

Neutral Citation Number: [2026] EWHC 696 (Ch)

Case No: CR-2024-006236

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 25/03/2026

Before :

ICC JUDGE AGNELLO KC

Between :

FINANCIAL CONDUCT AUTHORITY	<u>Petitioner</u>
- and -	
EQUITY FOR GROWTH (SECURITIES) LIMITED	<u>Respondent</u>

Ms Charlotte Cooke and Ms Charlotte Ward (instructed by **the Financial Conduct Authority**) for the Financial Conduct Authority
Mr Oliver Assersohn KC and Mr Alex Peplow (instructed by DAC Beachcroft LLP) for the Respondent

Hearing dates: 16 and 17 December 2025

JUDGMENT

ICC JUDGE AGNELLO KC :

Introduction

1. On 18 October 2024, the Financial Conduct Authority (the FCA) presented a petition against Equity for Growth (Securities) Limited (EFG) pursuant to section 367 of the Financial Services and Markets Act 2000 (FSMA) seeking

an order for its winding up on the grounds that it was insolvent and/or on the just and equitable grounds. The petition is contested by EFG which submits that the petition should be dismissed. The issues to be determined before me are (1) is EFG unable to pay its debts and/or (2) is it just and equitable to wind up EFG.

2. The FCA asserts that EFG is insolvent both on a cash flow basis and also on a balance sheet basis and that there is no realistic prospect of this position changing in the short or medium term.
3. EFG asserts that the FCA has not established that EFG should be wound up. It asserts (1) certain points of insolvency relied upon by the FCA are not sustainable, (2) in so far as EFG's financial position has been recently weakened, this is as a result of the actions of the FCA, which include its regulatory intervention. This is the subject of a separate challenge in the Upper Tribunal (the Tribunal) but currently the effect of his intervention is that EFG is not able to trade, and (3) as a matter of discretion, no winding up order should be made.
4. An important issue in assessing the financial position of EFG, is how to deal with the customer redress claims made to the Financial Ombudsman Service (FOS) many of which remain undetermined. EFG relies on that (1) it disputes the validity of many of these claims, (2) it has insurance coverage in place at least capable of covering some if not all of any successful claims, and (3) these claims will not transform into liabilities in the near future and once EFG is trading, it will have the ability to deal with the claims as and when they become liabilities. The proposed future trading requires the lifting of the Requirements which presently restrict the use of its Part 4A FSMA permissions.

Witnesses and evidence

5. Mr William Walsh provided the evidence on behalf of the FCA set out in various witness statements. It was accepted that there was no need for him to be cross examined because he had no personal knowledge, but he produced the documents relied upon by the FCA. Mr Timothy Baldwin, one of the directors and shareholders, gave evidence before me. He had also filed four witness statements.

Legal principles

(i) Insolvency test – section 123 Insolvency Act 1986

6. The parties agreed the principles of the tests for insolvency as set out in section 123 of the Insolvency Act 1986, being, one of two bases, (1) balance sheet insolvency, and (2) cash flow insolvency. The burden of establishing insolvency remains on the FCA. The well established legal principles are set out in *BNY Corporate Trustee Services Ltd v Eurosail [2013]UKSC 28* and *Bucci v Carman(Liquidators of Casa Estates (UK) Ltd [2014] BCC 269*.
7. Neither limb of the test is to be applied mechanically. The test of cash flow insolvency, being the ability to pay debts as and when they fall due, looks to the future as well as the present. The future in question is the reasonably near future and this will depend on all the circumstances, especially the nature of the company's business. The test is flexible and fact-sensitive.
8. The balance sheet test includes consideration and treatment of contingent and prospective liabilities. There is a comparison of present assets (rather than future assets) with present and future liabilities (discounted for contingencies and

deferment), but this not an exact test. Again the balance sheet test needs to be established on the available evidence as to the particular circumstances of the case on a commercial basis. The court is required to make a judgment whether it has been established that, looking at the company's assets and making proper allowances for its prospective and contingent liabilities, it cannot be reasonably be expected to meet those liabilities.

9. In *Cresta Estates Ltd v MPB Developments Ltd* [2025] EWHC 198 (CH), Joanna Smith J added some observations to the assessment of the test. The relevant ones for current purposes are :-

- (1) 'The more distant the liabilities, the harder it will be to establish that the company cannot reasonably be expected to meet those liabilities (Eurosail at [42], again per Lord Walker JSC);
- (2) Only the present assets of the company are to be taken into account (Eurosail at [37] and Burnden Holdings UK Limited (In Liquidation) v Fielding [2019] Bus LR 2878 [2019] EWHC 1566 (Ch) ("Burnden") , per Zacaroli J (as he then was), at [348]). It is not correct to take into account, in addition to assets presently owned by the company, any hope or expectation the company has that it would acquire further assets in the future without any accompanying right to such further assets (Byblos Bank SAL v Al-Khudhairy [1986] 2 BCC 99549 per Nicholls LJ at 99562). However, an inquiry into the nature of the present assets will also include their future profit or loss generating potential (Carton-Kelly v Darty Holdings SAS [2023] BPIR 305, [2022] EWHC 2873 (Ch) per Falk J (as she then was) at [126]);
- (3) Although the amounts recorded in the financial statements of a company for its assets and liabilities constitute evidence of, and may even be a starting point for, considering their value, the focus must be on their commercial value (Burnden at [349]). Similarly, a commercial view must be taken of the company's prospective and contingent liabilities. Proper allowance must be made for future and contingent liabilities, discounted for contingencies and deferment. In the case of contingent liabilities, this requires a series of commercial judgments to be taken as to the likelihood of the contingency falling in, the date it might do so, the amount of that liability and the

appropriate discounts to apply in relation to each aspect (Eurosail at [37] and [42] and Burnden at [352]);’

10. The business plans of a company can be considered but, as demonstrated in Cresta, these plans will be considered to see if they support a conclusion that there was a real prospect that the company would be able to meet its liabilities. Future profit or loss generating potential of present assets is relevant to the valuation of present assets.

11. Contingent liabilities are defined as follows: -

(a) a contingent or prospective debt is a debt which may or may not come into being depending on whether a future or uncertain event occurs. Lord Reid defined a contingent liability as, ‘*a liability which, by reason of something done by the person bound, will necessarily arise or come into being if one or more of certain events occur or do not occur.*’ The Supreme Court endorsed this definition in Re Nortel GmbH (in administration) [2014] AC 209, establishing that obligations arising out of steps taken that brought a company within the ambit of a statutory regime can give rise to contingent liabilities even if such liabilities do not crystallise until after the obligor has become insolvent: per Lord Neuberger at [73]-[85] and Lord Sumption at [130]-[136].

(b) A disputed contingent liability does not mean that no such liability exists (Noal SCSp v Noalpina Capital LLP (& Ors) [2025] EWHC 1392 (Ch) at [114]).

