

# **A survey of the use and effectiveness of the Company Directors Disqualification Act 1986 as a legal sanction against directors convicted of health and safety offences**

Prepared by the **University of Warwick**  
for the Health and Safety Executive 2007

# **A survey of the use and effectiveness of the Company Directors Disqualification Act 1986 as a legal sanction against directors convicted of health and safety offences**

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This study looks at the use made of powers contained in the Company Directors Disqualification Act 1986 in relation to disqualification orders related to health and safety failures in the management of companies. It considers the effectiveness of director disqualification under the 1986 Act as a legal sanction against directors convicted of health and safety offences, and examines links between prosecutions under Section 37 of the Health and Safety at Work etc Act 1974 and disqualification under the 1986 Act. The survey was undertaken over a period of six months, commencing in May 2005 and completed in November 2005.

This report and the work it describes were funded by the Health and Safety Executive (HSE). Its contents, including any opinions and/or conclusions expressed, are those of the authors alone and do not necessarily reflect HSE policy.

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*First published 2007*

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## EXECUTIVE SUMMARY

**This study looks at the use made of powers contained in the Company Directors Disqualification Act 1986 in relation to disqualification orders related to health and safety failures in the management of companies. It considers the effectiveness of director disqualification under the 1986 Act as a legal sanction against directors convicted of health and safety offences, and examines links between prosecutions under Section 37 of the Health and Safety at Work *etc.* Act 1974 and disqualification under the 1986 Act.**

**Following a presentation of the key powers contained in the 1986 Act, the scope of the relevant provisions is considered, and it is noted that the purpose of disqualification is directed at the protection of the public and not punishment.**

**From the material obtained, it appears that not less than ten directors have been disqualified for health and safety reasons since the coming into force of the Company Director's Disqualification Act 1986. There is no reliable data to indicate how many unsuccessful applications for disqualification have been made since 1986.**

**Interviews conducted with HSE operations directors and their counterparts in local authorities indicate a surprisingly low level of awareness of the 1986 Act provisions, and their utilisation in practice. Undoubtedly, the use of the disqualification sanction has not enjoyed a high priority by prosecutors – at least at a formal recorded level.**

**It is suggested that the reasons for this are a combination of (a) a low priority accorded, and (b) a lack of awareness, both within HSE and amongst local authorities, as regards the potential for use of this particular sanction. The low rate of utilisation for the disqualification sanction in relation to health and safety matters stands in stark contract to its use in other areas – in particular, concerning the management of companies in the context of corporate insolvency and related issues. Even where the disqualification sanction does come into play, the evidential material indicates that the initiative in invoking a disqualification order has (at least, on a number of occasions) been taken by the sentencing court, rather than being a matter following from application made by the prosecutor.**

**There is a persuasive case that there is potential for both a “sanctioning” and a “promotional” benefit to be obtained if there were a clear strategic approach adopted to the making of applications for disqualification orders under the 1986 Act (whether or not all of such applications resulted in eventual orders being made). That strategic approach would need to be accompanied by a publicity drive, in order to sensitise corporate management to the existence of, and consequences flowing from successful utilisation of, the 1986 powers.**

**The evidence indicates that, to date, no such strategic approach exists, or has been attempted, within HSE (including by the increasing number of external “agents” used for health and safety prosecution work). The position within local authorities would appear to be even worse – with a marked absence of awareness even of what potential powers may be contained within the 1986 Act.**

**It is suggested that, at the very least, steps would need to be taken to develop and draw up guidelines for prosecutors in relation to appropriate circumstances in which an application for a disqualification order might be made to a court. There should also be a direction to all**

prosecutors (whether directly from HSE, from local authorities, or those acting as “agents”) in relevant cases of health and safety management shortcomings that any court which returns a guilty verdict in relation to a relevant indictable offence should be reminded of the powers available under the 1986 Act. Such a move towards a strategic utilisation of the 1986 Act provisions and associated publicity in the light of successful applications for disqualification orders could be implemented with minimal resource implications.

A collateral benefit from such a strategic move would be the development of significantly improved record-keeping in relation to the outcomes of prosecutions where disqualification has been in issue. It is suggested that the potential benefits to be derived from a coherent body of reliable data upon which future policy-making may be founded will far outweigh any (probably relatively minor) additional resources involved in order to achieve such a data base.

It is recommended that arrangements be put in place to supervise and monitor all health and safety prosecution files with a view to identifying cases where it would be appropriate to make application for a disqualification order, and that, in any event, a formal return should be made by all prosecutors in respect of the outcomes of any cases handled by them before the courts.

In relation to the question of whether there has been any discernible influence upon director behaviour by virtue of the 1986 Act provisions, it is concluded that the sanction of director disqualification has been used too infrequently over a period of almost twenty years to have had much (if any) direct effect upon director behaviour. Even if there has been some such effect, it is impossible to say to what extent this has influenced director behaviour, or even in what respects.

In addition to making recommendations concerning the maintenance of records relating to prosecutions for health and safety offences, and guidance which should be provided to prosecutors in relation to the potential for director disqualification, it is suggested that responsibility for developing HSE policy on use to be made of the 1986 Act should be located at a senior policy-making level. Once a policy has been developed, this should be communicated widely within HSE and should be publicised. The policy should be reviewed on an annual basis.

Provided that these recommendations are introduced speedily, there is no reason to recommend amendment of the existing powers contained in the 1986 Act. However, it is observed that, in the longer term, there will be a need for HSC/E to engage actively in the development of guidelines for boardroom and director conduct in relation to health and safety issues.

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November 2005

## **1. INTRODUCTION**

- 1.1 The Health and Safety Commission (HSC), in conjunction with Ministers, is responsible for proposing to Parliament measures to provide for the regulation of all the risks to health and safety arising from work activity in Britain.
- 1.2 The Government and HSC/E when launching the Revitalising Health and Safety Strategy (RHS) in June 2000 included a key action that all organisations (in the private, public and voluntary sectors) should appoint an individual director to have responsibility for the management of health and safety and that the board should collectively provide leadership to ensure that risks to health and safety are properly controlled. HSC guidance published in July 2001 (INDG343) gave effect to the RHS action described above.
- 1.3 The Government and the HSC have concluded, taking account of research findings on the impact of the HSC guidance and the factors influencing director responsibility more generally, that for the moment the existing measures concerning director responsibility for health and safety, both voluntary and legislative, should continue.
- 1.4 The call from particular stakeholders, including trade unions and the Centre for Corporate Accountability (CCA), for further legislation placing new Occupational Health Support (OHS) responsibilities on directors under the provisions of the Companies Acts was addressed by the Commons Work and Pensions Committee in its inquiry of 2004 into the work of HSC/E. The Committee recommended that the Government should introduce legislation placing new OHS responsibilities on directors at the earliest opportunity.
- 1.5 However the Government in its response to the Committee's recommendation called on HSC/E to undertake further evaluation on the effectiveness of the current measures in place concerning director responsibility. It was asked to report its findings by the end of 2005. HSE is committed to further consider the merits of existing health and safety law concerning director's OHS responsibilities, including the appropriateness of the sanctions they face, and to the options for further legislation.
- 1.6 HSC/E is committed to undertaking further analysis of the effectiveness of the current voluntary and legal arrangements in place concerning director responsibility for OHS and reporting findings to Ministers by the end of 2005. This work will also inform the discussion on requirements for further legislation.

## **2. FRAMEWORK FOR THE INVESTIGATION**

2.1 The investigation was expected to last for a period of six months. It commenced on 14 May 2005 and was scheduled to be completed by 14 November 2005. In the course of its completion the Principal Investigators have:

- Explored the use of the sanction of director disqualification under the 1986 Act, assess the extent of its use, and address the reasons underlying the extent of that use;
- Considered the effectiveness of director disqualification under the 1986 Act as a legal sanction against directors convicted of health and safety offences;
- Examined links between prosecutions under Section 37 Health and Safety at Work *etc.* Act 1974 and disqualification under the 1986 Act;
- Assessed, in the light of the evidence available, whether the disqualification provisions of the 1986 Act could, with suitable amendment, be an effective (or a more effective) sanction;
- Assessed the extent to which the sanction of disqualification influences director behaviour;
- Explored stakeholder views on the merits of the disqualification sanction.

## **3 KEY OBJECTIVES OF THE INVESTIGATION**

3.1 The key objectives have been:

- Successful engagement with key stakeholders, including the Institute of Directors, CBI, TUC, CCA, Law Society, Bar Council, the Department for Constitutional Affairs, the Department for Trade and Industry and the Department for Work and Pensions, RoSPA, employers' organisations and other stakeholders to establish their views on the use and effectiveness of the current legal provisions concerning director disqualification and for amendment to the current law;
- Quantification of the occasions that disqualification orders under the 1986 Act have been made by reference to management failures touching health and safety in the period from 1986 until 2005;
- An analysis of the factors contributing to the reportedly rare use of the disqualification provisions in the 1986 Act;
- Assessment of the extent to which the current law concerning director disqualification, suitably amended, could be used as an effective sanction and lever for promoting appropriate director responsibility for OHS;
- A consideration of the implications of possible changes to the Company Directors Disqualification Act 1986 for stakeholders.

