



# Digest

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## Featured articles

### **LMEs Under Attack:**

In the light of ever-increasing and more ambitious use of LMEs, William Willson KC and Angus Groom consider possible challenges and how they might succeed

### **Sequana: A map for the advisor and some steps into uncharted territory:**

Rabin Kok, David Fletcher and Freya Maclean-Boyd of Farrer & Co, on the evolutionary role of directors' liabilities and two previously ignored aspects of *Sequana*

### **Enforcing foreign arbitration awards in the BVI: laws and limitations:**

Stefanie Wilkins and Sara-Jane Knock (Withers) discuss the recent decision in *Abdul Kadir Al Muhaidib & Sons Company v Kamel*



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CHAMBERS BAR AWARDS

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## Sequana: A map for the advisor and some steps into uncharted territory:

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# From the editors



Marcus Haywood and William Willson

## Welcome to the April edition of the South Square Digest

A very warm welcome to this issue of the South Square Digest, particularly if you are reading this on a visit to London for INSOL.

As we go to press, the US and Iran are 10 days into a 2-week ceasefire, sending global stockmarkets skyrocketing and the price of oil plummeting by nearly 20%. However, the future remains very uncertain – the Strait of Hormuz is still largely closed, the US and Iran initially struggled to agree on what the

main terms of the ceasefire in fact are, and the US has mounted its own blockade. With oil hovering near \$US 100 per barrel and the spectre of stagflation eerily present, we head into the summer amidst the largest energy crisis in history, and with murmurings of a recession that was not in contemplation at the start of 2026. It is no surprise that the Insolvency Service has announced increased amounts of corporate insolvencies in the last month, as the economy grapples with cost pressures from

the third Gulf War which could push more firms to the brink.

On a more positive note, Artemis II completed a 10-day crewed mission around the Moon in April 2026, breaking records for human distance from Earth: See our front cover.

Turning to further happier events, we begin this issue with warmest congratulations to William Willson KC (one of the Editors of the Digest) and Rory Brown KC, two members of Chambers

who were elevated to Silk in the appointments ceremony in March 2026. The appointments process is renowned for its rigour and elevation is a real achievement. Well done, William and Rory!

Neatly bookending our newest Silks, towards the back of this issue is brief synopsis of the life of Francis Bacon, the first ever Queen's Counsel. Bacon had an extraordinary career (though seemingly in debt on a permanent basis) and, as a member of Gray's Inn with a splendid bronze statue right outside our Chambers, we celebrate 400 years since his death on 6 April 1626.

Also within this issue we have rather more learned items, co-incidentally exploring uncharted territory and the so-called 'twilight zone' and linking nicely with our cover image of 'Hello, World' taken by Artemis II astronaut Reid Wiseman.

New Silk William Willson KC and Angus Groom turn the spotlight on liability management exercises in 'LMEs Under Attack'. In the light of ever-increasing and more ambitious use of LMEs, William and Angus consider options open to dissenting creditors, and the consequences and novel issues that the courts will face if, and when, challenges become more frequent.

Continuing the theme of exploration, South Square's Rabin Kok, together with David Fletcher and Freya Maclean-Boyd of Farrer & Co look how directors' liabilities evolve throughout the life of a company and explore two hitherto ignored aspects of 'Sequana: A map for the advisor and some steps into uncharted territory'.



Limbering up for what we hope will be warmer weather, Chambers' Stefanie Wilkins and Sara-Jane Knock of Withers transport us to the BVI with 'Enforcing foreign arbitration awards in the BVI' where they discuss the laws and limitations highlighted by the recent decision in *Abdul Kadir Al Muhaidib & Sons Company v Kamel*.

Professor Christoph Paulus returns with another 'Euroland' and selects some of the most interesting cases from the continent (with good news for earth-bound travellers) and notes the progress, however slow, on harmonisation of the EU's 27 differing insolvency laws.

A new edition of *Doyle, Keay and Curl: Annotated Insolvency Legislation* has been published. This leading author team from South Square provide practical guidance on the key primary and secondary insolvency legislation and we can offer a 10% discount to Digest readers: see page 15.

We are also delighted to announce that the *FromCounsel R&I Knowledge*, the collaboration between South Square and FromCounsel, is now live, giving

practitioners clear, practical and continuously updated guidance in one of the fastest moving areas of the law. See pages 70-73 for details and how to book a trial.

As always, our junior members of Chambers have been industrious in producing the case digests. Many thanks, as always, to them for their hard work. News and legal gossip can be found in the News in Brief section and the South Square Challenge for this issue has a judicial slant.

We do hope you enjoy this edition of the Digest. If you find yourself reading someone else's copy and wish to be added to the circulation list, please send an e-mail to [kirstendent@southsquare.com](mailto:kirstendent@southsquare.com) or sign up on our website and we will do our best to ensure you receive the next and all future editions.

If you have any feedback in relation to the Digest, positive or negative, do get in touch. As always, we are tremendously grateful to all our authors. The views expressed by individual authors are theirs alone.

**William Willson KC & Marcus Haywood**

# New Silks at South Square

Chambers is delighted that both William Willson and Rory Brown were both elevated to Silk in the appointments ceremony on 23 March 2026.

The rank of King's Counsel is awarded only to advocates who have demonstrated exceptional skill, expertise, and distinction in the conduct of advocacy, with the appointments made by His Majesty the King, following consideration by the independent King's Counsel Selection Panel. The application process is renowned for its rigour and demands, with intensive scrutiny of the applicants' practice over a three-year period. We offer both William and Rory our warmest congratulations on this significant achievement.

## William Willson KC



William Willson KC with his son, Rafe

William joined South Square in October 2007 after successful completion of his pupillage here. He has been a pupil supervisor since 2014, and the co-editor of the Digest since June 2018.

William divides his practice between domestic/cross-border insolvency and restructuring (contentious and advisory), banking and finance, commercial fraud/asset recovery, and general commercial/commercial chancery work. Much of William's work has an international dimension, and he has particular experience of cases with a CIS/Middle East nexus. He has been called to the Bars of the Cayman Islands, the British Virgin Islands and Gibraltar, appearing (both as sole/junior Counsel) in the Court of Appeal of the Cayman Islands,

the Court of Appeal of the Eastern Caribbean Supreme Court and the Privy Council. He also appears and advises on cases in the UAE (the DIFC and ADGM), the Channel Islands and Hong Kong.

Ranked in the legal directories in core areas of Restructuring & Insolvency, Banking & finance, Commercial Fraud, Commercial Litigation, Company and Offshore, directory quotes from William's time as junior counsel include:

*"A star junior barrister and very responsive – great to work with."*

*"Very intelligent and responsive with a great feel for the courtroom and the way the judge is thinking."*

*"William is bright, technically good and stands out as an advocate. He is strong and very persuasive in front of the court, and he has the respect of the Bench."*

*"Easy to work with, very commercial and his skeleton arguments are always excellent. He is very clever and very persuasive."*

*"Astute, commercial, very clever and excellent drafting. Gets across the issues very quickly so great on urgent matters."*

An experienced trial lawyer – as a junior appearing as co-advocate in the Supreme Court and as sole Counsel in the Court of Appeal – William has appeared in many high-value, high-profile pieces of litigation both at home and abroad over the last 10 years (e.g. *Coroin* and *Lehman* in London; *Primeo*

in the Cayman Islands; and *NMC* in Abu Dhabi) – acting both for claimants and defendants. He is well-versed in interim/urgent applications in both the Chancery Division and the Commercial Court (including freezing orders, disclosure orders, passport orders). He also has experience of group litigation and class actions, recently advising in relation to claims for mesothelioma and asbestosis).

In the fields of restructuring and insolvency, William has considerable experience of officeholder litigation. In addition, he frequently acts in relation to restructuring plans and schemes of arrangement under the Companies Act 2006 (recent instructions include *McDermott*; *Aggregate*; *Thames Water*; *Petrofac*; *Southern Water*; and acting for HMRC in *Great Annual Savings*; *Enzen*; and *OutsideClinic*). He also has considerable experience of special administrations (in particular the Investment Bank Regulations and the Payment and Electronic Money Regulations, where he has appeared in many of the leading cases).

Before coming to the Bar, William lived, studied Russian and worked as a journalist in Central Asia, where he specialised in terrorism and intelligence matters. He has worked for *BBC Newsnight* and a foreign affairs documentary producer for Channel 4. He also worked on the *Government Inspector*, which won 3 BAFTAs, and continues to produce short films/documentaries.

## Rory Brown KC



Rory Brown KC with his family

Rory has taken silk at just sixteen years call. He spent much of the last year in the trial of one of the Lawyer Top 20 cases of 2025. Rory acted as sole trial counsel for a group of four defendants in the action brought by Kuwaiti government organisation, the Public Institution for Social Security (PIFSS) against its former late director general, multiple banks, funds, and financial intermediaries for US\$1 billion

(plus interest). The trial was heard in the Commercial Court between mid-March 2025 to March 2026 at took up 133 court days and featured 13 KCs from the leading London commercial sets.

He is ranked as a leading individual in the following categories across Chambers and Partners, Legal 500 and Chambers and Partners Global and High Net Worth: civil fraud, commercial chancery, insolvency, traditional chancery, and private client litigation.

Directory quotes from Rory's time as junior counsel include:

*"Rory has the advocacy skills of a silk. He is completely unflappable and deals with the most difficult points with poise and equanimity."*

*"Rory gets to the crux of a matter and identifies the issues that need to be addressed. His advocacy and cross examination for a witness are very impressive."*

*"His advice is invaluable in multi-faceted and complex cases. I find him extremely approachable and excellent at what he does."*

*"Rory is a natural advocate, measured, meticulous and ruthless. A brilliant cross examiner and super strong on the academic side of fraud. Particularly good at the fraud/insolvency cross over. He is often used on the tough cases because he can get results."*

*"An incredibly effective opponent with an impressive legal mind, who deals with the most difficult points smoothly."*

Rory has commercial-chancery practice focusing on litigation in South Square's core practice areas: insolvency and restructuring; commercial dispute resolution; and contentious trusts.

His practice has a heavy emphasis on civil fraud, in particular cross-border investment fraud, and asset recovery (including the full gamut of injunctive relief applications). As well as advising and representing clients in litigation at all levels in England and Wales, he has advised and represented clients in the courts of the DIFC and has also advised and assisted in substantial Bermuda, Jersey, and Hong Kong proceedings and arbitrations. Prior to taking silk, Rory commonly led counsel teams.

Rory regularly acts for clients across the following industry sectors: commodities, fashion, aviation, oil and gas, reinsurance, football, motor-racing, utilities, sustainable energy, banking, investment markets, and financial services.



# LMEs under attack:

## *Possible challenges and how they might succeed*



**WILLIAM  
WILLSON KC**  
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**ANGUS  
GROOM**  
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With the ever-increasing and more ambitious use of out-of-court liability management exercises mechanisms for debt restructuring, dissenting creditors are having to consider the possible claims that they can bring to challenge an unfair transaction. In this article, we consider the possible claims that might be brought, the consequences of a successful challenge, and the novel issues that the courts will face if and when challenges become more frequent.

### Key Points

- Liability management exercises are becoming more common and more ambitious, no doubt driven in large part by the way that these out-of-court processes hand more power to debtors and leading creditors in a way that makes challenges more expensive and less appealing.
- In this context, dissenting creditors must consider the possible claims available to them at an early stage. We consider pure

contractual claims, economic tort claims and directors' duty claims, but consider that the most beneficial and successful actions are likely to be based on the abuse of majority power principle.

- Abuse of majority power is an English law principle that prevents contractual powers from being exercised otherwise than bona fide for the benefit of the class of creditors as a whole.
- The consequences of a successful challenge will depend on the specific terms of the transaction and the extent to which it might be unwound, but debtors may seek to short-circuit a challenge by proposing an in-court restructuring instead.

### The Difficult Backdrop to LME Challenges

A liability management exercise (LME), is an out-of-court mechanism that usually makes use of contractual powers under existing debt documents to adjust a company's capital structure. They can vary widely in their precise scope, but common features include new money injections, maturity extensions, covenant release and outright debt release (for the benefit of debtors) and adjustments to priority structures such as up-tiering or drop-downs (for the benefit of lenders).

LMEs are being increasingly relied upon because of the benefits that they can provide both to debtors and to those creditors who are able to control the process. Court-based restructuring tools have become increasingly burdensome. In the UK, a number of recent decisions by the Court of Appeal and High Court have stressed the need for debtors to demonstrate fairness and reasonable negotiation with all creditors if the court is being asked to impose a restructuring plan on a non-consenting class of creditors (*Saipem SPA v Petrofac Ltd* [2025] EWCA Civ 821; *Re Waldorf Production UK PLC* [2025] EWHC 2181 (Ch)). This is a continuation of a line of jurisprudence that has consistently stressed the need for any differential treatment of different groups of creditors to be strictly

justified and scrutinised by the court (*Re AGPS Bondco Plc* [2024] EWCA Civ 24). As a result, challenges in the English courts have become more frequent, and restructuring plans have become more expensive and so less attractive to debtors and controlling creditors as a result.

By contrast, challenges to LMEs by dissenting creditors who complain of unfairness are much more difficult. As a basic point, most court-based processes require significant supermajorities of creditors for a proposal to be approved, whereas some LMEs can be implemented with the support of only a bare majority of creditors (or of a group of creditors) if that is permitted under the relevant debt documents. Unlike in court-led restructurings, there is also no ready forum for bringing a challenge, and so any challenge needs to be instigated by the challengers themselves and at their own cost. Excluded creditors face a significant informational disadvantage because, by definition, they have been left out of the design of the transaction and so they may have very little information about what the transaction even consisted of when they need to formulate and commence their challenge. This has often led creditors to rely on disclosure applications as the first step in any challenge –and disclosure orders have recently been made in relation to the Hunkemöller (United States District Court for the SDNY, 15 October 2025) and Hurtigruten (High Court of England and Wales, 20 January 2026, [2026] EWHC 216 (Ch)) restructurings.



In *Hurtigruten*, where one of the authors acted for the successful applicants, the court noted the information asymmetries that were baked-in to the way that these transactions are implemented, and that this pointed in favour of making a disclosure order. The authors consider that, whilst pre-action disclosure is regarded by the English court as unusual in a commercial context, the position of a minority creditor who has been excluded from a transaction that has been purportedly imposed upon them under documents to which they are a party is one that is likely to have greater sympathy from the court. Even once they have the information they need, creditors and their advisors need to formulate freestanding causes of action that they can bring to court, as compared with court-restructurings where the debtor and supporting creditors bear the burden of demonstrating why the court should approve the proposal and impose it on creditors.

The *ex-post* nature of challenges also has an impact on the availability of remedies, as a creditor will normally be seeking redress long after the transaction has been (at least purportedly) implemented. We consider the issue of remedies further below. One especially salient feature, however, is the way that transactions are designed to incentivise co-operation and shut down opposition. Before a transaction is implemented, creditors are offered “early-bird” fees and other benefits to join lock-up agreements that prevent them from opposing the transaction, and so many creditors might give their support out of a sense of inevitability rather than free choice. After completion, minority creditors who refuse to support the transaction are often required to agree to deeds of release and other conditions to even participate in their share of the transaction outcomes (although we consider below the untested question of whether such requirements are valid and effective at English law). The result is that dissenting creditors often need to pay a certain and immediate economic cost just to keep open the optionality of bringing a future challenge to the transaction at a later date, and before they have all the relevant information.

## Possible Challenges to an LME

Notwithstanding these formidable challenges, the more frequent and more ambitious use of LMEs in the market has forced creditors to consider the possible challenges that are available to them.

LMEs are, at their heart, contractual mechanisms. In a simple case they might involve the exercise of a power to vary the terms of a finance document (or set of finance documents) that is granted under the document(s) to a specified majority of creditors. In more complex cases, it will be common for an LME or part of it to be implemented by a distressed disposal transaction as part of the enforcement process under an intercreditor agreement.

Because of their contractual nature, the most obvious claim that can be brought to



challenge an LME is a technical breach of contract claim. If a variation power has been exercised by a group of creditors, the dissenting group of creditors may argue that what has been done is outside the scope of that power and so impermissible under the terms of the document. Technical breach of contract claims, however, are unlikely to arise in practice. The express terms of finance documents are generally relatively clear about what can and what cannot be done, and well-advised debtors and majority creditors are likely to only try and implement a transaction that is technically possible within the documents. As a result, challenges to restructurings in the English courts based on the express provisions of the relevant debt documents are few and far between, and they are generally unsuccessful as was seen in relation to the *Stabilus restructuring (Saltri III Ltd v MD Mezzanine SA Sicar & Ors [2012] EWHC 3025 (Comm)* and

the *Galapagos restructuring (Galapagos Bidco SARL v Kebekus & Ors [2023] EWHC 1931 (Ch))*.

A different kind of breach of contract claim is a claim based on abuse of power (sometimes referred to as abuse of majority power, or minority oppression). Even where finance documents give a majority of creditors the power to do something, English law nevertheless implies a requirement that the power is exercised by the majority *bona fide* and for the purpose of benefiting the class as a whole and not merely the individuals in the majority (see the authoritative statement by Viscount Haldane in *British America Nickel Corporation Ltd v MJ O'Brien Ltd [1927] AC 369 at 371 (British America Nickel)*). This principle is closely analogous to the equivalent principle that applies to majority resolutions of a company's shareholders which must likewise be passed by a majority acting *bona fide* for the benefit of the company as a whole (the analogy itself is drawn by Viscount Haldane in *British America Nickel at 371*; and in *Assenagon Asset Management SA v Irish Bank Resolution Corporation Ltd [2012] EWHC 2090 (Ch) (Assenagon)* at [43]–[44], referencing the principle as applicable to shareholder resolutions from *Allen v Gold Reefs of West Africa [1900] 1 Ch 656 at 671*). Where the purported exercise of a contractual power is impeached as an abuse of power, the exercise of power is invalid and void. However, it is not enough for a majority to simply do something that differentially and negatively impacts some subset of the class, it must be that the purpose for which the power has been exercised is a bad one (*Redwood Master Fund Ltd v TD Bank Europe Limited [2002] EWHC 2703 (Ch) at [105] (Redwood)*).

Such challenges may be difficult to prove in practice, but they should succeed if, for example, it can be shown that a majority acted for the purpose of conferring special collateral benefits on themselves specifically (*Redwood at [105]*), or if a majority is acting coercively to expropriate the rights of the minority (*Assenagon at [84]–[86]*). Indeed, just as a coercive exit consent was held to be an improper and invalid abuse of majority power in *Assenagon*, the authors also consider that



the normal practise of requiring dissenting creditors to agree to a deed of release (that extinguishes any claims they might have arising out of the transaction) in order to access their allocated outcomes under the transaction may likewise be subject to an abuse of power that is liable to be challenged on the basis of the same coercion (although potentially limited to cases where the transaction is already otherwise unsound). Abuse of power claims have been made in the pleaded claim to challenge the Hunkemöller restructuring that was issued in the English court in October 2025, and they have also been suggested (in the recent pre-action disclosure application referenced above) as the likely claims to be brought to challenge the Hurtigruten transaction. When giving judgment granting the Hurtigruten disclosure application (referenced above), Mr Justice Fancourt concluded at [20] that the anticipated claims based on abuse of process were “*legally coherent*”, and that “*As the applicants put it, there is, on first impression, a response that is called for from the intended defendants*”.

Outside of contractual claims, advisors are often asked to consider whether economic tort claims might be available. If there is a breach of contract, claims based on procuring a breach of contract or causing harm by unlawful means may be available, but they are unlikely to add much to the breach of contract claims and so they will rarely be pursued. In the absence of a breach of contract, an economic tort will have to be based on causing harm by lawful means through a lawful means conspiracy. Such claims require a challenger to show that the sole or predominant purpose of the conspirators is to cause them harm, and it is not enough to say that the harm is probable if the defendants can validly say that their true purpose was to protect or promote their own business interests (with the causing of harm being only a consequence or means to the end) (*Crofter Hand Woven Harris Tweed Co v Veitch* [1942] AC 435 at 441-442). Majority creditors implementing a transaction will almost always be in a position to rely on the promotion of their own economic position as creditors to defend against any such claims.



In any event, lawful means conspiracy is a legal doctrine that has an unclear rationale that is “*anomalous*” when applied to modern commercial settings, and such a claim “*will only succeed in the most exceptional case*” (*Civil Fraud*, 1st Ed. at 2-092) – and so almost certainly not as part of a challenge to an LME. As a result, economic tort claims will generally add little to the dissenting creditors’ arsenal.

The other category of claims that might be considered are directors’ duty claims that might be brought against the directors of a debtor company, especially where the insolvency or near-insolvency of a company means that English law imposes the “*creditor duty*” that requires directors to ensure that



they are mindful of the interests of creditors as a class (as confirmed by the Supreme Court in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25). However, such claims are unlikely to be actionable by individual creditors (rather than by the company itself), and they will also be of little assistance where majority creditors (rather than the company and its directors) are the key controllers of a transaction.

In light of the above, the authors consider that abuse of power challenges are likely to be the most common and most effective challenges that dissenting creditors can bring when faced with an LME being imposed upon them, at least where unfairness (of the kind that might be argued against an in-

court restructuring) is the main complaint. These claims are relatively untested and can face eventual difficulties to which the courts are alive (*Redwood* at [105]–[107]), and the practical approach of the court will no doubt develop further and be clarified as more cases inevitably come before the courts.

### Consequences of a successful challenge

If a dissenting creditor is able to successfully challenge the exercise of a contractual power to implement a transaction – either on the basis of non-compliance with the express contractual terms or because of a challenge based on the implied abuse of power restriction – then the usual result will be that the power has not in fact been exercised (or validly exercised) at all. Subsequent steps in the transaction will generally be invalid and/or in breach of contract. In principle, this means that a successful challenge could mean that the transaction has never been validly implemented at all, such that the court would unwind it and/or declare that it never took effect. In reality there may be limits to the extent that unwind is possible, and if unwinding or restitution of the pre-transaction position is not possible a dissenting creditor may only be able to claim damages. Even if a transaction cannot be fully unwound, however, a dissenting secured creditor may nevertheless be able to argue that their intentionally restructured/released security remains in place, giving them a proprietary claim in the transaction security that may well rank senior to any new security purportedly created under the terms of the restructuring.

If only a claim in damages is available, a claimant will be required to prove the damages which have been suffered as a result of the breach of contract, and which would not have been suffered “but for” the breach. This requires an analysis of what the correct counterfactual is for an ineffective restructuring transaction.

If the debates that have taken place in relation to in-court processes are any guide, this may lead to an argument between majority creditors

arguing that the counterfactual is an insolvency (in which creditors would have low recoveries) and dissenting creditors arguing that the counterfactual is an alternative transaction (in which they are treated more fairly and evenly). In the context of a restructuring plan, the relevant alternative is often justified by statements by the plan company's directors that they will take steps to place the plan company into such an insolvency process, and the court acknowledges that the directors are “*uniquely well-placed*” to make that assessment (*Re CB&I UK Ltd* [2024] EWHC 398 (Ch), [2024] BCC 551 at [91]), such that their evidence will usually be accepted if it appears “*rational and considered*” (*Re ED & F Man Holdings Ltd* [2022] EWHC 687 (Ch) at [39]). In the context of creditor enforcement actions it may well be that the views and evidence of different creditor groups will be more important, and the approach that the court will take to these questions in practice remains to be seen.

A key consideration of all parties will be the costs of any proceedings when compared with the possible costs and benefits of the proceedings as a whole. The use of lock-up agreements and deeds of release will often mean that only a (relatively) small minority of creditors will be in a position to mount a challenge, and that may reduce the quantum of claims in a way that makes taking proceedings to trial undesirable on all sides. That said, it may well be that a deed of release will not effectively limit the impact of a successful challenge if that court concludes that the transaction was never properly implemented at all. All of these questions will need to be considered further, if and when cases come to trial for the first time.