(ii) The just and equitable test for winding up

12. It is agreed that the court's approach to the just and equitable test is identical to the well established approach applied to public interest petitions: *Re Inertia Partnership LLP [2007] Bus LR 879*). The Court must balance all relevant interests, and weigh all relevant factors in determining whether it is necessary to wind up the company to protect the public interest:-

(i) As stated in *Re Walter Jacob (1989) 5BCC 244*:- in determining whether to make a winding up order, 'the court has regard to all the circumstances of the case as established by the material before the court at the hearing. Additionally, "At the end of the day the court must be able to identify for itself the aspect or aspects of public interest which, in the view of the court, would be promoted by making a winding up order in the particular case". There is no specific assumption or preference in favour of making the winding up order merely because either the Secretary of State or, as here, the FCA is the Petitioner ;

(ii) As set out in *Secretary of State v PAG Asset Preservation Ltd [2020] BCC 979* (at paragraph 39(f) &(g)) the just and equitable ground can include illegality or regulatory breach or business that is 'inherently objectionable' or displaying a lack of commercial probity because its activities are contrary to a clearly defined public interest.

(iii) Historic misconduct can constitute grounds. As stated in Re Walter Jacob, 'by winding up such a company, the court will be expressing, in a meaningful way its disapproval of such misconduct. Moreover, in addition to being a fitting outcome for the company itself, such a course has the further benefit of spelling out to others that the court will not hesitate to wind up companies whose standards of dealing with the investing public are unacceptable'.

(iv) the burden of proof remains on the FCA, as Petitioner.

13. The making of a winding up order is a matter of discretion. This includes a discretion to dismiss the petition in a case where there is a determination to be made in other proceedings (*HMRC v Anglo Overseas Ltd* [2005] BPIR 137 (paragraphs 37-41 and para 81-82, *Re ENTA Technologies Ltd* [2015] 1 WLR 3911 at para 71.)

The legal structure of the regulated business and the regulatory regime

(i) The overall relevant structure of the Financial Services and Markets Act 2000 (FSMA)

14. Section 22 of FSMA stipulates that certain types of financial services activities and investments are regulated activities, requiring authorisation/permission from the FCA, the regulating body. Section 19 of FSMA provides that a legal person must be either authorised in accordance with Part 4A of FSMA or exempt under certain provisions such as section 39(1) of FSMA.
15. The section 39(1) exemption applies to a person who (a) is a party to a contract with an authorised person (the principal) which permits or requires that person to carry on business of a prescribed description, and which complies with such requirements as may be prescribed and (b) is someone for whose activities in carrying on the whole or part of the business its principal has accepted responsibility in writing. An unauthorised party to such a contract is called an “*appointed representative*” (AR). The principal of an AR is responsible to the same extent as if he had expressly permitted it, for anything done or omitted by

the AR in carrying on the business for which it has accepted responsibility pursuant to section 39(3) of FSMA.

16. For current purposes, the relevant regulated activities are those defined in Article 25 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (the RAO), which includes making arrangements for a person (whether as principal or agent) to buy, sell or otherwise invest in security instruments (such as bonds) (article 25(1)) or making arrangements with a view to a person buying, selling or otherwise investing in security instruments (article 25(2)):
17. FSMA also contains restrictions on invitations or inducements to enter into investment activity unless the communication is done by an authorised person or if the content is approved by an authorised person. There are exceptions such as when the communications are made to an individual who is certified as high worth or self certified as a sophisticated investor.

(ii)The FCA Rules

18. As part of the overall FCA regulatory regime, authorised persons must adhere to rules which are created by the FCA including the Conduct of Business Sourcebook which sets out various controls and restrictions in relation to financial promotions, particularly “*direct-offer financial promotion*” in relation to a “*non-readily realisable security*” (i.e. illiquid). These require that firms conduct appropriateness checks on investors’ knowledge and experience to determine if they are eligible, in accordance with the Rules, to receive such financial promotions and participate in such transactions.

19. Contravention of these (or many other) Rules by an authorised person is actionable at the suit of a private person who suffers loss as a result of the contravention. A principal may be liable for losses incurred as a result of contraventions of the rules committed by its AR in the course of conducting business for which the principal has accepted responsibility. This is the effect of the Rules alongside section 39(3) FSMA.

(iii)The Financial Ombudsman Scheme (FOS)

20. Part XVI provides for the operation of an ombudsman scheme administered by the FOS. For current purposes, the following are relevant:-
- (a) a claimant can only refer a complaint to the FOS after they have first engaged with the relevant firm's complaints process;
 - (b) the FOS has jurisdiction over complaints relating to activities carried out by an AR for which its principal accepted responsibility;
 - (c) Where a complaint is within the jurisdiction of the FOS and after hearing representations from the firm, the FOS can make a determination in favour of the complainant by making a money award;
 - (d) Authorised persons are required by the Rules to cooperate fully with the FOS and to comply promptly with any settlement or awards made by it;
 - (e) Where a complainant notifies the FOS that they accept the FOS's determination, any money award is enforceable by the complainant and may be recovered as it were payable under order of the county court in accordance with Schedule 17 FSMA.

(iv)The Financial Services Compensation Scheme (FSCS)

21. The FSCS is the UK's statutory compensation scheme for customers of failed financial services firms pursuant to section 213 of FSMA. Where the FSCS considers that a claimant had made or is to be treated as having made an application in respect of a valid claim for compensation and the firm liable to pay such an award is in 'default', then the FSCS will pay that claimant's compensation. The 'default' event includes a winding up order having been made against the firm.
22. A claimant does not have to engage with the FOS before making a claim with the FSCS. Both the FSCS and the FOS exist to provide largely retail customers of financial services with efficient recourse to compensation.

Background Facts

23. The background facts are generally not in dispute. EFG does dispute that it is liable in relation to the vast majority of the customer redress claims and that includes being liable for the actions of its ARs. EFG was incorporated on 1 April 2005 and has been authorised by the FCA since 9 May 2008 with certain permissions pursuant to Part 4A to conduct regulated activities, such as arranging deals in investments and making arrangements with a view to concluding transactions in investments. It has currently two directors, namely Mr Timothy Baldwin and Ms Karoline Pietka. Mr Baldwin holds 74% of the shares in EFG with Ms Pietka holding 17 % of the remaining shares. Mr William

Wood holds the remaining 9%. The individual approved by the FCA as senior management function holders are Mr Baldwin, Ms Pietka and Mr Wood.

24. According to Mr Baldwin, EFG has been in the business of providing corporate finance advisory services to small and/or distressed firms. In its regulatory plan provided to the FCA in 2022, EFG described itself as, ‘a small but ambitious corporate finance advisory firm, dedicated to assisting growth companies, predominantly small/microcap companies and companies in distressed situation with their financial future, and in matters of corporate finance.’ According to Mr Walsh, EFG’s principal business activity since 2011 was assisting its clients to raise seed funding and strategic capital for both listed and unlisted businesses.
25. According to the investigations carried out by the FCA, EFG’s business historically involved 5 ARs for whom they had accepted responsibility as principal. Of particular relevance is Ayma Ltd and Osborne Baldwin Limited which traded as Hunter Jones. Both these ARs were involved in the promotion of mini-bonds issued by unauthorised companies. Ayma became an AR of EFG on 2 July 2018 and ceased to be an AR on 2 September 2019. It went into creditors voluntary liquidation on 27 May 2020. Hunter Jones became an AR of EFG on 4 May 2018. EFG has accepted that similar to its AR agreement with agreement with Ayma, it also approved certain financial promotions relating to mini bonds on behalf of Hunter Jones. The AR with Hunter Jones was terminated on 9 April 2020.
26. The term ‘mini-bonds’ is used to refer to an unlisted, non-readily realisable debt instrument issued in consideration for a sum of money and providing for a repayment schedule of interest (typically at a fixed rate) and capital over a

specific period of time. According to Mr Walsh, mini-bonds are generally issued by small, unlisted companies with limited public visibility of their business operations and are therefore generally illiquid, untransferable (practically at least) and speculative. According to Mr Walsh, the arrangement of investments in mini-bonds is within the scope of article 25 of the RAO and these instruments will generally be considered to be illiquid for the purposes of financial promotions appropriateness rules. This is not disputed by EFG.

