

## Bounced out

*Are Bounce Back Loan cases leading to disproportionate director disqualification bans or are they duly deserved? Elliot Green weighs up the evidence*

Is Britain bouncing back? Well, not based on the current economic forecasts it seems and the levels of [Creditors Voluntary Liquidations](#) (CVLs) currently sprouting.

The figures are stark. According to the latest data dissemination from the [Insolvency Service](#) of the [Monthly Insolvency Statistics, May 2023](#), the number of CVLs for May 2023 was 2,181. This is the highest monthly number since the lockdowns landed.

However, the price of bounce back Britain is not just the loss to the Exchequer. Many company directors may never be able to run a company through the protection of [limited liability](#) again, such is the length of the bans dished out. [Director disqualifications](#) where bounce back loans are investigated are routinely hitting the 10- or 11-year mark.

More than three years ago the Bounce Back Loan (BBL) scheme was unleashed, with over £46 billion of credit flooding in to stop the economy from crashing as the pandemic spread. With extreme alacrity up and down the country business owners, whose companies were decimated by national lockdowns, no doubt breathed a huge sigh of relief as Bounce Back Loans started appearing in company bank accounts.

What ordinarily might usually have been a time-consuming process of applying for loans for businesses was for many a notably speedy process. It was no doubt gratefully received by business owners and without the need for a personal guarantee adding to the uptake. Lenders could not complain, either. For them, it was largely risk free lending as loans were backed by the government guarantee.

For some, however, their businesses did not bounce back and now three years later many are struggling to service the loan or pay it back. As the figures show many have succumbed and needed to go into liquidation. Liquidators reporting to the Secretary of State now have a whole section in the [Director Conduct Reporting Service](#) devoted to the improper receipt of Covid-19 finance.

The BBL regime involved an application process in which the borrower had to confirm details of its company's turnover. There were typically no external checks on the figure volunteered by the borrower.

A quick scrape of the [Insolvency Service Director Disqualification Register](#) since 11 April 2023 to date shows 217 directors have joined the list, of which 65% (140) had a Bounce Back Loan referred to as a feature of their conduct report with the word 'turnover' appearing in 102.

Given the director disqualification regime is primarily intended to protect the public rather than punish, it might for some be unclear as to why an unprecedented event that turned people's lives upside down has assumed such prominence in the disqualification register. The prospect of directors being able to obtain loans again through the provision of information on a self-satisfied basis anytime soon is plainly remote, not least because of the uproar over the administration of the BBL support scheme but also because, thankfully, pandemics are not a regular event.

It is not simply just the focus on BBL cases that seems arguably in question. The length of the bans handed down may seem out of sync with other director disqualification reports. Take, for example, the case of Hamed Abdelrahman – see [Director gets 10 year disqualification](#).

Abdelrahman received a BBL which was £19,229 more than it was entitled to; the Liquidator has been unable to verify that BBL monies were used for the economic benefit.

Then there's the case of Zafar Khan, who served as Carillion's finance director – see [Director of Carillion Plc gets 11 year disqualification](#). Khan caused the company to make the 2016 final dividend payment of £54.4m, which was paid on 9 June 2017; the payment could not be justified by reference to the FY2016 Financial Statements because those Financial Statements did not give a true and fair view.

In another case overseen by the Court where there were [Director Disqualification Proceedings, a travel agent was banned for 7 years](#) which had the following feature recorded:

“Between 4 May 2017 and 21 September 2017, [the Company] accepted holiday bookings that were required to be protected by ATOL from at least four customers who paid a total of £72,872 to [the Company] between 04 May 2017 and 13 October 2017. None of these customers received their holidays. One customer received a partial repayment of £2,678 from their credit card provider, leaving £70,194 owing to the four customers at the date [the Company] entered liquidation.”

One may wonder how the director with the Bounce Back Loan has to endure a ban of 10 years for a loss of £19,229, whereas another director who appears to have caused larger losses was banned for seven years.

Undoubtedly a problem with Bounce Back Loans was the scale of them and therefore the number of cases of misconduct. This extended to some directors obtaining multiple bounce back loans.

One case involved the Ultamodan Limited director [Davina Prasad](#), who was reported by the Insolvency Service to have hoovered up four BBLs with different banks and received a ban of 11 years. At liquidation the company had liabilities of £627,207, including £196,899 due in respect of the four BBLs.

On a broad-brush basis, around 1,000 directors a year were disqualified before Covid came, and the number of disqualifications now is less than it was in pre-pandemic times. So has the investigation of bounce back badness become disproportionate in terms of its focus and the length of the bans handed out?

Bounce Back Loan investigations are still being worked on and this is likely to continue for some years to come. So perhaps only after that period will we be able to reflect fully on what the figures show.

In the meantime, this matter undoubtedly engages both outrage and sympathy, depending on the nature of the cases considered. However, if indeed the director disqualification regime is primarily on the statute book to protect and not punish as the case law is replete with such mention, then why are lengthy bans surfacing over relatively modest losses compared with the cases where they are far greater?

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