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Tips for Directors facing Misfeasance Claims

Misfeasance Claims are increasing. Often brought by Liquidators against directors, Misfeasance Claims usually involve an allegation of the misapplication of money or company property and, therefore, of directors breaching their fiduciary duties.

We specialise in helping to defend directors against Misfeasance Claims. So, if you are a director and have received a Misfeasance Claim from a Liquidator, here are our 5 best tips to help you deal with such a claim

1

Engage with your Liquidator and his Solicitors quickly

- When the pre-action letter of claim and its daunting 3 inches of paper lands on your doormat (inevitably on a Saturday morning), the temptation is to ignore it. **Don't!**
- To ignore it, will annoy the Liquidator and may result in the commencement of Court proceedings against you, which is when positions become entrenched and legal **costs** become an issue.
- The sooner you react and respond to the claim, the more options are likely to be available to the Director.



2

Get specialist legal advice as early as possible



It is not a foregone conclusion that a Misfeasance Claim will end in 'victory' for the Liquidator. Take legal advice quickly so you know what tactical, practical and legal options are available, including:

- **Responding to the letter of claim.** The Liquidator is often a stranger to the company, its affairs and how it was run, so will not be in possession of all of the facts. Use your letter of response in a structured and targeted way to address any missing key legal and factual issues.
- **Arranging a meeting with The Liquidator and/or his solicitors.** This will allow you to get across your side of the story. The meeting **may** involve a quite separate 'without prejudice' discussion about your ability to pay a settlement amount and any other relevant issues.

3

Quickly decide on your objectives

Your objectives may include:

- Settlement for all of the amount claimed
- Settlement for some of the amount claimed
- To make a full and complete response and denial of the claim



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Settle early if you feel that a settlement is the inevitable outcome



If you recognise that some of the Liquidator's claim is valid, or to avoid the stress of a long and expensive Court case, then settle early.

- Don't delay settling because there are not funds available right now. Settlements can be structured so that payment is made over time.
- An early settlement offer, **made in the right way**, puts pressure on the liquidator to settle, from a **costs** perspective.
- In our experience, avoiding settlement in an attempt to buy time rarely ends other than in tears and increased costs.

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If you are intent on defending the claim, do so with your eyes wide open

This is because defending a claim takes time and money:

- A Misfeasance Claim will take between 9 – 24 months to come to Trial/final hearing.
- Your solicitors will demand significant time and input from you, with the inevitable impact on your family and business life.
- The legal costs of defending a Misfeasance Claim, as well as the costs of your opponent for which you may become liable, will be significant. **Be prepared!**



At Neil Davies and Partners, **our solicitors** are experts in dealing with Misfeasance Claims made by Liquidators against Directors. [Click here](#) to see some of our case studies.

If you are facing a Misfeasance Claim, [contact us](#) or call us as soon as you can on **0121 200 7040**.