27. According to the FCA, investments in minibonds are therefore unlikely to be appropriate for consumers who lack the necessary expertise and experience to appreciate the potentially significant risks involved. This is not directly challenged by EFG, but it does dispute its liability in relation to all the redress claims which have been made to date as well as those which have yet to be formalised by proceedings before the FOS.
28. According to the records obtained by the FCA, between 4 July 2018 and 27 August 2019, Amyma arranged 546 investments totalling about £10,103,110. Between 1 January 2018 and 31 August 2019, Hunter Jones arranged 758 investments totalling about £18,378,958. The figures provided in relation to Hunter Jones cover a period prior to it being an AR of EFG but it also does not cover the entire period of the AR relationship. The period from 31 August 2019 until the termination of the AR relationship on 9 April 2020 is not covered.
29. According to Mr Walsh, Hunter Jones promoted or arranged 273 investments totalling £6,248,701 which related to investments in a number of companies known as the Magna Group, including investments in mini-bonds. The entities in the Magna Group were wound up in Secretary of State for Business petitions

in August 2021. This followed an investigation by the Insolvency Service into the Magna Group which found that the marketing of its mini-bonds was misleading. Hunter Jones also promoted 34 investments totalling £732,385.56 in a German property development company known as Dolphin. This company has been in insolvency proceedings in Germany since July 2020. It also raised funds by issuing mini-bonds through various subsidiary companies.

30. Since 2019, the FCA has engaged with EFG in particular in relation to mini-bonds. On the same date as the petition was filed, being 18 October 2024, the FCA decided to impose certain requirements on EFG with immediate effect using its powers under section 55L of FSMA. These requirements included that EFG cease carrying on all regulated activities other than where it has express permission of the FCA. The restrictions imposed by the FCA were referred by EFG to the Upper Tribunal. The FCA and EFG have agreed that the Tribunal Proceedings be stayed pending determination of the petition.
31. This means that the restrictions remain in place against EFG. Accordingly, currently EFG is unable to carry out any business which falls under regulated activity. EFG has produced evidence relating to its future business plans set out in the witness statements of Mr Baldwin. EFG relies on its future prospects to demonstrate its solvency on the basis that the petition is dismissed and that it is successful in overturning the FCA restrictions in the Tribunal. The FCA has reserved its position but has indicated that even if the petition is dismissed, it is unlikely that the current restrictions will be removed in the foreseeable future or altogether. EFG challenges that view of the FCA and would seek to challenge the restriction in the Tribunal proceedings.

Recent business operations of EFG

32. As noted above, EFG has been unable to carry out any of its regulated activities since the imposition of the restrictions by the FCA on 18 October 2024. The evidence also demonstrates that it did not conduct regulated activities between May 2020 and June 2022.
33. Mr Walsh sets out details of the business carried out by EFG in the last 5 years. In the year ending 31 December 2024, EFG's total revenue was £30,382, effectively deriving from one invoice to Roth Turbines Limited dated 2 April 2024. As the restrictions were imposed in October 2024, just under 80% of the financial year had therefore occurred in the financial year before the restriction was imposed.
34. The revenue figure for the year ending 31 December 2023 was £17,500. In previous financial years, EFG relied on debt finance including in May 2020, the receipt of a bounce back loan of £50,000 and a loan of £100,000 from Mr Terence Sullivan in October 2022. More recently, in September 2025, EFG received an advance of £15,000 from Cluberly App. According to Mr Baldwin, this is not a liability of EFG but he also accepts that it forms part of the proposed £200,000 subordinated loan to EFG from Cluberly UK Limited. EFG relies on the proposed loan as part of its future trading.

Complaints against EFG- the redress claims

35. There have been many complaints by customers relating to the ARs, in particular, Ayma and Hunter Jones. Some of these complaints have been through the FOS process whilst others are at much earlier stages.

36. According to the FCA, there are some 131 complaints which have been made against EFG which have been referred to the FOS which relate to the actions of EFG's ARs. Eleven of these complaints have to date resulted in final determinations with ten of those adverse to EFG in the total sum of £324,500.04. One of these successful complaints relates to Aymya and the other nine relate to Hunter Jones. According to the FCA, from these determinations, it appears that Hunter Jones frequently breached regulatory obligations specifically in relation to its arrangement of inappropriate direct-offer financial promotions and/or a failure to conduct proper suitability assessments. These include proposing investments designated for sophisticated and/or high net worth individuals being sold to those with no investment experience.
37. In accordance with the relevant regulations, these awards are final and binding. There is no dispute as to the law in this area. The evidence demonstrates that in relation to some of the awards, a claimant had to wait months before being paid. This was after EFG had received from its insurers the sums to pay this award. The explanation was that Ms Pietka who dealt with the awards had been ill. In another case, a claimant waited over two years before his award was paid to him from EFG. According to the evidence, EFG sought to deduct sums from that award. This was despite being informed by the FCA that the award was final and binding and that it required it to be paid in full. There was no real explanation from EFG relating to this delay.
38. EFG accepts that currently there are claims valued at approximately £2.7 million. EFG's case is that these claims may or may not culminate into awards

and that EFG will be able to meet those awards in the years ahead from either its indemnity insurance and/or from its future trading profits.

39. EFG has divided up the claims into three categories, being (i) claims awaiting determination (£2,613,969), (ii) investigator determinations adverse to EFG (£610,076.08) and (iii) provisional decisions by the FOS (£180,000). Mr Baldwin has dealt in his evidence with his assessment as to whether these claims in the various categories have merit or potential merit. According to him, of the £2,613,969 category, only about £362,600.04 are potentially meritorious with only £50,000 falling due within 12 months.
40. As to the balance of those category (i) claims, Mr Baldwin asserts that £1,050,437.05 are defended on the basis that the AR was not responsible as a matter of fact. Other defences are also raised for other amounts, such as lack of evidence or that the AR was not conducting regulatory activity. In relation to category (ii), EFG disputes all these claims on various grounds, but accepts that £179,000 may have some merit. In relation to the two provisional FOS determinations, EFG continues to dispute these and is confident according to Mr Baldwin of success in defeating these.
41. EFG relies heavily on the length of time before any of these claims becoming liabilities of EFG. It also relies upon its claim against Hunter Jones and its remaining insurance coverage.

EFG's professional indemnity insurance

42. EFG has two insurance policies. The 2018-2019 policy potentially covers EFG's liabilities to its solicitors, DAC Beachcroft, for its outstanding fees. It

also potentially covers the costs of the current petition proceedings. The outstanding indemnity limit on this policy is £342,396.

43. The 2019/2020 policy covers only a specific category of claims, being those relating to the Magna and Dolphin claims relating to investments in those two corporate groups. The insurance limit under the 2019/2020 policy is approximately £302,446. This was originally stated to be £334,295 by EFG, but in so far as fees due to the FOS are deducted from the sums available, this will reduce what remains available to meet redress claims.

