



Directors' & Officers' & Charity Trustees' Insurance

CII Leeds Harrogate

Tuesday 3rd October 2017

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Ecclesiastical Learning Objectives: Agenda

- Why is D&O insurance required ?
- Role, duties and responsibilities of D&O's?
- What protection is available?
- Structure of D&O policies, covers and where they may differ?
- What organisations have D&O's and those that don't?
- Charity Trustees – as above
- Where claims may arise?
- How change in legislation impacts of a D&O/CTI?
- Questions?

What, Who & Why?

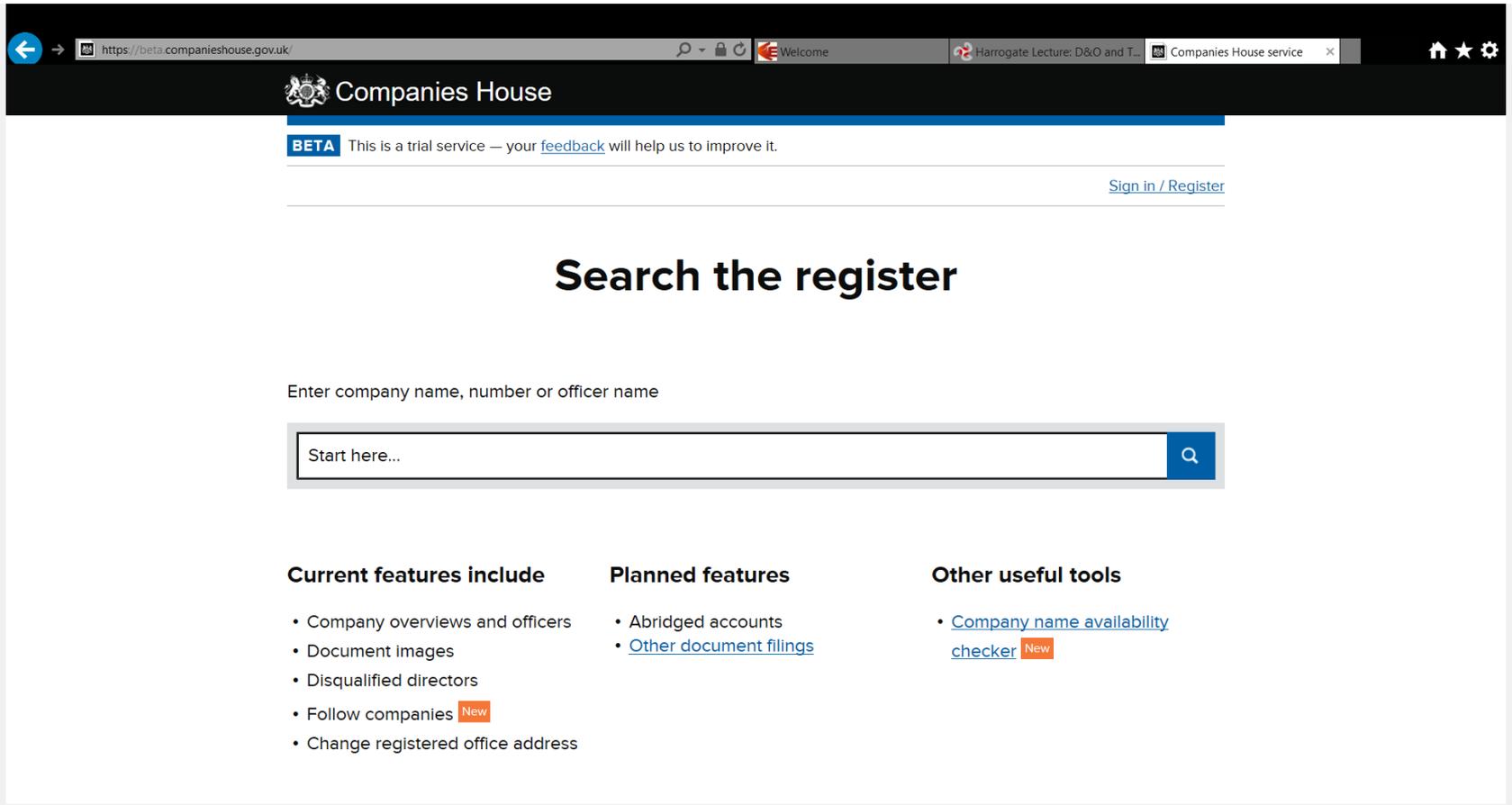
Where & When??

