities have an obligation to engage with and report to those communities about the impact of their activities upon them.

There is nobody who is actually ensuring that companies fairly report their tax bills and do not abuse tax law. HM Revenue & Customs might, of course, do so behind the scenes, but I'm talking about in their accounts here.

In fact, what we have is an accounting profession that utterly turns a blind eye to all of these legal requirements because its accounting standards which are endorsed by the UK government, say that the only people to whom accounts are relevant in the form that they're currently produced in the UK are the shareholders. Everybody else can get their information from elsewhere, and yet the company has a legal duty to ensure that it meets the needs of these other interests within society and yet accountants pretend there is no legal requirement to report to them.

This is absurd.

This is abusive.

This is accountants literally acting against the best interest of society. And I lay that charge specifically against them because I'm quite sure that is true and it fits with the long history of all the professional institutes of accountants in the UK, who have always done their utmost to deny information to anybody who wants data to ensure that we can have social change.

We need a company law regulator.

I have no idea why Labour will not deliver this.

I have no idea why it is not interested in this.

I have no idea why it would not want to make life better for people by ensuring that company law is enforced.

I have no idea why it does not want the taxation revenues that will flow from it doing so.

But I do know that any political party that stood up and said, this is what we need to do, should win popular support because it's standing up for people against corporate abuse, and that is one of the biggest fights that we now face inside the UK economy.