Balance sheet insolvency test applied to EFG

44. In order to determine if EFG is balance sheet insolvent, I need to determine which value to place on certain assets and how to deal with certain liabilities, including contingent and prospective liabilities which I need to take into account. Both sides produced useful comparative schedules and I reproduce the latest one with some formatting amendments produced by Ms Cooke and Ms Ward as it is up to date and includes the development during the hearing in relation to the FCA’s position relating to VAT liabilities. The FCA accept for current purposes that the failure to pay the VAT liabilities by EFG on the solicitors’ bills is a neutral balance sheet event. The FCA does rely on the failure to pay the VAT on the bills as evidence relating cash flow insolvency.

£		Assets	
Notes	Category	EFG	FCA
1	Cash	7,583.00	7,583.00
2	Shares in Metro Assets	71,274.57	13,603.00
3	Software Licence	18,000.00	-
4	Directors Loan Account	19,050.28	19,050.28

5	VAT monies owed by Roth Turbines Ltd	6,076.40	-
6	Fees owed by NVH Global Ltd	2,000.00	-
7	Monies claimed against Certain Bridge Ltd	5,781.25	-
8	Monies claimed against Hunter Jones	<i>Uncertain</i>	-
9	Overpayment owed by Protean/Close Brothers	3,084.05	-
10	HMRC Credit	95.34	-
11	Investment in Regen Finance Ltd	-	-
Total Assets		132,945	40,236

£ Liabilities (excluding any FOS claims)			
Notes	Liability	EFG	FCA
12	Bounceback Loan	28,386.17	28,386.17
13	DAC Beachcroft Historic Fees (Net of VAT)	-	45,870.18
14	VAT owed to DAC Beachcroft	-	-
15	Advance by Cluberly App	-	15,000.00
16	Debt owed to the FCA	-	3,623.89
17	Fees owed to the FOS	14,950.00	46,800.00
18	Debt owed to HMRC	532.37	532.37
19	VAT owed to HMRC (re. Roth Turbines Ltd)	4,930.75	5,848.14
20	Monies owed to Certain Bridge	-	<i>Uncertain</i>
21	Debt owed to Open Telecom	229.20	229.20
22	Debt owed to Accountant	2,500.00	2,500.00
23	Debt owed to Thistle Initiatives Ltd	-	-
24	EFG's Petition costs (Counsels and Solicitors Fees excl. VAT)	-	188,612.81
Total Liabilities		51,528	337,403

Net Assets (with costs recovery)	81,416	(30,833)
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<i>insurance adjustments under 2019/2020 Policy</i>		<i>31,850</i>
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<i>insurance adjustments under 2018/2019 Policy</i>		<i>45,870</i>
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<i>full Petition costs recovered from the FCA</i>		<i>188,613</i>
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Net Assets (with no costs recovery)	-	(30,833)
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<i>insurance adjustments under 2019/2020 Policy</i>		<i>31,850</i>
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<i>insurance adjustments under 2018/2019 Policy</i>		<i>234,483</i>
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Add back:	
<i>Maximum fees owed to the FOS</i>	31,850
<i>VAT on Magna File</i>	-
Sums recoverable under 2019/2020 Policy	31,850
<i>Historic Solicitors Fees (Net of VAT)</i>	45,870
<i>VAT on FCA File</i>	-
<i>VAT on Tribunal File</i>	-
<i>Counsel's Fees (Net of VAT)</i>	86,990
<i>Solicitors Fees June- November 2025 (Net of VAT)</i>	101,623
Sums recoverable under 2018/2019 Policy	234,483
Less:	
<i>Petition Costs</i>	188,613
<i>Solicitors Fees June- November 2025 (Net of VAT)</i>	101,623
<i>Counsel's Fees (Net of VAT)</i>	86,990
<i>VAT on the FCA file that will be costs in the Petition</i>	-
Sums recoverable under 2018/2019 Policy excl. Petition Costs	45,870
Indemnity Limit under 2018/2019 Policy	342,397
Available Indemnity under 2018/2019 Policy (costs recovery)	296,527
Available Indemnity under 2018/2019 Policy (no costs recovery)	107,914

Overview issues on the balance sheet

45. The above schedules demonstrate a negative net asset position (-£30,833) in relation to value of assets and liabilities relied upon by the FCA and a positive net asset position of £81,416 asserted by EFG. The differences in these net figures depend upon the value placed on certain assets and liabilities by the respective parties.
46. The schedule deals with the net assets with or without costs recovery. This relates to the costs of defending the petition. EFG submits that consideration of balance sheet solvency should not be on the basis that the petition succeeds, but

should be on the basis that the petition fails and that EFG can recover its costs as the successful party against the FCA. As can be seen from the schedule, the FCA's position is that EFG is insolvent on a balance sheet basis regardless as to whether it recovers its costs from the FCA (being the sum of £188,612.81) or not. This is because the FCA's case relating to the values of both the assets and liabilities is that there is a net negative position. EFG submits that there is a net positive position of £81,416.

47. The balance sheet currently does not place any value on the redress claims as contingent liabilities. The schedule does set out what the FCA says is the position if the sums available to EFG under the insurance policies are utilised, both in relation to legal fees covered under the 2018/2019 policy as well as certain liabilities which are covered by one of the policies, such as the some of the outstanding fees to the FOS (covered under the 2019/2020 policy). The 2019/2020 policy is also available to meet, up to its limit, any successful redress claims.
48. The FCA submits that once the redress claims are taken into account, then this merely increases the overall balance sheet insolvency position of EFG. The position of EFG is that the value of the contingent liabilities is such that it does not create an insolvent balance sheet because the vast majority of any successful claims will only materialise in the future, being more than 12 months away, if not years away. Even if there are successful redress claims which exceed the limit under the 2019/2020 policy, EFG will be able to meet those in the future from its future trading.

49. I will consider the competing values of assets and liabilities in the balance sheet before turning to the value of contingent liabilities as well as the evidence of EFG relating to future trading. In general, I will not deal with the value of assets and liabilities which are agreed by the parties.

Assets

The value of the shares in Metro Assets – EFG £71,274.57, FCA £13,603

50. Metro Assets is an investment/shareholding company which owns shares in Alpha Prospects Ltd, Red Squirrel Group Ltd, Roth Turbines Ltd and Beech Group PLC. Mr Baldwin is a director of Metro Assets. The FCA relies upon the expert report of Mr Tom Aslin of Moore Kingston Smith LLP which valued the shares at £13,603. This expert valuation dated 22 April 2025 was obtained by EFG. It is expressed as a preliminary view with a caveat that in order for Mr Aslin to prepare more comprehensive comments, he would require more comprehensive documentation and explanations from the directors/shareholders of Metro Assets. No further documentation or explanations were provided to Mr Aslin. No supplemental report from Mr Aslin has been obtained. Mr Aslin places his value based on a net asset basis.
51. In his evidence, Mr Baldwin considers that the valuation of Mr Aslin was too low. He has carried out his own valuation based on a share price per share rather than a net assets value. He relies upon a precedent transaction where shares in Metro Assets were valued at a value of £1 per share in satisfaction of a loan given to that investor by EFG. Effectively he bases his value on the value of shares from previous specific transactions in the shares. Mr Aslin states that

there is no evidence relating to whether the share transactions relied upon by Mr Baldwin were carried out on an open market basis at arm's length.

52. Mr Baldwin also relies upon his belief as to the long term value of Alpha Prospects Ltd and a very recent email from Mr Sullivan dated 11 December 2025. In that email Mr Sullivan offers to buy the Metro Asset shares for the sum of £64,771. This offer is made on the condition that the petition is dismissed. No explanation has been provided as to why the proposed acquisition is based on the dismissal of the petition.

