



The Insolvency
Service

Company Directors Disqualification Act 1986 and Failed Companies: A Guide to Director Disqualification

Contents

What is director disqualification?	3
What is a disqualification undertaking?	4
What are the effects of a disqualification order or disqualification undertaking?	4
Where does the order apply?	5
Penalties for contravention of a disqualification order or undertaking	5
When can the court make a disqualification order?	6
What is unfit conduct?	6
Who can be disqualified?	6
What is the Insolvency Service's role?	6
How will a director know if a disqualification order is to be sought?	7
How long does the Secretary of State have to apply for a disqualification order?	7
What happens when an application for disqualification is made?	7
When will the order/ undertaking come into force?.....	8
What other action might be taken?.....	8
How to obtain permission to act as a director whilst disqualified	8
How to find out if somebody is a disqualified director	9
How to complain about a director	9
Where can I get more information?	10
Other matters	10
Media enquiries.....	10
Data Protection Act.....	10

What is director disqualification?

Director disqualification is the process whereby a person is disqualified, for a specified period, from becoming a director of a company, or directly or indirectly being concerned or taking part in the promotion, formation or management of a company without permission from the court. The Company Directors Disqualification Act 1986 (CDDA) applies.

Disqualification proceedings are a civil, not criminal, process.

Disqualification orders are made by the court. Alternatively, directors may offer to give a disqualification undertaking. Disqualification can last for up to 15 years.

The CDDA aims to maintain the integrity of the business environment; those who become directors of limited companies should:

- Carry out their duties honestly and responsibly
- Ensure they/ the company complies with the law and all relevant regulations
- Exercise adequate skill and care with proper regard to the interests of the company's creditors, customers, shareholders, employees and, in some circumstances, the general public.

The majority of directors do this effectively. However, where they do not, director disqualification is a powerful tool which can be used to protect the public from those who abuse the privilege of limited liability.

In addition to companies, the disqualification regime also applies to the following organisations and their officers:

- Limited liability partnerships (LLPs)
- Building societies
- Incorporated friendly societies
- NHS foundation trusts
- Open-ended investment companies
- Registered societies
- Charitable incorporated organisations.

What is a disqualification undertaking?

An undertaking is the administrative equivalent of a disqualification order and can be entered into, voluntarily, without the need for court proceedings. Once accepted by the Secretary of State it has the same effect as a court order and can only be amended by the court.

A director can offer to give an undertaking at any time during the investigation; however, the Secretary of State will refuse the offer if he is not satisfied that, taking all known information into account, it would be appropriate for him to accept the offer.

If an undertaking is accepted before court proceedings are commenced then the Insolvency Service will not recover any costs of their investigation from that director.

Once court proceedings have been commenced, a director may still offer to give an undertaking. This will put a stop to the court proceedings. However, the director may be required to pay the costs and expenses incurred in the proceedings up to the date of the undertaking.

Many directors prefer to offer an undertaking at the earliest opportunity if they accept that the conduct alleged did happen. An undertaking allows them to 'put the matter of disqualification behind them' and move on.

It is important that a director obtains their own independent professional advice if they are uncertain whether they should offer an undertaking.

What are the effects of a disqualification order or disqualification undertaking?

Unless he or she has court permission, the person is disqualified by the CDDA for the period stated in the order or undertaking from:

- Acting as a director of a company
- Taking part, directly or indirectly, in the promotion, formation or management of a company or limited liability partnership
- Being a receiver of a company's property.

That person also cannot act as an insolvency practitioner.

In addition to the above many other restrictions are placed on disqualified people by other legislation and regulations. Organisations known to apply restrictions or other requirements include:

- Charities
- Schools
- Pension trustees
- Police and police authorities
- Registered social landlords
- Health boards and social care bodies
- Solicitors, barristers, accountants and other professionals.

More information about the effects of a disqualification order or undertaking is available in our publication [Effects of a Disqualification](#) which can be found on our website www.gov.uk/insolvency-service.

Where does the order apply?

The ban on being a director applies to all registered and unregistered companies formed in England, Wales and Scotland.

It also applies to foreign companies if the company:

- Is registered in England, Wales and Scotland
- Has sufficient connection to England, Wales or Scotland (for example, if it carries on business or has assets here) even if it is not registered here.

The above restrictions also apply in Northern Ireland. For more information visit nibusinessinfo.co.uk.

Other regulations may impose different geographic restrictions and other countries and/or their organisations may impose their own restrictions on people disqualified by the CDDA.

