



PUMP COURT  
CHAMBERS

Insolvency and directors, looking at the impact of  
bankruptcy and liquidation on directors dealing with  
disqualification and restraints prior to discharge

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Jason Nickless & Palak Sikri

# Automatic disqualification and the resignation requirement

- Under CDDA 1986 s.11, undischarged bankrupts are automatically disqualified.
- No court order is needed for disqualification to take effect.
- Immediate resignation from directorship is required upon bankruptcy or Bankruptcy Restrictions Order (BRO).
- Acting in breach is a criminal offence, even if bankruptcy is later annulled.



# How long does the disqualification last

- Disqualification lasts until discharge from bankruptcy.
- Ordinary discharge period is typically 12 months.
- Applies across the UK unless extended due to misconduct.
- Can be extended by a BRO.
- Discharge ends automatic disqualification unless a BRO is in place



# Extended disqualification and BROs

- BROs can extend disqualification from 2 to 15 years.
- Imposed for dishonest, reckless or culpable conduct.
- Example: Kennedy v Official Receiver [2022] EWHC 1973 (Ch).
- BROs protect the public from unfit directors.



# What you are not able to do as a disqualified director

- Cannot act as a director of any company.
- Includes companies registered in the UK.
- Applies to all disqualified individuals including those under BROs.
- Prohibited from promoting, forming or managing any company.
- Covers direct and indirect involvement.
- Court permission is required to engage in such activities.



# What you are not able to do as a disqualified director

- Disqualification includes shadow and de facto directors.
- Statutory definition of 'director' includes those acting as such in practice.
- Case: Official Receiver v Duckett [2020] EWHC 3016 (Ch).



# What you are not able to do as a disqualified director

- Prohibitions apply to companies outside England and Wales.
- Includes foreign companies with a UK place of business.
- CDDA s.11 applies to companies incorporated abroad but operating in the UK.



# What you are not able to do as a disqualified director

- Permitted to work as an employee in a company.
- Must not be involved in promotion, formation or management.
- Employment must not breach disqualification restrictions.
- Acting as a sole trader is permitted.
- No restrictions on self-employment outside company structures.



# With the permission of the Court...

- Court may grant leave to act as a director despite disqualification.
- Permission often comes with conditions.
- Case: *Hobson v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 1317 (Ch)



# What happens to the director's shareholding

- Disqualification does not require disposal of shares.
- Shares automatically vest in the Trustee in Bankruptcy or the Official Receiver
- Cannot exercise director-related rights (e.g., voting at board meetings).





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# The Impact of Liquidation on Directors with a Focus on Disqualification

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Jason Nickless

# The Impact of Liquidation on Directors Generally

- Loss of control of company
- Duty to co-operate with the liquidators
- Overdrawn directors' loan accounts
- Personal guarantees
- Wrongful or fraudulent trading
- Setting aside transactions and swelling the asset pool
- Investigation and reporting to the Insolvency Service and disqualification if unfit



# Disqualification for Unfit Conduct

- Investigation by liquidators (and administrators)
- Power to disqualify
- What is “unfit conduct”
- The procedure for disqualification
- A matter of mitigation



# Investigation by Liquidators

- Liquidators must prepare a report (“a **Conduct Report**”) on each person who was a director of the company on the insolvent date or at any time during the three years ending with that date (section 7A of the Company Directors Disqualification Act 1986 (“**CDDA 1986**”).
- The Conduct Report must be sent to the Secretary of State within 3 months of the winding up order or such period as the Secretary of State considers appropriate in the particular circumstances.
- The Liquidator is obliged to provide the Secretary of State with “new information” should this come to the Liquidator’s attention after they have submitted their Conduct Reports.
- The Conduct Reports are provided through an on-line portal operated by the Insolvency Service.



# The Power to Disqualify

- Section 6 of the CDDA 1986 provides that the Court *shall* make a disqualification order against a person where the Court is satisfied that:
  - the person is or has been the director of company which has at any time become insolvent or was a director of a company which has at any time been dissolved without becoming insolvent; and
  - the person's conduct as a director of that company (taken either alone or taken together with the person's conduct as a director of one or more other companies or overseas companies) makes the person unfit to be concerned in the management of a company.
- The period of disqualification is between 2 and 15 years.