D&O - A brief history;

- USA ?
- UK ?

Who are we talking about?

- Executive Directors
- Non Executive Directors
- Shadow Directors
- De facto Directors
- Officers
- Managers
- Employees (supervisory positions)



The screenshot shows a web browser window with the URL <https://beta.companieshouse.gov.uk/>. The page header includes the Companies House logo and the text "Companies House". A blue banner below the header reads "BETA This is a trial service — your [feedback](#) will help us to improve it." and includes a "Sign in / Register" link. The main heading is "Search the register". Below this is a prompt "Enter company name, number or officer name" and a search input field with the placeholder text "Start here..." and a search icon. The page is divided into three columns: "Current features include", "Planned features", and "Other useful tools".

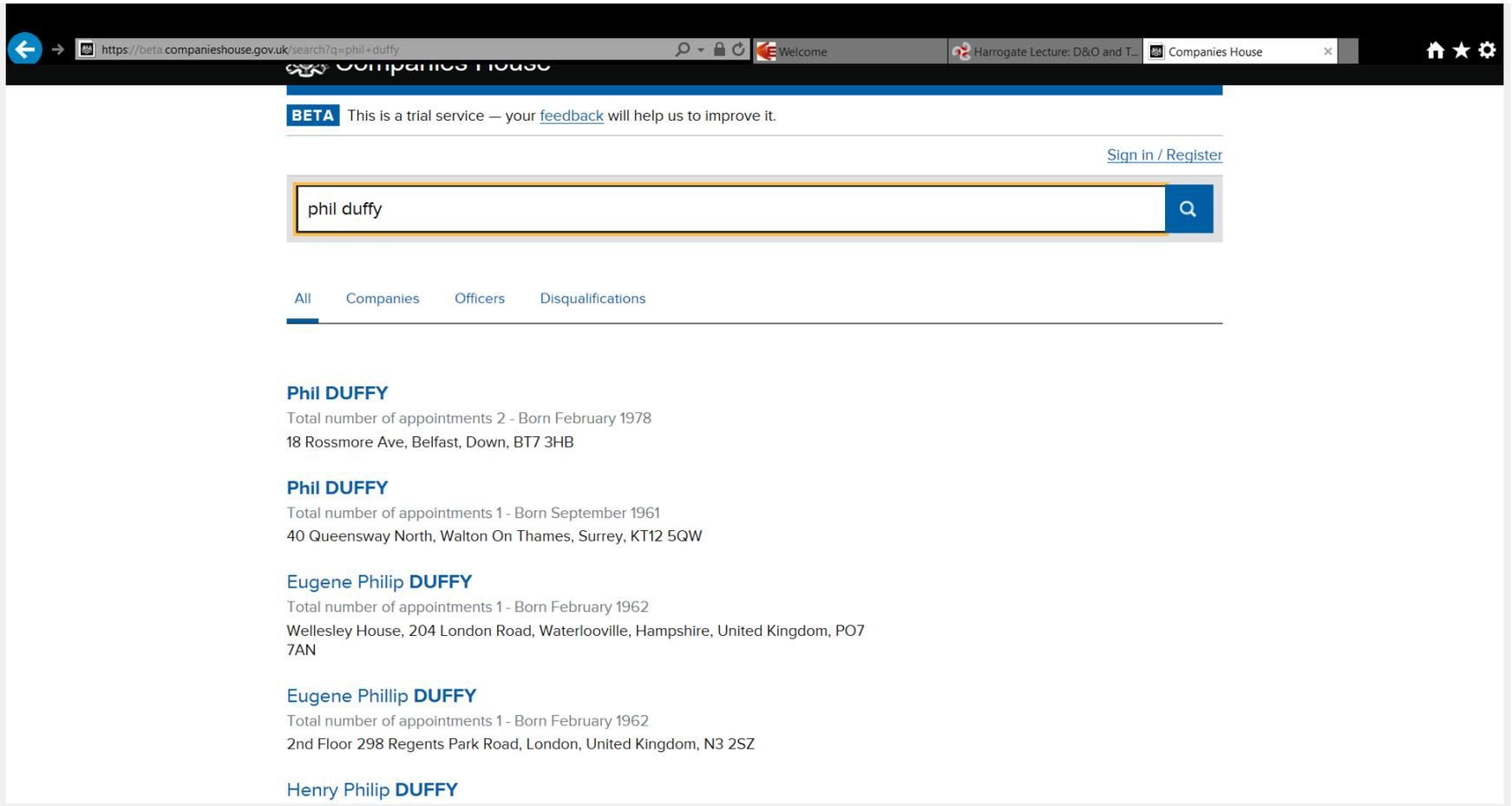
Companies House

BETA This is a trial service — your [feedback](#) will help us to improve it. [Sign in / Register](#)

Search the register

Enter company name, number or officer name

Current features include <ul style="list-style-type: none">• Company overviews and officers• Document images• Disqualified directors• Follow companies New• Change registered office address	Planned features <ul style="list-style-type: none">• Abridged accounts• Other document filings	Other useful tools <ul style="list-style-type: none">• Company name availability checker New
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The screenshot shows a web browser window with the URL <https://beta.companieshouse.gov.uk/search?q=phil+duffy>. The page displays a search result for 'phil duffy' with the following details:

BETA This is a trial service — your [feedback](#) will help us to improve it. [Sign in / Register](#)

[All](#) [Companies](#) [Officers](#) [Disqualifications](#)

Phil DUFFY
Total number of appointments 2 - Born February 1978
18 Rossmore Ave, Belfast, Down, BT7 3HB

Phil DUFFY
Total number of appointments 1 - Born September 1961
40 Queensway North, Walton On Thames, Surrey, KT12 5QW

Eugene Philip DUFFY
Total number of appointments 1 - Born February 1962
Wellesley House, 204 London Road, Waterlooville, Hampshire, United Kingdom, PO7 7AN

Eugene Phillip DUFFY
Total number of appointments 1 - Born February 1962
2nd Floor 298 Regents Park Road, London, United Kingdom, N3 2SZ

Henry Philip DUFFY

Who are we talking about?





What is their role in the Company?

Company **directors** are responsible for the management of their companies.

