



Helpful Facts for Directors Facing Disqualification for Crown Debt

The Insolvency Service, in its recent [Stakeholder Newsletter for Autumn 2015](#) points out that the director disqualification regime has been strengthened as part of the [Small Business, Enterprise and Employment Bill](#).

We expect to see a resulting increase in [director disqualifications](#). We specialise in defending directors who are threatened with director disqualification by The Insolvency Service, especially for non-payment of Crown Debt. We have a proven track record of dealing successfully with such cases.

Here we comment, in summary form, on 5 of the key points raised by The Insolvency Service. Our full set of comments can be seen by [clicking here](#).

1

We believe the average amount due to HMRC is lower than the Insolvency Service's figures

The Insolvency Service says that the average amount due to HMRC in a Crown Debt director disqualification case is c.£975,740.

We believe that is an over-estimate. A random sample of Insolvency Service cases we have looked at shows an average Crown Debt of c.£100,000 - £120,000 and in some cases for much lower crown debts owed at liquidation. The implication here is that more directors will fall into this lower debt range, potentially resulting in more director disqualification proceedings.



2

The Insolvency Service believes that there is a significant public interest in pursuing directors involved in Crown Debt cases

We monitor carefully the grounds and reasons for director disqualification on a case by case basis. Crown Debt cases figure prominently and are far and away the biggest allegation of Unfit Conduct relied upon by the Insolvency Service in seeking director disqualifications.

Their belief in the public interest is another factor in expected increases in Director Disqualification cases.



3

HMRC is more vigilant than ever in not allowing Crown Debt to escalate

Directors are often encouraged by their solicitors or accountants to seek time to pay arrangements with HMRC or to seek specialist insolvency advice, to benefit the company and to protect the director from the subsequent risk of a Director Disqualification investigation or [Misfeasance proceedings](#) by a liquidator subsequently appointed to the company.

As specialists in director disqualification we are well placed to advise on such issues and on wider restructuring options for the company.



4

Over 680 director disqualifications obtained in 2014 to 2015 involved cases of Trading to the Detriment of the Crown or unfair treatment of the Crown

In other words where the Crown was treated unfairly (in the Insolvency Service's view) in comparison to other creditors.

Of those 680 cases, we expect that many of them will have been the result of the director giving a Director Disqualification Undertaking, before Court proceedings are commenced to avoid the scrutiny or involvement of the Court in the case and what the director fears will be an expensive legal fight (although it need not be overly expensive).

In our experience, many directors are actually agreeing to be disqualified by undertaking, when there may well be no need to do so. The sooner you talk to us, the more we can help.



5

The Insolvency Service justifies its focus on Crown Debt cases on the basis that it impacts on "every law-abiding taxpayer"

This view, that Crown Debt is against the public interest, ignores the reality faced by directors of struggling companies, who keep the company going in the hope and expectation that things will improve, so preserving jobs and livelihoods. It is that type of detail that the director needs to get across, in his/her defence, to the IS to try and cut disqualification investigations off at an early stage.

All the circumstances of the case at the time are vitally important. The director should keep a diary of what actions he/she took, why they were taken and keep copy documents (eg-copy emails) to support his/her position.



The Insolvency Service's view of Crown Debt serves as a warning to company directors who may be incurring increasing, unpaid Crown Debt that they may become exposed to an allegation of trading to the detriment of the Crown or treating the Crown unfairly and face director disqualification.

If you or one of your clients is faced with director disqualification, our specialists in director disqualification can help.

Please [contact us](#) or call us today for a free no obligation/no pressure initial chat on **0121 200 7040**, or why not email a copy of a letter you may have received from the Insolvency Service to law@ndandp.