Penalties for contravention of a disqualification order or undertaking

Anyone contravening a disqualification order or undertaking is committing a criminal offence and can be fined and/or sent to prison for up to 2 years. They could also be disqualified for a further period.

When someone contravenes an order or undertaking, they might also become personally liable for any debts of a company that are incurred during that period.

If the disqualified director asks somebody to act on their behalf then that person could also be prosecuted and/or disqualified and become personally liable for the company's debts.

If it is a corporate director that is disqualified, then its officers or managers can be punished as if the order or undertaking applied to them personally for any contravention of the order or undertaking by the corporation.

When can the court make a disqualification order?

The court can do this for example, for:

- Unfit conduct in the promotion, formation, management or liquidation of a company
- Wrongful trading (such as trading while insolvent)
- Failure to comply with filing requirements under the Companies Act legislation
- Breaches of competition law
- Following conviction for criminal offences (either in the UK or abroad) related to the promotion, formation, management or liquidation of a company.

What is unfit conduct?

There is no finite list of conduct which may lead to disqualification; however, examples include:

- Conduct that seeks to deprive creditors of assets
- Continuing to trade to the detriment of creditors when a company is insolvent
- Fraudulent behaviour
- Failure to keep proper accounting records
- Failure to prepare and file accounts or make returns to Companies House
- Failure to submit tax returns and/or fairly pay the tax due
- Failure to comply with other regulatory requirements
- Failure to co-operate with the official receiver and/or insolvency practitioner.

Unfit conduct in overseas companies after 1 October 2015 may also be taken into account.

Who can be disqualified?

The law applies not only to a person (or other legal entity) who has been formally appointed as a director but also to those who have acted as a director without being legally appointed, to shadow directors and to others who have instructed a director, who is subsequently disqualified, to act in an unfit manner. A shadow director is "a person in accordance with whose directions or instructions the directors of the company are accustomed to act".

What is the Insolvency Service's role?

When a company has entered into formal insolvency proceedings, the official receiver, liquidator, receiver or administrator must submit to the Secretary of State a report on the conduct of all directors who were in office during the last 3 years of the company's trading.

Where we receive information to suggest serious corporate abuse either from the public or other regulators, our investigations teams have the power to conduct investigations into limited companies and limited liability partnerships which are actively trading, or which have ceased trading without entering into insolvency proceedings.

The Insolvency Service (the Service), acting on behalf of the Secretary of State, receives these reports and must decide whether it is in the public interest to investigate further and, ultimately, whether to seek a disqualification order.

To preserve the integrity of this process, this decision making function is exercised by a separate department to that carrying out the investigation and reporting function.

Except where settled by undertaking, any application for a disqualification order will be heard and decided by the court.

How will a director know if a disqualification order is to be sought?

Where the Service is investigating the conduct of a director, best efforts will always be made to contact that individual as early as possible to seek an explanation of the situation.

Where a final decision has been made to seek a disqualification order, the director will be notified by post to the last known address. If the director does not respond or a disqualification undertaking cannot be agreed then proceedings will be started at court. At this stage the director will be formally served with (sent) notice of the proceedings.

How long does the Secretary of State have to apply for a disqualification order?

The majority of applications made by the Service, on behalf of the Secretary of State, are made under section 6 of the CDDA. In such cases if the first date of insolvency (ie the first winding-up order, voluntary liquidation, administrative receivership or administration) is before 01 October 2015 then the application for disqualification must be made within 2 years, otherwise a 3 year limit applies. In certain relatively rare circumstances, the court may extend that time.

Applications can also be made by the Service under sections 2 and 8 of the CDDA. These applications can be made at any time and can be in relation to companies that are still trading or have not entered any formal insolvency procedure.

What happens when an application for disqualification is made?

The proceedings are brought by the Secretary of State for Business, Energy and Industrial Strategy or, usually in compulsory winding-up cases, by the official receiver at the direction of the Secretary of State. The matter is heard, and decided by the court.

Directors (defendants) have the opportunity to respond to the allegation(s) raised and to give both the court and the Service/Secretary of State reasons for their actions and, if they think the allegations are wrong, explain why they think that. They may do so via a statement of truth (a written account of the relevant facts which is sworn on oath or affirmed, usually before a solicitor). There may also be statements of truth from other people (such as the company's bankers, accountants and creditors) presented as evidence to support the case for or against the directors. These people may also be called as witnesses at any hearing. The court will then decide whether the alleged conduct makes the directors unfit to act in the management of a company and, if so, for how long they should be disqualified.

