

# The Duty of Loyalty of the Member of the Board of Directors of the British Company

## Abstract

The duty of loyalty of a board member in a British commercial company, along with the duty of care, ranks among their most fundamental obligations. This paper aims to clarify the distinctive nature of the duty of loyalty, its content, and its functions—both through its historical development and by analyzing its contemporary conceptual foundations. It subsequently examines the most crucial aspects of a board member's loyalty: the duty to promote the success of the company and the rules on conflicts of interest.

The first part provides a general overview of the fiduciary duty of loyalty, mapping the characteristic features of fiduciary relationships and outlining the reasons for the relative stability of British fiduciary law. This serves as a foundation for a deeper understanding of fiduciary loyalty.

The second part is dedicated to the historical development of fiduciary loyalty, which is characterized by continuity—each stage of its evolution significantly influenced the next until the duty of loyalty acquired its current form. The roots of this duty can be traced back to the Middle Ages, when the unique English invention known as *use* emerged, laying the groundwork for modern trust law. The fundamental rules governing trustee liability form a crucial basis for the duty of loyalty of any fiduciary, which for several centuries has included board members. Many general principles regulating fiduciary liability date back several hundred years and are common to all types of fiduciary relationships, though each has its own unique features and specifics.

The third part analyzes modern fiduciary concepts prevailing in British law, namely the *moralistic approach* and the *juridical approach*. Each of these theories offers its own theoretical insights, yet both rely heavily on longstanding case law, preserving the developmental continuity and the exceptional stability of the principles underlying the duty of loyalty.

The fourth part examines the most significant specific duties arising from the duty of loyalty of a board member: the duty to promote the success of the company and the prohibition of conflicts of interest. Their content is significantly shaped by the history of fiduciary loyalty and aligns with modern theoretical perspectives while also reflecting the specific context of corporate law. This section attempts to define the company's interest and explore the reasons behind the subjective liability for breaching the duty to promote the company's interest, which is the only duty where fault is examined. Furthermore, special attention is given to the highly

relevant issue of conflicts of interest within fiduciary relationships. This section explores why conflicts of interest should be regulated and why British academia and practice remain reluctant to relax the strict requirements of the relevant rules. The discussion then leads to a practical examination of these rules under the *Companies Act 2006*, including an analysis of one of the most controversial aspects of corporate law—the prohibition of usurping corporate opportunities.

**Keywords:** duty of loyalty, member of the board of directors of the British company, development of the general principles of fiduciary loyalty