Neutral Citation Number: [2026] EWHC 1263 (Ch)

Case No: CR-2025-BRS-000058

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

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 28 May 2026

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

BCNO LIMITED	**Claimant**
- and -	
IAIN COOKE	**Defendant**

- -
- -

Charlie Newington-Bridges (instructed by **TLT LLP**) for the **Claimant**
Angus Groom (instructed by **Birketts LLP**) for the **Defendant**

Hearing date: 30 April 2026

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This judgment was handed down remotely at 10.30 am on 28 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ Paul Matthews :

Introduction

1. This is my judgment on a claim brought by claim form under CPR Part 8 issued on 19 June 2025 by BCNO Limited against Mr Iain Cooke, under section 117 of the Companies Act 2006. Sections 116-119 of the 2006 Act make provision for members of a company and of the public to have access to a company's register of members under certain circumstances. Following a provisional decision by the company of which the defendant (who is not a member of the company) disapproved, he sought to obtain support amongst members, and (amongst other things) asked for access to the register of members. The litigation has arisen out of the claimant's response to this, considering the defendant's lobbying activities to amount to harassment.

2. By its claim, the claimant now seeks (i) an order that the claimant be directed not to respond to the original or any further request from the defendant, and (ii) an order that the defendant pay the claimant's costs of the litigation. The defendant resists both orders. Both parties accept that disposal of this claim does not require me (a) to decide anything about the merits of the decision provisionally reached by the claimant, or (b) to decide the truth or otherwise of the allegations and counter allegations between the claimant and the defendant as to the extent of the lobbying undertaken by the defendant.

3. At the trial, the evidence was given entirely in writing. Mr Ian Fraser, who is the chief executive officer of the claimant, made a witness statement in support of the claim on 19 June 2025, with one exhibit. The defendant made a witness statement in opposition, dated 10 October 2025, also with one exhibit. Then Mr Fraser made a further witness statement, in reply to that of the defendant, dated 7 November 2025, again with one exhibit. At the trial no cross-examination of either witness was sought or took place.

Facts

4. So far as necessary for the purposes of this claim, I find the following facts. The claimant is a charity, constituted as a company limited by guarantee. It educates osteopaths and naturopaths on two campuses, one in North London, and one in Maidstone, Kent. That in London is known as the British College of Osteopathic Medicine ("BCOM"). That in Kent is known as the European School of Osteopathy ("ESO"). These two schools merged in 2021. There was formerly a second charitable company, associated with ESO, called Osteopathic Education and Research Ltd, but this was dissolved in 2024, all its activities having been transferred to the claimant at the time of the merger in 2021.

5. The defendant is the father of a former student (and later faculty member) at the London campus, who has interested himself in the charity's affairs. He is not himself a member of the company, and lives in Switzerland. This litigation has arisen out of the provisional decision of the charity to phase out teaching at the London campus and close it down. The defendant, as well as other interested persons, is opposed to this provisional decision, and has sought to lobby the members of the charity, and the trustees, in order to seek to persuade them to change their minds. As already mentioned, the claimant says that the defendant's lobbying has reached an

unacceptable degree, amounting to harassment by the defendant of the trustees and staff of the charity. The defendant denies that his activities have reached such a level.

6. In June 2025, the defendant wrote by email to the company secretary of the claimant,

> "Dear Sue
>
> Please could you send me the register of members of BCNO covering the period from Jan 2015 to December 2021, and as I believe you were secretary for ESO as well, the register of members for ESO (Osteopathic Education and Research Ltd) for the same period.
>
> Thanks and best regards Iain Cooke".

7. The reference to "ESO (Osteopathic Education and Research Ltd)" appears to be a reference to the company dissolved in December 2024. It appears to be common ground that the request so far as concerned that company could not be effective, as by that time that company no longer existed. Accordingly, I need not deal further with that aspect of the matter.

