Neutral Citation Number: [2026] EWHC 2386 (Ch)

Case No: CR-2024-005405

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

IN THE MATTER OF ST MARK LIONS LIMITED (IN CVL)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Date: 22 September 2026

Before :

DEPUTY ICC JUDGE CURL KC

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Between :

LLOYD EDWARD HINTON
(Liquidator of St. Mark Lions Limited (in creditors' voluntary liquidation))

Applicant

-and-

DR MAREK STOBINSKI

Respondent

Samuel Hodge (instructed by **Coyle White Devine**) for the **Applicant**
Andrew Brown (instructed by **Kangs Solicitors**) for the **Respondent**

Hearing date: 8 and 9 July 2026
Further written submissions: 16 and 22 July 2026
Draft judgment circulated to the parties: 16 September 2026

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This judgment was handed down remotely at 10.30am on 22 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Deputy ICC Judge Curl KC:

1. The applicant, Lloyd Hinton, is the liquidator (**"Liquidator"**) of St. Mark Lions Limited (**"Company"**) and he brings proceedings against Dr Marek Stobinski, the Company's sole director and shareholder. Most of the present application is brought under s.212 of the Insolvency Act 1986 (**"IA 1986"**), which is a provision that enables a liquidator to pursue in their own name certain causes of action vested in a company in liquidation. The present claims were commenced by means of an application under r.1.35 of the Insolvency (England and Wales) Rules 2016 (**"IR 2016"**). Use of that form of originating process has thrown up an interesting procedural issue about the scope of s.212, which I must deal with before turning to the substance of the claim.

2. Dr Stobinski is a Polish national who moved to this country in around 2009 and has since practised here as a medical doctor. The Company was incorporated on 19 March 2015 and commenced creditors' voluntary liquidation on 12 October 2022. It appears principally to have been a service company for some (but not all) of Dr Stobinski's activities as a doctor. Although there was some suggestion by and on behalf of Dr Stobinski that the Company did (or at least explored the possibility of doing) other things, there is no evidence of substance to support that. Contemporaneous evidence is unusually thin on the ground generally in this case owing to an almost complete absence of books and records.

3. Most of the Liquidator's claims are based on the contention that Dr Stobinski breached his duties to the Company as its director under ss.171, 172, 174 and 175 of the Companies Act 2006 (**"CA 2006"**). The Liquidator seeks an order against Dr Stobinski for the total sum of £214,195.29 plus interest, comprised of three elements:

    a. £112,506 is said by the Liquidator to relate to an overdrawn director's loan account (**"DLA"**) owed by Dr Stobinski to the Company. The value of the claim reflects the figure showing for *"Other Debtors"* in the Company's final set of annual accounts for the accounting period ended (**"APE"**) 29 March 2021, as amended on 6 May 2022.

    b. £63,189.29 is alleged by the Liquidator to have been paid away from the Company's single bank account at Dr Stobinski's direction without any legitimate basis and unsupported by any invoices or other records (**"Other Payments"**). This sum may itself be broken down into eight sub-categories: payments to five named individuals (£17,159.09); purchases on Amazon.com (£3,253.25); purchases on Ebay.com (£1,447.73); purchases made via Paypal.com (£5,531.12); various monthly subscriptions (£2,299.91); payments to auctioneers (£17,709.99); payments to various other companies (£13,960.57); and spending on entertainment, mainly in pubs and restaurants (£1,827.63). The earliest of these payments was made in December 2019 and the significant majority of them were made during or after

APE 2021, which was the last accounting period for which a set of financial statements is available.

c. £38,500 was paid directly to Dr Stobinski by nine payments of varying sums between 18 May 2020 and 13 January 2021. These were described on the bank statements as *"MGMT CHARGE"*, which no one doubted was an abbreviation of *"management charge"*.

4. The Liquidator's case is that the Company was insolvent or at least bordering on insolvency from 2 December 2019 at the latest, with the consequence that Dr Stobinski was obliged to have regard during that time to the interests of the Company's creditors in order properly to discharge his duties to the Company. To demonstrate insolvency, the Liquidator points to the Company's accumulating debt for corporation tax (**"CT"**) dating back to APE 2019. The Liquidators says that inadequate steps to address the CT were taken by Dr Stobinski, who instead applied the Company's available cash primarily for his own benefit when his focus should have been on repayment of the DLA on which any prospect of discharging the CT rested. According to the statement of affairs signed by Dr Stobinski and dated 5 October 2022, the CT debt was £79,000 at that time. The Liquidator says that the entire £214,195.29 can properly be characterised as misfeasance, i.e. arising from breaches of Dr Stobinski's duties as a director; alternatively, that £112,500 (i.e. the element attributable to the DLA) is repayable by Dr Stobinski as a simple debt. It is this last aspect that has given rise to a procedural issue, which I address under the next heading.

5. Dr Stobinski sought to defend the claim on various grounds. I make the observation at the outset that to listen to and read the multiple explanations put forward by and on behalf of Dr Stobinski at various times has been a bewildering experience. A considerable proportion of the case advanced by Dr Stobinski was contradicted by reference to the limited contemporaneous evidence or inconsistent with some other part of his case. Some of it was simply incomprehensible. Where points made in his favour might have been capable of disclosing a defence, they were totally unsupported by evidence other than his uncorroborated word in circumstances where Dr Stobinski could have obtained some documentary evidence in support if those points had been accurate. Submissions made by Mr Brown on Dr Stobinski's behalf at trial were, in more than one respect, not supported by his client's own evidence. Regrettably, the need to unpack all this has made this judgment much longer than I would have preferred.

PROCEDURAL ISSUE

6. As I have said, the present claims were commenced using an application in the Liquidator's own name under r.1.35 of the IR 2016. A procedural objection to this was raised on behalf of Dr Stobinski by Mr Brown in his skeleton argument, which turned on the scope of s.212 of the IA 1986. Mr Brown submitted that, to the extent the Liquidator sought to assert a claim in debt against Dr Stobinski, it was impermissible to purport to do so by

means of an application under r.1.35 of the IR 2016 because only *"insolvency proceedings"* (i.e. proceedings within Parts A1 to 11 of the IA 1986) may be brought using such an application. In Mr Brown's submission, a debt claim cannot be brought using *"insolvency proceedings"* and, in particular, s.212 is not an available means of doing so. Instead, a debt claim must be commenced in the name of the company using the Part 7 procedure. Mr Brown submitted that *Manolete Partners plc v Hayward and Barrett Holdings Ltd* [2022] 1 All ER (Comm) 1293 is authority for this. But unlike the position in that case, submitted Mr Brown, the Liquidator's debt claim in the present case is a nullity incapable of cure.

7. Before dealing with the point, I make clear at the outset that resolution of this procedural argument has not affected the ultimate outcome in this case. That is because I have reached the view that Dr Stobinski is liable to compensate the Company in the same sum as the DLA balance because he dealt with that asset in breach of his fiduciary duties under ss.172 and 175 and his common law duty of care under s.174 of the CA 2006. I have nonetheless dealt with the point given the significant amount of time it occupied at trial and to ensure that it is clear to the parties and any appellate court how the case would have been resolved in the event that the Liquidator had not succeeded on his primary breach of duty case.

8. The antecedents of s.212 may be traced back to s.165 of the Companies Act 1862 but the current wording was introduced only by s.19 of the Insolvency Act 1985, which was replaced almost immediately by s.212 of the IA 1986. So far as relevant, s.212 provides as follows:

> *"(1) This section applies if in the course of the winding up of a company it appears that a person who–*
>
> *(a) is or has been an officer of the company,*
>
> *…*
>
> *has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company* [emphasis added].
>
> *…*
>
> *(3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him–*
>
> *(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just, or*

(b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just."

9. The words underlined in the extract above are the ones on which the procedural argument turned.

10. In *Manolete*, an assignee sought to bring in its own name claims that had formerly been vested in two companies in liquidation, as well as claims formerly vested in the company's officeholder under s.239 of the IA 1986. Had the company claims not been assigned, they could have been pursued by the liquidator in his own name using the statutory gateway in s.212 of the IA 1986. As is well known, s.212 bestows no new rights on a liquidator and is simply a procedural mechanism by which a claim vested in a company may be pursued by the officeholder without the need to bring a Part 7 claim: *Re Eurocruit Europe Ltd (in liquidation)* [2007] 2 BCLC 598. In this respect, s.212 differs from provisions in the IA 1986 that create new statutory causes of action at the commencement of liquidation, which are vested in the officeholder: see *In re Oasis Merchandising Ltd* [1998] Ch 170, 181D-G, per Peter Gibson LJ. By reason of the assignment, s.212 was no longer available as a means of bringing the company claims, because that provision may only be used by a liquidator, which the assignee in *Manolete* was not.

11. The director who was the target of the claims in *Manolete* submitted that the assignee should have used the Part 7 procedure to pursue the assigned company claims. In answer, the assignee argued that those claims could be commenced using either r.1.35 or Part 7 and that there was a practice of permitting *"hybrid"* claims (i.e. proceedings raising both company and officeholder claims) to be commenced using a single application under r.1.35. Drawing support from the then-recent decision of His Honour Judge Cawson QC (as he then was) in *Re Taunton Logs Ltd (in liquidation)* [2021] BPIR 427, Chief ICC Judge Briggs accepted the director's submissions. Rather than dismiss the company claims, however, Chief Judge Briggs directed the assignee to pay the appropriate issue fee for a Part 7 claim and made an order to rectify the proceedings under CPR r.3.10 without any need to issue a separate claim. Notably, Judge Cawson QC had found in *Taunton Logs* at [32] that r.12.64 of the IR 2016 (which provides that no insolvency proceedings will be invalidated by any formal defect or irregularity unless there is irremediable substantial injustice) was not an available route to rectify the proceedings, because that rule applied only to *"insolvency proceedings"* (i.e. applications made under Parts 1 to 11, since extended to include Part A1, of the IA 1986) and there were no such proceedings properly constituted before the court.

12. At the commencement of the hearing before me, Mr Hodge offered to give an undertaking on behalf of the Liquidator to pay the appropriate issue fee for the commencement of a Part 7 claim and invited the court to make an order rectifying the proceedings. That was essentially the solution adopted in *Manolete* and *Taunton Logs*. But Mr Brown submitted that a

workaround of that kind was not available here because of an important factual difference between those cases and this one. There were two stages to Mr Brown's argument. First, authority had established long ago that a simple debt claim could not be pursued by a liquidator using the statutory gateway in s.212 of the IA 1986: that had been put beyond doubt *In re ETIC Limited* [1928] Ch 861, at 871. Second, the proceedings had been commenced by the Liquidator in his own name yet he had never had title to the debt claim, which was an asset of the Company and could be pursued only by and in the name of the Company. That second point made all the difference, submitted Mr Brown, because in each of *Manolete* and *Taunton Logs* the applicant had at least title to sue on the cause of action in question: in *Manolete*, the assignee had itself owned the claim and in *Taunton Logs* the company had been named as a co-applicant, along with the officeholders, on the application notice. Accordingly, the defects in those earlier cases were not about standing or title to sue but were simply concerned with the form of originating process employed; in the present circumstances, by contrast, the debt claim purportedly commenced by the Liquidator without title had always been a nullity.

13. Mr Hodge sought to answer Mr Brown's submissions in three ways. First, he submitted that the debt claim fell within s.212(1) because having not repaid the debt Dr Stobinski had *"…retained, or become accountable for, any money or other property of the company…"* Second, and in the alternative, the debt claim was covered by s.212(1) because a failure to repay a contractual debt fell within the scope of *"…breach of…any other duty in relation to the company."* While *Re ETIC* had been rightly decided according to the statutory wording prevailing in 1928, the proposition that a debt claim cannot be brought by a liquidator in their own name ignores the fact that the modern equivalent provision (i.e. s.212) is in a materially different form. Third, Mr Hodge submitted that even if he was wrong in his argument on the construction of the statute, the proceedings were capable of rectification on the authority of *Irwin v Lynch* [2011] 1 WLR 1364, which he submitted covered the present circumstances.

14. The first of these points may be readily dealt with: where money is advanced under an ordinary contract of loan (and there was no suggestion that any loan in the present case was anything other than that), the money lent by the creditor to the debtor becomes the legal and beneficial property of the debtor when the loan is made. In this case, the Liquidator did not challenge the DLA on the basis that there had been any failure to comply with the disclosure and authorisation requirements now found in s.197 of the CA 2006 but, in any case, title to money lent by a company to its director passes even where the loan is voidable on such a basis: *Ciro Citterio Menswear plc (in administration) v Thakrar* [2002] 1 WLR 2217, [31]-[33], per Anthony Mann QC (as he then was). Instead of an interest in the money lent, the creditor obtains the right to repayment. That right is an asset and it continues to be held by the creditor or its successor in title until the debt is discharged. In this case, the money lent by the Company is no longer its

property: the Company continues to hold the right to repayment as an asset and accordingly Dr Stobinski's obligation as debtor cannot be one based on any accountability for any money or other property *"of the company"*. For that reason I reject Mr Hodge's submission on the first point.