As a final point, it is necessary to consider the impact that an in-court restructuring might have in the context of a challenge to an LME. As a challenge to an LME is likely to involve proceedings that may take years to reach a conclusion, it is entirely possible that a debtor will seek to short-circuit the risk and uncertainty of such a challenge by proposing a binding in-court proposal that treats the challenge as a contingent variable

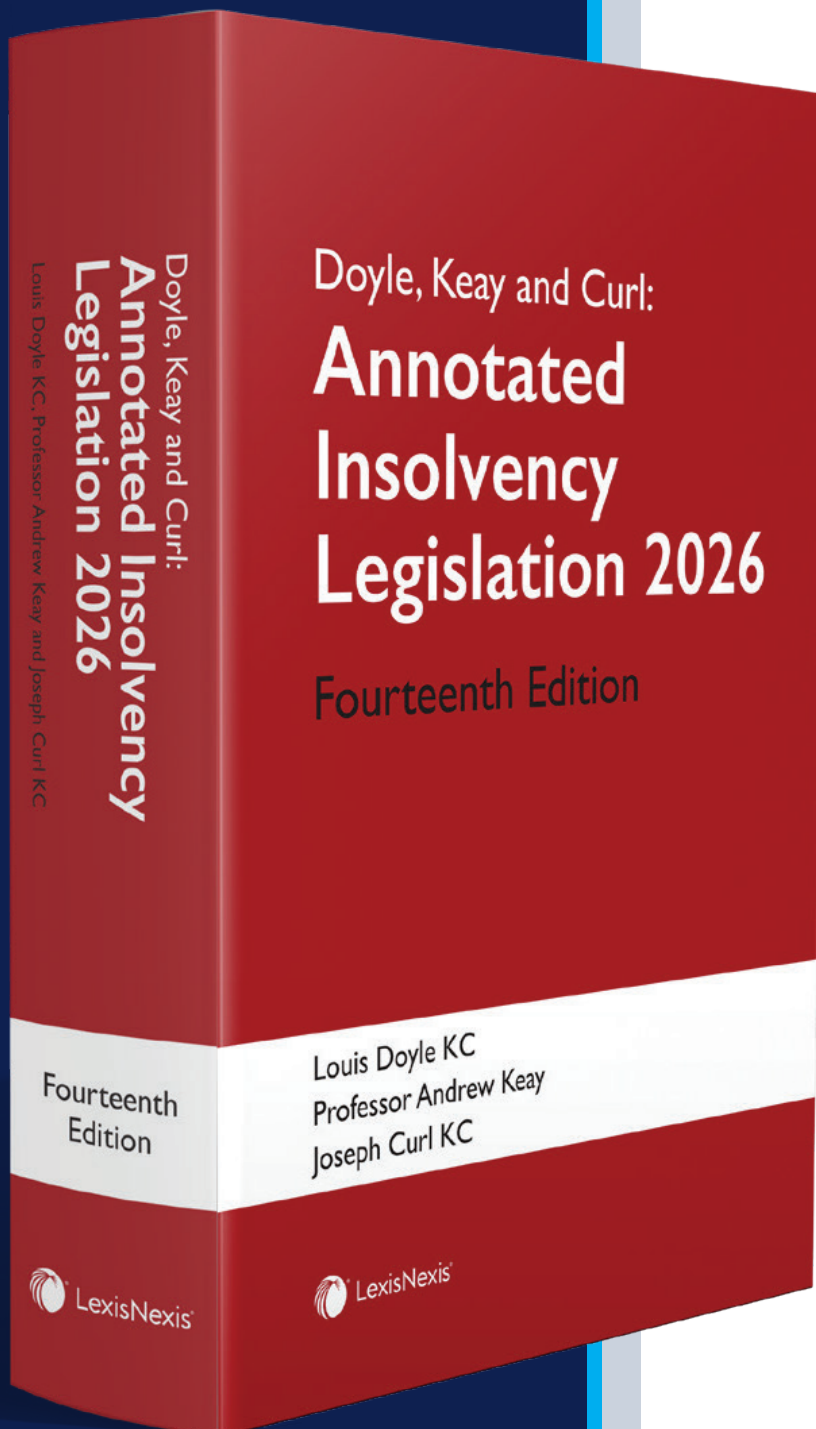
that the court will be asked to crystallise and conclude in order to protect the debtor's solvency. In order to establish the relevant comparator to a plan, however, the court will need to take some kind of a view on the challenge in order to assess the rights of creditors if the proposal is not approved. Unless they are confident that they can show that the challenge is bound to fail, debtors and majority creditors would be well-advised to present the court with a proposal that the court would be minded to approve even on the assumption that the challenge would be successful (essentially conceding the challenge to the plan, and starting again). In the end, this may mean that dissenting creditors are able to enforce the benefits and fairness requirements of a court process that the LME structure deprived them of in the first place.

### Concluding thoughts

The prospect of a dissenting creditor mounting an ex-post challenge to an LME transaction will never be an entirely appealing one. Even if the economics of an individual challenge are unappealing, however, in many cases the prospect of being exposed to such transactions in the future will be enough to justify launching such proceedings. A targeted attack on unfair allocations as justifying an inference that the transaction was implemented for collateral purposes and as an abuse of power is likely to be the most effective claim to bring, and indeed it has already proved to be the most popular. Given the increasing willingness of the courts to refuse sanction to restructuring plans or to overturn them on appeal, one should not expect the courts to shy away from the issues raised – and no doubt the architects of future transactions will respond to the increased likelihood of challenge even before any court challenges finally conclude.

Angus Groom acted on the counsel team for the Hurtigruten disclosure application referenced, but all views and analysis are the authors' own. ■

This article first appeared in the March 2026 issue of the *Butterworths Journal of International Banking and Financial Law*.



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## **Doyle, Keay and Curl: Annotated Insolvency Legislation Fourteenth Edition**

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**Publication Date:** 24th April 2026  
**ISBN:** 9781784735371

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# *Sequana:*

*A map for the advisor and some steps into uncharted territory*



**RABIN KOK**  
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In *BTI 2014 LLC v Sequana SA* (“*Sequana*”)<sup>1</sup>, the Supreme Court put beyond doubt the existence of the ‘creditor duty’ – that is, the duty of directors to have regard to the interests of creditors as part of their general duty to promote the success of the company under section 172(3) of the Companies Act 2006 (“2006 Act”).

1. [2024] AC 211; [2022] UKSC 25

2. The image of the ‘twilight zone’ used in cases like *Sogexia Sari v R Raphael & Sons plc* [2020] 7 WLUK 501 at [17] (which was not used in *Sequana*) is, we suggest, a dangerous one, because it is apt to give the impression that the Company is on the brink of irreversible decline when in reality a state of factual insolvency is often neither “*permanent nor fatal to the long-term success of the company*”: see the observations of Lord Briggs in *Sequana* at [120], discussed later in this article.

3. See Mark Phillips KC, Mark Arnold KC and Rabin Kok, “*The Creditor Duty Comes of Age*” (South Square Digest, December 2022)

4. Lord Reed acknowledged at [78], it was “*unnecessary to consider the content of the duty in detail for the purpose of determining this appeal*”, but he went on to offer general observations because the content of the duty is “*relevant to determining the circumstances in which it arises*” and in order to address the argument that the duty is incompatible with section 214 of the 1986 Act.

The creditor duty is enlivened when the company enters the “zone” between solvency and the onset of a formal insolvency process.

But at what hour does that twilight<sup>2</sup> begin? And what must a director do as the darkness of night draws nigh? These questions were left unanswered in *Sequana*, where the Court ultimately dismissed the appeal and found for the directors; the company had not been actually or imminently insolvent at the time of the payment of the dividend and so the creditor duty<sup>3</sup> did not arise. *Sequana* was, unfortunately, the wrong case on its facts to resolve many of the more nuanced questions that fall to be determined about the creditor duty.<sup>3</sup> The Justices discussed, debated, but ultimately left it to future cases to determine, the inception and evolution of director’s duties as twilight begins, darkens and is ultimately extinguished.

In this two-part article, we have two aims.

In the first part of the article, we set out the test in *Sequana* and try to highlight some of its uncertainties in a systematic way to aid practitioners in understanding how the liability of a director ‘evolves’ throughout the life of a company. Our suggestion is that it is helpful to focus

in on a three-stage classification and the journey through these three stages.

In the second part of the article, we explore two hitherto ignored aspects of *Sequana* and the cases that have followed it:

- First, we explore the effect of these cases on the law of wrongful trading. We suggest that the language used in *Sequana* and its progeny unnecessarily, and wrongly, shifts the ‘trigger point’ for wrongful trading closer to the onset of formal insolvency.
- Second, we explore the potentially far reaching effects of *Sequana* on the law of formal and informal ratification of transactions which would otherwise be a breach of duty, and how advisors should be astute to explain its effects to boards and directors hoping to ratify acts which would otherwise be breaches of duty by directors.

### ***Sequana* on the content and evolution of the creditor duty throughout the life of the company**

The question of what the rule in *West Mercia* actually requires of directors, as opposed to when it is triggered, received detailed treatment in *Sequana*, albeit on an expressly *obiter* basis.<sup>4</sup>

### The starting point: a duty to the company, not to its stakeholders

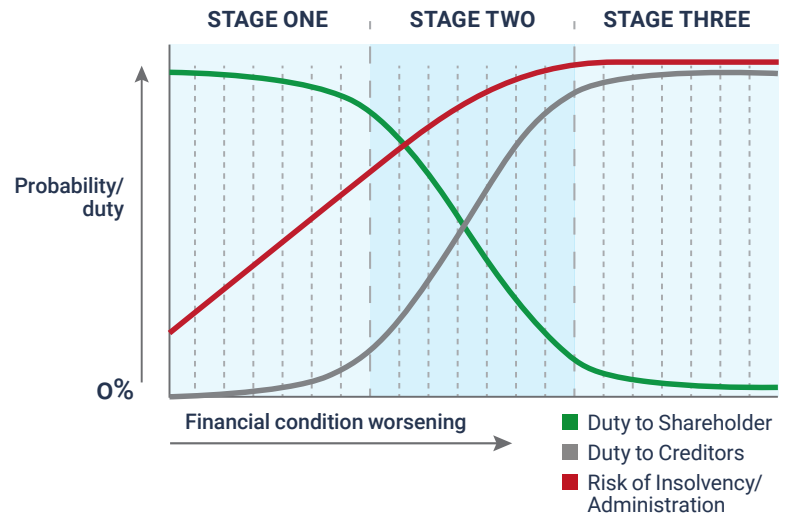
The starting point is that as Lord Reed emphasised at [77], the rule in *West Mercia* "does not create any new duty: it merely adjusts the long-established fiduciary duty to act in good faith in the interests of the company."<sup>5</sup> Where the rule applies, the interests of the company are extended so as to be identified those of the general body of creditors as well as those of the general body of shareholders. The duty remains a duty owed to the company; it is the stakeholders who are identified with the "interests of the company" that changes. This is why Lord Reed at [11] expressed a "risk of confusion" in describing the rule as a "creditor duty", since there is no duty owed to creditors, nor any duty separate from the directors' fiduciary duty to the company. Lord Briggs made the same point at [205], explaining that it was "in truth an aspect (where it arises) of the director's fiduciary duty to the company, rather than a free-standing duty of its own."

That starting point is in our view, an important jurisprudential anchor for the rule. The limited company is a vehicle, created by the law and endowed by it with the gift of separate legal personality, to facilitate the combined economic participation of all of its stakeholders. Those stakeholders include both creditors and shareholders.

It is after this helpful starting point that *Sequana* becomes somewhat less clear on how, precisely, directors should act at each stage of a company's life.

We agree that the scope of the directors' duty to consider creditors' interests can be said to progress through three main 'stages'. These emerge from the judgment in *Sequana* but were helpfully distilled in the Singapore Court of Appeal's judgment in *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 (CA), which should be influential in England & Wales and other English common law jurisdictions.<sup>6</sup>

In our view, the 'life cycle' of the creditor duty throughout these stages can usefully be visualised using the following graph, which we have proposed as an aid for advisors:



5. Lord Briggs and Lord Reed agreed on this point: see *Sequana* at [82] and [171] respectively

The acceptance of such a framework might also provoke some engaging debate on the details. For example, what is the level of solvency risk that is acceptable during Stage One? It would be false to argue that there is a phase in a company's life cycle when there is zero risk, as no company is immune from the risk of failure and indeed such risk is arguably intrinsic to a modern economy.

### The first stage – a solvent and financially stable company

As set out in *Sequana*, when the company is financially stable and able to meet its debts as they fall due, the traditional equation of the company's interests with those of its shareholders holds good, and the rule in *West Mercia* has no application at all. Lord Reed explained this at [47] of *Sequana* where he said that so long as a company is "financially stable, and is therefore able to pay its creditors in a timely manner",

"the interests of its shareholders as a whole, understood as a continuing body, can be treated as the company's interests for the purposes of the directors' duty to act in its interests. It is the shareholders whose interests are affected by fluctuations in its profits and reserves, as they are the persons entitled to share in its distributions and its surplus assets."

6. As Bright J put it in *GLAS SAS v European Topsoho SarL* [2024] EWHC 83 (Comm) at [134]–[135]: "The judgments of foreign courts are like the inhabitants of George Orwell's 'Animal Farm'. They are all equal; but some are more equal than others. Judgments from the courts of Singapore are in Mr Orwell's second category..."

7. *Sequana (SC)* at [87]–[88]: he considered that other phrases adopted in the authorities were “broadly synonymous”, all conveying “a sense of imminence”.

8. *Sequana (SC)* at [203]

This does not mean, of course, that directors of a financially stable company may disregard creditors entirely. As Lord Reed went on to explain at [47], the payment of debts as they fall due forms part of the ordinary conduct of the company's business, and a failure to pay will ultimately undermine the company's long-term success. But this is merely an incident of the duty to act in the shareholders' interests — it does not constitute a separate obligation to have regard to creditors as a distinct constituency whose interests may diverge from those of the shareholders.

The Singapore Court of Appeal in *Foo* agreed with this formulation of the ‘first stage’ at [105] and [106]. See [106](a):

*“Where a company is, all things considered, financially solvent and able to discharge its debts, a director typically does not need to do anything more than act in the best interests of the shareholders to comply with his fiduciary duty to act in the best interests of the company. This is so for the reasons we have set out at [70] above. In short, the Creditor Duty does not arise as a discrete consideration in these circumstances...”*

### *The second stage – where the company is insolvent or bordering on insolvency*

#### **The trigger point**

The Supreme Court unanimously rejected the argument that the creditor duty should be enlivened when there is a real rather than remote risk of insolvency. Lord Reed said that he was inclined to agree that it is sufficient if the company is “*insolvent or bordering on insolvency*” – in other words once the company has entered the so-called ‘twilight zone’ and insolvency is imminent or perhaps probable:

*“... the critical factor is whether, given where the economic interests lie, and the consequent distribution of risk, it continues to be appropriate to treat the interests of the company as equivalent to the interests of its shareholders alone.”*<sup>7</sup>

Lord Briggs described the principle as follows:

*“I would prefer a formulation in which either imminent insolvency (ie an insolvency which directors know or ought to know is just round the corner and going to happen) or the probability of an insolvent liquidation (or administration) about which the directors know or ought to know, are sufficient triggers for the engagement of the creditor duty.”*<sup>8</sup>



Lords Kitchin and Hodge agreed with this formulation.<sup>9</sup> Lord Reed was “inclined to agree” with Lords Briggs, Kitchin and Hodge that the probability of an insolvent liquidation or administration would also suffice, but was “less certain” that it is essential that the directors “know or ought to know” that the company is bordering on insolvency.

In *Foo*, the Singapore Court of Appeal thought that ‘category two’ (which we have called ‘stage two’) occurs when:<sup>10</sup>

“a company is imminently likely to be unable to discharge its debts. This category encompasses cases where a director ought reasonably to apprehend that the contemplated transaction is going to render it imminently likely that the company will not be able to discharge its debts. It is, in other words, no excuse for a director to claim that he did not appreciate how dire the company’s financial state was if he ought reasonably to have done so.”

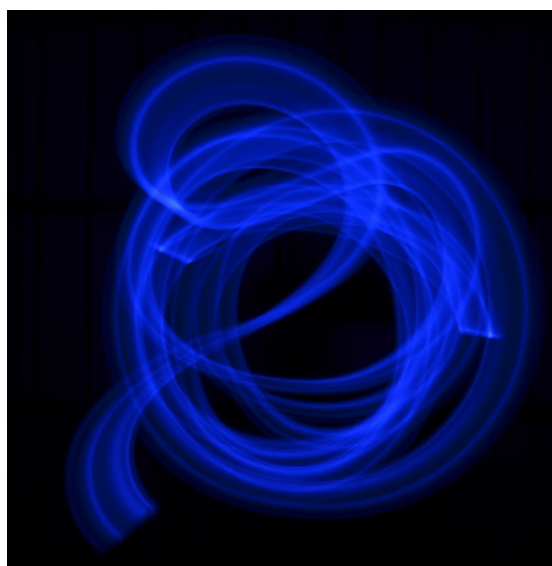
So a director’s duty to consider the interests of the company under section 172 ‘shifts’ so as to identify the interests of the company with those of creditors at the time the insolvency is ‘imminent’ or at least ‘probable’.<sup>11</sup>

### What is the meaning of ‘insolvency’ for these purposes?

Lord Briggs appeared to be of the view that the rigour of the duties incumbent on directors should track the proximity of the company from formal insolvency, not factual insolvency:

“[120] Insolvency takes two forms. Either may exist without the other. The first is usually called balance sheet insolvency, where the value of the company’s assets is exceeded by the value of its liabilities: see section 123(2) of the 1986 Act. The second is what is generally known as commercial insolvency, where the company is unable to pay its debts as they fall due: see section 123(1)(e) of the

1986 Act and the *Cheyne Finance* case. For present purposes what matters is that neither will necessarily be permanent, nor fatal to the long-term success of the company, although of course either may be, and commercial insolvency often is. A company may experience short-term commercial insolvency due to a temporary adverse balance between the liquidity of its assets and the maturity of its debts. Many start-up companies are balance sheet insolvent before a new invention or business product is sufficiently developed to be brought to market so as to generate revenue or goodwill value, and yet the company later becomes spectacularly successful, and its shareholders become millionaires. In both cases the directors may perceive that there is a reasonable prospect that the company will be able to trade out of insolvency, for the benefit of both creditors and shareholders, a perception often labelled as seeing light at the end of the tunnel.”



And:

“[165] It is only the onset of liquidation itself, rather than insolvency, that converts the creditors into the main economic stakeholders in the company. ”

Although this is a powerful argument, the better view of the law as it stands is that the probability of economic, not (just) formal insolvency, triggers the creditor duty. In other words, the creditor duty

9. *Sequana* (SC) at [227]

10. *Foo* at [105](b)

11. The difference between “imminence” and “probability” is not a question which is properly addressed either in *Sequana* or *Foo* (or the other authorities) and is a question which requires an article of its own.

is enlivened when it is probable that a company's liabilities will come to outstrip its assets (balance sheet insolvency), or when it is probable that the company will not be able to pay its debts as they fall due (cash flow insolvency).

That this is the meaning of 'insolvency' in the minds of the majority is clear from Lord Reed's judgment at [88], which expressly connects the *Sequana* duty with the balance sheet and cash flow tests, and not (just) a formal insolvency:

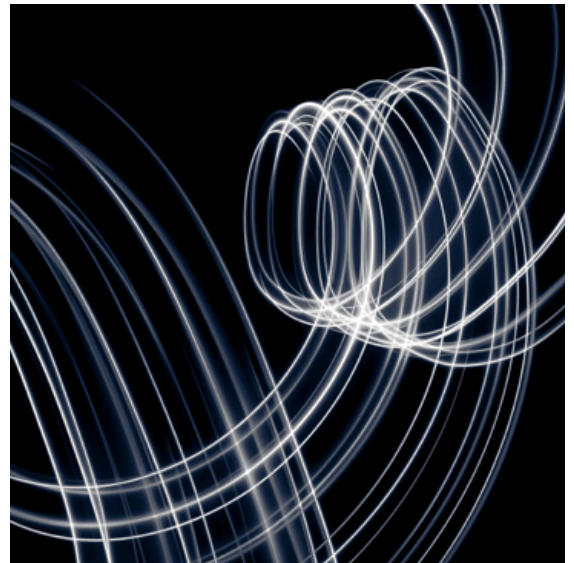
*"I am inclined to think that the term can conveniently and aptly be understood in this context in accordance with the tests laid down in section 123(1)(e) and (2) of the 1986 Act, i.e. cash flow or commercial insolvency, or balance sheet insolvency. I am inclined to agree with Lord Briggs JSC and Lord Hodge DPSC that the probability of an insolvent liquidation or administration is also sufficient for the creditors' interests potentially to diverge from those of the shareholders and therefore to require separate consideration."*

One might say that the shift in duty is logical because it mirrors the changing economic conditions faced by the company. At the 'first stage' the company was able to pay off its liabilities in full and therefore the directors were entitled to take greater risks with the company's money, provided that was in the interests of shareholders. But at the second stage, as losses are incurred and the company's surplus of assets over liabilities disappears, Lord Reed explained at [48] that:

*"the company's creditors as a whole become persons with a distinct interest (possibly, depending on the gravity of the company's financial difficulties, the predominant interest) in its affairs, as they are dependent on its residual assets, or on the possibility of a turnaround in its fortunes, for repayment."*

Lord Hodge also emphasized the connection between the economic condition of the company and the *Sequana* duty at [247]:

*"(iii) The West Mercia duty is a recognition of the economic interests or stakeholding in the company of its creditors when the company is bordering on insolvency or is insolvent. (iv) Where a company is insolvent or bordering on insolvency the West Mercia duty involves a fiduciary duty of the directors to the company to take into account and give appropriate weight to the interests of the company's creditors as a body."*



Lady Arden, too, made clear that either a probability of economic or formal insolvency was sufficient to trigger the duty, at [279]:

*"The first part is the requirement for directors to consider creditors' interests. This arises whenever a company is financially distressed. By that I mean, as Lord Reed puts it in para 12 of his judgment, the company is insolvent or bordering on insolvency, or an insolvent liquidation or administration is probable..."*

So the answer to when the duty is triggered is now tolerably clear it is one of either:

(a) an economic trigger – when the company faces a probability of becoming economically insolvent, or

(b) A 'procedural' trigger – when the company faces a probability of entering a formal insolvency process.



### The balancing exercise

The next question is the practical one which matters to advisors, namely – what should an advisor actually advise their client to do at the so-called ‘second stage’?

It is crucial for directors and their advisers to understand that where a company is journeying through the ‘second stage’, the content of the duty to promote the interests of the company (as identified with its creditors) remains one to balance the creditors’ interests with the shareholders, rather than subordinate the interests of the latter to the former. As Lord Reed stated at [81]:

*“...the directors' fiduciary duty to act in the company's interests has to reflect the fact that both the shareholders and the creditors have an interest in the company's affairs. In those circumstances, the directors should have regard to the interests of the company's general body of creditors, as well as to the interests of the general body of shareholders, and act accordingly. Where their interests are in conflict, a balancing exercise will be necessary.. the more parlous the state of the company, the more the interests of the creditors will predominate, and the greater the weight which should therefore be given to their interests as against those of the shareholders.”<sup>11,12</sup>*

The conduct of this balancing exercise was considered by Lord Briggs at [176], who thought that much depended upon two principal factors: (i) first, the “*brightness or otherwise of the light at the end of the tunnel; i e upon what the directors reasonably regard as the degree of likelihood that a proposed course of action will lead the company away from threatened insolvency, or back out of actual insolvency and* (ii) second, “*who, as between creditors and shareholders, then have the most skin in the game: i e who risks the greatest damage if the proposed course of action does not succeed.*”

In *Foo*, the Singapore Court of Appeal took the opportunity to add (a little) meat onto the bones of Lord Briggs’ two principal considerations, saying at [105](b) that:

*“A non-exhaustive list of relevant factors includes: (a) the recent financial performance of the company, in particular whether the company’s financial performance has been improving or deteriorating as well as the duration and extent of any such improvement or deterioration; (b) the industry that the company operates in, including its recent and future prospects; and (c) any other external developments, such as geopolitical ones, which may have an impact on the company’s business.”*

These are of course helpful matters for the director and their advisers to consider, but in our respectful view they should emphatically not be read as if they were words appearing in a statute. A failure to reach the ‘right’ answer is not a breach of duty, nor is a failure to properly understand the full implications of the matters listed at (a), (b) and (c).