A disqualification order usually carries with it an order to pay the costs and expenses of the Secretary of State or the official receiver or both.

At any stage in the proceedings a director may give an undertaking to the Secretary of State that has the same effect as a disqualification order and will put a stop to the court proceedings. The director may be required to pay the costs and expenses incurred in the proceedings up to the date of the undertaking.

At all stages in the proceedings any new information provided to the Service or the court is reviewed. In the event that the proceedings are no longer considered to be in the public interest then the proceedings will be discontinued (stopped).

When will the order/ undertaking come into force?

A disqualification order usually comes into effect 21 days after the date of the order.

An undertaking usually commences 21 days after the date that it is signed as accepted by a chief examiner of the Service acting on behalf of the Secretary of State.

What other action might be taken?

The disqualification, or absence of a disqualification, does not affect the right of the Secretary of State, or any other prosecuting authority, to bring criminal proceedings in respect of any conduct which may amount to an offence.

Nor does it affect the right of the liquidator or creditors to bring civil proceedings against the director(s) in respect of any losses sustained as a result of any unfit conduct.

Compensation orders may be sought in cases where the conduct for which a person has been disqualified has led to a direct loss to creditors and no, or insufficient, action has resulted from the insolvency process. The conduct must have occurred after 01 October 2015.

Where appropriate the Service will also bring matters of possible unfit conduct to the attention of any other relevant regulator for them to consider.

How to obtain permission to act as a director whilst disqualified

A person who is subject to an order or undertaking may apply to the court under section 17 of the CDDA for permission to act as a director or to take part in the promotion, formation or management of a named company. The court cannot give permission to a disqualified person to act as an insolvency practitioner.

The applicant will have to satisfy the court that they have a reasonable need to do what they are asking – not just that they want to be a director.

They must also satisfy the court that, if it gives the permission requested, the public will be adequately protected and therefore the court may require safeguards and may impose conditions/restrictions on the applicant.

Anyone considering such an application should contact the Service at civil.proceedings.team@insolvency.gov.uk for further general information and guidance. However, it is important that they also consider obtaining their own independent professional advice.

How to find out if somebody is a disqualified director

To search the Disqualified Directors Register, visit [Companies House](#) and go to the 'Find Company Information' page; then click on 'Disqualified Directors Search', found in the top right of the screen.

This register will also tell you if the individual has obtained permission from the court to act in relation to specified companies.

The Service also offers an [online facility](#) which provides details of recent disqualification results obtained by us including details of the unfit conduct that led to the disqualification. It is also possible to request details of the unfit conduct for older cases.

In addition, it is an offence for an undischarged bankrupt, somebody subject to a debt relief order or somebody subject to a bankruptcy or debt relief restrictions order or undertaking to act as a director of, or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, except with leave of the court. The Service maintains the [Individual Insolvency Register](#) (IIR) which contains details of these individuals.

You can access all these at www.gov.uk/search-the-register-of-disqualified-company-directors.

How to complain about a director

To access our complaint forms or to find out more about how to complain about a company director or a disqualified director visit our website at www.gov.uk/government/collections/insolvency-service-investigations-and-enforcement-what-we-do-our-outcomes-and-complaints.

Where can I get more information?

For more information on our investigation and disqualification work, visit our website at www.gov.uk/government/insolvency-service.

Further information regarding enforcement action including statistical data can be found within the Service's [Annual Report and Accounts](#).

All our publications are available at www.gov.uk/government/collections/insolvency-service-guidance-publications.

Her Majesty's Courts and Tribunals Service publishes a series of information publications and contact details on their website at: <http://www.justice.gov.uk/global/contacts/hmcts/index.htm>.

For general insolvency enquiries, contact the Insolvency Service Insolvency Enquiry Line on 0300 678 0015, or email Insolvency.EnquiryLine@insolvency.gov.uk.

Please note that the Enquiry Line can only give general information about insolvency. If your query relates to a specific case, then you should either contact the officer dealing with that case or obtain independent professional advice, as appropriate.

This publication provides general information only. Every effort has been made to ensure that the information is accurate, but it is not a full and authoritative statement of the law and you should not rely on it as such. The Insolvency Service cannot accept any responsibility for any errors or omissions as a result of negligence or otherwise.

Other matters

Media enquiries

Media enquiries should be directed to our Press Office press.office@insolvency.gov.uk.

Data Protection Act

Our Personal Information charter explains how we treat personal information. You can find it at www.gov.uk/government/organisations/insolvency-service/about/personal-information-charter.

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