News story: Poor record keeping nets 9 year ban for Birmingham businessman

Mr Ferguson was the sole director of Allied Commercial Factors Limited which provided financial services and operated from Cannock, Staffordshire. The company went into Liquidation on 14 October 2014, owing an estimated £1,159,011.

An Insolvency Service investigation found, specifically, that the company had failed to maintain, preserve or deliver up records that could explain payments of £20,529, 834 from the company bank account. This included £329,567 paid directly to Mr Ferguson and £177,337 paid to an associated company.

The Insolvency Service also found that Allied failed to deal with its tax affairs and at Liquidation, the Company owed HMRC in excess of £290,000 for VAT, penalties and charges.

Commenting on the disqualification, Sue MacLeod, chief investigator at the Insolvency Service, said:

> Company directors should note from this enforcement result that any failure to maintain or deliver up adequate accounting records is likely to lead to serious censure.
>
> In this particular case, Mr Ferguson failed to deliver up the Company’s accounting records with the result that transactions amounting to more than £20,500,000 could not be explained.
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> This disqualification is a reminder to others tempted to do the same that the Insolvency Service will rigorously pursue enforcement action to seek and remove from them the privilege of trading with limited liability to protect the public for a lengthy period.

Notes to editors

Allied Commercial Factors Limited (Company Registration No. 07382287) was incorporated on 21 September 2010 and traded from Morston Court, Cannock, Staffordshire, WS11 8JB.

John Alexander Ferguson, (date of birth 08 November 1963) was the sole registered director from incorporation, until Liquidation.

The company went into Liquidation on 14 October 2014. On 22 May 2017, the County Court sitting at Birmingham made a Disqualification Order against Mr

Ferguson, effective from 12 June 2017, for a period of 9 years.

The matters of unfit conduct upon which the Secretary of State’s claim was based were that Mr Ferguson failed to ensure that Allied Commercial Factors Limited maintained and/or preserved adequate accounting records from 01 March 2012 to 14 October 2014, the date of Liquidation or, in the alternative, he has failed to deliver them up to the Official Receiver. The last accounts filed by ACF at Companies House were in respect of year ending 29 February 2012.

As a result the Insolvency Service has been unable to determine, in the absence of purchase invoices, whether payments in the total sum of £20,529,834 paid from ACF’s bank accounts between 01 September 2012 and Liquidation on 14 October 2014 represent legitimate company expenditure, specifically:

- whether monies in the net sum of at least £329,567 paid to Mr Ferguson between 07 September 2012 and 12 May 2014 represented legitimate company expenditure
- whether payments in the net sum of at least £177,337 paid to a company connected to Allied between 17 September 2012 and 03 September 2014 represented legitimate company expenditure
- whether 68 cheque payments and a further 7 related payments in the total sum of £818,350 paid by Allied in the period from 03 September 2012 to 07 May 2014 represented legitimate company expenditure

It was also not possible to determine the asset position of Allied at liquidation with regard to:

- whether debtors in the sum of £1,427,063 identified in Allied’s abbreviated accounts to year end 29 February 2012 have been properly collected for the benefit of Allied
- whether a horse/part share of a horse purchased by way of funds in the sum of £120,000 paid from Allied’s bank accounts between 04 April 2013 and 06 August 2013 was an asset of Allied
- whether the horse remained an asset of Allied at Liquidation on 14 October 2014
- whether, if the horse was sold prior to Liquidation, the proceeds of the sale were properly received by Allied
- whether 11 vehicles identified by HMRC during an investigation into the operation of Allied’s VAT account were assets of Allied
- whether these vehicles remained assets of Allied at Liquidation on 14 October 2014
- whether, if any of the vehicles were sold prior to Liquidation, the proceeds of any sale were properly received by Allied

Furthermore Mr Ferguson failed to ensure that Allied’s VAT was properly accounted for in respect of quarters ending November 2011 to November 2013. As a result, HMRC raised an assessment in the sum of £78,385 in respect of expenses on which HMRC considered that input (purchase) VAT, should not have been claimed and further disallowed monies in the total sum of £198,343 reclaimed by ACF on purchases and other inputs in respect of quarters ending

May 2012 and November 2013:

- Mr Ferguson was the sole director and shareholder of ACF from incorporation on 21 September 2010
- on 12 July 2013 HMRC advised that they would be visiting the premises of Allied to carry out an inspection of its VAT account
- HMRC visited the offices of Allied on 22 August 2013 and reviewed the accounting records provided by Mr Ferguson
- HMRC raised a number of queries in respect of purchases and expenses against which input VAT had been claimed by Allied which it could not identify as legitimate company expenditure from the accounting records provided by Mr Ferguson
- between 20 September 2013 and 16 June 2014 HMRC asked Mr Ferguson for an explanation as to why these expenses were considered to be legitimate company expenditure against which VAT could be claimed
- Mr Ferguson failed to provide HMRC with an explanation as to why these payments were considered as legitimate company expenditure
- on 16 July 2014, HMRC advised Allied that it had disallowed monies in the total sum of £198,343 reclaimed by Allied on purchases and other inputs in respect of quarters ending May 2012 and November 2013
- HMRC raised an assessment in the sum of £78,385, plus penalties, in respect of VAT claimed against purchases/expenses for which Mr Ferguson failed to provide an explanation. Allied were informed of this assessment by a letter dated 15 September 2014
- HMRC advised ACF that at 24 September 2014, Allied’s liability to HMRC in respect of VAT stood at £203,398.

A disqualification order has the effect that without specific permission of a court, a person with a disqualification cannot:

- act as a director of a company
- take part, directly or indirectly, in the promotion, formation or management of a company or limited liability partnership
- be a receiver of a company’s property Persons subject to a disqualification order are bound by a range of other restrictions.

The Insolvency Service, an executive agency sponsored by the Department for Business, Energy and Industrial Strategy (BEIS), administers the insolvency regime, and aims to deliver and promote a range of investigation and enforcement activities both civil and criminal in nature, to support fair and open markets. We do this by effectively enforcing the statutory company and insolvency regimes, maintaining public confidence in those regimes and reducing the harm caused to victims of fraudulent activity and to the business community, including dealing with the disqualification of directors in corporate failures. Further information about the work of the Insolvency Service, and how to complain about financial misconduct, is available.

BEIS’ mission is to build a dynamic and competitive UK economy that works for all, in particular by creating the conditions for business success and promoting an open global economy. The Criminal Investigations and Prosecutions team contributes to this aim by taking action to deter fraud and to regulate the market. They investigate and prosecute a range of offences, primarily relating to personal or company insolvencies.

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