In that regard, we have misgivings about the Court of Appeal’s remark that these matters were “*capable of being known to directors at the point they undertake decisions for the company and there is therefore little risk of the court holding directors to unrealistic standards*”. In particular, matters (b) and (c)

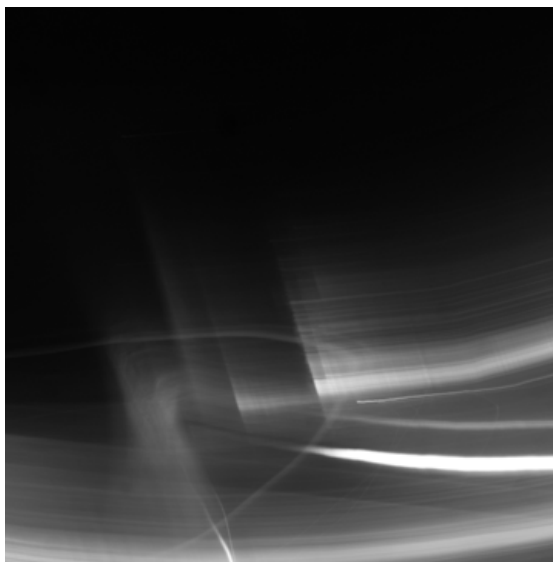
12. See also the lucid formulation of the ‘balancing’ principle in *Carlyle Capital Corp v Conway* Judgment 38/2017, 4 September 2017 (Lt Bailiff Hazel Marshall QC) approved in *Sequana* by Lord Reed at [82] and Lord Briggs at [170].

13. Indeed, as this article was being written there was no end in sight to the attack on Iran and the ensuing disruption, both in the Gulf and elsewhere.

14. Where Nourse LJ had expressed the quite remarkable view that "where the company is insolvent, or even doubtfully solvent, the interests of the company are in reality the interests of existing creditors alone"

are often notoriously difficult to know. As to (b), the "future prospects" of an industry are difficult enough to know even in long established industries but are even more difficult to know where a company operates in an experimental field or runs a business involving a significant degree of risk (as with many startups). Needless to say, it will often be unreasonable to expect a director to have full or proper knowledge of (c) (geopolitical developments) or their impact.<sup>13</sup> That all has knock-on effects for (a) (the financial performance of the company). Directors may give thought to the balance between shareholders' and creditors' interests but may be unable to fully appreciate the implications of a changing world or business environment on the company under section 172. That does not mean they have breached their duty to promote the success of the interests of the company. And if the directors could not reasonably have been expected to do so they will not have breached their duty of care and skill either.

It also should be borne in mind that just as a company's economic condition can wax and wane over time, the directors' task of balancing between competing duties is also not unidirectional. It is quite possible that companies will enter the second stage but then improve their economic position and move back towards and potentially re-enter the first stage.



### *The third stage – where a formal insolvency is 'inevitable'*

The position of directors changes fundamentally at the far end of the spectrum, where insolvent liquidation or administration has become unavoidable. The third stage in this classification. Lord Reed stated the principle plainly at [77]: "If insolvent liquidation or administration is unavoidable, the interests of the shareholders drop out of the picture, and the company's interests can be treated as equivalent to those of the creditors alone." The company's interests are thereafter to be treated as equivalent to those of its creditors alone.

Lord Reed was careful to note at [80] that the creditors' interests do not become paramount at any earlier point. He emphasised that certain dicta — including that of Lord Sumption in *Bilta (UK) Ltd v Nazir* (No 2) [2015] UKSC 23, [104] and *Brady v Brady* [1988] BCLC 20, 40,<sup>14</sup> which treated the company's interests as "synonymous with those of its creditors" from the point of actual or prospective insolvency had "gone further than is justified by the rationale of the rule in *West Mercia*", since they appeared to trigger 'paramountcy' at too early a stage.

Critically, and on that note, all of the Justices appear to have agreed that the interests of creditors only become paramount upon the inevitability or unavoidability of a formal insolvency procedure in which the directors and shareholders' control of the company is fully and formally displaced.

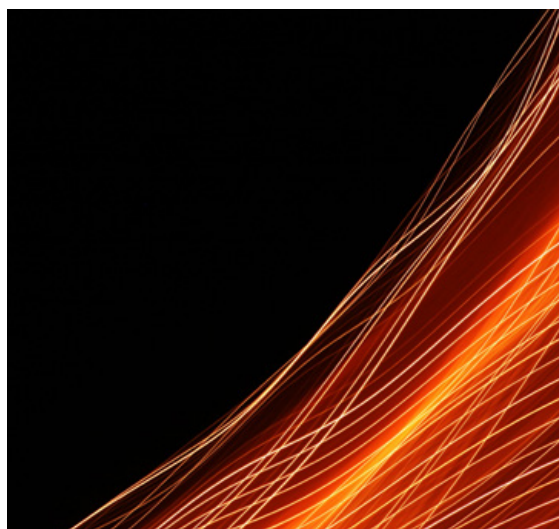
Lord Briggs said at [165] that:

"[165] It is only the onset of liquidation itself, rather than insolvency, that converts the creditors into the main economic stakeholders in the company. That is why section 214 only imposes liability upon directors for failure to act in their interests once liquidation becomes inevitable. That does make the creditors' interests paramount, but insolvency itself may not."

Lord Hodge and Lady Arden also agreed that the duty ‘shifted’ further in favour of creditors only upon the inevitability of a formal insolvency and not merely the inevitability of factual cash flow or balance sheet insolvency.<sup>15</sup>

The reasoning behind the Justices’ decision that ‘paramourcy’ only occurs at the point at which a formal insolvency becomes inevitable is straightforward as a matter of economics: it is only when a formal liquidation (and, arguably, a wind down or distributing administration)<sup>16</sup> is inevitable that the shareholders’ shares become truly worthless. Short of that point, the shareholders retain a residual economic interest in the company, whether through the possibility of a turnaround, a successful restructuring, or the realisation of assets at values exceeding their liabilities. Once that possibility has been extinguished, however, there is no longer any basis for treating the shareholders’ interests as bearing any weight at all, and the full weight of the directors’ duty falls on the side of the creditors. But the shareholders’ residual economic interest is only extinguished upon a formal insolvency, not factual insolvency.

We therefore also have the answer to when the third stage arises, and the interests of shareholders are extinguished. This is a procedural trigger only – when a formal insolvency process becomes inevitable.



## Sequana: Wrongful trading and ratification

In this section, we highlight two hitherto uncharted implications of *Sequana* – first, its effect on the law of *wrongful trading* (as opposed to directors’ duties) and second, the caution that must now be exercised by directors seeking to rely on informal ratification of breaches of duty via the so-called ‘*Duomatic* rule’.

### Wrongful trading – ‘inevitability’ or ‘no reasonable prospect’?

The ‘wrongful trading’ provision of the 1986 Act is section 214, by which the Court may order a person to contribute to the assets of an insolvent company where, at a time when that person was a director, the person “*knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation.*” It is a defence under section 214(3) for the director to show that they “*took every step with a view to minimising the potential loss to the company’s creditors as on the assumption that he had knowledge of the matter mentioned in subsection (2)(b) he ought to have taken.*”

Section 214 carries significant risks for directors in that the ‘trigger’ for liability is not subjective, but objective – it may arise even if the director was an ‘honest fool’ who did give thought to the solvency of the company and the interests of creditors but failed to carry out either exercise as a reasonable director would have done.<sup>17</sup> The stringency of the liability is tempered by the requirement that there be “*no reasonable prospect*” of the company avoiding “*insolvent liquidation or entering insolvent administration*”. That means that liability under section 214 arises only when there “*is no light at the end of the tunnel*”: see *Sequana* at [121] (Lord Briggs), and a formal insolvency, rather than just a factual state of insolvency, cannot realistically be avoided.

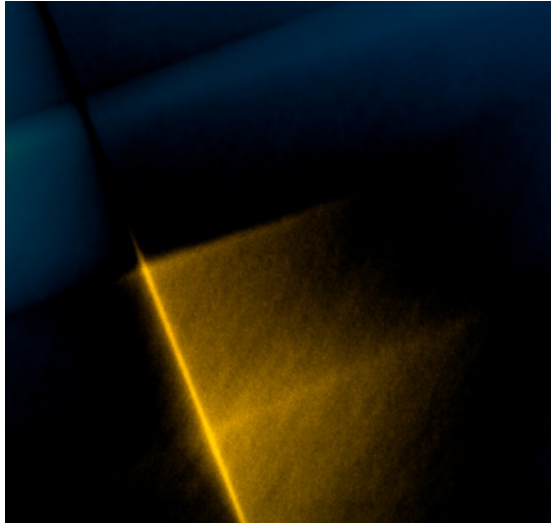
However, the ‘light at the end of the tunnel’ metaphor and the language employed in *Sequana* to describe the

15. See *Sequana* at [231] (Lord Hodge) and [306] (Lady Arden)

16. There is an interesting question as to whether the interests of creditors become paramount when what is inevitable is not a wind down or distributing administration (i.e. one pursuing the second and third of the purposes in paragraph 3 of Schedule B1) but a ‘turnaround’ administration (i.e. one pursuing the first of the statutory purposes). That issue is also worthy of a separate article and the authors do not address it here.

17. See e.g. *Re Ralls Builders Ltd* [2016] BCC 293 at [171]–[172]

18. [2023] EWHC 1784 (Ch) at [43]



‘trigger’ for liability, in our view, makes the statutory test of ‘no reasonable prospect’ needlessly hard to satisfy.

At several places in the *Sequana* judgment, the justices describe section 214 as being triggered when formal insolvency is “inevitable”. So, for instance, Lord Reed says at [98] that:

*“in circumstances where section 214 applies—that is to say, where insolvent liquidation or administration is inevitable—the rule in West Mercia applies on the basis that the shareholders no longer have any interest in the company.”*

Lord Briggs uses the same language, doubling down on his ‘light of the tunnel’ metaphor:

*“[124] It is to be noted that the trigger for the application of the section 214 liability, looking backwards from an insolvent liquidation (or administration, under section 246ZB of the 1986 Act) that has in fact happened, is that it is such a liquidation or administration, not just an insolvency, that has become inevitable. In most although not necessarily all cases insolvency will have happened some time before a liquidation or administration became inevitable.”*

*“[148] When it is borne in mind that, once liquidation is inevitable, the directors face personal liability under section 214...”*

Lord Hodge uses similar language which also unnecessarily adds to the ‘no reasonable prospect’ standard, at [231]:

*“It is consistent with section 214 that where directors know or ought to know that the company has become irretrievably insolvent, they come under a duty to the company to give priority to the interests of its creditors as a body.”*

The failure to properly distinguish between ‘inevitable’ and ‘no reasonable prospect’ was overlooked and (continued in later cases, including, for example, *Hunt v Singh* (albeit inadvertently, since Zacaroli J was not concerned with the trigger point for section 214 and heard no argument on the point)).<sup>18</sup>

There is a clear and obvious linguistic difference between the words ‘inevitable’ and ‘irretrievably insolvent’ on the one hand and ‘no reasonable prospect’ on the other. The former formulations mean that it is *impossible* for the company to escape insolvency. ‘No reasonable prospect’ on the other hand, means that it is possible but not reasonable to believe that it will. To take some crude examples that illustrates the linguistic differences between the two formulations:

- There is no reasonable prospect that the UK economy will grow at 4% next year, but it is not inevitable that it will not.
- There is no reasonable prospect that I will win the lottery this week, but it is not inevitable that I will not.

This (apparent), and unnecessary tightening of the ‘no reasonable prospect’ standard by the Court matters. That is because the approach take by the justices makes it more difficult to use section 214 against directors who pursue a ‘Hail Mary’ strategy or ‘last roll of the dice’ to save the company. Such a strategy may carry with it a *prospect* of success, albeit not a reasonable one. Lord Hodge described this scenario in [238] of his judgment in *Sequana*:

"But there may be more egregious circumstances in which the absence of a remedy beyond section 214 would appear to be a lacuna in our law. By way of example, suppose (i) a company has been unsuccessful and the capital of the shareholders has been lost through balance sheet insolvency; (ii) the company's directors know or ought to be aware in the exercise of their duty of skill and care that a formal insolvency process is more likely than not; (iii) there is a prospect of avoiding the formal insolvency if the company were to undertake a particularly risky transaction; but (iv) the company's assets that remain and which would be put at risk by the transaction would be lost to its creditors if the gamble were to fail. The shareholders, whether present or future, would probably have nothing to lose from the adoption of the very risky transaction as a last roll of the die because the likely alternative would be a formal insolvency from which they would receive nothing."

But the "lacuna" described by Lord Hodge would appear to be one created by the Justices' confusion between 'inevitable' and 'no reasonable prospect'. The company about to embark on the last roll of the die (in Lord Hodge's example), has a prospect of avoiding insolvency, but not a *reasonable* one. And so it follows that its directors should rightly be liable to an order under section 214; there was no need to expand the creditor duty to cover this lacuna.

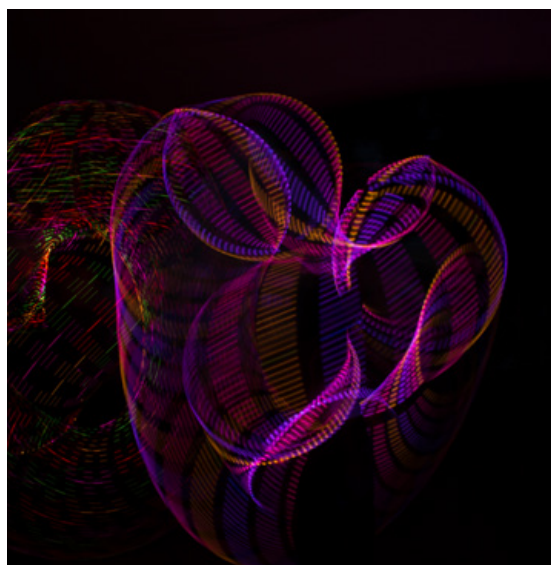
In *Re BHS Group Ltd*,<sup>19</sup> Leech J delivered a powerful judgment which applied the *obiter* principles in *Sequana* to find directors liable for misfeasant trading in breach of their creditor duty, in circumstances which Leech J considered to be analogous to the 'last roll of the die' described by Lord Hodge.<sup>20</sup> On its facts, this was clearly the right decision. However, Leech J continued – wrongly – to describe wrongful trading as applying where insolvency is "inevitable":

"[473] Mr Curl submitted that S.214(2)(b) was clear and that I should apply it without adding a gloss to it or reformulating the test

so that a director is not liable for wrongful trading unless he or she knew or ought to have known that the company was irretrievably insolvent or that insolvency was inevitable. I agree that the Court must apply the statutory test and not substitute its own form of words. But in the light of *Sequana* I am satisfied that the bar is a very high one and that the Joint Liquidators have to demonstrate that Mr Henningson and Mr Chandler knew or ought to have known that insolvent liquidation or administration was inevitable."

As a result of what Leech J described as the "very high" bar of 'inevitability', Mr Henningson and Mr Chandler were acquitted of wrongful trading<sup>21</sup> (although they were liable for misfeasant trading in breach of the creditor duty in respect of the relevant transactions).

In our view, the result in *BHS* shows that the failure to properly appreciate the linguistic distinction between 'no reasonable prospect' and 'inevitable' has real consequences. It is, in our respectful view, a wrong turn in the law and one that would benefit from further review.



### Ratification

A further, perhaps unintended, consequence of an approach which triggers the creditor duty based on proximity to factual insolvency is that the members of a company may be disabled from

19. [2025] Bus LR 1639

20. See *BHS* at [545]–[546] and [991] in particular

21. *BHS* in particular at [884], [887], [893], [896] and [909]

22. *Ciban Management Corpn v Citco (BVI) Ltd* [2021] AC 122

23. *Julien v Evolving Technologies and Enterprise Development Co Ltd* [2018] BCC 376 at [51]

24. See [5], [37], [91], [125] and [149] in particular.



ratifying transactions (either formally or under the *Duomatic* rule) even when the company is very successful and a formal insolvency is very far away. That is something that advisers should be astute to (and particular advisers to sole director/shareholders who run their companies with a degree of informality in reliance on their position as the majority shareholder).

The directors of a company cannot formally ratify a transaction at a time when the company is insolvent: *Sequana* at [312] (Lady Arden). There is a power of informal ratification, called the *Duomatic* principle, which is, in short, “*the principle that anything the members of a company can do by formal resolution in a general meeting, they can also do informally if all of them assent to it*”.<sup>22</sup> In particular, the principle allows the shareholders of a company to ratify the acts of directors informally, even if those acts would otherwise amount to a breach of duty.<sup>23</sup>

As with formal ratification there is, however, a recognised qualification to the *Duomatic* principle: a transaction cannot be ratified once the creditor duty is triggered. In *Ciban Management*, Lord Burrows formulated the qualification as follows at [40]: “*the transaction must not jeopardise*

*the company's solvency or cause loss to its creditors*”. That exception or limit to the *Duomatic* rule was affirmed in *Sequana*.<sup>24</sup>

The interaction between ratification and the creditor duty becomes problematic, however, when the trigger for the creditor duty is the likelihood of factual insolvency rather than the company's proximity to a formal insolvency. As we have seen (and as Lord Briggs observed at [120]) very successful companies are often balance sheet insolvent for some time as a new invention or business product is developed and increases revenue or goodwill value. At that stage, the likely success of the product or business may mean that a formal insolvency is very far off indeed, such that there is no proper justification for displacing the shareholders' ability to ratify acts of the directors via the *Duomatic* rule whenever the creditor duty (of whatever stringency) is triggered.

Despite that, it now appears that the *Duomatic* rule cannot apply at all whenever the creditor duty is triggered, regardless of whether the variant of the creditor duty that applies is ‘stage 1’ or ‘stage 2’. In *Yodel Delivery Network Ltd v Corlett* [2025] EWHC 3355 (Ch), two holders of warrants (Shift and Corja) purported to exercise various warrants they held in Yodel which would have given them a controlling stage in Yodel. Yodel argued that the warrants were void or voidable, having been issued by Mr Corlett in breach of his statutory and fiduciary duties.

Although it was the right result on the facts of the case (in which Fancourt J found as a fact that the warrants were forgeries), he also held at [253] and [275] that:

“[253] *In my judgment, Mr Thompson is correct in submitting, on the authority of Sequana, that either balance sheet insolvency or cash flow insolvency on its own is sufficient to trigger the creditor duty; however, the Supreme Court explained that the burden of the duty that exists is*

on a sliding scale, depending on the risk of an insolvency process that would be adverse to the creditors' interests. It is not unusual for a company to be balance sheet insolvent and yet trading successfully, with adequate funding and unquestioned ability to pay its debts as they fall due. In such a case, the duty to consider the interests of creditors would exist but it would be lighter than in a case where, in addition to being balance sheet insolvent, the company was in a cash flow crisis and at serious risk of commercial insolvency too. That is because the circumstances in which the creditors' interests may be adversely affected are much more likely to arise..."

"[275] I am unable to agree that the shareholders can ratify an excess of power of the directors in a case where the creditor duty has arisen. That would amount to the shareholders effectively conferring extra power on the directors to act beyond the company's constitution at a time when the directors should be considering the interests of the creditors. It cannot sensibly be for the shareholders to evaluate, on a sliding scale, the extent (if any) to which creditors' interests were affected by excess of power. That conclusion is consistent with all the judgments in *Sequana*, even with *Lady Arden's* judgment, in which she declined precisely to align the existence of the creditor duty and the ratification principle. Her Ladyship considered that the limits on ratification sometimes went further than the constraint imposed by the creditor duty."

His Lordship's reasoning is a shot across the bow for advisors. It seems to imply that *Duomatic* is disabled regardless of the 'stage' or rigour of the creditor duty then applicable. That is potentially productive of some uncertainty. A company may dip in and out of insolvency continually during its life cycle, and so the shareholders may purport to ratify a transaction without ever knowing that the company was (factually) insolvent at the time of purported ratification, only to have the transaction unwound many years later.

## Conclusion

In this article we have sought to take a fresh look at the Supreme Court's decision in *Sequana* and the subsequent case law. Our central contention is that, although the existence of the creditor duty has now been confirmed, some twenty years after *West Mercia Safetywear Ltd v Dodd* [1988] BCLC 25, there remain important constituent principles of that duty which would benefit from further judicial clarification.

Our aim has been to draw together and highlight strands within the existing authorities which, taken together, already offer a helpful framework for understanding and applying the creditor duty in practice. We have also examined two consequences of the recent decisions which are, at the very least, surprising and may prove to be unintended or concerning in their wider implications.

The latticework of principles that form the creditor duty will continue to evolve and we expect further judgments to clarify various aspects of its application in the years ahead. ■



# Case Digest Editorial



Editorial by:  
**Hilary Stonefrost**

**A wide range of issues are covered by the case digests in this edition, but here I highlight a few of those company and insolvency law decisions.**

The previous understanding that no limitation period applies to unfair prejudice proceedings brought pursuant to s.994–996 of the Companies Act 2006 has been confirmed by a majority of four to one in the Supreme Court; such proceedings are neither a specialty pursuant to s.8 nor an action to recover any sum recoverable by virtue of an enactment pursuant to s. 9 of the Limitation Act 1980: *THG plc v Zedra Trust Company (Jersey) Ltd*. This is not, however, an invitation to ignore the passage of time, as delay remains relevant to the court’s discretion to grant relief.

The court has recently revisited what liquidators must establish when bringing applications pursuant to section 235 and 236 of the Insolvency Act 1986 in an appeal from an order of ICCJ Judge Burton refusing to make an order on the grounds that the liquidators had not made out a proper case

for information: *Webb & Hussain v Eversholt Rail Limited*. The problem faced by the liquidators was that they asked for liquidators to reconstitute the records of the company. ICC Judge Burton held that this was misconceived and the Judge hearing the appeal agreed. Reconstituting the knowledge is the underlying purpose of these statutory provisions; that is not a requirement. Liquidators are required to establish a reasonable requirement for documents or information which requires them to do more than point out that someone has extensive knowledge that they want.

Decisions in two more restructuring plans appear in this issue. In one the court considered whether a meeting attended by one person is a meeting at all – it isn’t; it requires “*an assembly or coming together of two or more persons*”; *Re Argo Blockchain Plc*.

The other case considered the cost consequences for opposing creditors with unmeritorious grounds of opposition. While the court does not generally make adverse costs orders against creditors when they object to a scheme or a plan, including where the objections are unsuccessful, in this case the judge determined that an adverse costs order should be made against the opposing creditor, including on an indemnity basis for some issues raised at the convening hearing: *Re Madagascar Oil Ltd*.

There are many more cases digested on a wide range of topics – so, if you have made it this far, please read on.



# Banking and Finance

DIGESTED BY PAUL FRADLEY



## Conway v Plass; Re Argentex LLP

[2025] EWHC 3125 (Ch) (ICC Judge Agnello KC)

Special administration – Close out of positions – Contractual interpretation

27 November 2025

The Joint Special Administrators of Argentex applied for directions as to whether it was entitled to close out customer contracts. The firm offered forward and option foreign exchange contracts to its customers which were governed by its general terms and conditions supplemented by MiFID terms. Clause 13.2(h) of the general terms provided that the firm could "close out" contracts if it considered it necessary to do so for its own protection. Clause 11.4(c) of the MiFID terms provided for the firm to sell or realise MiFID investments which it held for customers if it considered that such action was necessary to protect the firm's interests.

The Judge held that the words in the contracts needed to be construed in the context of the contracts as a whole and the factual matrix. There was no express entitlement in

the contracts for the firm to terminate if it was insolvent or likely to enter some insolvency process. At the time they entered into the contracts the parties were aware that the customers of the firm sought certainty in relation to currency rates of future trades, depending on whether they negotiated zero contracts or contracts with or without margin calls. There was an increased risk when the firm entered into zero contracts, but the customer would have expected the firm to have hedged against that risk. There was an inconsistency between the customers contracting on terms which provided them with certainty by expressly contracting out of margining and the submission that the special administrators could close out the positions and essentially create a margin-type call on customers.

