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Mr 20% in the director's dock

Sir Clive Thompson, known in the business community as 'Mr 20 per cent', is currently defending a director's disqualification case with others over his tenure at Farepak, the provider of Christmas hampers. *Funke Abimbola*, senior solicitor with IBB Solicitors and a corporate restructuring specialist, unravels the implications for directors everywhere

There has never been a more precarious time to be a company director. In a speech to the Liberal Democrat conference last September, business secretary Vince Cable said he was “shining a harsh light into the murky world of corporate behaviour... Why do directors forget their duties when a fat cheque is waved before them?”

Our business secretary seems determined to hold directors accountable for their actions, the latest example of this arising amid a glare of publicity in connection with the directors of Farepak Food & Gifts Limited.

The Insolvency Service recently filed an application at the high court on behalf of Cable for the disqualification of all nine former executive and non-executive directors of Farepak and its parent, Europe Home Retail (EHR).

One of the directors facing disqualification is former Farepak chief executive Sir Clive Thompson, also known as 'Mr 20 per cent' due to the aggressive growth targets he achieved while chairman of pest control company Rentokil. One of the country's most celebrated businessmen, he was president of the Confederation of British Industry, remains deputy chairman of the listed investment trust Strategic Equity Capital, and has served on the boards of six FTSE 100 companies.

Many readers will be familiar with what happened to Farepak. Based in Swindon, it began as a

small Christmas savings club in 1935. At its peak, the company employed almost 300 staff. It ran a saving scheme that enabled customers to spread the cost of Christmas by placing orders with agents, who collected instalments from them and passed those instalments on to Farepak.

Customers had no right to any goods or vouchers unless their payments were complete by the first week of November. They were given no warning that their savings were at risk.

While EHR was encouraging customers to pay more instalments, it was itself in financial trouble. Farepak ceased trading on 11 October 2006 and BDO was appointed as administrator of EHR two days later. Almost 150,000 customers, many on low incomes, lost more than £40m in a collapse that prompted questions in the House of Commons. The average saver was left £400 out of pocket.

Customers have since been partially compensated, receiving 17.5p in the pound from a government-backed response fund set up after the company's collapse. Unfortunately, Farepak was not regulated by the Financial Services Authority. Last year, customers were told that they would receive a further 15p in the pound after BDO (by now liquidators as EHR moved from administration to liquidation in 2007) stated that a directors' action had been settled for £4m without any admission of liability by the directors.

The disqualification applications follow an intense, four-year investigation into the collapse of Farepak. The Insolvency Service has blamed the length of time it has taken to bring the disqualification applications on the complexity of the case. It confirmed that the applications were made "on the grounds that the conduct of each director in relation to the relevant company or companies makes him or her unfit to be concerned in the management of a company".

These are harsh words indeed. Many commentators have noted that Stevan Fowler, one of the directors facing disqualification, who only joined the company a few months before its collapse, should not be facing any action at all.

So what do insolvency practitioners need to advise regarding the implications of a disqualification order?

If the Insolvency Service is successful, Thompson and his former co-directors face being disqualified for between two and 15 years. Disqualification would stop any of them from being a director of a company, as well as "acting as receiver of a company's property or in any way

being concerned or taking part in the promotion, formation or management of a company without leave of the court”.

It is a criminal offence to act as a director in contravention of a disqualification order, and directors who do so face up to two years imprisonment. Directors can also become personally liable for any debts incurred by the company they are managing in contravention of an order.

Unsurprisingly, all the Farepak directors have instructed lawyers to defend them. Part of their defence is likely to hinge on a perceived lack of support from EHR’s lending bank, Bank of Scotland, which refused to extend EHR’s debt facility. Farepak’s collapse was triggered by the fact that the £33m it lent to EHR was not paid back.

It could take up to two years for the proceedings to come to court. In the meantime, there is nothing to stop the nine from acting as company directors – assuming that a company would be happy to appoint them.

If you would like to talk to us about the issues raised by this note, please contact:

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