15. But the second point is less straightforward. Having heard the parties' oral submissions in closing, which they had not had a great deal of time to prepare, I considered it unlikely that the question of whether or not a breach of a duty to repay a contractual debt fell within s.212 of the IA 1986 had not been considered during the forty or so years since that wording was introduced. In order to avoid a *per incuriam* decision, I directed the parties to file short written submissions after the hearing addressing two points: first, the nature of a borrower's *"duty"* to repay a contractual debt; and, second, whether there had been any reasoned decision since the introduction of the modern statutory wording determining that a debt claim is not covered by it. I also permitted Mr Brown to address in his written submission any arguments he wanted to make in answer to Mr Hodge's reliance on *Irwin v Lynch*, which had also emerged fairly late in proceedings, and for Mr Hodge then to file brief submissions in reply on that.

16. With the benefit of those written submissions, and remarkable though it may seem, it appears from counsel's researches that there has not been a reasoned decision on whether or not a company's debt claim against a director falls within the modern wording of s.212 of the IA 1986. I emphasise here *"reasoned"*, as *Re ETIC* has been applied in support of the proposition that such a debt claim is not covered by s.212 during that time, but apparently without any argument or decision on Mr Hodge's point that the statutory provision under which that case was decided was relevantly different from the modern wording. Accordingly, the parties argued their positions from first principles.

17. There was no real disagreement between the parties on the first of the two points on which they made written submissions: both sides agreed that in the ordinary course a borrower is under a contractual obligation to the lender that may properly be described as a *"duty"* to repay a loan in accordance with its terms.

18. For the Liquidators, Mr Hodge submitted that it followed from this that a debtor's failure to repay a debt was a breach of a duty owed to the creditor. Accordingly, where a debtor *"is or has been an officer of the company"* within s.212(1)(a) and fails to discharge their contractual duty to repay a debt owed to their company, then they must breach *"…any other duty in relation to the company"* within the meaning of the closing words of s.212(1). Key to Mr Hodge's argument was the fact that those words did not appear in the equivalent provision when *Re ETIC* was decided.

19. As mentioned, the provision now found in s.212 of the IA 1986 can be traced back to s.165 of the Companies Act 1862. That provision was re-

enacted by s.10 of the Companies (Winding up) Act 1890 and, in turn, by s.215 of the Companies (Consolidation) Act 1908. *Re ETIC* was decided under the last-mentioned of those provisions, which was in the following form:

> *"215 Power of court to assess damages against delinquent directors, &c.*
>
> *(1), Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of <u>any misfeasance or breach of trust in relation to the company</u>* [emphasis added], *the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just."*

20. In *Re ETIC*, Maugham J held at 872 and again at 874 that the word *"misfeasance"* in s.215 meant *"…misfeasance in the nature of a breach of trust…"* and concluded at 875-876 that it did not extend to a debt claim against a director. That proposition has been repeated since the enactment of s.212 of the IA 1986 but, as mentioned, it is not possible to find any reasoning for the non-inclusion of a debt claim (based on a breach of a contractual duty to repay) within the scope of the words *"…any other duty in relation to the company"*, notwithstanding that those words were not present when *Re ETIC* was decided. As to this, counsel's researches found *Re Eurocruit Ltd (in liquidation)* [2007] 2 BCLC 598, at [24], per Blackburne J and *Re Taunton Logs*, at [20.4], per Judge Cawson QC, which both repeated the proposition. But Blackburne J cited no authority for it and Judge Cawson QC cited only *Re ETIC* and the still earlier *In re Brampton and Longtown Railway Company* (1875) LR 20 Eq 620. Similarly, the proposition is mentioned without qualification in *McPherson & Keay's Law of Company Liquidation*, 5th ed, §16-006 and *Goode on Principles of Corporate Insolvency Law*, 5th ed, §14-15, in each case citing only *Re ETIC* in support. Mr Brown very properly also cited a text that was against his position, being the discussion of the point by the late Reuben Comiskey in *Insolvency Litigation: A Practical Guide*, 3rd ed, §20-009, in which it was noted that *Re ETIC*:

> *"…was decided in relation to an earlier version of the provision, which referred only to breaches of trust, as opposed to the present reference to a breach of fiduciary or other duty. Since an obligation to repay a*

loan can easily be categorised as an "other" duty owed to the company, it is arguable that s.212 could be used to recover a loan."

21. Some context for the introduction of the wider wording in s.212 of the IA 1986 may be found in *Re B Johnson & Co (Builders) Ltd* [1955] Ch 634, decided under the then-prevailing equivalent provision in s.333 of the Companies Act 1948, in which Evershed MR held at 648 as follows:

> *"The acts which are covered by the section are acts which are wrongful, according to the established rules of law or equity, done by the person charged in his capacity as "promoter, director," etc. But it is clearly established that it is not every kind of wrongful act so done that is comprehended by the section. At one end of the scale it may, I think, be taken as prima facie clear that a wrongful act involving misapplication of property in the hands of the person charged would be covered by its terms. At the other end of the scale, a claim based exclusively on common law negligence, an ordinary claim for negligence simply, would not be covered by the section."*

22. Discussion in the case law of the wording now found in s.212 of the IA 1986 has focused on the fact that it is, in its extended form, effective to enable common law negligence claims to be brought against directors, thereby removing the restriction on such claims identified by Evershed MR. For example, in *Re D'Jan of London Ltd* [1994] 1 BCLC 561, Hoffmann LJ commented at 562a-b that the provision *"…has been extended to include breaches of any duty including the duty of care."* Similarly, in *Cohen v Selby* [2001] 1 BCLC 176, Chadwick LJ referred at 183b-d to the section having been:

> *"…enlarged by the 1986 Act…thereby removing the limitation imposed by the concept of misfeasance which had been identified by Evershed MR in* Re B Johnson & Co*…There can be no doubt, now, that a liquidator can proceed under s 212 of the Insolvency Act 1986 where all that is established is common law negligence. But, if he does so, he must establish a cause of action at common law…"*

23. Counsel invited the court to draw different conclusions from these authorities. Mr Hodge, for the Liquidator, submitted that as it was plain that the expanded wording in s.212 now captured breaches by a director of common law duties, there was no reason why this should be limited to a common law duty of care and should extend also to a common law contractual duty to repay a debt. On the other hand, Mr Brown, for Dr Stobinski, submitted that the hallmark of conduct falling within s.212 was a requirement for something improper or capable of being described as *"misconduct"* and a mere failure to repay a debt could not be characterised in this way.

24. A straightforward reading of the expanded words of s.212 seems to support Mr Hodge's interpretation: where a director fails to repay a debt

owed to their company, they would seem to have breached *"…any other duty in relation to the company."* But I have nonetheless reached the conclusion that Mr Brown is correct. First, there is considerable authority, including at Court of Appeal level, that has emphasised that the provision now found in s.212 of the IA 1986 is concerned with wrongdoing in the sense of misconduct: see, for example, *Kingston Cotton Mill Company (No 2)* [1896] 2 Ch 279, 288, per Lopes LJ; *In re ETIC*, 872, per Maugham J; *Cohen v Selby*, 183d, per Chadwick LJ. Mr Brown is right that non-repayment of a straightforward debt cannot necessarily be characterised in that way. Second, the types of wrong covered by the old version of the provision were ones that arose from breaches of duty to which the wrongdoing director was subject as a consequence of their office as such, i.e. by reason of being subject to a fiduciary duty *qua* director. In the passage already cited from *In re B Johnson & Co (Builders) Ltd*, Evershed MR appeared to suggest, at 648, that to be actionable under the provision the range of acts had to be ones *"…done by the person charged in his capacity as "promoter, director," etc"* (emphasis added). There is nothing to indicate that the new words on which Mr Hodge relies (*"…any other duty in relation to the company"*) were intended to introduce liabilities unconnected with the respondent's office as a director. Further, the words relied on are general catch-all words and they should be construed *ejusdem generis* as being within the same class as the preceding words. If they are read in that way, then although they are apt to expand the scope of the provision to capture a breach of a common law duty of care (i.e. a duty other than a fiduciary duty to which a director is subject in their capacity as such), the same logic does not apply in relation to a duty to repay a simple debt obligation. A liability to repay a debt arises under the relevant contract of loan and is not a necessary incident of a director's office; it is of a different quality to duties (whether fiduciary or at common law) that come with that office and which are covered by s.212.

25. Before departing from this point, it should be emphasised that it will often be the case that where a director is subject to a liability capable of being described as a director's loan account, the facts giving rise to that liability will also be capable of being characterised as disclosing a breach of duty in their capacity as director. For example, the loan may not have been properly disclosed or authorised under s.197 of the CA 2006 in the first place, or the director may have continued drawing on it without regard to creditors at a time when those interests were relevant, or in failing to repay the director may otherwise have preferred their own interests to those of the company. Where those kinds of features are present, then the director's liability may be brought within the scope of s.212 of the IA 1986. By definition, the discussion in the preceding paragraphs applies to cases where the liability under a director's loan is not alleged to have any features of that kind and is simply a lawful loan due for repayment.

26. Accordingly, I accept Mr Brown's submission that, to the extent the Liquidator has purported to assert a simple debt claim by the present application, then that part of the application is procedurally defective.

27. Mr Hodge invited me to make an order, as the judges in *Manolete* and *Taunton Logs* had done, to rectify the position. He accepted that there would need to be two steps to this: first, joinder of the Company to the present proceedings; and, second, permission to continue the debt claim as if it had been commenced under Part 7. As to the first stage, the case was, Mr Hodge submitted, analogous to *Irwin v Lynch* [2011] 1 WLR 1364. In that case, an administrator had issued an application under s.212, not noticing that an administrator does not have standing to bring proceedings under that section. The respondent directors applied to strike out and the administrator made an application to join the company as co-applicant. As limitation had expired by that time, the directors opposed joinder on the basis that the company's claim was statute barred. Lloyd LJ rejected that argument and permitted the company to be joined, using what is now CPR 19.6. Given that there is no limitation issue in the present case, Mr Hodge submitted that the Company may be joined pursuant to CPR 19.2, which permits (*inter alia*) a person to be added as a new party if *"it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings"*. As to the second stage, Mr Hodge submitted that the position was straightforward: *Manolete* and *Taunton Logs* make clear that such an order can be made under CPR 3.10 on an undertaking by the Liquidator to pay the requisite fee.

28. Mr Brown resisted this course on two bases: first, he submitted that the debt claim was a nullity and incapable of rectification; and, second, the position was not like that in *Manolete* or *Taunton Logs* because two steps (rather than one) were required to rectify it. As to the first point, Mr Brown submitted that the present circumstances were in the same class as *Milburn-Snell v Evans* [2012] 1 WLR 41 and *Jenninson v Jenninson* [2023] Ch 225, which were both cases in which claims vested in deceased persons were purportedly commenced after the date of death. In his written submissions on this point, Mr Brown pointed out that in permitting the proceedings to continue in *Irwin v Lynch*, Lloyd LJ had not considered the line of authority analysed in *Milburn-Snell* concerning the nullity of claims issued by individuals without standing. Instead, Lloyd LJ had based his reasoning almost entirely on his Lordship's own previous decision in *Parkinson Engineering Services plc v Swan* [2010] 1 BCLC 163, which had also not referred to the authorities relied on by Mr Brown.

29. Turning to the cases relied on by Mr Brown, the claimants in *Milburn-Snell* had falsely claimed to be personal representatives of the deceased and had purported to commence proceedings in that capacity. Shortly before trial, the truth came to light. The Court of Appeal found that the proceedings could not be cured by making an order under CPR r.19.8, which enables the court to appoint a person to represent the estate of a deceased person where there is no personal representative. That provision, held Newey LJ, was concerned with enabling a validly instituted claim to proceed when a death intervened and it did not enable invalidly instituted proceedings to be retrospectively validated. In *Jennison*, the Court of

Appeal did not find the proceedings to have been invalidly instituted but Mr Brown relied on the case for the proposition that, had they been, they could not have been cured by an order under CPR r.3.10.

30. In my judgment, neither *Milburn-Snell* nor *Jennison* assists with the present circumstances. I agree with Mr Hodge that this case is not analogous to a situation where a claimant purports to bring a claim vested in another person without having the representative capacity on which they rely: there is no dispute that the Liquidator has, at all material times, been properly appointed as the liquidator of the Company and has been asserting a claim vested in the Company. In that capacity, the Liquidator unquestionably had authority to cause the Company to bring the debt claim; the only irregularity lay in the way in which that Company claim was asserted. This is to be contrasted with the position in the *Milburn-Snell* line of cases, where the person purporting to bring the proceedings had no authority to do so in any procedural form.

