




The Insolvency Service

Inspector General and Chief Executive
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Rt Hon Frank Field MP
Rachel Reeves MP
Joint Chairs
Work & Pensions Committee
Business, Energy & Industrial Strategy Committee
House of Commons
London
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Our ref: ACE/INSS/AOS
e-mail: 
Date: 11th January 2019

Dear *Mr Field + Ms Reeves,*

Thank you for your letter of 13th December 2018, following on from my meeting with Mr Field on 29th November 2018.

Whilst your comments in respect of the BHS investigation are noted; as I have previously explained, I am unable to comment further on that particular matter as to do so may prejudice ongoing proceedings before the Courts.

With regard to the current legislative and regulatory framework around directorial misconduct and disqualification, I believe that the current system functions well in meeting its objectives and I am proud of the work that the Insolvency Service carries out in this area.

As you may be aware, disqualification action may arise from two main areas of the Insolvency Service's work; the agency may investigate the conduct of directors where a company has entered into formal insolvency proceedings and/or if the action of a non-insolvent (live) company is so harmful that the Secretary of State considers that it's continued trading would not be in the public interest.

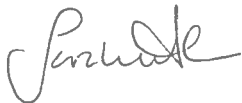
These powers are broad, and ensure that the agency is able to sanction those who have been proven, to a standard of proof that will satisfy a court, to be responsible for serious misconduct whether or not insolvency has occurred. The Government has recently announced its intention to widen these powers, when legislative time allows, allowing the Insolvency Service to investigate the directors of companies that have been dissolved from the register without formal insolvency. Taken together with our existing powers these will, I believe, ensure disqualification action can be taken in all appropriate cases.

Disqualification is extremely serious and the making of an order has considerable effect on the lives of those subject to it. When an individual becomes subject to a disqualification order, they are prevented from taking any further part in the management of any company. Disqualification orders can, and do, have a tremendous effect on the livelihoods and circumstances of those made subject to them - their use is rightly restricted.

Disqualification proceedings are largely unsuitable for use in trying to remedy one isolated piece of misconduct in an otherwise unexceptional career; particularly one which can be contrasted against a longer, and more recent, track record of good conduct, or one which may be seen as an atypical incident. Such incidents should be seen in the context of the fact that the primary accountability of any director is to a company's shareholders, who will be able to take a view and act appropriately in such cases. It would appear to me that, were there a desire to take proactive action to require directors to behave differently then to do so would require both a different set of powers and, potentially, a different agency to enforce them. There are millions of companies currently operating effectively, in the United Kingdom, that benefit from minimal government intervention within their internal affairs; the current system strikes an effective balance between that fact and ensuring that, where identified, serious misconduct is punished appropriately.

I thank you for your interest in the above matter.

Yours sincerely,



Sarah Albon
Chief Executive