



Wrongful trading

We have been struggling on for a while but a chap in the pub says wrongful trading was abolished during covid. So I'm ok, right..?

We hear a lot about this chap in the pub – he gets around. In this case, it seems he has picked up a bit of information that has *some* accuracy, but is outdated and fundamentally and dangerously wrong. He should stick to the pub quiz.

The starting point here – what is wrongful trading?

Wrongful trading is an offence under the Insolvency Act 1986 that arises when a director of a company that is in liquidation is shown to have continued to trade a company whilst insolvent and knew or ought to have known that the company had no reasonable prospect of avoiding going into insolvent liquidation.

The offence can leave a director liable for the increase in the deficiency (the 'loss' to creditors) when trading after the point in time when he or she should have concluded that the company ought to cease trading.

The pandemic and wrongful trading

During the coronavirus pandemic the government rushed in The Corporate Insolvency and Governance Act 2020, a piece of pending insolvency legislation that they adjusted to include some temporary measures required to take account of the pandemic and the effect it was having on the business community.

One of these changes was the temporary suspension (not abolition) of wrongful trading; relieving directors of the risk that continuing to trade (or just exist) during the pandemic was not going to leave them exposed to personal liability.

As it happens, wrongful trading was suspended twice when it was realised after the first term expired that further lockdowns would be necessary. Wrongful trading was suspended:

- From 1 March 2020 to 30 September 2020
- 26 November 2020 to 30 June 2021

Whilst there is a degree of protection for the periods stated above wrongful trading has applied fully since 1 July 2021, which means the suspension periods are of little use to the vast majority of cases going into liquidation now.

Contact us for more information and to discuss specific circumstances.