31. Neither of the ways in which Mr Brown sought to distinguish *Manolete* and *Taunton Logs* from the present case makes any relevant difference to this. As to *Manolete*, the fact that the assignee in that case directly held title to the claim (unlike the Liquidator in the present case), might have given rise to a relevant distinction if, in bringing the debt claim, the Liquidator had been asserting a personal title to it that he did not have, but that is not what is being done. Similarly, the fact that, in *Taunton Logs*, the company was specifically named as a co-applicant (along with the officeholders) makes no relevant difference to the present situation, because of the nature of the claims being asserted by the Liquidator: in bringing proceedings under s.212 of the IA 1986, the Liquidator is not purporting to do anything other than assert claims that belong to the Company. As Blackburne J explained in *Eurocruit* at 607g-h, whether a claim is pursued in the company's own name or using the procedural gateway in s.212, *"…there is only a single cause of action, that of the company."* Lloyd LJ made a similar point in *Irwin v Lynch* at [26]. This aspect of *Irwin v Lynch* has been commented on positively by the Court of Appeal in recent times: *Mark McLaren Class Representative Ltd v MOL (Europe Africa) Ltd* [2023] Bus LR 318, [94], per the judgment of the court; *Adcamp LLP v Office Properties PL Ltd (in liquidation)* [2026] 1 WLR 3233, [54]-[56], [76], per Zacaroli LJ. Accordingly, the debt claim is not a nullity: it has been commenced on behalf of the Company, by the Liquidator as a person entitled to cause the Company to assert claims. The fact that the wrong procedure has been used does not render the proceedings a nullity.

32. Mr Brown's second point was that the proceedings should not be rectified because it would require two stages, the first of which (joinder of the Company to the existing proceedings) would necessarily create a further procedural irregularity, in that the Company would then become a party to an insolvency application under r.1.35 of the IR 2016 asserting claims under s.212 of the IA 1986. I also reject that submission. To resist rectification on

the basis that two stages are required is to elevate form over substance and ignore reality: both stages would be embodied in a single order with a single overall effect.

33. Accordingly, had it been necessary to do so, I would have ordered rectification of the proceedings using CPR r.19.2 and r.3.10, upon the Liquidator's undertaking to pay the appropriate issue fee. In light of my findings on Dr Stobinski's breaches of duty, however, it is not necessary for the Company's creditors to be put to that additional expense. I now turn to the substance of the trial.

THE EVIDENCE

34. Statements of case were not directed in this case. Accordingly, the parties' witness statements set out not only their evidence but also perform the function of particularising and pleading their respective cases. The Liquidator filed a first witness statement dated 13 September 2024 at the commencement of the proceedings. On 13 October 2025, Dr Stobinski filed a witness statement in answer, which had apparently been made on an unspecified date in March 2025. The Liquidator filed evidence in reply dated 10 December 2025.

35. As mentioned earlier, Dr Stobinski has delivered up very little in the way of books and records of the Company to the Liquidator: there are various sets of filed financial statements and some bank statements but little else. In particular, there are no underlying accounting records, board minutes or resolutions, documents evidencing the lawful declaration of any dividends, disclosure or authorisation of any director's loan account, purchase orders, supplier invoices, asset register or stock list. Dr Stobinski's evidence in these proceedings was fairly described by Mr Hodge as *"a mess"*. Where Dr Stobinski's witness statement purports to refer to documents, these are not always adequately particularised or cross-referenced to enable the document to be identified and the exhibits themselves are not properly referenced or paginated. The version of the witness statement in the bundle appears to be unfinished, as it contains references in the form *"See pages ? - ? – ATTACH DOCUMENTS FROM THIS SERVER"* or something similar in several places. Evidence should not have been filed in this state. Further, certain documents exhibited by Dr Stobinski are written in what may be Polish. No translations were provided, no written or oral submissions were made on those documents, and there was no suggestion that the court could or should do anything with them. Accordingly, no regard has been had to documents in the bundle not written in English.

36. The parties made submissions on the burden of proof. Mr Brown acknowledged the discussion in *GHLM Trading v Maroo* [2012] 2 BCLC 369, from [143] onwards, in which Newey J (as he then was) reviewed a number of authorities on the obligation of a director to account (as a fiduciary) for dealings with company assets. Newey J concluded at [148] that:

"The close analogy between directors and trustees suggests, to my mind, that, much as a trustee 'must show what he has done with [trust] property', it is incumbent on a director to explain what has become of company property in his hands."

37. Both sides made reference to the decision of the Court of Appeal in *Re Mumtaz Properties Ltd* [2012] 2 BCLC 109 concerning the proper approach to evidence in a case of the present kind. Arden LJ (as she then was) summarised the position as follows at [14]-[16]:

> *"In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.*
>
> …
>
> *The approach of the judge in this case was to seek to test the evidence by reference to both the contemporary documentary evidence and its absence. In my judgment, this was an approach that he was entitled to take. The evidence of the liquidator established a prima facie case and, given that the books and papers had been in the custody and control of the respondents to the proceedings, it was open to the judge to infer that the liquidator's case would have been borne out by those books and papers."*

38. Mr Brown did not accept that Dr Stobinski bore the burden of proof in relation to the DLA balance of £112,506, arguing that the Liquidator had not shown that Dr Stobinski received or benefited from those sums or proved that the debit balance was correct. But he conceded that the burden was on Dr Stobinski to justify the Other Payments and the *"MGMT FEES"* heads of claim.

The Company's filed financial statements

39. Turning now to the evidence itself: in the particular circumstances of this case, I propose to start the discussion of the evidence with the Company's filed financial statements. Much of the argument at trial focused on these.

40. By a letter dated 17 January 2022, HMRC notified the Company that it was opening a compliance check into its tax returns for APE 2018 to APE 2021. At that time, the Company had filed financial statements for each of

those periods at Companies House (**"Filed Accounts"**). That compliance check led to the preparation of amended financial statements for each of those periods (**"Amended Accounts"**). The Amended Accounts were prepared by Farrow & Farrow (**"F&F"**), who were the Company's accountants, and they record on their face that they were approved by Dr Stobinski in 2022: APE18 and APE19 were approved on 28 April 2022 and APE 2020 and APE 2021 on 6 May 2022. HMRC subsequently issued a closure notice.

41. I summarise and compare below the key figures in the Filed Accounts and the Amended Accounts respectively.

APE18 Accounts	**Filed (£)**	**Amended (£)**
Turnover	133,968.00	10,879.00
Profit	85,495.00	(16,085.00)
Shareholders' funds	205,153.00	1,073.00
Other debtors	260,129.00	37,214.00
Cumulative CT	64,745.00	45,910.00
CT change from APE17	18,835.00	Nil
Dividends	73,000.00	175,000.00

APE19 Accounts	**Filed (£)**	**Amended (£)**
Turnover	159,908.00	159,908.00
Profit	117,197.00	119,075.00
Shareholders' funds	277,350.00	2,146.00
Other debtors	351,578.00	55,663.00
Cumulative CT	93,524.00	72,811.00
CT change from APE18	28,779.00	26,901.00
Dividends	45,000.00	118,000.00

APE20 Accounts	**Filed (£)**	**Amended (£)**
Turnover	146,797.00	146, 797.00
Profit	96,457.00	96,457.00
Shareholders' funds	323,807.00	2,605.00
Other debtors	433,152.00	91,237.00
Cumulative CT	116,225.00	95,512.00
CT change from APE19	22,701.00	22,701.00
Dividends	50,000.00	96,000.00

APE21 Accounts	**Filed (£)**	**Amended (£)**
Turnover	117,811.00	117,811.00
Profit	64,374.00	64,374.00
Shareholders' funds	324,181.00	2,979.00
Other debtors	454,421.00	112,506.00
Cumulative CT	131,518.00	110,803.00

CT change from APE20	15,293.00	15,291.00
Dividends	64,000.00	64,000.00

42. It was common ground that the Filed Accounts for APE 2018 had contained a material error: employment income received by Dr Stobinski personally from a third party had wrongly been recorded as Company turnover in the Filed Accounts for APE 2018. The error was attributed by Dr Stobinski to the Company's previous accountants, who had misunderstood that Dr Stobinski had direct employment income (on which PAYE had already been paid) that had nothing to do with the Company. Having overstated the Company's turnover, this error consequently led to overstatement of the Company's CT liability, which was corrected in the Amended Accounts for APE 2018.

43. I note the following points on comparing the Amended Accounts with the Filed Accounts:

a. Turnover has not changed in any year other than APE 2018.

b. There was a significant change to profit only in APE 2018. There was a modest upwards adjustment to profit in APE 2019 and no change in APE 2020 or APE 2021.

c. Dividends have increased significantly in every period other than APE 2021.

d. *"Other Debtors"* have decreased considerably.

e. Notwithstanding the decrease in *"Other Debtors"* between the Filed Accounts and the Amended Accounts, the Amended Accounts continue to disclose a significant level of *"Other Debtors"*, which increases year-on-year.

f. CT is not being paid and is allowed to accumulate year-on-year.

g. The Company has only marginally positive shareholders' funds in the Amended Accounts in any of these periods, which is wholly dependent on the recoverability of the *"Other Debtors"* balance.

44. A number of points were made by or on behalf of Dr Stobinski based on the Amended Accounts. First, Mr Brown submitted that it was not merely the case that Dr Stobinski's income for APE 2018 (£123,089) had been wrongly treated as Company turnover in APE 2018: in fact, the Company had *actually received* that income, but by way of loan from Dr Stobinski rather than as an accretion to turnover. This argument was raised for the first time in Mr Brown's skeleton argument. Second, Dr Stobinski suggested in his witness statement that the Company's turnover had *also* been overstated in APE 2019 and that he had lent the Company the total sum of £98,960 in the financial year ended 5 April 2019. Third, it was suggested

that the level of DLA claimed by the Liquidator remained subject to dispute by Dr Stobinski and F&F. Fourth, Dr Stobinski argued that the sums recorded in the Amended Accounts under *"Other Debtors"* had not been analysed by the Liquidator and it could not safely be assumed that the entirety of the sums so recorded were Dr Stobinski's DLA. As to this, Mr Brown went so far as to describe the DLA as *"HMRC's DLA Figure"* and submitted that it was an abuse of process for the Liquidator to have brought proceedings on the basis of it. Fifth, that some combination of the turnover error in APE18, the subsequent HMRC compliance check, and the preparation of the Amended Accounts meant that there remained a question mark over the Company's liability for CT in years other than APE18, which was the explanation for Dr Stobinski's decision not to cause the Company to pay the CT. For reasons that I will deal with below, I reject each of those submissions, which I consider to be without sensible foundation once regard is had to the evidence.

The Liquidator

45. The Liquidator gave oral evidence at trial. As is usual, the Liquidator was unable to give first-hand evidence of the material events, having come to the Company after they had taken place. Mr Brown on behalf of Dr Stobinski tested various aspects of the Liquidator's case in cross-examination.

46. Mr Brown challenged the basis for asserting that Dr Stobinski's DLA was overdrawn by £112,506: it was put to the Liquidator that it could not fairly be assumed that the *"Other Debtors"* balance in the Amended Accounts for APE 2021 was solely comprised of a debt owed by Dr Stobinski and the Liquidator had done nothing to analyse it. The Liquidator explained that the case was based on a considerable amount of material showing that the *"Other Debtors"* balance was Dr Stobinski's DLA and that, while he would have liked to have carried out the sort of analysis suggested, it was impossible to do so without the underlying accounting records. I accept the Liquidator's explanation: when regard is had to the correspondence between HMRC and F&F, and subsequently between F&F and the Liquidator, any suggestion that the *"Other Debtors"* balance is not solely comprised of a debt owed by Dr Stobinski falls away. It is not open to Dr Stobinski to criticise the Liquidator for not carrying out analysis or investigation when he has not provided the books and records that would have enabled the Liquidator to do that.

47. It was further put to the Liquidator that even on his own assumptions, the *"Other Debtors"* balance could only be shown to have increased by £21,269 (being the difference between the balance recorded in APE 2020 and APE 2021) after 2 December 2019, which was the earliest date identified by the Liquidator for the Company becoming insolvent or bordering on insolvency. The Liquidator did not dispute the arithmetic but made clear that the claim concerned the total quantum of the *"Other Debtors"* balance, which he contended represented a debt owed by Dr

Stobinski to the Company in respect of which he had breached his duties as a director.

48. Mr Brown also put to the Liquidator that the dividends of £64,000 recorded in APE 2021 were not challenged on the basis that those dividends had been unlawful in the sense of any non-compliance with the formal requirements in Part 23 of the CA 2006. This part of Mr Brown's questioning was apparently based on his submission that the payments totalling £38,500 to Dr Stobinski (i.e. *"MGMT CHARGES"*) were to be regarded as comprised within the dividends of £64,000 recorded as having been declared in APE 2021. Mr Brown's point was that the payments were challenged only on the basis of misfeasance, i.e. that it had been a breach of duty to pay those sums by reason of the Company's financial state at that time, rather than for non-compliance with the statutory formalities. The Liquidator was a little hesitant on this point and I think he was unsure in that moment quite how the claim in relation to the dividends had been pleaded. Given that the point was a legal one of some technicality, and the Liquidator did not want to concede anything unnecessarily, the Liquidator's hesitation was understandable. My reading of the Liquidator's case is that none of the dividends recorded as having been declared in any of the Amended Accounts was challenged as unlawful for want of compliance with Part 23 of the CA 2006. Instead, the Liquidator's case was that Dr Stobinski acted in breach of his duties to the Company in making payments to himself at a time when it was insolvent or doubtfully solvent. This has been described as the distinction between *"could not pay"* and *"should not pay"* claims and I return to it later in this judgment.