The Judge concluded that a reasonable person in the positions of the parties would not have understood that the language of the relevant clauses to entitle the company to terminate for its own economic interests instead of being bound by the terms of the contracts to perform its obligations at the maturity date. Such a construction would be contrary to business common sense and defeat the aim and purpose of the contracts for the customers. The Judge considered that customers would not on an objective basis have agreed to such a clause.



**Richard Fisher KC**



**Marcus Haywood**

## Hawkins v Abarbanel Limited (Cayman Islands)

[2025] UKPC 58 (Lords Reed, Hodge, Burrows, Stephens and Dame Janice Pereira)

Loan agreement – Statutory illegality – Common law illegality – Refusing permission to appeal as of right

2 December 2025

Hawkins obtained loans from the Respondent, a lender, secured on properties he owned. The Lender was a Cayman Islands company owned by US residents. Hawkins fell into arrears on the loans and the Lender gave notice of its intention to enforce its security. The Cayman Islands Local Companies (Control) Act (LCCA) prohibits a foreign-owned company from carrying on business in the Cayman Islands without a licence. The Trade and Business Licencing Act requires every person carrying on business in a range of activities to obtain a licence in respect of that business. While both statutes provided that a failure to obtain a licence was an offence, section 23 of the LCCA provided that “[f] or the avoidance of doubt it is hereby declared that no business transaction shall be void or voidable by reason only that, at the relevant time, any party thereto is in breach of this Law”. Hawkins brought proceedings for a declaration that the loan agreement was unenforceable.

Lord Burrows, giving the judgment of the Board, held that where the relevant illegality was set down in a statute an important question is whether the statute has dealt with the effects of the illegality. The

common law rules of illegality laid down in *Patel v Mirza* come into play only where the statute has not dealt with the effects of the illegality. In that case the critical question is whether the statute expressly or impliedly prohibits contracts made by companies who are carrying on business in the Cayman Islands without the required licence. There was no express prohibition in the legislation and so the question was whether there was an implied prohibition. The purpose of the statute was not to render contracts made by unlicensed businesses unenforceable but to ensure a measure of control over foreign companies carrying on business in the Islands so as to promote Caymanian businesses and to raise revenue by requiring payment for a licence.

In any event, section 23 of the LCCA was an express provision making clear that a contract entered into in breach of the licensing regime was not unenforceable. There was no distinction to be drawn in the provision between contracts being void/voidable and unenforceable. Such an approach would have the effect of undermining the impact of the clause rendering

the contract not void or voidable leading to an absurdity. The terminology of a contract affected by illegality has at various times been referred to as void, even if modern practice is to refer to it as voidable. Had it arisen, the Board would also have held the contract was not to be tainted by common law illegality on application of the *Patel v Mirza* test.

The Board also commented on the correct approach for a local Court of Appeal refusing permission to appeal as of right. The Board noted there was a proliferation of tests for refusing permission and considered that a single unified test should be applied. Permission to appeal as of right will be refused where the appeal raises no genuinely disputable issue or (which appears to be synonymous) the appeal is devoid of merit or is otherwise an abuse of process. The Board also has the power to strike out an appeal made as of right on the same basis.



**Toby Brown**

## Various Claimants v Standard Chartered

[2025] EWCA Civ 1581 (Newey, Snowden and Miles LJ)

Disclosure – Confidential information – Regulatory proceedings – Risk of prosecution

5 December 2025

A bank brought an appeal against an Order of Michael Green J dismissing its application to withhold from disclosure in proceedings certain documents unless and until foreign regulators gave permission for them to be disclosed. The substantive proceedings were brought under sections 90 and 90A of FSMA 2000, which provide for compensation to be payable in certain circumstances where there have been misstatements or omissions in prospectuses or other published information relating to securities. The Claimants asserted deficiencies in various items of published information issued by the Bank between 2007 and 2019. The information was said to have been rendered false by reason of matters arising in US regulatory proceedings. The Bank sought to withhold disclosure of US suspicious activity reports (or other documents revealing their existence or content) and documents containing confidential supervisory information. It contended that it would be at risk of criminal proceedings or regulatory sanction in foreign jurisdictions if it were to disclose

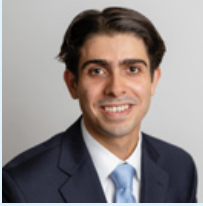
the documents pursuant to an English court order.

The Court of Appeal dismissed the appeal. Miles LJ held that, once the first instance judgment was read as a whole, it was clear that the Judge had applied the test laid down in *Bank Mellat v HM Treasury* [2019] EWCA Civ 449, namely whether there was a real or actual risk of prosecution. Miles LJ noted that there was no need for actual evidence of prosecution; logically the evidence could demonstrate a real risk of prosecution before the first actual prosecution takes place. However, he was not satisfied that the Judge had considered evidence of prosecutions was a threshold requirement. Miles LJ also rejected the challenge to the Judge's evaluative judgment about the risk of prosecution. There was no direct evidence of the extent of the risk and the Judge was entitled to use his own intelligence and experience in scrutinising the evidence and reaching a conclusion.

Miles LJ deprecated the suggestion that the scales were weighed in favour of disclosure when the documents were

agreed to be relevant. It was better to say that a ground rule of our procedural code is that disclosure should be given and that, while there may be grounds for departing from that ground rule, the party resisting disclosure bears the burden. The question whether to allow a departure requires the court to assess competing factors and reach a judicial judgment without losing sight of the policies behind the ground rule. Miles LJ did not consider the Judge had erred in misallocating the burden of persuasion and had not considered there was no need to assess the materiality or significance of the documents.

Miles LJ held that while the English court did not lightly disregard breaches of foreign law when ordering disclosure, comity works both ways. The English procedural code required disclosure, and the foreign court could be expected to recognise that. The Judge had not erred in treating breaches of foreign law lightly. The Judge had considered that a confidentiality club was sufficient protection for the regulators to maintain confidentiality in the documents.



## Civil Procedure

DIGESTED BY JAMIL MUSTAFA



# Midland Premier Properties Ltd & anor v Doal & ors

[2026] EWCA Civ 117 (Lewison, Newey, Cobb LJ)

Debarring orders – Unless Orders – Strike Out

17 February 2026

One of the claimants (Sanman) agreed to lend £1.5 million to one of the defendants to enable it to purchase a property. Sanman alleged that under the terms of their contract, it was entitled to interest of 36% per annum and 50% of the profit made by that defendant from selling on the property. Sanman alleged that the defendant then disposed of its interest in the property to one of the other defendants to avoid accounting to Sanman for its profit share and thereby breached the contract. Sanman also alleged that the other defendants induced that breach of contract and all were liable for unlawful means conspiracy.

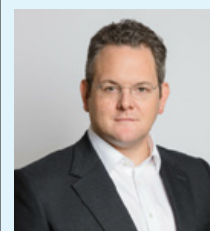
The Judge at first instance held that the defendants had failed to comply with an unless order and were debarred from defending the claims against them. He entered judgment for the claimants.

The Court of Appeal allowed the appeal, holding that the Judge had misconstrued the terms of the unless order by applying case law in respect of requests for further information under Part 18 of the CPR. Newey LJ (with whom Lewison and Cobb LJ agreed) held that: (i) an unless order must be restrictively construed; (ii) whether a person has attempted to comply in good faith is not the applicable test; and (iii) *“the terms of an unless order are crucial”*. An unless order must be construed in the usual way to determine whether or not it has been complied with: *“If, properly interpreted, such an order stipulated that X would happen unless Y was done, then, in the absence of relief from sanction, the order will have taken effect if it is clear that Y was not done”*.

The Court of Appeal also held that the Judge was wrong to hold that he would have struck out

the defendants’ defences and debarred them from defending the claim, even if there had been no breach of the unless order. Newey LJ held that an order debarring a defendant from defending *“is draconian and must be seen as a remedy of last resort”*. He held that the Judge had wrongly failed to consider whether a further unless order would be a more proportionate and appropriate remedy in the circumstances.

Accordingly, the Court of Appeal set aside the Judge’s orders and directed that there should be a re-trial before a different judge.



**Stephen  
Robins KC**

# Soprim Construction SARL v The Republic of Djibouti

[2026] EWHC 418 (Comm) (Waksman J)

Defendant – Jurisdiction – Security for Costs

27 February 2026

A party objecting to the grant of a final charging order (DP World) applied for security for costs against the claimant (Soprim).

Soprim commenced proceedings against the defendant (the Republic) to enforce arbitral awards it had obtained in the principal amount of US\$56m plus interest and costs and obtained permission of the Court to do so. Some years later, Soprim applied for a charging order to enforce those awards. Dias J made an interim charging order in favour of Soprim *ex parte* over monies held in London bank accounts in the name of a Djiboutian company (DCT), over which Soprim had previously obtained a worldwide freezing order (the ‘WFO’) prior to obtaining its arbitral awards against the Republic. Soprim contended that the monies in the bank account were held on trust for the Republic following various hostile actions that the Republic had taken against DCT, including the appointment of an administrator and then liquidator over DCT.

The Republic did not appear at the return date for the charging order and was debarred from resisting that relief. However, DP World – which owned one-third of the shares in DCT – appears to object to the making of a final charging order. It contended that it had contractual rights to control DCT and that neither the appointment of the administrator nor liquidator should be recognised by the English court. DP World contended

that the monies in the London bank accounts always belonged to DCT beneficially and could not be charged by way of enforcement of the awards made against the Republic. DP World also applied to set aside the order giving Soprim permission to enforce the arbitral awards and dismiss the arbitration claim. Deputy Master Sabic KC ordered that DP World be added as a respondent to Soprim’s application and that DCT be permitted to join if it gave notice of its objections, which it subsequently did.

Deputy Master Sabic KC further ordered a trial at which Soprim’s application for a final charging order and DP World’s application to set aside the arbitration claim form and the enforcement order would be determined.

DP World applied for security for costs. Soprim accepted that its application for a final charging order was a ‘claim’ for the purpose of CPR 25.26 and both that it was resident abroad and impecunious. Soprim therefore did not argue that, if the Court had jurisdiction to grant security, there was no available ‘gateway’ for security. However, Soprim denied that the Court had jurisdiction to award DP World security for costs because it was not a ‘defendant’ to Soprim’s application for a final charging order, and that the Court should, in any event, refuse to exercise its discretion to award security.

DP World argued that it was a defendant to a claim because: (i) it was owed its share of the dividend

which DCT had declared for 2017 and the monies in the London bank accounts were the only available source from which that dividend could be paid following actions taken by the Republic towards DCT in Djibouti; and (ii) in any case, DPW had valuable contractual rights to operate DCT that would be lost if the Court made a final charging order. DP World also relied on the fact that it had been ordered to file a statement of case and provide specific disclosure.

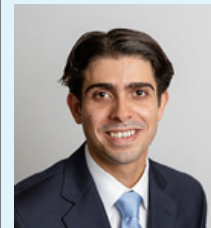
After reviewing the authorities and summarising the principles which he considered could be extracted from them, Waksman J concluded that DP World was not a defendant to Soprim’s application for a charging order and that he had no jurisdiction to grant security because: (i) the monies in the bank accounts either belonged to the Republic or DCT; DP World’s assets were not under attack; (ii) DCT had not applied for security for costs and it was objectively questionable why it was necessary for DP World to join the proceedings given that DP World and DCT were jointly represented and had filed a joint Defence opposing the final charging order sought; (iii) the fact that statements of case had been ordered, specific disclosure ordered against DP World, and there was to be a trial had to be viewed within the context that DCT was also participating and that it was not unusual for interested parties to be joined to proceedings and subject to similar procedural orders;

(iv) although DP World's interests were likely to be adversely affected if a final charging order was made, that was likely to be the case for most interested parties; and (v) the alleged interference with DP World's contractual rights to operate DCT added nothing to the analysis.

Waksman J further held that,

if contrary to his conclusion on jurisdiction, he had jurisdiction to grant security for costs, he would refuse to do so. That was not because of the Republic's alleged persecution of Soprim, but because, on the facts, it appeared that DP World had always controlled the London bank accounts through the authorised signatories and could have paid itself its outstanding

dividend (subject to applying to vary the WFO to the extent necessary to make that payment).



**Jamil Mustafa**



## Commercial Litigation

DIGESTED BY IMOGEN BELTRAMI



### CM Telecom (UK) Ltd v Buck

**[2026] EWHC 161 (Comm) (HHJ Bird sitting as a High Court Judge)**

**Guarantee – No set-off clause – Unenforceability – Foreign law**

**11 February 2026**

CM Telecom (UK) had lent over £5m to Necto under an advanced payment agreement to fund the upfront costs of organising a musical tour. The agreement was governed by Dutch law and contained a clause which stated that *“All payments made by [Necto] under this Agreement will be made without deduction, set-off (verrekening), counterclaim and/or suspension (opschorting) from any cause of action howsoever arising, present or future, unless expressly provided otherwise herein”*. The loan was to be repaid from ticket sales from the tour up to 15 December 2024 and if any of the loan remained outstanding at

that date then it was all to become due. By 15 December 2024, no ticket sales had occurred and as a result the entire loan became due.

Mr Buck had entered into a guarantee of the sums due under the advanced payment agreement. Necto made partial repayments of the loan but then failed to repay the loan in full. CM therefore commenced proceedings against Mr Buck based on the guarantee. Mr Buck's sole defence to the claim was that Necto allegedly had a crossclaim against CM in respect of the provision of ticketing services which exceeded the

claimed loan. In relation to the no set-off clause in the advanced purchase agreement, Mr Buck's case was that it was unenforceable as matter of Dutch law based on the principle of reasonableness and fairness in section 6:248(2) of the Dutch Civil Code.

HHJ Bird allowed CM's application for summary judgment on its claim. He rejected Mr Buck's defence as having *“no real (and in my judgment no) prospect of”* success. The Judge was prepared to proceed on the basis of reports produced by the parties' Dutch lawyers, rather than requiring

formal expert evidence. The Judge placed weight on the fact that CM and the principal debtor were commercial parties who had entered into sophisticated agreements and had the opportunity to comment on what was a bespoke agreement. The Judge held that the alleged disparity in size and financial

might carried little weight as Necto was still a commercial enterprise engaged in the complex and risky business of organising music concerts. The Judge did not consider that Mr Buck's evidence that the principal debtor had not read the clause or previously encountered one assisted. The Judge was satisfied that a trial

would be "a waste of court resources and a waste of the litigants' money".



**Paul Fradley**

## URE Energy Ltd v Notting Hill Genesis

[2025] EWCA Civ 1407 (Males, Zacaroli, Miles LJJ)

Right to terminate – Performance – Waiver

10 November 2025

This appeal concerned the principle of waiver by election, the key question being whether a party with an express contractual right to terminate a contract in certain events, who continues to perform for a period of months after such an event has occurred, is entitled to say that its conduct does not amount to an election to affirm the contract because it was unaware that the contract entitled it to terminate.

At first instance, Mrs Justice Dias held that the right to terminate was not lost as a result of an election to affirm in the relevant circumstances. Despite describing the result as "counter-intuitive and indeed unmeritorious" on the facts of the case, the Court of Appeal upheld that decision.

The Claimant, URE Energy Ltd ("URE"), was a start-up company purchased by a Mr Ensor with the aim of supplying electricity to the Genesis Housing Association ("Genesis") on a long-term basis. The parties entered into a four year short-term supply contract on 29 September 2017 (the "Contract")

pending the negotiation and execution of a 25 year contract. The Contract included terms entitling URE to terminate the Contract in certain circumstances, which included the passing of a resolution by Genesis for its amalgamation. URE was entitled to terminate the Contract in its entirety if any of the termination events occurred, and the Contract provided for a payment to URE in the event of termination (the "Termination Payment").

On 1 February 2018, Genesis passed a special resolution providing for a merger with another housing association, Notting Hill Housing Trust. The merged entity became Notting Hill Genesis, the appellant ("NHG"). Notice of the amalgamation was subsequently sent to URE on 22 March 2018. URE did not object to the amalgamation at any point and continued to supply NHG with electricity and negotiate the 25 year contract.

The relationship between the parties began to break down in October 2018 and on 29 October 2018 NHG gave URE notice that

it no longer intended to proceed with the 25 year contract (as it was entitled to do). In November 2018, URE sought to terminate the Contract, citing the amalgamation of Genesis as the justification and requesting settlement of the Termination Payment. Following the termination of the Contract, URE effectively ceased to operate.

In assessing the applicable principles for a waiver by election, it had to be shown that URE was aware of (i) the facts giving rise to the right to terminate; and (ii) the right itself (based on *Peyman v Lanjani* [1985] Ch 457). This knowledge requirement was assessed by reference to Mr Ensor's knowledge. Whilst Mr Ensor was aware of the amalgamation, the Court found at first instance that he did not know that the Contract gave URE a right to terminate on the basis of a solvent amalgamation (a point on which he did not receive any legal advice). As such, the defence of waiver by election failed. NHG did not have permission to challenge these findings of fact on appeal.

On appeal, NHG sought to modify

the knowledge principle set out in the *Peyman* case and argue that a contracting party must be deemed, as a matter of law, to have knowledge of the express terms of a contract to which it has agreed. This submission was not advanced at first instance but as it was point of law which did not require further evidence or factual findings, the Court of Appeal permitted NHG to advance the argument.

The Court of Appeal ultimately held that the knowledge principle set out in *Peyman* was intended

to be of general application. Furthermore, the deemed knowledge modification suggested by NHG would be both artificial and unrealistic as a blanket approach that was not supported by authority. Instead, there exist routes for any potential unfairness in the existing knowledge principle to be mitigated. For example, in circumstances where a contracting party is legally advised, they will be rebuttably presumed (subject to disclosure of the advice and waiver of privilege over its contents) to know the terms of the contract.

It should be noted that disclosure and waiver of privilege over advice was done in the present case.

As such, for the purposes of the principle of waiver by election, whether a party has the relevant knowledge is a question of fact. Although the conduct of URE following the amalgamation would have been sufficiently clear on an objective basis to demonstrate intention to affirm the Contract, there could be no waiver by election without the relevant knowledge and the appeal failed.

## Gagliardi v Evolution Capital Management LLC

[2025] EWHC 3214 (Comm) (Calver J)

Discretionary bonus – Contractual discretion – Good faith

1 October 2025

The Claimant brought a claim against his former employer, Evolution Capital Management LLC (a US hedge fund) (“Evolution”), alleging breach of his employment contract by reason of Evolution’s failure to pay him a discretionary bonus in connection with his trading activity in 2021. That block trading had generated over USD 60 million in profit and 97% of revenue for the fund.

The Claimant was an experienced portfolio manager focusing on US and European equity capital markets. His specific focus was “block trading”, which is a strategy consisting of privately buying large quantities of securities in bulk from financial institutions before going on to re-sell them. He was hired by Evolution for his expertise and connections in this area given that Evolution was seeking to integrate US block trading into its existing equity

capital markets trading framework.

The Claimant’s employment contract provided for a discretionary bonus for each calendar year provided he remained an employee in good standing. That bonus if awarded would be based on individual performance and the overall performance of the fund with a target range of between 10–15% of profit of the claimant’s revenue contributions.

Upon starting work, the Claimant generated an unprecedented volume of trading at a rapid pace. Concerns about risk management arose and ultimately Evolution decided to separate the Claimant’s activity from the wider fund as a protective measure. Later that same month, the Claimant was served with a subpoena from the US Department of Justice in connection with an investigation into block trading malpractices. Three

months later on 28 February 2022, Evolution dismissed the Claimant, effective on 7 March 2022 (although not for cause). Any discretionary bonus was due to be paid on 15 March 2022, but Evolution decided not to award the Claimant a bonus. The Court found that the reason for this was an unwillingness to award a bonus before knowing the outcome of the investigation that the Claimant was subject to (in relation to which, he was never charged with any offence).

The employment contract itself was governed by Delaware law. However, the parties agreed that every contract subject to Delaware law is also subject to an implied covenant of good faith and fair dealing which required a party to a contract to refrain from arbitrary or unreasonable conduct that has the effect of preventing the other party from receiving the fruits of the bargain. This covenant is fact

specific and will turn on the terms of the contract and the agreement of the parties. Any exercise of discretion must fall within the range of what the parties would have agreed upon during their original negotiations had they thought to address the issue.

The parties also agreed that given the nature of the contract as one of employment, it included an additional implied term of trust and confidence pursuant to which Evolution would not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence with the Claimant. Based on the requirements of *Braganza v BP Shipping Ltd* [2015] UKSC 17

this implied duty of trust and confidence required Evolution to (i) exercise its discretion in good faith in accordance with the contractual purpose; and (ii) take account of matters which should be taken into account.

In assessing the exercise of contractual discretion, Mr Justice Calver held that the calculation of any discretionary bonus was to be done by reference to the Claimant's individual revenue performance and contribution and not behavioural or reputational issues. As such, no reasonable decision-maker, faced with the quantum of profit generated by the Claimant, would have refused to award him a bonus. The Court considered the investigation into the Claimant to constitute the only matter

considered at the time in relation to whether he should be awarded a bonus. However, this was not proof of wrongdoing and failed to justify refusal to pay the Claimant a discretionary bonus. As the Claimant had not been dismissed for cause, he was entitled to a good faith exercise of discretion in relation to the question of whether Evolution should pay him a bonus.

Ultimately, the Court determined that the rational exercise of the contractual discretion warranted a bonus at the higher end of the range estimated in the employment contract given that the Claimant had generated 97% of revenue for the fund. The Claimant was awarded USD 5,385 million in damages (plus interest).

## King Crude Carriers SA and others v Ridgebury November LLC and others

[2025] UKSC 39 (Lords Reed, Hodge, Hamblen, Burrows, Stephens)  
Deemed fulfilment - Mackay principle - Implied terms

12 November 2025

The appellants were the buyers of three second-hand oil tankers. The contracts of sale provided that the buyers would pay deposits of 10% of the purchase price into third-party escrow accounts within three banking days of the confirmation that the accounts were open and ready to receive funds. In order to facilitate the opening of the accounts, the buyers were also contractually obliged to provide all necessary "know your client" ("KYC") documentation without delay. The buyers failed to provide the KYC documentation which meant that the escrow accounts could

not be opened, and the deposits were not paid. As such, the sellers terminated the contracts and commenced arbitration against the buyers seeking to recover the deposits as accrued debts.

The buyers disputed the claim brought by the sellers, contending that they had never received confirmation that the accounts were ready to receive funds, meaning that the deposits had not accrued. The sellers relied upon the decision of the House of Lords in *Mackay v Dick* (1881) 6 App Cas 257 to support the principle of deemed fulfilment

of a condition precedent. This was a Scottish appeal case.

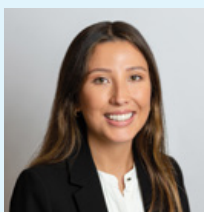
The Supreme Court unanimously held the principle of deemed fulfilment set out in *Mackay v Dick* forms no part of English law; the principle was drawn from civil law rather than English jurisprudence. Instead, the Supreme Court determined that there is no principle of English law that a condition precedent in a contract, which would give rise to a debt being owed by a party if fulfilled, should be treated as fulfilled where the relevant party has wrongfully prevented the

condition from being satisfied. To uphold the principle would undermine established English law on contracts for the sale of goods as to when a debt accrues. Further, the Supreme Court found that the principle was premised on a legal fiction because in reality there has been no performance of the relevant condition precedent. It was determined that such fictions “*tend to obscure transparent reasoning and, wherever possible, should be removed.*” Instead, the Supreme Court endorsed the

point that the English law of contract in this area proceeds on the basis of the terms of the relevant contract and their proper interpretation. This is consistent with freedom of contract and the enforcement of the terms of the bargain which parties have made, endorsing principles of certainty and predictability.

It was also held that the rejection of the deemed fulfilment principle would not cause any injustice because in circumstances where a condition is not fulfilled because

of a party’s breach of contract, the innocent party will hold an accrued claim in damages for loss of its bargain. This remedy will require proof of loss (as opposed to a debt claim which facilitates recovery of the full amount of the debt). As such, the sellers were not entitled to claim the deposits provided for under the contracts of sale. In this case, the market price of the oil tankers had actually increased since the sale to the buyers meaning that no net loss had been suffered and the sellers could only recover nominal damages.