53. In his cross examination, Mr Baldwin accepted that his views as to the increased value he placed on the shares of the companies was available to Mr Aslin. He also accepted that no further report was obtained for Mr Aslin and no further documentation was provided to Mr Aslin. He was also asked about the latest Mr Sullivan offer and in particular why it had been made so close to the hearing of the petition. He was unable to really respond as to why the offer made was conditional upon the dismissal of the petition.

54. In court, Mr Baldwin stated that a share value based on a share value from 6 years ago is better than taking a net assets value which is what Mr Aslin did. He stated that he had spoken to those at Alpha Prospects at length and that its value is much greater than it was in 2019. He accepted that none of these points were set out in his written evidence and that there were no documents to support his assertions.

A software licence in relation to Folio Bridge Ltd – EFG £18,000 , FCA – zero

55. EFG asserts that it owns a valuable software licence developed by Folio Bridge Limited. According to Mr Baldwin, EFG contributed £18,000 towards Folio Bridge's development costs which totalled £150,000. EFG considers that the licence is an intangible asset that could be used by it to generate income in the future providing the petition is dismissed and its regulatory permissions are reinstated. This asset is valued by Mr Baldwin at £18,000. He exhibits an incomplete draft contract and invoices from Folio Bridge for the development work. He asserts that this asset was mischaracterised as a 'debtor' in EFG's 2022 and 2023 accounts. He asserts that it is not a licence but a prepayment for the licence. There is no evidence produced supporting the characterisation of this asset.

56. The software licence was not mentioned in EFG's 2022 business plan submitted to the FCA. In the witness box, Mr Baldwin accepted that this asset was not listed in the list of assets provided by Mr Baldwin on behalf of EFG to the FCA on 6 September 2024. He also accepted that there was no specific reference to the licence as an asset of EFG in the written representations submitted by EFG in the Tribunal proceedings. He also accepted that it was not referred to as an asset in his first two witness statements.

Director's loan account - £19,050.28

57. The FCA are prepared to accept the DLA as an asset although there are doubts that it is recoverable from Mr Baldwin. There is no real evidence relating to the precise sum claimed. As the FCA do not challenge it, I do not need to deal with it further.

VAT monies owed to Roth Turbines Ltd- EFG £6,076.40, FCA zero

58. EFG claims that Roth Turbines Ltd owes it a sum of £6,067.40 representing the VAT component on an invoice dated 2 April 2024. The non VAT element of the invoice was settled by the issue of shares in Roth Turbines Ltd to Metro Assets. This share allocation was registered at Companies House on 5 September 2024.
59. When questioned, Mr Baldwin confirmed that the shares were transferred to Metro Assets and not to EFG. He also stated that he believed that the VAT element remained owing.
60. The VAT sum has been included in EFG's latest VAT return dated 7 November 2025. In that return, it is lower than the £5,063.67 recorded for VAT on EFG's accounting software because it has been offset by expenses claimed by EFG. There is no evidence relating to the recovery of these sums from Roth Turbines Ltd. This did not appear as an asset in the list of assets provided to the FCA in September 2024, or in the extract from the management accounts in the written representations in November 2024, or in the balance sheet with those representations. There is real doubt as to the financial ability of Roth Turbines Ltd to pay the VAT liability. It has been outstanding for 18 months. EFG submit that it remains an asset and even though there is a VAT liability to HMRC, this should remain in the list of assets.

Fees owed by NVH Global Ltd – EFG £2,000, FCA zero

61. EFG asserts that NVH Global Ltd owes the sum of £2,000 to EFG said to be payable under an engagement letter dated 26 September 2024 for work carried out by EFG preparing an application to HMRC for approval for an Enterprise

Investment Scheme. No invoice has been issued to NVH. This is disputed by the FCA. Mr Baldwin asserted that it will be paid next year and that NVH will settle it but provides no details relating to any invoice having been issued and any communications between EFG and NVH.

Certain Bridge Ltd- EFG £5,781.25, FCA zero

62. EFG has issued proceedings in relation to the sum it claims is owed by Certain Bridge in relation to invoices dating back to 2018. The invoices are disputed and Certain Bridge has counterclaimed in the sum of £10,000. There is an unassessed costs order made against EFG in those proceedings. Certain Bridge asserts its costs are in the region of £29,311 which is disputed by EFG. Mr Baldwin asserts that there is no merit in the Certain Bridge counterclaim.
63. The FCA disputes that this can constitute an asset. It considers that the claim cannot be listed as an asset and it is more likely to be a liability by reason of costs liability as well as the counterclaim.

The Hunter Jones claim – uncertain

64. EFG assert that it has a claim against Hunter Jones for breach of the AR agreement. EFG have written a letter of claim and received a denial of the claim from Hunter Jones. EFG assert that this represents a potential indemnity which can be called upon to meet adverse FOS claims. No value has been placed on this as an asset by EFG. The FCA submits that no value can be attributed to this asset on the evidence.

Overpayment owed by Protean/Close Brothers – EFG £3,084.05 , FCA zero

65. EFG asserts that the Lloyds/Close Brothers claim in the sum of £2,222.85 arises from the payment made to Close Brothers twice in around September 2019. This was raised in March 2022 with Protean Risk and complaints were made to Lloyds Bank and Close Brothers in August/September 2022. A referral was made to the FOS. Its investigator rejected the complaint in June 2023. There was no reference to the Ombudsman before the deadline expired, but EFG assert that they have resumed pursuit of this complaint with the FOS in October 2025.
66. The second payment claimed is the modest sum of £861.20 asserted by EFG to be an overpayment to EFG's insurance brokers. There is no evidence which supports this overpayment.

HMRC Credit- EFG £95.34, FCA – deduct from VAT liability

67. EFG claims it has a credit with HMRC in the modest sum of £95.34. This is not disputed by the FCA but it asserts that this credit needs to be deducted from the debt owed to HMRC which relates to Roth Turbines Limited.

Investment in Regen Finance Limited- no values

68. This asset asserted by EFG has no value attributed to it. Mr Baldwin in his fourth witness statement does not assert this claim exists in that EFG held no shares in this company as the shares were transferred to Ms Pietka in part settlement of her salary in April 2023.

Liabilities

DAC Beachcroft Historic Fees (net of VAT) – EFG – zero, FCA £45,870.18

69. EFG incurred fees to its solicitors, DAC Beachcroft, in relation to their engagement with the FCA before coverage for those fees was provided by the insurer. Post notification fees have been paid, but to date, the insurer has refused to meet these pre-notification fees. DAC is not currently pursuing these fees from EFG and therefore EFG considers that they are not a liability. DAC Beachcroft have not waived these fees. In so far as these fees are ultimately agreed to be met by the insurers, then it appears this will be taken from the 2018/2019 policy.

Advance by Cluberly App – EFG zero, FCA £15,000

70. EFG received the sum of £15,000 from Cluberly App which Mr Baldwin asserts should be treated as having been paid by Cluberly UK Ltd. Mr Baldwin asserts that this advance has been provided without any contractual commitment. When asked, he accepted that it was not a gift. The draft terms of the proposed subordinated loan of £200,000 state that the loan is to be provided by Cluberly UK Ltd. The FCA submit that this is clearly a liability as it was not a gift and the evidence supports it being an advance in relation to the proposed £200,000 loan.