#### **4 OVERVIEW OF METHODS IN USE DURING THE COURSE OF COMPLETING THE PROJECT**

- 4.1 The management of the project has been organised on the same lines as previous contract work successfully undertaken by the Principal Investigators, Professor A. C. Neal and Professor F. B. Wright for the Health and Safety Executive (HSE) and the European Commission in the field of regulation concerning health and safety at work.
- 4.2 The overall management of the programme was placed in the hands of a Steering Committee, chaired by a nominated representative of HSE, and including Professor Neal and Professor Wright. This Steering Committee met on a regular basis, either meeting physically or communicating by telephone/video conferencing facilities. The University of Warwick provided the secretariat.
- 4.3 Having been duly constituted and having met for an initial discussion to confirm the project objectives, and to approve the proposed Work Programme and delivery targets, the Steering Committee provided HSE with a light-touch “hands-on” supervisory mechanism exercised in conjunction with the Principal Investigators working on the project.
- 4.4 A primary, and urgent, task for the Steering Committee was to approve the profiles identified by the Principal Investigators as constituting the project reference groups representative of the views and experience of key stakeholders in relation to the regulatory provisions under consideration. Initial pre-start-date consideration of this issue suggested that these groups should include (i) policy-makers; (ii) representatives of members of the Solicitors’ profession active in the field; and (iii) representatives of the membership of the CBI, TUC, IoD and the CCA, together with two or more “specialist groups” representing key sectors.
- 4.5 Initial contact was made with the members of these reference groups by way of postal and E-mail communication. This initial contact was followed-up by a detailed study of the successful prosecutions to date. Finally, a selected group of respondents was interviewed with a view to evaluating proposed changes to the law.
- 4.6 With data compilation and initial assessment completed by the fourth month of the project, the Principal Investigators then drew up a draft report for consideration and discussion by the Steering Committee, after which it finalised its interim draft report containing the results of the project for presentation to HSE.

## 5 INTRODUCTION TO THE RELEVANT LEGAL PROVISIONS ON DIRECTOR DISQUALIFICATION IN CONNECTION WITH HEALTH AND SAFETY MANAGEMENT

- 5.1 The sanction of disqualification for company directors is available to the courts under the Company Directors Disqualification Act 1986. That statute applies to England, Scotland and Wales, while a broadly parallel 2002 Order enacts an equivalent regime for operation in Northern Ireland. It may be noted that, where a disqualification has been imposed in the Northern Ireland jurisdiction, the effects of that measure will be applied in England, Scotland and Wales as though the power had been exercised in those jurisdictions.
- 5.2 By virtue of Sections 22A to 22C, Section 2 of the 1986 Act applies expressly to building societies and NHS foundation trusts. The scope of the Act is further expanded by Section 22, which *inter alia* provides that (with the exception of Section 11) the expression “company” in the Company Directors Disqualification Act 1986 includes any company which may be wound up under Part V of the Insolvency Act 1986. Thus, the scope of the Company Directors Disqualification Act 1986 and the prohibitions which can be imposed by virtue of its provisions are not confined to companies registered under the Companies Acts.
- 5.3 Section 2 of the Company Directors Disqualification Act 1986 applies to European Companies (SE), provided that the head office of any such body is situated in the United Kingdom,<sup>1</sup> and to foreign companies in relation to which British courts have jurisdiction, as well as to European Interest Groupings registered in Great Britain.
- 5.4 The Company Directors Disqualification Act 1986 contains no territorial restrictions. The court therefore has the power to disqualify a director who resides outside the jurisdiction of the courts. This applies regardless of the director’s nationality.
- 5.5 Section 2 of the 1986 Act gives the court the power to make a disqualification order in relation to a person who has been convicted of an indictable offence in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company’s property or with his being an administrative receiver of a company.
- 5.6 For the purposes of health and safety enforcement and sanctioning, the relevant part of Section 2 would normally be limited to conviction of an indictable offence “in connection with the...management...of a company”.

This provision is widely drafted, and covers any offence ‘in connection with’ any aspect of the birth, life and death of the company, and extends to the conduct of both the internal and external affairs of the company.<sup>2</sup> In *R. v. Goodman*<sup>3</sup> a director had been disqualified following a conviction for insider dealing in his company’s shares while in possession of unpublished information regarding the company’s trading position. He argued that he should not be disqualified since the insider dealing offence was not an offence committed in connection with the management of the company. The Court of Appeal held that it was

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<sup>1</sup> See Council Regulation 2157/2001.

<sup>2</sup> *R. v. Austen* (1985) 7 Cr. App. Rep. (S) 214. See also *R. v. Corbin* (1984) 6 Cr. App Rep (S) 17; *R. v. Georgiou* (1988) 4 BCC 322.

<sup>3</sup> [1993] 2 All ER 789, [1994] 1 BCC 322.

not necessary to establish that the offence related to the management of the company itself – it was sufficient that the offence did have some factual connection with the management of the company. On the facts, the insider dealing offence of which he was convicted was an offence in connection with the management of the company, and he was properly disqualified.

- 5.7 In England and Wales, an indictable offence is an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or “triable either way”.<sup>4</sup> The same definition applies in Scotland,<sup>5</sup> and in Northern Ireland.<sup>6</sup>
- 5.8 It should be noted that the application of Section 2 – which is targeted at “persons” – is not limited only to “directors” (whether *de jure*, *de facto* or “shadow”), but applies equally to employees, managers, company secretaries or insolvency practitioners convicted of an offence falling within its scope. However, where a “director” is concerned, there is a definition of “director” set out in Section 22(4) of the 1986 Act, which adopts the same wording as is to be found in Section 741 of the Companies Act 1985 and Section 251 of the Insolvency Act 1986.
- 5.9 The assistance provided by the Section 22(4) definition of “director” is not complete, so that further assistance has to be derived from relevant case-law developed by the courts.
- A director who has been formally appointed in accordance with the appropriate procedure set out in the relevant company’s articles of association and has consented to act is known as a *de jure* director.
  - The Company Directors Disqualification Act 1986 also applies to *de facto* directors whose past conduct raises questions about their suitability to be involved in the management of companies. For a court to make a finding that a person was acting as a *de facto* director it must be established that (i) both the company and the defendant had represented that he was a director of the company at the relevant time; and (ii) the defendant had undertaken functions which could only be performed by a director and not by a manager or some other senior employee below board level.<sup>7</sup>
  - A “shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity).<sup>8</sup>

- 5.10 In relation to the notion of “management” for the purposes of the Company Directors Disqualification Act 1986, the court will take a contextual approach and construe this term

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<sup>4</sup> Interpretation Act 1978, s.5, Sch.1.

<sup>5</sup> By virtue of Section 2(2) of the Company Directors Disqualification Act 1986.

<sup>6</sup> By virtue of Article 5(1) of the Company Directors Disqualification (Northern Ireland) Order 2002.

<sup>7</sup> See Millett J. in *Re Hydrodam (Corby) Ltd* [1994] BCC 161, and *Re H Laing Demolition Building Contractors Ltd., Secretary of State for Trade and Industry v. Laing* [1996] 2 BCLC 324.

<sup>8</sup> Section 22 (5) Company Directors Disqualification Act 1986. See *Re Euro Express Ltd., Secretary of State for Trade and Industry v. Deverell* [2001] Ch. 340. The provisions setting out the definition of “shadow director” have been subject to modification, notably by the Insolvency Act 2000, Section 8 and 15, and Schedules 4 and 5. The relevant provision is now set out in Section 6(3)(c), for the purposes of Sections 6 and 7 of the 1986 Act.

in the light of the overall purpose of the Act, taken together with the specific corporate context in which the disqualified person was operating. The court's jurisdiction will only arise if there is a demonstrable link between (i) the offender and the company's management and (ii) the offence itself and the company's management. Thus, in order to be susceptible to being disqualified, the offender must be someone who identifiably performs a management role, or discharges or assists in the discharge of a managerial function, as well as there being a nexus between the particular offence and the activity of management.<sup>9</sup>

5.11 The maximum period of disqualification is 15 years (save where the order is made by a court of summary jurisdiction – in which case, the maximum period is five years).