## Company Law

DIGESTED BY ANNABELLE WANG



# THG plc v Zedra Trust Company (Jersey) Ltd

**[2026] UKSC 6 (Lord Hodge and Lord Richards, with whom Lord Lloyd-Jones and Lord Briggs agreed, Lord Burrows dissenting)**

**Unfair prejudice – Sections 994 to 996 of the Companies Act 2006 – Limitation**

**25 February 2026**

A majority of the Supreme Court held that sections 8 and 9 of the Limitation Act 1980 (the “1980 Act”) do not apply to petitions under sections 994–996 of the Companies Act 2006 (“CA”).

The appellant (Zedra Trust Company (Jersey) Ltd) (“Zedra”) was a minority shareholder in THG plc (“the Company”). Zedra had presented a petition under section 994 of the CA in January 2019, claiming various forms of relief against the Company and its former and current directors for having conducted the affairs of the Company in a

manner alleged to be unfairly prejudicial to Zedra’s interests.

Following the respondents’ successful application to strike out of parts of its petition, Zedra applied to amend the petition to include an allegation that it had suffered unfair prejudice by its exclusion from an allotment of bonus shares in July 2016 paid up by capitalising sums from a distributable reserve account (the “July 2016 Complaint”).

At first instance, Fancourt J had rejected the respondents’ arguments that the July 2016

Complaint was time-barred. He held that the Limitation Act 1980 (the “1980 Act”) does not have a limitation period that applies to petitions under section 994 of the CA. Delay or acquiescence was, however, a matter going to the exercise of the court’s discretion to grant relief on the petition.

On the respondents’ appeal, the Court of Appeal held that the July 2016 Complaint was time-barred because the limitation period of six years under section 9 of the 1980 Act applied and permission to amend had not been granted within that period.

The Court of Appeal held that a petition seeking relief under section 994 of the CA comprised an action “*upon a speciality*” under section 8(1) of the 1980 Act and was thus, in principle, subject to a 12-year limitation period. However, Lewison LJ (giving the leading judgment) held that the 12-year period was disapplied under section 8(2) of the 1980 Act, as the July 2016 Complaint was an “*action to recover any sum recoverable by virtue of an enactment*” falling within section 9 of the 1980 Act. The right to go court under section 994 of the CA was purely statutory and the only relief sought by Zedra in respect of the July 2016 Complaint was the payment of money.

The Supreme Court approached the case as a question of the proper interpretation of sections 8 and 9 of the 1980 Act. Lord Hodge and Lord Richards (giving the majority judgment) reviewed the origins and legislative history of section 8 and concluded that

it is the essence of an action “*upon a speciality*” that it is an action to enforce an obligation created by a deed or statute. His Lordships held that sections 994–996 of the CA do not create any substantive obligations but enable members to obtain such relief as the Court thinks fit where the breach of fiduciary obligations results in members being unfairly prejudiced. Accordingly, section 8(1) of the 1980 Act does not apply to petitions under sections 994–996 of the CA.

As to the scope of section 9 of the 1980 Act, His Lordships held that it was not confined to claims under statute for ascertained debts but extended to claims under statute for unascertained sums. However, whilst a petition under sections 994–996 will specify the orders which the petitioner wishes the court to make, and may specify a monetary order, the applicant did not have any entitlement to any particular

form of relief. It is for the court to determine what, if any, relief ought to be granted in the exercise of its discretion. An order for the payment of a specific sum, by way of compensation or otherwise, on a section 994–996 petition is not a sum “*recoverable by virtue of*” sections 994–996. Lord Hodge and Lord Richards also expressed the view that section 9 of the 1980 Act does not apply to any claims under statutory provisions which confer a wide discretion on the court as to remedy.

In his dissenting judgment, Lord Burrows concluded that both sections 8 and 9 of the 1980 Act applied to petitions under sections 994–996 of the CA. His Lordship considered that section 8(1) applied as petitions were actions “*upon a speciality*”, although the 12-year period would be disapplied under section 8(2) where the petition sought monetary relief, as such petitions fall within the scope of section 9(1).

## Wonop APS v Jagger

[2026] EWHC 362 (Ch) (Chief ICC Judge Briggs)

Company administration – Dissolution – Paragraph 84 of Schedule B1 IA 1986

23 February 2026

The applicant applied to remove the respondents as joint administrators of FAI Realisations 2024 Limited (the “Company”) without discharge from liability. The application was heard by Rajah J, who granted orders removing the joint administrators from office, postponing their discharge from liability and appointing the applicant’s proposed administrators in their place.

The original joint administrators had, however, filed a notice to move from administration to dissolution under paragraph 84 of Schedule B1 to the Insolvency Act 1986, prior to the orders being made. Chief ICC Judge Briggs held that the legislature intended for paragraph 84 to operate as a self executing termination of the office of administrator upon registration of a filed notice. The statutory purpose of the

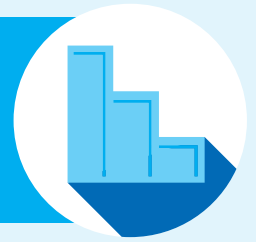
provision was to provide a swift, inexpensive and final exit where no distribution is possible.

The Company’s administration therefore terminated automatically upon registration of the notice of dissolution, notwithstanding that the new administrators had been appointed and the administration had been extended by court order after filing but before registration.



# Corporate Insolvency

DIGESTED BY CHARLOTTE WARD AND ANGUS GROOM



## Re Kingate Global Fund Ltd (in liquidation)

**BVIHC(COM)2024/0331 (Wallbank J)**

**Directions application – NAV not determined – No deferred creditors – No priority of deferred creditors – No statutory interest – No creditors' committee – Refusal to sanction disposition as proposed by Liquidators**

26 January 2026

Kingate Global Fund Ltd (“KGF”) was a company incorporated in the BVI in 1994. It carried on business as an open-ended professional investment company. It was one of a number of feeder funds for Bernard Madoff’s security and options trading company, BLMIS. On 11 December 2008, Bernard Madoff was arrested. On 12 December 2008, the Board of KGF suspended the net asset value (NAV) for KGF for November 2008 with immediate effect. The Board also suspended redemptions and the payment of redemption proceeds from that date. Liquidators were appointed in respect of KGF on 4 June 2009.

The Liquidators of KGF had received in excess of USD 300 million. There were no trade creditors of KGF left to pay. There were two competing classes for monies held by the Liquidators. Firstly, what were referred to as the November Redeemers, being those who were registered members of KGF who had submitted a valid but unpaid redemption requests in respect of their shares as at 28 November 2008. Secondly, what were referred to as Continuing Members, being

those members who had not submitted such redemption requests as at 28 November 2008.

The Liquidators applied for the directions of the BVI Court pursuant to s.186(5) and/or schedule 2 of the Insolvency Act 1986 (“the Act”) and/or paragraph 4 of the order of the Court dated 4 June 2008 by which the Liquidators were appointed.

The Liquidators sought the following orders:

- (1) The 28 November 2008 NAV was validly determined and there is no basis to go behind that determination;
- (2) The November Redeemers are deferred creditors in respect of any unpaid redemption proceeds;
- (3) As deferred creditors, the November Redeemers have priority over the Continuing Members;
- (4) The November Redeemers are entitled to statutory interest under the Act;
- (5) Accordingly, pursuant to s.207 of the Act, the Liquidators were sanctioned to distribute the remaining assets in a prescribed order of priority;

- (6) The Creditors Committee established on 22 April 2022 was (and remains) validly constituted under the Act;
- (7) The Liquidators’ costs of the application are costs in the liquidation.

The Judge determined that no November 2008 NAV had been validly determined. The Judge agreed with the Continuing Members that for the NAV to be validly determined it needed to be approved, agreed or at least not objected to by the directors of KGF. As a consequence, the Judge decided that the so-called November Redeemers remained in the position of members of KGF. As such, he said that the November Redeemers were owed nothing and did not become creditors of KGF in any shape or form. Instead, he decided that the November Redeemers were in the same position as the Continuing Members. In addition, the Judge decided, among other things, as follows:

- (1) The November Redeemers were not entitled to statutory interest;

(2) The Liquidators should not be sanctioned to distribute the remaining assets in the manner they propose;

(3) The November Redeemers could not validly be appointed as members of the Creditors' Committee;

(4) The so-called Creditors' Committee established on 20 April 2022 was not validly established or constituted.



**David  
Alexander KC**



**Barry  
Isaacs KC**

## Re Madagascar Oil Ltd

**(unreported) (Richard Smith J)**

**Restructuring plan – Part 26A – Costs order – Cross-class cram down – Indemnity costs**

**7 November 2025**

On 15 August 2025, the Court handed down a judgment [2025] EWHC 2129 (Ch) with reasons for sanctioning a restructuring plan that has been proposed by the plan company (Madagascar Oil Limited, "MOL") in relation to itself and its subsidiary (Madagascar Oil S.A., "MOSA"). The Court sanctioned the plan by application of the cross-class cram down power against the wishes of the dissenting creditor Outrider Master Fund LP ("Outrider").

On 7 November 2025, the Court heard argument on the question of costs and whether Outrider should be required to pay some of the costs incurred in connection with the proceedings. Exceptionally, the Court (Richard Smith J) concluded that it was appropriate for Outrider to be ordered to pay part of the MOL's costs, with significant costs being assessed on the indemnity basis.

As a preliminary issue, the Court considered Outrider's objection that the terms of the restructuring plan itself had stated that each party would

bear their own costs. The Court concluded that this clause did not seem to limit the ability for a party such as MOL to later seek to recover those incurred costs from another party pursuant to section 51 of the Senior Courts Act 1980 and Part 44 of the CPR.

In principle, the Court accepted that the principles described in *In Re Virgin Active Holdings Ltd* [2021] EWHC 911 (Ch) were relevant to the Court's discretion, and also that there is a distinction between a "classic" plan and a plan that is in substance adversarial litigation between only two parties (as in *Consort Healthcare (Tameside) plc v Tameside & Glossop NHS Trust* [2025] BCC 46).

In the round, the Court concluded that Outrider should bear a not insignificant proportion of the overall costs on account of its conduct and approach to the case. In particular, the Court described Outrider as taking many points "some obviously bad", "some abandoned late", which had led to additional costs being incurred and court time being involved

at all stages in the process.

The Court also awarded costs on the indemnity basis for certain parts of the convening hearing (where Outrider's position was held to have an "evident lack of merit"), for parts of the CMC (where Outrider was held to have "unreasonably pursued (frivolous) grounds which were only dropped shortly before the hearing") and also for various parts of the sanction hearing (in relation to further "frivolous" points).

Finally, the Court also awarded MOL its costs of the costs hearing, again on the indemnity basis, because Outrider's approach to that hearing (including a "long letter", with "all the hallmarks of its approach to the case I have already described").



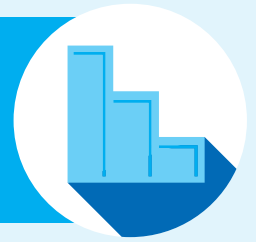
**Matthew  
Abraham**



**Rabin Kok**

# Corporate Insolvency

DIGESTED BY CHARLOTTE WARD AND ANGUS GROOM



## Various Claimants v Kroll Trustee Services Limited

[2026] EWHC 216 (Ch) (Fancourt J)

Pre-action disclosure – Distressed disposal – Restructuring transaction – Abuse of majority power – Confidentiality

20 January 2026

On 20 January 2026, the Court (Fancourt J) heard argument and gave an *ex tempore* judgment granting an application for pre-action disclosure brought in relation to a restructuring transaction that was said to have been implemented between November 2024 and February 2025 in relation to the Hurlgruten group of companies.

The Applicants, including Deutsche Bank AG and accounts managed by Oaktree Capital Management (UK) LLP and Oaktree Capital Management (Europe) LLP, were lenders holding various classes of debt under an intercreditor agreement between parties including lenders, the Hurlgruten Group entities, and Kroll Trustee Services Limited in its capacity as security trustee (the Respondent to the Application).

The restructuring transaction was initially proposed as a consent solicitation, but this was blocked by creditors including the Applicants who had expressed concerns that the ad hoc group of creditors which was coordinating the transaction (the “AHG”) had arranged the transaction such that they would procure special benefits for themselves which were

not available to other *pari passu* ranking creditors. In the event, the consent solicitation failed and the transaction was subsequently said to have been implemented as a distressed disposal under the terms of the intercreditor agreement. It was understood that this distressed disposal was likely to have been implemented by the AHG giving enforcement instructions to the security agent (the Respondent), directing them to implement the transaction.

The Applicants considered that they appeared to have claims against the AHG and others based on the abuse of majority power doctrine, on the basis that the AHG had given the instructions by exercising a contractual power granted to a majority of creditors, but where the exercise of power in the intercreditor agreement to dispose of the relevant debt was an abuse of majority power, as it was not exercised bona fide in the interests of the class of creditors as a whole but was exercised for the benefit of or to prefer the private interests of the AHG. The Court concluded that this claim was legally coherent and that the evidence put forward by the Applicants appeared to call for an explanation from

the intended defendants.

However, the Applicants had been given very little information about how exactly the transaction had been implemented or even what exactly it consisted of. In the circumstances, the Applicants brought an application for pre-action disclosure against the Respondent security trustee. The Court noted that the Applicants were seeking limited classes of documents to enable them to know: first, exactly what instructions were given to the Respondent; second, who gave those instructions and what those persons individually and collectively obtained under the transaction in question; and, third, the value of the benefits that those persons received.

The Court accepted that the threshold requirements for making an application under CPR rule 31.16 (as also repeated exactly with the PD 57AD) were met and so the key issue for the Court was whether it should exercise its discretion to make an order as sought. The Court concluded that it should make the order sought in light of the fact that the documents sought were likely to be some of the most relevant

evidence in the claim, and also because this would save costs and could be done at relatively little inconvenience to the Respondent.

The Respondent did not actively oppose the application, but took the position that it could not hand over the documents sought voluntarily because it owed duties of confidentiality to various third parties (which, it accepted, would be overridden by an order of the Court requiring disclosure). The Court concluded that these duties of confidentiality were not a good reason to refuse the application. In particular, the

Court concluded that the parties to whom the confidentiality obligations were owed were likely to be defendants in the anticipated proceedings, and in circumstances where the relevant confidential documents would clearly fall within the scope of disclosure to be provided by those defendants in the proceedings themselves to which confidentiality would be no answer, it followed that likewise confidentiality could not be a reason to refuse disclosure at an earlier stage where it might save costs and assist in disposing of the dispute more fairly and conveniently.



**Stephen  
Robbins KC**



**Adam  
Al-Attar KC**



**Angus Groom**

## Webb & Hussain v Eversholt Rail Limited & Norton Rose Fulbright LLP; Re Eversholt Rail (365) Limited (in liquidation)

[2026] EWHC 101 (Ch) (Sir Anthony Mann)

[Sections 235 and 236 – What a liquidator must show - Reasonable requirement](#)

22 January 2026

Sir Anthony Mann (sitting as a High Court Judge) has dismissed an appeal brought by the Liquidators of 365 Co against an order of ICC Judge Burton. The Liquidators of 365 Co brought an application under sections 235 and 236 of the Insolvency Act 1986 against ERL and its solicitors seeking "*copies of all documents ... in its possession, custody or control relating to the business, dealings, affairs or property of [365 Co] ...*". The expressed reason for the application was that all of the documentation was required to enable the Liquidators "*to reconstitute the company's records*" in circumstances where 365 Co had little of its own records. ERL was a sister company of 365 Co which provided asset management and administrative services to companies within

the group, including 365 Co. 365 Co was a special purpose vehicle whose role it was to hold some of the Group's train fleet and went into CVL in 2019.

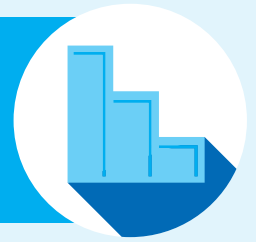
ICC Judge Burton handed down a judgment on 29 August 2024 ([2024] EWHC 2217 (Ch)) dismissing the application as "*fundamentally misconceived*". She emphasised that an officeholder needed to demonstrate a reasonable requirement for the relief they are seeking. On appeal the Liquidators contended that they did not need to demonstrate a reasonable requirement to reconstitute 365 Co's records, or that alternatively that the reasonable requirement spoke for itself. They maintained that the Liquidators were entitled to insist on seeing (in the Judge's

words) "*everything forever*".

Sir Anthony Mann rejected that argument. After reviewing the authorities, he concluded that officeholders have to establish a reasonable requirement for documents or information under both sections. While it may be that in some circumstances an officeholder could establish they needed to see everything forever, but they had to do more than simply point to the fact that someone has extensive knowledge they wanted and establish a reasonable requirement. The Judge noted that the place of reconstituting the company's knowledge had to be understood; that was one of the underlying purposes of section 236, but it was not a sufficient requirement

# Corporate Insolvency

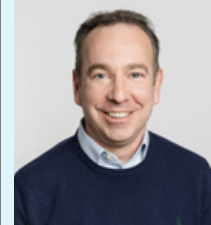
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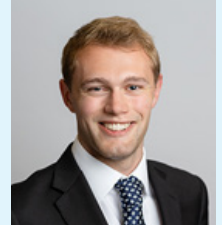
to be granted relief.

The Judge went on to reject the Liquidators' challenge to the evaluative assessment made by ICC Judge Burton that a reasonable requirement had not been made out. He also rejected an argument that ICC Judge Burton erred in not granting some relief rather

than dismissing the application entirely. He held that this was a case management decision she was entitled to reach. The possibility of a lesser order has not been properly raised before her at the hearing and she could hardly be blamed for addressing the case which was put to her.



**Daniel  
Bayfield KC**



**Paul Fradley**

## Re Argo Blockchain Plc

[2025] EWHC 3257 (Ch)

[2025] EWHC 3395 (Ch) (Hildyard J)

**Restructuring Plans - Part 26A – Sanction – Meetings**

**10 December 2025 – Sanction**

**23 December 2025 – Reasons**

On 10 December 2025, Mr Justice Hildyard sanctioned a restructuring plan brought by a holding company of a group which is in the business of the large-scale mining of Bitcoin and other cryptocurrencies.

The convening hearing considered the extreme urgency of the matter which was essential to enable the Plan Company to retain its Nasdaq listing. Between the Convening and Sanction hearings, Nasdaq confirmed, upon submissions from the Plan Company and an expert report by an English King's Counsel, that a Part 26A restructuring Plan was not a bankruptcy proceeding that would jeopardise the Company's ability to retain its listing.

On 23 December 2025, Hildyard J handed down his judgment setting out the reasons why the

Plan would be sanctioned.

The Plan enabled the company to be rescued by cryptocurrency miner, Growler Mining Tuscaloosa LLC ("Growler"), and to enable the Plan Company, with the assistance of, and contribution of assets from, Growler, to implement a turnaround plan and maintain its NASDAQ listing. In essence, Growler would acquire the company and secure the majority (87.5%) of its shares in exchange for injecting \$3.5 million in new equity and \$18.4 million in new assets. Growler's secured debts were to be released, as were the Company's notes, in exchange for which the noteholders would receive 10% of the equity and the remaining shareholders would be diluted to 2.5%.

There were 3 classes of creditor, Growler, the noteholders and

the shareholders. The latter two classes received a low turnout with 3.2% of the shareholders voting and only the Chair appearing at the meeting for the noteholders to vote as a proxy for 17 of them. Each class assented to the Plan.

Hildyard J considered whether a "meeting" attended by one person could constitute a meeting at all. The Judge declined to follow Lord Braid in *Dobbies Garden Centres Ltd* [2024] CSOH 111 at [115] and found that "it is an essential quality of a meeting, and the rationale of the requirement of a meeting in Part 26 (and now Part 26A) of the Act, that it is (in the words of David Richards J at [8]) 'an assembly or the coming together of two or more persons.'"

Therefore, despite the unanimous vote by the noteholders via the proxy, the Judge considered that the

meeting was not valid and the class needed to be crammed down. The Judge was content to do so, finding that the noteholders would receive up to \$3million in equity under the Plan but nothing in the relevant alternative, which he found would be an administration followed by an orderly wind down. Accordingly, the noteholders were no worse off.

As for the low turnout amongst the shareholders, the Judge was satisfied this was fair having heard submissions from a retail advocate who applied a “critical eye” to the Plan in respect of retail shareholders and noteholders.

The Judge was assisted by a restructuring benefits report which led him to conclude that the allocation was fair. The Judge was also satisfied that the Plan was the “*product of serious negotiation between the Plan Company and Growler (including a process of market testing in respect of the restructuring).*”

In concluding his judgment, Hildyard J reiterated the salutary warning to practitioners from Snowden LJ in Adler that “*the court's willingness to decide cases quickly to assist companies in genuine and urgent financial difficulties must not be taken for granted or abused...*”



Joe Curl KC



Matthew Abraham



Rabin Kok

## TAQA Bratani Ltd v Fujairah Oil & Gas UK LLC

[2025] EWCA Civ 1669 (Falk LJ)

Transaction at an undervalue – Meaning of transaction – Defences

19 December 2025

This was an appeal against a judgment dismissing a claim under s.238 of the Insolvency Act 1986 where Dias J concluded that, although there was a transaction at an undervalue within the prescribed period, the defence under s.238(5) applied. The company (now known as Fujairah Oil & Gas UK LLC) entered into the transaction in good faith, for the purpose of carrying on the business and had reasonable grounds to think the transaction would benefit the Company.

The transaction involved the sale of the company which was owed an intercompany receivable by another group entity. That receivable was extinguished by the declaration of a corresponding dividend as part of the process to agree the sale.

The appeal was advanced

on three grounds:

(1) That the Judge should have held that the dividend alone was the “transaction” for the purposes of s.238. The trial judge had found that it would be artificial to consider the dividend alone and instead it was inextricably intertwined with the wider arrangements and sale.

(2) That the trial judge erred in finding the defence under s.238(5) applied. Dias J had failed to consider whether, even if a sale was in the interests of the Company in general terms, the payment of the dividend was for its benefit.

(3) That the trial judge wrongly treated a pension write-off as consideration for the dividend.

Falk LJ allowed the appeal on all grounds and remitted the case back to the Commercial Court to exercise its discretion as to the remedy

to be granted under s.238(3).

As to ground 1, the statutory provision merely requires that a company has at a relevant time “*entered into a transaction with any person at an undervalue*”. It is the company itself which needs to enter into the transaction. In this case, the undervalue transaction entered into by the company was the dividend. That is all the statute requires on this limb.

On ground 2, the error in categorising the transaction also undermined Dias J’s analysis of the defence. The correct question was whether there were reasonable grounds to consider that the dividend would benefit the company (and not the group overall). The fact that the Judge found that the sale was not conceived with the purpose of

prejudicing creditors was not determinative of this point.

Finally on ground 3, there was no indication in the documents that the pension write-off was offered in exchange for

the dividend and could not be considered consideration for it.



**David Allison KC**

## Re Versilia Solutions Limited (In Provisional Liquidation)

**[2026] EWHC 282 (Ch) (Lance Ashworth KC sitting as a deputy High Court Judge)**

**Provisional liquidation – Powers of sale – Retrospective ratification**

**12 February 2026**

This was an application to wind up Versilia Solutions Limited which had been in provisional liquidation since 10 December 2025 and retrospectively ratify a ‘pre-pack’ sale of its most valuable assets which had taken place on 19 December 2025.

There had been an extant petition and administration application on foot but on 10 December 2025 the Company admitted the Petition debt, consented to the dismissal of the administration application and did not oppose the appointment of joint provisional liquidators (“JPLs”) under section 135 of the Insolvency Act 1986. This was done pursuant to an order of HHJ Klein, (sitting as a High Court Judge) which set out certain powers the JPLs could exercise.

After their appointment, the JPLs received an offer to acquire certain aspects of the Company’s business and certain assets which had a deadline of 16 December 2025 for acceptance. The Company was in financial distress, it had received termination notices of main customer contracts and had urgent requirements to pay suppliers in order to keep remaining contracts alive. The JPLs accepted

the offer, considering it the best means of preserving/obtaining value in the Company’s business and assets (the “Sale”).

The JPLs did not make any application to Court in advance of the Sale either for confirmation that the powers granted to them in the HHJ Klein’s order empowered them to cause the Company to enter into the Sale, nor seeking to extend their powers in this respect.

