

## Director Disqualification: What is unfit conduct?



Section 6 of the Company Directors Disqualification Act 1986 (CDDA 1986) provides that “the court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied that they are or have been a director of a company which has at any time become insolvent (whether while they were a director or subsequently), and that their conduct as a director of that company (either taken alone or taken together with one or more other companies or overseas companies) makes them unfit to be concerned in the management of a company.”

If the court makes a finding of unfitness against a director, it is obliged to make a disqualification order against that director for a minimum period of two years. For the purposes of section 6 of CDDA 1986, the minimum period of disqualification is two years and the maximum period 15 years. The period of disqualification is in the court’s discretion.

Disqualification periods will usually fall into one of the following brackets:

- less serious: 2-5 years
- serious: 5-10 years
- very serious: 11-15 years

The types of allegation of unfitness to act as a director are:

1. Crown allegations.
2. Accounting records allegations.
3. Non-cooperation.
4. Transactions to the detriment of creditors.



5. Illegal/unlawful dividends.
6. Trading with knowledge of insolvency/wrongful trading.
7. Previous failures.

Whatever your current circumstances, it is always sensible to try and negotiate the lowest period of disqualification as possible. Not only is this down to the fact that the disqualification will naturally come to an end more quickly, but it will also open up the opportunity to apply to [court for permission to become a director](#) again even if you are still disqualified. Accepting whatever is offered to you at the outset without attempting to negotiate the period down can have unintended long term consequences. If possible, it is always best to be in the lower bracket – and our legal expertise can help you achieve this.



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