8. The claimant replied to this email on 19 June 2025, in part as follows:

> "We refer to your email dated 13 June 2025 timed at 12.35pm, sent to Sue Leadbeater. As this email constitutes a request for the register of members which is governed by section 116 of the Companies Act 2006 ('the Act'), in accordance with the requirements of section 117(1) of the Act, we have, today, issued a claim in the Business & Property Courts in Bristol, seeking an order that BCNO Limited need not comply with this request, or any request you make under s116 of the Companies Act 2006.
>
> This email constitutes notice to you, pursuant to section 117(2) of the Act."

9. If the defendant's request were indeed one within section 116 then, by virtue of section 117, the claimant within 5 days would have either to comply with it or to challenge it by a claim made under that section, otherwise an offence would be committed under section 118. (The text of these sections is set out later in this judgment.)

10. On 25 June 2025, the defendant sent a further email, saying (in part)

> "I do not believe my email of 13th June did constitute a request under section 116 of the Companies Act.
>
> I did not reference the act, and the act clearly states that a request under the act must contain the following information—
>
>> (a) in the case of an individual, his name and address;
>>
>> (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
>>
>> (c) the purpose for which the information is to be used; and

> (d) whether the information will be disclosed to any other person, and if so —
>
> > (i) where that person is an individual, his name and address,
> >
> > (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
> >
> > (iii) the purpose for which the information is to be used by that person.
>
> Of all of the above explicit and mandatory requirements for a communication to be a valid request under the act, the only thing I provided was my name. My email is therefore very clearly not a (valid) section 116 request."

11. His email further said:

> "I therefore hereby formally withdraw my request."

12. There followed correspondence between the parties. The company was prepared to accept the withdrawal of the request on two conditions. One was the provision of an undertaking by the defendant that he would not make any future requests for the register of members of the company. The other was that he agree to pay the company's legal costs occasioned by the request.

13. The defendant instructed solicitors, and the two firms corresponded. Although it was agreed between the parties that the defendant's original email did not comply with the requirements of section 116(4), the parties could not agree on the legal consequences. The defendant said that, since there was no valid request under section 116, there was no obligation on the company under section 117 either to comply or to issue a claim, that the court had no jurisdiction to make an order under that section, and that the defendant should not have to pay the claimant's costs. The claimant said that, even though there was no request complying with the requirements of section 116(4), there was still a request made to the company for the purposes of section 116, which engaged the obligation on section 117(1) to comply with it or challenge it in court. Hence the claim was properly brought, and the claimant was entitled to its costs.

14. During the correspondence, on 12 August 2025 the defendant by his solicitors conditionally offered an undertaking to the claimant not to make any request under section 116:

> "As to your request for undertakings, Mr Cooke is prepared to agree to provide an undertaking to the extent that he will not make any request under s116 Companies Act 2006 for inspection of the Register of Members. He is willing to provide this if BCNO provides him with confirmation as to the number of Members of BCNO limited in place on the following dates:
>
> 1. 31 August 2020
>
> 2. 31 August 2021

3. 08 October 2021

Mr Cooke has legitimate concerns with regards to decisions made over this period. If this is provided, he will provide an undertaking with the specific terms to be agreed".

15. The claimant by its solicitors rejected this offer:

> "This conditionality is completely unacceptable as any such request constitutes a s116 request 'through the back door'. This is part of wider information that Mr Cooke would have obtained had BCNO provided the information sought by Mr Cooke in his original request."

16. In September 2025, the defendant's solicitors wrote to the claimant's solicitors offering

> "to agree to a consent order providing (1) that the request made was not in compliance with the provisions of section 116 and so it did not in any event need to be complied with by BCNO, and (2) that there be no order as to costs. This will allow for this Claim to be disposed of quickly on the papers and without the need for any more wasted costs."

However, this offer was rejected on behalf of the claimant. The claim issued by the claimant on 19 June 2025 has therefore continued, and I must decide who is right.