The Judge found that the Sale was permitted on a correct interpretation of HHJ Klein’s Order. The stipulation that assets or property not be parted with until further order of the Court did not extend to the Sale which instead converted assets to cash to protect their value in these (unusual) circumstances. The Judge was willing to make a declaration to this effect but commented it would have been better for the JPLs to come back to Court for clarification about the order or express permission before consummating the Sale.

The Judge then considered whether permission could be sought retrospectively to approve

the Sale or extend the JPLs powers to enter into it if he had been wrong about the construction of HHJ Klein’s Order. The Judge found this was permissible, by analogy with cases where creditors who require permission to commence proceedings against insolvent companies under paragraph 43(6) of Schedule B1 and section 130(2) (and 285(3) IA86 for bankrupt individuals) have failed to do so but obtain such permission retrospectively. Proceedings brought without permission in those circumstances are not a nullity. The Judge found he had jurisdiction to control a properly appointed provisional liquidator, in the same way the Court can control the actions of a properly appointed receiver acting beyond the scope of his powers.

The Court found it was appropriate to ratify a sale taken on appropriate advice that would be the only way to preserve the assets of a company (or at least the value of those assets to creditors) and the JPLs should not be punished for not having sought leave in advance in circumstances where the Sale would have been ratified if a prospective application had been made.



# Personal Insolvency

DIGESTED BY RABIN KOK



## Nardelli v Desiman Ltd

[2026] EWHC 366 (Ch) (Sir Anthony Mann (Sitting as a judge of the High Court))

Guarantees – Bankruptcy petitions – Adjudgments – Delay

24 February 2026

This was an appeal by two guarantors against bankruptcy orders made by ICCJ Mullen following their failure to comply with an unless order requiring payment of £33,500 in costs.

The petition debt arose under a joint guarantee given in favour of the petitioner, to support lending to a development company. Below, ICC Judge Greenwood dismissed the debtors' attempts to set aside the demands in robust terms. Costs were ordered to be paid, failing which the debtors were debarred from taking further steps in the petitions without permission.

The debtors applied in time to extend the payment in respect of the petition debt, but did

not pay. The creditor applied to accelerate the hearing and sought immediate bankruptcy orders on the basis that the debtors were effectively debarred and that the extension application was bound to fail. ICCJ Mullen concluded that the extension application would inevitably be dismissed and also concluded that a bankruptcy order should be made with no adjournment.

Sir Anthony Mann dismissed the appeal. He held that the Judge had been entitled to treat the proposed repayment as uncertain and insufficiently substantiated, particularly given the manner and timing in which the point was raised. The reference to “*inevitability*” was perhaps “*a little too strong*”, but read fairly

the judgment reflected a justified scepticism that the petitions would realistically be defeated. The remaining grounds — centred on the effect of the unless order and the anticipated failure of the extension application — were also rejected.

Sir Anthony Mann considered the relevance of delaying tactics and the breaches of the unless order to the discretion to adjourn the petition, holding that both were plainly relevant factors.



**Robert Amey**

## Nilsson v Jones; Re Jones

[2026] EWHC 319 (Ch) (ICC Judge Jones (sitting in retirement))

Annulment – Debtor’s petition – Domicile

17 February 2026

This was an application by joint trustees in bankruptcy to annul a bankruptcy order made in December 2021 on the debtor’s own application.

Two issues arose. First, domicile – whether, at the date of the order, the debtor was domiciled in Austria such that the adjudicator lacked jurisdiction. Second, whether the original order ‘ought not to have been made’ even though the statutory requirements were met, but in circumstances where the Court should not have exercised its discretion to make an order.

On domicile, the Court reviewed the test for acquisition of a domicile of choice: residence coupled with an intention of permanent or indefinite residence. Although the debtor had long resided in Austria, carried on

business there, described himself in earlier family proceedings as intending to live there permanently, and referred to himself as an Austrian permanent resident shortly before the bankruptcy, the Court held that the trustees had not proved the necessary *animus manendi* – that is, intention to remain – at the relevant date. In the circumstances, his future intentions were not sufficiently fixed or settled to displace his English domicile of origin. The adjudicator therefore had jurisdiction.

The trustees’ alternative case was that although the statutory requirements had been met, the order should be annulled because the debtor had no realisable assets in England, had misstated his interest in the former matrimonial home, and because the bankruptcy

was not recognised in Austria, preventing recovery of substantial Austrian assets. As such, it was contended, the making of an English bankruptcy order was to the detriment of the bankrupt’s creditors, who would be prevented under s 285 IA 1986 from pursuing the debtor in Austria.

The Court accepted that argument. The creditors were faced with a potentially pointless bankruptcy in England without prospect of a distribution whilst at the same time being prevented by section 285 of the Act from bringing their claims against Mr Jones in Austria. In the circumstances, while the statutory criteria for the making of an order were met the Court should have exercised its jurisdiction not to make an order, and thus it ‘ought not to have been made’.



## Property and Trusts

DIGESTED BY PETER BURGESS



### Re Pocket Renting Limited (in administration); Maher v Investalet Limited

[2025] EWHC 3133 (Ch) (ICC Judge Greenwood)

Section 234 – Insolvency Act 1986 – Vacant possession – Administrators

1 December 2025

This was a hearing of an application made by joint administrators for an order for vacant possession of properties owned by the company under section 234 of the Insolvency Act 1986. The properties were let to the respondent company and were then occupied by sub-tenants.

The administrators' position was that the relevant tenancies had been terminated such that any person now in occupation was a mere trespasser, without any relevant entitlement or consent, and as a result the administrators were entitled to vacant possession.

However, the Judge raised the question of whether even if the land in question, occupied by a trespasser, is itself relevant property for the purposes of section 234, and even if the company (and so the officeholder) has a right to seek vacant possession of that property, nonetheless, is the officeholder, in doing so, seeking to compel the trespasser to "*deliver, convey, surrender or transfer*" any such property "*to the office-holder*", rather than seeking simply to compel that person to leave – to vacate and cease to occupy?

The administrators argued that

the obligation to give vacant possession by "*returning the property*" free of people, chattels and interests, meant that there was (or would be a) relevant transfer for the purposes of section 234. The Judge did not accept this argument. He considered that the trespasser's identified interest is not in any sense (by his vacation of the property) transferred to the holder of the superior title (or delivered, conveyed or surrendered to that person).

The Judge decided that the relief was not, therefore, within the scope of section 234 and dismissed the administrators' application.



## Sport

DIGESTED BY DANIEL JUDD



# Felipe Massa v Formula One Management Limited, Bernard Charles Ecclestone, Fédération Internationale De L'Automobile

[2025] EWHC 3064 (KB) (Jay J)

Formula One – Summary judgment – Declaratory relief

20 November 2025

The Formula One (“F1”) racing driver Felipe Massa launched proceedings claiming that he was the true 2008 F1 World Drivers’ Champion, following the controversial events of the 2008 Singapore Grand Prix (a scandal known to some as “Crashgate”).

This case concerned a preliminary hearing of Massa’s claim. The defendants, the FIA and FOM, sought to strike out or obtain reverse summary judgment on Felipe Massa’s claim. (The facts set out in the judgment were therefore assumed to be as alleged by Felipe Massa.)

Massa’s claim centred on the 2008 Singapore Grand Prix. The Renault driver, Nelson Piquet Jr, deliberately crashed his car in order to confer a race advantage on his teammate, Fernando Alonso. At the time of the crash, Massa had been in the lead and Alonso was far behind. The crash caused the deployment of the safety car, which led the

cars to slow down and bunch up. Alonso eventually went on to win the race, and Massa finished the race without scoring any points, including after suffering his own difficulties in the race.

At around that time, Piquet Jr’s father informed the race director, Max Whiting, that the crash was deliberate. Whiting informed FIA (through Max Mosely) and FOM (through Bernie Ecclestone) about this. Massa claimed that FIA and FOM, who were vicariously aware of this information, conspired to conceal it in order not to investigate the crash. An investigation of the crash may have led to cancellation of the race results and Massa becoming the champion.

The Court only struck out certain of Massa’s various claims. The Court dismissed Massa’s “pure” breach of contract and tort claims brought under French law. These were essentially based on the allegation that the FIA breached its regulations by

failing to investigate the crash. The contract claim was dismissed because no contractual duty was owed to Massa personally, and because it was limitation-barred; the tort claim was dismissed because it was limitation-barred.

The Court nevertheless held that Massa’s claims for unlawful means conspiracy and for inducing breach of contract were sufficiently arguable to proceed to trial, although faced “a number of obstacles” on the issue of causation. The Court also concluded that the English claims were not barred by limitation at this stage. But the Court stopped short of allowing a claim for declaratory relief to proceed further: This would impinge on the FIA’s right of management of its own affairs, without hearing from relevant third parties (such as Lewis Hamilton, the eventual champion) and Massa’s case that he lost a chance to become the 2008 Drivers’ World Champion could be reflected by an award of damages alone.

# Enforcing Arbitration Awards in the BVI: laws and limitations



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The Egyptian Court of Cassation, Cairo

In *Abdul Kadir Al Muhaidib & Sons Company v Kamel* (unreported, 29 January 2026, BVIHC (COM) 2024/0213), Mithani J (Ag) was required to consider whether an arbitral award should be enforced in the BVI, notwithstanding that it had been set aside in the jurisdiction in which the award was made.

Perhaps for the first time in the BVI, the judgment provides guidance on the limited circumstances in which the Court will enforce an award which has been set aside at its seat, and the matters which will be taken into consideration by the Court in the exercise of its discretion. In doing so, the Court acknowledged both the desirability of enforcing arbitral awards, as well as the deference to foreign judgments that the BVI Court will exercise in the interest of both comity and the finality of litigation.

## The facts

The facts of the case are complex and at their heart demonstrate the dogged determination

of a party to seek redress over a wrong they consider to have occurred; over 13 years, in multiple courts and countries.

The claimant is a joint stock company, incorporated in Saudi Arabia, whose business includes investing in medical and related services in the Middle East and North Africa. In 2007, it entered a memorandum of understanding (the “MOU”) with the first and second defendants (and a third party, referred to as MAM, who played no part in the BVI proceedings) concerning a proposed transaction in which the claimant would acquire 49% of the shares in Al Mokhtabar Medical Laboratories Company (“Al Mokhtabar”), an Egyptian company in the business of medical testing.

The MOU provided for certain conditions precedent to the transaction, including that the share capital of Al Mokhtabar would be increased to EGP 11,435,000. It also made provision for the Claimant to complete legal and financial due diligence.

The MOU was governed by Egyptian law. It also contained an arbitration clause, which provided (*inter alia*) that:

*"This MOU and the relationship between the Parties shall be governed by, and construed in accordance with, the laws of the Arab Republic of Egypt. Any dispute arising out of or in connection with the interpretation or the execution of this Agreement, including any question regarding its existence, validity, interpretation, performance or termination, or any action taken hereunder, shall be settled by Arbitration..."*

*(a) The arbitration shall take place in Cairo, Egypt before the CRCICA according to the CRCICA [R]ules of arbitration applicable at the time of the dispute.*

...

*(d) The arbitral award shall be final, binding on the Parties and subject to no appeal".*

The parties subsequently fell into dispute on a range of matters, including whether the condition precedent had been satisfied. This led, in turn, to various proceedings being commenced in the Egyptian courts.

In 2012, notwithstanding that court proceedings had already commenced, the claimant commenced arbitration proceedings in Egypt under the MOU. The arbitral tribunal declined jurisdiction, holding that the parties had waived their entitlement to rely on the arbitration clause. This then led to further court proceedings in Egypt, concerning (*inter alia*) whether the Egyptian courts had jurisdiction. This culminated in a decision of the Egyptian Court of Cassation (the 'CC' – being the highest Court in Egypt) which held, in 2018, that the Egyptian courts lacked jurisdiction.

Dissatisfied with this decision, in 2020, the claimant commenced another second arbitration against the first and second defendants, and MAM. MAM had, by this stage, died, and so his heirs were joined. This time, the claimant was successful before the arbitral tribunal: the defendants (and

the heirs of MAM) were held to be jointly and severally liable for breaches of the MOU, and the claimant was awarded damages in the amount of approximately US\$23 million, (being the loss of opportunity together with costs). Importantly, the damages were awarded in US dollars, rather than being denominated in Egyptian pounds.

The defendants sought to challenge the award.

Without waiting for the outcome of that challenge and presumably hungry to reap some reward after a marathon 8 years of litigation, whilst the award was being challenged in Egypt, the claimant turned their sights to enforcement and applied to the BVI court for recognition and enforcement of the award, on an *ex parte* basis against the first and second defendants and also another new defendant, Hena Holdings Limited ('Hena'), a BVI company, which took a neutral stance in the BVI proceedings. The claimant was successful in obtaining interim recognition of the award, and freezing orders against the defendants' assets.

This action turned out to be premature as ultimately the defendants were successful with their challenge before the CC, which set aside the award in its entirety. Specifically, the CC held that the award had been made in violation of mandatory provisions of Egyptian law concerning foreign exchange, because it had been made in US dollars. This was treated as a violation of Egyptian public order. Further, the CC held that the MOU itself did not provide for transactions to be made in foreign currency, but instead contemplated the use of Egyptian pounds.

After the CC had set aside the award, the defendants sought consent from the claimant to discharge the interim orders and to dismiss the BVI enforcement proceedings. The claimant declined to do so, maintaining that the CC's ruling should not be recognised or given effect in the BVI – namely that the award should stand so enforcement could continue.

Given the claimant's stance, the defendants brought the question before the BVI

Court; in short, the BVI Court was asked to consider whether it should recognise and enforce the arbitral award (which had been made in Egypt), notwithstanding that it had been set aside by the CC.

### The existing law

The regime for the enforcement of arbitral awards in the BVI is contained in the BVI Arbitration Act 2013 (the 'Act'). As Egypt is party to the New York Convention the Recognition and Enforcement of Foreign Arbitral Awards, the award made under the MOU was a "Convention award" for the purpose of the Act.

The Act provides for the enforcement of Convention awards in the following terms. First, section 84(2) provides that a Convention award is:

*"... is to be treated as binding for all purposes on the persons between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set-off or otherwise in legal proceedings in the Virgin Islands."*

Secondly, section 86 provides for the enforcement of Convention awards (and the limited circumstances in which enforcement may be refused). The question as to BVI enforcement in *Abdul Kadir Al Muhaidib & Sons Company v Kamel* arose because the award had been set aside in Egypt (the seat of the arbitration), which engaged section 86(2)(f)(ii). Section 86 provides, insofar as is relevant for present purposes:

- (1) *Enforcement of a Convention award may not be refused except in the cases mentioned in this section.*
- (2) *Enforcement of a Convention award may be refused if the person against whom it is invoked proves*
- ....
- (f) *that the award*
- (i) *has not yet become binding on the parties; or*
- (ii) *has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.*
- [emphasis added]

Section 86(f) reflects Article V(1)(e) of the New York Convention, which is given effect to in England by section 103(2)(f) of the Arbitration Act 1996. In England, the Supreme Court has held that articles V and VI constitute a code for recognition and enforcement: *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corpn* [2017] UKSC 16; [2017] 1 W.L.R. 970 at [41] (per Lord Mance, with whom the other Lords agreed).

The provision (both in BVI and English law) directs attention to the law of the country in which the award was made. The reference in section 86(2)(f)(ii) to the country "under the law of which" the award is made is, similarly, intended to refer to the jurisdiction in which the arbitration is carried out, rather than (if different) the country which has provided the governing law of the arbitration agreement. Dicey, Morris and Collins (16th ed, 2022) illustrate the principle by explaining that if, for example, an arbitration was to be resolved according to the law of Pakistan, but is heard in Switzerland, a decision of a Pakistani court purporting to set aside the award would not provide a ground to refuse enforcement: see [16-109].

Section 86(2) is, however, expressed in permissive, rather than mandatory terms – i.e. enforcement "*may be refused*" if one of the enumerated conditions is satisfied. Even if it is established that the award has been set aside in the country in which it was made, the Court still has a discretion, albeit a narrow one, to enforce it in any event.

### The judgment

In *Abdul Kadir Al Muhaidib & Sons Company v Kamel*, it was common ground between the parties that the arbitration award had been set aside, such that section 86(2)(f)(ii) was satisfied. Accordingly, the only issue for Mithani J (Ag) was whether he should nevertheless exercise his residual discretion to enforce it.

Mithani J (Ag) explained that the discretion to enforce a judgment, notwithstanding its annulment by another court, was very narrow. This was because, as a matter of comity, the BVI Court should not disregard a foreign judgment,

and also because of the risk that if the BVI Court were simply to substitute its own judgment for that of the Egyptian Court of Cassation, that would “violate the fundamental doctrine of finality in litigation” (at [53]): He explained (at [47] and [57]):

*"It is well established in England and Wales that judgments of the courts of the seat — particularly apex courts — are ordinarily entitled to recognition, both as a matter of comity and because the New York Convention allocates supervisory authority primarily to the courts of the seat. Refusal to recognise a foreign annulment decision is justified only in exceptional circumstances, such as where recognition would offend basic principles of honesty, natural justice, or the fundamental public policy of the enforcing jurisdiction."*

...

*"This Court respectfully concurs with the Defendants' submission that, subject to the exceptionally narrow grounds upon which discretion may properly be exercised as examined herein, any attempt to "impugn" the decision of the CC would constitute an impermissible challenge to that determination, contrary to well-established principles founded upon the doctrine of issue estoppel. Alternatively, such action may constitute an abuse of process, as it is impermissible for a BVI court to permit a collateral attack on a prior decision of a court of competent jurisdiction, whether domestic or foreign."*

Nevertheless, Mithani J (Ag) accepted that the doctrines of issue estoppel and abuse of process – which reflected the doctrine of finality in litigation – would not be “an insuperable bar” if the Court was persuaded that the Egyptian CC was “so fundamentally vitiated by breaches of natural justice or procedural fairness as to warrant recognition of the award” (at [67]).

The parties had each sought the expert opinion of different Egyptian former judges concerning the CC judgment. The Court considered the opposing views of the experts and despite the excoriating terms in which the claimant's expert had described the CC judgment, including that it was “so perverse that it cannot have been arrived at in good faith”, Mithani J

(Ag) considered that there was no basis for enforcing the award in the face of the judgment setting it aside. He explained (at [88]–[89]):

*"... At its highest, the Claimant's case is that the [CC] fundamentally misunderstood the applicable law and reached an erroneous conclusion. But the [CC], as Egypt's apex court, has final authority over questions of Egyptian law, and it is not the function of this Court to review the correctness of its legal conclusions."*

*"The procedural criticisms advanced by the Claimant likewise provide no proper basis for interference, including the contention that the [CC]'s reasons were inadequate. ... This Court must be astute not to assess the legal or procedural framework of a foreign judgment by reference to domestic standards..."*

Mithani J (Ag) accepted, however, that bias of the Egyptian Court in its decision to set aside the award might be a sufficient reason to recognise it (at [92]). However, he considered that there was no evidence of bias (and the claimant's submissions on this issue had essentially amounted to a suggested that the decision must have been biased because it was obviously wrong) (at [99]).

Mithani J (Ag) also acknowledged that the public policy of the BVI “strongly favour[ed] the enforcement of arbitral awards” (at [100] and [103]). However, in the circumstances of the case, the public policy favouring the enforcement of arbitral awards did not avail the claimant, because to do so in these circumstances would undermine certainty and comity.

### Conclusion

The judgment demonstrates that the BVI Court will accord deference to a foreign judgment that has set aside an arbitral award, because of the policy in favour of judicial comity and the interest in finality in litigation (specifically, the interest in avoiding re-litigation of matters already determined by a Court). It also illustrates the high bar that must be met by a party seeking to enforce a foreign award in the face of the judgment of (its) foreign court setting it aside. ■



**PROF. CHRISTOPH  
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# Euroland

## Introduction

In turbulent times like the present ones, it gives special comfort to see that some things remain as they always have been. One of them is that the EU is still producing new law and decisions which are marking the evolution of a European insolvency law, which I report on here. Additionally, mention needs to be made of some legislative signals whose realisations are partly secure to predict, partly far less so.

## A. Court decisions

**CJEU from June 27, 2024 – C-771/22  
C-45/23<sup>1</sup> – HDI and Amlin Insurance**

This decision combines two cases, one from Austria and the other from Belgium. Both centre around art. 17 of the Directive (EU) 2015/2302 on package travel and linked travel arrangements which regulates the “*effectiveness and scope of insolvency protection.*” The cases in question involve disputes about whether travellers are entitled to refunds

1. ECLI:EU:C:2024:644.  
ECLI:EU:C:2025:518.

if they terminate their travel contracts due to exceptional circumstances before the travel organiser's insolvency.

In the Austrian case, the Federal Work Chamber as legal successor to a traveller sued the insurance company of the travel agent of the affected traveller, and similarly, in the Belgian case four travellers directly sued the respective insurance company. In both cases, the travel contracts were terminated by the prospective travellers because of the COVID-restrictions in 2020, and in both cases, subsequent to the terminations, the respective travel organisers were declared insolvent.

Since full payment had already been made in both cases by the customers, they claimed repayment from the insurance companies pursuant to the said Directive. However, both the Belgian and Austrian insurance companies refused to pay, arguing that their insurance protection covered only losses due to an insolvency proceeding and not those due to terminations. Both courts in Vienna and in Brussels saw the point, but doubted whether such limitation complied with the high level of consumer protection which the EU is eager to guarantee. Therefore, both turned to the CJEU.



The reasoning of the CJEU begins with a word about the admissibility of the

Austrian referral. The Austrian insurance company argued that EU law, in the present case, was not an issue at all and that all that mattered was the interpretation of the insurance contract. The court rejected this argument, and clarified that it was the national court's sole responsibility to decide on the relevance of European law in the respective matter. If it did so, the Luxembourg court would assume a presumption of relevance. Therefore, the Austrian case was included.



The main question was the correct understanding of art. 17(1) of the Directive: did it include coverage in cases in which a traveller terminated a contract because of unavoidable and extraordinary circumstances before the travel organiser entered an insolvency proceeding, and that travel organiser then become insolvent without having paid the traveller? The court considered the questions within a broad context, considering other paragraphs of the same provision, beginning with an interpretation of art. 12 of the Directive which provides a right to termination. Para. 4 of that provision obliges the organiser to reimburse the traveller within 2 weeks for the payments made when the termination is caused by unavoidable and extraordinary circumstances. Art. 17(2) of the Directive requires the security to be effective and to cover reasonably foreseeable costs (para 64). In light of recitals 39 and 40, the

CJEU stated that any refund of payment was a foreseeable amount of payment which may be affected by the travel organiser's insolvency (para 68). Otherwise, the effectiveness of consumers' right to termination under Article 12(2) would be compromised, and consumers would be dissuaded from exercising their rights (paras 69–70). Lastly, Art. 5 of the Directive requires the travel organiser to inform the consumer that 'if the organiser ... becomes insolvent, payments will be refunded'. This information would be misleading if Art. 17(1) excluded consumers' refund claims arising before insolvency (para 73).

In conclusion, the CJEU ruled that the security granted under art. 17(1) does apply to travellers who have terminated their travel contracts prior to the insolvency but who have not yet received a refund. Some good news for travellers, at last, and some comfort for those of us planning our summer holidays!

## 2. CJEU from July 3, 2025 – C-582/23<sup>2</sup> – *Wiszkier*

This case is about a Polish consumer insolvency proceeding and centres around consumer protection. In 2007 the debtor ('R.S.') entered into a mortgage loan agreement with a bank ('B') whereby the agreement was indexed to Swiss francs and a term of 360 months. Twelve years later, in 2019, R.S. was declared bankrupt under Polish law and an administrator was appointed. In 2021, the supervisory judge approved the list of the claims lodged in that proceeding. Most of those claims were the ones from the B resulting from that loan agreement. The debtor R.S. acknowledged all claims without raising any objections. Again, two years later, in 2023, the B bank was declared insolvent under Polish law.