5.12 In the White Paper entitled *A Revised Framework for Insolvency Law*, presented to Parliament in 1984 by the Secretary of State,<sup>10</sup> as a result of recommendations within the Cork Report,<sup>11</sup> the Department of Trade and Industry (DTI) advocated the introduction, as soon as possible, of a series of additional measures to curb and penalise the activities of irresponsible directors.<sup>12</sup> In particular, the DTI saw the principal role of legislation in this context and that of insolvency law as (i) providing a statutory framework to encourage directors to pay careful attention to their company's financial circumstances so as to recognise difficulties at an early stage and before the interests of creditors are seriously prejudiced; and (ii) deterring and penalising irresponsible behaviour and malpractice on the part of those who manage a company's affairs.<sup>13</sup> Lord Hoffman has observed that "disqualification is a very serious matter".<sup>14</sup>

5.13 In his 1999 report, the Comptroller and Auditor General said that:

"The disqualification arrangements help to promote confidence and risk-taking in the market, by assuring those who do business with limited liability companies that directors who are unfit will be disqualified from being involved in the management of those companies. If unfit directors were able to continue in business without the sanction of disqualification, confidence in the market would be undermined."<sup>15</sup>

5.14 In so far as deterrence is concerned, it is interesting to note the comments of the Australian Standing Committee on Legal and Constitutional Affairs in 1989. The Committee had this to say of disqualification:

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<sup>9</sup> *R. v. Goodman* [1993] 2 All ER 789

<sup>10</sup> Department of Trade and Industry, *A Revised Framework for Insolvency Law* HMSO, London, Cmnd 9175, 1984.

<sup>11</sup> Report of the Review Committee on Insolvency Law and Practice, HMSO, London Cmnd 8558, 1982.

<sup>12</sup> The CDDA 1986 owes its origins to the Companies Acts 1928 and 1947. These were consolidated in the Companies Act 1948. cf. Report of the Committee on Company Law Amendment, HMSO, London, Cmd 6659, 1945 at para 150; and Report of the Company Law Committee HMSO, London, 1749, 1962 at paras 80, 85(b), 497–499 and 503 (a)–(d)

<sup>13</sup> Department of Trade and Industry, *A Revised Framework for Insolvency Law*, Cmnd. 9175 (HMSO, London 1984) at page 5.

<sup>14</sup> *Hoffman L.H.*, 'The Fourth Annual Leonard Sainer Lecture' (1997) 18 Co Law 194 at 197. See also the views of Jonathan Parker J in *Re Barings plc (No. 5)* [1999] 1 BCLC 433 at 484.

<sup>15</sup> Comptroller and Auditor General, *The Insolvency Service Executive Agency: Company Director Disqualification – A Follow Up Report* (HMSO, London 1999).

“Evidence was given to the Committee that disqualification from office was the greatest threat to directors, notwithstanding possible gaol sentences and financial penalties, and therefore was an effective sanction.”<sup>16</sup>

- 5.15 By section 2 Company Directors Disqualification Act 1986 (CDDA 1986) the court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company’s property or with his being an administrative receiver of a company.<sup>17</sup>

The maximum period for disqualification under Section 2 is five years where the order is made by a court of summary jurisdiction, and 15 years in any other case.<sup>18</sup>

- 5.16 Disqualification under this provision is a penalty as a result of conviction for an offence, and it does not preclude the Secretary of State from bringing disqualification proceedings against the same person under Section 6 of the 1986 Act (unfit directors of insolvent companies),<sup>19</sup> unless the subsequent proceedings can be seen as an abuse of process.<sup>20</sup>

- 5.17 Disqualification proceedings are civil and not criminal,<sup>21</sup> notwithstanding that under Section 2 of the 1986 Act the disqualification order may be made following criminal proceedings by the court which convicted the person concerned.<sup>22</sup> The restriction on taking part in the management of a company is very wide. In particular, the words “be concerned in” the management do not mean “take part in,” and so include acting as a management consultant.<sup>23</sup>

It is well established that the purpose of disqualification is directed at the protection of the public and not punishment.<sup>24</sup>

The standard of proof is on the balance of probabilities. Dillon LJ in *Re Sevenoaks Stationers (Retail) Ltd* has said that,

“incompetence or negligence to a very marked degree ...is enough to render him unfit...to take part in the management of a company”.<sup>25</sup>

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<sup>16</sup> Senate Standing Committee on Legal and Constitutional Affairs, Social and Fiduciary Duties and Obligations of Company Directors AGPS, Canberra, 1989 at 194.

<sup>17</sup> CDDA 1986 s.2. See s.16(2) as to the wide categories of persons who may apply for a disqualification order under this provision, but note *Juer v. Lomas* [2001] All ER (D) 309; affirmed [2001] EWCA Civ 1568 (need for applicant to have legitimate interest in the relief sought). An application for disqualification can be made under this provision even though the court which has convicted the individual director has refused to make an order: *Re Samuel Chandler Ltd, Secretary of State for Industry v. Nimley* [2002] All ER 283.

<sup>18</sup> CDDA 1986, s.2(3).

<sup>19</sup> *Secretary of State for Trade and Industry v. Rayna* [2001] 2 BCLC 48, endorsed by the Court of Appeal, see EWCA Civ 1083, [2001] 30 LS Gaz. R 37.

<sup>20</sup> *Re Barings plc (No.3), Secretary of State for Trade and Industry v. Baker (No.3)* [1999] 1 BCLC 226; *Re Denis Hilton Ltd* [2002] 1 BCLC 302.

<sup>21</sup> *R. v. Secretary of State for Trade and Industry, ex parte McCormick* [1998] BCC 379 at 392 per Morritt LJ.

<sup>22</sup> The period of disqualification must date from conviction, not, for example, from the convicted person’s release from prison. See *R. v. Bradley* [1961] 1 WLR 398.

<sup>23</sup> *R. v. Campbell* [1984] BCLC 83.

<sup>24</sup> *Re Lo-Line Electric Motors Ltd* (1988) 4 BCC 415 at 422 per Browne-Wilkinson VC.

However, where the law does not require any kind of qualification for becoming a director, it is not easy to fix an *ex post facto* standard of competence for disqualification.<sup>26</sup> Thus, Nicholls VC, in *Re Swift 736 Ltd*, stated that:

“Limited liability is a valuable tool in the promotion of trade and business, but it must not be misused. Those who make use of limited liability must do so with a proper sense of responsibility. The director disqualification procedure is an important sanction introduced by Parliament to raise standards in this regard. Those who take advantage of limited liability must conduct their companies with due regard to the ordinary standards of commercial morality. They must also be punctilious in observing the safeguards laid down by Parliament for the benefit of others who have dealings with their companies.”<sup>27</sup>

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<sup>25</sup> [1990] BCC 765 at 780

<sup>26</sup> *Hoffman LH*, “The Fourth Annual Leonard Sainer Lecture”, (1997) 18 Co Law 194, at 196.

<sup>27</sup> [1993] BCC 312.

**6 THE USE OF THE SANCTION OF DIRECTOR DISQUALIFICATION UNDER THE 1986 ACT, AN ASSESSMENT OF THE EXTENT OF ITS USE, AND THE REASONS UNDERLYING THE EXTENT OF THAT USE**

6.1 Most offences listed in Section 33 of the Health and Safety at Work *etc.* Act 1974 are “indictable offences.”

6.2 Speaking in the House of Lords in 1991, Viscount Ullswater, Under Secretary of State for Employment, said:

“In our view Section 2 of the Company Directors Disqualification Act 1986 is capable of applying to health and safety matters. We believe that the potential scope of Section 2(1) of that Act is very broad and that “management” includes management of health and safety.”<sup>28</sup>

6.3 More recently, in March 2005, The Right Hon. Jane Kennedy M.P., Minister for Work and Pensions said:

“A sanction of disqualification of company directors is also available to the courts under the Company Directors Disqualification Act 1986 and I assure the House that the power has been and will continue to be used”.<sup>29</sup>

6.4 However, notwithstanding that assurance from the responsible Minister, the Principal Contractors have found that it is not possible to locate, with confidence, all of the specific instances where company directors have been disqualified in respect of health and safety related matters. Thus, for example, at the outset of the project, interview evidence suggested that the relevant statistic was a total of seven disqualifications during the period since 1986 – although no direct evidence was furnished to bear out this figure. However, other commentators have recently suggested a total of eight disqualifications – but, once again, without “chapter and verse” to bear out that proposition.

6.5 By way of indication, if one were to rely upon the data furnished from FOCUS, the picture would appear as follows:

Case No	Defendant’s Name, Director & company	Comments	Court	Date of Hearing	Director Fine
70000092	Peter Rodway P Rodway & Sons Ltd	MD, Peter Rodway, <b>disqualified from being a director for 2 years.</b>	Southend Magistrates	18/05/1998	£1,600
50000066	Tony O’Sullivan RainhamWaste Ltd	<b>MD disqualified for 5 years.</b> Case against company	Snaresbrook Crown Court	24/09/1998	£5,000

<sup>28</sup> Hansard, 22 November 1991, col.1429-30.