49. Overall, the Liquidator took care to restrict his evidence to the facts and the documents and he very properly did not stray into speculation or argument. If he was a little guarded, this was hardly surprising given that it had been submitted on behalf of Dr Stobinski that the Liquidator had committed an abuse of process in bringing a claim on the DLA on the basis that this was *"HMRC's DLA Figure"* and was *"merely speculation based on the belief of the revenue officer"*. In my judgment, that allegation was without foundation and it is rejected. I accept the Liquidator's evidence, although ultimately (as is not usual in this type of case) it has not been necessary to rely on any first-hand evidence of the Liquidator in reaching my decision.

Dr Stobinski

50. Dr Stobinski made one witness statement and gave evidence in the witness box at trial. He called no other witnesses. As I have noted, statements of case had not been directed and, accordingly, the parties' witness statements had the additional function of articulating their pleaded cases.

51. As to the DLA, Dr Stobinski had two main arguments. First, he submitted that he was properly to be regarded as a creditor (not a debtor)

of the Company. The position in Dr Stobinski's witness statement was that he had caused his PAYE salary from his employment with the NHS in the total sum of £98,960 for the tax year ended 5 April 2019 (i.e. almost entirely falling within APE 2019) to be paid to the Company by way of loan. That position is flatly contradicted by the Company's bank statements for that period, which show no payments consistent with such a loan. Dr Stobinski's witness statement did not explain how the alleged loans were made or could otherwise have reached the Company and he did not disclose any documents (such as his own bank statements or remittance advice or other evidence from his employer) that might have shed light on that point.

52. It was further submitted by Mr Brown on Dr Stobinski's behalf that salary from NHS employment during APE 2018 was also *"routed into the Company as a DLA"* in the net sum of £123,089. The Liquidator strenuously objected to this submission, pointing out that while there had been no challenge to the proposition that Dr Stobinski's salary had been incorrectly *recorded* in the Filed Accounts for APE 2018 as Company turnover, the suggestion that sums reflecting that salary had been *actually paid* to the Company had not been made prior to Mr Brown's skeleton argument. In my judgment, the Liquidator was justified in his objection. As I shall come on to, this new argument was in any case readily contradicted by the evidence.

53. Second, it was submitted that the Liquidator was unable to show that the *"Other Debtors"* balance showing in the Company's accounts for APE 2021 was paid to or owed by Dr Stobinski by way of DLA. This argument is inconsistent with correspondence between F&F (to whose explanations Dr Stobinski deferred) and HMRC which shows conclusively that the debtor balance was entirely composed of DLA and that the figure of £112,506 had originated with F&F in the first place. Further, the point had in any event been impliedly (at least) conceded by F&F (following a period of equivocation and evasion) by a letter dated 22 March 2024.

54. Although it was not pursued at trial, I also mention for completeness that F&F stated in a letter dated 20 February 2023 that further dividends (not shown in any of the financial statements) had been declared during 2022 (i.e. during the period post-dating APE 2021) to extinguish the DLA. F&F's contention was not supported by any evidence at all (including anything to indicate that any attempt had been made to comply with any of the formalities for the lawful declaration of dividends required by Part 23 of the CA 2006, such as dividend vouchers, board resolutions or relevant accounts) and, in any event, there could have been no serious suggestion (and none was made at trial) that the Company had any distributable profits capable of giving rise to lawful dividends by 2022.

55. Turning to the Other Payments in the sum of £63,189.29, these were said by Dr Stobinski either to be legitimate Company expenditure or, where they were not, that any liability had been extinguished by sums owed to him by the Company either by way of debt or unpaid dividend. There was

no evidence for this (such as purchase orders, invoices or correspondence) beyond Dr Stobinski's vague and uncorroborated word.

56. Dr Stobinski's answer to the Liquidator's claim to the so-called *"MGMT FEES"* totalling £38,500 was constantly in flux and difficult to pin down. As noted above, Mr Brown submitted that the £38,500 was comprised within dividends of £64,000 recorded in the Amended Accounts for APE 2021, which was one of the explanations given by F&F in correspondence. The main (but not the only) difficulty with that argument was that it was categorically inconsistent with Dr Stobinski's written evidence, as I shall identify shortly.

57. I turn now to Dr Stobinski's oral evidence. Overall, this provided no support for his defence. It instead served to undermine his witness statement and his credibility generally. His answers in the witness box demonstrated that he had little knowledge, and even less understanding, of the contents of the document that was purported to be his witness statement. I make clear that although English is not Dr Stobinski's first language, he speaks the language to a high standard and I am certain that none of the shortcomings in his evidence were attributable to language difficulties.

58. The essential stance adopted by Dr Stobinski in the box was that any question going to the matters in issue in this trial were not matters for him but should be referred instead to the Company's accountant. Words to the effect of *"I am not an accountant"* or *"you would have to ask my accountant"* were repeated continually in answer to many of the questions put to him. The evidence indicates that this was a position consistently maintained by Dr Stobinski throughout the liquidation: in a file note recorded by way of an email dated 6 January 2023 (a few months after the commencement of the Company's CVL on 12 October 2022), Cristina Bordei of the Liquidator's staff recorded that:

> *"I just spoke to Marek, the director, to confirm if he holds any books and records as he indicated on the questionnaire only bank statements.*
>
> *He refused to speak to me, and stated that he has nothing to do with the company and any query should be addressed to the accountants.*
>
> *I mentioned that this is a question for a director and if he could just confirm it, however, I was kept being interrupted and referred to the accountants.*
>
> *He also said that* [it was] *unprofessional that I called him."*

59. There was no challenge to the accuracy of this file note. Dr Stobinski's position, both at the time of Ms Bordei's file note and at trial was obviously wrong: although a company director will not be expected to have the

knowledge and expertise of an accountant, they are required to know why they have decided to cause their company to make certain payments or not discharge certain liabilities. While a company director is entitled to take and rely on professional advice, they are ultimately and inescapably responsible for the statutory and fiduciary responsibilities of that office: see the comments of Lord Woolf MR in *Re Westmid Packing Service Ltd* [1998] 2 All ER 124, 131e-f.

60. Having heard his evidence, I have no doubt that Dr Stobinski did not apply his mind to the Company's separate interests at any time. What has happened in this case is a consequence of Dr Stobinski's ignorance of what a limited company is and what a director is supposed to do. Mr Hodge submitted that Dr Stobinski was deliberately dishonest, although in my judgment his lack of knowledge of or interest in the affairs of the company was of such a degree that he would be incapable of acting with the calculation or intent that Mr Hodge sought to attribute to him. This was evident from his inability to engage with the material facts, even to a superficial extent, including many facts contained in what was purported to be his own witness statement.

61. There were two paragraphs in his statement that were particularly relevant to matters in issue. I had found these to be incomprehensible in pre-reading and I had made a note to ask Dr Stobinski about them in order to make sure I understood his position correctly. The first was at §33:

> *"…In all, I loaned the Company £98,960.00, my taxed PAYE income for the year ended 5th April 2019…Consequently,* [the Liquidator] *is correct in part. There is an outstanding DLA, however, it is due to me, in the sum of £98,960.00 (evidenced by £48,107.84 in the Debtor's current account) rather than me being indebted to the Company…"*

62. Dr Stobinski's reference to the *"£48,107.84 in the Debtor's current account"* appeared to be a reference to that figure in a document in Dr Stobinski's exhibit, headed *"Trial Balance 31 March 2017"*. This showed a receivable, i.e. an asset of the Company, in that sum. It was not clear to me how evidence that Dr Stobinski had been a debtor of the Company on 31 March 2017 supported the proposition that Dr Stobinski had advanced £98,960 to the Company during the financial year ended 2019 and was a creditor for that (or any) sum at the date of trial. Dr Stobinski was unable to say why this might be so. He gave the appearance of having no knowledge of this part of his witness statement and could not engage with it in a reasoned way.

63. The second was at §40 of the statement, which concerned the payments totalling £38,500:

> *"…The reference to "MGMT CHARGES" is a clumsy reference on my part and I apologise for the same. The "charges" paid out to me, during this period, were simply the monies that I needed to live on and enable*

me to continue to work (by undertaking locum positions) to enable the company to continue to receive some cash flow during COVID. The payments were neither a dividend nor a loan. They were salary payments. From the money that I provided by way of loan (the £89,960.00 [sic – it was common ground that this should say £98,960]*), the withdrawals related to the expenses that I had incurred as part of my day-to-day duties as the director. It was my money."*

64. This made no sense in so far as it appeared simultaneously to characterise the £38,500 as (a) salary paid by the Company to Dr Stobinski; (b) sums derived from Dr Stobinski having lent the Company his salary from elsewhere which had then been paid back to him by way of reimbursement of expenses incurred by him in the course of acting as a director; and (c) Dr Stobinski's own property. There was no evidence (such as payroll records or any payment by the Company of employer's PAYE or NICs) to suggest the payments were salary from the Company; nor was there any evidence to support the assertion that Dr Stobinski lent the Company £98,960 comprising his salary from a third party during the year ended 2019: as mentioned above, the bank statements showed that no sums referable to such a loan had been paid to the Company's only bank account during that period and there was no suggestion that any loans had reached the Company by some other means. Further, Dr Stobinski's express rejection of any suggestion that the £38,500 was a dividend was directly at odds with the position taken on his behalf in Mr Brown's skeleton argument and in his cross-examination of the Liquidator. When given an opportunity to clarify the position in the witness box, Dr Stobinski was unable to provide a meaningful answer, simply deferring to his accountant and commenting only *"…I believed it was my salary money and I could use it."*

65. Ultimately, Dr Stobinski was unable to assist with either point. He clearly did not understand, at the most basic level, what these passages were supposed to be about, what they meant, or how they were said to support his defence. This reaction was so obviously against his own interests (both because it meant that those aspects of his case could not be seriously advanced and because it called into question the reliability of his witness statement) that, in my judgment, his incomprehension was genuine.

66. Mr Hodge put to Dr Stobinski that if his DLA was not due (as Dr Stobinski contended), then the Company had been balance sheet insolvent for years. Dr Stobinski said that this was a matter for his accountant. Dr Stobinski was also asked why he had not exhibited his own personal bank statements to support the new suggestion put forward in Mr Brown's skeleton argument that he had lent £123,089 to the Company during APE 2018. Again, Dr Stobinski said that Mr Hodge would *"need to ask my accountant."*

67. Dr Stobinski was asked about the Company's CT position and why he had continued to pay money to himself or for his own benefit while allowing

the CT debt to rise. This was an area where his oral evidence was at least consistent with his witness statement: Dr Stobinski's oral evidence was that he was being advised by F&F as late as 2022 that no CT was properly due; his witness statement added that he continued to be advised, apparently at the date of that statement, that this was the case. When asked where this advice was, Dr Stobinski said that it was all given by telephone. In my judgment, the contemporaneous evidence provides no support for any suggestion that the Company's CT debt was ever subject to any material doubt for any period other than APE 2018, which related to the narrow and specific point about the overstated turnover in that period only.

68. Mr Hodge took Dr Stobinski through the various payments that were challenged by the Liquidator and asked why there was no documentary evidence to support his position. Dr Stobinski had no sensible answer to any of these points. For example, when asked why he had not taken steps to obtain evidence from his own Ebay account to show that purchases made using Company money from that platform had been for legitimate purposes of the Company, he answered that this was a question (like many others) for his accountant. This was typical of the extent to which Dr Stobinski deferred to F&F. It is in my judgment clear having heard Dr Stobinski's evidence that, as far as he is concerned, any question concerning the Company, even if it relates to things he has done or omitted to do, or decisions he must have taken, is not a question for him.

69. Towards the end of Dr Stobinski's time in the witness box, I asked him whether the Company had had any debtors other than himself. The purpose of this question was to see whether there was any possibility, on Dr Stobinski's case, that any part of the *"Other Debtors"* balance in the Company's accounts could be composed of debts owed to the Company by someone other than himself, as Mr Brown had put to the Liquidator in cross-examination. Dr Stobinski was not able to identify any such debtors. To the extent necessary, given the concession on this point by F&F (to whose explanations Dr Stobinski entirely deferred) in their letter dated 22 March 2024, I find as a fact that the *"Other Debtors"* balance in the Amended Accounts for APE 2021 is wholly comprised of a DLA owed by Dr Stobinski to the Company.

70. Ultimately, I am unable to attach any weight to any of Dr Stobinski's evidence, written or oral, save where it is corroborated by contemporaneous documents or has some other rational basis as a matter of inference. This conclusion is one I am driven to because Dr Stobinski was essentially unable (and indeed repeatedly eschewed any ability) to speak to his statement's contents or engage with questions in any way other than by deferring to his accountant. The consequence of this conclusion for Dr Stobinski's factual case is considerable, given that Dr Stobinski's factual case depends almost entirely on his uncorroborated word.

Correspondence from the Company's accountant

71. There was extensive correspondence in the bundle generated by the Company's accountant, F&F. As a consequence of Dr Stobinski's deflection of almost all relevant questions as being matters for his accountant, combined with the significant lack of Company books and records, that correspondence takes on a heightened relevance in this case: it was the foundation on which Dr Stobinski ultimately based his defence.

72. Given his deference to whatever F&F might say on every matter in issue in these proceedings, Dr Stobinski's decision not to call that firm's principal as a witness was significant. Had anyone from F&F been tendered as a witness, then I anticipate that they would have been challenged on various aspects of their correspondence and may have faced a difficult time given some of its contents. I recognise that the Liquidator has not had an opportunity to test any of F&F's explanations in cross-examination. Nonetheless, in order to be fair to Dr Stobinski, I consider that I must have close regard to the explanations put forward by F&F in that correspondence, to see whether any defence is disclosed.

