

Directors' confidentiality

A Guest Article by Robert Brooks
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Confidentiality Orders

For directors of certain high profile companies, keeping their home addresses off the public record could be a matter of life or death.

Several years ago, activities of animal rights groups against Huntingdon Life Sciences in Cambridge highlighted the problem and led to a debate that culminated in the introduction in 2002 of provisions enabling directors to apply to the Secretary of State (currently the SOS for Business, Enterprise and Regulatory Reform) for an order preventing the publication of their residential address on documentation held at Companies House where its disclosure creates or is likely to create a serious risk that they or a person who lives with them will be subjected to violence or intimidation.

Such an order is called a Confidentiality Order.

Since the introduction of Confidentiality Orders there have been approximately 20,000 successful applications, based on a wide variety of circumstances relating either to the directors themselves or to the companies that they serve.

The new provisions

With effect from October 2009, it will no longer be possible to obtain a Confidentiality Order. Instead, under the relevant provisions of the Companies Act 2006, directors will be obliged to provide their usual residential address and a service address (e.g. the registered office of the company). But only the service address will be on the public record. The residential address will be available only to predetermined organisations.

As one would expect, these predetermined organisations include public bodies that require the information in order to carry out their public functions.

Perhaps less obviously, they also include credit reference agencies. Vulnerable directors will therefore have to apply to the Registrar for their addresses not to be provided to such agencies.

The grounds upon which applications can be made are broadly similar to those upon which current applications for Confidentiality Orders are based. Hence, no application will have to be made to prevent disclosure to credit agencies where, on 30 September 2009, a Confidentiality Order is already in place.

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Why Orders are still worth considering

The difficulty with the provisions of the new Act is that they are not retrospective, so information already on the register on 30 September 2009 will remain so. Confidentiality Orders themselves only apply to documents filed at Companies House after the date of the Order.

However, it may still be worthwhile considering an application between now and 30 September 2009 where, for example, a director feels that he is at risk and therefore may be entitled to an Order and he is changing address, particularly where he may be about to join another company whose activities place him at risk or see him remain at continued risk. A successful application will also obviate the necessity for any application under the new legislation in relation to credit reference agencies.

Challenges to privacy

In today's political climate, there are constant challenges to the ability of the individual to preserve information about himself and his family as private. This was highlighted by the Court of Appeal in the recent case brought by MPs against the Information Commissioner.

Although this case dealt with MPs' Additional Costs Allowances and their rights under the Freedom of Information Act, in its judgment the Court of Appeal made the following somewhat disheartening observations about disclosure of MPs' addresses:

"No one would disagree that the address of each individual's private residence is personal data, and represents an aspect of private and family life, but a residential address is an aspect of private life which may not be very private at all. So, for example, MPs are required to disclose an address when seeking nomination for election. This address is published in the electoral process. Usually it will be the constituency address of the candidate and its publication inevitably diminishes its private nature. Other professions and occupations may require notification of and public access to a residential address. Thus, company directors are required to provide a residential address available to those who search the register of companies. Everyone eligible to vote must have his or her address recorded in the register of electors, full versions of which are available for public scrutiny in local libraries and local government offices. The reality is that an

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individual who is determined to discover a residential address of an adult law-abiding citizen is likely to be able to do so by one legal means or another, and where the person concerned is the holder of a public office and in the public eye, such an inquiry is likely to be easier."

In light of these observations by the Court of Appeal, the relevant provisions of the Companies Act offer an opportunity for a company director to secure some degree of privacy where, owing to the nature of his company's activities or of his profile and activities within the industry in which it operates, there is any fear of violence or intimidation against him and his family.

Grounds for granting an Order

In order to decide whether a Confidentiality Order should be granted, the Administrator at the Department for Business, Enterprise & Regulatory Reform (BERR) will take into account risk assessments from the police and from other relevant bodies so that only individuals who are known to be at serious risk of violence or intimidation will benefit.

There are few opportunities for people to protect themselves and their families from the glare of unwanted publicity, but this is one of them.

Accordingly, any director who feels threatened should consider applying for a Confidentiality Order if other circumstances would render an Order of practical use (i.e. where he is moving house, or moving house and changing job, so that his new address is not already in the public domain).

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If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.

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