<sup>29</sup> Hansard, 4 March 2005, col.1234.

		and MD as an individual			
70000179	Spencer Brown Pharmacos Ltd	MD, Spencer Brown <b>disqualified from acting as company director for 4 years.</b>	Basildon Crown Court	09/11/1999	£ 2,500
220000032	Abdulwaheed Abidoeye - Beckon Contacting	MD of Beckon Contacting. <b>Barred from being a director for 2<sup>1</sup>/<sub>2</sub> years.</b>	City Magistrates Court, London	28/05/2003	£3,750
230000222	Stuart Forbes - Craneswater Maintenance Ltd	<b>MD disqualified from being company director for 5 years.</b>	Portsmouth Magistrates	06/08/2003	£2,000
230000196	Morris Williams	<b>Director disqualified from being a director for 2 years.</b>	Birmingham Crown Court	03/08/2004	£40,000
230000197	Joanne Carroll	<b>Disqualified for holding any directorship for 1 year.</b> Linked to case no. 230000196 above.	Birmingham Crown Court	03/08/2004	£5,000

6.6 However, it has become clear during the course of the Principal Investigators' enquiries that disqualification activity has also taken place on at least one occasion prior to the commencement of the period for which this data has been produced (1998-2005). Thus, for example, on 26 June 1992 The Crown Court at Lewes (Beryl Cooper Q.C., Recorder) fined Rodney James Chapman £5,000 for breach of Section 37(1) of the Health and Safety at Work *etc.* Act 1974 and disqualified him from holding office as a company director for a period of two years for contravening the terms of a prohibition notice.

6.7 From the material obtained by the Principal Investigators during the course of this investigation, it appears that not less than ten directors have been disqualified for health and safety reasons under the Company Director's Disqualification Act 1986. However, this figure has to be treated with great caution, since the availability of relevant detailed data from which to draw the evidence is limited in part because of the policy of shredding documents after they reach a certain life-span.

6.8 A number of complementary routes have been travelled by the Principal Investigators with a view to obtaining material in respect of the evident "gaps" in this area – although with limited success. Thus, the records held by Companies House do not appear to indicate the

basis upon which a company director disqualification might have been imposed – being restricted only to the period of disqualification for record and enforcement purposes. Nor has it been realistic, for reasons of time and resources, to consider investigation of all files held in Crown Court files or other related sources. Even an approach based upon the prosecution files held by HSE has not proved to be administratively possible.

- 6.9 The absence of evidence-based documentation or records concerning specific instances of director disqualification in this context has led the Principal Investigators to undertake a wider range of interviews than had initially been envisaged, with a view to strengthening the opinion-based evidence in relation to the use of the disqualification sanction. Thus, in the course of investigating the frequency of use for the potential sanction, the study undertook interviews with a variety of operations directors within the HSE and elsewhere (including in local authorities, which are also responsible for enforcement activity in the relevant field). These interviews indicated a surprisingly low level of awareness of the 1986 Act provisions, and their utilisation in practice. Indeed, in relation to local authorities, there has been no indication of any considered utilisation of the provisions at all.<sup>30</sup>
- 6.10 A number of issues opened up by the interviews completed to date are now under investigation. However, it does seem that the use of the disqualification sanction has not enjoyed a high priority by prosecutors – at least at a formal recorded level. Certainly, if the total suggested figure for the period since 1986 of around 10 or so instances is anywhere near accurate, this has to be seen against a background in which, from statistics provided in relation to the period 1994-2004, a total of 111 company directors were prosecuted in relation to various health and safety management matters, and 86 of them were convicted, of whom 11 were jailed. Putting this data<sup>31</sup> together with the responses obtained during the course of stakeholder interviews, a preliminary view would be that the reasons for this are a combination of (a) a low priority accorded, and (b) a lack of awareness, both within HSE and amongst local authorities, as regards the potential for use of this particular sanction for health and safety management failure on the parts of company directors.

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<sup>30</sup> Not a single response was elicited as a result of a twice-repeated article, issued by the Head of LAU Operational Policy and Support Division, in the Local Authority newsletter, while LAU records yielded no instance where the potential sanction had been sought or obtained.

<sup>31</sup> The data was furnished to the Principal Investigators on 21 October 2005, and is set out in the Appendix.

## **7 THE EFFECTIVENESS OF DIRECTOR DISQUALIFICATION UNDER THE 1986 ACT AS A LEGAL SANCTION AGAINST DIRECTORS CONVICTED OF HEALTH AND SAFETY OFFENCES**

7.1 Taking other areas of activity as a comparative point of reference, the potential sanction of director disqualification is clearly viewed as effective by the Department of Trade and Industry. Such other fields include, in particular, matters relating to the management of companies in the context of corporate insolvency and related issues.

7.2 Thus, the number of directors disqualified by United Kingdom courts rose from 399 in 1993-1994 to 1,267 in 1997-1998. Over the past five years, the number of United Kingdom company directors that have faced disqualification orders has remained fairly consistent at over 1,700. However, between 2003 and 2004, over 1,500 United Kingdom company directors have been disqualified from management for between two and fifteen years.

7.3 The official position is stated as follows:

“Since the introduction of the Insolvency Act 2000 (on 1 April 2001), the disqualification of company directors by undertaking, rather than by court order, is continuing to grow in popularity, delivering a massive boost to making the disqualification of directors a more straightforward, quicker and cost effective process. Between 2003 and 2004, 84% of all disqualification orders were implemented out of court, an 11% rise on the previous year and a huge step forward compared to the time before April 2001 when the disqualification of company directors was a serious burden on the legal system both in terms of cost and court time”.

7.4 However, for reasons related to the limited availability of specific file documentation, it is not possible to offer any evidence-based view as to the effectiveness of such a sanction. Instead, the Principal Investigators have been obliged to rely heavily upon opinion-based material (some of which tends to suggest that the mere existence of the potential sanction could and does serve to influence the behaviour of individual members of boards of directors of companies).

7.5 One aspect which does need comment, however, is the problem of whether the court will actually go on to apply the sanction of disqualification, once the potential to do so has been brought to its attention, and whether it is possible to obtain any insight into the reasons as to why a court might or might not apply the sanction.

7.6 In this regard, a very recent case illustrates the problem facing an investigation such as the present:

Mr Phillip Royle was fined £50,000 (and the company Royle Security and Surveillance Ltd were fined £10,000) on 18 July 2005 at Maidstone Crown Court. This followed an investigation into a fatal CO poisoning of a security Guard, Craig Beak, at Old Ashford Hospital. It is recorded that Counsel for the prosecution (Richard Matthews) reminded the judge that he had the authority to disqualify Mr Royle as a director. The judge was apparently very critical of Mr Royle, and in his summing up he blamed Mr Royle directly for the accident and death of Mr Beak, and even at one point apparently said that Mr Royle was lucky not to be receiving a prison sentence. However, despite the strong criticism of Mr Royle, the judge did not make a disqualification order, and, from the record, it appears that no information was given as to the reasons why not.

## **8 LINKS BETWEEN PROSECUTIONS UNDER SECTION 37 OF THE HEALTH AND SAFETY AT WORK ETC. ACT 1974 AND DISQUALIFICATION UNDER THE 1986 ACT**

- 8.1 For the reasons already mentioned, this examination has been limited by the non-availability of access to the relevant files. It is also the case that even the information which is available is “patchy”, with, for example, no data at all in respect of Scotland.<sup>32</sup> Any link thus remains to be explored, should the necessary raw material become available during the remaining period for this study.
- 8.2 Nevertheless, one or two preliminary observations may be made on the position as it appears to date. Thus, as has been noted, by Section 2(1) of the Company Directors Disqualification Act 1986, the court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, or with the receivership or management of a company's property. Breach(es) of Section 37 of the Health and Safety at Work *etc.* Act 1974 may be a reason for proceedings leading to disqualification, but other reasons could include breaches of Sections 3(2), 7, 8 and 36 and the contravention of an improvement or prohibition notice (Sections 21 and 22). It also seems clear that disqualifications could arise in respect of prosecutions under the Gas Regulations; the Asbestos Regulations and the Management Regulations (all of which could give rise to indictable offences with the requisite linkage to the 1986 Act).
- 8.3 Ministers have advised Parliament that the Government, the Health and Safety Commission and the Health and Safety Executive expect company directors to be fully aware of the criminal liability that they face and to ensure that they and their companies discharge their duties seriously. The Health and Safety Commission's enforcement policy statement, published in February 2002, states that
- “when the enforcing authorities are investigating possible health and safety offences, they should consider the management chain and the role played by individual directors and managers. Enforcing authorities should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or have been attributable to neglect on their part.”
- 8.4 Notwithstanding these, however, the limited evidential material which has been located by the Principal Investigators would seem to indicate that the initiative in invoking the potential sanction of director disqualification has (at least, on a number of occasions) been taken by the sentencing court, rather than being a matter following from application made by the prosecutor. However, only a study of the file material in relation to the specific cases identified will enable any reliable view to be taken about the strategic and/or casuistic use of the sanction as a weapon in the prosecutor's arsenal for this area.
- 8.5 In this context, it may be noted that, from the information provided during interviews, it appears that only around 5% of the total prosecutions in this area by HSE are seen by the Legal Advisor's Office, and that the overwhelming majority of cases are taken by solicitor agents and by inspectors. There has been no review of cases on a continuing basis by the

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<sup>32</sup> Thus, for example, the Focus data covers only Birmingham, London, the South East, and the South. In addition to this geographical limitation, the data also only goes back to 1998, leaving a substantial data gap in respect of the first 12 years for potential activity under the Act.