They must act in a way most likely to promote the success of the business and benefit its shareholders. They have **responsibilities** to the company's employees, its trading partners and the state.

- Duties?

There are 3 principle headings:

- Fiduciary Duty
- Duty of skill and care
- Statutory duties



Directors Duties

- To act in accordance with the company's constitution (i.e. Memorandum and Articles of the company), and to use powers only for the purpose they were given;
 - To promote the success of the company for the benefit of the shareholders;
 - To exercise independent judgment;
 - To exercise reasonable care, skill and diligence;
 - To avoid conflicts of interest;
 - Not to accept benefits from third parties; and
 - To declare to the company's other directors any interest a director had in a proposed transaction or arrangement with the company.
- In addition – consider the interest of creditors and maintain confidentiality of the Company's affairs



Directors Liabilities

- A Director may be liable for the failure of the company to make required filing at Companies House
- Under Insolvency Act 1986, a Director may be personally liable for wrongful or fraudulent trading in the context of insolvency of the company; and
- The board and each Director has responsibilities under Health and Safety at Work Act 1974, breach of which may result in criminal sanctions on a Director

In certain circumstances, a Director may be disqualified from being a director under the Company Directors Disqualification Act 1986

- ❖ Injunctions
- ❖ Setting aside an affected transaction
- ❖ Terminations of executive directors service contract

Company Indemnity –

A company can indemnify its directors against personal liability so long as the indemnity does not cover:

- * Liability to the company in cases where the company sues the director – only liability to third parties can be the subject of an indemnity;
- * Liability for fines for criminal conduct or fines imposed by a regulator such as the Financial Conduct Authority (FCA) or Prudential Regulation Authority (PRA);
- * Other liabilities (such as legal costs) in criminal cases where the director is convicted, or in civil cases brought by the company where the final judgment goes against the director.



When would a D&O get protection?

Or Court Indemnity via Companies Act

Section 1157 restates section 727 of the 1985 Act and provides that where proceedings for negligence, default, breach of duty or breach of trust are brought against a director, the court may relieve him from liability if it considers both that:

- He has acted honestly and reasonably.
- Considering all the circumstances of the case, he ought fairly to be excused.

