

# *The Way We Live Now: Bounce Back Loans and the ‘Calamitous’ Abuse of Limited Liability*

## *Some Lessons?*

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THE WAY WE LIVE NOW.

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WITH FORTY ILLUSTRATIONS.

IN TWO VOLUMES.

VOL. I.

LONDON:  
CHAPMAN AND HALL, 193, PICCADILLY.  
1875.

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# ABSTRACT

*'The Bounce Back Loan Scheme (BBLs) financial support package which was rushed out by Government during the Covid-19 pandemic has resulted in large scale loan default across many types of companies operating in various sectors. Around £7bn appears to have been lost to fraud and misuse.*

*This paper argues that the BBLs default and associated director behaviour demonstrates a new high point in the (mis)use of the corporate form. **Director education initiatives** are required to re-balance director conduct so that company stakeholders are not harmed by future 'unfit' director behaviour.'*



- ‘the **calamitous decision** in *Salomon v. Salomon* [1897] AC 97...the courts **failed to, "give protection to the business creditors which should be the corollary of the privilege of limited liability."**
- “...the metaphysical separation between a man in his individual capacity and his capacity as a one-man company **can be used to defraud his creditors who are exposed to grave injury** owing to the timidity of the Courts and of the Companies Act.”

(Professor Sir Otto Kahn-Freund QC - 'Some Reflections on Company Law Reform' (1943-1944) 7 MLR 54-66).



**‘It is the unpleasant  
and unacceptable face  
of  
capitalism, but one  
should not suggest  
that the whole of  
British industry  
consists of practices of  
this kind.’**

**(and now??)**

**(Sir Edward Heath MP,  
May 1973, Lonrho  
Affair)**





**Bounce Back Loan Scheme (BBLS)**

<b>Bounce Back Loan Scheme (BBLS)</b>	<b>“Just get the Money out there!” (Alok Sharma MP, then BEIS SofS)</b>
Loan Value(s):	£2,000-£50,000
For:	‘provide an economic benefit to the company’/‘company asset purchase’
Lent by:	British Business Bank & High Street Banks ( <b>Government Guarantee – reckless lending?</b> )
Total Value	<b>£47 billion</b> <b>1.5 million loans/’Quarter of UK businesses’</b>
<b>Default Levels</b>	<b><u>£7 billion</u></b> (National Audit Office)



# BBLS AND DISQUALIFICATION

As at October 1<sup>st</sup> 2022:

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- 16,000 companies wound up **WITHOUT** paying back BBLs
- £500m cost of dealing with these companies/directors
  
- *Understatement?*
  - ***‘there is increasing evidence that a proportion of bounce back loans were misused’***  
(Angus Crawford & Tony Smith. *Thousands of small firms go bust owing millions in bounce back Covid loans*. BBC News, 2<sup>nd</sup> August 2022).



<b><i>Suspected cryptocurrency scam company shut down</i></b>	<b><i>Bankrupt abuses government support scheme</i></b>
<i>Director banned after each of his four companies wrongly claimed Bounce Back Loans</i>	<i>Directors falsely applied for £100,000 bounce back loans</i>
<i>Walsall retailer banned from running companies</i>	<i>7-year ban for Manchester takeaway boss who abused Covid-19 support schemes</i>
<i>Further bankruptcy restrictions for Bounce Back Loan abuse</i>	<i>Ban for consultancy director who abused Covid-19 financial support scheme</i>
<i>Directors banned for abusing dissolution process</i>	<i>Insolvency Service tackles further Bounce Back Loan abusers</i>
<i>10-year bankruptcy restrictions for former petrol station worker</i>	<i>9-year ban for Glasgow coffee wholesaler boss</i>
<i>Rogue director abuses bounce back loan</i>	<i>Director of Blackburn automotive business banned for 8 years</i>
<i>Grocer banned for abusing £50,000 government loan</i>	<i>Coventry director given 10-year ban for Bounce Back Loan fraud</i>
<i>9-year bankruptcy restrictions for Indian restaurant owner</i>	<i>9-year ban for director who lied to secure Covid-19 financial support</i>
<i>10 year ban for director of online hair and beauty business</i>	<i>Court bans Glasgow pizzeria boss</i>
<i>Bounce Back Loan fraudster jailed</i>	<i>Bankruptcy restrictions for student who took out Bounce Back Loan</i>
<i>Companies wound-up after abusing covid support</i>	<i>Hull luxury static caravan company wound up</i>



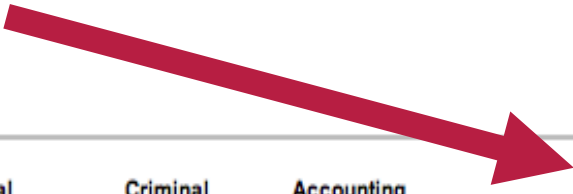
# Worksheet 1c: Director Disqualification Orders and Undertakings: Allegation Types in Insolvent Disqualifications, Great Britain, 1 April 2011 to 31 July 2023 [note 3][note 4][note 5]

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This worksheet contains one table. Some cells refer to notes which can be found in the Notes worksheet. Some shorthand is used in these tables, [r] = revised. See Notes worksheet for further details.