Legal Advisor's Office. This renders it difficult to evaluate the processes whereby cases come to be brought before the court and circumstances which might raise the possibility of director disqualification in any particular case. By way of example, it may be the case that HSE has enjoyed mutual collaboration with the insolvency service on various occasions, but no evidence of this has been brought to light.

**9 IN THE LIGHT OF THE EVIDENCE AVAILABLE, COULD THE DISQUALIFICATION PROVISIONS OF THE 1986 ACT, WITH SUITABLE AMENDMENT, BE AN EFFECTIVE (OR A MORE EFFECTIVE) SANCTION?**

9.1 Notwithstanding the problems of limited access to reliable data, the Principal Investigators have formed the following views in relation to the potential effectiveness of the 1986 disqualification provisions.

9.2 First, having regard to the broad penumbra of secondary evidence (albeit that much of this is opinion-based, and drawn from surveys relying upon “closed” questions about hypothetical situations) from which the Principal Investigators have drawn their contextual data, the following emerges:

- A growing number of directors claim to have taken responsibility both for the health and safety of their company’s workforce and for the health and safety of those who might be affected by their company’s activities.
- It is widely accepted that business as well as welfare benefits flow from sound health and safety practice. This is confirmed in cases where a “business case” is made for the concern in relation to health and safety issues.
- Furthermore, it is noted that the Combined Code on Corporate Governance requires the boards of directors of all listed companies to maintain and review a system of internal controls which covers areas such as health and safety management. There would appear to be a growing body of opinion that further companies should adopt this standard.

9.3 In this regard, particular issues have been indicated as being:

- the consideration of health and safety concerns when new plant and products are being acquired or when new processes are being put in place;
- the extent to which directors inform themselves of health and safety affairs within the company; and
- the “collective responsibility” for health and safety management to avoid the possibility that one director might be “put up” as a scapegoat.

9.4 The initial question arises as to whether the 1986 provisions can be said, at all, to constitute an “effective sanction” for management conduct which falls short of acceptable standards. In this regard, it has to be borne in mind that the “sanction” is only triggered in the aftermath of conviction for a relevant indictable offence, and, consequently, only behaviour or default which attracts activity on the prosecution front will give rise to the potential sanctioning consequences.

9.5 All of the evidence obtained by the Principal Investigators by way of interviews and follow-up enquiries indicates a remarkable absence of knowledge about the “sanction” potential at all. That lack of awareness is evident even amongst those responsible for instigating or seeing through prosecution/enforcement measures. This being the case, there may be a marked improvement in effectiveness simply by raising levels of awareness

within HSE and amongst local authority enforcing agencies, if “effectiveness” is measured by applications for, and the granting of, disqualification orders in appropriate circumstances.

- 9.6 The Principal Investigators have been persuaded – both by the comments of interviewees and in the light of the reported effectiveness of the “soft/administrative” instruments of “improvement notices” and “prohibition notices” under Sections 21 and 22 of the Health and Safety at Work *etc.* Act 1974 – that there is potential for both a “sanctioning” and a “promotional” benefit to be obtained if there were a clear strategic approach adopted to the making of applications for disqualification orders under the 1986 Act (whether or not all of such applications resulted in eventual orders being made). That strategic approach would need to be accompanied by a publicity drive, in order to sensitise corporate management to the existence of, and consequences flowing from successful utilisation of, the 1986 powers.
- 9.7 Currently, the evidence indicates that no such strategic approach exists, or has been attempted, within HSE (including by the increasing number of external “agents” used for health and safety prosecution work). The impression gained in relation to the position within local authorities, where these are the responsible enforcement bodies, is that the position may be even worse – with a marked absence of awareness even of what potential powers may be contained within the 1986 Act.
- 9.8 At the very least, steps would need to be taken to develop and draw up guidelines for prosecutors in relation to appropriate circumstances in which an application for a disqualification order might be made to a court. There should also be a direction to all prosecutors (whether directly from HSE, from local authorities, or those acting as “agents”) in relevant cases of health and safety management shortcomings that any court which returns a guilty verdict in relation to a relevant indictable offence should be reminded of the powers available under the 1986 Act.
- 9.9 Such a move towards a strategic utilisation of the 1986 Act provisions could be implemented with minimal resource implications, while any associated publicity activity might focus upon disseminating reports of cases in which disqualification has taken place (thereby involving only marginal additional resources over and above the existing HSE publicity activity in relation to successful prosecutions).
- 9.10 A collateral benefit from such a strategic move would be to improve the present unsatisfactory system of record keeping in relation to applications for disqualification orders. In an era when the collation and dissemination of data such as that relating to health and safety prosecution outcomes should be relatively straightforward and inexpensive, the potential benefits to be derived from a coherent body of reliable data upon which future policy-making may be founded far outweigh any (probably relatively minor) additional resources involved in order to achieve such a data base.
- 9.11 In summary, therefore, the Principal Investigators are of the view that arrangements should be put in place to supervise and monitor all health and safety prosecution files with a view to identifying cases where it would be appropriate to make application for a disqualification order under the 1986 Act, and that, in any event, a formal return should be made by all prosecutors in respect of the outcomes of any cases handled by them before the courts.

## **10 ASSESSMENT OF THE EXTENT TO WHICH THE SANCTION OF DISQUALIFICATION INFLUENCES DIRECTOR BEHAVIOUR**

- 10.1 From the limited evidence available to the Principal Investigators, it has to be concluded that, in relation to health and safety issues, the sanction of director disqualification has been used too infrequently over a period of almost twenty years to have had much (if any) direct effect upon director behaviour.
- 10.2 Even if there has been some such effect, it is impossible (without any reliable benchmark against which to measure the effect) to say to what extent this has influenced director behaviour, or even in what respects.
- 10.3 Although some of the background literature in this area (not all of which is specifically directed towards director behaviour in relation to matters of health and safety) suggests that there might be some “dissuasive effect” upon directors deriving from a knowledge that a sanction such as the disqualification power contained in the 1986 Act is actively being applied for and obtained, there is little evidence to support that proposition other than opinion-based comments in relation to hypothetical questions. In any event, no such active utilisation has been undertaken, so that the issue remains moot.
- 10.4 The question of whether there might be “indirect” effects is even more difficult to ascertain. However, in addition to the range of (largely opinion-based) data available in relation corporate director behaviour (both individually, and in the context of collective board level decision-making), some indicators of influence have emerged from the Principal Investigators’ follow-up discussions with stakeholders – although most of the views expressed have been aspirational in nature, rather than indicative of measurable activity taken.
- 10.5 All in all, therefore, there has been no reliable empirical research directly bearing upon the question of whether more director disqualifications would improve health and safety standards. Some opinion-based evidence suggests that the mere existence of such a potential sanction might positively influence the behaviour of boards and of individual directors in relation to health and safety matters, but the reliability of such opinions – generally stated in response to ‘closed questions’ under hypothetical conditions – must be open to grave doubt.
- 10.6 All of this having been said, however, the fact remains that a potential sanction of director disqualification has been available for nearly twenty years, and no measurable impact upon director behaviour has been discerned either in the evidence-based or opinion-based material obtained by the Principal Investigators.

## **11 STAKEHOLDER VIEWS ON THE MERITS OF THE DISQUALIFICATION SANCTION**

- 11.1 Work was undertaken by the Principal Investigators – primarily in the form of face-to-face interviews – to engage with key stakeholders, including the Institute of Directors, the CBI, the TUC, the CCA, the Law Society, members of the Bar, the Department for Constitutional Affairs, the DTI and the Department for Work and Pensions, as well as with RoSPA, employers’ organisations, and others, to establish their views on the use and effectiveness of the current legal provisions concerning director disqualification and for improvement or, or amendment to, the current law. Many of those who made time available for these interviews and discussions had been similarly generous in their provision of time to discuss earlier related research undertaken by the Principal Investigators in relation to health and safety regulatory policy, and a sincere vote of gratitude is due to all of those concerned.
- 11.2 Consistent with the findings at other stages of their investigations, the Principal Investigators discovered a widespread absence of awareness of the provisions in, and potential of, the 1986 Act. This was not just a question of unfamiliarity with the detail of the legislative provisions, but extended to unawareness of the existence of the relevant powers at all.
- 11.3 While there was a broad awareness of powers to disqualify in relation to matters of financial impropriety in relation to the management of companies, and of the potential liability of individual directors in situations of corporate insolvency, there was general surprise to discover the existence of powers as widely framed as those in Section 2 of the 1986 Act. Almost nobody with whom the Principal Investigators discussed these matters volunteered, without prompting, “health and safety mismanagement” as a basis for disqualification.
- 11.4 Some indirect anecdotal evidence of possible influence which might derive from a measure such as the disqualification power under the 1986 Act has been obtained in a different (though somewhat related) area – namely, in the context of proposals to introduce an offence of “corporate killing”.