Or

A Directors' and Officers' insurance policy

Wrongful Act – any actual or alleged;

Breach of duty breach of trust breach of confidentiality breach of contract neglect error or omission misstatement misleading statement breach of warranty breach of warranty of authority wrongful trading libel slander

Or

“Any act”

Whilst carried out in the capacity of a Director or Officer



What is covered under a D&O policy?

- Legal Defence Costs and Expenses- (criminal or civil) inc Damages
Compensation
Environmental legal costs charges and expenses
Investigation costs charges and expenses

Not fines or penalties

- To policy limit (any one claim/aggregate) inc above
****Claims Made wording****
- Side A - Individual D&O
Side B - Company Reimbursement
Side C - Entity

What is covered under a D&O policy?

Heads of cover

- Directors and Officers (side A)
(Company Reimbursement (side B))
- Management Liability ? (side C)
- Corporate Liability/Entity ?(side C)
- Employment Liability ?
- Pension Trustee Liability ?
- Crime ?
- K&R/E ?
- ?



What is covered under a D&O policy?

- Extensions
- Organisation (entity) cover
- Public Relations Crisis Management
- Extended Reporting Period
- Retired Director Cover
- Outside Boards
- Emergency Costs & Expenses
- Investigations
- Extradition/Repatriation/Bail Bonds
- Additional Limits for non executives
- ?



What is covered under a D&O policy?

- Exclusions
- BI/PD
- Professional Indemnity
- Fines and Penalties
- Insured V Insured
- Major Shareholder
- Prior and Pending
- Fraud & Dishonesty
- Retro date?
- ??
- Buy backs/carve back?
- Absolute/total exclusion?



What other organisations have D&O's?

Other than PLC's and Private Ltd Companies?

- Charities,
- Not For Profit,
- Limited by Guarantee
- CIC's, CIO's, Social Enterprises

But only if:

✓ Incorporated

Not

❑ Unincorporated

***Incorporated** charity – a legal entity,

Trustees have more protection

***Unincorporated** charity – not a legal entity,

Trustees unlimited liability

Legal Structure of Charity (e.g. Trust, Association, CIC, Ltd Co by Guarantee)?

+ Charity (Entity and therefore a Director)

+ Trustee

Who are we talking about?



What is the role of the Trustee?

- ❑ have independent control over, legal responsibility for, a Charity's management and administration
 - also known as officers, board members, governors or committee members and directors

- extends to include employees

Organisation

- named in schedule (title ?)

There are Six clear duties

- Ensure charity is carrying out its purpose for the public benefit
- Comply with charity's governing document and the law
- Act in the charity's best interests
- Manage the charity's resources responsibly
- Act with reasonable care and skill
- Ensure the charity is accountable

What is covered under a CTI policy?

- Heads of Cover
- Trustee Indemnity (side A)
(Charity/Organisation Reimbursement (side B))
- Management Liability ? (side C)
- Corporate Liability/Entity ? (side C)
- Employment Liability ?
- Pension Trustee Liability ?
- Crime ?
- K&R/E ?
- Cyber?
- ?

What is covered under a CTI policy?

- Extensions ?
- Organisation (entity) cover
- Public Relations Crisis Management
- Extended Reporting Period
- Retired Trustee Cover
- Outside Boards
- Emergency Costs & Expenses
- Investigations
- Extradition/Bail Bonds
- Additional Limits for non executives
- ?



Where claims may arise?

- Own governing document
- Companies Act
- Charities Act 2011
- Trustees Act 2000
- Charity Commission
- Other Regulators i.e. Ofsted, CQC, PRA, FCA
- Local/National/International legislation
- Shareholders/Creditors/Employees/Customers/Liquidators/Directors/
Company

Where & When claims may arise?

- 2014 - Care Act – Duty of Candor
- 2015 - Small Business, Enterprise & Employment Act
- 2016 - Enterprise Act – Small Business Commissioner
- 2017 ?????
- 2018 - ? General Data Protection Regulations (GDPR) (25/5/18)
- Brexit?? (start & finish???)

- Are Directors, Officers, Trustees, Organisations;
- Ready?
- Prepared??
- Insured????
- How ?

Questions ?