73. I start with the correspondence between HMRC and F&F before turning to the subsequent explanations provided by F&F to the Liquidator in support of Dr Stobinski's defence. Although the documents disclosed by Dr Stobinski are not presented methodically or chronologically, the earliest relevant correspondence appears to be a letter from HMRC to F&F dated 9 May 2022. The letter makes reference to emails from F&F of 29 April and 6 May 2022 (which have not been disclosed) and to amendments having been made to the Company's accounts. I note that 6 May 2022 was also the date on which the Company approved the Amended Accounts for APE 2020 and APE 2021. In the circumstances, I infer that the missing emails from F&F were concerned with providing the Amended Accounts to HMRC.

74. The letter from HMRC refers to the DLA balances for APE 2019, APE 2020 and APE 2021 and cites the same figures for the outstanding director's liability as those that appear under *"Other Debtors"* in the Amended Accounts. Given that HMRC's letter dated 9 May 2022 post-dates by a short period the Company's approval of the Amended Accounts, and given Dr Stobinski's failure to disclose the emails from F&F to which HMRC's letter was a response, I draw the inference that the figures for the overdrawn DLA balance originated with the Amended Accounts prepared by F&F with the authority of the Company. Accordingly, I reject Mr Brown's characterisation of the DLA balance figure of £112,506 as *"HMRC's DLA Figure"*. In fact, it is the Company's DLA figure.

75. The next piece of the jigsaw is an extract from some email correspondence exhibited to Dr Stobinski's witness statement. This material appears to be extracted from two emails. The presentation of the emails has clearly been interfered with by someone and they have been reproduced in evidence in an unorthodox way: the sender and recipient details, dates and headings have all been removed, as has the sign-off from the sender at the end. It is accordingly impossible to identify the sender

with precision but in context it is obvious that the emails came from HMRC and formed part of a chain of correspondence with F&F that included a letter from F&F (which has not been disclosed) dated 21 June 2022. The index to Dr Stobinski's exhibit attributes the date 6 November 2025 to the emails, but in my judgment that is plainly wrong and I reject it: the first part of the document that is available reads *"I propose to issue closure notices to the company by the 28 August 2022"* and a little further down (under the salutation *"Good Morning Emma"*, which can only be a reference to the principal of F&F) thanks the recipient *"…for your email of the 21 June 2022."* Given those matters, I draw the obvious inference that the correspondence post-dated 21 June 2022 and pre-dated 28 August 2022.

76. Immediately following the mention of closure notices appears a table. The sender explains that the closure notices will reflect the amendments in that table. Key features of the table are that turnover for APE 2018 is reduced by £123,089 to reflect (as was common ground at trial) the misrecording of some of Dr Stobinski's personal income as Company turnover in the Filed Accounts for that period. That reduction had a significant effect on taxable profit for APE 2018. There were no changes to taxable profit for APE 2019 or APE 2021 and only a modest increase of £3,600 (reflecting an adjustment to capital allowances) for taxable profit in APE 2020. The table also provided a calculation for the Company's amended liability under s.455 of the Corporation Tax Act 2010, which is a tax levied where a close company makes loans to certain categories of person, including directors. I reproduce below the matters set out in part of HMRC's table that are particularly relevant to Dr Stobinski's arguments in relation to CT and his DLA:

APE	**2021 (£)**	**2020 (£)**	**2019 (£)**	**2018 (£)**
Revised CT liability	15,921.20	23,385.39	26,890.70	Nil
Additional s.455 liability	6,912.42 (21,269 x 32.5%)	11,561.55 (35,574 x 32.5%)	5,995.92 (18,449 x 32.5%)	12,904.55 (37,214 x 32.5%)

77. On comparing these figures with those in the Amended Accounts (see §41 above), it is evident that the foregoing revised CT figures are very close to the provision made for CT in the Amended Accounts in the case of APE 2019 and APE 2020 and identical to the provision in the case of APE 2018 and APE 2021. HMRC's view of the Company's liability in each period was accordingly within a few pounds of the position recorded in the Amended Accounts, which had been prepared by F&F and approved by the Company some time earlier and, as I have found, provided by F&F to HMRC by early May 2022. Further, the additional s.455 liability has been calculated on the basis of the increase to the DLA in each accounting period. The figures set out by HMRC on which the s.455 liability has been calculated reflect precisely the increases recorded in the Amended Accounts for each period under *"Other Debtors"*. The final paragraph in evidence from HMRC's

correspondence with F&F (before the exhibited extract abruptly ends without any sign-off) reads:

> *"In your recent letter you requested that the S455 tax liability should be added to the final director's account balance. Please note that the S455 tax liability is a company tax liability rather than a liability of the director. Therefore, it is not appropriate to add the tax charge to the director's loan account."*

78. The matters set out in the correspondence with HMRC summarised above put beyond doubt that F&F, acting on behalf of the Company, knew at the time they prepared the Amended Accounts and presented them to HMRC that the *"Other Debtors"* balance was attributable solely to the DLA owed by Dr Stobinski to the Company, and did not dispute the imposition of a s.455 liability based on the level of that balance in the Amended Accounts. Given F&F's later equivocation over the composition of the *"Other Debtors"* balance when dealing with the Liquidator's inquiries on behalf of Dr Stobinski, this conclusion calls into question the degree of candour with which F&F approached their dealings with the Liquidator.

79. Mr Hodge emphasised in his oral submissions that it was plain that HMRC's email was sent in response to a letter from F&F dated 21 June 2022, which Dr Stobinski had chosen not to exhibit. He further submitted that the decision only to extract elements of HMRC's correspondence should be seen in the context of the Liquidator's solicitors' repeated requests for disclosure of the full correspondence between F&F and HMRC over the Amended Accounts. Mr Hodge invited me to infer from these matters that had the correspondence with HMRC been exhibited in full, it would not have supported Dr Stobinski's case that there was material doubt over the level of the Company's CT liability for any accounting period other than APE 2018 or that there was any dispute over the level of his outstanding DLA as shown in the Amended Accounts for APE 2021. In all the circumstances, I readily draw those inferences. It is likely, in my judgment, that the missing letter from F&F dated 21 June 2022 would, like the missing email of 6 May 2022, have shown F&F putting forward the figures in the Amended Accounts on behalf of the Company as the correct ones. Accordingly, assessing the evidence both by reference to its presence and its absence, and having regard to the alternative explanation put forward on behalf of Dr Stobinski, I find as a fact that there was no material doubt at any time over the level of the Company's CT liability for any accounting period other than APE 2018, which was adjusted by reason of a discrete issue that applied only to that period. There was a small adjustment by HMRC to CT in APE 2020 arising over capital allowances but this was, in context, fairly *de minimis*.

80. In my judgment, there was no foundation for Dr Stobinski's professed *"reluctance"* (as he put it in his witness statement) to cause the Company to pay the CT liability based on any belief that it would be reduced or extinguished: there was never at any time any ground to think that the CT

liability for any year other than APE 2018 would be materially affected. Similarly, I find that the level of Dr Stobinski's DLA had been acknowledged by the Company, acting by Dr Stobinski, as being £112,506 for the end of APE 2021. In my judgment, that evidence, combined with the agreement of the s.455 liability with HMRC, raises a *prima facie* evidential case that Dr Stobinski owed the sum of £112,506 to the Company as a DLA on the last day of APE 2021, which was 28 March 2021.

81. Pausing here, it appears that the Liquidator did not know the foregoing detail, despite having made repeated inquiries of F&F, until it approached HMRC directly in 2024. HMRC said it was limited in what it could provide to the Liquidator because much of it concerned the tax affairs of a related party, which in context can only have been a reference to Dr Stobinski. It did, however, provide an email dated 17 April 2024 containing essentially the same information as that summarised at §76 above in tabular form. It appears from that email that, as far as HMRC was concerned, the tax return for APE 2018 was the only one that the Company ever suggested was materially incorrect.

82. I now turn to the explanations given to the Liquidator by F&F, on which Dr Stobinski placed great weight in the witness box. It appears that the Liquidator's firm was first contacted by F&F on 5 September 2022, which was some weeks in advance of the commencement of the Company's CVL on 12 October 2022. The principal of F&F indicated on 6 September 2022 that she was authorised to deal with the Liquidator's firm on Dr Stobinski's behalf. Various documents were provided by F&F the following day, although it appears that the Liquidator was not told at that point that the Company's accounts had recently been amended. Cristina Bordei, a member of the Liquidator's staff, noticed that the figures F&F had provided differed from those in the accounts filed at Companies House and asked for an explanation for this by an email dated 28 September 2022. F&F responded by email later that day and simply stated that *"The accounts were amended and new figures provided to the HMRC. We discussed with HMRC official, we did not have to submit new accounts to CH."* This description of the origin of the figures in the Amended Accounts was obviously inadequate and did not provide the requested explanation.

83. Ms Bordei followed up the next day and again asked why the accounts had been amended. There was no immediate response and Ms Bordei chased for one on 30 September 2022. An explanation of sorts was provided later that day:

> *"The Accounts were amended and correct figures were submitted to HMRC.*
>
> *The reason to change the accounts was the wrong Company Sales Figure we submitted for the Year ended 2018.*

Some of the income we added as Sales was in reality coming from director PAYE income."

84. It is clear now that this was a reference to the mistaken inclusion of Dr Stobinski's PAYE income as Company turnover in the Filed Accounts for APE 2018, although I doubt that this would have been immediately clear to anyone reading F&F's email in isolation without any further background information. Subsequent emails in the chain show that Ms Bordei requested a telephone call with F&F to discuss the position and I infer that one must have taken place. Copies of the Amended Accounts were provided by an email dated 3 October 2022. F&F's cover email states that *"…the turnover on the 2018 Accounts is different from the original Accounts as the turnover on the original 2018 Accounts included income from Directors Employment under PAYE."* Although the same is in any event plain from the face of the Amended Accounts compared with the Filed Accounts, in singling out 2018 this email confirms the Liquidator's contention that there has never been any suggestion that any income was wrongly included in any of the Filed Accounts other than those for APE 2018. This further undermines, in my judgment, Dr Stobinski's unsupported assertion that he thought the Company's CT liability would be reduced or extinguished.

85. Following receipt of the Amended Accounts, it appears that Ms Bordei spotted almost immediately the significant outstanding balance under *"Other Debtors"* of £112,506 in APE 2021. By an email of 4 October 2022, Ms Bordei asked for a breakdown of this figure. This question went unanswered for three months until, on 6 January 2023, F&F sent an email containing in substance only one sentence: *"The debtors are the figures we have accounted for accumulated various business investments from 2016."* The evidence shows that this answer was plainly incorrect and apt to mislead the Liquidator: given that F&F had recently been responsible for preparing the Amended Accounts, and had engaged in detailed correspondence with HMRC that proceeded on the common basis that the *"Other Debtor"* balance in the Amended Accounts was wholly attributable to the overdrawn DLA owed by Dr Stobinski, I am unable to identify any proper basis on which F&F could have given this answer. None was suggested on behalf of Dr Stobinski at trial. I note that F&F's misleading email was timed at 13:44 on 6 January 2023, which appears to have been very shortly after Dr Stobinski had refused to speak to Ms Bordei in the circumstances summarised at §58 above: Ms Bordei's file note was timed at 13:43 and appears to have been made immediately following the unfruitful conversation with Dr Stobinski that it describes. I infer that F&F's email (three months after the question to which it relates had been asked) was connected with Ms Bordei's attempt to speak to Dr Stobinski.

86. Even on its own terms, F&F's email of 13:44 had not addressed Ms Bordei's actual request, which was for a breakdown of the *"Other Debtors"* figure. Ms Bordei replied at 13:54 and repeated her request for a breakdown.

87. By an email dated 15 February 2023, Ms Bordei made a comprehensive request to F&F for any Company books and records held electronically. F&F replied on 20 February 2023 (an apparently identical email seems also to have been sent on 3 March 2023) and confirmed that F&F *"…maintain our working paper file for the last four years…it is important to note that we do not hold any physical documents or records, as the accounts were made using the information from the bank statements."* There was still no breakdown of the *"Other Debtors"* figure, although F&F's email now appeared to acknowledge by implication that at least some of that balance had been a DLA owed by Dr Stobinski, albeit in the course of contending that no sums were now due:

> *"Prior to the company's liquidation, both the company and the director's tax were investigated by HMRC. As a result, the director paid an additional £68,000 to HMRC for an amount taken from the company that had not been declared as a dividend. The director declared it as a dividend during the course of the investigation.*
>
> *Immediately after the investigation, the company went into liquidation. Due to time constraints, the accounts could not be updated to reflect the additional sum taken by the director for the additional dividend amount.*
>
> *Please note that with the necessary documentation for the additional tax paid by the director, the attached debtor/director loan accounts' balance was reduced to nil, given the additional personal tax payment of £68,000 made for the additional dividend."*

88. This is not easy to follow but, to the extent it is said that any credit should be applied against Dr Stobinski's DLA by reason of a dividend declared as described, I reject it. There are several reasons for this. First, the evidence shows that the HMRC opened and notified the Company of its compliance check on 17 January 2022. If the dividends in question were purportedly declared *"during"* that process, then the purported declaration must necessarily have happened after APE 2021 (which ended on 29 March 2021), which was the final period for which the Company prepared accounts. F&F's email makes clear that the purported further dividend is not recorded in any accounts (*"…the accounts could not be updated to reflect the additional sum…"*) and so must have been a dividend in addition to those recorded in the Amended Accounts. It is on any view plain from the Amended Accounts that the Company could not have had sufficient realised profits to justify the payment of any further dividend. Second, the Company had certainly been insolvent for some time by 17 January 2022, in that it had a significant accumulated CT liability and the marginal balance sheet solvency position recorded in the Amended Accounts was wholly dependent on the recoverability of the *"Other Debtors"* balance. Third, no contemporaneous documents showing compliance with any of the formalities in Part 23 of the CA 2006 have been produced.