While it has to be said that the level of sophistication of some of the views expressed might not have been particularly advanced – there generally being a perceived possibility of individual directors becoming embroiled in any potential criminal proceedings – it emerged that a number of those spoken to were firmly of the view that the mere threat of such a serious (particularly, “criminal”) sanction being invoked in relation to individual directors would (not “might”) cause relevant individuals to act more cautiously (and upon legal advice) while discharging their boardroom functions than has hitherto been the case.

It has also been suggested that some further evidence of the extent of this “fear factor” is to be seen in the growing number of courses and seminars being marketed for members of boards of companies with a view to “recognising their new duties” in the context of legislative proposals such as for a new offence of “corporate killing”.

## 12 CONCLUSIONS

- 12.1 Director disqualification powers in relation to the management of a company have been in place since the coming into force of the Company Directors Disqualification Act 1986. Those powers are not confined to “directors” or “shadow directors”, but extend also to persons involved in the “management” of a company.
- 12.2 The “trigger” for the disqualification powers being made available is conviction for an indictable offence, which thus makes the disqualification sanction of potential relevance to health and safety prosecutions which involve statutory offences triable on indictment. This potential is not confined only to “Section 37” convictions under the Health and Safety at Work *etc.* Act 1974.
- 12.3 It is open to the prosecution to make a specific application for a disqualification order to be made, or, alternatively, the court may decide of its own motion to invoke the powers granted under the 1986 Act.
- 12.4 The available data indicates that only a small number of disqualification orders have been made in the context of successful health and safety prosecutions during almost twenty years in which the 1986 Act powers have been available. In some cases, it is unclear whether the “health and safety” offence has been the primary reason for the disqualification order, or whether other matters arising at the same time (*e.g.* involving a corporate insolvency) have provided the principal motivation for the order made.
- 12.5 There is no reliable data from which to quantify the number of occasions on which an application has been made to the court for a disqualification order but the application has not been granted.
- 12.6 There is a widespread absence of awareness of the existence and potential scope of the powers contained in the 1986 Act. This lack of awareness has been found within HSE, as well as in local authorities, where these are the relevant enforcement bodies. A similar absence of knowledge has been noted amongst members of the solicitors’ profession and the Bar, suggesting that where “agents” are used for prosecuting health and safety matters there is likely also to be a lack of awareness of the potential contained in the 1986 Act provisions.
- 12.7 There is no express (or even, it would appear, informal) policy within HSE on the utilisation or exploitation of the powers contained in the 1986 Act. Unsurprisingly, therefore, no guidelines or instructions are provided to prosecutors in respect of potential (or recommended) submissions to be made in the context of the disqualification sanction.
- 12.8 Amongst directors of companies there is a similar lack of awareness about the existence, or potential implications, of the powers contained in the 1986 Act. This leads to the conclusion that the existence and/or operation of those powers has had little or no influence upon the behaviour of individual directors or boards of directors acting collectively.

## 13 RECOMMENDATIONS

- 13.1 The availability of reliable data on prosecutions for health and safety offences over the past twenty years is severely limited. This is due to a number of factors, including a policy of “shredding” certain categories of files after a pre-determined “shelf-life” (normally, five years), and an increasing use of “agents” outside HSE, who do not report back in a sufficiently systematised manner upon the outcomes of any particular prosecution.
- 13.2 This absence of systematic data undermines attempts to draw out trends from past experience with a view to informing future policy-making. The position is rendered even more problematic by the paucity of empirical evidence concerning director behaviour, and the widespread tendency for the available literature in the field to present opinion-based evidence as persuasive in relation to predicted boardroom behaviour.
- 13.3 **The Principal Investigators recommend that all prosecution files managed under the aegis of HSE as the enforcement body should be supervised and monitored in such a way as to enable policy-makers to identify prosecution outcomes with much more clarity than has hitherto been the case. In particular, it is recommended that any prosecution “agent” instructed by HSE should be required to make a formal return which details the prosecution outcomes of the case in question.**
- 13.4 **It is also recommended that local authorities should establish a similar reporting and monitoring system, to enable prosecution outcomes to be evaluated in a coherent manner throughout the jurisdiction and to be presented in comparable form to that collated by HSE.**
- 13.5 There is a pressing need for levels of awareness to be raised in relation to the existence of the powers, and the potential for their utilisation, in the 1986 Act. This applies, first and foremost, in relation to prosecutors, for whom no effective guidance is currently in place.
- 13.6 **The Principal Investigators recommend that information briefing notes should be prepared for dissemination to all prosecutors concerned with health and safety case files. These briefing notes should set out categories of cases (or specific elements within cases) for which it would normally be appropriate to anticipate an application for a disqualification order being made. They should also set out, in standard form, the content of submissions which it would normally be expected might be placed before the court in any event. Prosecutors should be briefed as to when it would normally be expected that the disqualification sanction would form part of discussions about the nature of pleas entered by a defendant, and should be encouraged to draw the existence of the 1986 powers to the attention of the court in a majority of (if not all) cases.**
- 13.7 **Responsibility for developing HSE policy on use to be made of the 1986 Act disqualification provisions should be located at a senior policy-making level. Once a policy has been developed, this should be communicated widely within HSE and should be publicised (in much the same manner as “prosecution guidelines” are made notorious to the public). The policy should be reviewed on an annual basis, drawing upon the data collated in consequence of the recommendations set out at paragraph 13.3 above.**

- 13.8 **A parallel policy development and review procedure should be introduced for local authorities, where these are the relevant enforcement bodies.**
- 13.9 **The policies developed by local authorities should be co-ordinated with those developed by HSE, so that a consistent enforcement policy can be implemented across the whole field of health and safety regulation. This should be facilitated through the establishment of a policy liaison body representing both HSE and local authority enforcement officers.**
- 13.10 **Provided that the recommendations set out in the foregoing paragraphs are introduced speedily, the Principal Investigators see no reason to recommend amendment of the existing powers contained in the 1986 Act.** The scope of the Section 2 power is very wide, and the “trigger” of conviction for an indictable offence establishes the link of serious default for a health and safety related reason. Disqualification may be for up to a maximum of fifteen years, and no suggestion has been received that this is inadequate or inappropriate.
- 13.11 **In the longer term, there is a need for HSC/E to engage actively in the development of guidelines for boardroom and director conduct in relation to health and safety issues.** This would *inter alia* enable any “best practice” developed (whether in the form of guidance or, more formally, in the shape of an Approved Code) to feed into the considerations taken into account by a court mindful of its powers under Section 2 of the Company Directors Disqualification Act 1986.

**APPENDIX**

**Prosecutions via HSWA s. 37 of Directors or Similar - Period 1/4/96 to 31/3/05**

(Names/Comments taken from **Internal** Prs Database – HSE use only. Comments also taken from Individuals Database and FOCUS)

Case No.	Defendant's Name	Comments	Director Fine
30000464	Monty Hammond	Charge laid against the MD for failing to comply with IN.	£5,000
70000428	Hugh Mason	S37 (1) case as Director of Maurice Mason Ltd. Co prosecuted under HSW S2(1)	£6,5000
230000549	Terence Daynes	IN for training served in 2001 and not complied with. Director tried to pass off forged training certificates for himself and an employee.	£2,000 (i.e. 2 x £1000)
70000452	David John Cox	A number of charges laid against Director of Cox Landscapes Ltd in connection with accidents and poor standards of health and safety.	£7,500 (i.e. 2 x £3000, 1 x £1000, & 1 x £500)
70000474	James Braidford	Prosecution for carrying out gas work whilst not being CORGI registered.	£200
90000423	Timothy Gareth Elsome	Director of Elsome Engineering Ltd failed to ensure the safety of employees. Company also fined total £100,000 for h&s breaches.	£10,000 (i.e. 1 x £6000, & 2 x £2000)
90000426	T Smalley	Director of Ltd Co. neglected to take the reasonably practicable measures he could have taken to ensure safety during work by a contractor.	£1,000
140000358	Douglas Dodgson	Farm manager. Failed to control risk.	£1,000
230000196	Morris Williams	<b>Director disqualified from being a director for 2 years</b> Case against director involved removal of asbestos without a licence, and asbestos exposure	£40,000 (i.e. 4 x £10,000)
230000197	Joanne Carroll	<b>Disqualified for holding any directorship for 1 year.</b> Case against secretary linked to case no. 230000196 above.	£5,000
230000222	Stuart Forbes	<b>MD. 5 yr. Disqualification from being company director</b> imposed by Magistrates.	£2,000