Law

Statute

17. Section 116 of the 2006 Act provides as follows:

> "**116. Rights to inspect and require copies**
>
> (1) The register and the index of members' names must be open to the inspection—
>
> (a) of any member of the company without charge, and
>
> (b) of any other person on payment of such fee as may be prescribed.
>
> (2) Any person may require a copy of a company's register of members, or of any part of it, on payment of such fee as may be prescribed.
>
> (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
>
> (4) The request must contain the following information—
>
> (a) in the case of an individual, his name and address;

(b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;

(c) the purpose for which the information is to be used; and

(d) whether the information will be disclosed to any other person, and if so—

(i) where that person is an individual, his name and address,

(ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and

(iii) the purpose for which the information is to be used by that person."

18. Section 117 of the 2006 Act provides as follows:

"**117. Register of members: response to request for inspection or copy**

(1) Where a company receives a request under section 116 (register of members: right to inspect and require copy), it must within five working days either—

(a) comply with the request, or

(b) apply to the court.

(2) If it applies to the court it must notify the person making the request.

(3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose—

(a) it shall direct the company not to comply with the request, and

(b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.

(4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

(5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request

immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued."

19. Section 118 of the 2006 Act provides as follows:

> "**118. Register of members: refusal of inspection or default in providing copy**
>
> (1) If an inspection required under section 116 (register of members: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by—
>
> (a) the company, and
>
> (b) every officer of the company who is in default.
>
> (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
>
> (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it."

20. Section 119 of the 2006 Act provides as follows:

> "**119. Register of members: offences in connection with request for or disclosure of information**
>
> (1) It is an offence for a person knowingly or recklessly to make in a request under section 116 (register of members: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.
>
> (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—
>
> (a) to do anything that results in the information being disclosed to another person, or
>
> (b) to fail to do anything with the result that the information is disclosed to another person,
>
> knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.
>
> (3) A person guilty of an offence under this section is liable—
>
> (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both)."

Case law

21. A number of authorities were cited to me. In *Burry & Knight Ltd v Knight* [2014] EWCA Civ 604, the Court of Appeal considered these provisions, on an appeal from the Registrar, who had made a no-access order on the basis of an improper purpose for the request, and had ordered Dr Knight to pay the company's costs on the indemnity basis. Dr Knight appealed against both the no-access order made, and also the indemnity costs order. Arden LJ gave the principal judgment. Briggs and Christopher Clarke LJJ agreed with her on certain aspects, including the law and the main appeal (though not the appeal on costs).

22. Arden LJ said:

"6. The statutory provisions dealing with inspection of share registers are now to be found in sections 113 to 120 of the Companies Act 2006 ("CA 2006"). Sections 116, 117, 119 and 120 are new. The other sections are derived from previous statutory provisions, some of which date from the Companies Act 1862.

7. The Companies Act 2006 ('the CA 2006') in general requires every company to keep a register of its members, showing (in the case of a company having a share capital) for each member his name and address, the date he was registered as a member or ceased to be a member and the number and class of his shares and the amount paid up on those shares.

8. Persons other than the company may have a legitimate interest in accessing the information in the register. A member may, for instance, need the information in the register because he wants to obtain support from other members to requisition a general meeting of the company. A member of the public may need the information in order to investigate whether the board has issued shares improperly, for example by issuing them to their associates.

9. Accordingly, statute confers rights to inspect and take copies of the information in the register of members. Under the Companies Act 1985, section 356, anyone could obtain access to the register and a copy of it. However, there was evidence that some people were abusing this right and seeking the information in order to harass the members.

10. So since 2006 these rights have been qualified. In the CA 2006, Parliament has sought to provide some protection for members against improper requests by enabling the company to obtain a court order preventing access if the request fails a 'proper purpose' test. Accordingly under the CA 2006:

- the person who wants access to the register must make a request for access which states the purpose of the request (section 116);
- the company may within 5 days apply to the court for an order relieving it from any obligation to comply with the request, and
- the court has no option: it must make this order if it is satisfied that the request is not made for a proper purpose (section 118).