Source: Insolvency Service

Period	Total allegations	Phoenix companies or multiple failures	Misappropriation of assets	Unfair treatment of the Crown	Transaction at the detriment of creditors	Trading at a time when knowingly or unknowingly insolvent	Technical matters	Criminal matters	Accounting matters	Other	COVID-19 financial support scheme abuse
2011/12	1,213	2	56	639	156	7	105	51	194	3	0
2012/13	1,012	0	28	625	104	1	53	50	151	0	0
2013/14	1,322	6	32	788	116	9	65	120	185	1	0
2014/15	1,407	3	28	719	214	13	160	86	184	0	0
2015/16	1,389	0	13	676	168	17	148	176	190	1	0
2016/17	1,292	0	13	612	120	2	199	177	169	0	0
2017/18	1,257	2	11	661	123	4	168	119	169	0	0
2018/19	1,149	1	9	660	82	6	136	107	148	0	0
2019/20	1,306	5	19	705	88	2	186	117	184	0	0
2020/21	1,030	0	12	533	68	4	134	113	164	0	2
2021/22	818	0	20	298	75	3	92	55	136	0	139
2022/23	957 [r]	1	11	186 [r]	41	1	76	35	148	0	458
2023/24 YTD	382	0	3	68	10	0	23	11	53	0	214
Apr 23	93	0	2	15	3	0	5	2	17	0	49
May 23	92	0	0	16	2	0	6	4	12	0	52
Jun 23	87	0	0	13	1	0	7	3	11	0	52
Jul 23	110	0	1	24	4	0	5	2	13	0	61



	<b>2021/2022</b>	<b>2022/2023</b>
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<b>“Covid-19 financial support scheme abuse”</b>	<b>139 (of 818)</b>	<b><u>458</u> (of 957)</b>
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# **Solutions?**

**(to the problem of Kahn-Freund Ltd Liability/Creditor Abuse via BBLs)**

# DISQUALIFICATION REFORMS

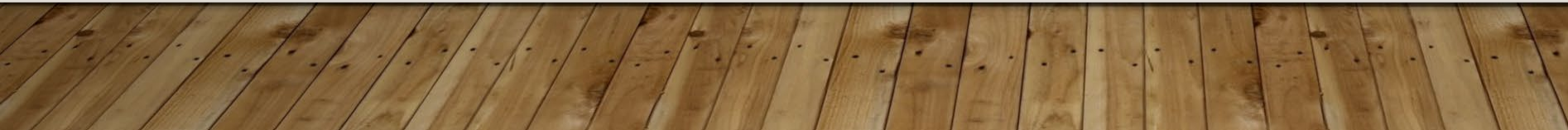
- **Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021**

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- BBLS

- Phoenixism

- **Dissolution (without going through an insolvency procedure)**



# DIRECTOR EDUCATION

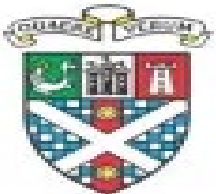




Companies House



THE  
INSTITUTE OF  
CHARTERED  
ACCOUNTANTS  
OF SCOTLAND



The Insolvency  
Service



UNIVERSITY OF  
LIVERPOOL



HM Revenue  
& Customs



# DIRECTOR INFORMATION HUB – LAUNCHED IN JULY 2023:

[HTTPS://WWW.GOV.UK/GUIDANCE/DIRECTOR-INFORMATION-HUB](https://www.gov.uk/guidance/director-information-hub)