Debt owed to the FCA – fees – EFG zero, FCA £3623.89

71. The FCA assert that it is entitled to charge fees which are recoverable as debts pursuant to section 1A and paragraph 23 of Schedule 1ZA of FSMA. Mr Baldwin asserts that the fees are not payable in relation to a period during which the FCA was carrying out its investigation and that EFG was unable to utilise its permissions at this time. It challenges the £750 penalties for non submission of reports which EFG states it does not have to file and that in any event the fees

are unreasonable and unfair. Mr Baldwin also asserts that the fees dispute he raises is paused due to the ongoing investigation of EFG.

72. The FCA rely on the statutory provisions as being the basis for the fees charged. It has considered the points of dispute raised by EFG but has determined that the fees are due from EFG. The fees have not been waived, but they have not been chased pending the outcome of the Petition.

Fees owed to FOS – FCA £46,800, EFG £14,950

73. EFG accept that fees are owed to the FOS but assert the correct figure is £14,950. This is on the basis that £31,200 of the FOS fees will be covered by its insurance policy (2019/2020). The FCA accepts that those fees are covered by insurance, being the 2018/2019 policy.

VAT owed to HMRC (Roth Turbines Ltd) – EFG £4,930.75, FCA £5,848.14

74. As set out above, there remains a VAT liability owed to HMRC in relation to the invoice of Roth Turbines Ltd. The FCA assert that the sum owed is larger than that asserted by EFG because none of it has been accounted for.

Certain Bridge

75. EFG disputes that there is a liability. As set out above there is an unassessed costs order against EFG as well as the counterclaim itself. The FCA considers that essentially the Certain Bridge line item is neither an asset or a liability.

EFG Petition Costs – EFG zero, FCA -£188,612.81

76. EFG asserts that the balance sheet should be considered on the basis that no winding up order will be made against it and additionally that it will be able to trade in the future with the relevant authorisations. On this basis, it asserts that an order for costs against the FCA will be made in favour of EFG. The FCA disputes that this is the correct approach but it has set out in the schedule I have used above that even if the costs are not recoverable from the FCA, they would be recovered under the relevant insurance policy. This explains that reference to ‘with costs recovery’ or ‘without costs recovery’ in the above schedule. EFG accepts that the costs would be recoverable under the relevant insurance policy.

The redress claims, associated costs and the insurance policies

77. As is set out above, it is accepted by the FCA and EFG that £31,200 of the FOS fees are covered by the 2019/2020 policy as being fees which relate to Magna Group or Dolphin claims. This would reduce the liability to the FOS accordingly to £14,950. The FCA accepts that there may be insurance cover for this sum as well but that is not clear at this stage. The total available under the 2019/2020 policy in relation to potential redress claims relating to Magna Group and Dolphin is £334,295.66. This produces a net sum of £303,096 available to meet redress claims under this policy, currently in the region of £2.7 million but the majority is disputed by EFG. The 2018/2019 policy potentially covers both the petition costs as well as the DAC outstanding fees.

Future business plans

78. EFG presented no formal business plan. The 2022 business plan which had been submitted to the FCA is not relied upon. As explained by Mr Assersohn KC, EFG rely upon what is set out in Mr Baldwin's witness statements as to the future trading plans of EFG. These plans depend upon EFG being able to trade with its FSMA authorisations. In particular, Mr Assersohn relies upon the Cluberly proposed investment in EFG which totals £200,000, although a payment of £15,000 has already been made. Cluberly will obtain a 9.9% shareholding and will license EFG to operate and manage Cluberly's fintech bespoke investment portfolio to be launched on an app. Mr Baldwin also relies upon what he states is interest from high net worth individuals to invest in EFG. He provides no further details relating to this potential interest. He also relies upon what he says are commitments from interested parties to provide future business to EFG. These include 6 letters dated between 13 August 2024 and 21 November 2024. One of those letters relates to a proposed engagement by Roth Turbines Ltd. One of the other letters of engagement relates to NVH Global. Both of these companies are also claimed to owe sums to EFG. There is no update in relation to any of these proposed future business activities, or some future business plan relating to the future profits or turnover projections from these potential business opportunities.

Mr Baldwin as a witness

79. Mr Baldwin was overall a reliable witness in that he answered the questions put to him. His view of matters was one where he certainly believed that EFG had a future and would be able to trade without difficulty if current restrictions were lifted and the authorisations restored. In my judgment, Mr Baldwin consistently

presented an overly optimistic view of the future prospects of EFG. He was unable to accept that the previous trading history of EFG was such that its future trading prospects were somewhat limited. He firmly blamed the FCA for the current position of EFG and also referred to both his health problems as well as Ms Pietka's due to the length of the investigations carried out by the FCA.

80. In my judgment, he also presented an overly positive view in relation to the existence and the value of EFG's assets. By way of example, in relation to Metro Assets, he was clear that his valuation was correct, but that was based really only on his opinion based on his experience. It was not backed up by any documentation. Equally, he was unable to accept matters which, in my judgment, demonstrated that his view was clearly incorrect. For example, his denial that the £15,000 from Cluberly was not a liability but at the same time he accepted that it was not a gift.
81. He was unable to answer properly why Mr Sullivan's recent share purchase offer had a condition of the dismissal of the petition. In my judgment, this condition was his idea.
82. In relation to the redress claims, Mr Baldwin's approach was consistently one of disputing any liability. He accepted only a very small number of the current redress claims as potentially having merit. He was unable to accept that some of the claims which had been successful against EFG had dismissed effectively the defences he wanted EFG to run against the majority of the claims. Mr Baldwin's approach included contesting both the two provisional determinations as well as almost the vast majority of the investigator determinations adverse to EFG. He was asked about the failure to pay two of

the final awards for a prolonged period of time. His evidence was unsatisfactory and demonstrated that he did not view even final awards as claims which could not be contested in some way or delayed for no good reason. His approach was also clear in relation to the outstanding FCA fees where again he was unable to accept that those fees were owed by EFG and continued to maintain that they were disputed. This demonstrated an inability to accept matters facing the company which he wanted to be able to operate successfully in the future.

83. I agree with Ms Cooke that Mr Baldwin's approach is one of a combative stance to adverse decisions. He asserted in his evidence that EFG was able to pay any liabilities which would arise over the lengthy period of time before any such liabilities would become due. I formed the distinct impression that Mr Baldwin's attitude to all these claims would be to defend and contest for as long as possible, taking any challenge available and prolonging any payments which ultimately had to be made by EFG. It is very clear that his attitude coloured his assessment of the outstanding redress claims. I find it unbelievable that EFG is unable to accept that any of the redress claims it faces now are valid. Mr Baldwin was at pains to assert that even claims which he accepted may have potential merit were not accepted by him.

84. I agree with Ms Cooke that Mr Baldwin's assessment of the outstanding redress claims is premised on him taking an overall positive view of defences available to EFG and in particular defences which had been run by EFG but which the FOS had dismissed in its determinations.

85. I therefore place little weight overall on his view and assessment not only of the value of assets of EFG but importantly as to the merits or otherwise of the

outstanding redress claims. Equally, his assessment of the future business plans of EFG is equally approached by him on an overly positive way with very little evidence to back up his view.