> 11. This is a major change in the law. Formerly, the law regarded the right of a shareholder to access the share register as an incident of his property right in his share, and did not inquire into his motives for wanting access: see *Davies v Gas Light and Coke Co* [1909] 1 Ch 248."

23. Arden LJ then went on to say this:

> "15. I start with the mischief to which section 117(3) of the CA 2006 was directed. Ms Lexa Hilliard QC, for Dr Knight, pointed out that Margaret Hodge MP, Minister in charge of the Bill at that stage, spoke during the committee stage of the Companies Bill leading to the CA 2006 of abuse of the right to inspect the share register.
>
> 16. These abuses were the subject of recommendations by the Steering Group of the Department of Trade and Industry's Company Law Review ('the CLRSG'), of which I was a member. Section 117 was enacted following acceptance by the Department of those recommendations. In its *Modern Company Law For A Competitive Economy: Final Report* (www.dti.gov.uk/cld/review.htm), the CLRSG pointed out that the right of access to share registers was abused by, for instance, bounty hunters or people who sought to use the names and addresses for advertising purposes.
>
> 17. The principal recommendation made by the CLRSG on this point was that the Companies Act should restrict access to the share register. The CLRSG went on to recommend an approach not wholly dissimilar to the approach in the Australian Corporations Law. Under that Law, the applicant has to make his application in a prescribed form, and must set out in it each of the purposes for which he seeks access (section 117(3A) (c)). None of the purposes must be a proscribed purpose, and the proscribed purposes include such matters as requesting a donation from a member. The CLRSG recommended that purposes of access be limited to some (different) prescribed purposes (see *Final Report*, paragraph 11.44). However, Parliament has not identified any purposes as improper. Thus it has left the words 'proper purpose' at large for the courts to work out in the conventional way, using the context and on a case by case basis. I therefore agree with the Registrar that Parliament intended to leave the meaning of 'proper purpose' open for the courts to determine, and not to limit or define it."

24. Having considered the facts of the case, Arden LJ concluded:

> "109. I would dismiss the appeal against the Registrar's order under section 117(3) of the CA 2006 ((A) in paragraph 1 above). Dr Knight's purpose in circulating shareholders with details of past irregularities was not a proper

> purpose because this communication could not confer anything of value on fellow shareholders, alternatively because the real purpose was to harass fellow shareholders, as found by the Registrar. I would make no order on the respondents' notice.
>
> 110. However, I would allow the appeal against his order for indemnity costs ((B) in paragraph 1 above). Dr Knight's conduct after deciding to withdraw his request, on which the Registrar relied, was not unreasonable for this purpose."

25. As I said above, Briggs and Christopher Clarke LJJ agreed with the result reached by Arden LJ, and the order to be made. They did not express a different view on the law to be applied. However, they did not agree with her view as to the reasonableness of Dr Knight's conduct for the purpose of overruling the Registrar's decision that he should pay the company's costs on the indemnity basis. But that aspect turns on an appreciation of the facts, and does not concern me in deciding this case.

26. In *Fox-Davies v Burberry plc* [2017] EWCA Civ 1129, the person making the request of the company sought to obtain company information for the purpose of tracing missing shareholders. As David Richards LJ put it:

> "2. The appellant carries on the business of tracing lost members of companies and, for a fee or commission, reuniting them with their shares. In furtherance of this business, he requested a copy of the register of members of the respondent company Burberry PLC (Burberry), under section 116 of the Companies Act 2006. Burberry refused to supply it and applied under section 117 for a direction that it should not comply with the request. After a contested hearing, Registrar Briggs made the direction sought by Burberry. The appellant appeals with permission granted by the Registrar."