The Insolvency  
Service

**Company Health Check**

**Keeping your business on track**



The Insolvency  
Service

Guidance

## Fact sheet: Bounce Back loans

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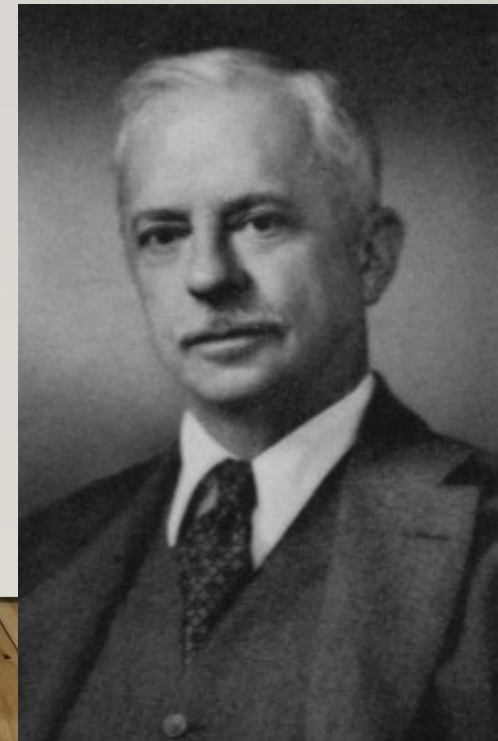
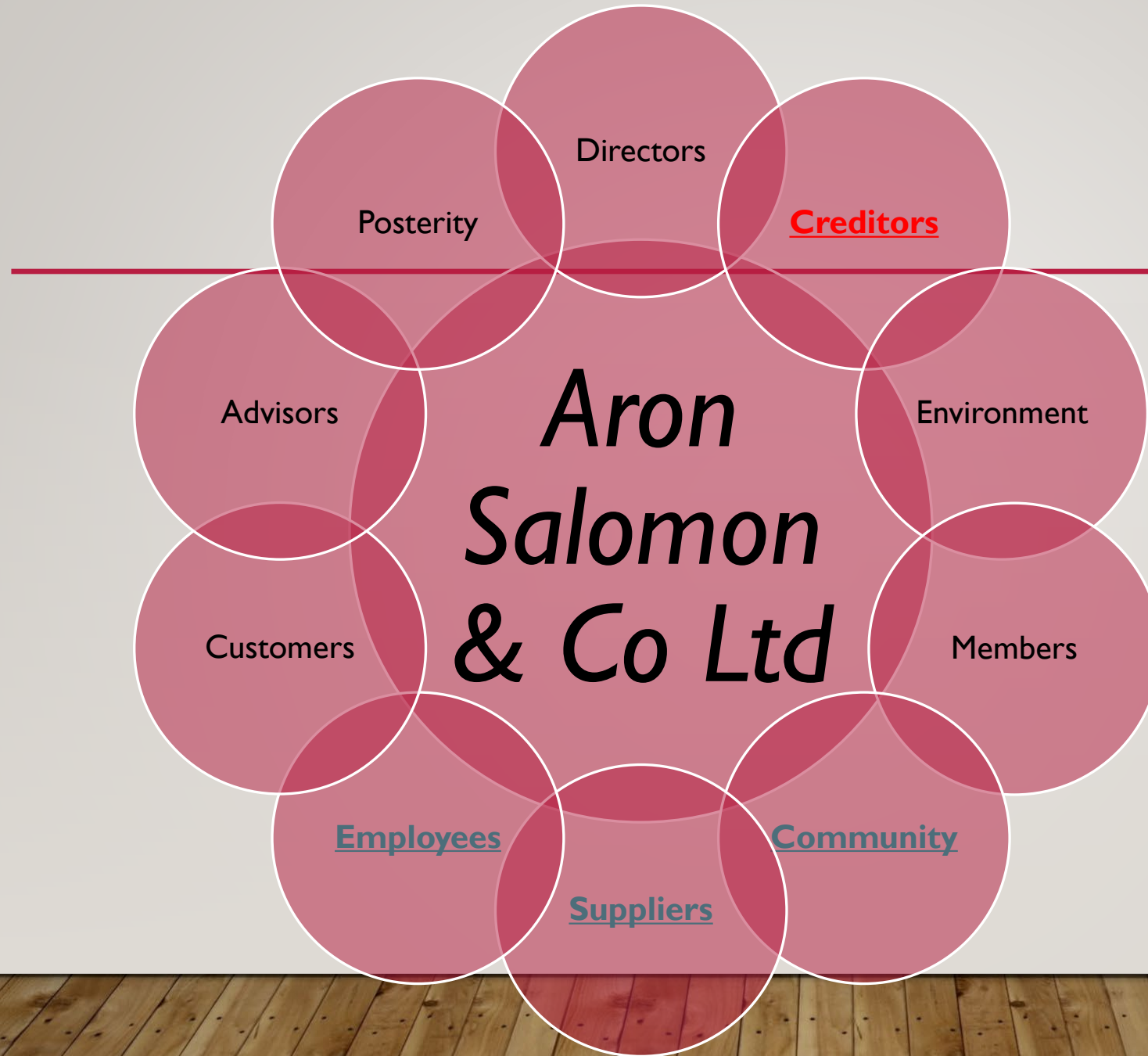
1. [Bounce Back loans must be repaid](#)
2. [If we find misconduct](#)
3. [What misconduct means to you and your company](#)
4. [Bounce Back loan: case study 1](#)
5. [Bounce Back loan: case study 2](#)
6. [Bounce Back loan: case study 3](#)
7. [Bounce Back loan: case study 4](#)

Measures were introduced during 2020 to support businesses affected by COVID-19 such as loans, grants and tax allowances. The Bounce Back loan scheme helped small and medium-sized businesses to borrow between £2,000 and £50,000, at a low interest rate, guaranteed by the Government.

The Bounce Back loans were made on the condition that they were not to be used for personal purposes, but could be used, for example, to purchase a company asset such as a vehicle, if it would provide an economic benefit to the business.

For more information on understanding your duties as a director, read our [Company health check - keeping your business on track](#) guidance

# WHO BENEFITS FROM DIRECTOR EDUCATION?



# CONCLUSION

- **The Kahn-Freund Risk Balance** – between Creditors and Controllers (directors/shareholders) - **STRESS TESTED WITH BBLs!**

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- **Accountability for BBLs mis-use** - unresolved questions...Lenders & Directors
- **BBLs episode demonstrates why ‘Law won’t save us’** – rules observance?
- Indicative of a wider change in director/societal behavior towards limited liability forms?

