

editorial

Directors' Duties

In the Editorial of the March edition of *BLR* we expressed the view that it would be regrettable if directors in the UK were to have to adopt the defensive approach of their American counterparts. This view was expressed in the context of honest mistakes or errors of judgment by directors. A different position must of course be adopted in relation to deliberate misfeasances; here no compromise is appropriate. The case of *Prudential Assurance Co Ltd v Newman Industries Ltd* (*The Times*, February 29, 1980) is a valuable reminder to directors of the remedies available to shareholders. The judgment of Vinelott J is particularly to be welcomed in that it makes clear that a minority shareholder may bring a derivative action not only when the directors concerned control the company but also when it can be shown that, unless the action is allowed to proceed, the interests of justice would be defeated, in that an action which ought to be pursued on behalf of the company could not be pursued.

Further disturbing irregularities in directors' conduct have been disclosed in the Department of Trade Inspectors' report on the affairs of the Ozalid group. Particular concern is expressed over substantial undisclosed overseas remuneration paid to certain directors. The Inspectors draw particular attention to the role of the company secretary in this context and observe that the company secretary of Ozalid failed to display the independence of mind which is essential for any person who is to discharge the functions and duties of secretary of a large company.

Suitably Qualified Company Secretaries

This comment by the Inspectors echoes the reasons of Sir Graham Page for tabling his new clause, which has been incorporated in the Companies Bill, imposing on the directors of every public company the duty to appoint a

suitably qualified company secretary. The qualifications required were specified in detail in the clause which was approved in Commons Standing Committee "A". However the clause has been amended on report in a number of respects. The clause now includes as suitably qualified "a person who by virtue of his holding or having held any other position or his being a member of any other body appears to the directors to be capable of discharging [the functions of secretary of the company]". This particular criterion appears so wide as to render the clause of little effect. It will no doubt be of some value for the clause, as amended, to be enacted as a statement of principle. At a later date it may be found expedient to define the qualifications more precisely.

The original list of qualifications (qualified accountants, lawyers and chartered secretaries) had an advantage which has now been lost. One thing the specified bodies had in common was that they all admitted members only after they had passed stringent examinations and after approved practical training. This requirement met with some opposition and it was pointed out that many able and experienced people could be excluded merely because they did not possess a "paper" qualification. There was, however, a further consideration: these bodies all exercise professional discipline over members and in cases of serious misconduct may expel a member from membership. The new clause may still give some protection since, even under the wide criteria mentioned above, the directors surely could not regard a person as suitably qualified by experience should they know that that person has been expelled by his professional body (or in other words found unfit to continue his professional functions). However, in practice, the matter will probably never come to light as the directors will not now have to enquire so closely into the reasons for an applicant for the office of Secretary not possessing a recognised qualification.