Is EFG balance sheet insolvent? Discussion

86. In considering the balance sheet, I have not relied on the petition costs as a liability of EFG. This is not on the basis that I have pre-judged the issue of this liability, but on the basis that in so far as this is a liability of EFG, it is accepted that it is covered by the 2018/2019 policy and that there is sufficient left in relation to that policy to cover the costs liability. Equally, I have given credit for liabilities which it is agreed are covered by one of the insurance policies or potentially covered by the insurance policies.

Assets

87. **Metro Assets-** In my judgment, I am not satisfied that there is a real basis for the value placed upon the shares by Mr Baldwin. He is not an expert. He provided little more than his reliance on certain previous share transactions and his belief. He presented no documentation to support his belief. He dealt with none of the issues raised by Mr Aslin, such as information relating to the recoverability of the liabilities on certain balance sheets of the four companies. Significantly, there was before me no evidence of the transactions, including the recent one from Mr Sullivan, being at arm's length and representing open market value. There is no evidence from Mr Sullivan. Mr Baldwin was unable to explain the condition as to the dismissal of the petition placed on the share offer. In my judgment this was suggested and proposed by Mr Baldwin in the hope it would assist his case. There is no logical reason as to why the valuation

of shares in an investment company should be reliant upon the dismissal of the petition against EFG. I place therefore little weight on the email from Mr Sullivan.

88. EFG have had ample opportunity to provide Mr Aslin with the further information necessary for him to consider the points raised by Mr Baldwin. No additional report for Mr Aslin was obtained. I accept the report of Mr Aslin. Net asset value is the method he relied upon and no further information was provided by EFG for him to revise his opinion. I prefer the evidence of Mr Aslin and will accept the value placed on the shares by him. Mr Baldwin's evidence is given little weight for the reasons I have set out above.

89. **Software licence- Folio Bridge-** In my judgment, there is no evidence supporting this as an asset of EFG. There is no evidence relating to the value placed on it by Mr Baldwin which is simply the sum he asserts was invested by the company. There is no evidence relating to what this is worth in the open market. The failure of EFG to refer to this in its accounts accurately is significant as is the failure to list it in the company's reply to the FCA. I reject on the evidence that this asset exists as well as the value placed upon it.

90. **Roth Turbines Ltd-** In my judgment, even if this is an asset of EFG, it is effectively neutral on the balance sheet. This is because there is a liability of VAT owing. The value of what is said to be owing as a liability differs between the FCA (£5,848.14) and EFG (£4930.75) . The evidence shows a real concern that this asset is actually realisable. It has been outstanding for more than 18 months. It has only recently been accounted for by EFG in its latest VAT returns. I am not prepared to provide any value to it but propose to treat it as a

neutral balancing item in that in so far as it exists, it is met by a liability for VAT. That is a generous approach to EFG.

91. **NVH Global** – In my judgment, there is a lack of evidence supporting this asset. There is no invoice produced. I reject this as an asset based on the evidence before me.
92. **Certain Bridge** – In my judgment, this is incapable of being an asset on the evidence before me. Mr Baldwin asserts that EFG has a good claim on the merits and that it will be successful. He provides no evidence in support of this assertion. Moreover, it is impossible to ignore that Certain Bridge has an unassessed cost order in its favour as well as a counterclaim. I place little, if any weight on Mr Baldwin's assertion that EFG has a good claim and the counterclaim will be dismissed. There is no evidence which supports his assertion. He also ignores the costs order. I propose to value this as zero as an asset but also value as zero as a liability. It is a balance sheet neutral item.
93. **Hunter Jones** - No value has been placed on this asset by EFG. In my judgment, I am not able to place any value on it. Currently, Hunter Jones have replied to the letter before action denying liability. EFG have not sought to place any value of this chose in action. For current purposes, no value is placed on it.
94. **Overpayment by Protean/Close Brothers** – There is no evidence that these overpayment claims will be successful or are likely to be successful. As to the Close Brothers claim, it has already been rejected. In relation to the Protean overpayment, there is no evidence to support this. These claims are in my judgment typical of the approach taken by Mr Baldwin in believing that EFG

has valuable assets effectively because he believes that to be the case. I reject both of them as assets.

95. **HMRC Credit** - In my judgment, credit can be given to this for this but I agree with the FCA that there is a VAT liability which needs to be taken into account. This therefore creates a further balance sheet neutral item with a corresponding VAT liability on the liability side.
96. In conclusion, the assets are valued in line with the FCA case set out in the schedule above. (£40,236)

Liabilities

97. **The Cluberly app/Cluberly UK Ltd advance**- in my judgment, this is clearly a liability. The evidence does not support that this sum was advanced as a gift. Mr Baldwin asserts there is no contractual liability. In my judgment, he is merely avoiding the obvious, namely, that this is part of the overall £200,000 loan to be advanced by Cluberly. I reject that in some way the £15,000 paid over by Cluberly is not a liability. On the evidence before me, it was provided as part of the £200,000 loan.
98. **FCA Fees** - I also reject on the evidence that there is any dispute relating to the sums owed by EFG to the FCA . In my judgment, the fees are a liability for EFG on its balance sheet. No real grounds of dispute have been raised by Mr Baldwin beyond he disputes it and says it is unreasonable. That is again indicative of his combative style.
99. **FOS fees** -Whilst the liability for these fees is £46,800, I accept that £31,200 is covered by one of the insurance policies. This leaves £14, 950. I am prepared to

also consider that this liability may also be covered by one of the insurance policies, but in so far as it is covered, this will reduce the sums which remain available to pay redress claims under the relevant policy.

100. **DAC Beachcroft fees** – These remain a liability in that they have not been waived by DAC although it has stated it is not currently seeking payment for these historic fees. These fees may be covered by one of the insurance policies, but currently cover has been rejected. Despite this rejection, I am prepared to treat this liability as being capable of being met by the insurance policy thereby providing EFG with the benefit of the doubt in the current assessment of the balance sheet.

101. **Other liabilities** - As I have already indicated above, Roth Turbines and its corresponding VAT liability will be balance sheet neutral. The same approach arises for the Certain Bridge asset/liability claim. The remaining assets and liabilities have been taken into account on the agreed values set out in the schedule.

Conclusion on balance sheet insolvency (without consideration of contingent liabilities)

102. Accordingly, in my judgment, EFG is insolvent on a balance sheet basis. The liabilities are a total of £65,871.87 which include giving credit for the liabilities covered by the insurance policies. If a further credit due to the insurance policy is given for the additional £14,950 relating to the FOS fees, then the liabilities total £50,921.87. The assets are a total sum of £40,236. This is without any consideration being given to the value to be placed on contingent liabilities in relation to the redress claims.

Valuation and consideration of contingent liabilities and the proposed business plans and future trading

103. EFG does not provide any actual figure by way of valuation of contingent liabilities. EFG asserts that (1) there would be sufficient insurance policy cover in relation to any liabilities, and (2) any potential liabilities would not fall due for a considerable period of time and can therefore be discounted , and (3) any eventual liability can be met by its proposed trading providing it obtains its authorisation back from the FCA.
104. This is not a case where there is evidence of ongoing trading which will easily meet any liability falling due in relation to redress claims. In my judgment, there is very little, if any, reliable evidence to the future trading prospects of EFG. Mr Baldwin blames the FCA for the current position of EFG and asserts that EFG's trading position has been weakened as a result of regulatory action. In considering the future trading prospects of EFG, I have considered the matter on the basis that EFG will be able to recover its FSMA authorisations. Even on this basis, in my judgment, there is a lack of any realistic future business plan or forecast evidencing the potential ability of EFG to meet future redress claim liabilities. Its historical trading provides no assistance. It provides evidence of very modest trading even before the restrictions imposed in October 2024.
105. This therefore makes it important to consider the value of the redress claims to ascertain whether EFG can really be expected to meet those liabilities. Those liabilities may not fall due for some time. In my judgment, this is partly due to the attitude and approach of Mr Baldwin who has asserted that the claims will

be defended and basically challenged in every way possible before falling due. There are actually no claims which Mr Baldwin actually accepts EFG is liable for. Bearing in mind the trading history of EFG and the redress claims already established by final awards, I do not accept that Mr Baldwin's assessment is correct.