89. Correspondence on behalf of the Liquidator is then taken up by his solicitors, Coyle White Devine (**"CWD"**). They wrote to Dr Stobinski on 29 June 2023 asking detailed questions about the £38,500 *"MGMT CHARGE"* payments, the circumstances in which the Company had applied for a *"Bounce Back Loan"* (**"BBL"**) in the maximum sum of £50,000 on 5 May 2020, and various apparently personal payments made following receipt of the BBL on 10 May 2020. CWD made the point that, as the Company had no employees and the accounts showed no provision in relation to PAYE, the only way Dr Stobinski could have been paid was by way of dividends. A request for repayment of £96,791.33 (comprising the £38,500 and various other impugned payments) was made. The DLA was not part of the claim at that time.

90. F&F responded on Dr Stobinski's behalf by a letter dated 21 July 2023. The letter is stridently worded (*"It appears the contentions raised in your communications are predicated on superficially scrutinized evidence…"*) and promises a *"comprehensive elucidation"*. In fact, the letter is not comprehensive in its treatment of the amendments to the accounts in 2022: it focuses on the incorrect classification of Dr Stobinski's personal income as Company turnover in APE 2018 and does not discuss the significant retrospective reduction of debtors and corresponding increase in dividends across APE 2018 to APE 2021. As to the payments totalling £38,500 described in the bank statements as *"MGMT CHARGE"*, the letter states categorically that these were remuneration and not dividends: *"…the payments to Dr. Stobinski were not dividends but compensations for his services as an independent contractor."* The apparently personal payments are said to have been *"…executed in association with the company's legitimate business activities"* and that *"…not all transactions necessitate invoices or receipts"* and *"…can be substantiated through alternative documentation"*. F&F's point on this went nowhere, for no such *"alternative documentation"* was in any event provided or even identified. The letter also stated that the payments to the five individuals (see §3(b) above) had been *"sanctioned by HMRC"* although, again, no evidence for this was provided. I note that there was no reference to any such *"sanction"* in the correspondence between F&F and HMRC to which I have already referred. Overall, and despite extending over five pages, F&F's letter consists of little more than unparticularised assertion and in the end raises more questions than answers.

91. Perhaps most remarkably, the letter contained the following paragraph:

> *"Stock/assets – Some of the assets remains in the warehouse and is available for sale. We have not been asked for details by the liquidator, hence it was not provided."*

92. Evidence on the so-called *"warehouse"* is almost non-existent. It does not appear to have been an asset of the Company (for no premises or lease of any premises were declared to the Liquidator either in the statement of affairs or subsequently) and no reasoned basis to regard any costs in

connection with it as a legitimate Company expense has ever been suggested on behalf of Dr Stobinski. The unparticularised reference to *"stock/assets"* being *"available for sale"* also gives rise to the objection that only the Liquidator had any authority to offer any stock belonging to the Company for sale. F&F failed to acknowledge, let alone engage with, that obvious point. The letter closed by offering £2,000 as a *"goodwill gesture"*. In my judgment, the letter did not provide an adequate explanation for the transactions challenged by the Liquidator and again raised more questions than answers.

93. On writing back on 11 August 2023, CWD made the fair point that F&F's letter had not provided the promised *"comprehensive elucidation"* and pointed out that a company director is required under ss.386 and 387 of the CA 2006 to maintain adequate day-to-day company records. CWD identified various shortcomings in the explanations provided by F&F and made requests for particular documentation. In particular, CWD asked for bookkeeping records, copies of all correspondence between F&F or the Company and HMRC in relation to the Company's accounts, and a list of stock held by the Company.

94. F&F responded by a letter dated 31 August 2023. In apparent recognition of the fact that Dr Stobinski was not an employee and so not entitled to remuneration, but that simultaneously the Company's solvency position was such that it could not declare or pay further dividends, F&F gave the following description of Dr Stobinski's position:

> *"…*[Dr] *Stobinski's role within the company was multifaceted. In addition to serving as director, he also carried out labour-intensive tasks vital to the business. These weren't just administrative duties; they were hands-on roles that kept the company solvent. Payments made to him should be viewed in this context – as essential remuneration for his multi-dimensional involvement in the company. It is crucial to consider the unique dual role Dr. Stobinski undertook in both directorial and labour-intensive capacities for the Company. Therefore, his financial remunerations were not merely discretionary but essential to the financial viability of the Company."*

95. To the extent this may be understood, it appears to be a suggestion that Dr Stobinski was entitled to take the Company's money *ad hoc* because his role was *"unique"*. If that is Dr Stobinski's case, then I reject it. Dr Stobinski's position was unremarkable (save for the unsatisfactory way in which he performed it) for a closely held company of which he was sole director and shareholder.

96. The letter went on to say that the Company's electronic bookkeeping records were no longer accessible to Dr Stobinski (but did not say why) and that demanding their production was neither reasonable nor proportionate. This was misconceived: the delivery up of such financial records to any liquidator is basic and essential. As to correspondence with HMRC, F&F

asserted that more time was required to *"compile"* this (but did not say how long would be needed) and added that they were *"particularly concerned"* that legal professionals had been engaged *"without adequate prior communication and initial investigation."* In my judgment, this criticism was again misconceived: given Dr Stobinski's refusal to cooperate personally and the inadequate information provided by F&F, the Liquidator's decision to instruct CWD at the time he did so was fully justified in the circumstances.

97. F&F went on to confirm that it would *"endeavour to provide a list of all stock held by the company at the date of liquidation and any subsequent sales."* Again, F&F seemed oblivious to the fact that no stock belonging to the Company should have been sold without the Liquidator's authority after the commencement of liquidation. F&F concluded this paragraph with: *"We request that you specify which stock items you query and the reasons behind such queries."* This request is a typical example of the *"through the looking-glass"* quality of the arguments advanced by and on behalf of Dr Stobinski in this liquidation: in the absence of a stock list, or even the vaguest description of the nature of the stock, the Liquidator could not begin to engage with the request. Further, it was not for the Liquidator to justify to the Company's accountants why he wanted to know about assets belonging to the liquidation estate. This was particularly so in circumstances where it had been asserted that at least some of the stock had been sold without his authority since the liquidation had commenced.

98. In apparent response to CWD having referred to the responsibility of all company directors to maintain adequate books and records, the letter asserted that Dr Stobinski had *"…maintain*[ed] *required accounting and operational records. These were meticulously kept across various platforms such as bank statements, spreadsheets, and emails, given that the company did not have a formal office set up."* Yet again, this was no more than bare assertion. The remainder of the letter (about a page and a half) consisted of unparticularised attempts to justify Dr Stobinski's conduct that in my judgment lacked any legal or financial coherence. It made a further criticism of the Liquidator's decision to instruct CWD without first having *"an initial, clarifying meeting between the liquidator and Dr. Stobinski."* This criticism was again unfounded, not least because it ignored the fact that Dr Stobinski had positively refused to cooperate with the Liquidator's reasonable inquiries. The letter closed with a request for a *"comprehensive list of all queried payments, queried stock, and any other issues, along with a justification for each query, to allow for an informed response."* This request was not warranted in the circumstances: CWD had already provided a high degree of particularity in relation to the questioned payments in their letter of 29 June 2023, the Liquidator was unable to raise specific queries in relation to *"stock"* because he did not know what stock the Company had held at the commencement of liquidation, and the *"justification"* for such queries should have been self-evident to F&F.

99. In their next letter dated 20 October 2023, CWD chased for the promised correspondence with HMRC and the stock list. CWD also pointed out that no explanation had been given for Dr Stobinski's inability to access the Company's electronic bookkeeping records.

100. F&F wrote again on 2 November 2023. The letter in question is dated 31 August 2023, but this appears to be a slip as it appears to have been attached to an email of 2 November 2023 and is clearly responsive to CWD's letter of 20 October 2023. As to its substance, far from providing the *"necessary clarity and information"* promised by the covering email, the letter consisted of generalities and did not advance matters. F&F's comment that *"…despite our efforts to establish clear communication lines, there has been limited reciprocation from the liquidator's side"* was in my judgment unjustified. Under the heading *"Stock and Records"*, F&F stated that *"Dr. Stobinski is ready and committed to providing all necessary financial records and related documents."* In my judgment, these were empty words. Had that been Dr Stobinski's position, then the requested information would have been provided. Nor did F&F's requests at the conclusion of their letter for a *"detailed list of pending inquiries"* and a *"consolidated list of queries"* have any sensible foundation. In my judgment, this was an attempt to deflect and stonewall the Liquidator's reasonable inquiries because F&F, on behalf of Dr Stobinski, had no answer to them.

101. CWD sent a further letter dated 1 December 2023 and made clear that it presented a final opportunity to settle the matter without proceedings. That letter again set out, including by reference back to CWD's letter of 29 June 2023 in which particulars of the Liquidator's inquires had been given, those matters that remained outstanding or for which an inadequate account had been provided. In my judgment, all the points made in that letter were well-founded.

102. F&F responded on 14 December 2023. The letter was comparatively short (two pages) and stated that *"Ou[r] stance on the following points* [apparently everything other than the BBL and settlement] *remains unchanged"*. Despite this assertion, the very next line included a significant change in Dr Stobinski's position:

> *"Clarification on Roles and Responsibilities: Dr. Stobinski was not an employee; his remuneration was via dividends, and the personal tax was duly paid on these 'Management Charges.'"*

103. This was a reversal of the position adopted in relation to the *"MGMT FEE"* in F&F's letter dated 21 July 2023: see §90 above. It is also inconsistent with the position taken in Dr Stobinski's witness statement for trial, to which he swore in the witness box: see §63 above. F&F did not say when the dividends comprised by the *"MGMT FEES"* related had been declared.

104. CWD sent a further letter dated 5 January 2024 reiterating matters that had by then been outstanding for many months. CWD described F&F's most recent letter as *"…another example of entirely futile correspondence where our client's requests are ignored and your approach merely serves to increase costs without any progression whatsoever."* In my judgment this was a fair assessment in all the circumstances.

105. F&F wrote again on 31 January 2024. This letter largely repeated points previously made but contained one new material argument in Dr Stobinski's defence: it was contended (apparently for the first time) that the £38,500 *"MGMT CHARGES"* paid between May 2020 had been comprised within the dividends in the total sum of £64,000 recorded in both the Filed Accounts and the Amended Accounts for APE 2021. Although positively inconsistent with Dr Stobinski's witness statement, this was the case advanced by Mr Brown on Dr Stobinski's behalf at trial. The letter also stated that invoices to support some of the payments (to individuals called Beata Orlowsjka and Marcin Pilichowski) were *"…now being recovered by* [Dr] *Stobinski."* No invoices have to date been produced to support these or any other payments.

106. By a letter dated 20 February 2024, CWD picked up one of the Liquidator's earlier inquiries and again asked F&F for a breakdown of the *"Debtors"* figure recorded in the Amended Accounts for APE 2021. This had previously been requested by emails of 4 October 2022, 4 January 2023 and 6 January 2023. CWD made the compelling point that as F&F had prepared the Amended Accounts during 2022, which had reduced *"Debtors"* from £454,421 (as had been stated in the Filed Accounts) to £112,506, F&F must have understood the basis of the amended figure. CWD also asked whether the *"Other Debtors"* figure was in fact the DLA referred to by F&F in their email of 3 March 2023 or whether there was a separate DLA account. CWD also asked for documentation to support the alleged additional dividend (see §87 above) which according to F&F had reduced the DLA to nil. CWD also chased for other outstanding matters, including copies of HMRC communications and an explanation for the non-availability of the bookkeeping records.

107. F&F responded on 22 March 2024. This is an important letter, as it impliedly acknowledges that the figure for *"Debtors"* in the Amended Accounts for APE 2021 is entirely comprised of a debt owed by Dr Stobinski to the Company and contends that it should be reduced to £24,385.88 in various ways. The approach in this letter was significantly different from the position taken in relation to Dr Stobinski's DLA in previous correspondence. F&F's new approach in relation to the DLA balance was to suggest that the balance of £112,506 in the Amended Accounts for APE 2021 comprised an opening balance of £48,108, unclaimed expenses of £40,012.28 (for which a breakdown was provided) and £24,385.88 *"related to director"* (which appeared to be a concession that this sum was owed by Dr Stobinski by way of a DLA). F&F asserted that the opening balance *"…should not be*

classified as other debtor, its need to be classified as other investment because the money has been invested to develop a business, but that investment is not recoverable as it was not a successful investment and eventually all investment has been lost." No evidence for this by way of any supporting documentation has ever been provided.