Regarding the bankruptcy of R.S., a Polish law peculiarity comes into play. Once the supervisory judge has approved the claims, it is up to the bankruptcy court



to establish a plan for the distribution of dividends. There is, thus, a kind of two-step procedure: first comes the supervisory judge, second the bankruptcy court. In our case, the latter was located in Lodzi and the court there referred the case to Luxembourg, suspecting that the mortgage loan agreement contained unfair terms which would make the agreement null and void. Due to the said Polish law peculiarity, however, bankruptcy judges are bound to accept the supervising judge's confirmation of the claims. All they can do in such a case is to oblige the supervisory judge to re-examine the claims. Whether this imposed obligation encompasses the duty to control the claims' validity in light of the Directive 93/13 on unfair contract terms is unclear. This is all the more so, as the debtor raised no objections to the claims. However, such a remission would imply a prolongation of the proceeding. This is an important factor since, for the duration of the proceeding, part of the debtor's income is automatically withheld for the benefit of the estate. What income remained was barely sufficient to meet his and his family's needs. Therefore, indirectly a debtor might be forced to raise no objections for avoiding delays of the procedure. Additionally, Polish law provides no remedy for interim measures to alleviate the debtor's predicament. Considering all this, the Lodzi court referred the following questions to the CJEU:

2. ECLI:EU:C:2025:518.

(1) Must Article 6(1) and Article 7(1) of [Directive 93/13] be interpreted as precluding rules of national law which provide that the bankruptcy court is bound by the list of claims approved by the [supervisory judge] in bankruptcy proceedings, thereby preventing the bankruptcy court which gives the final ruling in the proceedings from assessing whether contractual terms are unfair?

(2) Must Article 6(1) and Article 7(1) of [Directive 93/13] be interpreted as precluding rules of national law which prohibit the ordering of interim measures in bankruptcy proceedings and which are therefore liable to deter consumers from availing themselves of the protection afforded them by that directive?'

The first question is aimed at the compatibility of Polish insolvency law with European law, more precisely with art. 6(1) and 7(1) of Directive 93/13. The unusual bi-furcation of responsibilities between the supervising judge and the bankruptcy court means, in a case like the present one, that no judge will examine the validity of the claims: the supervising judge will not because the debtor has acknowledged the claims, and the bankruptcy court will not because it is bound by the list drawn up by the supervisory judge. The only remedy available would be a remission to the supervisory judge. But this is detrimental for the very consumer in need of protection. Therefore, the Luxembourg Court saw the principles of equivalence and effectiveness violated. It emphasised, however, that the legislative protection of the consumer does not leave irrelevant any inactivity of the consumer. But to see the present debtor's acknowledgement of the lodged claims as a waiver of his rights under the Directive 93/13 should be admissible only in very clear cases. Here, the debtor was not represented by legal counsel at the relevant time – and the entire composition of the Polish proceeding was to push any debtor through the proceeding as quickly as possible.

This leads to the conclusion that European law requires the bankruptcy court, irrespective of the contradicting Polish statutory competences, to assess the validity of the claims unless the supervisory judge has made sufficiently clear that (s)he has examined this very issue and adds “at least summary reasons” why (s)he comes to the conclusion that the contractual terms are not unfair pursuant to the Directive 93/13. In summary, the Polish legislator must change the respective law and allow the bankruptcy court to examine the validity of claims from the list to which it is otherwise bound.

The second question, too, deals with an omission of the Polish law, namely, to provide the possibility for interim measures which reduce the risk of a consumer to refrain from making use of his rights under the Directive 93/13 because of the material consequences resulting from the delay. The CJEU referred again to the autonomy of the national legislator as long as the principles of equivalence and effectiveness with the intended protective shield was guaranteed. In rather lengthy comparisons, the court ultimately concluded that the Polish legislator, here too also was obliged to do some



touching-up by providing for the possibility to reduce the amount of the income withholdings. The decision goes even further and exemplifies the factors which a judge should take into account when considering such a reduction (mar. no. 71).

The Luxembourg Court is acting in this decision once again in one of its favourite roles, as defender of the consumer protection. Almost like a battle cry, it proclaims that the continued use of unfair terms in contracts has to be prevented (mar. no. 61). Domestic procedural law, standing in the way of this goal, has little if any chance to withstand the attacks from Luxembourg. This line of reasoning was surely predictable – at least after the *Radlinger* decision<sup>3</sup> and a similar line of argument regarding payment order proceedings (Ibercaja Banco, SPV Project 1503, Impuls Leasing România, and Unicaja Banco – all from 17 May, 2022). And it will almost certainly affect several domestic laws in the EU (including the German). The assumption that a silent consumer will know what his silence implies (*volenti non fit iniuria*) will lose much of its credibility. And yet, consumers should be reminded that invalidity of certain terms does not mean that the money (or whatever else is at stake) received could be kept. In most cases, at least the unjust enrichment rules will oblige the consumer to repay.

### 3. CJEU from April 10, 2025 – C-723/23<sup>4</sup> – *Amilla*

The regular reader of this column meets in this case an old acquaintance, AEAT,<sup>5</sup> i.e. the Spanish Tax Administration Agency (Agencia Estatal de Administración Tributaria). The decision deals with the interpretation of art. 20 and 23(1) of the Directive 2019/1023 on a preventive restructuring framework etc. and the referring court is the Juzgado de lo Mercantil no 3 de Orviedo, con sede en Gijón.

VT and his wife UP had been directors of two companies which both went into an insolvency proceeding and which both were classified as ‘fault-based’. In addition to this classification, VT and his wife were “badged” as ‘persons concerned’ by that classification. The consequence thereof was that both were subjected to certain “quarantine” rules (no management of property of others, no representation of any person for a certain period). Moreover, not only did they lose any rights as creditors of the insolvency or of the assets of the companies, they also were ordered to pay the shortfall in the assets of the two companies concerned (roughly 230.00 €). This obligation led VT to initiate an out-of-court payment agreement procedure, which failed. Consequently, he applied for

3. CJEU from 21 March, 2016 – C-377/14 – *Radlinger and Radlingerová*, ECLI:EU:C:2016:283.

4. ECLI:EU:C:2025:262.

5. Cf. *Euroland* South Square Digest – December 2024, S. 58, 63; South Square Digest – August 2025, 64, 69.





the declaration of insolvency at the Gijón court. The court opened the proceeding and declared it as ‘inadvertent’.

It was during the course of this proceeding that VT applied for a discharge. And AEAT did what it seemingly is used to doing: it objected. The authority argued that the debtor, irrespective of being involved in his own proceeding, still is a ‘person concerned’ of a ‘fault-based’ proceeding and that he has not yet fully discharged his liability under that proceeding. Of course, VT held the opposite view. He argued that a distinction should be drawn between his own creditors in the present insolvency proceeding and the other creditors in the company’s proceeding; with regard to the former creditors, he claimed to be ‘in good faith’. Additionally, he argued that the relevant Spanish norm is violating art. 23 of the Directive 2019/1023 insofar as it establishes strict liability without taking into account subjective circumstances which would qualify him as an honest debtor or a dishonest one.

These arguments led the Gijón court to the deliberation whether Article 23(1) of that directive does include creditors of a third party when it addresses a situation in which an insolvent entrepreneur acts dishonestly or in bad faith towards creditors and might therefore become barred from discharge. Accordingly, the court referred the following question to the CJEU – whether denying access to the

discharge of a debtor’s outstanding debts with regard to his or her own creditors is applicable to the creditors of a third party, and whether such application is compatible with the concept of ‘creditors’ within the meaning of that provision?

The second deliberation of the Gijón court related to a particular section in the Spanish insolvency law, art. 487(1). Its point 4 prevents VT from having access to a procedure that can lead to a full discharge of his debts with regard to his own creditors because he “*has been declared the person concerned in the judgment classifying the insolvency of a third party as fault-based, unless, on the date on which the application for discharge is made, he or she has paid all the debts for which he or she is liable.*” This is precisely the situation which VT found himself in, so that the court asked as its second referred question whether this Spanish rule complies with art. 20 of the Directive, which requires Member States to provide for a procedure that can lead to a full discharge of debt.

The final deliberation follows from the previous in that the Gijón court wondered whether art. 20(2) of that directive which requires that the scheme for access to full discharge of debt put in place must take into account the subjective circumstances surrounding the debtor’s situation, that is to say, his or her individual situation, is compatible with a rule like the Spanish one (such as point 4 of Article 487(1)), which lays down purely objective criteria and which does not take that situation into account.

The Luxembourg judges respond to these questions by combining the answers to question 2 and 3. Regarding the first question, the CJEU began with clarifying the need for any interpretation of an EU provision to take account not only of its wording but also of the context and the objectives of the rules of which it is part. To begin with the wording, the court refers to the temporal qualification in art. 23(1): ‘*towards creditors ... when becoming*



6. Cf. SouthSquare Digest August 2025, 69.

*indebted, during the insolvency proceedings or during the payment of the debt*'. From this it becomes clear, as the court concluded, that the creditors of the third party are to be seen as his creditors as well because, as director of a fault-based insolvent company, VT must have been aware of being declared a person concerned so that the company's creditors became also his creditors. Moreover, a textual interpretation of various language versions of the directive showed that none has specified the word 'creditors' as specifically 'his', i.e. without using a possessive adjective. The contextual interpretation confirmed the result, as par. 1 of art. 23 (in contrast to par. 2, 3 and 4) does not invite the member states to use discretion regarding derogation of the discharge option ('*shall*' instead of '*may*'); only the Spanish version seems to do that, but here the court says that one single language version cannot determine the interpretation of a EU provision.

Finally, the wide description of affected debts in recitals 78 and 79 is an indication for the court that the objective-related interpretation is a final confirmation for the result found before. Accordingly, the Spanish national legislation in s. 487 was upheld.

The answer to question 2 and 3 began with spotting art. 23(2) of the directive as the relevant legislative basis. The court referred to a previous decision in which it declared as permissible to expand the list there ('such as') when the respective

circumstances are well defined and duly justified ((CJEU of 7 November 2024, *Corván and Bacigán*, C 289/23 and C 305/23, mar. No. 28<sup>6</sup>). In close correlation to the previous case, the CJEU concluded that the Spanish rule is permissible under EU law but that it is up to the referring court in Gijón to assess whether the exception in s. 487 of the Spanish insolvency law is sufficiently defined and duly justified. In summary, the *Amilla* decision confirms the previous decision and might, thus, put an end to further appearances of the Spanish tax authority before the Luxembourg court.

#### **4. Landgericht Frankfurt/M. – 12 O 239/24 from 9 July, 2025**

The (preliminary) decision of this district court came as a rather big bang in the world of cross-border insolvency law. It ruled that an English Part 26A-plan proceeding cannot be recognized under German law. Well, this is surprising when looking at the relevant norms, sec. 335 et seq. Insolvency Ordinance, which, on purpose, are drafted in a very open manner resembling the automatism of the EIR.

Thus, a proceeding from the Cook Islands or any other country is likely to enjoy recognition under German law – but not the English 26A plan proceeding!? And indeed, a closer look at the reasoning reveals that something went wrong here and that most likely, the German Federal Court in Civil Law (Bundesgerichtshof) will put back things to order.

7. *Re Project Lietzenburger Straße Holdco S.à.r.l.* [2023] EWHC 2849 (Ch), Miles J, 1 November 2023 (convening), [2024] EWHC 468, Richards J, 4 March 2024 (first sanction hearing) and [2024] EWHC 563 (Ch), Richards J, 7 March 2024 (second sanction hearing).

8. Madaus/Paulus, Die Anerkennung englischer Restrukturierungspläne in Deutschland – eine Grundsatzfrage?, *Neue Zeitschrift für Insolvenzrecht (NZI)* 2025, p. 966 et seq.

But let's look a bit closer at the case in dispute and then into the decision before we then make a little outlook into a likely future.

The case is about a rather big property project in Berlin (Lietzenburger Straße). The owner and in charge of the project is a company registered under Luxembourg law. When this company got in financial difficulties, it decided to restructure its financial situation through an English plan proceeding under Part 26A. This went quite well, the final consent was considerable (97% of the senior creditors) and Richards J sanctioned it in a thorough and noteworthy decision.<sup>7</sup> This is relevant insofar as the proof of the likelihood of the sanction order's recognition in Germany was disputed – one expert confirmed, the other denied. The latter's arguments are to be found again in the present district court decision since that expert had made them public in a German law journal article.

Back in Germany, it came as it had to come: the dissenting creditor sued the company for full payment and won (a) because the plan proceeding was said not to be an insolvency proceeding due to the lack of full collectivity and (b) because of lack of reciprocity because of the *Gibbs* rule. The respective assumptions are for the first part that the English plan proceeding is possibly an insolvency proceeding, for the second that it is a regular civil procedural law instrument. Accordingly, two separate

sets of rules had to be examined, in the first part the Insolvency Ordinance (Insolvenzordnung), in the second the Civil Procedure Ordinance (Zivilprozessordnung).

Since the present author has published a rather extensive (and opposing) annotation to this decision together with Prof. Madaus from the University of Halle in a German law journal,<sup>8</sup> I confine myself here to a brief summary of the arguments from that article.

Regarding the first part, the Frankfurt court ignored that it is common understanding in German literature and many court decisions that the question of what constitutes a foreign insolvency proceeding pursuant to the Insolvency Ordinance is to be answered in close correlation to the EIR's interpretation. There, in art. 1, one finds a (kind of) definition of an insolvency proceeding. And there, one finds, it abstains from the requirement of full collectivity. Regarding the second, the Frankfurt court oversees (a) that the mere existence of a mutual recognition treaty among the states involved precludes the applicability of the reciprocity requirement as foreseen in s. 328 par. 1 no. 5 Civil Procedure Ordinance. As a matter of fact, there are more than one such treaty – suffice it to mention here the most recent Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Moreover (b), the court got it wrong when it empowered the *Gibbs* rule with excluding reciprocity.



This is because the common understanding in German literature, again, is that there need not be an identical recognition pattern but only one which is essentially the same. Due to its limited range (only for claims governed by English law), the *Gibbs* rule is no obstacle to (the German understanding of) reciprocity. In short, the Frankfurt court got it completely wrong.



However, the most interesting question in this context is, of course: what will the final decision look like? As usual – predicting the future is somewhat difficult. But there are certain likelihoods. The first one is that the court of appeal in Frankfurt a.M. will uphold the decision.<sup>9</sup> The second one is, however, that the Bundesgerichtshof will finally decide in favor of recognizability of an English plan proceeding. This follows from previous decisions in which that court never declared partial collectivity as an obstacle for recognition.

## B. Legislation

To begin with the good news: the European institutions recognise that the insolvency laws of the member states should be harmonised to increase foreign investment. After all, an investor nowadays is bound to take into account 27 different insolvency laws in its calculations. Needless to say, that this exercise is costly and time-consuming and, thus, a deterrent. Still further good news is that the EU is actively pursuing the goal of harmonisation. It began with the European Insolvency Regulation 1346/2000 and its considerable

widening by the Recast Regulation 2015/848. This was followed by the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt. This instrument is the reason why, by now, all member states have an insolvency prevention procedure which resembles in many aspects the English scheme of arrangement as the English plan proceeding resembles in many aspects this Directive. It is also the reason why, for instance, the waiting period for a discharge is now EIR-wide three years.

The third step in the evolution is forthcoming. In spring of this year, a second Directive is expected to become officially adopted which is determined to further harmonise certain aspects of insolvency law. This, however, brings us closer to the bad news. Since what ultimately will be content of the Directive is but a fraction of what it was originally, i.e. at the beginning of the consultation process with the group of experts was supposed to contain. Even in the course of this initial process, some topics were removed from the agenda as being, for instance, too political. And only recently, in December 2025, the subject of a simplified winding-up proceeding for microenterprises got eliminated from the text shortly before the Committee on Legal Affairs (JURI) approved the final text which allegedly deals with the rules on avoidance law (*actio Pauliana*), asset tracing, the duty to file, and the introduction of pre-pack-proceeding; additionally, the appointment of a creditors' committee shall be mandatory under certain circumstances.

When considering that it took years to achieve this compromise, we are exactly within the bad news. And it gets even worse when we reflect on the tardiness of this process and its limited scope in a political surrounding which is dominated by changes taking place on an almost daily,

9. The reasons for this presumption are somewhat tricky and shall not be elaborated here.

10. Cf. Garcimartin / Paulus, The 28th insolvency regime: Reflections on a *lex concursus europea*, International Insolvency Review 2025, 1 et seq. (subsequently also published in Spanish, German and Italian).

11. Cf. MEPs' recommendations for a new EU framework for innovative companies | News | European Parliament.

12. Financing Innovative Ventures in Europe from January 2026.

if not hourly pace and contrast it with the often-acclaimed need for unified action of “Europe” (in whichever constellation).

In light of this, what JURI approved on 11 December 11 2025, the recommendation for an upcoming Commission proposal, appears to be a golden solution. It runs under the name “28th corporate regime”, i.e. a new legal framework to support innovative companies such as start-ups and scale-ups but also SMEs. The name of the new company form would be SEU (*Societas Europea Unificata*). To be sure, this proposal does not come out of the blue. The present Commissioner for Justice, Michael McGrath, announced a similar idea already in his Mission Statement as a tool to overcome the European legislative slowness. But even earlier than that, a similar idea popped up in the course of the discussions of the abovementioned expert group in 2021. And in June 2025, an article was published by two members of that expert group proposing a *lex concursus europea*.<sup>10</sup>

Whereas all this happened before the JURI approval date, the US – Greenland conflict turned out to provide a push for speeding up. Since because of the credible threat of the U.S. president to imbibe that “*piece of*

*ice*”, the World Economic Summit in Davos served as the stage for the Commission president von der Leyen to announce the preparation of a 28th regime<sup>11</sup> for the entire life circle of start-ups and scale-ups in order to alleviate the legal surroundings of technical innovation within Europe. At the same time, the European Parliament, too, adopted a legislative initiative report for a new legal framework supporting innovative companies in the EU; its clue is again a 28th regime. And as if this were not yet enough, in parallel, a French-German working group Financing Innovative Ventures in Europe (FIVE) launched its final report just a few days before the Davos Summit in which, too, the need for a 28th regime for start-ups and scale-ups is addressed.<sup>12</sup>

Whereas this innovation turbo sounds very plausible, it is a bit more questionable what the respective legislative framework will look like when, and if, it is supposed to regulate the entire activities of those enterprises. Even a *lex concursus europea*, which is a humbler approach to solve a similar problem, is likely to be quite voluminous. As the two authors envisage in their abovementioned publication, it would make foreign investment in Europe more attractive as it overcomes the pain and costs of fragmentation. ■



A detailed oil painting of Francis Bacon, showing him from the chest up. He is wearing a black cap, a white ruffled collar, and a dark blue robe with gold embroidery. The background is a warm, reddish-brown color.

# Francis Bacon – Celebrating 400 Years

*“He that is learned in the law, and of good judgment, is capable of all other studies”*

Francis Bacon, *Advancement of Learning*, 1605

Sir Francis Bacon, Viscount St Alban, Lord Chancellor, philosopher, statesman and first ever Queen’s Counsel was also a towering historical figure at Gray’s Inn, where a bronze statue now stands in South Square, right outside our Chambers. 6 April 2026 marked 400 years since Bacon’s death, and Gray’s Inn is celebrating this anniversary with a year-long programme of events, including an archival exhibition, guided tours and a celebratory dinner in Hall.

Francis Bacon served as a Bencher, Dean of the Chapel, and held an exceptionally long tenure as Master Treasurer for nine years from 1608 – 1617. Not only did he influence the intellectual life of the Inn, he also transformed the surroundings by designing “the Walks”, which remain as one of the largest private garden spaces in London.

### A quick canter through a prolific career

Bacon first came to live at Gray’s Inn in 1576, at the age of 15, alongside his older brother, Anthony. It was by no means a foregone conclusion that either boy would pursue a career in law: As the sons of Sir Nicholas Bacon, a senior courtier in the court of Elizabeth I and one-time Treasurer of Gray’s Inn, his contacts could give them opportunities across a range of fields. In addition to his house on the Strand and Verulam House in the country, Sir Nicholas, who had started life as a promising barrister in during the reign of Henry VIII, had retained his chambers in the building that stood at what is now 1 Gray’s Inn Square, and it was here that the boys moved and were enrolled as student members of the Inn.

It was not long after his admission as a student that Sir Nicholas arranged for Francis to travel with the ambassador to

the King of France, Sir Amias Paulet, whilst Anthony remained studying in the Inn. For the next three years this afforded Francis valuable political instruction, studying languages, statecraft and civil law whilst performing routine diplomatic tasks.

However, the unexpected death of Sir Nicholas in 1579 reversed this situation. Sir Nicholas’ will was incomplete at the time of his demise and so Anthony inherited independent wealth but Francis was left with very little save for a need to build his legal career in order to support himself. Happily, perhaps, the Bacon chambers were in the same building as the Inn’s library at that time, and his tutors included distinguished politicians and judges. Francis was eventually called to the Bar in 1582.

Francis took on his first leadership role in the Inn at the age of 28, serving as Dean of the Chapel between 1589 and 1590, responsible for the Chapel’s finances and overseeing the Chapel services and enforcement of the Inn’s rules on attendance – not necessarily simple matters given that the Chapel had fallen behind in paying the Preacher’s salary and that the Protestant services were not to the taste to those members of the Inn that were Catholic. As Dean, Bacon would have been

able to fine or recommend expulsion for non-compliance in attendance, but there is no evidence that he did so.

Meanwhile, Bacon had also begun a parliamentary career whilst actively working as a lawyer. He was first elected as MP for Bossiney in Cornwall in 1581, then for Melcombe in Dorset in 1584, and Taunton in 1586. By 1588 he was MP for Liverpool, then for Middlesex in 1593. Later he sat three times for Ipswich (1597, 1601 and 1604) and once for Cambridge University (1614). He was known as a liberal-minded reformer, and often spoke against religious persecution. He advocated for the union of England and Scotland, and for the integration of Ireland, believing that constitutional ties would bring greater peace and strength.



Ever a busy man with fingers in many pies, Bacon was connected, through his brother Anthony, to Elizabeth I's spymaster, Sir Francis Walsingham, and Bacon developed codes and cyphers for him. Further writings at the time included thoughts on the organisation of knowledge.

Bacon soon became acquainted with Robert Devereux, the 2nd Earl of Essex, and a favourite of Queen Elizabeth, and by 1591 he was acting as the earl's confidential adviser. However, by 1593 the Queen's Court excluded him from favour and over the next two years Bacon failed to secure either of the two posts he really desired: Attorney General or the lesser office of Solicitor General.

In 1597 Bacon became the first Queen's Counsel, when Queen Elizabeth reserved him as her legal counsel, and in that same year he was also granted a patent, giving him precedence at the Bar. In spite of this, he seemed unable to gain the status afforded to others and, seemingly, perennially short of funds. In 1598 he was arrested for being in debt. Eventually, his standing with the Queen improved, particularly after he severed ties with Essex – a shrewd move, as Essex would later be executed for treason in 1601, with Bacon being one of the judges appointed to investigate the charges against him.

The succession of James I brought Bacon into greater favour. He was knighted in 1603 and in June 1607 he was at last rewarded with the office of Solicitor General, and in 1608 began working as the Clerk of the Star Chamber. Despite a

generous income, old debts still could not be paid. He sought further promotion and wealth by supporting King James and his arbitrary policies and, as a reward, in 1613 Bacon was finally appointed as Attorney General.



Bacon's star might finally have seemed to have been in the ascendent. He continued to receive the King's favour: appointed in March 1617 as temporary Regent of England (for a period of one month), becoming Lord Chancellor in 1618 and then, in July of that same year, being created Baron Verulam of Verulam.

However, it was not to last. Bacon's public career ended in disgrace in 1621. After he fell into debt yet again, a parliamentary committee on the administration of the law charged him with 23 separate counts of corruption for accepting bribes. He was sentenced to a fine of £40,000 and committed to the Tower of London at the King's pleasure. The imprisonment lasted only a few days and the fine was remitted by the King. More seriously, Parliament declared Bacon incapable of holding future office or sitting in Parliament. He

narrowly escaped being stripped him of his titles. Subsequently, the disgraced viscount devoted himself to study and writing.

