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# Neil Davies & Partners LLP

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## S O L I C I T O R S

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### Director Disqualification Proceedings (DDP's)

#### **The Law - An Overview:-**

DDP's are most commonly commenced under the provisions of the Company Directors Disqualification Act 1986 (CDDA).

They are brought only against "Directors". It is not only the Directors, registered at Companies House, who are targeted. A person may be a "Director" in law, and thus subject to proceedings, even if not registered at Companies House. Such persons may be targeted as "De Facto" Directors or as "Shadow" Directors.

CDDA proceedings usually have to be commenced against the Director within two years of the date of the formal insolvency of the company to which they relate.

Disqualification lasts between 2 and 15 years, depending on the severity of the admitted/proved unfit conduct.

Such proceedings usually have to demonstrate that the Director has been involved in or allowed others to be involved in "Unfit Conduct", arising out of a failed company. The question of what constitutes "Unfit Conduct" has to be determined on the facts of each case.

#### **The Director's Response**

Will depend on the facts of each case and on what the Director wants to achieve, which might be to defeat the claim against the Director or to negotiate a lower period of disqualification than is offered by the Opponent (most usually, the Secretary of State) or to enter into a Director Disqualification Undertaking in agreed terms to end the proceedings.

#### **Some Commonly asked questions**

##### *Disqualification is inevitable isn't it?*

No. It isn't. The Secretary of State in putting together a case against a Director, often only knows one side or part of the story. It is vital that the Director who has "lived" the story puts his version of events to the Secretary of State, at the earliest point.

##### *What should I do?*

In response to a letter from the Secretary of State (or his Solicitors) the well advised Director will meet the claim head on and respond to it, in appropriate terms. That may (and will usually) involve writing a letter of representations to the Secretary of State and/or having a face to face meeting with the Secretary of State to ensure that the Director's position is fully understood by the Secretary of State. Obtaining and

interpreting the Secretary of State evidence, to be relied on against the Director, is a crucial, first step.

*The Secretary of State surely won't withdraw the threat of proceedings?*

Yes he will, if the Director can persuade him that he did not engage in “Unfit” Conduct. The Secretary of State can and does review the CDDA proceedings at every step of the case, even after the issue and service of proceedings. It is not unusual for DDP’s to be abandoned by the Secretary of State, even after the commencement of legal proceedings.

*What is “Unfit Conduct”?*

By way of example only, the Secretary of State may allege that:-

The Director caused his Company to trade on for too long (“trading to the detriment of the Creditors” or “trading with knowledge of Insolvency”).

Or

That the Director “traded to detriment of the Crown” or failed in his statutory obligations, by allowing the Company to run up Crown debts, in respect of VAT, PAYE and Corporation Tax.

Or

That the Director entered into transactions to the detriment of the Company (e.g. paying off a personally guaranteed bank debt prior to Insolvency).

Or

That the Director failed to maintain, preserve or deliver - up the books and records of the company to its appointed Insolvency Practitioner, with what the Secretary of State says are the consequences that flow from that.

*Even if I am disqualified, I can still manage and run my new business?*

Not necessarily. A Disqualification Order usually precludes the disqualified Director from being involved in “the promotion, formation or management” of another Limited Company, during the currency of the disqualification. “Management” is widely construed and it is very easy for a Director to become involved in a new business and to unwittingly breach a Disqualification Order. Such a breach has criminal law and civil law consequences for the Director.

*I cannot afford to oppose the claims, can I?*

Often, the Secretary of State will not seek to recover his legal costs from the Director, if matters resolve before the commencement of proceedings. Legal Aid is not ordinarily available to oppose DDP’s. The Director may thus be compelled to fund his/her own solicitors to oppose or deal with the claims against him/her. If the right advice is given early on in the claim this is often money well spent.

*How can the Director end the proceedings?*

In a number of ways, to include by succeeding in his Defence at Final Hearing or by persuading the Secretary of State to abandon his case or by the Director entering into a Director Disqualification Undertaking.

## ***What is a Director Disqualification Undertaking?***

An “Undertaking” is a document which sets out the Unfit Conduct that a Director may be prepared to admit to, so as to end the claims against him, as quickly and cost effectively as possible.

An Undertaking can be entered into, before or after the commencement of proceedings.

The terms of the Undertaking need to be carefully scrutinised and agreed in terms that are acceptable to the Director so that, for example, those terms do not leave the Director open to other civil or criminal action.

## **Summary**

Each case must be judged on its own facts and in the context of all relevant facts. The Director is best placed to know what those facts are. It is vital that the Director seeks and obtains specialist legal advice as early as possible.

## **About Us and Our Caseload**

We have an ongoing caseload where NDP represents Directors in Director Disqualification proceedings. We are well used to dealing with the Secretary of State and his Solicitors, on a daily basis, in correspondence, in meeting and in Court proceedings.

Team members have over 30 combined years of experience of representing Directors, in Director Disqualification and other proceedings. Three of the team members have historically represented the Secretary of State in bringing and prosecuting cases against Directors, which we believe gives us a unique insight into defending and opposing such proceedings.

We have excellent working relationships with and access to leading Barristers and other experts who practice in the field of Director Disqualification law.

Much of our Director Disqualification caseload is referred to us by other Solicitors and by Accountants and Licensed Insolvency Practitioners, who know of our breadth and depth of experience in this area of law and practice.

We represent Directors of the smallest companies through to Directors of failed Plc businesses. We presently act for one of the two Directors of a failed, high profile Plc Claims Management Company, in heavily contested DPP’s before the High Court.

Director Disqualification Proceedings inevitably involve issues of Insolvency Law and practice. Our Lawyers have a good grounding in and practice daily in the field of Insolvency Law, acting for and against Licensed Insolvency Practitioners. We believe that such knowledge is fundamental to our being able to properly represent the Director.

## **Legal Costs - Free first meeting**

We believe that we charge our clients competitive rates for the work we undertake. We discuss and agree case fees in advance and are happy to work to budgets for particular tasks involved in the case.

We are happy to discuss any case with a client, on a free of charge basis, at the outset. We recognise that ‘people instruct people’ and that we need our clients to be comfortable with us before they commit to instructing us.