108. As to the *"unclaimed expenses"*, these were said to comprise various personal payments made by Dr Stobinski as follows: payments totalling £19,500 to Ms Orlowska in APE 2019; payments in APE 2020 and APE 2021 totalling £8,794.98 to Harley Academy for training; mileage of £9,422 in APE 2019; and payments totalling £2,295.30 to Hitachi Capital in APE 2021 to pay for equipment in APE 2021.

109. Having considered the written and oral evidence and the explanations advanced by F&F, I reject any suggestion that the matters identified by F&F are capable of being treated as credits to Dr Stobinski's DLA. The alleged lost investment in a business of £48,107.84 is both unevidenced and unparticularised. It is nothing but assertion. On the balance of probabilities, it must be rejected. As to the unclaimed expenses, the purported payments by Dr Stobinski to Ms Orlowska and for mileage are entirely unevidenced. As with other aspects of his case, Dr Stobinski could easily have evidenced any payments by him to Ms Orlowska, if they had been made, by exhibiting his own bank statements but he has not done so. The mileage claim is high and is unevidenced beyond a table of entries of unexplained provenance. Bank statements showing regular purchases of fuel might have given some evidential support for this claim but, as already noted, Dr Stobinski has not provided any evidence at all.

110. Any entitlement to credits to the DLA arising from unclaimed expenses by way of payments by Dr Stobinski to Harley Academy and Hitachi Capital is also rejected. It is clear from the Company's bank statements that these payments were indeed made, but by the Company itself rather than Dr Stobinski. That such a basic error was made by F&F in putting these forward as evidence of unclaimed expenses going to justify credit entries to Dr Stobinski's DLA is remarkable.

111. F&F's letter closed with an apparent acknowledgment that the sum of £24,385.88 remained outstanding from Dr Stobinski to the Company and stated that Dr Stobinski was *"prepared to contribute"* £13,000 towards this. No reason to support any entitlement to such a discount was provided. In my judgment, none of the matters identified by F&F supported any credit being applied to the balance of £112,506 recorded in the Amended Accounts for APE 2021, either because they were misconceived on their face (such as the suggestion that Dr Stobinski had personally made the Harley Capital and Hitachi Capital payments) or wholly unevidenced.

112. CWD wrote again to F&F on 29 April 2024. By this time, the Liquidator had received the email from HMRC summarised at §81 above and so knew that the *"Other Debtors"* balance related solely to Dr Stobinski's DLA. CWD

described F&F's equivocation over what the *"Other Debtors"* balance comprised as *"…staggering and somewhat disingenuous…"*, given that F&F must have known all along that it was Dr Stobinski's DLA. It is certainly difficult to identify any proper reason for F&F's equivocation on this point or to understand why it took so long for the truth to emerge.

113. The final letter in the evidence at trial was from F&F and dated 31 May 2024. F&F adopted another new approach in this letter, which was to assert that the determination of the DLA balance at £112,506 *"…was never challenged nor agreed* [with HMRC] *due to the director's financial constraints and lack of information during that particular time.* [Dr] *Stobinski, facing significant personal and professional challenges, made the difficult decision to put the Company into liquidation rather than incurring further expenses to contest the HMRC decision. However, this does not alter the fact that the classification was open to dispute."* As I have already found, there is no basis for any suggestion that the DLA balance was in some way to be regarded as *"HMRC's DLA Figure"*. This was another meritless argument advanced on behalf of Dr Stobinski against a clear contemporaneous record. F&F nonetheless increased Dr Stobinski's offer to £24,385.88, which it described as the *"full balance"*, given the credits it had previously identified.

114. Ultimately, none of the points or arguments put forward by F&F on Dr Stobinski's behalf comes close to disclosing any defence to the current proceedings. Given their changeable and to some degree misleading nature, they really do the opposite.

DIRECTORS' DUTIES AND INSOLVENCY

115. The Liquidator's case is that Dr Stobinski breached in various ways the following duties in the statutory statement of directors' duties codified by ss.170-180 of the CA 2006: s.171 (only to exercise powers for the purposes for which they are conferred), s.172 (to act in the way the director considers, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole), s.174 (to exercise reasonable care, skill and diligence) and s.175 (to avoid conflicts of interest). Of these, ss.171, 172 and 175 are fiduciary duties. Section 174 is a common law duty of care.

116. Mr Hodge submitted that the Company was insolvent or bordering on insolvency from 2 December 2019, which meant that Dr Stobinski's duties to the Company were modified by the need to have regard to the interests of its creditors from that time. This area was authoritatively reviewed by the Supreme Court in *BTI 2014 LLC v Sequana SA* [2024] AC 211. In summary, when a company's state of financial distress is such that the interests of its creditors have sufficiently diverged from those of its shareholders, a director must have proper regard to the interests of the creditors in order to discharge their duties to the company. That condition will exist where the Company is *"bordering on insolvency or of doubtful solvency"* (per Lord Reed, [88]) or where *"insolvency is imminent or*

probable" (per Lord Briggs, [203]). Most of the argument in the present case focused on the duty in s.172 of the CA 2006, which contains the following qualification at s.172(3): *"The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of the company."* Although s.172 is the only one of the codified duties to contain an express reference to creditors, it should be noted that the majority in *Sequana* considered that the qualification in s.172(3), where it applied, prevented any implication of the primacy of the interests of shareholder into any of the other general duties: see Lord Hodge at [225]-[226], with whom Lord Briggs and Lord Kitchin agreed on this point at [155]-[156].

117. The Liquidator's case on insolvency was that the Company had accrued a CT liability dating back to 2017, which had grown year-on-year. By 2 December 2019, the Company had only £1,218.65 cash in its bank account and its balance sheet solvency (whether using the Filed Accounts or the Amended Accounts) was wholly dependent on the recoverability of the DLA owed by Dr Stobinski. Instead of taking steps to recover the DLA or pay the CT liability, Dr Stobinski continued to draw on the DLA and make other payments for his own benefit. Mr Hodge emphasised that, as matters now stood, Dr Stobinski disavowed any liability under the DLA.

118. In answer to this, Dr Stobinski said at §41 of his witness statement and in oral evidence that he had been advised at the time that the *"MGMT CHARGES"* payments were made (i.e. May 2020 to January 2021) and *"continue[d] to be advised"* that no CT was due. As I have already said, I can attach no weight to Dr Stobinski's evidence save where it is corroborated or has some other sound basis. On the question of the CT liability, Dr Stobinski's position is not merely uncorroborated, it is positively contradicted by F&F's correspondence with HMRC summarised above. This shows that there was at no time any material doubt over the level of the Company's CT liability for any period other than APE 2018. Had Dr Stobinski been in receipt of advice of the kind described in his statement at any time, then it would have been straightforward to have put some evidence of it before the court. I reject Dr Stobinski's evidence on the CT debt in so far as he contends that he had any rational basis to think that it would be materially reduced or extinguished for any year other than APE 2018.

119. Taking into account the Company's asset and liability position, I am satisfied that the Company was at least bordering on both cash flow and balance sheet insolvency from 2 December 2019 at the latest. That was because it had liabilities greatly in excess of its cash (such that it could not pay its liabilities without realising its other assets) and its other assets (on which both cash flow and balance sheet solvency were completely dependent) were largely comprised of a DLA that was at least of doubtful recoverability, given Dr Stobinski's attitude towards it. Indeed, far from taking any step to repay the DLA, Dr Stobinski intended to and did continue

to draw on it. Even if the DLA had been recoverable in full, the Company's notional balance sheet solvent position shown in the Amended Accounts was very narrow. Accordingly, I accept the Liquidator's case that the Company was insolvent or bordering on insolvency from 2 December 2019. I should add that there is to my mind a degree of artificiality in taking the DLA into account as an asset capable of improving the balance sheet for the purposes of an assessment of solvency, given that Dr Stobinski resists any suggestion that he should now have any liability under it. I have nonetheless taken it into account but applying a realistic assessment of the circumstances as they were at the time.

120. Establishing that a company was insolvent or bordering on insolvency at the time of a particular act or omission is, however, only the start of the inquiry: the weight then to be given to the interests of the company's creditors is heavily fact-dependent and will vary with the circumstances. Lord Briggs JSC (with whom Lord Kitchin and Lord Hodge JJSC agreed) explained in *Sequana* at [176] that:

> *"…prior to the time when liquidation becomes inevitable…the creditor duty is a duty to consider creditors' interests, to give them appropriate weight, and to balance them against shareholders' interests where they may conflict. Circumstances may require the directors to treat shareholders' interests as subordinate to those of the creditors…This is likely to be a fact sensitive question. Much will depend upon the brightness or otherwise of the light at the end of the tunnel; i.e. upon what the directors reasonable 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. It may well depend upon a realistic appreciation of 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."*

121. One element of the *"fact contingent"* inquiry into the appropriate weight to be given to creditors is the kind of *"proposed action"* that is in issue. In *Hunt v Singh* [2023] BPIR 1351, Zacaroli J (as he then was) referred to the passage from *Sequana* just cited and pointed out at [57] that:

> *"…The extent to which directors should act with a view to protecting creditors' interests is likely to vary significantly, for example, depending on what it is the directors are considering doing. For example, there is a world of difference between, on the one hand, (1) directors proposing to continue trading, notwithstanding the risks of making further losses and, on the other hand, (2) directors proposing to declare dividends of all available assets leaving nothing to pay the disputed liability in the event that it is a good one."*

122. Pausing here, I remind myself that all the challenges to Dr Stobinski's conduct in this case are to actions that in one way or another benefited Dr Stobinski. Those challenges concern either the way Dr Stobinski dealt with

the DLA (as an asset of the Company) or payments that were either directly to him or are otherwise alleged to have been made for his personal benefit without any benefit to the Company. In my judgment, having proper regard to the Company's solvency position and the need to recover the DLA if HRMC was to stand any chance of being paid, the interests of the Company's creditors should have been accorded very significant weight when deciding on any proposed action that was concerned with the Company's ordinary course of trading. However, where any proposed action was for the benefit of Dr Stobinski, in my judgment the interests of the Company's creditors should have been given paramount or near-paramount weight.

123. As already noted, most of the argument in this trial focused on s.172 of the CA 2006. Mr Hodge accepted that a subjective standard of review ordinarily applies to a director's performance of their duty under s.172, i.e. whether the director exercised his decision-making discretion in good faith and in what he (not the court) considered to be in the company's best interests. This does not mean, of course, that a director can avoid liability simply by asserting that they acted in what they genuinely believed in good faith were the company's interests: whether or not they did so will be a question of fact to be determined, where it is in dispute, on the evidence like any other.

124. Further, the test of subjectivity is in any event qualified by a threshold requirement of rationality. The rationality qualification applies generally to fiduciary decision-making: see *Children's Investment Fund (UK) v Attorney General* [2020] UKSC 33, [2022] AC 155, at [232], per Lord Briggs JSC. It has been applied in the company law context at least as far back as *Hutton v West Cork Railway Co* (1883) LR 23 ChD 654, in which Bowen LJ observed at 671 that:

> "Bona fides *cannot be the sole test, otherwise you might have a lunatic conducting the affairs of the company, and paying away its money with both hands in a manner perfectly* bona fide *yet perfectly irrational. The test must be what is reasonably incidental to, and within the reasonable scope of carrying on, the business of the company."*

125. As Miles J (as he then was) recently put it in *London Capital & Finance Plc (in administration) v Thomson* [2024] EWHC 2894 (Ch), at [1911]:

> *"an irrational decision, even if made in good faith, may constitute a breach of this duty*."

126. A director may find it more difficult to show that particular conduct was the product of a decision taken in good faith or arrived at rationally where a company-focused basis for it is absent or contrived or where they or their associates derived a benefit from it: see *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] 1 All ER 1126, at 1131-1132, per Lord Wilberforce; cited in *Colin Gwyer & Associates Ltd v London Wharf (Limehouse) Ltd*

[2003] 2 BCLC 153, at [76], per Mr Leslie Kosmin QC (sitting as a deputy High Court judge).