80000354	Jonathan Eugene Bygate	Director of Markyate Precision Engineering Co Ltd (which went into voluntary liquidation about April 2002).	£6,500
150000520	Lance Fawcett	Case against Director of Electrical Co. for work on an industrial unit privately owned by the Director, and not part of usual company business.	£2,500
20000514	Peter Allen Preston	S37 prosecution substituted by Crown for manslaughter charge.	£5,000
20000515	Paul McKenzie	Section 37 HSWA prosecution of Director. Guilty plea accepted by Crown in place of charge of manslaughter.	£5,000
160000321	Moores Timber Merchants Ltd	Mr Broadbent, Director, charged on 2 counts S37 HSWA through neglect. Case follows Judicial Review and subsequent joint investigation with Greater Manchester Police into the circumstances of the death of Mohammed Omar Akhtar. CPS considered evidence insufficient for charge of involuntary manslaughter.	£5000 (i.e. 2 x £2,500)
220000032	Abdulwaheed Abidoye	Mr Abidoye, MD of Beckon Contacting Ltd had his track cert withdrawn by London Underground on 24.4.02 after breaching LUL rules. Despite this on 5.5.02 he acted as protection master for Thales Telecommunications Ltd and took a contractor on to the track without informing the Track Access Controller. <b>Disqualified from being a director for 2<sup>1</sup>/<sub>2</sub> years.</b>	£3,750
80000343	Richard Clarke	Company fell far short of expected standards. Mr Clarke directly involved in management of health and safety at company.	£2,000
20000374	John Crook	Mr Crook was the arboricultural manager for Artel Services Ltd. His employers were also prosecuted.	£1,000
200000545	George Falconer Bisset	Director in G F Bisset (Inverbervie) Ltd knowingly allowed work to be carried out in contravention of the Prohibition Notice served on the company on 13 December 2001.	£1,000

80000317	Giovanni Viale	The company (Europlants (UK) Ltd did not have any systems of work for the control of vehicle movements on site.	£5,000
80000331	A Turness	S.37 prosecution of Director. Accident while clearing blockage on machine, resulted in amputation of two fingers. No safe system to clear blockages.	£7,000
120000436	William Barry Cox	Worker fell through fragile cement roof sheeting. Safety net on site not used. MD of William Barry Cox (Construction) Ltd on site before and at time of accident but failed to take any action.	£1,000
150000476	Alister David Smith	HSE charges against Director linked to offences by firm. Fatal accident. Inquest recorded unlawful killing but CPS decided against manslaughter charge.	£4,000
110000773	Mr Allott	Prosecution of Works Director following machinery accident. No safe system of work to include secure isolation.	£6,000
110000733	John Emlyn Parry	Mr Parry MD of Taymove at this time. Incident on site when a lorry made contact with overhead power lines. CDM regs not applied to site activities.	£3,000
20000339	Julian Austin	Fatal accident. Site labourer run over by rough-terrain lift truck operated by untrained and untested driver. Accused instructed / permitted operator to drive LT without checking training status.	£20,000
110000674	F P Gaskill	Prosecution of Operations Manager in relation to breaches by company - 2 Charges.	£6,000 (i.e. 2 x £3,000)
110000675	J A Baxter	Prosecution of Company Director in relation to breach of PUWER '98 by company.	£3,000
30000357	Norman Stewart	Director of Cleveland Cars Ltd. No safe system of work, no information, inadequate instructions, no supervision by competent person.	£1,000

HID C901	Peter Denton	Guilty pleas saving estimated 6 weeks of court time. Claimed costs did not include barristers costs for court time because it was clear that only a fraction of costs would be granted due to liquidation of defendant company.	£150 (i.e. 1 x £100; 1 x £50)
HID C911	John Mather	Guilty pleas saving estimated 6 weeks of court time. Claimed costs did not include barristers costs for court time because it was clear that only a fraction of costs would be granted due to liquidation of defendant company.	£18,150 (i.e. 4 x £2,000; 1 x £4,000; 1 x £6,000; 1 x £100; 1 x £50)
HID C921	Nigel Jackson	Guilty pleas saving estimated 6 weeks of court time. Claimed costs did not include barrister's costs because only a fraction of costs would be granted due to liquidation of defendant company.	£16,100 (i.e. 3 x £2,000; 1 x £6,000; 1 x £4,000; 1 x £100)
10000656	Mr Towens	Asbestos lagged vessel stripped without precaution with consent of Company Director.	£5,000
90000169	Brian Jones	Production director and senior manager with site responsibility. Present and involved during the entry into the oven which resulted in a double fatality.	£1,000
90000172	John Bridson	MD of both Harvestime limited and Fresha Bakeries Limited. but did not ensure the safety of employees carrying out work. Double fatality.	£20,000 (i.e. 2 x £10,000)
150000434	Sarjit Dulay	Fatal accident. No safe system of work to stop slabs falling off the stone bogie onto operatives.	£3,000
10000397	David John William Downton	Employee electrocuted on machine. Director neglected to carry out his duty. Mr Recorder Wassall, very critical of directors but placed burden of fine on company as directly affects the Directors. Took into account mitigation and aggravating factors in deciding penalties.	£750

10000398	Andrew Charles Tomlin	DP electrocuted whilst clearing blockage from machine. Conductors not insulated, but risk assessment not done so failed to identify hazard. This due to neglect of MD. As with above case no.10000397, Mr Recorder Wassall, was very critical of Directors, but placed burden of penalty on company.	£750
180000390	Mr Foster	Waste Equipment Services Ltd supplied faulty machine to a company. Supply company now liquidated, but Director still trading in same business, at the same locality, under different name. This Director was personally involved in the original location of, decommissioning and re-installation of this m/c.	£500
130000413	P D Morgan	Failure to control sub-contractors involved in unsafe roof work.	£5,000 (i.e. 2 x £2,500)
10000655	Mr Trivett	1 HSWA S37 by director in respect of alleged breach of Workplace reg 12(3) 2 HSWA S37 by director in respect of alleged breach of COSHH reg 7(1) offence.	£1,000 (i.e. 2 x £500)
90000299	Kerr David	Action against a Co. Director. Fork lift truck safety not being properly managed following serious accident to employee.	£150
210000336	Joseph McHugh	Electrocution of banksman with excavator passing under overhead power lines. No goalposts or warning signs.	£1,500
230000256	Lewis Andrew Courtney	MD of Clearserve Ltd. Case taken for manslaughter against the company and its two directors not successful. MD fined for failure to provide information, instruction training and supervision. Guilty on two other charges (failure to provide safe plant and systems of work, and suitable and sufficient risk assessment), but no separate penalty.	£6,000

230000262	James Quinn Holland	Director of Clearserve Ltd. Details as above case no. 230000256. Director convicted and fined for same breaches as MD of company.	£1,500
150000376	Robert Pickthall	Proceedings instituted against MD as well as corporate body for serious failings to protect MOPs and particularly children by failing to fence a significant housing site.	£1,000
60000258	J Piccolo	Case against Mr Piccolo, MD of MIDAS Properties & Investments, Principal Contractor, following collapse of scaffolding.	£4,000 (i.e. 1 x £2,000; 2 x £1,000)
80000215	Terry Edwards	Falsely pretended to be member of CORGI to Crosshall School. *MD appealed against sentence in but did not attend & appeal dismissed.	£200
80000216	Terry Edwards	Work on gas boiler and gas heaters at Crosshall School when not CORGI registered. * see above	£200
80000217	Terry Edwards	Falsely pretended to be member of CORGI to North Kesteven School.* see above.	£200
80000218	Terry Edwards	Carried out gas work on gas boilers at North Kesteven School but was not CORGI registered. * see above case 80000217.	£200
80000219	Terry Edwards	After carrying out gas work on boiler at North Kesteven School, failed to take steps to inform responsible person (school site manager) of defects.	£200
80000220	Terry Edwards	Falsely pretended to Milton Keynes Council to be CORGI registered.	£200
130000261	Peter Dexter	Employee suffered partial amputation of thumb whilst using inadequately guarded press brake - safety device defective despite instruction from HSE to rectify 5 months earlier. Director failed to take immediate steps to rectify.	£800

150000319	Raymond Bingham	Director of British & European Polymers Ltd and British & European Consultants Ltd. Employees working at Northern Gaskets and Mouldings exposed to MbOCA. Case against Director in view of direct personal involvement. Linked to S.3 charge against British & european Consultants Ltd.	£3,500
80000374	Ian Terry Thorne	Case against Director of JPD Ltd. Injury from unguarded circular saw. Injured person had no formal training. No risk assessments in place, and accident not reported under RIDDOR	£6,000 (i.e. 1 x £5,000 1 x £1,000
150000373	Sydney Robert Harris	Breach is attributed to the neglect of Mr Harris personally as engineering director. No risk assessment completed. Manslaughter case withdrawn	£1,000
150000374	William Beaumont Marshall	Prosecution because health and safety failings of company attributable to neglect of Mr Marshall personally as director of production. Manslaughter case withdrawn	£400
150000375	Mehdy Zarrebini	Prosecution because health and safety failings of company attributable to neglect of Mr Zarrebini personally as Chief Executive of PFE. Manslaughter case withdrawn	£3,500
110000421	John Lewis Perryman	Director had intimate knowledge of the work on site and took no steps to ensure the safety of employees etc. Fatal accident involved. Both companies also being prosecuted.	£2,500
90000258	Brian Kenneth Eaton	Managing Director of Vayland Engineering Ltd. A lot of previous advice and enforcement on similar issues over number of years.	£1,000 (i.e. 2 x£400; 1 x£200)
150000309	Mark Alan Hateley	Director closely involved in the company's failure to comply with PN.	£5,000