27. The appellant was a director and shareholder of a Gibraltar company called Interum Ltd, and he stated in the request that information provided pursuant to the request would be disclosed to that company. What he did not say was that that company would make the information available to independent specialist researchers in the relevant countries, who would assist in tracing the lost members, and with whom he would share his fee. All three members of the Court of Appeal (Longmore, David Richards LJJ and Sir Patrick Elias) held that this failure to mention disclosure to the specialist researchers amounted to non-compliance with section 116(4)(d) and invalidated the request. Hence, the appeal was dismissed.

28. One of the four main points taken on appeal was that

> "a failure to comply with the requirements of s.116(4), alternatively the requirements of s.116(4)(d), does not invalidate the request or excuse the company from compliance with it".

29. David Richards LJ (with whom the other members of the court agreed on this point) said this:

> "31. This too is a submission that I cannot accept. Section 116(4) is clear that the request 'must contain' the information specified in the sub-section, and section 117(1) requires a company to comply with 'a request under section 116'. The

> statutory scheme strongly suggests that this is a mandatory requirement and that a company is not obliged to comply with a request that does not contain the necessary information. It is hard to see that paragraphs (a) and (b) could be anything other than mandatory. Paragraph (c) is essential to enable the company to form a view whether the requester's purpose is proper and so decide how to proceed under section 117. As to paragraph (d), the appellant's own submission is that it is directed at enabling the company to assess the purpose. In any event, it would be very odd if compliance was mandatory as regards paragraphs (a) to (c) but not paragraph (d). Substantial compliance with section 116(4) might suffice, but in this case there was a wholesale failure to comply with paragraph (d).
>
> 32. In my view, the Registrar was right to hold that non-compliance with section 116(4)(d) invalidated the requests.
>
> 33. The Registrar also held that the request did not comply with section 116(4)(c) because it did not sufficiently or accurately state the appellant's purpose, but for two reasons it is unnecessary to consider further that part of his first decision. First, he held, and we have agreed, that the request did not comply with paragraph (d). Secondly, the parties agreed to treat the second request as complying with section 116(4), so as to obtain a decision on whether the appellant's purpose was proper."

30. This was a case where the requesting party *did* intend to disclose the information to others, but mentioned only one of such others and not all of them. It was held to amount to "a wholesale failure to comply" with the requirement. As a result the "company [was] not obliged to comply with" the request because it did "not contain the necessary information." This decision was followed by Deputy ICC Judge Agnello KC (as she then was) in *Exeter Golf and Country Club v Jackson* [2023] EWHC 198 (Ch), and by ICC Judge Greenwood in *Aviva plc v Litani LLC* [2025] EWHC 3134 (Ch).

31. Although I am bound by the decisions of the Court of Appeal referred to, there was also cited to me a decision of my own, in *Sir Henry Royce Memorial Foundation v Hardy* [2021] EWHC 714 (Ch). This was a case of a request by a Mr Hardy by email on 10 February 2020 for access to the register of members of a company, which did not comply with section 116. Mr Hardy (who was a litigant in person) supplemented his request a few days later. He said that this made the request compliant with section 116, and that the company was obliged either to comply or to challenge the request in court. The company said that it was not so obliged. In that case I said that there were three ways to explain how the second email might be said to correct the invalid request:

> "40. … The first would be to say that the original request was invalid at the time, but was later validated by the supply of the additional information, so that either (i) it becomes retrospectively valid, or at least (ii) it is valid from the date of later supply. The second would be to say that the original request was always invalid, but that the supply of the further information creates a new and valid request as from the date of later supply. The third would be to say that the request is contained in *both* documents read together."