# What is “Unfit Conduct”: Schedule 1 to the CDDA 1986

- Starting point is section 12C of the CDDA 1986 which refers the Court to Schedule 1 to that Act. The provisions of Schedule 1 apply to considerations of what amounts to unfit conduct as well as how long any disqualification order should last.
- Schedule 1 addresses:
  - the extent to which the person was responsible for the causes of any material contravention by a company of any applicable legislative or other requirement;
  - the extent to which the person was responsible for the company becoming insolvent;
  - the nature and extent of any loss or harm caused or potential loss or harm which could have been caused by the person’s conduct;
  - any misfeasance or breach of fiduciary duty by the director in relation to the company;
  - any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company; and
  - the frequency of the conduct set out above.



# What is “Unfit Conduct”: Insolvency Service Guidance

- The Insolvency Service states that directors should:
  - carry out their duties honestly and responsibly;
  - make sure they or 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.
- Stress upon the importance of complying with the company’s obligations to keep records, file documents, pay fines and comply with directors’ duties.



# What is “Unfit Conduct”: Case Law

- Recently confirmed that the conduct does not have to have a causative connection with the insolvency (**Secretary of State for Business and Trade v Greensill [2026] EWHC 639 (Ch)**);
- In **Secretary of State for Business, Innovation and Skills v Chohan [2013] EWHC 680 (Ch)** the following useful points were made by Hildyard J:
  - the matters set out in Schedule 1 of the CDDA 1986 are non-exhaustive and any misconduct of a person exercising the powers of a director may be relevant;
  - determining unfit conduct is a question of law and fact and involves a comparison with the standard of behaviour to be expected of a director; and
  - a broad brush approach is not correct and any allegation must be considered individually and in the round.
- Negligence is not generally enough and a substantial amount of incompetence is required: “*total incompetence*”; incompetence “*in a very marked degree*”; and “*really gross incompetence*” (**Re Dawson Print Group Ltd [1987] BCLC 601** per Hoffman J)



# The Procedure for Disqualification

- Conduct Reports are provided to the Insolvency Service.
- The Insolvency Service decides whether it is in the public interest to investigate further and, ultimately, whether to seek disqualification.
- Notify director of potential action as soon as possible and will give the director an opportunity to defend themselves.
- Proceedings will be issued in the High Court, Chancery Division.
- Disqualification Undertakings can be accepted at any stage but the director will typically have to pay legal costs if proceedings have been issued.



# A matter of mitigation

- The duration of the disqualification order or the disqualification undertaking will depend in part upon what are effectively the aggravating and mitigation factors of the conduct.
- Aggravating factors include:
  - intentional behaviour;
  - dishonesty;
  - the frequency of any misconduct; and
  - a history of disqualification.
- Mitigating factors include:
  - behaving honestly;
  - acting upon professional advice; and
  - attempts to protect the interest of the company and its creditors.



## Contact details



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Jason Nickless is experienced in commercial and civil litigation. He can be relied upon to provide carefully considered advice and robust representation in contentious disputes.

Before being called to the Bar in 2001, Jason Nickless worked as an academic at the University of Leuven and later as the managing director of his own consultancy company. He has published numerous books and articles on the subject of European Social Law. He was particularly involved in considering the impact of the EC provisions on competition and free movement upon social systems such as health care and pensions. He has given presentations at conferences and lectures at universities throughout Central and Western Europe including Barcelona, Brno, Brussels, Bucharest, Budapest, Genève, Graz, Helsinki, Kiev, Ljubljana, Luxembourg, Maastricht, Mangalia, Moscow, Ostend, Prague, Sarajevo, Strasbourg and Tallinn. He has undertaken consultancy work for the Council of Europe in Strasbourg and the European Commission in Brussels as well as government ministries and NGO's.

Palak is a specialist civil law practitioner developing a practice in business and commercial disputes, employment law, personal injury, and property law. She is regularly instructed for both Claimants and Defendants, appearing in the Employment Tribunal, the County Court, and the High Court.

In civil proceedings, Palak is regularly instructed across personal injury, property, and commercial and contractual disputes. Her personal injury practice spans employer's liability, occupiers' liability and public liability claims, and she is routinely instructed in credit hire matters across both the Fast Track and Small Claims Track.

On the commercial and contractual side, Palak has experience representing both claimants and defendants in breach of contract claims, including disputes arising from agency and principal relationships. She has experience in advising on liability, quantum, and the prospects of settlement in commercial disputes, and brings a commercially-minded approach to litigation that reflects her background in business and finance.



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