Whilst he never relinquished his chambers at 1 Gray's Inn Square, it appears he never returned after his disgrace. True to form right to the end, Bacon died in Hampstead on 6 April 1626 having contracted a chill whilst conducting an experiment with a frozen chicken.

### Bacon at Hall

*"Some things are better shewed than told":*

Francis Bacon, *The Essays*, 1625

Hall in Bacon's time was central to the life of the Inn. It was where members dined, learned and celebrated. For Bacon, Hall was also his father's legacy.

The Manor of Purpoole, the property at the heart of the Inn today, was acquired by Reginald de Gray in about 1307. That property featured a medieval Hall which, it is thought, remained unchanged until Nicholas Bacon, Francis' father and then Treasurer of the Inn, oversaw work to transform it into something much larger.

Whilst the rules for student members were strict (beards, boots and spurs were forbidden, Chapel and communion compulsory) young Francis was exempted from the need to dine in Hall on the grounds of terrible indigestion (something which his mother apparently attributed to spending too long in bed). At this stage, much of the teaching of the Inn was done by 'Readers', who would 'read' the law before meals.

Revels were also considered part of a well-rounded legal education and Bacon found great value in revels and masques, arguing in his essay on the subject that beyond frivolity they also communicated order and hierarchy. During his time as Treasurer of the Inn he authorised two masques at great expense to the Inn. To honour his eventual appointment as Lord Chanellor, the Inn chose to perform a masque for Bacon in Hall – the Masque of the Mountebanks, in 1618.

A stained-glass window installed in Gray's Inn Hall in 1621 to commemorate Bacon's elevation to Viscount St Albans is still visible there today. Whilst the Hall's 16th Century walls were damaged during the Blitz, all the stained glass had been removed to a place of safety and later reinstated.

### Bacon and “The Walks”

Newly arrived at his father's chambers in Gray's Inn, Bacon would have looked out to the west over semi-rural wasteland. By the end of his life in 1626 the view instead would be over a wooded garden enclosed by walls, with walks and a summerhouse on a mound

Bacon started the work to improve the land in 1591, when he was part of an initial survey of the wasteland. At that time Sir Edward Stanhope had the lease of part of it, and built stables and cottages. As Bacon began to lay out the walk in 1598 Stanhope's portion severely limited what was possible and so, in 1605, the Inn revoked Stanhope's lease, clearing and enclosing what was to become the Walks.

The 1608, when Bacon began his tenure as Treasurer, the Inn ledger has entries for Bacon's order for fencing, and trees (birch and cherry), for flowers (violets, primroses, eglantine and roses) and wages for a team of labourers and gardeners. He extensively designed and landscaped ‘the Walks’, transforming them into a fashionable, structured retreat planting hedges of privet and quickset and walkable paths planted underfoot with thyme, burnet and mints.

1612 saw Bacon write an essay “Of Gardens”, seeing their potential to serve as science laboratories for observation and experimentation. Whilst he

almost certainly never did any hands-on gardening himself, his perspective is more than that of a person simply strolling in the garden, enjoying the sights. In one of his key retirement-era works “*The New Atlantis*”, written after his impeachment in 1621, he describes gardens as part of utopia, integral to an idealised palace of learning: “*The outer court was furnished with orchards and gardens, pleasant walks, and green alleys, where were planted herbs and fruits of all kinds, both for use and delight.*”

The Walks are now open to both Members of the Inn and the public between the hours of 12 noon and 2 p.m. on weekdays. ■





FromCounsel and South Square launch *FC R&I Knowledge* to meet the demands of a rapidly evolving restructuring and insolvency landscape

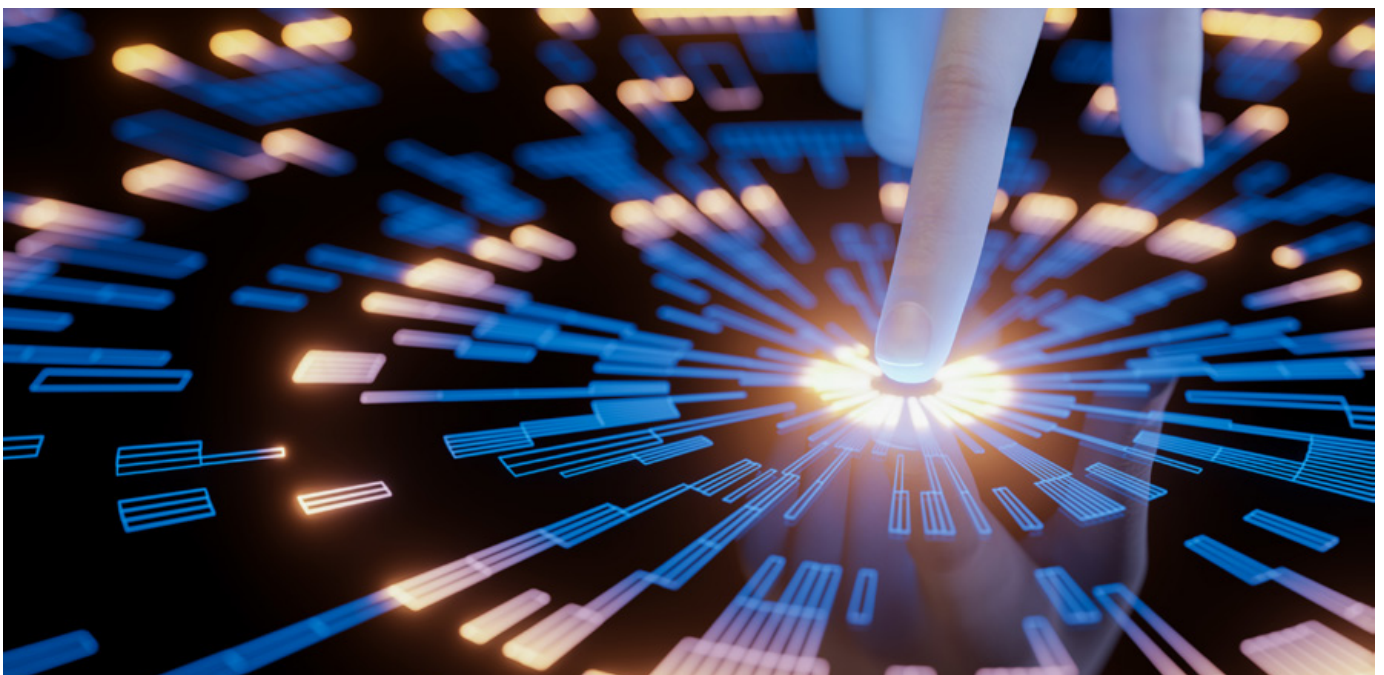
FromCounsel, the pre-eminent legal knowledge services provider, and South Square, the leading set for restructuring and insolvency, have launched FC R&I Knowledge – a new digital service designed to give practitioners clear, practical and continuously updated guidance in one of the fastest moving areas of legal practice.

Restructuring and insolvency has undergone a period of exceptional change, with major shifts in restructuring plans, cross-border recognition and liability management exercises.

As South Square's Tom Smith KC notes, the field is *"fast-moving and constantly developing... with numerous important decisions that materially altered the landscape"*. In this environment, practitioners need access to guidance that keeps pace with the law – not material that becomes outdated as soon as it is published. This is reflected in recent R3 survey findings, which show practitioners increasingly shifting towards resources that deliver real time, practical guidance rather than relying on conventional reference texts.

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FC R&I Knowledge brings together the collective expertise of South Square – widely regarded as the leading chambers for restructuring and insolvency – and distils it into a clear, intuitive Q&A format. Twenty four members of chambers have contributed to the service, capturing the depth of private, practice-based knowledge that typically sits behind closed doors. The breadth of contributors ensures that the service includes a considerable range of South Square's input and expertise.



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developments as they emerge. As Tom Smith KC explains, when developments occur, *“that will be reflected in the text... regularly, and quickly”*.

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The new service integrates seamlessly with FromCounsel's Corporate Knowledge platform, supporting the many areas where restructuring and insolvency intersect with corporate law – including directors' duties, board decisions, security and Companies Act considerations.

### *A new benchmark for R&I insight*

Commenting on the launch, Lucinda Case, CEO of FromCounsel, said:

*“Restructuring and insolvency moves quickly, and practitioners need guidance that moves with it. FC R&I Knowledge captures the insight of the leading experts in this field and delivers it in a format designed for real world practice. We believe it sets a new benchmark for clarity, authority and practical value in this field”* ■



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# News in Brief

## Kira King Shortlisted for Advocate of the Year at the Women & Diversity in Law Awards

We are delighted to announce that Kira King has been shortlisted for Advocate of the Year award at the Women & Diversity in Law Awards 2026.

Hosted by The Global Legal Post, the Women & Diversity in Law Awards celebrate outstanding women leaders, practitioners, and changemakers across the profession. The shortlist recognises those

working to ensure the legal sector better reflects the diverse society it serves.

Kira's dedication to championing inclusion, amplifying underrepresented voices, and driving advocacy-led change has made a significant impact across the legal community, making this recognition truly well deserved.

The winners will be announced at a ceremony on 28 April at the London Marriott Hotel Grosvenor Square.



Many congratulations to Kira, and to all those shortlisted.



## SpecFailures?

A man has been found by an Insolvency and Companies Court Judge to have been wearing smart glasses to secretly receive coaching while giving evidence.

The incident arose during a hearing before ICC Judge Raquel Agnello KC in a case brought by Laimonas Jakstys (and a company related to him) in relation to the ownership a property development company that owns a flat in south-east London and land in Tonbridge. The Claimants

sought a declaration that they were the owners of the company and that the company's register be rectified accordingly.

Whilst giving evidence the Judge noticed that Jakstys, who was giving evidence through an interpreter, "seemed to pause quite a bit" before answering questions. Counsel for the Defendants then heard "interference" coming from the area around the witness. When ordered to remove the glasses, Jakstys' mobile phone began

broadcasting a voice, which he then tried to blame on ChatGPT.

When questioned (without wearing the said glasses) Jakstys denied using the smart glasses to receive answers and denied they were connected to his phone. He also claimed that the contact (to whom multiple calls had been made) on his phone, named "abra kadabra", was a taxi driver.

ICC Judge Agnello found she did not need to determine who was coaching Jakstys, but accepted that he was "being assisted or coached" in his replies during cross examination, concluding that "the effect of this is that his evidence is unreliable and untruthful." The Judge rejected his evidence in its entirety. A first of kind, but with technological advances perhaps something to watch out for again in the future ...

**Celebrity Dog Trainer sues government for £8 million**

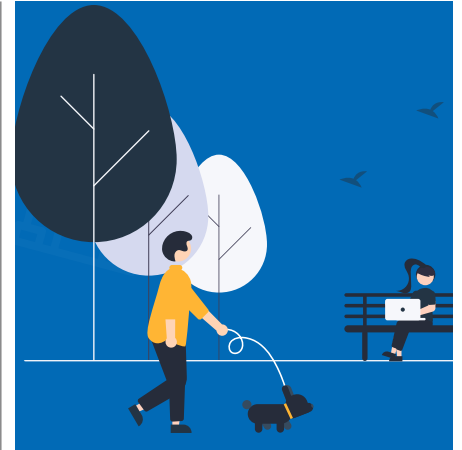
Dog trainer Matthew Wiggins, of WKD Trained Dogs, is suing HS2 for £8 million after his kennels were shut to make way for the high-speed rail line.

The business, set up in 2010, had supplied highly trained dogs to institutions, professionals, high net worth individuals and celebrities from a high-end training centre at Brookhouse Farm in Staffordshire.

Lawyers for WKD claim that the Department for Transport (DfT)

‘dithered’ for four years when it came to informing Mr Wiggins about crucial deadlines in relation to terminating/relocating the business before the government finally acquired the farm in January 2023. The claim includes ‘shadow losses’ for the period from 2019 to 2023 during which time the uncertainty over the looming acquisition ‘adversely affected staff morale, performance and retention’ and impacted Mr Wiggins’ mindset and focus.

Whilst accepting that the rate of trained dogs had tailed off during the shadow period,



DfT claim that the real causes were the advent of Covid and changes in market demand.

The trial continues.

**Chambers Awarded 2026 ChBA Charter for Fairness**



South Square has been awarded the 2026 Charter for Fairness Mark by the Chancery Bar Association.

Following submission of our revised 2026 Charter for Fairness survey, the ChBA Equality & Diversity Secretary

has confirmed Chambers’ continued accreditation. We are delighted to reaffirm our commitment to promoting fairness in work allocation, career development, marketing, and earnings, in line with the Charter’s objectives.

The Charter, created following the Voices of Women at the Chancery Bar report (2021), sets out twelve

practical steps that support meaningful progress for women and those with other protected characteristics at the Bar. South Square is proud to be included among the chambers that have renewed their pledge for 2026.

We look forward to continuing this important work throughout the year and contributing to a fairer, more inclusive profession.



**Under Pressure**

A surge in energy prices since the start of the US/Israeli war on Iran has heaped further pressure on the retail sector in Europe, already struggling with weak consumer demand and diminished spending power. Shares in retailers, from Zara-owner Inditex to Britain's Marks & Spencer, fell in March as investors and analysts expected a knock-on impact from higher petrol and gas prices, even as the sector has barely recovered from the inflation cycle triggered by spiking gas prices after Russia's invasion of Ukraine.

Meanwhile, millions of households are facing higher water bills after five of Britain's biggest suppliers were allowed to raise charges to help fund debt costs. The Competition and Markets Authority is to allow Anglian Water, Northumbrian Water, South East Water, Southern Water and Wessex Water to increase customers’ bills by an extra 2.2 per cent on average, on top of previous bill increases allowed by Ofwat.

### The fake £9.8 million NHS contract

Husband and wife Tanveer and Tasneem Khan have been banned as company directors for a combined 23 years following investigations by the Insolvency Service. The Khans, of Loughton in Essex, founded Matz Medical Limited in 2013, running it together until it collapsed in October 2022, leaving creditors £40m out of pocket.

Tanveer Khan, 55, was described as the "mastermind" behind the forgery of a fake order by

NHS Wales for hundreds of beds worth £9.8m and falsifying evidence of previous deliveries, duping investors into believing their company, Matz Medical Limited, continued to hold an NHS Supply Chain agreement. Tasmeen Khan, 51, played a significant role in providing the false paperwork presented to lenders and investors.

NHS Supply Chain had, in fact, suspended all trading with Matz Medical Limited in December of 2019 after an audit uncovered



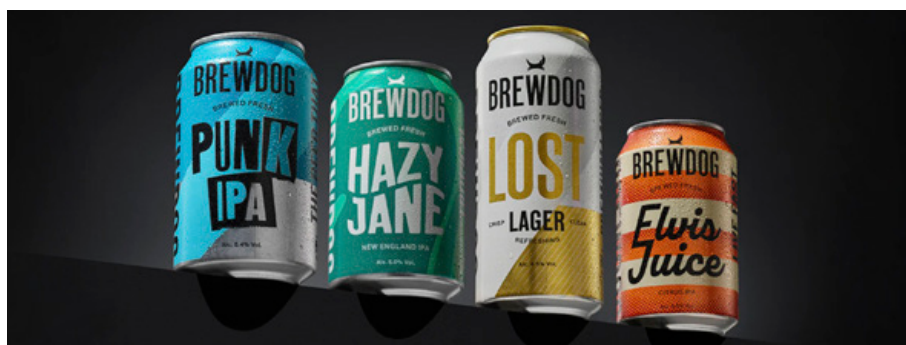
serious problems with the company's stock management, storage and labelling: issues considered so severe that continuing trade would pose a potential patient safety risk.

### BrewDog had "no money left"

Former Scottish brewer, BrewDog, had "no money left" by the time it was rescued in a cut-price deal by US cannabis and drinks firm Tilray in early March 2026. A total of 38 UK bars were closed and former Chief Executive, James Taylor, told 484 staff they were no longer employed during a conference call. The shares owned by

220,00 'equity punks' who invested some £75 million in the company over seven funding rounds are now understood to be practically worthless.

Irwin Simon, chair and chief executive of Tilray said that "a tonne of money" would need to be ploughed into BrewDog "just to get it started again". He added: "Day one, there was no money left".



### Peter Burgess Appointed to BVI Government Legal Panel

Peter Burgess has been appointed to the Legal Services Panel for the Government of the British Virgin Islands following a public procurement exercise. The role of the Legal Services Panel is to advise and represent the Government of the British Virgin Islands in a wide range of civil and commercial legal matters.

Peter was admitted to the BVI Bar in 2023 and has a significant offshore and international practice. He acted as sole counsel for the successful bondholders in the BVI Commercial Division and the ECSC Court of Appeal in *Re Haimen Zhongnan*, the leading BVI case on bondholder standing.

### #SaveDenby

A public campaign has been launched in an effort to support sales of Denby Pottery, which officially entered administration on 31 March 2026. FRP Advisory were appointed as administrators as the company seeks a strategic investment partner in an effort

to keep the historic Derbyshire factory operating. The company cited the soaring cost of gas to fire its kilns (which need to run 24/7), together with weakened consumer spending and escalating employment costs, for the move.

The firm, which previously survived a 2009 administration, has called for the government to extend the existing energy cost support scheme (British Industry Supercharger) to the ceramics industry as soon as possible in a bid to change investor confidence.

# Diary Dates

South Square members will be attending, speaking and/or chairing the following events

20 April 2026

**INSOL International Offshore Day  
INSOL International ADR Colloquium**

 **JW Marriott Grosvenor House, London**

21 – 22 April 2026

**INSOL International Annual Conference**

 **JW Marriott Grosvenor House, London**  
*South Square are delighted to be an  
'inclusive spaces' sponsor*

23 – 25 April 2026

**American Bankruptcy Institute Spring  
Conference**

 **Marriott Marquis, Washington DC, USA**

6 – 8 May 2026

**R3 Annual Conference**

 **Marriott Budapest Hotel, Hungary**

14 May 2026

**South Square Spring Reception**

 **Spencer House, London**

15 May 2026

**Insolvency Lawyers Association Conference**

 **Linklaters, 20 Ropemaker Street, London**  
*South Square are delighted to be sponsoring  
this event*


19 – 21 May 2026

**Thought Leaders 4 FIRE International**

 **EPIC SANA Algarve Hotel,  
Vilamoura, Portugal**

14 – 16 June 2026

**International Insolvency Institute Annual  
Conference 2026**

 **Montreal, Canda**  
**Further details to follow**

9 June 2026

**South Square & RISA Bermuda Conference**

 **Hamilton Princess, Hamilton, Bermuda**


17 June 2026

**South Square & RISA BVI Conference**

 **Long Bay Resort, West End,  
British Virgin Islands**

17 September 2026

**INSOL Channel Islands Seminar**

 **St Pierre Park, Guernsey**  
*South Square is delighted to be  
sponsoring this event*

South Square also runs a programme of in-house talks and seminars – both in Chambers and on-site at our clients premises – covering important recent decisions in our specialist areas of practice, as well as topics specifically requested by clients.

For more information contact: [events@southsquare.com](mailto:events@southsquare.com)



# SOUTH SQUARE CHALLENGE



Welcome to our first South Square Challenge of 2026 which features members of the Judiciary and their hobbies.

Your task on this occasion is to identify each judge pictured and then correctly match them up with the hobby with which they have publicly acknowledged an interest.

All the correct entries will go into the wig tin for the draw, and the winner will receive a magnum of Champagne and a much-prized South Square umbrella.

Good luck!

Please send your answers by Monday Friday, 5 June 2026 to Kirsten either by e-mail to [kirstendent@southsquare.com](mailto:kirstendent@southsquare.com), or to the address on the back cover.

The correct answers to our festive December Challenge are below. We had a huge number of correct entries – thank you to all who entered – but the winner is Hannah Barrett Brown, an Associate at Milbank to whom we send our congratulations, a magnum of Champagne and the traditional South Square Umbrella.

1. *Section 31 of the Pyrotechnic Articles (Safety) Regulations 2015, prohibiting the sale of a Christmas cracker to a child under the age of 12.*
2. *Sunday Observance Act 1677, proving that “noe Tradesman, Artificer Workeman Labourer or other Person whatsoever shall doe or exercise any worldly Labour, Busines or Worke of their ordinary Callings upon, the Lords day” later extended to include Christmas Day, making it illegal to work on Christmas.*
3. *Section 3 of the Game Act 1831, making it illegal to “kill or take any game, or use any dog, gun, net or other engine or instrument for the purpose of killing or taking any game, on a Sunday or Christmas Day.”*
4. *Section 12 of the Licensing Act 1872, providing that “every person found drunk [...] on any licensed premises, shall be liable to a penalty”.*
5. *The Holy Days and Fasting Act 1551, modified by George III in 1780, prohibiting driving or riding to Church.*
6. *According to various internet sites a William IV People’s Charter of 1836 made it illegal to eat more than three courses of Christmas dinner at a restaurant or hotel.*
7. *Unlawful Games Act 1541, prohibited any sporting activity other than archery at Christmas, later amended to include ‘leaping and vaulting’.*
8. *Section 79(1)(fb) of the Environmental Protection Act 1990, which gives “artificial light emitted from premises so as to be prejudicial to health or a nuisance” as an example of what may constitute “statutory nuisances”.*
9. *Section 54 of the Metropolitan Police Act 1839 (and apologies to all thrown by our typographical error) make it an offence to make or use any slide upon ice or snow in any street or other thoroughfare, to the common danger of the passengers.*
10. *“Ordinance of the Lords and Commons Assembled in Parliament for the Better Observation of the Fest of the Nativity of Christ,” 19 December 1644, confirmed that Christmas Day in 1644 was a legally mandated day of fasting.*

### JUDGES

1



2



3



4



5



6



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8



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10



### HOBBY

A



B



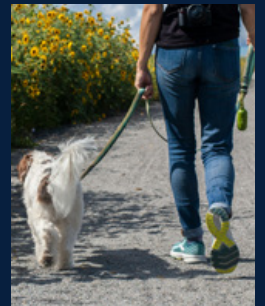
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D



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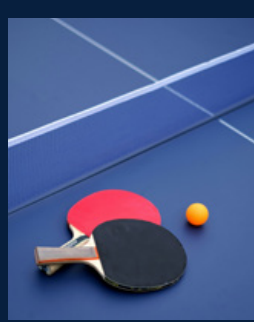
F



G



H



I



J



*“South Square has an array of sparkling KCs and juniors who are real experts in the fields of Insolvency and Company Law”*

**LEGAL 500**

## Members

Tom Smith KC – Head of Chambers

Mark Phillips KC  
Fidelis Oditah KC  
David Alexander KC  
Glen Davis KC  
Barry Isaacs KC  
Felicity Toubé KC  
Mark Arnold KC  
Jeremy Goldring KC  
David Allison KC  
Daniel Bayfield KC  
Richard Fisher KC  
Joseph Curl KC  
Stephen Robins KC  
Tony Beswetherick KC  
Adam Al-Attar KC  
William Willson KC  
Rory Brown KC

Hilary Stonefrost  
Lloyd Tamlyn  
Marcus Haywood  
Hannah Thornley  
Clara Johnson  
Georgina Peters  
Henry Phillips  
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Kira King  
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Toby Brown  
Robert Amey  
Oliver Hyams  
Andrew Shaw  
Ryan Perkins  
Dr. Riz Mokal  
Madeleine Jones

Edoardo Lupi  
Jon Colclough  
Roseanna Darcy  
Stefanie Wilkins  
Lottie Pyper  
Philip Judd  
Daniel Judd  
Jamil Mustafa  
Paul Fradley  
Peter Burgess  
Annabelle Wang  
Rabin Kok  
Imogen Beltrami  
Dhananjay Kumar  
Charlotte Ward  
Angus Groom

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Worthington KC (Hon)  
Hon. James M Peck  
Michael Crystal KC  
Prof. Christoph G Paulus  
Hon Paul Heath KC  
Hon Justice Ian Kawaley  
Ronald DeKoven

John Sheahan KC  
The Hon Frank J C  
Newbould KC  
Simon Mortimore KC  
Louis Doyle KC  
Prof. Andrew Key  
Prof. Peter Walton  
Barry Mortimore GBS KC

Richard Sheldon KC  
Christopher Brougham KC  
John Briggs  
Martin Pascoe KC  
Adam Goodison  
Michael Lok  
Richard Hacker KC