32. I did not accept the first explanation, as the company had only five days to react to a valid request and therefore (at [41]) "a request is either valid or invalid at the time it is made. Its status ought not to change depending on what happens later." The second was a possibility. But I said (at [42]) that it would be a matter of construction of the second notice whether it purported simply to correct the first or to amount to a completely fresh request. In that case it was clear that the purpose was to correct the original, defective request. As to the third explanation, for reasons given (at [43]), I said, "In my judgment it is not permissible to aggregate separate matters into one in this way." I then went on to say:

> 44. Accordingly, I hold that the request made by the defendant in his email of 10 February 2020 was invalid, and the company is not required to comply with it … "

33. That was enough to decide the case. But I did go on to deal briefly with the case on the footing that my decision on the validity of the request was wrong, and that it had actually been valid under section 116. In that case, I decided (at [54]) that "the court would have had to make a no-access provision order because at least one of the stated purposes [for the request] was improper." However, (at [60]) I then went on to say "For the reasons set out above, the claimant succeeds in its claim. I will therefore make the appropriate no access order." Strictly, as I had already said that the request was invalid, I doubt that that was a correct thing to say. It may be that I should simply have declared that the request was invalid and that the company was not obliged to deal with it.

The parties' positions

The claimant

34. The claimant puts the outstanding issues in this way in its skeleton argument:

> "40. The Defendant has conceded almost everything in the claim in that he accepts that the claim was not valid and therefore by inference it does not need to be complied with by the Claimant. The only issues that are outstanding as set out above are:
>
> > i. Should the court make an order that the Claimant need not comply with any future requests?
> >
> > ii. Should the Defendant pay the Claimant's costs?"

The defendant

35. The defendant's skeleton argument puts the position this way:

> "12. In reality, the primary issue that the Court must determine is a legal issue: whether the words at the start of section 117 ('Where a company receives a request under section 116') are engaged only by a valid request that complies with section 116(4), or whether they are engaged by any form of ask or communication that can be described as a 'request' relating to a company's register of members (the '**Invalid Request Issue**').

13. Mr Cooke's position is that only a request complying with section 116(4) is a 'request under section 116' that engages section 117, whereas something that does not comply with section 116(4) does not need to be responded to by the company in any way."

The parties' submissions

The claimant

36. The claimant says that it is agreed that the email request is not a valid request under section 116, because it does not comply with the requirements of s116(4). But the claimant nevertheless made a claim under section 117, seeking a declaration that it did not need to comply with future requests. It also sought an undertaking from the defendant in respect of future claims. This undertaking was eventually offered but conditionally on certain (more limited) information being given to the defendant by the claimant.

37. The claimant says that, notwithstanding that the request did not comply with section 116, the court has jurisdiction to make a declaration under section 117. Section 117 does not refer to a "valid" request under section 116. There is no authority which says that the court lacks such jurisdiction. Moreover, it would be surprising if the court's powers were restricted, so that the court cannot (i) find that the request was invalid and still (b) go on to find that there was an improper purpose behind it. In a case like the present, where there is evidence (the claimant says) that the purpose was or was "likely to be to harass, intimidate or even defame the directors", the court should be able to direct that future requests should not be complied with.

38. The claimant goes on to say that no purpose was stated in the request, although the defendant's later letter of 12 August 2025 did say that the defendant had "legitimate concerns with regards to decisions made over this period". The claimant further says that the defendant sought the information "to further the campaign he has perpetrated against the board", and that it was "likely in the context of the campaign that he would use the information … to threaten, harass or intimidate members".

The defendant

39. The defendant says that the obligation to provide information about members, and the criminal offences created by sections 118 and 119, are triggered by a "request under section 116". That must mean a request that falls within section 116, which is one that must contain the information in section 116(4). It would be straining the language to construe "request under section 116" as including *any* request for access to the register of members, whether it complied with section 116 or not. So, only a *valid* section 116 request entails the consequences stated. Indeed, the defendant goes further than this, and says that only a request *purporting to exercise the section 116 rights* may do so.

40. The defendant relies on the decision in *Fox-Davies v Burberry plc*, and in particular on the passage in the judgment of David Richards LJ at [31], set out above.

Discussion

41. I start with the proposition that the jurisdiction of the court to make the order which the claimant seeks by this claim is conferred on the court by "an application under this section" in section 117(3). This refers to an application to the court made by the company under section 117(1)(b), in response to "a request under section 116". In my judgment, without such a request, there can be no "application under this section" to the court, and thus, on the face of it, no jurisdiction. The phrase "a request under section 116" appears therefore to be key.

