

Company Directors' Duties – A Guide to Your Legal Responsibilities

Any company that is set up in the UK will require directors. Directors act on behalf of the company and assume a range of duties and legal responsibilities. They manage a company on a day-to-day basis, assuming responsibility for the legal entity of the company. There are different types of directors, but all share similar legal responsibilities.

This guide will outline company directors' principal duties and legal responsibilities.

The Role of the Board

A company acts through two bodies, the shareholders and the board of directors. The board of directors makes a range of strategic and operational decisions for the company and is responsible for ensuring that it meets its statutory obligations.

Individual directors are required to participate in board meetings and enable the board to reach collective decisions and ensure that the company's obligations are fulfilled.

Appointing directors to the board

Shareholders appoint directors to the board to manage the company's day-to-day affairs. Directors, in effect, operate as agents of the company. The directors act together as a board, taking collective responsibility for decisions, but will typically delegate powers to individual directors or groups of directors.

A 'director' is defined as any person occupying the position of a director by whatever name they are called. There are several forms of directorship, with the key distinction being between the executive and non-executive directors.

Executive Directors

An executive director is normally a full-time employee who performs executive functions in the day-to-day running of the company's business. The director will usually have specific tasks and authority delegated to them. In this case, the word 'executive' indicates that the director is an employee of the company. Therefore, they will have a contract with the company as an employee.

As an employee, they will have a different set of rights and obligations that are distinct from their role as a director. If they were to be dismissed or resign from the position of director, the employment contract would remain in place until it is terminated or expires.

Non-Executive Director

Unlike an executive director, a non-executive director is not employed by the company. Nor will they hold an executive position. Although they don't have any day-to-day responsibilities, they will still be held accountable in law for the decisions that the board makes. They will be expected to participate in board meetings and on board committees.

What are the statutory directors' duties?

Directors have seven general duties under the Companies Act 2006. These duties are applied whether or not the director is also a shareholder.

The Seven General Duties of Directors

- To act within powers
- To promote the success of the company for the benefit of its members (shareholders) as a whole
- To exercise independent judgement
- To exercise reasonable care, skill and diligence
- To avoid conflicts of interest
- Not to accept benefits from third parties
- To declare interests in transactions or arrangements with the company

What are directors' responsibilities to Companies House?

Directors have a range of responsibilities to provide a body of information about the company to Companies House. Statutory accounts, also known as annual accounts or financial statements, are required to be submitted to Companies House by all Limited Companies ("Limited" or "Ltd"), Public Limited Companies ("PLCs"), and Limited Liability Partnerships ("LLPs") at every year-end.

Responsibilities for ensuring these are sent to Companies House in good time lie with directors. Failure to do so may result in penalties. You can hire other people to take care of compiling your Statutory Accounts and ensuring they are sent on time.

Our team of accountants are experts at helping businesses prepare and submit documents to Companies House. Our Statutory Accounts service ensures they are filed correctly and on time so that you avoid any penalties.

Other general responsibilities for company directors

Company directors have a range of other responsibilities related to different issues that may arise. These include:

Insolvency: If a company is insolvent, then the director's duty is owed to all creditors, not just one or more specific creditors. Therefore, the directors cannot dispose of any company assets or make any payments to shareholders if a provision for the creditors' interests has not been made.

Data Protection:

The primary responsibilities of directors related to data protection are:

- Carry out a risk assessment of what might go wrong with information and how risks can be reduced.
- Registering with the Information Commissioners Office
- Publishing clear information, including a privacy notice for customers, clients and beneficiaries. How and why will information be used.
- Setting up robust systems to ensure information is protected.
- Ensuring staff receive regular training to understand their responsibilities and how to properly use systems.

Health & Safety: Directors have both collective and individual responsibility for health and safety within the company. The HSE suggests that directors should review their health and safety performance regularly. They should ensure that health and safety policy statements reflect current board priorities and that management systems provide effective monitoring and reporting procedures.

Modern Slavery: In a landmark 2019 case, the High Court found a company's officers personally, jointly and severally liable to its employees as victims of modern slavery. Whilst a director cannot incur criminal liability under the Modern Slavery Act TISC provisions; there is an argument that they could incur liability for a breach of fiduciary duty.

Corporate Manslaughter: Individual directors believed to be at fault for work-related deaths may be prosecuted under the common-law offence of gross negligence manslaughter. To be negligent: The director must owe the deceased a duty of care. The director must have breached this duty of care.

Are there additional responsibilities for directors of publicly traded companies (PLC)?

A PLC will require a minimum of two directors, rather than the one required for a private company. Company accounts are required to be submitted to HMRC within 6 months at the end of the financial year. A private company has 9 months to make the submission. A fully-qualified Company Secretary must also be appointed, but the secretary does not need to hold qualifications in a private company.

What are the consequences of a breach?

When a breach of director duties occurs, it will usually be the company itself which takes action. One or more shareholders may choose to make a claim against a director if they have suffered financial loss or if they suspect that other directors will prevent a claim from being made by the company.

The consequences of a breach may include:

- Removal from office – If over half of shareholders vote in favour, a director can be removed from office on a temporary or permanent basis.
- The restoration of company property.
- Setting aside transactions.
- An interim injunction may be served to prevent any further loss or damage due to a breach of director duty.
- Damages or compensation for financial losses incurred may be sought. In the most serious cases, this can result in directors being pursued through the courts, leading to personal bankruptcy and loss of assets such as a family home.
- Criminal fines

Disqualification

You can be banned from acting as a director if you fail to meet your legal responsibilities. Anyone can report a company director's conduct as being unfit. Unfit conduct includes:

- Allowing a company to continue trading when it can't pay its debts
- Not keeping proper company accounting records
- Not sending accounts and returns to Companies House
- Not paying tax owed by the company
- Using company money or assets for personal benefit

If a director is found to be unfit following an investigation, they may be disqualified for up to 15 years. This means:

- You can't be a director of any company registered in the UK or an overseas company with connections with the UK.
- You can't be involved in forming, marketing or running a company.