



Department for
Business, Energy
& Industrial Strategy

The Rt Hon Andrea Leadsom MP
Secretary of State
Department for Business,
Energy & Industrial Strategy
1 Victoria Street
London
SW1H 0ET

T +44 (0) 20 7215 5000
E enquiries@beis.gov.uk
W www.gov.uk

Rachel Reeves MP
Chair, Business, Energy and Industrial Strategy Committee
House of Commons
London SW1A 0AA

7 October 2019

Dear Rachel

Thank you for your letter of 26 September regarding the collapse of Thomas Cook Group PLC, and the Government's programme of audit reform.

I want to reiterate that the Government will do all it can to support Thomas Cook's employees and customers. This is, of course, a hugely worrying time for them, and BEIS's immediate priority is to assist those who have lost their jobs.

I have convened a special cross-Government taskforce alongside local stakeholders to support employees and local stakeholders. The taskforce is considering existing support schemes available and will also monitor local business impacts.

I agree with you that the failure of Thomas Cook further underlines the importance of having a strong and effective audit and corporate governance framework; and I am committed to reform in this area to drive up quality. The Government will ensure that the UK's audit and corporate governance framework better serves shareholders and the wider public.

My Department is working on three key areas: the regulator, the market and the effectiveness of the audit itself.

In March, the Government accepted the central recommendation of Sir John Kingman's review of the Financial Reporting Council:

- to create a new regulator, the Audit, Reporting and Governance Authority, with stronger powers. We remain committed to that.
- We have just completed an initial consultation on the Competition and Markets Authority's far-reaching and ambitious recommendations to improve quality, resilience and competition in the statutory audit market. We remain committed to audit market reform, and are now considering responses to the consultation.
- And thirdly, Sir Donald Brydon's Independent Review into the quality and effectiveness of audit is expected to report this year.

Together these studies will be the basis for long-lasting, proportionate and effective reform, many of which will require primary legislation. All must come together to form a strategically solid, coherent programme of change that will ensure meaningful, wide-reaching reform.

Turning to your specific questions: on the Government's response to the initial consultation on the Competition and Market Authority recommendations, the Government is now considering the representations it has received. We are looking to make rapid progress but have not yet set a date for publishing a response. We are committed to taking action in response to the CMA's findings and the timing of legislation will depend on the availability of Parliamentary time.

Regarding Sir John Kingman's review of the FRC, my Department is working with the FRC to implement those recommendations that do not require legislation, and good progress has been made. In particular, as you know, a new Chair and Chief Executive have been appointed. Sir Jon Thompson took up his post as Chief Executive on 1 October and Simon Dingemans takes up his post as Chair on 7 October. I am delighted that the Committee was able to endorse his appointment. Numerous steps have already been taken that will support a change in culture at the FRC – reinforcing the expectations and organisational structure of a public body in relation to Managing Public Money transparency, governance, confidentiality, IT security and the development of diversity policy and practices in accordance with the Public Sector Equality Duty.

Where legislation is required, as with reform to the audit market, the Government remains committed to legislating as soon as Parliamentary time allows. That includes on measures to hold company directors to account in relation to their duties in preparing and approving reports and accounts, in addition to auditors and accountants.

I have written to the Insolvency Service to ask them to prioritise and fast-track their investigation into the circumstances surrounding Thomas Cook going into liquidation. The investigation will also consider the conduct of the directors. The Official Receiver will review all payments made to executives, including bonuses, and where those payments are unlawful or unjustified they can take action to recover. Under the Insolvency Act 1986, the Official Receiver as liquidator may seek to overturn a range of transactions made prior to the liquidation, for example where preference payments have been made to a creditor/s or where a transaction is to the detriment of creditors, which may include payments made to directors. Such actions may also constitute misconduct and the Official Receiver has powers under the Company Directors Disqualification Act 1986 to commence disqualification proceedings against directors if misconduct is identified.

You also asked what preparations the Government has made to respond swiftly to Sir Donald's Brydon report later this year. Responding to Sir Donald's review will form part of our overall programme to reform audit, and it will be important to ensure that our whole programme of reform is coherent and strategically solid. Naturally, as an independent review I do not know what his recommendations will be, and the way in which we respond will depend on the recommendations and the degree of interaction

with those that we have already seen from Sir John Kingman and the CMA, but I will certainly respond in a considered and timely manner.

As you would expect, the impact of Thomas Cook's collapse on its supply chain is an important concern and the Government is encouraging any businesses owed outstanding monies by Thomas Cook Group at the time it entered liquidation to register as creditors with the Official Receiver. We have published details of how to do so on GOV.UK. The Official Receiver will liquidate the assets of the company and distribute realised monies to the creditors in the normal sequence. Supply chain creditors are likely to be categorised generally as unsecured creditors: they may receive payment for whole or part of their claims depending upon whether sufficient assets can be realised to cover the unsecured claims.

As a wider issue, action on late payments is a key policy area for the Government. On 19 June, we published our Response to last year's Call for Evidence to assess what further steps and intervention may be needed to create a responsible payment culture. We announced that we are bringing forward a broad package of measures that will increase Board level responsibility, unlock the benefits of technology for more SMEs and set clear standards of good practice, and that we will consult on the merits of extending the powers of the Small Business Commissioner.

In relation to a proposed 30-day statutory limit on payment terms, as I have previously said, we do not intend to legislate on this. While setting limits on the maximum legal payment terms might address the problem of lengthy payment periods in some commercial contracts between the purchaser and supplier, we believe the disadvantages are of greater significance.

Accepted payment terms vary across the economy from sector to sector, so a 'one size fits all' approach is not the best way to deliver a change in culture. On the other hand, if we were to take a sectoral approach to this policy, there would be significant variation in structures for payment terms for construction, retail, manufacturing etc. This would only complicate the landscape even further for small businesses.

I am reluctant to restrict businesses' ability to negotiate business to business contracts, or risking the negative impact of making business more difficult to do. UK legislation already establishes maximum 30-day payment terms for transactions with public authorities and 60-day payment terms between businesses, unless they agree longer terms and those terms are not grossly unfair to the supplier.

Lastly, you asked about the expansion of the scope of audits to look at payment practices. We are already working towards greater transparency in how supply chain finance is reported in company accounts and assessed in audits, by working with the Financial Reporting Council to develop guidance and build it into their sampling of companies' accounts. At Spring Statement, the Government announced that FRC will require large companies' Audit Committees to review payment practices and report them in their annual reports.

I would like to see this implemented through guidance but, if necessary, we will consider legislation to ensure that the issue of late payment is given sufficient attention by the Boards of larger companies.

Beor

Andrea

THE RT HON ANDREA LEADSOM MP
Secretary of State for Business, Energy & Industrial Strategy