42. What does that mean? First of all, it refers back to section 116 itself. Section 116(1) and (2) create two separate rights to access certain company information (that is (i) the right to inspection of the register of members, and (ii) the right to copies of the register). Section 116(3) refers to "a request to the company" which seeks "to exercise either of the rights conferred by this section". Section 116(4) enacts that such a request "must contain the following information", and the required information is then set out. In *Fox-Davies v Burberry plc*, the Court of Appeal decided that compliance with section 116(4) was *mandatory* if the request was to be a valid request, imposing the significant obligations set out in the legislation. Absent such compliance, the company had no obligation under section 117(1) *either* to comply with the request *or* to challenge the request in court. I am of course bound by the decision in *Fox-Davies v Burberry plc.*

43. On the face of it, therefore, since (as is common ground) this request did not comply with section 116(4), and therefore did not comply with section 116, the jurisdiction under section 117(1)(b) never arose, and this court has no power to make the order sought by the claimant. However, the claimant submits that the court should be able to (i) hold that the request was invalid, but still (b) go on to find that there was an improper purpose behind it, that is (in this case), harassment of the directors and members. As I have already recorded, the claimant points to the fact that section 117 does not refer to a "valid" request. The claimant says that the further jurisdiction it argues for would be analogous to a "*quia timet*" power to prevent threatened wrong in the future. However, even without the clear wording of the statute, I see no good reason for construing section 117 as conferring a further jurisdiction of this kind on the court.

44. At the time of the enactment of the 2006 Act, there already existed a civil remedy for harassment generally, under the Protection from Harassment Act 1997. Prior to 2006, there was an unrestricted right of access to the register of members. What Parliament did in 2006 was to restrict the disclosure of company member information, by requiring a certain format of request to be adopted. *Outside* that format, there was no obligation on the company to comply at all. That in itself protected members. The company could simply and safely ignore the request. Harassment by multiple non-compliant requests could be dealt with by other legal remedies, including under the 1997 Act. *Within* that format, on the other hand, there were rules about purpose, which *also* protected members, by giving rise to a jurisdiction in the court to direct non-compliance with the (otherwise valid) request, on the basis that it is "satisfied that the inspection or copy is not sought for a proper purpose". But that is the point of the claim, to decide whether the court is so satisfied or not.

45. It may perhaps be asked what a company should do if there were any doubt on the part of the company as whether a request complied with section 116, so that the

company was *unsure* whether to challenge the request or not. But that is not this case, and it can be left to be decided as and when the point actually arises. However, given the nature of the information required by section 116(4), it is not easy to see how there would normally be any doubt on the part of the company as whether a request did or did not comply with section 116. Either the request gives answers to the four points raised by section 116(4), or it does not. I accept that, in *Fox-Davies v Burberry plc*, both the Registrar and the Court of Appeal investigated the completeness and accuracy of the answers given. But, as David Richards LJ said (at [33]), that was because the parties *agreed* that a *second* request satisfied section 116 so that the court could consider the matter of purpose. But that does not arise here. It was obvious that the request did not comply with section 116, and the parties have not agreed that it did.

46. What the claimant appears to seek, even in a case where there is no doubt that the request does not comply with section 116, is for the court nevertheless to have jurisdiction, so that (even if the court decides that the notice is invalid) the court may direct that future requests not be complied with. I do not see how *that* jurisdiction is to be conjured out of the wording and the context of section 117. In my judgment, it does not exist. In the present case, there never was an obligation on the company to comply with the request, and there never was any risk of committing a criminal offence by failing to do so. In my judgment, in the present case the claimant was not entitled to bring these proceedings for a direction of non-access, because the threshold condition laid down by section 117, namely a "request under section 116", was never satisfied.

Conclusion

47. For the reasons given above, this claim fails, and must be dismissed.