120000333	B J Salisbury	Photoelectric guards fitted to machine had been bypassed. Both Directors aware that machine was being operated in this way but failed to take any action. Penalties of £2000 imposed on each Director plus £10,000 fine on Company.	£2,000
120000334	R Elston	As above case no. 333	£2,000
90000228	Brian Reece Fairbairn	Failings of company attributable to the personal neglect of the Managing Director. Investigation following complaint concerning risks to employees from radioactive tritium being processed in the factory.	£5,000 (i.e. 5 x £1,000)
210000251	Francis Adams	Co-director of company accused of breaches associated with amputation accident to 17 year old at vertical milling machine.	£750
210000252	John Campbell Cowie	As above case no. 251	£750
170000252	Carl Clayson	Accident to trainee bricklayer with Tarmac Construction Ltd, who was sub contracted to Clayson Development Ltd (Carl Clayson owner ). Cases also against Clayson Development Ltd. No risk assessment. Project not notified. Planning Supervisor not appointed.	£7,000
170000249	Michael Flynn	As Director of company caused a contractor to rupture a high pressure gas main.	£2,400 (i.e. 3 x£800)
210000312	Colin Alldritt	Two employees of Scottish Adhesives Co Ltd killed in a fire. MD of adhesives company responsible for failure to ensure the safety of employees.	£2,000
210000195	Sher M Rafique	Company in liquidation so case taken against MD	£250
20000185	R A Bernier	Non compliance with IN which was handed personally to MD	£500
150000248	Michael David Pieri	Site manager not provided with training. Breach by company of r. 28 CHSWR and s.37 by MD, Michael David Pieri.	£1,000

110000238	Robert Ellerby	Director in charge of housing development site. Had almost a full time presence on site. Permitted a semi detached dwelling to be constructed up to the felt and battens stage to within 1 metre of a live 33Kv overhead power line.	£1,500
100000130	Philip Rose	M.D. of Rollco Screw & Rivet Co Ltd. instructed workforce to clean down heavily contaminated machinery in premises where illegal asbestos removal had occurred. Longstanding knowledge of presence of asbestos.	£4,000 (i.e. 2 x £2,000)
100000131	Bernard William Rose	Company Secretary of Rollco Screw & Rivet Co Ltd. Asbestos illegally removed from premises leaving significant contamination. Took no steps to ensure safety of workforce on their return to work.	£6,000 (i.e. 2 x £3,000)
70000181	Alexander Joseph Hemmings	Director of Mazdon Construction. Provision of inadequate welfare facilities. Also, no provision for the supply of PPE - boots. Company has, in the past, received four Improvement Notices for similar issues.	£1,000
110000206	MD of GTS (Fabrications) Ltd	MD failed through his negligence to ensure that the cooling towers at the factory were operated and maintained in a clean state, and thereby exposed employees and others to risk of legionellosis	£25,000 reduced to £15,000 on appeal
150000187	Adamsons Ltd	S 37(1) Against William Hewitt as company secretary in relation to machinery safeguarding deficiencies.	£1,250
110000214	Arthur Burslem	PN served on company for unsatisfactory methods for working on fragile roofs	£2,500
150000122	Stephen Adrian Walmsley	Major fire at LPG cylinder filling/storage depot	£6,000 (i.e. 2 x £3,000)

110000120	GKR Maintenance & Building Ltd	Two cases against company, CHSW 6(1) and RIDDOR 3(1) and one case against managing director Mr G K Rowlands HSW Section 37 following accident to an employee who fell 3m from a flat roof which was not protected with roof edge barriers.	£2,000
10000107	Charles Frederick Perry	PN served until safe system of work complying with HSG 66 established. MD claimed poverty, hence the relatively low fine	£2,000
180000066	R N Clarke	Breach of HSW Act s37. Director of company directly implicated in agreeing and organising works involving inappropriate systems of work and unsafe plant. Case taken in conjunction with prosecution of company G F Martindale and Sons Ltd on HSWA section 2 charge.	£750
70000048	Simon Charles Grant Weeks	HSW S37. Unsafe system of work comprising deficiencies in planning of task, equipment, execution and supervision. PR of Director, implicated in offences of employer, as he observed the incident.	£500
200000079	Kenneth Harper	Police included charge of attempting to pervert the course of justice - found guilty. Accused appealed against rulings and granted interim liberty pending appeal.	£12,000
120000069	Thomas Joseph Murphy	Case resulted from director forging an asbestos clearance certificate	£750
190000034	Michael O'Brien	Director of company consented to unsafe removal of slates from steep sloping roof without edge protection.	£3,000
210000062	David Ross Turner	4 x S37 informations laid. Plea bargain resulted in PF accepting 1 guilty plea and dropping the 3 others	£2,000

10000050	Royston Joseph Alfred Cooper	Demolition of roof structure of former engineering factory. Failure to take any precautions to deal with limpet sprayed crocidolite asbestos; widespread contamination.	£2,000 (i.e. 2 x £1,000)
70000028	Robert Spencer Brown	Mr Brown, MD of Pharmacos, prosecuted following fire and explosion at factory. Alleged that Mr Brown acted negligently. Convicted 10/9/96.	£8,000
70000179	Pharmacos Ltd & Robert Spencer Brown	HSWA s.37 case against MD, Spencer Brown dropped in plea bargain, but prosecuted for an EA case, fined £2,500, and <b>disqualified from acting as company director for 4 years.</b> Convicted 9/12/99. Company in liquidation.	£2,500
160000033	R Williams & Son (Engineering) Ltd	2 men killed and 1 injured during removal of structural beams. Defendant present during the work.	£10,000
80000534	Carlton James Edwards-Leary	Director, CEL Leadwork Contracts Ltd. Failure to comply with Improvement Notice. Failure to prevent eat/drink/smoke in lead contaminated area, and failure to ensure employee exposed to lead was under suitable health surveillance	£8,000 (i.e. 1 x £4,000 1 x £2,000 2 x £1,000)
10000627	Mark Edward Foley	Director, Wessex Stone Ltd. Unguarded machinery. Failure to ensure safety of employees	£10,000
10000628	Daniel Christopher O'Brien	Director, Wessex Stone Ltd. Failure to ensure safety of employees	£10,000
70000423	James William Alston	Director, W L Duffield & Sons Ltd. Knocked down delivery driver on farm when driving JCB 526 with bucket raised obscuring view ahead	£2,700

190000310	John Elders	MD of Factorycover Ltd. Fatal accident to employee engaged in a roof repair. No guardrails on roofing boards, no fall protection harnesses used. MD responsible for absence of safety precautions and apparent unsafe system of work.	£12,500 (i.e. 2 x £6,250)
70000092	Peter Rodway	Peter Rodway, MD of P Rodway & Sons Ltd <b>disqualified from being a director for 2 years</b>	£1,600
50000066	Rainham Waste Ltd	<b>MD disqualified for 5 years.</b> Case against company and MD as an individual.	£5,000
60000239	Surinder Singh Nahal	Mr Nahal, Director of Skyglass Ltd was company officer responsible for ensuring that Improvement & Prohibition Notices were complied with. They were not.	£2,250 (i.e. 3 x £750)
60000376	Anthony Meehan	2 charges against Director of Design Building Ltd who constructed extension to house around flue terminal of room sealed boiler leading to carbon monoxide poisoning of family of four. 1 charge withdrawn. Found guilty and fined for second charge.	£15,000
60000346	Nicholas Carey Martin	H & S Director, Mays (Pressure Diecasting) Ltd. Case related to failure to maintain two water cooling towers in a condition that was safe and without risks to employees and others. Also failed to notify towers to the London Borough of Hillingdon.	£3,000
60000345	Keith Arthur Stait	Director of Mays (Pressure Diecasting) Ltd. As with above case no. 60000346. Company prosecuted also.	£3,000
30000367	Alan Swift	Director of Swift Roofing Contracts Ltd. A roofer died as a result of a fall from the first lift of a scaffold. The scaffold working platform was incomplete and had no edge protection in the area from which the roofer fell.	£10,000 (i.e. 1 x £7,500 1 x 32,500)

80000343	Richard Clarke	Mr Clarke directly involved in management of health and safety at Six Mile Bottom Shoot Ltd. Case followed accident to young person who fell from rear of moving vehicle. Company fell far short of expected standards.	£2,000
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# A survey of the use and effectiveness of the Company Directors Disqualification Act 1986 as a legal sanction against directors convicted of health and safety offences

This study looks at the use made of powers contained in the Company Directors Disqualification Act 1986 in relation to disqualification orders related to health and safety failures in the management of companies. It considers the effectiveness of director disqualification under the 1986 Act as a legal sanction against directors convicted of health and safety offences, and examines links between prosecutions under Section 37 of the Health and Safety at Work etc Act 1974 and disqualification under the 1986 Act. The survey was undertaken over a period of six months, commencing in May 2005 and completed in November 2005.

This report and the work it describes were funded by the Health and Safety Executive (HSE). Its contents, including any opinions and/or conclusions expressed, are those of the authors alone and do not necessarily reflect HSE policy.