106. The relevant insurance policy (2019/2020) is limited now to a total sum of £303,096. If the balance of £14,950 is also taken out of this policy, then the remaining sum available for meeting redress claims is £288,146.
107. The current total of redress claims is around £2.7 million. Of those, Mr Baldwin asserts, at its highest, only about £362,600 potentially have merit. In relation to the investigators' determinations, he asserts only £179,000 potentially have merit and in relation to the provisional decisions, totalling £193,000, these are disputed by EFG. As set out above, I place little weight on Mr Baldwin's assessment of claims. They are not supported by any independent evidence. However, even if I accept his values, there is clearly a large sum not covered by the balance of the insurance policy. Even if I did accept that EFG is entitled to ask for the provisional determinations to be treated as disputed, the total of those accepted as potentially having merit total £541,600 (being £362,600 plus £179,000). In my judgment, this is the minimum value to be placed on the contingent liabilities. This excludes the provisional decision totalling £193,000 which is an approach perhaps too generous towards Mr Baldwin's assessment of the value of the redress claims.
108. Even if I were to reduce this further because Mr Baldwin asserts that these only 'potentially' have merit, in my judgment it is simply not believable to reduce

these claims to less than the current insurance limit of £288,146. In my judgment, it is clear that the redress claims will greatly exceed the current insurance limit. There is no evidence that EFG will be able to trade profitably to be able to meet those redress claims, within one year or even two years.

109. Once the contingent liabilities are taken into account, the insolvent position of EFG is beyond doubt, even when a generous approach is taken in relation to those valuations. EFG is insolvent on the balance sheet test. It is impossible to place no value on the contingent liability claims in a case where the evidence fails to establish any real future profitable trading sufficient to meet contingent liabilities as and when they fall due. On the facts of this case, it makes no difference that the contingent liabilities do not fall due for some period of time because during that time, there is no evidence of potential future trading. On the evidence, any potential future trading is limited and not capable of meeting the significant contingent liabilities. EFG is insolvent and accordingly a winding up order can be made on those grounds.

110. On that basis, I will not consider the alternative case of EFG being cash flow insolvent. I will consider in summary terms whether there are grounds for making an order on the just and equitable grounds.

Just and equitable winding up

111. The FCA relies on the following :-

(1) EFG was responsible for supervising Hunter Jones and it is apparent that there was a significant failure to do so;

- (2) EFG has a combative approach to claims in dealing with the redress claims.
The approach is not just defending every claim, but appealing any adverse claims including asserting that EFG will seek judicial review of any decision adverse to it. This is despite its obligations to treat its customers fairly and to address the complaints fairly as well as cooperate with the FCA;
- (3) There is evidence of a failure to pay final awards for months in one case and in the other case for years for no good reason. EFG has demonstrated an inability to produce accurate financial information relating to its position. There is a real lack of clarity including the actual existence of assets including some which were not raised before in documents sent to the FCA. There is also evidence of sums due to EFG being paid by way of a transfer of shares from Roth Turbines Ltd to Metro Assets. There is no explanation or justification as to why a liability to EFG should be paid by a transfer of shares to a different entity;
- (4) There is a real lack of clarity as to the future business proposals of EFG. These have changed since the issue of the petition and currently lack any real detail, cashflow prognosis or any future business planning;
- (5) EFG has done very little business the last five years. The restrictions were imposed in October 2024, but there is a lack of historical trading to support the ability of EFG to trade in the future profitably. The future trading is reliant on the restrictions being lifted but this remains uncertain;
- (6) It is in the public interest that EFG be wound up because this would enable the FSCS to take over the administration of the redress claims thereby

allowing for a more orderly and less delayed procedure than the company who has delayed at every opportunity.

112. In reply, Mr Assersohn relies upon the enormous strain placed upon the directors by the ongoing FCA investigation. Mr Baldwin was so busy dealing with questions raised by the FCA that he was not able to devote more time to EFG's business. It is unfair to rely upon the inability of EFG to trade due to the restrictions as part of the overall case against EFG. Equally, it was submitted that the process in the Tribunal should be allowed to proceed, which is unlikely to occur in the event that a winding up order is made. EFG maintains that the FCA were wrong to have imposed restrictions on EFG. EFG also relies upon its proposed action as against Hunter Jones to be able to meet its liabilities.
113. As to the issues on disputing every claim, it is submitted that EFG is entitled to defend itself and the evidence demonstrates that not all the claims brought against it have been successful. Those which have not been successful, EFG has paid. It is not in the public interest to wind up EFG on the basis that the FSCS will take over the administration of the redress claims. The complaints about the lack of accurate financial information need to be placed in the context of the severe strain which the directors of EFG found themselves in due to the actions and the investigations of the FCA.
114. Reliance is also placed on the fact that the conduct which forms the basis of the redress claims has ceased. The two ARs are no longer acting with the authority of EFG.

Conclusion on just and equitable winding up

115. In my judgment, the starting point relating to just and equitable winding up is that this is an insolvent company. In my judgment, it is not in the public interest to allow an insolvent company to remain in existence with no prospects of being able to trade out of its insolvent position or pay its contingent liabilities. It is equally not in the public interest to allow an insolvent company to seek to deal with the outstanding redress claims. Redress claims should be dealt with in an orderly fashion and the evidence does not allow for that bearing in mind the financial position of EFG.
116. I also accept that the combative approach of Mr Baldwin is something to be taken into account. I accept that EFG is entitled to defend itself, but I cannot accept that the entirety of the £2.7 million redress claims can be treated as being of no real value. It is clear that EFG is ignoring the validity of defences which it has already run and which have been dismissed. It is also of concern that in at least two claims, there was a delay in paying the awards for no good reason.
117. In my judgment, there is force in the FCA's submission that on the evidence EFG has failed to treat its customers fairly and to address the complaints fairly as well as cooperate with the FCA. In my judgment, the approach to the redress claims historically from Mr Baldwin is of concern. It is not in the public interest to allow a company which fails to recognise complaints to the extent that it considers despite the awards and findings already made, that there will be very modest future liabilities out of the £2.7 million.
118. I consider that there are grounds for making a winding up order on just and equitable grounds as well as on the grounds that EFG is insolvent as set out above. I have considered carefully the issues raised by EFG as to the strain

which has been put on the directors of EFG. Equally I have considered that EFG submits that it should be allowed to defend itself at the Tribunal hearing. A winding up order now will mean effectively the end of the company. I have also weighed up the insolvent position as well as the lack of future prospects of trading. I have taken into account the points set out above made by Mr Assersohn about the position of the directors as well as their aspirations to be able to continue to trade the company as well being allowed to make their case before the Tribunal. In the exercise of my discretion, I consider that a winding up order should be made.