127. Moreover, the subjective standard of review will yield to an objective standard under certain conditions. Mr Hodge submitted that the following analysis of Mr John Randall QC (sitting as a deputy High Court judge) in *Re HLC Environmental Projects Ltd* [2014] BCC 337 at [92] is relevant to the present case:

> *"(b) As Miss Leahy submitted, the subjective test only applies where there is evidence of actual consideration of the best interests of the company. Where there is no such evidence, the proper test is objective, namely whether an intelligent and honest man in the position of a director of the company concerned could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company (*Charterbridge Corp Ltd v Lloyds Bank Ltd *[1970] Ch.62 at 74E-F, (obiter), per Pennycuick J.;* Extrasure Travel Insurances Ltd v Scattergood *[2003] 1 B.C.L.C. 598 at [138] per Mr Jonathan Crow).*
>
> *(c) Building on (b), I consider that is also follows that where a very material interest, such as that of a large creditor (in a company of doubtful solvency, where creditors' interests must be taken into account), is unreasonably (i.e. without objective justification) overlooked and not taken into account, the objective test must equally be applied. Failing to take into account a material factor is something which goes to the validity of the directors' decision-making process. This is not the court substituting its own judgment ton the relevant facts (with the inevitable element of hindsight) for that of the directors made at the time; rather it is the court making an (objective) judgment taking into account all the relevant facts known or which ought to have been known at the time, the directors not having made such a judgment in the first place…"*

128. In my judgment, this is a clear case where an objective standard of review is appropriate. Based on Dr Stobinski's evidence in the witness box, I do not believe that he really understands what a company is or accepts that it has separate interests beyond his own personal interests. As a consequence of this, I am satisfied that Dr Stobinski has not properly applied his mind for the purposes of s.172 of the CA 2006 to the question of whether any particular decision to act was in the best interests of the Company, because in my judgment he does not acknowledge that those interests are distinct from his own. Further, Dr Stobinski made it clear again and again in the box that that it is his view that all matters of corporate governance, including decision making and judgment, are not ones with which he has been or should be concerned. Accordingly, I am satisfied that Dr Stobinski does not believe and has at no relevant time recognised that he needs to consider the Company's interests separately from his own. In my judgment, he did not do so in any respect relevant to any of the matters challenged by the Liquidator in these proceedings.

129. Having made these findings, I am driven to the conclusion that no relevant decision that is in issue in this case complied with the duty in s.172, because that duty requires a director to apply their mind in a particular way in taking decisions: in my judgment, Dr Stobinski did not do that in any relevant respect. To the extent that Dr Stobinski thought about HMRC as a significant creditor at all before he acted, he did so in a way that was irrational (or otherwise *"non-qualifying"* in the sense in which Lord Briggs used those words in *Sequana* at [116]), because Dr Stobinski went on to act in a way that was adverse to HMRC without any justification referrable to the interests of the Company as those interests fell to be construed at the time. An objective standard of review accordingly applies to Dr Stobinski's decision-making because he did not (a) exercise his deliberative function by reference to the separate interests of the Company at all; (b) have proper regard to the interests of HMRC as a significant creditor; or (c) have any rational foundation for his decision making or conduct.

130. The Liquidator's allegation that Dr Stobinski breached his duty under s.175 (the duty to avoid conflicts of interest) is also clearly made out in relation to each relevant decision for similar reasons: any decision he has taken is necessarily not independent of his own interests, because he does not adequately recognise that the Company has interests that are distinct.

CONCLUSION

131. As noted earlier, Mr Brown did not accept that Dr Stobinski bore the burden of proof in relation to the DLA balance of £112,506, arguing that the Liquidator had not shown that Dr Stobinski received or benefited from those sums. But he conceded that the burden was on Dr Stobinski to justify the other heads of claim, i.e. the Other Payments and the *"MGMT FEES"*.

132. For the reasons I have given, I reject Dr Stobinski's submission that the *"Other Debtors"* figure of £112,506 in the Amended Accounts for APE 2021 is anything other than a DLA owed by Dr Stobinski to the Company. The suggestion that the *"sole ground"* for this was an assertion by HMRC is without foundation. In fact, the figure originated with F&F at the time the Amended Accounts were prepared, was proffered to HMRC as the correct level of Dr Stobinski's DLA, and was taxed as a DLA with the concurrence of F&F and Dr Stobinski.

133. I also reject Dr Stobinski's evidence that he advanced a loan to the Company in the financial year to April 2019 of £98,960. This is contradicted by the Company's bank statements and no attempt has been made to explain how otherwise the Company received the loan. There is no evidence to support it.

134. I further reject the case advanced in Mr Brown's skeleton argument that £123,089 was lent by Dr Stobinski in APE 2018. In the first place, I agree with the Liquidator that this case is not available to Dr Stobinski as it had not been raised prior to Mr Brown's skeleton argument. While it had long

been known that certain salary income of Dr Stobinski's had been misrecorded as Company turnover in the Filed Accounts for APE 2018, there had been no suggestion anywhere that such salary had been *actually paid* to (or, as Mr Brown put it, *"routed through"*) the Company prior to the eve of trial.

135. In any case, the Liquidator was able to point to a spreadsheet, apparently produced by F&F, which indicated that payments to Dr Stobinski from *"EAST SUSSEX HEALTH"* between 5 May 2017 and 29 March 2018 in the total sum of £123,089.30 had been paid to an identified personal bank account of Dr Stobinski's. I infer, as the Liquidator invited me to infer, that these were the sums Mr Brown submitted had been *"routed through"* the Company. Had there been anything in Mr Brown's new argument, Dr Stobinski could readily have provided his personal bank statements for the account identified in F&F's spreadsheet to show how the money was subsequently *"routed through"* the Company, if that was what he said had happened. As it was, he did not even mention Mr Brown's argument in his evidence.

136. As to the extent of Dr Stobinski's liability, Mr Brown submitted that the Liquidator only challenged the DLA on the basis that Dr Stobinski continued to draw on it after the Company had become insolvent or bordering on insolvency from 2 December 2019. That meant that only those sums (i.e. £21,269: see §47 above) that could be conclusively shown to have been drawn after that time were recoverable, given the non-availability of a debt claim under s.212 of the IA 1986. I do not accept that the Liquidator's claim is limited in that way. Fairly read in context, I consider that the Liquidator's complaint is not simply that Dr Stobinski continued to draw on the DLA once the Company was bordering on insolvency. Rather, the Liquidator's overall allegation is that Dr Stobinski failed to take any step to recover the DLA as an asset of the Company (i.e. to repay it) while simultaneously failing to take any step to deal with the CT debt, in circumstances where there was no rational doubt that a significant CT debt was due and no prospect of that debt being paid without recourse to the asset represented by the DLA.

137. Applying an objective assessment of what a reasonable director acting in good faith would have done once the Company was bordering on insolvency, such a director would in my judgment have ceased drawing on the DLA and taken steps to recover it as an asset. Given that Dr Stobinski himself was the debtor, and demand and repayment were accordingly both under his control, the only proper way to discharge his fiduciary duty of loyalty to the Company, in the particular circumstances as they were at the time, would have been to take steps promptly to discharge the debt, at least to the extent necessary to allow the CT liability to be addressed. Instead of doing that, Dr Stobinski continued to draw on the DLA. In my judgment, that was a clear breach of ss.172 and 175 of the CA 2006, applying an objective standard. Alternatively, the failure to recover the asset and

instead to continue to increase the Company's exposure to an unreliable debtor was negligent and accordingly a breach of s.174 of the CA 2006. Accordingly, this part of the claim succeeds in full.

138. I add for completeness and the avoidance of any doubt that, had the Liquidator not succeeded in his primary argument that Dr Stobinski breached his duties as a director in the way he dealt with the DLA, then I would have taken the Liquidator up on his offer of an undertaking to pay the appropriate fee for a Part 7 claim and entered judgment in favour of the Company for £112,506 on the basis that this is a debt due and owing from Dr Stobinski: see §33 above. Judgment in that form may have affected arguments on interest (on which I have not yet had submissions) but the principal judgment sum would have been the same.

139. Turning to the Other Payments of £63,189.29, Mr Brown does not resist the Liquidator's submission that Dr Stobinski bears the burden of proof in showing that these were payments for the benefit of the Company. If it had come down to the burden of proof then plainly Dr Stobinski would have failed to discharge it: the explanations put forward have lacked credibility and have been unsupported by evidence other than his uncorroborated word, which I decline to accept.

140. However, applying the kind of approach explained by Arden LJ in *Mumtaz*, the matter can readily be resolved on the balance of probabilities: having assessed all the evidence in the round, having regard both to its presence and its absence, and having regard to the plausibility of the alternative explanations put forward, and after a trial in which Dr Stobinski gave oral evidence on oath, the outcome is clear. In the end, I am driven to find that none of these payments was made for the benefit of the Company. For the reasons I have already given, an objective assessment of Dr Stobinski's conduct is required, and I find that a reasonable director acting in good faith would not have made these payments because they were not for the Company's purposes, were not in the interests of the Company, and were instead for the benefit of its director. Accordingly, a breach of each of ss.171, 172 and 175 of the CA 2006 is established. Making these payments was also negligent and a breach of s.174 of the CA 2006.

141. I accept, however, that there is something in Mr Brown's submission that the court cannot be confident that there is no double-counting between the sums debited to the DLA (which are comprised within the £112,506 overdrawn balance) and the payments making up the further Other Payments claim to £63,189.29. On behalf of the Liquidator, Mr Hodge submitted (relying on *Mumtaz*) that in circumstances where Dr Stobinski had not produced any ledger showing how the DLA balance was made up, despite repeated requests for it, and had generally confounded the record, adverse inferences should be drawn against Dr Stobinski. I am sympathetic to the Liquidator's submission on this. But I have concluded that as the Liquidator seeks to rely on and hold Dr Stobinski to the accuracy of the exercise undertaken by F&F in amending the Company's accounts,

including the crystallisation of the DLA as at APE 2021 (which was 28 March 2021), he must take both the upside and the downside of the hypothesis that the balance was accurate at that point.

142. But there is still a significant sum that can be shown not to be double-counted: according to the unchallenged spreadsheets prepared by the Liquidator, £60,416.99 of the total Other Payments of £63,189.29 was paid after the end of APE 2020, i.e. after 28 March 2020. The difference between the *"Other Debtors"* balance in the Amended Accounts for APE 2021 and APE 2020 was £21,269 (i.e. the difference between £112,506 in APE 2021 and £91,237 in APE 2020), which means that to the extent of £39,147.99 (i.e. the amount by which the total sum of £60,416.99 paid away after 28 March 2020 exceeds the increase in the DLA of £21,269 after that date) the Other Payments cannot be double-counted. Accordingly, the Liquidator succeeds on this part of the claim in the sum of £39,147.99. I reach this decision with some regret, as there is a reasonable chance that allows Dr Stobinski too much, but I consider that the logic of the Liquidator having stood on the DLA figure in the Amended Accounts compels this result.

143. Finally, I also find that the Liquidator's case on the payments away of £38,500 labelled *"MGMT FEES"* is made out. I consider it highly improbable that these were comprised within the dividends recorded in the Amended Accounts for APE 2021, not least because F&F, who had been responsible for administering those dividends, were emphatic in their letter dated 21 July 2023 that these payments were not dividends and only changed their position later. That these payments were not dividends remained Dr Stobinski's own evidence in a witness statement that has performed the function of a pleading in this trial and to the truth of which Dr Stobinski swore at trial.

144. Any argument to the contrary must inevitably fail in any event. This is because, as Mr Brown explored with the Liquidator in the witness box, the Liquidator's case is not based on challenging the lawfulness of the dividends recorded as having been declared in the Amended Accounts under the formalities requirements in Part 23 of the CA 2006. Instead, it is based on the proposition that the payments totalling £38,500 should not have been made at the time they were, even if they represented lawfully declared dividends, because to do so was a breach of Dr Stobinski's duty to the Company to have proper regard to the interests of its creditors.

145. This distinction has been described as the difference between *"could not pay"* and *"should not pay"* claims in the context of impugned dividends. In the former case, a dividend simply cannot be paid because there has been no compliance with the formalities in Part 23 of the CA 2006; in the latter, a lawful declaration of a dividend may be technically possible (i.e. the relevant accounts show realised profits available for distribution and the other statutory formalities have been duly complied with) but for the directors to pay it out would nonetheless constitute a breach of duty: see the discussion of these distinct aspects in the first instance judgment of Rose J

in *BTI 2014 LLC v Sequana SA* [2016] EWHC 1686 (Ch), [2017] 1 BCLC 453, at [301*ff*] and [456*ff*].

146. The Liquidator's submission in the present case, on the hypothesis that the £38,500 was comprised within otherwise lawfully declared dividends, is that Dr Stobinski *should not* have paid them because of the Company's financial condition at the time. I accept that submission, essentially for the same reasons I have already given in relation to the other heads of claim: the Company was at least bordering on insolvency, was dependent on recovering money from Dr Stobinski to stand any prospect of paying its principal creditor, and the creditors' interests should have been accorded paramount or near paramount weight when deliberating on any proposed action that involved applying Company assets for Dr Stobinski's personal benefit. An objective assessment accordingly falls to be applied and in my judgment a reasonable director acting in good faith would not have paid these sums to Dr Stobinski, whether they were lawfully declared dividends or not. By the same process of reasoning as I have applied to the Other Payments, payment of each of the *"MGMT FEES"* was a breach of ss.171, 172, 174 and 175 of the CA 2006. Accordingly, this part of the claim succeeds in full.

Transaction at undervalue

147. The Liquidator also had an alternative claim to payments away of those sums (£21,104.84, although Mr Hodge sought to revisit and increase this in his skeleton argument) falling within the two years prior to the onset of the Company's insolvency under s.238 of the IA 1986. I heard almost no argument on this alternative claim. Given that there remained an unexplored question over the proper analysis to be applied to impugned payments not made directly to Dr Stobinski himself and judgment on this alternative basis would not add to the total award, I decline to decide it.

CONCLUSION

148. The Liquidator's claim succeeds in the total sum of £190,153.99, i.e. £112,506 + £39,147.99 + £38,500. I shall hear the parties on interest and costs to the extent these cannot be agreed.